



## 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

Greg Lukianoff  
PRESIDENT

Robert L. Shibley  
VICE PRESIDENT

William Creeley  
DIRECTOR OF LEGAL AND  
PUBLIC ADVOCACY

Alan Charles Kors  
CO-FOUNDER AND  
CHAIRMAN EMERITUS

### BOARD OF DIRECTORS

Harvey A. Silverglate  
CO-FOUNDER AND  
CHAIRMAN

Barbara Bishop  
William J. Hume  
Richard Losick  
Joseph M. Maline  
Marlene Mieske  
Daphne Patai  
Virginia Postrel  
Daniel Shuchman  
James E. Wiggins

### BOARD OF ADVISORS

Lloyd Buchanan  
T. Kenneth Cribb, Jr.  
Candace de Russy  
William A. Dunn  
Benjamin F. Hammond  
Nat Hentoff  
Roy Innis  
Wendy Kaminer  
Woody Kaplan  
Leonard Liggio  
Herbert London  
Peter L. Malkin  
Muriel Morisey  
Steven Pinker  
Milton Rosenberg  
John R. Searle  
Ricky Silberman  
Christina Hoff Sommers

April 10, 2009

Chancellor Robert C. Holub  
University of Massachusetts Amherst  
374 Whitmore Administration Building  
Amherst, Massachusetts 01003

### URGENT

*Sent by U.S. Mail and Facsimile (413-545-2328)*

Dear Chancellor Holub:

FIRE is disappointed to be writing you for the second time within a month about violations of the rights of students at the University of Massachusetts Amherst (UMass Amherst). We wrote you on March 24 with serious concerns about the excessive security fee charged to the Republican Club for an event featuring controversial speaker Don Feder. We asked for a response by April 14 but have not yet received one.

We now write with grave concerns about the threats to freedom of the press, freedom of speech, freedom of association, and due process presented by the UMass Amherst Student Government Association's (SGA's) recent resolution to suspend The Silent Majority, a Registered Student Organization (RSO), without a hearing of any kind, because of constitutionally protected content in the group's March/April 2009 edition of its newspaper, *The Minuteman*. In addition to this violation of freedom of the press and freedom of association, SGA has gone even further by attempting to unconstitutionally coerce speech through its demand that The Silent Majority publicly apologize for its constitutionally protected expression if it wishes to prevent the suspension from taking effect. These are violations of the First Amendment for which UMass Amherst, having appointed the SGA as its agent in matters of group recognition and funding, is both morally and legally responsible.

SGA is responsible for distributing a significant portion of the mandatory student activity fee collected by UMass Amherst from every student, and is responsible for a significant portion of the process of recognizing, suspending, and de-recognizing Established Student Organizations and Registered Student Organizations. As such, SGA acts as an authorized agent of the university. Just as UMass Amherst itself cannot compel student speech or punish students for engaging in speech protected by the First Amendment, neither can its agent, SGA.

As a state institution, UMass Amherst must understand that it has a non-delegable duty to ensure that the First Amendment rights of its students are protected and is legally liable if these rights are not respected. FIRE urges you to prevent SGA from imposing any unconstitutional punishment upon *The Minuteman* or The Silent Majority and to immediately rescind the SGA resolution already enacted.

In addition, FIRE is in possession of a video recording showing that at least two identifiable individuals stole copies of *The Minuteman* out of the hands of a graduate student in the presence of a member of the UMass Amherst Police Department. UMass Amherst must take this theft seriously and appropriately investigate and punish the thieves. Importantly, one of the individuals seen stealing the papers in the video recording has been identified to FIRE as student and SGA official Vanessa Snow, who is a subject in the SGA resolution that unconstitutionally censors and punishes The Silent Majority.

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

On April 1, 2009, The Silent Majority published its March/April 2009 issue of *The Minuteman* and distributed copies, as it normally does, around the UMass Amherst campus. The issue criticizes a UMass Amherst student organization, Student Bridges, for its “reckless spending”:

Student Bridges claims to be a college preparatory pathway and tutoring program for low-income and minority children, but according to financial expenditure logs obtained under the Freedom of Information Act (FOIA) by *The Minuteman*, the organization spent thousands on frivolities, such as \$10K worth of food during the 2008 Fiscal Year alone-- including one shocking \$2,100 tab racked up during a single night of revelry at Salsarengue Restaurant and Seafood in Holyoke.

