

FORCED FIRE QUARTERLY

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SUMMER 2016

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HARVARD BRINGS BACK THE BLACKLIST FOR FINAL CLUBS, FRATERNITIES, SORORITIES

● CAMBRIDGE, MASSACHUSETTS ●



In a stunning attack on freedom of association, Harvard University announced on May 6 that members of independent, single-sex, off-campus organizations will be blacklisted from Rhodes and Marshall scholarships and banned from leadership of on-campus organizations or athletic teams.

Harvard President Drew Gilpin Faust stated that starting in 2017, members of fraternities, sororities, and “final clubs” will begin to be denied these opportunities in an effort to foster “inclusion” and “address deeply rooted gender attitudes.” According to Dean Rakesh Khurana, who recommended the changes, such organizations have been independent from Harvard since 1984. They operate as off-campus entities and do not receive any recognition or benefit from the university.

“Outrageously, Harvard has decided that 2016 is the right time to revive the blacklist,” said Robert Shibley, executive director of FIRE. “This year’s undesirables are members of off-campus clubs that don’t match Harvard’s political preferences. In the 1950s, perhaps Communists would have been excluded. I had hoped that universities were past the point of asking people, ‘Are you now, or have you ever been, a member of a group we don’t like?’ Sadly, they are not.”

“Harvard’s decision simply demonstrates that it is willing to sacrifice students’ basic freedom of association to the whims of whoever occupies the administrative suites today,” said FIRE co-founder, civil liberties attorney, and Harvard Law alumnus Harvey

Silverglate. “Who’s to say that Harvard’s leaders five years from now won’t decide that Catholics or Republicans should be blacklisted because they might not line up with Harvard’s preferred values?”

“Harvard’s decision simply demonstrates that it is willing to sacrifice students’ basic freedom of association to the whims of whoever occupies the administrative suites today.”

HARVEY SILVERGLATE, FIRE CO-FOUNDER

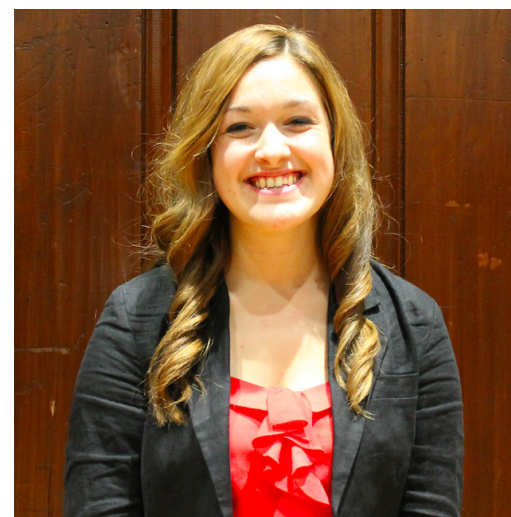
FIRE strongly opposes President Faust’s illiberal decision. On May 12, we wrote to President Faust, calling on the Harvard administration to reverse its policy and protect the freedom of association rights of all students. FIRE has also set up a system on our website (thefire.org) for concerned students and alumni to easily contact President Faust to urge her to reverse her decision.

On July 11, FIRE released a video featuring members of the Harvard community who are critical of the university’s new policy. Economics professor and Harvard President Emeritus Larry Summers, cognitive scientist and psychology professor Steven Pinker, and Silverglate are among those who talked with FIRE for the video.

Also featured in the video are members of Harvard’s student body, including rising Harvard junior and sorority president Rebecca Ramos. Ramos echoed the concerns of many frustrated students, saying she thinks membership in her philanthropic organization will drop if pledges are forced to forgo so many other opportunities.

“I can tell you that my sorority has been the best part of my experience on campus,” Ramos said. “It would definitely be one of the hardest choices that they could really force us to make.”

The video can be viewed on FIRE’s YouTube page ([YouTube.com/TheFIREorg](https://www.youtube.com/TheFIREorg)).



“My sorority has been the best part of my experience on campus.”

