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THE FIRE QUARTERLY

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FIRE

601 Walnut Street • Suite 510
Philadelphia, PA 19106
215.717.3473 tel
215.717.3440 fax
www.thefire.org

UC HASTINGS COLLEGE OF THE LAW

In *CLS v. Martinez*, Sharply Divided Supreme Court Undermines Freedom of Association on Campus

In a blow to freedom of association and religious liberty on campus, a sharply divided U.S. Supreme Court ruled on June 28 that a public university may require its student organizations to admit any student as a voting member or officer, regardless of whether that student openly disagrees with or is even hostile to the group's fundamental beliefs.

Writing for the majority, Justice Ginsburg dismissed the fact that the policy allows students hostile to a group's core tenets to dilute or disrupt the communication of the group's preferred message, or even to take over the group altogether, claiming that these concerns are "more hypothetical than real." However, FIRE's *amicus* brief, filed in conjunction with national student organization Students For Liberty, identified examples of this exact motivation among students hostile to unpopular or minority viewpoints on campus.

"FIRE is deeply disappointed by the Supreme Court's decision in *Christian Legal Society v. Martinez*. For all of the reasons stated in our brief, we believe the practical effect of this case will be the derecognition of devoutly religious groups—especially evangelical Christian groups. This is a loss for diversity and pluralism on campus, not a win," said FIRE President Greg Lukianoff.

In a 5-4 decision, the Court ruled that the University of California Hastings College of the Law did not violate the First Amendment rights of the Christian Legal Society (CLS) when it denied the group official recognition because of the group's requirement that its voting members and leaders sign a "Statement of Faith" expressing belief in CLS' particular religious worldview. By denying CLS recognition, Hastings stripped the group of access to university benefits such as meeting space, e-mail listservs, literature distribution tables, and student fee funding. The majority opinion in *Christian Legal Society v. Martinez*, authored by Justice Ruth Bader Ginsburg, held that Hastings' all-comers policy is constitutional.

"In his dissent, Justice Samuel Alito observed that the majority has provided public universities with 'a handy weapon for suppressing the speech of unpopular groups.' FIRE agrees with Justice Alito's assessment of the likely impact of today's misguided ruling, as our experience demonstrates that censorship on campus is pernicious and widespread," said Will Creeley, FIRE's Director of Legal and Public Advocacy. "FIRE will continue to fight for the rights of expressive campus organizations to form around shared beliefs and for the principle that the College Democrats have the right to be Democrats, the College Atheists have the right to be atheists, and the College Christians have the right to be Christians."



New Threats to Freedom Book Features Chapter by FIRE President

Templeton Press' new book *New Threats to Freedom* hit bookstores on May 18.

To mark the release of this volume, which features original essays from a wide variety of noted authors, including playwright David Mamet (of *Glenngarry Glen Ross* fame), journalist Christopher Hitchens, author Christina Hoff Sommers, and many others, FIRE has released a new video featuring one of the main cases covered in FIRE President Greg Lukianoff's own chapter of the book, "Students Against Liberty?" Greg's chapter warns readers about the impending threat to American freedom from those students who have been miseducated by our colleges and universities to believe that free speech is simply too dangerous and "offensive" to be allowed.

The book's website, newthreatstofreedom.com, contains a thorough list of all of the authors and the threats they have identified. In his introduction, Editor Adam Bellow states that the goal of the book is to "reinvigorate an old discourse about freedom that went out of style with the Cold War." In this vein, the threats to freedom listed in the book are many and varied. From *Reason* senior editor Michael Moynihan's essay on "The Anticapitalists" to Peter Berkowitz's contribution on "The New Dogma of Fairness" to the contributions of the other authors, there is sure to be food for thought in every chapter for those concerned about American liberty. Just as on the college campus, there is room in the "marketplace of ideas" in the book for divergent views and a healthy spirit of debate. While most of the topics covered in the book are not FIRE issues or are only tangentially related to freedom in academia, FIRE is always glad to see an exercise in advancing ideas and robust debate, and we are proud to be part of the prestigious intellectual group that the authors of this book represent.



