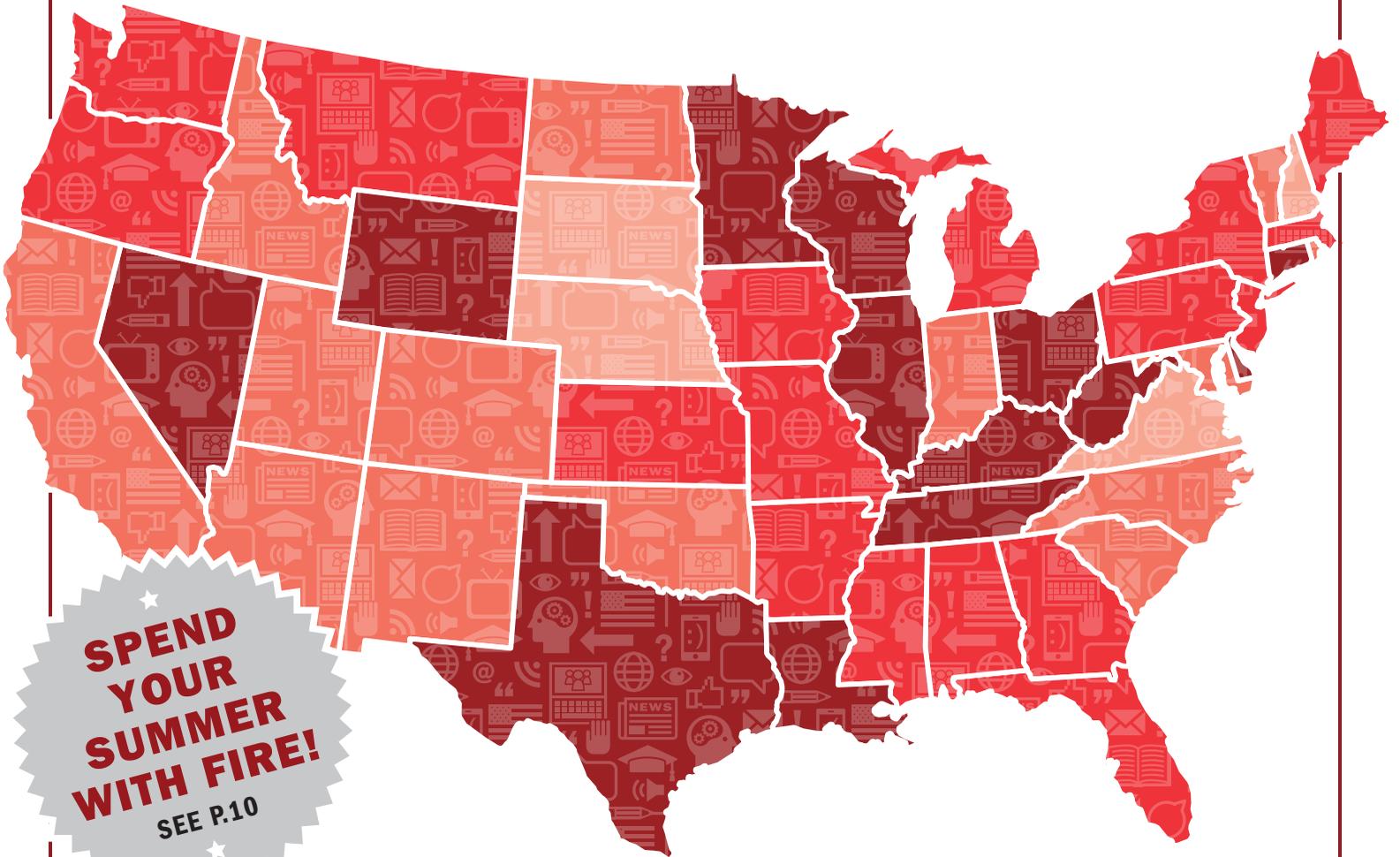


FIRE QUARTERLY

SPOTLIGHT ON SPEECH CODES 2013: THE STATE OF FREE SPEECH ON OUR NATION'S CAMPUSES

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LETTER FROM *Senior Vice President*



ROBERT SHIBLEY

2012 was a milestone year for FIRE. The publication of FIRE President Greg Lukianoff's book *Unlearning Liberty: Campus Censorship and the End of American Debate* delivered the long-awaited follow-up to the book that became FIRE's founding manifesto, *The Shadow University: The Betrayal of Liberty on America's Campuses*. Critical reception of *Unlearning Liberty* has been outstanding, and the publicity surrounding the book has helped get our message to the public. For many, it has served as an introduction to FIRE's issues.

