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Bucknell and the 'Affirmative-Action Bakesale'



Oh to be back in college. The parties, all that time to stretch out with the world's great books, those absolutely *mind-blowing* affirmative-action bakesales.

Yes, we jest — at least on the last point. Truth is, we've never experienced an "affirmative-action bakesale," though we understand that they've popped up on college and university campuses periodically over the last several years. The bakesales, typically put together by conservative student groups, attempt to make a political point about the alleged unfairness of affirmative action by charging different prices for cupcakes and other baked goods based on one's race and sex. For instance, white and Asian males might be

charged \$1 for a cupcake, while black and Latino males might be charged 50 cents, etc., etc. Click [here](#) for an article from 2003 on one such event held at UCLA.

Perhaps not surprisingly, such events typically provoke controversy on campus. But few have gotten as heated, it seems, as one currently roiling Bucknell University, a liberal arts school in Lewisburg, Pa.

According to [this Philadelphia Inquirer](#) article out Tuesday, the Bucknell administration shut down one of these bakesales in April.

Shortly thereafter, according to the Inquirer, the university president, Brian Mitchell, received a flurry of letters, emails and phone calls protesting the move. Then a group called FIRE (Foundation for Individual Rights in Education) got involved, sending off [this doozy of a letter](#) to Mitchell last month, protesting not only the bake sale move, but an earlier move in which the same conservative group was prohibited from passing out anti-stimulus handbills in the form of fake dollar-bills that portrayed President Obama.

Wrote Adam Kissel, a director at FIRE:

Bucknell is not the only university that has attempted to shut down an affirmative action bake sale protest on the ground that it is "discriminatory." [Others have] attempted to shut down affirmative action bake sale protests or punish their sponsors on similar grounds. FIRE intervened in each of these cases and the institutions relented, realizing that attempting to silence this type of political protest runs afoul of free expression and opens the institution to legal liability for violating the First Amendment, or the university's contractual promises of freedom of expression, or both.

But Bucknell was undeterred. The school's general counsel, Wayne Bromfield, sent back [this letter](#) earlier this month, stating that neither "instance is a matter of free speech. To the contrary, they are matters of campus safety and fairness." On the

bakesale issue, Bromfield stated: “disparate racial pricing for doughnut sales — was prohibited because we cannot and do not permit facially discriminatory practices.”

So who, legally, is in the right here? It's tough to say. Sheldon Steinbach, a Washington-based higher education law expert, told the Inquirer that for private universities, such a decision was a “judgment call.”

We checked in with Kissel, who conceded that the First Amendment probably didn't apply to Bucknell, a private university. That said, Kissel said he was “sure” that he and the group were on the right side of the legal battle. The school's Student Handbook instructs students not only that they have freedom of speech but that “deliberate interference” with this freedom is prohibited. “It could create a contractual issue,” said Kissel.

We also checked in with Tom Evelyn, a spokesman for Bucknell, who said “this is not a free speech issue at all.” He said that in regard to the Obama dollars, the students hadn't followed the right protocol to distribute leaflets. And the bake-sale “violated the anti-discrimination policy. That much is very clear.”

The issue could flare up anew in the fall. Travis Eaione, one of the group's members, told the Inquirer the group might try to hold another similar bakesale when students are back.

Answered Bucknell's Evelyn: “If it's the same kind of bakesale, we'll have the exact same objections.”

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