



Foundation for Individual Rights in Education

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October 27, 2005

President Alan G. Merten
George Mason University
D103 Mason Hall
4400 University Drive
Fairfax, Virginia 22030-4444

Sent by U.S. Mail and Facsimile (703-993-8707)

Dear President Merten:

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

FIRE writes to George Mason University to express our concern not only about the incident involving student Tariq Khan, but also about two policies at GMU that unconstitutionally inhibit the freedom of expression of GMU students and faculty members. As a public institution of higher education, GMU has a moral and legal responsibility to recognize and protect the free speech rights of students and faculty. Not only do media accounts indicate that GMU failed to do this with regard to Khan, but FIRE's subsequent review of the university's policies on solicitation and posting shows that GMU must change both its policies and its practices if liberty on its campus is to be preserved.

With regard to the incident involving Khan, who is a junior at GMU and an Air Force veteran, FIRE's understanding of the facts comes from numerous published accounts of the incident as well as GMU's own statements about the incident. Please inform us if you believe we are in error. On September 29, Tariq Khan went to the George W. Johnson Center, a public building on GMU's Fairfax campus, to protest near a table of military recruiters. Khan carried posters and flyers and affixed a sign to his chest reading "Recruiters Lie, Don't Be Deceived."

Khan told *The Washington Post* that two students approached him and began yelling at him in disagreement with his message, and that one of the students ripped the sign off his chest. About half an hour after Khan's protest began, the campus police arrived and asked him for identification, which he did not have on

his person. After a brief scuffle—the nature of and origin of which is the subject of disagreement between the parties—Khan was arrested and charged with trespassing and disorderly conduct.

After receiving widespread press coverage because of the incident, GMU issued two statements. The first statement from Provost Peter N. Stearns stated that the university would “commit to review Johnson Center and other relevant policies, to make sure they are compatible with freedom of speech, and [that GMU would] work to identify those individuals responsible for any alleged violations.” He also said that “George Mason University reiterates its deep commitment to the freedom of speech. We must work to avoid attacks on expressions of free speech, including destruction of signs and other written statements.” Then, on October 20, University Relations issued a second statement saying that “the university believes it would be inappropriate for this student to be prosecuted in a criminal court.” The statement goes on to reiterate that GMU “has embarked upon a thorough review of all policies and procedures pertaining to leafleting, demonstrations and other activities associated with free speech, with a goal of providing a safe and secure campus environment that preserves the rights of all those in the George Mason University community to express their views.”

FIRE is encouraged by the university’s decision that it would be “inappropriate” for Khan to face criminal charges, although we are concerned about the comment in the second statement indicating that “[s]tudents involved in the incident are being referred to the Dean of Students.” While student disciplinary charges may be appropriate against any students who assaulted Khan for his expression, the university’s admission that criminal charges would not be appropriate for Khan himself should give the university serious pause before pursuing any possible internal charges against him. Indeed, GMU could have and should have stopped the incident before it started by taking quick action to protect Khan’s right to peacefully protest and stopping the student or students who truly caused a disruption by assaulting Khan.

FIRE believes that the campus police approached and later arrested Khan, rather than the disruptive counter-protestors, because of GMU’s unconstitutional policies on solicitation and posting. GMU’s commitment to review “all policies and procedures pertaining to leafleting, demonstrations and other activities associated with free speech” lends credibility to this assessment. FIRE’s examination of two GMU regulations reveals that a revision of these policies is certainly warranted. As a state university, GMU has a legal obligation to uphold and protect First Amendment rights on its campus.

One of the most obviously problematic policies regulating expression at GMU is University Policy 1109, the “Poster Posting Policy” that, despite its name, goes further than merely regulating the posting of posters. This policy, which “applies to all University Departments, faculty, staff, students, contractors, and the general public at all George Mason University locations,” states that “[n]o information or advertising will be posted that is inconsistent with the educational mission of the University or that has not received prior authorization in accordance with this policy.” It goes on to apply to more than posters, however, saying that the “[p]osting of materials or **distribution of flyers/leaflets** without prior approval as specified above will be considered as littering and is subject to the laws of the Commonwealth of Virginia.” [Emphasis

added.] This policy would apply to Tariq Khan, as he was distributing flyers to those people who asked him for them and presumably did not have permission to do so beforehand.