In addition to food, Student Bridges blew an outrageous \$7,954 on rental cars, \$1,850 on hotels, \$2,840 on bus transportation, and \$1,918 on party supplies, t-shirts, and personalized promotional items.

The issue also calls Student Bridges “Our Jackass of the Month” in a piece that speaks satirically about its Director, Vanessa Snow, relating her weight to Student Bridges’ large expenditure on food:

- The only thing more horrifically large than their bloated 172K FY2009 budget is the bloated backside of their responsibility-averse Director, Vanessa Snow.
- The only thing more wasteful than the careless way they manage their budget were the amount of uneaten tacos and burritos they left at Taco Bell.
- They spent more money on food, drinks, hotels, and rental cars in Fiscal Year 2008 than Eliot Spitzer spent on high-class hookers. (Well, almost.)
- They failed to show any tangible quantitative achievements in their program during Fiscal Year 2008, yet had the arrogant audacity to request a \$50,000 larger budget when most student groups’ overall budget allocations are less than \$5,000.

- They, in essence, take your Student Activities Fee money to discriminatorily tutor poor minority students without showing any tangible results.
- Under the guise of “building bridges to education opportunities” and acting as a “community service organization,” the only servicing this group of corrupt bureaucrats-in-training does is at the salad bar at Salsarengue, where it spent a preposterously indefensible \$5000 in Fiscal Year 2008, thus literally making Director Snow’s ass its own (rather large) budgetary line item for Fiscal Year 2009
- Given all the time this clumsy group of freeloading Leftists spends at restaurants in Holyoke, it is no wonder that their obesity rate is higher than their mentored students’ high school graduation rate

According to photographs and a video in FIRE’s possession and available online, on April 1, during a free speech rally sponsored by the UMass Amherst Republican Club and other RSOs, Snow stood on a pile of copies of *The Minuteman* and would not release them. The video shows that after a woman identified to FIRE as UMPD officer Lisa Kidwell arrived and Snow released the copies, they were picked up by a student intending to distribute the papers, but then Snow and others grabbed almost the entire pile out of his hands. According to an April 6, 2009, article in the *Daily Collegian*, “University spokesman Ed Blaguszewski said a police report was filed and officials are looking into the incident.” Failure to act on the theft of student newspapers would be a serious affront to the freedom of the press on campus, permitting mob rule under which anyone who disliked a news article could steal and destroy an entire press run with impunity.

Following this incident, on April 8, SGA passed the following resolution:

Whereas, Title VII, Chapter 3, Section 10, states that: “Any ESO [Established Student Organization; an RSO is a type of ESO] shall be recognized to have freedom of press and shall not be penalized or subject to penalty due to the subject matter expressed within their medium, with the exception of slander and intentional misrepresentation of SGA members or organizations.” And;

Whereas, The Silent Majority is an active registered student organization on the campus of the University of Massachusetts Amherst, thus subject to the Constitution and ByLaws [sic] of the Student Government Association of UMASS [sic] Amherst under Title VII, and;

Whereas, The Silent Majority published the newspaper *The Minuteman* on April 1st, 2009. On page 17 under, “Our Jackass of the Month” wrote “the only thing more horrifically large than their bloated 172 [sic] FY2009 budget is the bloated backside of their responsibility-averse Director, Vanessa Snow.” Later they add, “...it a spent [sic] a preposterously indefensible \$5000 in Fiscal Year 2008, thus literally making Director Snow’s ass its own (rather large) budgetary line item for Fiscal Year 2009.” This is a clear example of slanderous defamation of character, and an intentional misrepresentation of an SGA member;

Be it Resolved, that the SGA Senate call upon the Secretary of Registry [of the SGA] to suspend the Silent Majority as an RSO based on violations of Title 7 Chapter 3 Section 10 unless The Silent Majority within 2 weeks of the passing of this motion, issue a written apology which shall be published as an advertisement in the Massachusetts Daily Collegian. This apology will directly address the intentional misrepresentation of SGA members within The Minuteman.

As you know, UMass Amherst 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 colleges like UMass Amherst 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).

In addition, the very Title VII cited in the SGA resolution also promises “Freedom of Speech” in Chapter 2, Section 1:

All Established Student Organizations are recognized to have freedom of speech, which cannot be limited or restricted by any officer or body of the Student Government Association. An ESO's political affiliation or speech is not relevant to any proceeding conducted by the Student Government Association. No officer of the Student Government Association shall use an ESO's political speech or affiliation as reason to deny or limit space or funding.