FIRE's progress against the forces of repression and indoctrination on campus has been steady. Even in the face of pressure from the education establishment, we have driven the percentage of campuses with speech codes that blatantly violate First Amendment principles from 75% five years ago down to 62% this year.

Considering that FIRE is a small non-profit organization facing an industry whose assets count in the hundreds of billions, our success is remarkable. But while the opponents of liberty on campus might be losing ground, they are hardly giving up—and FIRE has moved to block their efforts. During the last Congressional term, several pieces of legislation were introduced that would curtail student rights if passed, so FIRE developed a presence on Capitol Hill. In the year to come, we plan to be on the Hill more often to ensure that our freedoms are considered *before* destructive legislation is introduced.

FIRE will also continue to capitalize on the success of *Unlearning Liberty* to reach more of the public with our message. Last year, Greg discussed the themes of the book in the nation's largest newspapers, including the *The New York Times*, *The Wall Street Journal*, and *The Washington Post*. Greg's speech at Columbia University has been aired multiple times on C-SPAN's Book TV, and George Will devoted a nationally syndicated column to the book. In 2013, FIRE will use this publicity to spread its message far and wide—expect to see more of FIRE on your television soon!

We're also addressing the sobering fact that students entering college often have little idea of how the Bill of Rights applies to them—and therefore don't realize when their rights are compromised in freshman orientation and through college policies. That's why this year, in cooperation with the Bill of Rights Institute, FIRE is unveiling a new high school civics curriculum that will provide free materials and lesson plans about student rights on college campuses.

FIRE has other big initiatives in the pipeline, as well, with the potential to produce huge changes in the campus climate. But none of our plans will work without your continued support and your willingness to spread FIRE's message of liberty in 2013. I hope we can count on you! ♣
Robert Shibley

FIRE *in action*

FIRE'S NEW LEGISLATIVE AND POLICY PROGRAM IS OFF TO A HOT START

In recent years, FIRE has observed that student rights are increasingly being endangered by intrusive laws and regulations. That's why last year, FIRE launched our new Legislative and Policy Program to address these threats head-on by establishing a presence in Washington, opening new doors for reform, and building coalitions for change.

I'm honored to serve as the program's first director, and I'm proud to report that we are off to a hot start. For example, most FIRE supporters are aware of our opposition to the Department of Education's Office for Civil Rights' (OCR's) April 4, 2011, "Dear Colleague" letter (DCL), requiring colleges and universities to utilize the judiciary's lowest burden of proof when deciding sexual misconduct cases. In our first year, the Legislative and Policy Program increased the size of the coalition we organized to oppose the mandate to an impressive list of 19 prominent professors, individuals, and organizations across the political spectrum. We also worked effectively with both Democratic and Republican legislators to rebuke efforts to codify OCR's mandate into law through provisions in the Violence Against Women Act (VAWA) reauthorization.

VAWA's primary purpose is to combat domestic violence. While FIRE takes no position on the vast majority of the legislation, we successfully worked in a bipartisan fashion to remove language from both



JOE COHN

houses' bills that would have codified OCR's mandate. Ultimately, neither the Senate version nor the House version of VAWA was signed into law before the 112th Congress' session closed. New VAWA reauthorizations will be introduced soon, and this time FIRE will be on the ground from the beginning to work with both sides of the aisle to ensure that students' rights are fully taken into account in any final bill.