University Policy 1110, the “Vending Sales and Solicitation Policy,” also presents constitutional problems. This policy, which “applies to all University Departments, faculty, staff, students, contractors, and the general public at all George Mason University locations,” states that “[t]he sale, distribution, or solicitation of any products, goods, food, beverage, service, and newspaper by GMU and non-GMU organizations and individuals is subject to prior authorization.” By its own terms, this policy purports to give GMU administrators the right to dictate what newspapers may be distributed on campus. By way of giving guidelines on what materials, including newspapers, might be forbidden, the policy states, “No use shall be permitted which is inconsistent with the mission of the University...or to further causes which are adverse to the well being of the University.”

As written, both the Poster Posting Policy and the Vending Sales and Solicitation Policy give administrators unfettered discretion to refuse permission to students who wish to engage in expression through the distribution of leaflets, flyers, or newspapers. While the Vending Sales and Solicitation policy does give some guidelines about what will not be permitted, it does not require administrators to permit activities protected under the First Amendment or to explain their decisions to students who might be denied permission to distribute literature or newspapers. This degree of discretion is unconstitutional. According to the U.S. Supreme Court, “a law subjecting the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority, is unconstitutional.” *Shuttlesworth v. Birmingham*, 394 U.S. 147, 150-151 (1969). The two policies discussed above, which require a “license” from the university in that they prohibit the distribution of literature or newspapers without the university’s prior approval, include none of these “narrow, objective, and definite standards,” and therefore cannot pass constitutional muster.

While the constitutional concerns about GMU’s restrictions on expression are important, equally important is the fact that GMU itself promises freedom of speech to its students. GMU’s student handbook, as well as its student judicial code, contains a Statement of Community Values. In pertinent part, this statement reads, “Underlying the university’s mission are basic values that must be respected if the goals are to be achieved. These indispensable community values include...the freedom of intellectual inquiry in the pursuit of truth [and] the freedom of speech and open exchange of ideas....” Regulations that demand prior authorization for distribution of newspapers and leaflets, and that give the university unfettered discretion to do so, can hardly be said to fit with a mission that includes freedom of speech and intellectual inquiry. As a university that values open inquiry and honors the memory of George Mason, the author of the Virginia Declaration of Rights and a driving force behind the U.S. Bill of Rights, GMU has a moral obligation to honor the rights of those who, like Thomas Paine and Benjamin Franklin, choose to use the power of pamphlets and newspapers to engage in societal and political debate.

While FIRE is disappointed in GMU’s treatment of Tariq Khan, we hope that GMU will seize the opportunity presented by the situation and use the promised review of its policies affecting free speech to revise these policies so that they protect the First Amendment rights of its students. Protestors carrying on a peaceful demonstration—even those who bring flyers or

leaflets—should be protected from those who might attempt to silence or assault them, not blamed for disturbances caused by others. Students who wish to distribute newspapers or leaflets on campus should be free to do so regardless of their political, religious, or ideological beliefs. If GMU is to be a true “marketplace of ideas” where intellectual inquiry can flourish, the chilling effect on expression that comes with the possibility of administrative censorship must not be a part of that community.

In light of the concerns outlined above, FIRE has two requests. First, we request that GMU handle Tariq Khan’s situation with the greatest respect for due process and for his rights under the First Amendment. Unless some pivotal wrongdoing on the part of Tariq Khan is missing from the public record, GMU should dismiss any potential charges against him. Second, FIRE requests that GMU rewrite its policies on the posting of posters, on vending sales and solicitation, and any other policies that might restrict speech on GMU’s campus to bring them in line with the university’s legal and moral commitments to the First Amendment and to freedom of expression.

Because of the nature of this incident and the importance of the rights at stake, FIRE requests a response on this matter by November 16, 2005.

Sincerely,



Robert L. Shibley
Program Manager

cc:

Sandra Hubler, Vice President for University Life, George Mason University
Peter N. Stearns, Provost & Executive Vice President for Academic Affairs, George Mason University
Linda A. Schwartzstein, Vice Provost for Academic Affairs, George Mason University
Maurice W. Scherrens, Senior Vice President, George Mason University
Girard M. Mulherin, Dean of Students, George Mason University
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Tariq Khan