

FIRE **QUARTERLY**

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FIRE AIMS TO CHALLENGE LEGALITY OF FEDERAL SEXUAL MISCONDUCT MANDATE

• WASHINGTON, DC •

Five years ago, the Department of Education's Office for Civil Rights (OCR) announced sweeping new requirements for colleges and universities adjudicating allegations of sexual misconduct. By unilaterally issuing these binding mandates via a controversial "Dear Colleague" letter (DCL), OCR ignored its obligation under federal law to notify the public of the proposed changes and solicit feedback.

To correct this error, and to begin to fix a broken system of campus sexual assault adjudication that regularly fails all involved, FIRE seeks a student or institution to challenge OCR's abuse of power. FIRE has made arrangements to secure legal counsel for a student or institution harmed by OCR's mandates and in a position to challenge the agency's violation of the Administrative Procedure Act (APA). In keeping with FIRE's charitable mission to advance the public interest, representation will be provided at no cost to the harmed party.

"In the five years since its issuance, OCR has acted as though the 2011 Dear Colleague letter is binding law—but it isn't," said FIRE Executive Director Robert Shibley. "By circumventing federal law, OCR ignored all stakeholders: victims, the accused, civil liberties advocates, administrators, colleges, law enforcement, and the general public. Real people's lives are being irreparably harmed as a result. It's time that OCR be held accountable."

The DCL requires that schools use the low "preponderance of the evidence" standard of proof (i.e., that they find an accused student guilty with just 50.01 percent certainty) when adjudicating claims of sexual assault and

sexual harassment. The DCL's requirement that colleges use this standard—found nowhere in Title IX or its implementing regulations and specified before 2011 only in letters between OCR and individual schools—effectively creates a new substantive rule for institutions to follow.

The APA requires federal agencies implementing new substantive rules to first offer those rules for public notice and comment, so that affected parties may provide feedback before they are adopted.

OCR must rescind the DCL's mandates and subject them to public notice and comment as required by the APA. Since it has not done so voluntarily despite a substantial public outcry, the time has come to hold the agency accountable for its unlawful actions. A student or institution harmed by the DCL's mandates can do this by filing a lawsuit against the agency.

**"Real people's lives
are being irreparably
harmed as a result.
It's time that OCR be
held accountable."**

ROBERT SHIBLEY, FIRE EXECUTIVE DIRECTOR

FIRE invites interested students and institutions to contact us at APA@thefire.org. We stand ready to take action with the aid of attorneys from the Washington, D.C. law firm of Kaiser, LeGrand & Dillon PLLC, with whom we have partnered on this case and who are widely recognized as nationwide leaders in handling cases of campus sexual misconduct. [🔗](#)





LSU PROFESSOR FILES LAWSUIT CHALLENGING SPEECH CODE CHAMPIONED BY FEDS

• BATON ROUGE, LOUISIANA •

In January, education professor Teresa Buchanan filed a federal civil rights lawsuit against the president of Louisiana State University (LSU) and other top administrators for violating her free speech and due process rights by firing her last year. FIRE is sponsoring Buchanan's lawsuit, which at the time of the filing was the eleventh in FIRE's undefeated national Stand Up For Speech Litigation Project.

Buchanan was fired for her alleged occasional use of profanity and sexual language in preparing her adult students to be effective teachers. LSU claimed Buchanan's teaching methods violated its policy prohibiting "sexual harassment" of students, which defines sexual harassment as "unwelcome verbal, visual, or physical behavior of a sexual nature."

LSU's policy mirrors the language of the sexual harassment definition propagated by the U.S. Departments of Education and Justice in 2013 as "a blueprint for colleges and universities throughout the country." **FIRE and other civil liberties advocates have warned this controversial language threatens the free speech and academic freedom rights of faculty and students.** Buchanan's lawsuit challenges the policy and its application to her.

"FIRE predicted that universities would silence and punish faculty by using the Department of Education's unconstitutional definition of sexual harassment—and that's exactly what happened at LSU," said FIRE Director of Litigation Catherine Sevchenko. "Under this broad definition of sexual harassment, professors risk punishment for teaching or discussing sex-related material, be it Nabokov's *Lolita* or the latest episode

of *The Bachelor*. Now Teresa is fighting back to protect her rights and the rights of her colleagues."

Buchanan was a tenured associate professor teaching in LSU's prekindergarten through third grade teacher certification program. In December 2013, she was informed that she would not teach during the Spring 2014 semester because of unspecified allegations that she had made "inappropriate comments" while teaching college-aged teacher education students.

At the time, Buchanan was in the final stages of approval for a promotion to full professor. Buchanan tried to explain to LSU administrators in a letter that she occasionally uses sexual language and humor in lessons that are meant to prepare educators for their future interactions with "children from family backgrounds that are different from their own."

