



April 14, 2017

Father John P. Fitzgibbons, S.J.
Office of the President
Regis University
3333 Regis Boulevard B-4
Denver, Colorado 80221-1099

Sent via U.S. Mail and Electronic Mail (president@regis.edu)

Dear President Fitzgibbons:

As you know from our March 22 letter, the Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

FIRE was disappointed not to have received a response to our March 22 letter by our April 5 deadline. Making matters worse, FIRE has become aware of statements you made to students and a statement made by Regis University's administration to a local media outlet claiming that Regis immediately shut down Alexander Beck's "Social Justice Bake Sale" event because it allegedly violated federal law. Not only do these statements directly contradict Regis' prior claims that it did *not* shut down Beck's demonstration, it is also an inaccurate statement of law. Your statements and Regis University's actions undermine Regis' advertised commitment to its students' freedom of expression.

The following is our understanding of the facts; please inform us if you believe we are in error.

FIRE's March 22 letter raised concerns about Dean of Students Diane McSheehy's unilateral decision to shut down student Alexander Beck's March 16 tabling event after Beck had received permission for the event from Event Coordinator Chelsie Bowmar. Beck's demonstration took the form of a bake sale, offering different prices for baked goods depending on students' gender, race, sexuality, or religion.¹ He intended to raise money for Milo Yiannopoulos' "Privilege Grant," a college scholarship designed specifically for white men. A sign at the table invited students to discuss the prices with Beck if they disagreed with them.

¹ Alexander Beck (@realAlexBeck) TWITTER (Mar. 16, 2017 1:12 PM), <https://twitter.com/realAlexBeck/status/842423406813429766>.

Beck engaged other students in discussion at the table for about an hour until McSheehy approached the table and asked Beck to meet with her. Beck was not permitted to record the meeting. According to Beck, McSheehy claimed Beck's table constituted a "demonstration" and then explained that, because the expression was in protest of Social Justice Week, Beck needed to obtain permission from the university 48 hours in advance, and that he had to shut down his display.

Beck emailed McSheehy for clarification later that day, and she replied confirming that she viewed the table as a "demonstration."

Thanks for your email. Your table was not "shut down". I thought in our conversation I was very clear about that. I simply wanted to connect with you about the correct process and procedures that need to be followed in order to have a recognized organization and to table as such. When I first came down to talk with you, you were the one that stated you were "protesting" that is why we also had the conversation about the correct procedures for having a demonstration. I thought we had a good conversation and I am happy to answer any questions or concerns that you may still have. I also have you and Nick on my calendar for next Tuesday for a follow-up conversation as we agreed to today. Looking forward to continuing our conversation on Tuesday.

In a March 31 article, KMGH-TV (Denver7) quoted a statement by Regis concerning Beck's demonstration.²

Regis University welcomes and encourages diverse viewpoints on campus. However, the bake sale you referenced violated university policy and federal law by selling items at different prices based on race and gender.

Last week, in response to the bake sale, the Office of Diversity held an open forum for students who felt marginalized, attacked or unsafe. This was facilitated by a Regis counselor and attended by Diversity office staff. Regis is hosting more of these: A forum about race at Regis, where a lot of these same issues will be discussed, will be held next week. The entire Regis community is invited.

During Regis' April 5 "Courageous Conversations: Race at Regis" event, you accused Beck of a "crystal clear" violation of federal law and defended Regis' actions in shutting down the event. In that discussion, you distinguished between *how* things are said and *what* is said, arguing that Beck's expression was "not rhetoric." You asserted that administrators "took care of that as soon as it was noticed" and that "it was noticed after an hour and a half. We got on it when we understood that's what was going on." When Beck interjected to say that his display was "noticed immediately," you acknowledged that that may be true, but said that it wasn't your understanding that administrators noticed it immediately.

You then said that it was "absolutely clear" and "crystal clear" that Beck's bake sale was "a violation of federal law," and you asserted that Beck's expressive display was "a huge mistake" but

² Jackie Crea, *Students speak out against 'affirmative action' themed bake sale and fried chicken on MLK Day*, DENVER7, (Mar. 31, 2017), <http://www.thedenverchannel.com/news/front-range/denver/students-speak-out-against-affirmative-action-themed-bake-sale-and-fried-chicken-on-mlk-day>.

likely undeserving of the “nuclear” response of federal incarceration. After citing Beck’s alleged violation of federal law and querying where on the spectrum of punishment the university’s response should lie, an administrator at the event declined to say whether punishment would be levied, citing federal privacy laws. After students shared their frustrations with the bake sale and the administration, the meeting came to an end.

As stated in FIRE’s letter last month, while Regis is a private university and thus not legally bound by the First Amendment, it is both morally and contractually bound to honor the promises it has made to its students. For example, Regis’ “Student Conduct Expectations” states:³

Within the traditions of its mission and Catholic, Jesuit heritage, Regis University expects its students to develop a high standard of behavior and personal values. Among these expectations are included:

[. . .]