In celebration of the book's release, FIRE will be giving away copies autographed by Greg to anyone who donates $50 or more. Visit myfire.thefire.org/nttf for more information.

Hinds Community College

Victory for Free Speech on Campus:
Mississippi College Reverses Punishment of Student for Swearing Outside of Class

Mississippi's largest community college used an unconstitutional ban on "cursing and vulgarity" to bar a student from a course for swearing outside of class. After Hinds Community College (HCC) student Isaac Rosenbloom was forbidden to return to class and given twelve "demerits," he turned to FIRE for help.

After a four-month ordeal, Rosenbloom is again able to pursue advanced training as a paramedic at Hinds now that the school has reversed its punishment. Rosenbloom, who supports his wife and two young children as an emergency medical technician, was barred from one of his classes and denied financial aid after a professor initiated a verbal confrontation with him over his language.

"HCC almost ruined a man's life because he cursed after class in the vicinity of a college professor," said Will Creeley, FIRE's Director of Legal and Public Advocacy. "But Hinds Community College isn't some Victorian finishing school—it's a public institution bound by the First Amendment."

Rosenbloom's ordeal began on March 29, 2010, when professor Barbara Pyle and a few students stayed after class to discuss the students' grades. At one point, in the doorway of the room, Rosenbloom said to a fellow student that his grade was "going to f--- up my entire GPA."

According to Rosenbloom's account of his April 6 hearing, Pyle began to yell and told him that his language was unacceptable and that she was giving him "detention." Rosenbloom replied, accurately, that detention was not a punishment at HCC. Pyle then told him that she was sending him to the dean. She submitted a disciplinary complaint against Rosenbloom, stating that "this language was not to be tolerated [and] he could not say that [word] under any circumstances [including in] the presence of the other students."

HCC found Rosenbloom guilty of "flagrant disrespect" and issued him twelve demerits—just three short of suspension. He also was involuntarily withdrawn from Pyle's course, and a copy of the decision was placed in Rosenbloom's student file. As a result, Rosenbloom lost his financial aid, effectively ending his academic and professional career. Rosenbloom unsuccessfully appealed the decision twice.

FIRE wrote HCC President Clyde Muse on April 27, pointing out not only that HCC's policy is unconstitutional but also that it was applied



Isaac Rosenbloom

unconstitutionally to punish Rosenbloom for his protected speech outside of class. In contravention of the First Amendment, HCC bans "public profanity, cursing and vulgarity," assessing a fine of $25 for the first offense, $50 plus ten to fifteen demerits for the second offense, and suspension for the third offense.

After Muse failed to respond to FIRE, FIRE obtained the assistance of attorneys Robert B. McDuff and Sibyl Byrd, who took up Rosenbloom's case and secured a settlement in his favor. HCC has removed the finding and demerits from Rosenbloom's record and has restored his financial aid. McDuff is a civil rights and criminal defense attorney practicing in Jackson.

"Under the threat of litigation, HCC has seen the light in this case, but its unconstitutional prohibition of 'vulgarity' is still on the books," said Adam Kissel, Director of FIRE's Individual Rights Defense Program. "Official punishment of speech is the wrong way to achieve 'civility' on campus. It is only a matter of time before another student sues HCC over this policy and costs the taxpayers of Mississippi a lot more than 25 dollars. FIRE will be watching HCC closely and asking the school why a policy it cannot defend in court remains in force."

FIRE and ACLU of San Diego: California College's 'Free Speech Patio' Chills Expression

Southwestern College (SWC) limits free expression on its California campus to a single "free speech patio" and has proposed a new policy that unconstitutionally restricts expression, according to letters released by FIRE and the American Civil Liberties Union of San Diego & Imperial Counties (ACLU-SD).