The coming months on Capitol Hill promise to be busy for student rights and for FIRE. In addition to working to make the new VAWA student-friendly, FIRE will also continue urging OCR to ensure that campus sexual assault hearings are fair and reliable. In December, the DCL's author, Assistant Secretary for Civil Rights Russlynn Ali, resigned. FIRE is making every effort to engage her replacement in a productive dialogue that will hopefully lead to meaningful due process protections and a renewed emphasis on free speech.

Those two goals promise to keep the Legislative and Policy Program busy. Nevertheless, FIRE will also be ready to respond to any bills that threaten students' rights to free speech, due process, freedom of conscience, and religious liberty. As a nonpartisan organization, we will continue to work across party lines to protect rights on campus. And, as always, we'll keep you posted on how the session unfolds on our blog, *The Torch*, and future editions of the *FIRE Quarterly*.  Joe Cohn

FIRE *in action*

JOURNALISM STUDENT SUSPENDED FOR OFFENDING HOCKEY COACHES

Like any journalism major worth his or her notepad, Alex Myers, an Australian exchange student studying at the State University of New York at Oswego (SUNY Oswego), was just trying to get a few good quotes. Writing a feature on SUNY Oswego men's hockey coach Ed Gosek for a class assignment in October, Myers wanted to find out what other coaches thought about Gosek's style on and off the ice. But thanks to a shocking overreaction from SUNY Oswego administrators, Myers found himself suspended.

On October 17, Myers wrote Gosek's counterparts at Cornell University, Canisius College, and SUNY Cortland. Myers explained that what the coaches said about Mr. Gosek did not "have to be positive." Somehow, Cornell coach Michael Schafer took Myers' inquiries entirely the wrong way. A seemingly angry Schafer wrote back that same day: "[Gosek] is one of the best guys in college hockey. Your last line of saying your comments don't need to be positive is offensive." Myers wrote back quickly to apologize and to clarify that he was "simply letting you know that this piece I am writing is not a 'puff' piece about Mr. Gosek."

Just 24 hours later, on the evening of October 18, Myers was informed in a letter from SUNY Oswego President Deborah Stanley that he was being placed on interim suspension, beginning at 6:00 p.m. the next day. He'd have to vacate his dorm room, taking all of his belongings, and he would be banned from setting foot on campus, subject to arrest if he returned without permission.

Myers faced two charges.

The first was a charge of "dishonesty," as Myers' email stated that he worked for the Office of Public Affairs without clarifying that the assignment was for a class. The second charge was more serious—and more shocking. Myers was also charged with "disruptive behavior" under the school's policies prohibiting emails that "defame, harass, intimidate, or threaten another individual or group."

After receiving the charges, Myers contacted FIRE. We sent a letter to President Stanley on October 26, letting her know that Oswego's punishment of Myers violated the First Amendment and that Myers' speech didn't qualify as defamation, harassment, intimidation, or a true threat.

Happily, FIRE's letter had the desired effect. SUNY Oswego recognized their gross error, dropping the "disruptive behavior" charge. Myers' suspension was scrapped and he was allowed to stay in his dorm, albeit with limited access to campus facilities.

However, Myers was found guilty of the dishonesty charge, issued a "warning," and forced to write apologies. Wanting the ordeal over, he complied. But because of the negative national media attention the case generated, SUNY Oswego learned a lesson about free expression on campus. President Stanley issued a statement acknowledging that her school is "open to criticism ... with regard to free speech and free expression." FIRE will be watching to ensure that the school honors student rights in the future. 



OSWEGO MEN'S HOCKEY

OHIO UNIVERSITY ENDS POLITICAL CENSORSHIP IN DORMS IN TIME FOR ELECTION DAY 2012

In the final weeks before Election Day 2012, Ohio University (OU) ceased limiting students' political speech in dorms, freeing students to make their voices heard. This encouraging change came after FIRE wrote the university regarding student Jillyann Burns, whose political flyer was censored.

In early September 2012, Burns, a member of the student group Ohio University Students for Liberty, taped a flyer to her residence hall door in James Hall criticizing President Barack Obama and Governor Mitt Romney and suggesting that the two would govern similarly on a range of political issues. On September 6, a resident advisor informed students via email that "NO political posters/flyers should be hung in the hallways or on you[r] door until 14 days before an election."

