



FIRE QUARTERLY

SUMMER 2019



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FIRE ANALYSIS: RUTGERS VIOLATED THE CONSTITUTION BY DEFUNDING STUDENT NEWSPAPER

• NEW BRUNSWICK, NEW JERSEY •

Rutgers University’s student newspaper, the award-winning Daily Targum, lost its funding despite winning the overall support of student voters in an April referendum. But a FIRE analysis found that the Rutgers policy that defunded the newspaper is unconstitutional in at least four ways. Last month, FIRE called on Rutgers to reverse course, fund The Daily Targum, and reform its unconstitutional funding policy.

Though 68% of voting students supported continuing to fund The Daily Targum, it fell short of receiving the required thumbs-up from at least a quarter of the overall student population. Only about a quarter of Rutgers students voted on the ballot measure, which is held every three years.

Since 2017, the Rutgers University Conservative Union has led a #DefundTheTargum campaign. The group, which argues that it aimed “not to destroy the paper, but to give more freedom and more choice” to students, had run-ins with the Targum in recent years. Group leaders have complained that the newspaper printed “Fake News” after the Targum published an article revealing that a member of the group crafted flyers nearly identical to those created by American Vanguard, a white supremacist group.

Melissa Hayes, an alumni member of The Daily Targum’s Board of Trustees, told NJ.com that the vote means a loss for the newspaper of around \$540,000 a year.

“The university must immediately reverse course and implement a funding process that doesn’t subject student newspapers, or any other student organization, to layer upon layer of impermissible viewpoint discrimination,”



THE DAILY TARGUM LOST MORE THAN \$500,000 IN FUNDING FOLLOWING AN APRIL REFERENDUM. FIRE’S ANALYSIS REVEALS THE REFERENDUM WAS UNCONSTITUTIONAL. (WABC-TV)

said FIRE’s Adam Goldstein, author of FIRE’s letter.

The referendum itself, and the system that determines a student group’s eligibility for a funding referendum, are unconstitutional in four ways:

- Court precedents forbid public colleges from distributing student activity fees by referenda. The Supreme Court has said, under the First Amendment, the power to impose a mandatory student activity fee is tied to the obligation to distribute that fee in a viewpoint-neutral way. A referendum cannot be viewpoint-neutral because, as the Supreme Court has held in another student fee funding case, “[a]ccess to a public forum ... does not depend upon majoritarian consent.”
- The referendum procedure is apparently unavailable to belief-based groups, such as political and religious organizations.
- Under the policy, a committee of the University Senate is charged with determining whether the “educational value of the organization justifies the proposed investment.” While an inquiry into “educational value” — which the Rutgers policy leaves undefined — may be a lawful component of a viewpoint-neutral

standard, it does not, standing alone, provide adequate guidance to decision-makers and thus allows for biased funding determinations.

- The university president has unfettered power to unilaterally approve or deny a student group’s request for a referendum, including for viewpoint-discriminatory reasons.

FIRE is committed to using all the resources at our disposal to ensure student journalists at Rutgers are not silenced by an unconstitutional funding system. FIRE stands ready to provide guidance to Rutgers — or any university or college — on what policies would comply with the Constitution. 🗳️

This year, more than **500 SUPPORTERS** have written directly to college presidents through FIRE’s Take Action campaigns. Almost **50 WROTE** directly to Rutgers to demand that the newspaper’s funding be restored.

FIRE IN THE NEWS

Coverage of FIRE’s work at Rutgers appeared in the state’s largest newspapers — The Star-Ledger and The Record — as well as local radio, Inside Higher Ed, The Daily Beast, Reason, and Columbia Journalism Review.



FIRE PRESIDENT AND CEO GREG LUKIANOFF'S FIVE WAYS UNIVERSITY PRESIDENTS CAN PROVE THEIR COMMITMENT TO FREE SPEECH

Threats to free speech and academic freedom on campus constantly change: One year, it's speech codes and federal government overreach that present the greatest danger. The next, it could be speaker disinvitations and heckler's vetoes.

With the targets constantly shifting, what are some effective steps college presidents can take right now to fight censorship, regardless

of where it originates? Presidents like to say they are in favor of free speech, but few have presented a plan of action that would improve the state of free speech for their students and faculty members.

