



Foundation for Individual Rights in Education

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January 23, 2004

President Timothy J. Sullivan
College of William & Mary
Office of the President
P.O. Box 8795
Williamsburg, Virginia 23187-8795

Sent via U.S. Mail and Facsimile (757-221-1259)

Dear President Sullivan,

As you can see from our Directors and Board of Advisors, the Foundation for Individual Rights in Education (FIRE) 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, freedom of religion, academic freedom, due process, and, in the case of the Sons of Liberty at the College of William & Mary, freedom of speech and expression on America's college campuses. Our web page, www.thefire.org, will give you a greater sense of our identity and activities.

We are certain that you are aware of the recent controversy involving your administration's censorship of an "Affirmative Action Bake Sale" held by the Sons of Liberty, a libertarian student organization at the College of William & Mary (W&M), on November 8, 2003. This sale and your subsequent unprofessional e-mails to concerned members of the public who criticized your administration's actions were the topic of a letter from FIRE to W&M's Board of Visitors. This letter, to which no one at W&M has responded, contains a detailed description of the incident and is attached for your convenience.

Despite the fact that W&M's Board of Visitors and administration have chosen to ignore or dismiss this controversy, the issue of campus censorship is not going to go away. In fact, the Sons of Liberty are planning another Affirmative Action Bake Sale for January 27, 2004. W&M will once again be faced with a choice between either censoring unpopular speech or allowing students to exercise their First Amendment right to engage in political protest. FIRE hopes that W&M now will choose the latter course *regardless* of the nature of the message of particular demonstrations.

Despite repeated inquiries by Will Coggin, the organizer of the November bake sale, no W&M official was able to provide a policy or even a cogent reason for

shutting down the protest. Because W&M closed down the November 8 bake sale and refuses to explain this action, Mr. Coggin is understandably concerned that the upcoming bake sale will also be suppressed. FIRE asks that W&M not let any overly restrictive policy, written or unwritten, turn students into criminals for exercising what should be recognized as their fundamental and, of course, Constitutional rights. Let them protest, which is their right, protected both by the law and by our country's highest traditions.

Parody and satire are important—indeed, vital—components of political speech and are at the core of our country's honored traditions. Protests that rely on satire—such as the Affirmative Action Bake Sale and the feminist “wage gap” bake sales cited in our previous letter—exist to challenge, to amuse, to provoke, and, indeed, to offend. We strongly encourage you to read the landmark Supreme Court cases of *Cohen v. California* (1971) and *Hustler Magazine, Inc. et al. v. Jerry Falwell* (1988). Taken together, the precedents set by these cases protect even highly offensive material, farce, profanity, and exaggeration, and they confirm that parody and satire play essential roles in our society precisely because they challenge our deepest assumptions and beliefs.

The great irony of W&M's de facto prohibition of unpopular political speech is that a special function of the university as a whole, in any free society, is to serve as the ultimate forum for free speech. Any university serious about the search for truth should be seeking, at all times, to expand open discourse, to develop intellectual inquiry, and to engage and challenge the way individuals think. A university that is intolerant of the often messy reality of a free society is incapable of teaching students to live in freedom. By shutting down the Sons of Liberty's bake sale, W&M sent the message to its students that speech is to be feared, monitored, and ultimately restrained if it is deemed sufficiently controversial. This message is completely incompatible with a free society and stands in stark opposition to the values of higher education. W&M should remember, at all times, the U.S. Supreme Court's timeless expression of the important role of our universities in *Sweezy v. New Hampshire* (1957):

The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. **To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation.** No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made...Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die. [emphasis added]

W&M's actions in regulating free expression create the very “atmosphere of suspicion and distrust” against which the justices warned. Its arbitrary and capricious enforcement of unwritten and unconstitutional speech restrictions is totally misplaced at an institution preparing students to be engaged citizens in a pluralistic democracy.

FIRE is categorically committed to seeing this situation through to a just and moral conclusion. To this end, we request your administration's assurance that the Sons of Liberty's January 27

Affirmative Action Bake Sale will be allowed to proceed unhindered by the administration and that no university policy or contrivance will be used to infringe upon the free speech of students at W&M.

Please spare the College of William & Mary the embarrassment of fighting, with taxpayer funds, no less, against the Bill of Rights, by which it is both legally and morally bound. We urge W&M to show the courage necessary to admit its error, renounce its unjust policy, and tell the world that free speech is to be celebrated, honored, and broadened—not feared, suppressed, and restricted. Let your students exercise their basic legal, moral, and human rights; let them protest as their consciences dictate.

We trust you will make the right decision.

Sincerely,

A handwritten signature in blue ink, appearing to read "Greg Lukianoff". The signature is fluid and cursive, with the first name "Greg" being more prominent than the last name "Lukianoff".

Greg Lukianoff
Director of Legal and Public Advocacy

cc:

Henry Kissinger, Chancellor, College of William & Mary
P. Geoffrey Feiss, Provost, College of William & Mary
Gary A. Kreps, Vice Provost, College of William & Mary
W. Samuel Sadler, Vice President for Student Affairs, College of William & Mary
James S. Kelly, Advisor to the President, College of William & Mary
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Jeffrey L. McWaters, Vice Rector, Board of Visitors, College of William & Mary
Michael J. Fox, Secretary to the Board of Visitors, College of William & Mary
Board of Visitors, College of William & Mary
Will Coggin

Encl.