Following a room inspection by a residential coordinator on September 17, Burns received an inspection form listing her violation of OU's requirement that "political posters not [be] displayed outside room until within 14 days of election date" as a "Corrective Action."

OU's residence hall policies state that this 14-day window is dictated by OU's "political campaign policy," though neither Burns nor FIRE could find any such published policy. The inspection form also noted that failure to remove the poster within 48 hours could result in referral to OU's disciplinary system. Burns responded by taping a sheet of paper with the message "Censored until further notice" over the flyer.

FIRE wrote to OU President Roderick McDavis on September 28, reminding OU of its binding legal obligation as a public university to respect students' First Amendment rights. FIRE's letter pointed out that doors in OU residence halls are commonly used as venues for individual student expression and that protected expression may not be prohibited merely because of its political content. FIRE emphasized that OU's censorship was of particular concern given the proximity to Election Day, when unfettered political discourse is of crucial importance.

OU promptly addressed FIRE's concerns. On October 1, Burns received an email from McCarey informing her that she was free to post political materials on her door and that OU "will work to clarify posting policies immediately."

"Though we're happy that Ohio University quickly realized and corrected its error, we're still concerned that universities are willing to obstruct their students' political expression in the first place," said Peter Bonilla, associate director of FIRE's Individual Rights Defense Program. "Colleges across the country ought to be providing more space for students' political speech, not less. This latest incident shows that there is still great capacity for confusion when it comes to a student's right to speak his or her mind on political matters." 



JILLYANN BURNS

FIRE *in action*

MICHIGAN STATE REVERSES DECISION REJECTING SCHOLAR'S SPEECH

In November 2012, Michigan State University (MSU) reaffirmed the First Amendment rights of student organizations after it wrongly denied funding to a student group that wanted to bring a speaker to campus.

The College Libertarians, a recognized student organization at MSU, applied to the Associated Students of Michigan State University's (ASMSU's) Funding Board for \$4,450 to host a lecture by bestselling author and historian Tom Woods. The event was to provide "a comprehensive lecture on the 2008 economic collapse" and "a perspective from the Austrian School of economics..." The group presented its application to the Funding Board on September 18.

On September 26, however, College Libertarians President Robert Fox was notified by the Funding Board's chair that the student government "cannot fund groups with political agendas." The email further stated that it was "not fair ... to seem like we [ASMSU] are pushing

a particular political agenda," and that doing so "can lead to legal action."

FIRE wrote to MSU President Lou Anna K. Simon on October 19, making clear that not only was ASMSU allowed to provide funding from MSU's mandatory student activity fees for the College Libertarians' proposed event, but that it was required to ensure that such events were eligible for funding on a content- and viewpoint-neutral basis. FIRE warned MSU that denying the College Libertarians funding on the basis of its alleged "political agenda" would put the First Amendment rights of countless other expressive organizations at risk.

Shortly after FIRE sent its letter, the College Libertarians were informed by the Funding Board that their application for funding would be re-reviewed, and on October 23, the Funding Board approved the College Libertarians' request. ASMSU also plans to review its policies to make sure they are fully compliant with the First Amendment. The College Libertarians hosted Woods on campus on December 4, 2012.



TOM WOODS SPEAKING AT MICHIGAN STATE UNIVERSITY

"We commend Michigan State and its student government for quickly addressing this important free speech issue," said Peter Bonilla, associate director of FIRE's Individual Rights Defense Program. "Unfortunately, it's another lesson that student organizations interested in public affairs and activism can all too easily be denied the full extent of their First Amendment rights. Hopefully, other universities will take note of Michigan State's example." 

FIRE cover story

FIRE'S NEW REPORT FINDS THREE-FIFTHS OF COLLEGES RESTRICT FREE SPEECH ON CAMPUS

In December, FIRE released *Spotlight on Speech Codes 2013: The State of Free Speech on Our Nation's Campuses*, a survey of campus speech codes at more than 400 of our nation's colleges and universities. More than three-fifths of the colleges and universities analyzed maintain policies that seriously infringe upon the free speech rights of students (FIRE labels these "red light" speech codes).