"Last fall, Southwestern College suspended four faculty members and banned them from campus for allegedly violating an unconstitutional free speech zone policy," said FIRE Vice President Robert Shibley. "Despite taking more than six months to draft a replacement, Southwestern still hasn't been able to produce a constitutional policy. The new proposed policy still restricts the rights of peaceful protesters on campus. Free speech zones like this one are unacceptably repressive."

On October 22, 2009, a group of students and faculty members assembled in SWC's "free speech zone" to protest various actions taken by the SWC administration. According to a professor who was in attendance, one of the students said, "Let's go where they can hear us." When some of the protesters reached the courtyard where SWC Superintendent/President Raj K. Chopra's office is located, they were met by police officers who would not let them pass. Three faculty members who were with the group for different periods of time, and a fourth who was merely in the area, were placed on paid leave and banned from campus that night via letters hand-delivered to their off-campus homes. The faculty members also were banned "from using any District facilities, phone or email."

FIRE wrote Chopra on November 3, 2009, explaining why both the "Freedom of Expression" policy and its application to the protesters were unconstitutional. In a November 25 response, SWC attorney Jonathan A. Pearl promised to "carefully consider the issues" raised by FIRE.

SWC convened an administrator-faculty-student committee to draft a new policy in January 2010. The committee announced a new proposed policy on April 28, but it contained significant unconstitutional flaws. In May, both FIRE and ACLU-SD sent letters protesting the constitutional problems in the new policy. FIRE's letter of May 12 points out that the new policy not only threatens First Amendment liberties, but also betrays a public college's function as a true marketplace of ideas.

"Time is running out at SWC. All these months after violating the rights of its own faculty members, SWC has failed to produce a constitutional policy," said Adam Kissel, Director of FIRE's Individual Rights Defense Program. "The inaccurately named 'Freedom of Expression' policy remains on the books, chilling speech on campus every day and further violating the rights of students and faculty members. This policy must be revoked immediately in order to forestall further damage to free speech on campus."



Southwestern College campus map showing the location of the "Free Speech Patio"

Clemson Drops All Charges Against Student Accused of 'Disorderly Conduct' for E-Mail

Clemson University has withdrawn "disorderly conduct," "harassment," and two other charges against a student who e-mailed an administrator using "language and tone" that another administrator found "unacceptable." After undergraduate William Kirwan was charged with a variety of offenses in violation of his First Amendment rights, he turned to FIRE for help.

"Public university administrators cannot punish students simply because they disapprove of their 'language and tone,'" said FIRE Vice President Robert Shibley. "We commend Clemson's leadership for putting an end to this violation as soon as FIRE brought it to their attention."

On May 13, Clemson administrator Laura McMaster tried to persuade Kirwan's student organization, Central Spirit, to participate in Clemson's Fall Organizations Fair. Kirwan, the group's president, believed this would be a waste of time. He replied by e-mail, with a copy to administrator Marty Kern, "I'm not going to let you bully the organization into doing the things you want us to do or perceive as important." He stated that he trusted the advice of six previous Central Spirit presidents "over yours any day of the week and twice on Sunday." He also joked that she must have been "smoking crack" before trying to persuade him.

Kern responded that the e-mail's "language and tone [were] unacceptable in any setting" and requested a meeting with Kirwan. Kirwan declined the invitation to meet, at which point Kern bizarrely stated that she would hold the meeting without him.

On May 19, Kirwan received a disciplinary letter charging him with "Disorderly Conduct," "Harassment," "Failure to Comply with Official Request," and "Computer Misuse" because he allegedly had "sent an email that had the effect of creating a hostile work environment" and had declined the optional meeting. Neither the particular e-mail nor the particular staff member was identified.

FIRE wrote Clemson President James F. Barker on May 24 explaining that Kirwan's e-mails were protected speech. In response, Clemson dropped all charges on May 25. Clemson's letter to FIRE acknowledged that "[T]he First Amendment protects speech even when it is rude or offensive" and pledged that "Clemson University does not prohibit speech in violation of the First Amendment."