The following five suggestions provide a path for presidents to prove their commitment to freedom of expression and academic freedom by leading with basic, clear, and reasonable changes:



1. Stop violating the law. This shouldn't need to be said — and yet it does. Public universities are bound by the First Amendment. Their policies and practices must protect, and never violate, the free expression of students and professors. Yet 90% of America's top institutions still maintain unconstitutional speech codes that clearly and substantially restrict protected speech, or could too easily be used to restrict protected speech. Private universities, while not bound by the First Amendment, are required to honor their own promises of free speech and academic freedom. Yet, 88% of top private institutions maintain policies that violate these promises.



2. Pre-commit / recommit to free speech and inquiry.

Enshrining protections for free speech in official campus policy can help forestall demands for censorship and repression. But these policies should be adopted publicly and conspicuously before a controversy arises. What's more, a college president should seek out opportunities to regularly recommit to protecting speech.



4. Teach free speech from day one.

During orientation, colleges should introduce students to the principles of free speech, academic freedom, truth-seeking, and curiosity — making clear how these principles work in practice and why they are absolutely essential to the functioning of a university. Unfortunately, only a handful of colleges do so, and most students arrive with little knowledge of these vital concepts.



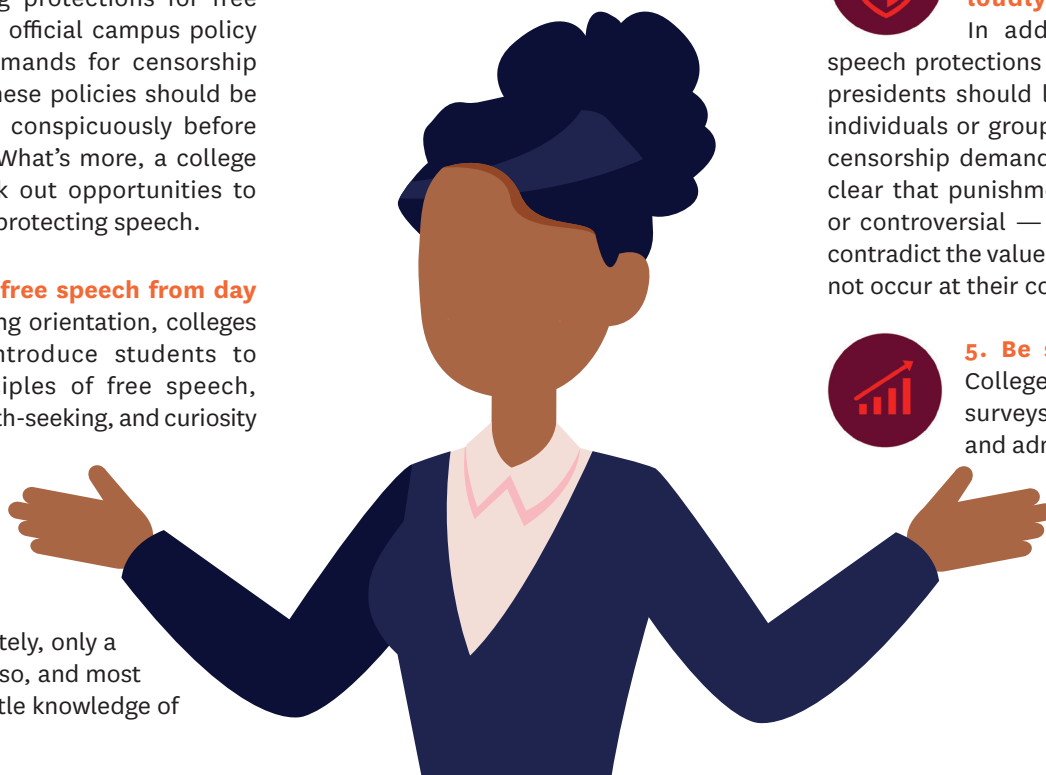
3. Defend the free speech rights of your students and faculty loudly, clearly, and early.

In addition to adopting clear speech protections in campus policy, college presidents should lead from the front when individuals or groups on or off campus make censorship demands. Presidents must make clear that punishments based on unpopular or controversial — but protected — speech contradict the values of any university, and will not occur at their college.



5. Be scholars: Collect data.

Colleges should conduct annual surveys of students, professors, and administrators to understand their attitudes toward free expression, and to gather opinions of the campus climate for debate, discussion, and dissent.