REBECCA RAMOS, HARVARD JUNIOR AND SORORITY PRESIDENT



MIZZOU IGNORES WARNINGS, CENSORS T-SHIRTS ADVOCATING MARIJUANA LEGALIZATION

• COLUMBIA, MISSOURI •

Despite repeated warnings that it is violating the First Amendment rights of its students, the University of Missouri (Mizzou) refuses to allow a recognized student group to create T-shirts featuring a cannabis leaf and the university's name.

FIRE has twice warned Mizzou that its treatment of the campus chapter of the National Organization for the Reform of Marijuana Laws (MU NORML) violates the First Amendment.

“Mizzou flatly told MU NORML that it was censoring the group’s T-shirt artwork because of the message it could appear to express. That’s viewpoint discrimination, and it’s prohibited by the First Amendment,” said FIRE Vice President of Legal and Public Advocacy Will Creeley.

During the fall 2015 semester, MU NORML sought to sell promotional T-shirts with a design featuring a marijuana leaf in the form of an animal paw, a stylized depiction of the Mizzou campus skyline and a marijuana leaf, and the group’s name. Because the design also included the name “University of Missouri,” MU NORML President Benton Berigan applied for official approval on September 5 in accordance with university policy.

Berigan’s submission was rejected because it allegedly used the university name “in connection with promotion of alcohol, tobacco or other drugs.” Berigan responded via email on September 21, arguing that MU NORML “exists to reform Cannabis laws through political engagement and community education”

and “do[es] not advocate the use of Cannabis as a drug.” The administrators also contended that MU NORML’s use of “an image of a cannabis leaf in conjunction with university icons could be considered a form of endorsement.”

FIRE has since written to Mizzou twice—once in April and once in May—explaining that under the First Amendment, the university may not reject MU NORML’s submissions because it disagrees with MU NORML’s viewpoint. Mizzou has yet to provide a satisfactory response.

“MU NORML is a student organization created to facilitate an educational dialogue regarding the history and policy

“That’s viewpoint discrimination, and it’s prohibited by the First Amendment.”

WILL CREELEY, FIRE VICE PRESIDENT OF LEGAL AND PUBLIC ADVOCACY

implications of our nation’s marijuana laws among students and faculty at the University of Missouri,” Berigan said. “The university’s decision is an immediate threat to students’ intellectual freedom and First Amendment rights.”

In 2014, the NORML chapter at neighboring Iowa State University (NORML ISU) filed a First Amendment lawsuit against ISU following almost identical censorship. This past January, a federal judge ordered ISU to stop censoring ISU NORML’s T-shirts. The ISU lawsuit is part of FIRE’s Stand

Up For Speech Litigation Project, aimed at eliminating speech codes at public colleges and universities nationwide.

“Political speech is accorded the greatest protection of any form of expression under our Constitution,” said Dan Viets, an attorney with the Missouri Civil Liberties Association and Missouri state coordinator for NORML. “MU should encourage vigorous and open discussion, but all too often suppresses it because of misplaced fear of controversy and political repercussions.” 🔥



REJECTED T-SHIRT DESIGN, FRONT LEFT CHEST



REJECTED T-SHIRT DESIGN, PORTION OF BACK





“I truly hope that the legacy of this case will make Blinn a place where free speech rights are both exercised by students and protected by the administration.”

NICOLE SANDERS, BLINN COLLEGE STUDENT-PLAINTIFF



VICTORY: TEXAS COLLEGE SETTLES FREE SPEECH LAWSUIT AFTER TELLING STUDENT THAT GUN RIGHTS SIGN NEEDED 'SPECIAL PERMISSION'

• BRENHAM, TEXAS •



On May 4, the Blinn College Board of Trustees agreed to settle a First Amendment lawsuit filed last year by a student who was told that she would need to jump through numerous bureaucratic hoops to express herself on campus and would need “special permission” to display a gun rights sign. The settlement was the ninth consecutive victory for FIRE’s unprecedented and undefeated Stand Up For Speech Litigation Project.