"Kirwan's speech was so clearly protected that the charges never should have been filed in the first place," said Adam Kissel, Director of FIRE's Individual Rights Defense Program. "An administrator found vague policies to apply vindictively against a student because of his attitude, but the First Amendment prohibits such punishment at a public university like Clemson. Clemson quickly corrected its error for the right reasons and is unlikely to make the same mistake again."



William Kirwin with the Clemson Tiger

From the CFN
CAMPUS FREEDOM NETWORK

Meet FIRE's 2010 Summer Interns!

On June 7, FIRE's Philadelphia office began to bustle with the addition of seven undergraduate summer interns to our team. The Internship Program is FIRE's longest-running outreach program, bringing talented students from across the country to the City of Brotherly Love for a hands-on, ten-week training program each year. While at FIRE, the interns get an inside look into our day-to-day operations; hear from some of the most brilliant minds in the field of civil liberties, including our very own founders Alan Charles Kors and Harvey Silverglate; and design reform campaigns to be implemented when they return to their campuses in the fall.



- **Casey Given** hails from the University of California, Berkeley, where he majors in rhetoric with a minor in philosophy. At Berkeley, Casey founded and now serves as president of a Students For Liberty chapter. He also writes for the California Patriot magazine—the subject of a recent FIRE case.

- **Christa Brashier** is a rising junior at Indiana University of Pennsylvania and the Community College of Allegheny County (CCAC), where she majors in K-6 education. Christa is also the Pennsylvania state coordinator for Students for Concealed Carry on Campus (SCCC). While trying to form an SCCC chapter at CCAC, Christa faced an egregious act of censorship that became a top FIRE case.

- **Cynthia Bell** is a rising junior at Seton Hall University, where she majors in English with a double minor in political science and philosophy. She serves as the Editor-in-Chief for The Liberty Bell, an independent political newspaper at Seton Hall, and the Vice President for Seton Hall University Students for Individual Liberty.

- **Kirby Thomas** comes to FIRE from Bucknell University, where she is a rising junior majoring in political science and English. Kirby is Editor-in-Chief of The Counterweight, the conservative student paper, and she has held various positions with the Bucknell University Conservatives Club (BUCC). Kirby was involved with the BUCC as it was serially censored by Bucknell, landing the university on FIRE's red alert list.

- **Nico Perrino** joins FIRE from Indiana University-Bloomington, where he majors in journalism and history with a minor in Italian. Before coming to FIRE, he interned at ESPN. Nico is also president of Young Americans for Liberty at IU.

- **Sarah Klein** is a rising junior at the University of Pennsylvania, where she majors in political science and minors in gender, culture & society.

- **Virginia Robinson** comes to FIRE from the University of Virginia where, as a rising junior, she majors in commerce and history with a minor in economics. She is editor of the Burke Academic Review, opinion editor and columnist for the Cavalier Daily, and a member of Student Entrepreneurs for Economic Development.

PLEASE VISIT
FIRE's SPOTLIGHT
THE CAMPUS FREEDOM RESOURCE

for comprehensive information on the state of liberty on America's campuses, including pages for individual academic institutions, relevant links to our research of speech codes, and case materials from FIRE's Individual Rights Defense Program.

When I Was a FIRE Intern...

In 2005, I had the opportunity to intern at FIRE because of donors like you. That summer, I left FIRE feeling empowered to make a difference on my campus and with the new goal of making a career out of defending our most cherished freedoms. My short first stint at FIRE truly changed my life in the best of ways. Your donations led me to my current position as the Director of FIRE's Campus Freedom Network—a fulfilling job I greatly enjoy—and to my soon-to-be wife, whom I met while working at FIRE! Thank you for giving me these opportunities simply by supporting FIRE's work. I hope you will consider extending your generosity to the 2010 interns with a donation today.

If there is one thing I love about overseeing the Internship Program, it's the lasting relationships the program creates. Our interns stay deeply involved in and dedicated to our mission. Just recently, John Cetta, a 2009 summer intern, volunteered to write a letter to our supporters because he so strongly believes in the program's importance and ability to have lasting effects on hundreds of campuses and tens of thousands of students.



