



Foundation for Individual Rights in Education

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November 6, 2006

President Daniel H. Weiss
Lafayette College
Office of the President
316 Markle Hall
Easton, Pennsylvania 18042

Sent via U.S. Mail and Facsimile (610-330-5700)

Dear President Weiss:

As you can see from our Directors and Board of Advisors, the Foundation for Individual Rights in Education (FIRE) unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, due process, legal equality, voluntary association, freedom of speech, and religious liberty on America's college campuses. Our website, www.thefire.org, will give you a greater sense of our identity and activities.

FIRE writes today to commend you for your forthrightness in apologizing to the Lafayette College community about your mistake in cancelling Republican gubernatorial candidate Lynn Swann's visit to campus a few weeks ago. FIRE was initially disconcerted to learn about the cancellation, as a student organization does not relinquish its right to invite partisan speakers to campus simply because its college is a not-for-profit institution. We were pleased to see you were willing to rectify the matter.

In your statement to the Lafayette community, you said:

We must use this experience as a learning opportunity. I can assure you that we will fix our administrative procedures so that such requests can be processed more efficiently in the future and we will develop new guidelines that reflect practices to ensure the open exchange of ideas.

FIRE has had much experience with universities cancelling partisan events close to election time, and we have drafted a set of guidelines to help universities avoid making unwise and even unconstitutional mistakes that infringe on their students' expressive and associative rights. Even though Lafayette, a private institution, is not bound by the Constitution, as the

college moves forward to draft policies that will ensure the avoidance of similar mistakes in the future, FIRE hopes that you will take this advice into consideration.

While various state and federal laws prevent public and private university officials from explicitly campaigning for or against candidates on university time or through the use of university resources, not all speech regarding a political candidate is considered unacceptable “partisan” campaigning. The Constitution puts profound limits on the ability of public university administrators to suppress student-sponsored speech, even if that speech explicitly and purposefully endorses a political candidate.

First, students do not abandon their constitutional rights when they enter the university gates, and partisan political speech does not enjoy lesser constitutional protection than speech that advances cultural, educational, or religious purposes. To the contrary, political speech is considered the “core” rationale for the First Amendment, and nowhere is it more important that speech remain free than in the arena of political advocacy. So long as students are not materially disrupting the educational process, campus administrators have no valid reason for limiting or suppressing expressive activities that support a particular candidate or political party.

Second, the fact that student activity fees may be used to fund partisan political activity is irrelevant to constitutional analysis. Contrary to popular belief, student activity fees are not “government resources,” nor should they be treated as the property of a private college. As U.S. Supreme Court Justice Sandra Day O'Connor noted in the case of *Rosenberger v. University of Virginia*, a student activities fund, when derived from student activity fees, is “a fund that simply belongs to the students.” The obligation of the university is only to ensure that it dispenses those funds on a viewpoint-neutral basis.

Viewpoint-neutral simply means that student organizations and student groups must have equal access to student activity fee funds without being subject to ideological litmus tests. It does not mean “without a viewpoint.” Republicans, Democrats, Greens, and Libertarians may all petition for student fee funding, and the ultimate funding decision must be made without regard to the political viewpoint of the group. It is the right of individual students and of student groups to propose creative programs that impact campus opinion; it is the obligation of the student activity fee funding boards to fund those programs without bias.

Importantly, student organizations that fail to seek funding for their own activities or speakers cannot complain if funding is granted to those organizations that do seek funding. Student activists should remember the old axiom that the cure for speech with which they disagree is not censorship, but more speech.

Election campaigns present a perfect opportunity for universities to prove themselves as models for democratic discourse. For many of our nation’s students, the current campaign will represent the first time they can vote and publicly speak out about their beliefs. As you stated, in contrast to the widespread apathy among many college students, you are

lucky to have a campus of politically engaged students. It is all of our responsibility to ensure that their voices are heard in a meaningful way.

Again, FIRE commends you for recognizing your error in cancelling Swann's visit to campus and trusts that a similar situation will not arise in the future at Lafayette.

Sincerely,

Tara E. Sweeney
Senior Program Officer

cc:

James F. Krivoski, Vice President for Student Affairs and Acting Administrative
Secretary to the Board of Trustees, Lafayette College

Kevin D. Worthen, Dean of Students, Lafayette College

June Schlueter, Provost, Lafayette College