Major findings include:

- **MORE THAN THREE-FIFTHS (62.1%)** of the 409 schools surveyed have speech codes that clearly fail to meet First Amendment standards.
- **THIS REPRESENTS A NEARLY 13-POINT DECLINE** from five years ago, when policies at 75% of surveyed institutions seriously restricted student speech.
- **FOR THE FIRST TIME IN SEVEN YEARS**, the percentage of red light public schools (61.6%) fell below the percentage of red light private schools (63.4%).
- **THE NUMBER OF SCHOOLS THAT DO NOT MAINTAIN ANY SPEECH CODES** has nearly doubled in the last five years, increasing from eight to 15 institutions.
- **VIRGINIA IS THE BEST STATE FOR FREE SPEECH ON CAMPUS**, with 37.5% of schools rated earning a green light and only 25% earning a red light. Illinois and Texas are among the worst states, with 100% and 87.5% red light institutions, respectively.
- **THE UNIVERSITY OF MISSISSIPPI AND MISSISSIPPI STATE UNIVERSITY** eliminated all of their speech codes this past year, earning green light ratings from FIRE.

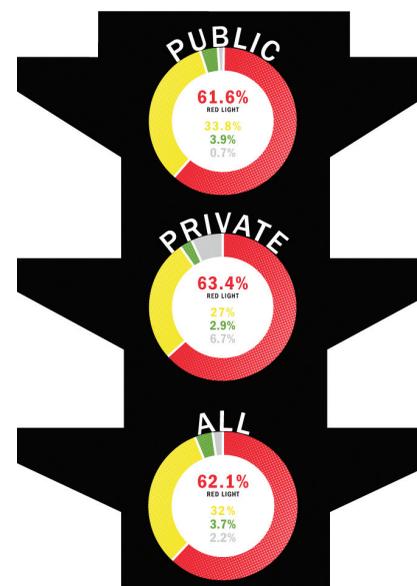
This year's report also shows that many of the nation's top institutions continue to place substantial restrictions on students' right to free speech.

HARVARD UNIVERSITY

prohibits actions that "demean" others based on a variety of personal characteristics, as well as "[b]ehavior evidently

intended to dishonor such characteristics as race, gender, ethnic group, religious belief, or sexual orientation." **PRINCETON UNIVERSITY** prohibits verbal behavior "which demeans ... or injures another because of personal characteristics or beliefs or their expression." **COLUMBIA UNIVERSITY** prohibits "[b]elittling remarks about a person's gender or belittling remarks about a person's sexual orientation based in gender-stereotyping," and "inappropriate sexual innuendoes or humor," including over "email, the Internet, or other forms of digital media."

FIRE Director of Speech Code Research Samantha Harris said, "FIRE is happy that speech codes have again declined, but it is hard to feel too good when so many students are still living with censorship. We will continue our work until campus censorship is a thing of the past." 🔥



FIRE *rights at risk*

GLOBAL UNREST PROMPTS PROFESSORS TO BLAME FIRST AMENDMENT

This past October, the country was shaken by the attacks on American diplomatic missions in Cairo and Benghazi, the latter of which took the life of U.S. Ambassador Chris Stevens and three other Americans. In the face of such tragedy, it's natural to ask questions about why these events took place and what could have been done to prevent them. Unfortunately, as seems increasingly common, the suggested answer from many quarters has been to impose censorship of controversial views. And in this country, the leading voices advocating censorship are coming from academia.

One of the earliest to call for the arrest of the producer of the “Innocence of Muslims” YouTube film trailer initially blamed for the unrest in the Middle East and North Africa was University of Pennsylvania religious studies professor Anthea Butler. Professor Butler took to the pages of *USA Today* to opine that scenes in the movie that could “incite and inflame viewers” justified the creator’s arrest.



left: ERIC POSNER
right above: ANTHEA BUTLER
right below: GARRET EPPS



University of Chicago law professor Eric Posner came to a similar conclusion in an article for *Slate*, arguing that other nations “might have a point” when they decide that free speech must “yield to other values and the need for order.” Former *Washington Post* reporter and University of Baltimore law professor Garrett Epps piled on in *The Atlantic*, telling readers that “[m]uch of the advanced, democratic world questions” the American view of free speech.