Luke Sheahan

FIRE Hosts 3rd Annual Campus Freedom Network Conference

FIRE is proud to announce that it held its third annual Campus Freedom Network (CFN) Student Conference on July 15-17 at Bryn Mawr College just outside of Philadelphia. The conference began with a keynote dinner on Thursday evening with Daphne Patai, professor at the University of Massachusetts at Amherst and a member of FIRE's Board of Directors. The conference continued with a day and a half of lectures and panels. Students heard from leading experts on First Amendment rights on campus and took part in workshops where they learned how to defend core constitutional freedoms at their own colleges and universities.

Friday night's keynote speaker was Jonathan Rauch, a scholar at the Brookings Institution, columnist for *National Journal* magazine, and a contributing editor at *The Atlantic Monthly*. Rauch has authored several books, including *Kindly Inquisitors: The New Attacks on Free Thought*.

Other speakers included Greg Baylor, senior counsel for the Alliance Defense Fund, and members of FIRE's esteemed staff, including FIRE President Greg Lukianoff, Director of Speech Code Research Samantha Harris, Director of Legal and Public Advocacy Will Creeley, and Director of the Individual Rights Defense Program Adam Kissel. FIRE's Sweidy Stata Video Fellow, Joe Stramowski, conducted a session on how to capture good video, and CFN Director Luke Sheahan discussed getting the word out through social media.

Students involved in FIRE cases also spoke about their experiences. These included Michele Kerr, who was nearly kicked out of Stanford's School of Education for expressing disagreement with the school's philosophy, and Braum Katz, who led an effort that successfully reformed the speech codes at the College of William & Mary to earn the school a green light rating in FIRE's Spotlight database.



From FIRE Case to FIRE Intern

by 2010 Intern Christa Brashier

It would be easy to simplify the incredible events of the last two years of my life by saying I was denied my constitutional right to free speech on a public campus by a dean who did not want me discussing firearms, much less advocating concealed carry on campus, and that FIRE stepped in and saved me from expulsion—as I've never been able to follow orders I know to be wrong. That would be easy, but the sentiment and underlying social, moral, philosophical, ideological, and educational underpinnings of my experience with FIRE are so pervasive that to leave them out would be an injustice to my story.



Christa Brashier

I might have stood on principle and insisted on my right to debate and discuss what I believe to be an important topic, for the very same reasons (based on current events) that administrators would like us to keep quiet about it, but without the guidance of FIRE, it would likely have been as efficacious as trying to chop down a tree with a butter knife.

Mine was an insignificant voice. However compelling my argument, the Dean dismissed it. When all of her legitimate questions had been answered, she digressed to yelling at me as one would a child, implying terroristic motives, creating an illusory file bearing my name and placing it in my "permanent record," and alluding to expulsion. I left the office in tears—and vaguely fearing arrest for domestic terrorism. Months later, embroiled in public speculation and legal action, one of the administrators present at that meeting told me, "We just didn't realize how principled you really are." This only served to make me more insistent that the rules be altered in such a way that future students (who may not be so principled) cannot be subjected to such tyranny.

FIRE collaborated with me in every way, making sure that my ultimate goals, which matched neatly with their own, were met and giving me direction and moral support when necessary. Ultimately, after an almost unbearable length of time, FIRE was able to right the wrong in such a way that liberty was fully restored and more doors were opened than would have been if I had been permitted to form my student group without issue. I even won the college's 2009-10 MVP award for my efforts with the group.

The college had met its legal, moral, and intellectual superior in FIRE, and I had finally found my ideological match on this issue. I almost immediately became determined to join their fight. I wanted in! I made friends with that year's summer interns, read blogs in *The Torch* in my spare time, placed copies of FIRE's publications in the reference section of my school library, and attended every event. Through every encounter with FIRE, I grew better at backing up my arguments, not just with legal and anecdotal arguments, but with moral and philosophical ones as well. FIRE not only makes sure that the wrongs are righted but also provides just as much preventive and practical education as defense against oppression.