These suggestions are simple: obey the law, commit to academic freedom, defend students and professors who exercise their rights, teach students about freedom of speech, and study your campus climate. College presidents unwilling to take these steps should leave you wondering how committed they really are to protecting free speech.

But college presidents need your help, too. In my nearly 20 year career defending student and faculty rights, I have seen how controversies around freedom of speech can take a campus by storm. In those moments, it can seem like a college leadership's only choice is to give in to the voices that call for censorship. But I've also seen how supportive letters, emails, and phone calls from current students, faculty, and alumni can tip the balance toward standing strong and preserving student and faculty rights. 🗳️



FIRE FIGHTS VILLAINOUS

CENSORS WITH FIRST

COMIC BOOK

Students need to know their rights before they get to college — and that’s why FIRE worked with a local artist to develop a graphic novel to help high school students understand the complex issue of free speech.

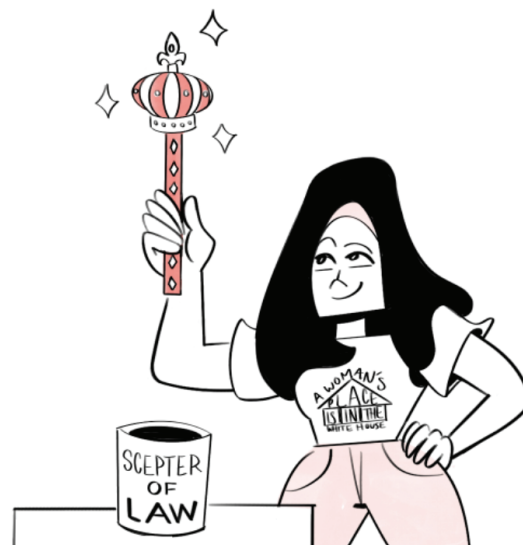
We teamed up with comic book stores from coast to coast to help spread the word, and are working with high school teachers to incorporate the book into their curricula. So far, FIRE has distributed over 8,000 graphic novels throughout the country.

“Finding Your Voice: A Free Speech Comic” follows two high school students who encounter speech restrictions and learn about First Amendment rights against the backdrop of a school assembly. Through conversations with teachers, a counselor, and a college student, they discover the value and limits of expression while exploring ways to make their own individual statements. The comic touches on urgent and trending free speech topics in a relevant, approachable, and entertaining way.

“It’s so important for students to learn about their First Amendment rights early, and especially before they head to college, where free speech rights are sometimes challenged or infringed and may need to be defended — accurately, knowledgeably, firmly, and calmly,” said FIRE Director of High School Outreach Bonnie Snyder. “We’re thrilled to be able to make this comic available, free of charge, to teachers, parents, students, school counselors, administrators, and interested individuals who request it across the country.”

The comic release is just one part of our expanding high school outreach efforts, which include a growing catalog of free speech curricular content for teachers, our new FIRE Starter video series, and our annual Free Speech Essay Scholarship Contest.

Production and publication of “Finding Your Voice” were made possible by a donation from the Arthur N. Rupe Foundation. FIRE is able to make multiple copies available upon request at no charge. (Even shipping is free!) To request copies for libraries, classes, or schools, email highschooloutreach@thefire.org.



FIRE HAS DISTRIBUTED OVER 8,000 COMIC BOOKS TO TEACHERS AND STUDENTS ALL OVER THE COUNTRY.



GET YOURS TODAY!

TO REQUEST COPIES FOR LIBRARIES, CLASSES, OR SCHOOLS, EMAIL HIGH SCHOOL OUTREACH@THEFIRE.ORG.



MEET THE CHARACTERS



ARTIST SPOTLIGHT:

THE COMIC IS ILLUSTRATED BY NEW JERSEY-BASED ILLUSTRATOR GWEN PRICE, A RECENT UNIVERSITY OF THE ARTS GRADUATE WHO STUDIED COMIC ART UNDER WELL-KNOWN CARTOONIST SCOTT MCCLOUD.