In May 2014, Buchanan was informed that she was being charged with violating the university's sexual harassment policy and in June 2015, **LSU's Board of Supervisors fired Buchanan, overruling a unanimous faculty committee recommendation that she not be fired.**

In a subsequent statement to the press, LSU justified its actions by stating that it was following "the U.S. Department of Education's Office of Civil Rights' [sic] advisements."

"It's a professor's job to provoke students into thinking and examining their assumptions," Buchanan said, "and that's precisely what I did. LSU said I offended some people, called it sexual harassment, and fired me. In doing so, they violated LSU's promises of free speech and academic freedom for its faculty."®



TERESA BUCHANAN, STAND UP FOR SPEECH PLAINTIFF



“The University of South Carolina is so intolerant of free speech that students can’t even talk about free speech.”

CATHERINE SEVCENKO, FIRE DIRECTOR OF LITIGATION



COVER STORY

STUDENT INTERROGATED FOR ORGANIZING FREE SPEECH EVENT FILES FIRST AMENDMENT LAWSUIT AGAINST UNIVERSITY OF SOUTH CAROLINA

• COLUMBIA, SOUTH CAROLINA •

The University of South Carolina's (USC's) marketing materials claim "No Limits" on the student experience—except, it seems, when it comes to constitutional rights. That's why in February, student Ross Abbott and the campus chapters of Young Americans for Liberty (YAL) and the College Libertarians filed a First Amendment lawsuit against USC with the help of FIRE.

Last fall, the student groups held an outdoor event displaying posters with examples of expression that was censored on campuses across the country. Three other students filed formal complaints, claiming that some of the posters were "offensive" and "triggering." In response, USC served Abbott with a "Notice of Charge" letter and launched an investigation for "discrimination," threatening him with punishment up to and including expulsion for his protected speech.

Abbott and the campus chapters of YAL and the College Libertarians are now suing USC for violating their free speech rights. FIRE is sponsoring the lawsuit, the twelfth in FIRE's undefeated national Stand Up For Speech Litigation Project.

"The University of South Carolina is so intolerant of free speech that students can't even talk about free speech," said Catherine Sevchenko, FIRE's director of litigation.

"Ironically, the university's current marketing campaign features the slogan 'No Limits.' But as Ross and his fellow students learned, that does not extend to their free speech rights."

The free speech event, held in a USC "free speech zone" on November 23, 2015, featured information about 11 instances of campus censorship, most of which required FIRE's intervention. These examples included Modesto Junior College in California preventing a student from handing out copies of the U.S. Constitution and Chicago State University censoring a faculty blog.

The day after the event, USC served Abbott with a Notice of Charge letter demanding that he meet with an administrator to respond to the complaints that his event was offensive.

On December 8, 2015, Abbott and YAL President Michael Kriete met with a USC administrator, who required that Abbott answer for each poster by explaining the situation it described and justifying the message that he and the others were trying to send. In response, Abbott gave the administrator a letter asking that his disciplinary record be expunged, that the university clarify that controversial speech that is protected by the First Amendment will not be penalized under USC policies, and that USC reaffirm the importance of free speech and academic freedom on campus.

Two weeks later, Abbott was notified by email that the matter was being dropped. However, the administration did not respond to Abbott's three requests—inaction that prompted February's lawsuit.

"No one should have to explain their speech to a government bureaucrat under threat of punishment, but that is exactly what USC made Ross do," said Sevchenko.

The lawsuit challenges a number of USC's policies, including its restrictive free speech zone policy and the Student Non-Discrimination and Non-Harassment Policy, a vague and overbroad policy that prohibits "unwelcome" speech and "suggestive or insulting gestures or sounds."

"I held an educational event for students to learn about their free speech rights. Apparently it was my school's administrators that needed the lesson," said Abbott.

FIRE retained preeminent First Amendment attorney Robert Corn-Revere of the law firm Davis Wright Tremaine and his colleagues Ronald London and Lisa Zycherman to represent the students in this Stand Up For Speech lawsuit. The attorneys also represent Teresa Buchanan in the Louisiana State University lawsuit featured in this edition of the *FIRE Quarterly*. 