I have finally arrived in Philadelphia, donning the lapel pin of the organization that educated and inspired me just last summer; a community college student with a GED, working with students from top-tier schools in pre-law and with other impressive credentials, chosen for my principles and the values of my humanity. Words cannot adequately express my gratitude for this opportunity.

FIRE's THE TORCH Want more FIRE news and views? Check out *The Torch*, FIRE's blog, for daily updates at www.thefire.org/torch.

New Duke Policy Renders Students Unwitting Rapists and Removes Protections for Those Accused of Sexual Misconduct

Duke University has instituted a new "sexual misconduct" policy that can render a student guilty of non-consensual sex simply because he or she is considered "powerful" on campus. The policy claims that "perceived power differentials may create an unintentional atmosphere of coercion." Duke's new policy transforms students of both sexes into unwitting rapists simply because of the "atmosphere" or because one or more students are "intoxicated," no matter the degree. The policy also establishes unfair rules for judging sexual misconduct accusations. FIRE is challenging the policy.

"Duke's new sexual misconduct policy could have been written by Mike Nifong," said FIRE Vice President Robert Shibley. "Members of the men's basketball team could be punished for consensual sexual activity simply because they are 'perceived' to be more powerful than other students after winning the national championship. Students who engage in sexual behavior after a few beers could be found guilty of sexual misconduct towards each other—even if they are married! This is not just illogical and impractical, but insane. Given its experience during the lacrosse team rape hoax, Duke, of all schools, should know better than to institute such unjust rules about sexual misconduct."

The new policy was introduced at the beginning of the school year with fanfare from the Duke Women's Center—the same center that apologized for excluding pro-life students from event space in a case FIRE won this spring. Women's Center Director Ada Gregory was quoted in Duke's student newspaper *The Chronicle* justifying the new policy, saying, "The higher [the] IQ, the more manipulative they are, the more cunning they are ... imagine the sex offenders we have here at Duke—cream of the crop." (In a follow-up letter to *The Chronicle*, Gregory claimed that the quote was inaccurate and did not reflect her views, but stood by her analysis that campuses like Duke are likely to harbor smarter sex offenders who are better able to outwit investigators.)

Duke's vastly overbroad definition of non-consensual sex puts nearly every student at risk of being found guilty of sexual misconduct. Students are said to be able to unintentionally coerce others into sexual activity through "perceived power differentials," which could include otherwise unremarkable and consensual liaisons between a varsity athlete and an average student, a senior and a freshman, or a student government member and a non-member.

Further, students are said to be unable to consent to sexual behavior when "intoxicated," regardless of their level of intoxication. Duke has turned mutually consensual sexual conduct, which might merely be poorly considered, into a punishable act. Adding to the confusion, if both parties are intoxicated at all, both are guilty of sexual misconduct, since neither can officially give consent. North Carolina law does not support this definition of consent.

"Of course, there is no way that everyone who was intoxicated during sexual activity, let alone 'perceived' to be more powerful, is going to be charged with sexual misconduct," said Adam Kissel, Director of FIRE's Individual Rights Defense Program. "Add to that the provision about an unintentional atmosphere of coercion, and anyone can see that Duke's policy is impossible to rationalize or to fairly and equitably enforce. As a result, this policy effectively trivializes real sexual misconduct, which is a gravely serious crime."

The new policy even makes reporting of so-called sexual misconduct mandatory for any Duke employee who becomes aware of it, regardless of the wishes of the alleged victim.

Furthermore, Duke has made fair enforcement of the sexual misconduct policy even more difficult by establishing different procedures and even a different "jury" to judge sexual misconduct complaints. For instance, sexual misconduct charges are judged by two faculty or staff members and only one student, but all other offenses are judged by a panel of three students and two faculty or staff members. Duke fails to explain why a jury with a majority of one's peers is necessary for charges like assault or theft but not for sexual misconduct.

