



Foundation for Individual Rights in Education

601 Walnut Street, Suite 510 • Philadelphia, Pennsylvania 19106
T 215-717-3473 • F 215-717-3440 • fire@thefire.org • www.thefire.org

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February 26, 2008

Dr. Susan A. Cole
Office of the President
Montclair State University
1 Normal Avenue, College Hall Room 235
Montclair, New Jersey, 07043

Sent via U.S. Mail and Facsimile (973-655-7195)

Dear President Cole:

As you can see from our Directors and Board of Advisors, FIRE unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals from across the political and ideological spectrum on behalf of liberty, free speech, legal equality, due process, the right of conscience, and academic freedom on America's college campuses. Our web page, www.thefire.org, will give you a fuller sense of our identity and activities.

FIRE is gravely concerned about the threat to freedom of the press presented by the Student Government Association of Montclair State University's (SGA's) recent decision to freeze funding to *The Montclarion*, Montclair State University's (MSU's) student newspaper, as a result of an ongoing dispute between the SGA and the editors of *The Montclarion* regarding press access to closed meetings of the student government.

By discontinuing *The Montclarion's* funding, firing the paper's lawyer, and declaring provisions of the paper's constitution "unconstitutional" under the SGA's constitution, the SGA has brazenly violated the First Amendment. The SGA is authorized to allocate portions of the mandatory student activities fee paid by MSU undergraduates. Due to the power vested in it by MSU as a public institution of higher learning, it is clear that the SGA is an agent of MSU and is morally and legally bound by the United States Constitution. Thus, the SGA's claim that it is free to disregard the First Amendment as a "private corporation" is entirely specious and without merit. FIRE urges you to stop the SGA from imposing further unconstitutional punishments upon *The Montclarion*, and to immediately rescind those already enacted.

This is our understanding of the facts. Please inform us if you believe we are in error.

Frustrated with what they perceived as the SGA's consistent practice of making important decisions behind closed doors, *The Montclarion* retained attorney Sal M. Anderton on January 19, 2007 to advise the paper about the SGA's compliance with the New Jersey Open Public Meetings Act, in addition to other legal matters. In November 2007, acting on Anderton's advice, Karl de Vries, editor-in-chief of *The Montclarion*, publicly stated during an SGA meeting that the SGA's practice of holding closed sessions violated state law. The next day, SGA President Ron Chicken sent a letter to Anderton, attempting to terminate his contract with *The Montclarion*. However, Chicken sent the letter to an outdated address. On November 29, *The Montclarion* reported on a secret decision made by the executive board of the SGA to shut down campus radio station WMSC. On November 30, Chicken resent the letter terminating Anderton's services to the correct address, ending his employment.

In lieu of retaining Anderton's services, Chicken announced that *The Montclarion* would henceforth be granted access to the SGA's attorney, Aaron Easley, but that all interactions between *The Montclarion* and Easley must first be approved by Chicken. Subsequently, on December 5, Chicken verbally requested that *The Montclarion* surrender copies of its correspondence with Anderton to the SGA. Both Anderton and the paper refused. Chicken formally demanded the correspondence in a letter to *The Montclarion* and Anderton again on December 13. Anderton and the paper continued to refuse.

In response to this refusal, Chicken announced that the paper's funding would be frozen as of January 22, 2008, the first day of MSU's spring semester. In addition to *The Montclarion*'s refusal to turn over the privileged correspondence, Chicken cited the contract with Anderton as improper and in violation of SGA policy, despite the fact that the contract had been approved by previous members of the SGA's executive board and the SGA legislature as a whole. SGA bookkeeper Pamela Mitchell contacted RFM Printing, the company which publishes *The Montclarion*, to inform them of the suspended funding and halt production. After announcing the budget freeze, Chicken denied *The Montclarion* access to Easley for legal advice. Further, attorney Daniel Crowe, of Easley's firm, sent de Vries a letter informing him that failure to surrender the correspondence within five days would leave the paper in violation of its charter.

National outrage ensued. The SGA's budget freeze was reported in *The New York Times*, among other media outlets, and roundly condemned by the Society of Professional Journalists, the Student Press Law Center, the American Civil Liberties Union, and the New Jersey Press Association.