SGA has violated the freedom of speech of The Silent Majority by coercing an apology on penalty of being derecognized and losing all access to the financial and associational benefits of other ESOs and RSOs on campus. Indeed, the threat to penalize The Silent Majority in this way violates the group's rights to freedom of speech, freedom of the press, and freedom of association by punishing the organization for protected expression.

Moreover, this resolution is an especially disappointing violation of The Silent Majority's right to due process. The organization was given no hearing of any kind, instead being punished by SGA's elected representatives through what can only be described as a bill of attainder. The Silent Majority was given no opportunity to defend itself against the allegation of misrepresentation, despite the fact that *The Minuteman* had made clear that the proof of the reported financial information existed in financial documents acquired under the Freedom of Information Act. Furthermore, it was given no opportunity to defend itself against the strange charge of “slandorous defamation of character.” As with any defamation claim, the Constitution requires that truth is always an absolute defense. In addition, a successful defamation charge must show that at the very least the defendant was careless or reckless with the facts. In this case, The Silent Majority had documentary evidence of the spending by Student Bridges. The lack of a hearing prevented The Silent Majority from providing the evidence showing that it had not lied and had not defamed Snow. It is also important to note that defamation claims can only be applied to assertions of fact, not opinion. *The Minuteman's* purely opinion-based comments

about Vanessa Snow that are cited in the SGA resolution provide no constitutional grounds for punishment.

Moreover, beside the point that libel, not slander, would be the appropriate charge regarding defamation in a publication, the piece in *The Minuteman* clearly was satirical (e.g., the references to Taco Bell and Eliot Spitzer). Satire, even when it includes “offensive” language and situations, is a form of political speech at the core of our country’s honored traditions. Satirical depictions of SGA officials and other political officials exist precisely to challenge, to amuse, to provoke—and, indeed, to offend. Case law on this subject is clear. The landmark Supreme Court cases *Cohen v. California*, 403 U.S. 15 (1971) and *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46 (1988) protect—as core political speech—shocking or deeply offensive material, farce, profanity, and exaggeration, and they confirm the essential role of parody and satire precisely because they challenge readers’ deepest assumptions and beliefs. No campus that claims to take seriously the free speech rights of students may retaliate against students or a student publication because others on campus felt offended by fully protected speech.

SGA must rescind its demand for a coerced apology from The Silent Majority and must not investigate *The Minuteman*’s protected speech. No policy or contrivance may be used to censor or punish the paper or its publisher because of the protected speech in question. The SGA resolution is unconstitutional and is unenforceable.

As president of a public institution, you cannot and must not allow these actions to stand. FIRE calls upon you to immediately clarify *The Minuteman*’s status as a newspaper that may not be censored by SGA. As leaders in institutional governance, models for SGA, and the ultimate authority in disciplinary matters, UMass Amherst administrators have a legal duty to step in where the SGA has failed and to check its attempt to trample upon students’ most basic freedoms. By fulfilling this responsibility as a public official, you can teach the SGA leadership that it must respect the moral and legal rights of UMass Amherst students and help to instill in them an understanding of the full repercussions of repeatedly and recklessly defying the Constitution.

In addition, FIRE calls upon you to ensure that the investigation of the theft of *The Minuteman* proceed with all due diligence and speed.

FIRE hopes to resolve this matter amicably and swiftly. We are, however, committed to using all of our resources to seeing this matter through to a just and moral conclusion. We request a response to this letter by Wednesday, April 22, the date of SGA’s deadline.

Sincerely,



Adam Kissel

Director, Individual Rights Defense Program

cc:

Esther Terry, Vice Chancellor for Student Affairs and Campus Life, UMass Amherst

Jo-Anne Vanin, Associate Vice Chancellor/Dean of Students, UMass Amherst  
Byron Bullock, Associate Vice Chancellor for Student Affairs and Campus Life, UMass  
Amherst

Lisa Kidwell, UMass Amherst Police Department

Ngozi Mbawuike, President, Student Government Association, UMass Amherst

Shaun Robinson, Speaker of the Senate, Student Government Association, UMass Amherst

Cheryl Feinstein, Associate Speaker of the Senate, Student Government Association, UMass  
Amherst

Derek Khanna, Commuter Area Senator, Student Government Association, UMass Amherst

Josh Davidson, Southwest Senator, Student Government Association, UMass Amherst

Vanessa Snow, Undergraduate Coordinator and Chair of the Board, Student Bridges, UMass  
Amherst

Frank LoMonte, Executive Director, Student Press Law Center