"STORYTELLING, IN MY OPINION, IS A VITAL DEVICE THAT CAN BE USED TO ENGAGE SOMEONE IN A LESSON AND GIVE THEM NEW IDEAS TO THINK ABOUT," PRICE SAID. "FOR ME, I HAD ONLY GOTTEN TO USE IT FOR GAGS AND FUNNY EXPRESSIONS, WHICH I GET TO DO A SWEET AMOUNT OF IN 'FINDING YOUR VOICE.' BUT IN THIS BOOK, I ALSO GET TO RACK MY BRAIN AROUND HOW TO VISUALLY DEPICT THE VALUE OF FREE SPEECH RIGHTS IN CREATIVE, INVENTIVE WAYS. AS A RESULT, I'VE COME OUT OF THIS PROJECT WITH EVEN MORE FUNNY JOKES TO DRAW AND MORE RELEVANT TOPICS THAT I WANT TO SHARE."



11-YEAR-OLD CORINNE FROM KENTUCKY PUT HER FREE SPEECH RIGHTS TO EXCELLENT USE – WRITING TO US AFTER FINISHING HER FREE COPY OF THE BOOK. "THANK YOU FOR HELPING ME UNDERSTAND FINDING YOUR VOICE AND FREEDOM OF SPEECH," SHE WROTE.



WANDA BAI

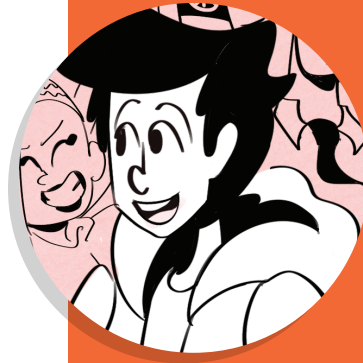
Year: High school sophomore

Nickname: Magic Wand

Personal Motto: "Be the change you wish to see in the world"

Favorite lunch: Pizza day

Known for: Statement tees



JEREMY RIVERS

Year: High school junior

Favorite Book: 1984

Sports Highlight: All-county track

Bad Habit: Indecisiveness

Most embarrassing moment: Once called 8th grade teacher "Mom" in class



MS. TIA HAWTHORNE

Profession: High school English teacher

Favorite author: John Milton

Pet peeve: Chatty students

Little known fact: Has an identical twin

Hobby: Reading early retirement blogs



MR. CARL CLARKE

Profession: High school guidance counselor

Strength: Empathy

Weakness: Organizational skills

Favorite beverage: Strawberry YooHoo

Likes: Science podcasts and Renaissance fairs



LAWSUIT UPDATE: UCLA RELEASES RECORDS ABOUT MNUCHIN APPEARANCE

• LOS ANGELES, CALIFORNIA •

How long does it take for the University of California, Los Angeles to release public records?

A week? A month? Try 410 days — and a lawsuit.

Two weeks after FIRE filed a lawsuit against UCLA for failing to release public records — and more than a year after FIRE originally filed a request for the documents — the university finally fulfilled its legal obligation and produced 13 pages of emails.

FIRE issued its document request on March 2, 2018, after reports surfaced that U.S. Secretary of the Treasury Steven Mnuchin “retracted his permission” for UCLA to release a video of a campus speaking appearance two days after it happened. During the appearance, Mnuchin was briefly heckled by demonstrators. FIRE — along with others, including the greater Los Angeles chapter of the Society of Professional Journalists — requested a copy of the video and documents about Mnuchin’s appearance under the California Public Records Act.

With multiple requests pending, Mnuchin reportedly “decided to end his objections,” and UCLA posted the video to its website on March 9. However, the school put off responding to the rest of FIRE’s request, estimating it would make the documents available three months later. Three months later, UCLA gave itself

another two months to respond. Two months after that, the school gave itself another three months. Then another three months. Then another two months.

Sensing a pattern, FIRE submitted its lawsuit for filing in March, alleging that UCLA’s long delay runs roughshod over the Public Records Act’s requirement that public institutions make public records “promptly available,” and asking a judge to compel production and declare that UCLA’s actions violated the law. Within two weeks, UCLA reviewed FIRE’s request, searched for responsive records, and produced 13 pages of emails.