It’s no coincidence that these attempts to justify censorship, unconvincing and specious as they may be, are coming from American academia. Colleges and universities have spent a generation subjecting students and professors to speech codes and taking action against those who dare to dissent.

National controversies over free speech always spill onto college campuses and create trouble for freedom of expression. FIRE has spent countless hours and thousands upon thousands of dollars turning back these attempts to turn tragedies into excuses for ever-greater repression and censorship on campus. We’re preparing to do that again in the wake of the latest uproar—and we need your help to do it.

Whether it’s donating to FIRE (royalties from *Unlearning Liberty: Campus Censorship and the End of American Debate* go to FIRE too), emailing or calling administrators who engage in censorship, or writing letters to the editor of your local paper supporting free speech, FIRE needs your help. We hope you will heed the call. 

VIRGINIA COLLEGE QUARANTINES STUDENT SPEECH IN FREE SPEECH ZONE

Of the many types of campus speech codes FIRE fights, “free speech zones” may be the most maddening. What could be more antithetical to freedom of expression than quarantining student speech to a tiny, pre-approved “zone”? FIRE staffers are always outraged to discover that a public university maintains a policy locking students wishing to speak their minds into a certain small section of campus. Somehow, we don’t think this is what the Supreme Court had in mind when it deemed the American public college campus “peculiarly the ‘marketplace of ideas.’”

That’s why we’ve been so proud to win a string of victories defeating free speech zones at colleges across the country in recent years. From the University of Cincinnati in Ohio to Valdosta State University in Georgia, and Texas Tech University to the University of Nevada at Reno, FIRE’s efforts have taken down free speech zones from coast to coast.

Unfortunately, despite our success, many public colleges persist in forcing student speech into minuscule areas of campus, often with onerous pre-registration requirements. One such institution is Virginia’s Longwood University, where students recently alerted FIRE to a staggeringly restrictive free speech zone policy.

Longwood’s “Distribution of Written Materials, Outdoor Speeches, Marches and Demonstrations Policy” designates one small area of campus for free speech. Out of its roughly 160 acres, Longwood allows for free speech only in “the



GRAINGER HALL AT LONGWOOD UNIVERSITY

patio and the surrounding area located on the south side of the Student Union.” Needless to say, that’s hardly enough room—what if many of Longwood’s 4,000 students all wanted to exercise their First Amendment rights at once?

Worse still, students wishing to use the free speech zone must reserve it five business days in advance, meaning that students can’t react in a meaningful way to breaking news. And Longwood only allows student groups to use the zone once a month for a maximum of two days. How can student organizations discuss the issues of the day in any sustained fashion when they may only do so 12 times a year for a maximum of 24 days?

FIRE wrote Longwood to express our deep concerns about the university’s unconstitutional policy on December 3, 2012. In our letter, we pointed out the constitutional infirmities of Longwood’s free speech zone, stating that the policy “has no place at an institution presumptively committed to intellectual rigor, robust debate, and a free and vibrant community.” In response, Longwood Interim President Marge Connelly wrote that, after review, the school still “believes that such policies pass constitutional muster.”

FIRE disagrees, and we’ll be responding soon. Free speech zones like Longwood’s seriously restrict student speech, and we will continue to fight them nationwide. ♪

FIRE *rights at risk*

CAN TUFTS HANDLE RELIGIOUS PLURALISM?

Tufts University is facing a growing struggle over the existence of the Tufts Christian Fellowship (TCF) as a recognized student group on campus. At stake is the ability of Tufts students to organize around shared religious beliefs—and, more broadly, whether Tufts still accepts the American conception of religious pluralism.