Other problems in the sexual misconduct policy, detailed in FIRE's letter to Duke President Richard Brodhead of March 4, include giving the complainant more rights than the accused, requiring the results of a hearing to be kept secret in perpetuity even if one is found not guilty or is falsely accused, and allowing anonymous and third-party reporting so that the student may never be able to face his or her accuser.

FIRE wrote, "As a private university, Duke is not obliged to agree with the authors of the Bill of Rights about the value of the right to face one's accuser. Nevertheless, Duke ignores their wisdom at the peril of its own students and reputation." Duke has declined to respond to FIRE's letter in writing.

"More than any other school in the nation," Shibley said, "Duke should be aware that its students deserve the best possible rules and procedures for ensuring that rape and sexual misconduct charges are judged fairly. Sexual misconduct is a serious offense. Duke students deserve a policy under which true offenders will be punished but the innocent have nothing to fear."

From the Associate Legal Director: As We Work Through a Busy Summer, FIRE Prepares for the Challenges and Opportunities of the Upcoming Fall

by Azhar Majeed



The year 2010 has been a busy one for FIRE. We have won public victories in several noteworthy cases, successfully achieved policy reform at a number of colleges and universities, published legal scholarship, and introduced several exciting efforts, including a groundbreaking video series, a Continuing Legal Education course, and more.

That being said, there is plenty of work to be done in the months ahead. The rest of 2010 will provide FIRE with challenges and opportunities in our efforts to constantly improve our effectiveness and find new ways to serve our mission.

Our annual Campus Freedom Network (CFN) student conference marks one of the important occasions of our summer. This year has been no different: a select group of undergraduates from across the country gathered on the campus of Bryn Mawr University, outside of Philadelphia, on July 15-17 for our third annual summer conference.

The CFN conference allows us an opportunity to build relationships with students, faculty members, and other allies—ties that are important to much of the work that FIRE does. In building these relationships, we teach students the basic skills they need to successfully challenge speech codes on their respective campuses. Students armed with the requisite First Amendment knowledge and tools for campus activism can then help to bring down these illiberal speech policies, making their campuses freer for student expression.

Such activism comes in many different forms, including litigation. Speech code litigation is oftentimes necessary to eradicate speech codes from university handbooks and materials, and FIRE has an undefeated track record in these cases. In recent years, our efforts have resulted in legal victories at such schools as San Francisco State University, Temple University, and, just this past March, Tarrant County College in Texas. We plan to add to these precedential victories in 2010 and beyond.

Additionally, we hope to pierce the "qualified immunity" of public university administrators responsible for speech codes at their institution. Qualified immunity protects government officials from personal liability for monetary damages when their actions are not in violation of "clearly established" law of which a reasonable official would have been aware. Given the unanimity over the years with which courts have struck down speech codes facing constitutional challenges, it is unreasonable for administrators to argue that the law is not clearly established with respect to the constitutionality of speech codes.

If courts recognize this point and deny qualified immunity to university officials, they will force these officials to pay damages out of their own pockets to students harmed in the exercise of their First Amendment rights. This will send the powerful message that administrators enact and maintain speech codes at their own financial peril, a message that FIRE believes will drastically change the situation on campus. Administrators will be hesitant to continue to maintain speech codes lest they risk personal financial loss, leading to massive policy reform at institutions across the country.

FIRE will be introducing another, long-awaited project this fall. In September, we will be teaching our first Continuing Legal Education (CLE) course for attorneys, to be offered in the state of New York.

Our course, "Free Speech 101: Protecting Free Expression and the First Amendment at our Nation's Colleges and Universities," will explore the case law on freedom of speech in higher education and the ways in which colleges and universities violate the law in this area, and will discuss how attorneys can become involved in the fight against campus censorship.

The course is designed to be an introduction to this area of the law for those attorneys who lack familiarity with it, while allowing attorneys who have a greater understanding of the issues involved to further explore their interest. It is a perfect use of FIRE's expertise and unique perspective on free speech in higher education, as we have much to impart to attorneys looking to become active in our mission and work. Indeed, I am hard pressed to imagine who besides FIRE would be better suited to teach such a course.