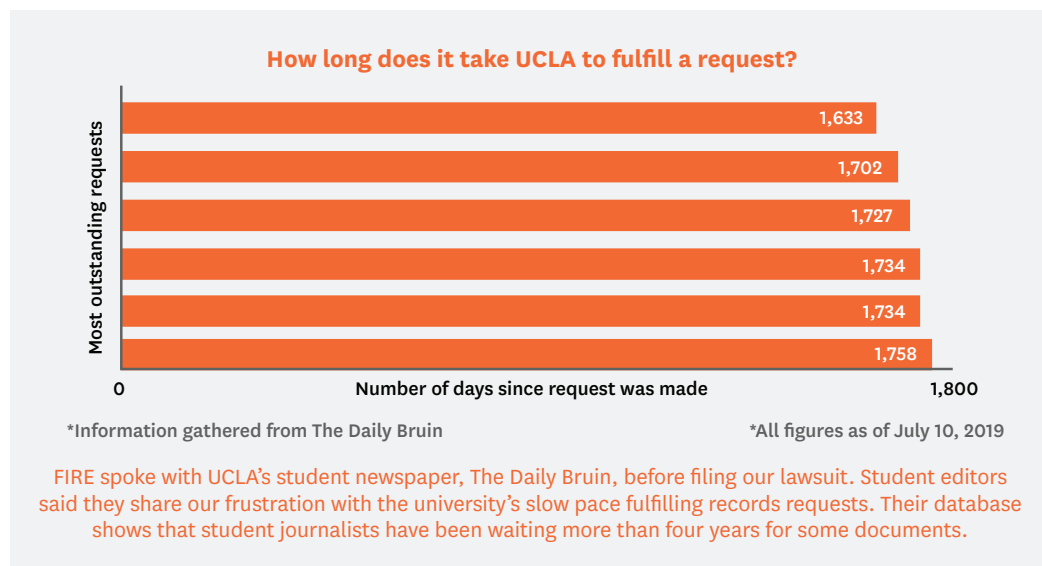
A string of emails between the director and deputy director of UCLA’s Burkle Center, which hosted Mnuchin’s appearance, add to public knowledge the mildly embarrassing inference that Mnuchin’s office either didn’t realize or sort-of forgot that Treasury staff agreed in discussions prior to the event to its being taped and publicly posted. Indeed, the exchange underlines the L.A. Times’ observation that the heckling incident “might have attracted little attention had Mnuchin

not refused to allow the university to post a video of his appearance.”

Much more concerning is UCLA’s pattern of repeatedly and apparently indefinitely kicking the can down the road on responding to a public records request. The Public Records Act requires agencies to make records “promptly available” precisely because the public deserves to have timely access to information, which means journalists and watchdogs like FIRE should be able to access records while recent events are still recent. But because UCLA failed to search for and review 13 pages of documents for over a year, a mildly embarrassing campus appearance by a cabinet official is now the subject of a lawsuit and a public letter of complaint to the University of California Board of Regents from the Society of Professional Journalists, which requested the same documents.

UCLA must do better. Whatever the reasons for its repeated delays, it must figure out how to handle public records requests in a timely manner, consistent with its obligations under state law. 🔥

FIRE QUARTERLY



RECENT HEADLINES FROM ‘NEWSDESK’

- FIRE relaunches Legal Network, calls on attorneys nationwide to defend student and faculty rights
- University of Central Arkansas censored library’s Pride Month sign after legislator complained
- Santa Clara University ratifies rejection of conservative student group over its political views
- University of Houston promises to respect students’ rights, clarify free speech policies



IOWA BOARD OF REGENTS, UNIVERSITY OF IOWA FACULTY COMMIT TO FREE SPEECH AND ACADEMIC FREEDOM

● IOWA CITY, IOWA ●



THE OLD STATE CAPITOL BUILDING IN IOWA CITY, NOW PART OF THE UNIVERSITY OF IOWA (DAVID HARMANTAS / SHUTTERSTOCK)

There's good news for free speech at Iowa's public universities.

In late spring, Iowa's board of regents adopted a policy statement that promotes free speech and freedom of association at member institutions, including the University of Iowa, Iowa State University, and the University of Northern Iowa. In so doing, the board joined a distinguished list of 63 other institutions and faculty bodies to adopt a version of the University of Chicago's "Report of the Committee on Freedom of Expression," better known as the "Chicago Statement."

64
The number of institutions or faculty bodies that have adopted the Chicago Statement.

The state board of regents adopted its freedom of expression policy in compliance with a law signed by Gov. Kim Reynolds in March. The policy states that "universities must strive to ensure the fullest degree of intellectual freedom and free expression allowed under the First Amendment to the Constitution of the United States."

The Regents' policy prohibits member institutions from adopting speech codes and states that "[n]o area of campus shall be designated as a free speech zone," instead designating all outdoor areas as "public forums." The policy also prohibits state universities from discriminating against student organizations that hold a viewpoint disfavored by the campus administration, and from restricting student organizations from selecting only leaders who affirm those groups' beliefs and guiding principles.