The Tufts Christian Fellowship, a chapter of the national InterVarsity Christian Fellowship, wishes to be able to select its leaders based on their beliefs and exclude from leadership those who do not share the group's understanding of the Bible. Tufts' Committee on Student Life decided in December that groups like TCF should be able to make such belief-based decisions on leadership as long as they can convince the head chaplain of Tufts that their need to make such choices is based on legitimate religious reasons.

As in the Supreme Court's ill-advised 2010 decision in *Christian Legal Society v. Martinez*, the underlying dispute at Tufts involves a Christian student group that disapproves of homosexual sexual conduct. (A belief in chastity outside of heterosexual marriage, regardless of sexual orientation, is a requirement for TCF leadership.) In *Martinez*, the Court determined that a public university could (but was not obligated to) require all student groups to admit all students as both members and leaders, regardless of whether they agreed with the core tenets of the group. Tufts is private and therefore is not bound by the *Martinez* decision, but a similar

insistence that student groups allow all students to participate as members and leaders, regardless of their beliefs, has driven the controversy at Tufts. The same is true of the better-known controversy at Vanderbilt University, where 13 religious student groups have been forced to leave campus over their refusal to jettison belief-based requirements for members or leaders.

While TCF has grabbed the lifeline of the committee's decision, the idea that religious groups should have to defend their beliefs before an administrator in order to be granted equal status flies in the face of the American tradition of religious toleration and pluralism. Since our nation's founding, the United States has avoided religious conflict by allowing citizens to freely associate around shared beliefs—and to exclude from those associations those who do not share those beliefs. Pluralism is America's proven method of ensuring that people can live peacefully side by side with one another even if they have wildly different and conflicting beliefs.

Tufts is a private institution, and it is free to adopt official religious beliefs about how leaders must be selected with which all students or student groups must comply. But if it's going to do so, it needs to understand that this is ultimately a religious decision. Such an important change should be made only after recognizing that implementing this policy would mean that religious diversity and tolerance may no longer be a characteristic of Tufts' campus. Tufts' students, professors, and alumni deserve complete candor about the nature of any such change. 



FIRE *on campus*

SPEND YOUR SUMMER WITH FIRE

FIRE is now accepting applications for our 2013 Summer Internships for undergraduate and law students. FIRE interns spend an unforgettable summer in Philadelphia doing substantive work to defend free speech on campus. Apply today to spend your summer with FIRE!

**SAVE THE DATE:
2013 CAMPUS FREEDOM
NETWORK CONFERENCE
JULY 19-21, 2013**

FIRE's annual CFN Conference is the only national conference where students from across the political spectrum come together to learn about how to encourage speech on their campuses and make their schools more free. Students leaders will hear from First Amendment experts, FIRE staff, and each other about the most effective ways to confront campus censorship.



ATTENDEES AT FIRE'S 2012 CFN CONFERENCE
LAUGHING DURING A PRESENTATION

WHERE: Bryn Mawr College, Pennsylvania
(just outside of Philadelphia)

WHEN: Friday, July 19 – Sunday July 21, 2013

WHO: All college students.

COST: Registration is **FREE**, room and board are provided, and FIRE reimburses students for travel expenses up to \$300.

**SPACE IS LIMITED, SO APPLY TODAY
AT THECFN.ORG/CONFERENCE!**

SPEECH CODES OF THE YEAR: 2012

FIRE announces its Speech Codes of the Year for 2012: Illinois State University and Oakland University in Michigan. Illinois State's conduct code sets forth certain "non-negotiable values" such as "civility" and "an appreciation of diversity," and tells students that if their behavior conflicts with those values, they "must choose whether to adapt their behavior to meet the needs of the community or to leave the University." Oakland University prohibits the use of "immoral" or "insulting" language "over any telephone or other communications device."





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ABOUT THIS PUBLICATION

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The mission of FIRE is to defend and sustain individual rights at America’s colleges and universities. These rights include freedom of speech, legal equality, due process, religious liberty, and sanctity of conscience—the essential qualities of individual liberty and dignity. FIRE’s core mission is to protect the unprotected and to educate the public and communities of concerned Americans about the threats to these rights on our campuses and about the means to preserve them.

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