



Foundation for Individual Rights in Education

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May 13, 2009

President Mary Sue Coleman
University of Michigan–Ann Arbor
Office of the President
503 Thompson Street
2074 Fleming Administration Building
Ann Arbor, Michigan 48109

URGENT

Sent via U.S. Mail and Facsimile (734-936-3529)

Dear President Coleman:

The Foundation for Individual Rights in Education (FIRE; www.thefire.org) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, freedom of speech, freedom of conscience and religion, and freedom of association on America's college campuses.

FIRE is deeply concerned about the threat to freedom of the press and legal equality posed by the University of Michigan's (UM's) treatment of *The Michigan Review* (hereinafter the *Review*) over the past two years. Most recently, this treatment has resulted in threats to evict the student publication from the office space it has held for approximately 27 years after university officials broke the organization's five-year lease, changed policies without providing notification, provided misinformation, failed to provide information or delayed providing information when it was requested, and failed to extend application deadlines or hear appeals granted to other student organizations in other years.

These actions seem to have been taken primarily in retaliation for the *Review's* frequent opposition to UM policies. *Review* pieces have criticized UM's former speech code, UM's response to the Michigan Civil Rights Initiative, and policies proposed by UM that would have restricted student publications' distribution on campus. For instance, the *Review's* editorial page denounced the proposed distribution policy in February 2008, arguing that "[t]he policies would create a chilling effect for existing speech as well as new student speech that seeks to enter the arena of ideas." UM soon rescinded the policy, undoubtedly due in significant part to negative public pressure initiated by the *Review*.

The following is our understanding of the facts, according to documents in FIRE's possession and a timeline (enclosed) provided by *Review* Editor-in-Chief Adam Pascarella and *Review* Publisher Karen Boore to Loren Rullman, Associate Vice President for Student Affairs, on May 10, 2009.

In 2003, then-University of Michigan League Director Robert Yecke informed the *Review* that it had been classified as a "five year" organization and that, accordingly, it had been re-allocated its traditional office space, Room 351 of the University of Michigan League, "for the period of September 1, 2003–July 31, 2008." On January 8, 2007, however, current University of Michigan League Director Audrey Schwimmer notified the *Review* that it would have to reapply for its space by a January 12 deadline. According to the timeline, UM administrators have claimed that this was because UM had reclassified the organization such that it was no longer eligible for five-year leases, but no evidence has been produced to show that the policy had changed or that the *Review* had been so notified. In November 2007, apparently under the threat of losing its office space, the *Review* entered into a retroactive contract with the University of Michigan League giving it the right to occupy Room 351 from September 20, 2007, through April 18, 2009. This contract did *not* claim to supersede or invalidate the 2003 agreement. Although the July 31, 2008, date passed without comment, the *Review* still had not been notified that the university had changed its official classification or the terms of the 2003 agreement.

On September 5, 2008, the *Review* received its one and only notification that it should complete the process for re-registration as a student organization for 2008–2009. This notification, an e-mail from the address msa-webstuff@umich.edu, implied that the process could be completed retroactively as late as May 1, 2009, covering the 2008–2009 academic year. The e-mail stated, "Making the recognition process available in May instead of September was in response to student organization feedback," and no deadline was given.

The implication that student organizations could proceed normally pending official re-recognition, however, even under the new terms that administrators had dictated to the *Review*, turned out to be false. At some point after September 5, 2008, UM removed the *Review* from the list of organizations that regularly received e-mail notification of deadlines and other information pertinent to student organizations. The *Review* thus was never sent any notification of an impending January 16, 2009, deadline to reapply for its office space for the 2009–2010 academic year. UM failed to notify the *Review* that the deadline was looming or, afterward, that the deadline had passed.

UM also failed to notify the *Review* that UM had decided to remove the *Review* from its office space at the expiration of the contract on April 18. In fact, the *Review* did not learn that this decision had been made until March 16, 2009, in a meeting between Boore and Schwimmer about the following year's leadership of the *Review*. According to Boore, Schwimmer told her that she had merely assumed that the *Review* "had found space elsewhere or was going defunct." It is extremely difficult to imagine that Schwimmer would have treated other student publications in this way.