Through our CLE course, we hope to increase awareness of FIRE's work and mission and of the challenges we face, and to recruit more attorneys who are interested in becoming involved. We also hope to increase the membership of our Legal Network, a nationwide team of outside attorneys who share our principles, values, and goals. Since we do not ourselves directly litigate, FIRE refers cases to members of the Legal Network when litigation becomes necessary, such as when a student challenges his or her institution's speech codes. As our Legal Network grows, we can initiate further speech code litigation by matching willing student-plaintiffs with expert attorneys who are interested in taking these cases. Coordinating such efforts will be made easier and more feasible with an expanded and active Legal Network.

I therefore look forward to FIRE's first CLE course offering. Along with all of the other challenges and opportunities that await us in the fall, it promises to make for an exciting time for FIRE!

Fanning the Flames

As our cover story reports, the Supreme Court delivered a severe blow to freedom of association and religious liberty on America's college campuses with their recent ruling in *Christian Legal Society v. Martinez*. With the law no longer solidly backing free association, students will now need FIRE's steadfast advocacy more than ever before. With your help, FIRE will redouble its efforts to defend the right of students of all viewpoints to join together with others of like mind in pursuit of their own highest values.

Today, please join us in this fight.

We are the *only* group working to foster real ideological and political diversity on campus and to combat the majority-approved homogeneity that has now been endorsed by five justices on the Supreme Court. FIRE is embarking on a long-term campaign to ensure that diverse viewpoints continue to flourish on campuses nationwide, and we need you by our side if we are to succeed.

In our mission, we promise that we will protect the unprotected and defend individual rights at America's colleges and universities. **That will not change.** Thanks to the Court's unwise decision in *CLS v. Martinez*, our road to success is longer. But with your help, FIRE will fight back, strengthen its arsenal, defend more students than ever in its history and, hopefully, reverse the great harm done by this opinion.

Please donate to FIRE today by using the provided envelope, or by visiting us online at www.thefire.org/donate, so we can continue to advance our vital work. America's current and future college students need FIRE, and we need you.



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About the Publication

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The mission of FIRE is to defend and sustain individual rights at America's increasingly repressive and partisan colleges and universities. These rights include freedom of speech, legal equality, due process, religious liberty, and sanctity of conscience—the essential qualities of individual liberty and dignity. FIRE's core mission is to protect the unprotected and to educate the public and communities of concerned Americans about the threats to these rights on our campuses and about the means to preserve them.

FIRE is a charitable and educational tax-exempt foundation within the meaning of Section 501(c)(3) of the Internal Revenue Code. Contributions to FIRE are deductible to the fullest extent provided by tax laws.

HOW TO REACH US:

FIRE

601 Walnut Street • Suite 510
Philadelphia, PA 19106
215.717.3473 tel
215.717.3440 fax
www.thefire.org

FIRE
601 Walnut Street • Suite 510
Philadelphia, PA 19106

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FIRE Releases Short Film on Censorship of Gun-Related Speech

FIRE is proud to release a new short film, "Empty Holsters: Gun Speech on America's Campuses," highlighting widespread campus censorship of student speech about guns. The film is the first in a new FIRE series focusing on how colleges and universities across America are preventing students and faculty members from speaking out on the weightiest political issues of the day. Filmed on location at campuses from Pennsylvania to Virginia to Texas, the film features interviews with students from several colleges where administrators attempted to squelch debate over the licensed concealed carry of firearms by students. Tellingly, no administrators contacted at those colleges would agree to be interviewed for the film.

"Empty Holsters" is the first film produced by FIRE's Sweidy Stata Video Fellow, Joe Stramowski. Throughout the fall semester, FIRE will be premiering fresh, new video content ranging from short interviews with experts and students to hard-hitting investigations into the stifling of campus discussions about our society's most contentious issues.