- Respect for the University’s academic traditions of honesty, freedom of expression and open inquiry;

Additionally, Regis’ Student Handbook states that “the Regis community seeks to live the Jesuit mission by . . . providing opportunities for self-expression and growth in the Regis community” and that “[i]ntentionally and substantially interfering with the freedom of expression of others in or on University Property or at University sponsored activities” constitutes prohibited conduct.⁴ These are noble ideals for the university to embrace, but it is clear that Regis is failing to stand by these promises.

Further, it is apparent that Regis is tailoring its explanations depending on the audience and its institutional goals, contradicting itself in the process. Immediately after Beck’s event, McSheehy claimed over email that Beck’s bake sale was not “shut down” and argued that the university was just ensuring that proper “demonstration” guidelines were followed. But at last week’s “Courageous Conversations” event, you proudly proclaimed that Regis “took care of [the bake sale] as soon as it was noticed,” indicating that it was the *content* of Beck’s expression that Regis sought to stymie. It is shameful that Regis—a university that touts its “traditions of honesty, freedom of expression and open inquiry”—has shifted from refusing to take responsibility for the censorship in which it has engaged to boasting about how quickly it was able to do so.

Furthermore, Regis’ justification for censoring Beck cannot withstand scrutiny. Regis issued a statement to be broadcast on local television publicly claiming that Beck’s bake sale “violated university policy and federal law by selling items at different prices based on race and gender,” and you later supported that claim, calling it a “crystal clear” violation. To the contrary, Beck’s

³ *Community Standards of Conduct*, REGIS UNIVERSITY, <http://www.regis.edu/About-Regis-University/University-Offices-and-Services/Student-Activities/Judicial-Affairs/Community-Standards-of-Conduct.aspx> (last visited Mar. 20, 2017).

⁴ *STUDENT HANDBOOK 2016 - 2017*, REGIS UNIVERSITY, http://www.regis.edu/~media/Files/University/Student%20Activities/Student_Handbook_2016_17_final_October_10_2016_LO.ashx (last visited Mar. 15, 2017).

expressive conduct is political protest clearly protected by the First Amendment, and Regis cannot justify its censorship by reference to unidentified and inapplicable federal laws.

The “bake sale”—a common method of protest seen at universities across the country⁵—was intended as a satirical response to Regis’ “Social Justice Week.” Categorizing the bake sale as a violation of federal law ignores or willfully misinterprets the expressive purpose of the event. Beck did not seek to create a profitable commercial enterprise—indeed, he pledged not to keep any meager profit—but to make a statement. Protests that rely on satire—such as Beck’s “Social Justice” bake sale and feminist “wage gap” bake sales, both of which utilize proposed transactions to highlight perceived flaws in society or policy—exist to challenge, provoke, and, indeed, often offend.

Satirical political protest is at the very heart of our country’s honored traditions. In *Hustler Magazine v. Falwell*, 485 U.S. 46 (1988), the Supreme Court of the United States ruled that the First Amendment protects even the most blatantly ridiculing, outlandishly offensive parody. In that case, a satirical advertisement offered a purported interview with the Reverend Jerry Falwell, as he recounted how he lost his virginity in a drunken encounter with his own mother in an outhouse. A university seeking to honor the tradition of freedom of expression should surely recognize that Beck’s bake sale, like the advertisement ridiculing Falwell, should not face censorship.

Finally, that some—or even many—members of the campus community were offended by Beck’s event is not cause to censor it. The proper response to speech that offends others is “more speech, not enforced silence.” *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., dissenting). That Regis held discussions in response to community members’ opposition to the event is evidence that the university is aware of the power of rigorously debating and refuting ideas with which one disagrees. Regis clearly recognizes the value in encouraging students to use their own voices to respond to the bake sale, but it cannot expect students to substantively engage each others’ views, or to change each others’ minds, if the expression of some views is to be met with censorship and punishment.

To honor its numerous stated commitments to free expression, Regis University must continue to rely on counter-speech as a means of responding to speech it believes is offensive, and it must reassure Beck and the Regis community that it will not hinder students’ free speech rights by simply labeling their expression “demonstrations” or censoring it because it may offend some members of the student body.

FIRE is committed to using all of the resources at our disposal to see this matter through to a just conclusion. We request a response to this letter by April 28, 2017.

⁵ See, e.g., Press Release, Found. for Individual Rights in Educ., (Victory for Free Speech at William & Mary (Feb. 2, 2004), <https://www.thefire.org/victory-for-free-speech-at-william-mary>; Press Release, Found. for Individual Rights in Educ., Twin Victories for Free Speech on Campus (Feb. 13, 2004), <https://www.thefire.org/twin-victories-for-free-speech-on-campus-2>; Press Release, Found. for Individual Rights in Educ., Partial Victory for Free Speech at DePaul (Feb. 20, 2006), <https://www.thefire.org/partial-victory-for-free-speech-at-depaul>.

Sincerely,

A handwritten signature in cursive script that reads "Sarah McLaughlin". The signature is written in black ink and is positioned below the word "Sincerely,".

Sarah McLaughlin
Program Officer, Individual Rights Defense Program

cc:
Diane McSheehy, Dean of Students