As part of the settlement agreement, Blinn College agreed to revise the restrictive policies targeted in the lawsuit to comply with the First Amendment. Blinn also agreed to pay student Nicole Sanders \$50,000 in damages and attorney’s fees.

“I truly hope that the legacy of this case will make Blinn a place where free speech rights are both exercised by students and protected by the administration,” said Sanders, who filed the lawsuit against Blinn last year with FIRE’s support.

In February 2015, Sanders and a fellow activist sought to recruit students on the Brenham campus of Blinn College to join a campus chapter of Young Americans for Liberty she was forming. The two held signs for an hour and a half outside of the student center. One sign read, “LOL,” with the Obama presidential campaign logo replacing the “O.” Another sign read, “Defend Gun Rights on Campus.”

After they were done recruiting, Sanders and her friend went into the student center, where they were approached by an administrator and three armed campus police officers. The administrator told them they needed “special permission” to collect sign-ups for their club and display their signs. The official then added, “I don’t know that you can get special permission” to advocate for gun rights, explaining that she was not against guns, but “on campus, I’m not so sure.”

“Because Nicole bravely stood up for what she knew was right, the free speech rights of more than 17,000 students at Blinn College have been restored.”

CATHERINE SEVCENKO, FIRE DIRECTOR OF LITIGATION

Sanders later requested clarification from a different administrator, who sent her copies of two college policies, one of which required that student organizations request permission a month in advance and gain approval from four administrators for any on- or off-campus expressive activity.

On May 20, 2015, Sanders filed a First Amendment lawsuit with FIRE’s assistance

to challenge the college’s restrictions on free expression. The settlement agreement that was approved by the Blinn College Board of Trustees will bring the policies that Sanders challenged in line with the First Amendment throughout the Blinn College District, not just on its Brenham campus.

“Because Nicole bravely stood up for what she knew was right, the free speech rights of more than 17,000 students at Blinn College have been restored,” said FIRE Director of Litigation Catherine Sevcenko. “Students should never be confronted by armed police officers and forced through bureaucratic red tape when trying to express themselves on the issues they are passionate about, whether it’s gun rights or gay rights.”

Through its Stand Up For Speech Litigation Project, FIRE has coordinated 12 lawsuits against public colleges and universities that violated student and faculty First Amendment rights. With the addition of Sanders’ settlement, Stand Up For Speech has restored the free speech rights of almost 250,000 students.

All Stand Up For Speech student- and faculty-plaintiffs, have been skillfully represented by attorneys Robert Corn-Revere, Ronald London, and Lisa Zycherman of the law firm Davis Wright Tremaine in Washington, D.C. Nicole Williams of Thompson & Knight in Dallas joined them as counsel on Sanders’ case. 🔥



COVER STORY

FORMER UVA STUDENT CHALLENGES UNLAWFUL SEXUAL MISCONDUCT MANDATE IN FEDERAL LAWSUIT

• WASHINGTON, D.C. •

A former University of Virginia School of Law student filed a federal lawsuit on June 16 challenging the Department of Education's unlawful mandate that colleges abandon due process protections and try sexual misconduct cases using the lowest standard of evidence.

FIRE is sponsoring the lawsuit.

FIRE and other civil liberties advocates have continually objected to the Department of Education's "preponderance of the evidence" mandate since its Office for Civil Rights (OCR) announced the requirement in a 2011 "Dear Colleague" letter (DCL). Advocates have warned that the letter diminishes accused students' due process rights and violates the Administrative Procedure Act (APA).

"Following the law isn't optional, and discontent with the 2011 'Dear Colleague' letter is widespread and well-documented," said FIRE Executive Director Robert Shibley. "Hardly a week goes by without new headlines

pointing to the failure of the status quo on campus. OCR has acted as though decreasing due process rights will increase justice. In fact, the opposite is true. Real people's lives are being irreparably harmed."

The APA requires agencies like OCR, which enforces Title IX and other federal anti-discrimination laws, to notify the public of proposed rules and solicit feedback before imposing new obligations on regulated entities like colleges and universities. OCR did not fulfill these obligations before issuing the DCL.