On March 17, Boore submitted a request for an appeal of the decision to be heard, but she was notified on March 23 by Michigan League Board of Governors member Colleen Monahan that

UM had refused to hear the appeal. Monahan's e-mail to Boore stated that "The Office Allocation Committee of the Michigan League Appeals Committee has met this morning and, unfortunately, does not intend to hear the Michigan Review's appeal as they did not submit an application for office space in 2009." Apparently the committee was arguing that it was not at all responsible for the misinformation and lack of information provided to the *Review*.

This newfound, strict adherence to stated policies has been applied unequally to the benefit of other, uncontroversial student organizations and to the harm of the *Review*, in violation of the *Review*'s right to equal treatment and, likely, as a punishment of the *Review* in violation of its freedom of the press. On February 23, 2006, for instance, *The Michigan Daily* reported that the College Democrats, Model United Nations, Black Student Union, La Voz Latina, and P.R.O.V.I.D.E.S., all student organizations, had missed the January 12, 2006, deadline to apply for office space. In that instance, the deadline was extended to March 7. The main reason the groups had missed the deadline, as in the present case of the *Review*, was reportedly "insufficient attempts to contact prospective applicants and current occupants about Michigan Union office space application procedures." No opportunity to have an extended application deadline, however, was offered to the *Review* this year. Similarly, according to the timeline,

In 2006 the University of Michigan Gilbert and Sullivan Society also failed to re-apply for their office space in the League. According to their president: "After the deadline had passed, the other members of the board realized her error and we sent in a rather hasty appeal to be heard. Because we had been a regular tenant in the office for over 20 years (I don't know exactly how many), the League was kind enough to give us a petition hearing."

The denial of an appeal to the *Review* this year is still more unacceptable in light of the acceptance of the University of Michigan Gilbert and Sullivan Society's appeal in 2006.

After the *Review* complained about some of the unfair procedures listed above, the eviction date was advanced to May 25, 2009. Under the duress of being threatened with eviction, the *Review* has been working with UM officials to find an alternative office space without giving up its ability to enter five-year office space agreements. According to the timeline, UM officials failed to produce requested documents that prove that there has ever been an official change of policy affecting five-year agreements, nor have UM officials been able to provide any evidence that any student organization was notified of the apparently unofficial change in policy that has been used, to our knowledge, singularly against the *Review*.

As you know, UM is legally and morally bound by the First Amendment and the decisions of the Supreme Court concerning freedom of speech at public colleges and universities. That the First Amendment's protections fully extend to public universities like UM is settled law. See, e.g., *Healy v. James*, 408 U.S. 169, 180 (1972) ("[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, 'the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.'") (internal citation omitted). UM is equally bound by the Fourteenth Amendment's guarantee of legal equality. Policies may not be contrived or changed in order to

benefit or harm specific student organizations, and exemptions to the rules (as in 2006) in the case of insufficient notice of the rules may not be granted only to organizations that are most favored by the university.

FIRE requests that you act immediately to correct this ongoing injustice by renewing the lease of *The Michigan Review* in its current offices for five years and by directing university officials to provide timely and sufficient notification of policies and policy changes in the future. The university may not violate the rights of *The Michigan Review* to freedom of the press and legal equality by means of any policy or contrivance that punishes the publication indirectly for its protected expression.

We hope to see this matter resolved with fairness and common sense. Because of the continuing threat to *The Michigan Review's* rights, we request immediate action and a response to this letter by May 20, 2009, three business days before the *Review's* scheduled eviction on May 25.

Sincerely,



Adam Kissel
Director, Individual Rights Defense Program

Encl.

cc:

E. Royster Harper, Vice President for Student Affairs, University of Michigan
Loren Rullman, Associate Vice President for Student Affairs, University of Michigan
Cynthia H. Wilbanks, Vice President for Government Relations, University of Michigan
Sally J. Churchill, Vice President and Secretary of the University, University of Michigan
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