UNIVERSITY OF MARYLAND, SUNY BROCKPORT REVISE SPEECH CODES, EARN FIRE'S HIGHEST FREE SPEECH RATING

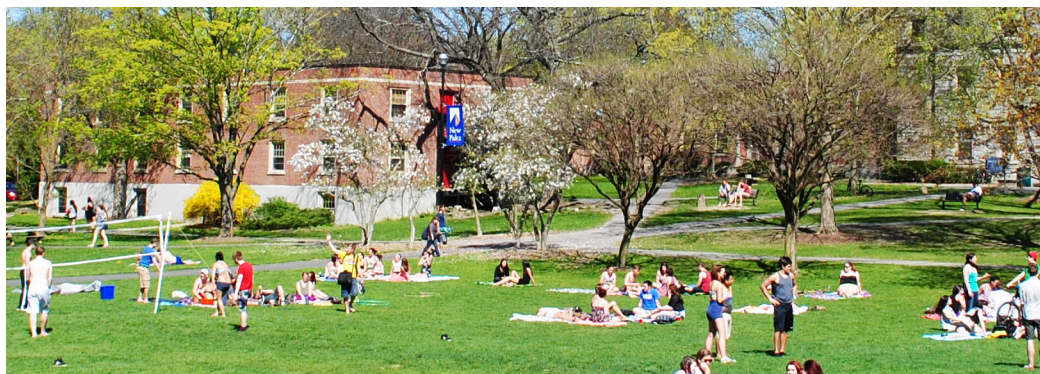
• COLLEGE PARK, MARYLAND •
BROCKPORT, NEW YORK

The University of Maryland (UMD) and The State University of New York College at Brockport (SUNY Brockport) have revised their speech codes, earning FIRE's highest, "green light" rating for free speech.

At press time for this edition of the *FIRE Quarterly*, UMD and SUNY Brockport are the latest institutions to join a prestigious group of colleges and universities that have revised their policies on student and faculty expression to ensure compliance with First Amendment standards.

FIRE wrote to UMD following the university's appropriate handling of an incident that arose last spring involving a controversial student email. When FIRE began this collaborative effort, UMD maintained two policies earning a "yellow light" rating. FIRE advised UMD administrators on revising a policy concerning student rights and responsibilities as well as a policy on multicultural philosophy.

"The University of Maryland prides itself on our thriving environment of free speech



STUDENTS ENJOYING SPRING, SUNY BROCKPORT

and academic freedom for every member of our campus community," said UMD Vice President of Student Affairs Linda Clement. "We are extremely proud to earn the highest, green light rating from the Foundation for Individual Rights in Education."

When FIRE began working with SUNY Brockport last fall, the school maintained two speech codes earning a yellow light

UMD and SUNY Brockport are the 24th and 25th green light institutions in FIRE's Spotlight database of over 400 colleges and universities. UMD has nearly 38,000 students enrolled and SUNY Brockport has nearly 8,000.

Last year, six colleges and universities collaborated with FIRE on policy reform to earn a green light rating. FIRE hopes the strong start to 2016, led by the University of Maryland and SUNY Brockport, inspires more schools to revise restrictive policies. [@](#)

UMD and SUNY Brockport are the 24th and 25th green light institutions in FIRE's Spotlight database.

rating. Following discussions with FIRE, SUNY Brockport administrators revised the school's policy governing email and Internet usage, as well as its posting policy.

SUNY Brockport's chief communications officer David Mihalyov said, "At Brockport we are deeply committed to protecting the rights of all our students and faculty to ensure that we have a robust campus environment that encourages the full exchange of ideas and information that is the hallmark of a SUNY Brockport education."



GRADUATION, UNIVERSITY OF MARYLAND

RECENT HEADLINES FROM 'THE TORCH'

FIRE'S AWARD-WINNING BLOG

- **VICTORY:** Federal Court Orders Iowa State to Stop Censoring Student T-Shirts Advocating Marijuana Legalization
- **VICTORY:** University of Kansas Professor Reinstated After Four-Month Investigation Into Classroom Speech
- **VICTORY:** Student Journalists Cleared of Charges for Reporting on Sexual Assault Awareness Event
- FIRE-supported Documentary 'Can We Take a Joke?' Acquired by Samuel Goldwyn, Set for Release this Summer



WELCOME TO FIRE'S NEW PHILADELPHIA HEADQUARTERS!

● PHILADELPHIA, PENNSYLVANIA ●

For more than 10 years, FIRE was headquartered in the historic Curtis Center in the heart of Philadelphia. We're excited to announce that FIRE has finally settled into our new home at One Washington Square, which fittingly overlooks the even-more-historic Independence Hall.

To say FIRE outgrew our previous office is quite an understatement! Our relocation was born of necessity, as **FIRE has evolved over the years from a small group of dedicated First Amendment advocates into a proven, multi-faceted organization of dozens.** We have been quite busy as of late. After vastly expanding many of our programs, our staff has tripled in size since FIRE's early days in the Curtis Center.