"Real people's lives are being irreparably harmed."

ROBERT SHIBLEY, FIRE EXECUTIVE DIRECTOR

In January, the University of Virginia (UVA) found that, due to alcohol consumption, a student was unable to give "effective consent" for a 2013 sexual encounter with plaintiff John Doe. Doe maintained that he received effective consent and that the other student did not show signs of intoxication—much less signs of incapacitation—at any time before, during, or after the encounter that night.

The retired judge who served as UVA's fact-finder called Doe's a "very close" and "very difficult case," and repeatedly emphasized that she was required by OCR to use "the weakest standard of proof." Prior to the 2011 DCL, UVA used the higher, "clear and convincing" standard of proof. The judge said the new, lower standard was the "[f]irst and foremost" factor in her finding.

"Campus sexual assault is a serious problem, but OCR doesn't get to break the law in order to solve it," said Justin Dillon of the Washington, D.C. law firm KaiserDillon PLLC. "It needs to do what federal law requires—tell the American people what it wants to accomplish, ask them for their feedback, and only then make a decision. Sure, that might take longer than OCR wants, but the Founders picked democracy because it was the fairest form of government, not because it was the most efficient. Democracy is hard work."

Dillon and his colleague Chris Muha represent Doe in this suit. 🔥

RECENT HEADLINES FROM 'THE TORCH'

FIRE'S AWARD-WINNING BLOG

- **VICTORY:** Northwestern University Reverses Course, Recognizes Student Group After Rejection
- Professor Investigated for Discussing Conflicting Viewpoints, 'The Coddling of The American Mind'
- Yale Faculty Resign From Residential College Roles; Concerns About Free Speech Remain
- A Lifetime in 'The Truth Business': FIRE Honors the Exceptional Career of Wisconsin Professor Donald Downs
- When Comedy and Outrage Collide! "Can We Take a Joke?" Now Available



RECAP: 2016 FIRE STUDENT NETWORK CONFERENCE

• PHILADELPHIA, PENNSYLVANIA •

From July 15 to 17, more than 100 students from across the country came to Philadelphia for the eighth annual FIRE Student Network (FSN) Summer Conference. Held at Drexel University and the National Constitution Center, the FSN Conference is designed to teach students about their rights on campus and provide them with tools to assert and defend them.

Students had a packed weekend. They learned about their rights, worked closely with FIRE staff to explore current free speech challenges facing college campuses, and developed effective strategies for combating censorship at their schools. Students from all sides of the ideological spectrum represented institutions from coast to coast, including the University of Connecticut, the University of Florida, the University of Southern California, and the University of North Carolina.

The event was punctuated by keynote addresses from two speakers who have grappled with censorship on campus: historian of medicine and science Alice Dreger and journalist Jason Riley.

Dreger kicked off the conference Friday evening with a rousing discussion of academic freedom and how students should approach free speech advocacy. She drew heavily on her own experience, having resigned from her professorship at Northwestern University in August 2015 after a prolonged battle with the administration over censorship of the faculty-produced medical journal *Atrium*, of which she had been an editor.

Saturday evening, Jason Riley spoke to students about his experience being disinvited from speaking at Virginia Tech over vague concerns that his opinions might upset some on campus.

Both keynote addresses encouraged students

to act with integrity and consider opposing viewpoints.

Saturday morning's breakout sessions kicked off with "Free Speech 101: Speech on Campus" by FIRE's Will Creeley, followed by Catherine Sevchenko's session titled, "On the First Amendment Barricades: Fighting for Free Speech on Campus." FIRE's Robert Shibley, Joseph Cohn, Nico Perrino, and Peter Bonilla led interactive discussions on topics ranging from Title IX to the minutiae of FIRE's investigative process. Attendees also shared ideas for campus activism and plans for the fall semester.

On Saturday afternoon, FIRE's Samantha Harris explained in her session, "America's Worst Speech Codes," how university speech codes restrict student expression and how FIRE can help students who face censorship on campus.