Meanwhile, the Faculty Senate at UI has done its own part by unanimously approving a policy statement that pledges its support for freedom of expression and academic freedom. In this statement, the faculty affirm key tenets of freedom of expression that FIRE has long supported: that "speech that sparks strong disagreement or disapprobation is most in need of protection," that "the exchange of strongly held views is part of the educational process," and that "those who come to the university must be prepared to have their beliefs and expectations challenged, sometimes in ways they find offensive."

UI professor Peter Snyder, who served as president of the Faculty Senate, told FIRE: "These principles allow our students and faculty to explore new ideas and challenge accepted wisdom, and to teach and learn without fear that unpopular ideas will

be stifled or divergent viewpoints suppressed. This statement serves as a foundation to guide our campus in responding to protests, controversial speakers, and other incidents that may arise."

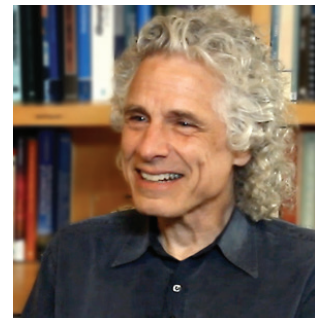
These initiatives are much needed at Iowa's public universities. UI, Iowa State, and Northern Iowa all maintain speech codes that prevent them from earning FIRE's highest, "green light" rating.

Given this backdrop, FIRE commends the Board of Regents and the UI Faculty Senate for their actions. We are hopeful that all three public universities will now commit themselves to improving their policies and earning a green light rating.

As always, FIRE is available to work with the schools to do just that. The end result, we hope, will be an improved campus climate for freedom of expression at all three institutions. ⚡

SIGN UP FOR FIRE'S FACULTY CONFERENCE

FIRE's 2019 Faculty Conference will take place at Boston University from Oct. 31-Nov. 2. As with our previous conferences, attendees will be treated to a variety of presentations and panel discussions on topics relevant to academic freedom in higher education. FIRE's 2019 conference will additionally feature a keynote address by Harvard University professor and bestselling author Steven Pinker. Limited space is still available. Email facultyconference@thefire.org for more information!



STEVEN PINKER



Want to celebrate free expression? Ready to toast to unprecedented victories for campus rights? Us too! Twenty years ago, Harvey Silverglate and Alan Charles Kors began the fight for free speech and due process on college campuses. FIRE is celebrating those two decades of work and devotion to civil liberties with a gala event on Thursday, Oct. 24 at the Mandarin Oriental in New York City. This memorable night will serve as an important reminder of the ongoing fight on our college campuses, offer a comprehensive review of the history of FIRE, and honor the allies who have helped support this critical cause.

Comedian Karith Foster will serve as the evening's emcee and the event will feature

individuals from throughout FIRE's history, who will share their stories and reflect on FIRE's impact. The highlight of the evening will be a keynote address by Sir Salman Rushdie, who will be introduced by longtime FIRE friend and Brookings Institution scholar Jonathan Rauch. It is sure to be a wonderful program!

For more on the event, visit thefire.org/anniversary, call us at 215-717-3473, or email us at events@thefire.org. Sponsorship and ticket purchases are now available!

Thank you for making FIRE's 20 years of advocacy possible. We hope to celebrate that milestone with you at this unforgettable event. 🍷



COMEDIAN KARITH FOSTER

THANK YOU FIRE INTERNS!



WESLEY RICHARDSON // UNIVERSITY OF SOUTHERN CALIFORNIA
JONATHAN GREENSTEIN // FLORIDA STATE UNIVERSITY
SHAKIRA HALL // HARVARD UNIVERSITY

ERIK THORSHEIM // UNIVERSITY OF NORTH CAROLINA, CHAPEL HILL
JANE WANG // EMORY UNIVERSITY
MARGAUX GRANATH // UNIVERSITY OF MINNESOTA
CAROLYN LANE // UNIVERSITY OF VIRGINIA

ELIZABETH STANLEY // KENYON COLLEGE
LOUIS GALAROWICZ // UNIVERSITY OF PENNSYLVANIA
DANIEL ZAHN // PENNSYLVANIA STATE UNIVERSITY