On January 31, a temporary compromise was approved by the SGA legislature, rededicating enough funds to provide for *The Montclarion*'s publication throughout February. The legislature's bill passed with amendments mandating executive meetings between officials from *The Montclarion* and the SGA, with attorneys present, to be mediated by an MSU official. Crowe withdrew his request for the correspondence that same day. Finally, on February 12, Chicken finally announced the cessation of the SGA's demands for the privileged information, citing the cost of litigation. However, Chicken continues to contend that Anderton's hiring was

improper, as was his payment via SGA funds. Mediation regarding these outstanding issues is still pending.

Finally, on February 14, SGA Chief Justice-elect Nathaniel Liberty issued a ruling stating that Article XII of *The Montclarion's* own organizational constitution, which states that “neither the [SGA] or the current Administration of [MSU] can make any attempts to interfere with *The Montclarion's* rights as a news organization,” is in violation of the SGA’s constitution. Specifically, Liberty stated that “*The Montclarion* is completely subject to the will of the university and the SGA,” is “not independent,” and “does not function the same way as a state-funded school’s newspaper would.”

The SGA’s argument that it is a corporate entity free of constitutional responsibility, and thus can control content of *The Montclarion* even if MSU cannot, is utterly devoid of merit. To be clear: the SGA operates with a budget of approximately \$1.2 million in mandatory student fees collected by MSU and distributed to the SGA. Students enrolled full-time, therefore, pay roughly \$50 per semester to fund the SGA. As such, the SGA acts as an authorized extension of the university. Just as MSU cannot censor the student paper by withdrawing its funding, neither can the SGA. To the contrary, both MSU and the SGA have an absolute moral and legal obligation to respect and uphold the First Amendment rights of students and groups on the MSU campus.

Liberty’s claim that the student newspaper is “completely subject to the will of the university and the SGA” is directly contradicted by no less of an authority than the Supreme Court. In *Rosenberger v. Rector and Visitors of the University of Virginia* (1995) and *Board of Regents of the University of Wisconsin System v. Southworth* (2000), the Court held that when a public university decides to use student fees to fund a multiplicity of independent student groups, as MSU has done here, each student group retains its status as a private party expressing its personal viewpoint. It is important to remember that any number of private groups, such as private universities, receive funding without becoming agents of the government. Accordingly, the university cannot censor independent student groups, even those who receive student fees, anymore than it can censor *The New York Times*.

Furthermore, the paper does not, as Liberty suggested, provide the “press” for the SGA. While the SGA is free to create and publish its own pro-SGA newsletter, there is no evidence that *The Montclarion* has ever served in that capacity. *The Montclarion* operates as an independent entity, expressing its personal viewpoint, and as such, its funds cannot be withdrawn when SGA finds its speech disagreeable.

The SGA must reinstate *The Montclarion's* funding and recognize that, under the First Amendment, *The Montclarion* has a right to express its own viewpoint, free from the censorship of the SGA.

Chicken, Liberty and the SGA have blatantly overstepped their bounds in seeking to punish *The Montclarion* for publishing articles critical of the SGA and making use of counsel approved by previous actions of the SGA. As president of a public institution, you cannot and must not allow these actions to stand. FIRE calls upon you to immediately clarify *The Montclarion's* status as an

independent newspaper. As leaders in institutional governance, models for the SGA, and the ultimate authority in disciplinary matters, MSU administrators have a legal duty to step in where the SGA has failed and to check its attempt to trample upon students' most basic freedom of press. By fulfilling this responsibility as a public official, you can teach the SGA leadership that they must respect the rights of MSU students and help to instill in them an understanding of the full repercussions for repeatedly and recklessly defying the Constitution.

FIRE hopes to resolve this matter amicably and swiftly. We are, however, committed to using all of our resources to see this matter through to a just and moral conclusion. We request a response to this letter by Wednesday, March 18.

Sincerely,



Samantha Harris
Director of Legal and Public Advocacy

cc:

Karl de Vries, Editor-in-Chief, *The Montclarion*
Shayna Jacobs, News Editor, *The Montclarion*
Ron Chicken, President, SGA
Nathaniel Liberty, Chief Justice-elect, SGA
Joe Specchio, Attorney General, SGA
Rose Mary Howell, Dean of Students, Montclair State University
Fatima deCarvalho, Director, Center for Student Involvement, Montclair State University
Karen Pennington, Vice President for Student Development and Campus Life, Montclair State University
Frank LoMonte, Executive Director, Student Press Law Center, MSU