Sunday morning was all about the students: It began with FIRE's fantastic summer interns leading participants in an engaging debate about common campus speech issues. Next, student activists participated in a panel discussion sharing their experiences fighting back against censorship and standing up for their rights.

The weekend concluded with a session led by FIRE's Azhar Majeed on the importance of the Chicago Statement on Free Expression and effective strategies for students to help their schools adopt it.

FIRE staff had a fantastic weekend working with the students. We look forward to hearing what strategies for defending and protecting student rights attendees will bring back to their campuses in the fall. 🔥



CONFERENCE ATTENDEES



ALICE DREGER, HISTORIAN OF MEDICINE AND SCIENCE



STUDENTS, FIRE INTERNS, AND STAFF

FIRE LAUNCHES ‘SO TO SPEAK: THE FREE SPEECH PODCAST’

• PHILADELPHIA, PENNSYLVANIA •

The fight for free speech has many stories. That’s why FIRE is proud to launch *So to Speak: The Free Speech Podcast*, in which we take an uncensored look at the world of free expression through personal stories and candid conversations.

The first of our bi-weekly episodes was released on May 5 and featured FIRE’s own President and CEO Greg Lukianoff and long-time FIRE friend and Brookings Institution Senior Fellow Jonathan Rauch.

In 1993, a young Rauch published *Kindly Inquisitors: The New Attacks on Free Thought*. It was his response to what he saw as the West’s lackluster and apologetic defense of the novelist Salman Rushdie’s free speech rights. In *So to Speak*’s inaugural episode, Rauch talks about his book and its impassioned moral (not legal!) defense of liberal inquiry and criticism.

So to Speak has subsequently released a number of episodes on the subject of “Defending My Enemy,” focusing on why people who vehemently oppose certain ideas nonetheless staunchly defend the right of others to express them. We interviewed former ACLU Executive Director Aryeh

Neier, who coined the phrase “defending my enemy” for the title of his 1979 book about his experience overseeing the ACLU’s defense of neo-Nazis who wanted to march on Skokie, Illinois.

We also interviewed lawyer and journalist Glenn Greenwald and attorney David Baugh about the subject. Greenwald spent the early part of his career defending the free speech rights of neo-Nazis, and Baugh, a black man, fought for the free speech rights of the Ku Klux Klan in a case that ended up at the United States Supreme Court.

A more recent episode of the show features a first-of-its-kind interview with Kelly Carlin, Rain Pryor, and Kitty Bruce, the daughters of comedy legends George Carlin, Richard Pryor, and Lenny Bruce.

New episodes of *So to Speak* are released every other Thursday.

You can subscribe and listen to *So to Speak* on iTunes. All things *So to Speak* can also be found at sotospeakpodcast.com. 📻

Have questions? Ideas for future shows? Email us at sotospeak@thefire.org.



GLENN GREENWALD, LAWYER AND JOURNALIST



KITTY BRUCE, KELLY CARLIN, AND RAIN PRYOR

A MESSAGE FROM HARVEY SILVERGLATE, FIRE CO-FOUNDER AND BOARD MEMBER

The fight to save higher education has entered a new and more intense stage that requires FIRE to ramp up its efforts if we are to succeed. To do this, we must mobilize massive support and resources. ... Virtually every campus has been massively burdened by a sudden explosion in the number of student life administrators and other bureaucrats whose job it is to control, in ever more detail, the lives and—dangerously—the beliefs of students, and even faculty.

Federal overreach is reaching epidemic levels. Consider the letter that the Department of Justice sent to the University of New Mexico this year, asserting that the university’s adherence to the commands of the

First Amendment must be trumped by its bureaucrats’ diktats.

Some faculties are beginning to wake up to the fact that they have lost control over the educational policies at their institutions. We need to encourage and inform that waking-up process.

I urge, in particular, that if you are harboring plans to donate to an institution that has disgraced the principles of liberal education, you entrust those funds to FIRE instead. Rest assured that we will make better use of these resources than the campus administrators likely would. 📻