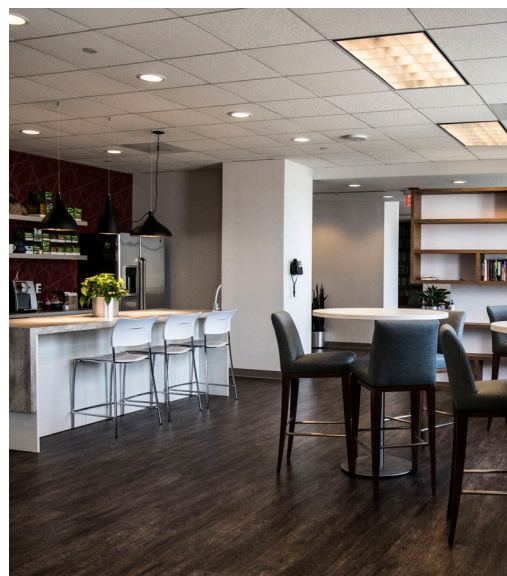
The new office—with its contemporary feel and large, open floor plan—affords FIRE opportunities that were simply not possible in our old space. At twice the size of the former headquarters, the new office incorporates numerous collaborative work areas, allowing staff to work on projects together. The space also includes a dedicated sound-proof studio with a four-point lighting installation for conducting professional video interviews, marking an expansion of our Public Awareness Project.

We've also incorporated flexible work spaces for our world-class FIRE interns. Through the years of running our successful internship program, we have seen firsthand how allowing interns to move and control their workspaces gives them the means to communicate ideas amongst each other more efficiently and to engage fully with their projects. With that in mind, we specifically designed their workspace so that this summer, **when we welcome the 2016 intern class, it will be entirely up to them how they work**—whether they sit or stand, work together or work alone, or even where they choose to move their workstation within the

office. We know that when student activists are given this type of flexibility, they exceed expectations.

FIRE would like to thank all of our supporters who made this expansion possible.

We are thrilled to move into our new headquarters and look forward to growing into it in the years to come. This office, and the new tools it provides, will allow our staff to do even better at what they already do best: defend liberty on America's campuses. 🔥



FIRE'S 10 WORST COLLEGES FOR FREE SPEECH: 2016

● PHILADELPHIA, PENNSYLVANIA ●

Nearly half of America's top colleges maintain speech codes that blatantly violate First Amendment standards. But every year, FIRE takes a closer look at the past year's incidents of college censorship to determine the nation's 10 worst abusers of student and faculty free speech rights.

This year's list of the 10 worst colleges for free speech—published with detailed descriptions at *The Huffington Post*—includes many public colleges or universities bound by the First Amendment. Some of them, on the other hand, are private colleges that, although not required by the Constitution to respect student and faculty rights, nonetheless promise to do so. This year's list features:

- Mount St. Mary's University (Maryland)
- Northwestern University
- Louisiana State University
- University of California, San Diego
- Saint Mary's University of Minnesota
- University of Oklahoma
- Marquette University
- Colorado College
- University of Tulsa
- Wesleyan University

Among the institutions on FIRE's annual "worst of the worst" list are a university that fired two faculty members for criticizing the university president's plan to oust low-performing freshmen, a college that suspended a student for making a six-word joke on social media, and even one university that punished a student for something someone else said—and then went after the student newspaper for reporting on the story.

"This past year, free speech on campus took center stage and became international news," said FIRE President and CEO Greg Lukianoff. "For those of us who have worked for years on the frontlines, the threat to free speech on campus isn't a new story. Too often students find their voices silenced, and increasingly their professors are finding themselves in the same boat. If this year's 'worst' list proves anything, it's that even tenured faculty members aren't safe from the censor's muzzle." 



UNIVERSITY HALL, NORTHWESTERN UNIVERSITY



SIGN UP FOR FIRE'S MONTHLY GIVING PROGRAM AND GET AN AWESOME T-SHIRT

Do you love reading about all of FIRE's accomplishments and the victories we have won for campus liberty in the *FIRE Quarterly*? By joining our Monthly Giving Program, you can ensure we have the resources to record even more success in the future!

Enrolling in the program saves you time and money: no more having to write and mail in checks. With a monthly donation, protecting liberty on campus is easier than ever. FIRE will automatically charge your credit card each month for the amount you specify, and if your credit card expires, we'll send you a reminder to renew!

To sign up, you can **check the appropriate box** on the enclosed return envelope, visit the donate page on our website (thefire.org), or give us a call at 215-717-3473. Monthly gifts are easy, fast, and convenient for you and for FIRE. **And if you enroll today, we will send you a FIRE T-shirt!**

Free speech doesn't always come for free—but with your commitment to a monthly gift that we can count on, you can ensure FIRE's fight to restore freedom to campuses across the nation never falters. For more information, feel free to email us at support@thefire.org. 