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# 'Tyler Clementi Higher Education Anti-Harassment Act' Threatens Free Speech on Campus

**An "anti-bullying" bill first introduced in Congress in November gravely threatens free speech on America's college campuses. Despite the bill's admirable intention of preventing future tragedies, FIRE has determined that the proposed "Tyler Clementi Higher Education Anti-Harassment Act" is at odds with the Supreme Court's carefully crafted definition of harassment and would require colleges to violate the First Amendment.**




After New Jersey Senator Frank Lautenberg and Representative Rush Holt introduced the bill, Senator Lautenberg declared that "it is time for our colleges to put policies on the books that would protect students from harassment." Yet, such policies are already in place. For decades, colleges that receive federal funding have been required to maintain policies that address discriminatory harassment under Titles VI and IX of the Civil Rights Act of 1964.

The bill, which would amend the Higher Education Act, flies in the face of that very law. When Congress reauthorized the Act in 2008, it added a "sense of Congress" provision noting that "an institution of higher education should facilitate the free and open exchange of ideas."

In contrast, the bill redefines harassment in a manner that is at odds with the Supreme Court's exacting definition of student-on-student harassment, which successfully balances the need to respond to extreme behavior with the importance of free speech on campus. In *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999), the Court defined student-on-student harassment as conduct that is "so severe, pervasive, and objectively offensive, and that so undermines and detracts from the victims' educational experience, that the victim-students are effectively denied equal access to an institution's resources and opportunities." This definition has been relied upon by courts for more than a decade and has been adopted by many institutions across the country, including the entire University of California system.

Flouting the Supreme Court's carefully crafted balance, the bill removes the requirement that the behavior in question be objectively offensive. The loss of this crucial "reasonable person" standard means that those most interested in silencing viewpoints they don't like will effectively determine what speech should be banned from campus. Unconstitutional definitions of "harassment" have already provided the most commonly abused rationale justifying censorship, having been applied to a student magazine at Tufts University that published true if unflattering facts about Islam, a Brandeis professor who used an epithet in order to explain its origins and condemn its use as a slur, and even a student at an Indiana college simply for openly reading a book.

Because this bill has the potential to be a powerful tool for censorship, it would likely be ruled unconstitutional were it to become law. Indeed, since 1989, there have been at least sixteen successful challenges to campus codes that included similarly

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# From the President

## Greg Lukianoff



2010 was a banner year for FIRE in many ways. Not only did we gain many new, significant victories for students and professors across the country but, we also accelerated our efforts to transform the campus culture by improving our existing projects, building new initiatives, and taking advantage of the power of publicity and social media. In 2010, FIRE reached a larger audience than ever before, spreading our message and advancing our mission even further.

FIRE's Public Awareness Project is a key part of our efforts to expose the outrageous violations of liberty on campus. Thanks to our publicity campaign, FIRE was featured in a number of key media outlets in 2010, such as *The Chronicle of Higher Education*, *The New York Times*, and *The Atlantic*. In addition, as a testament to our appeal and the quality of our work, our own articles have been featured in a wide range of outlets including *Congressional Quarterly Researcher*, *Reason* magazine, *The Huffington Post*, the *New York Post*, and *The Wall Street Journal*. FIRE is also a fixture on the airwaves, and last year we appeared on numerous radio and television shows including *Fox & Friends* and *NRA News*. This fall, Fox Business Network's *Stossel* devoted nearly an entire show to FIRE cases, where I joined a number of students to discuss the prevalence of censorship on campus. FIRE's social media presence has also expanded significantly through our presence on Twitter, YouTube, and Facebook. All of these achievements are an integral part of our work here at FIRE, and in 2010, our efforts in these fields have helped generate real progress on campus.

There are countless examples of these successes; FIRE's recent work on the Tyler Clementi Higher Education Anti-Harassment Act is a key example. Through an extensive publicity campaign, we were able to get the word out early about the dangers of the rush to legislate in light of the Clementi tragedy. FIRE will remain vigilant as the bill makes its way through Congress, but we are confident that it will not pass, in part due to our efforts to spread the word about the consequences of legislation that restricts expression. We are also working hard to ensure that 2010's unfortunate Supreme Court decision, *Christian Legal Society v. Martinez*, does not deter our progress on campus. Universities across the country know that if they choose to follow this dangerous precedent, FIRE will be the first to point out their abuses.

Achievements like this would not be possible without the support of our allies and friends. The attention that FIRE's work has received over the last few months is a result of the relationships we have been able to build and the help of our donors. Because of this support, our office of fifteen has been able to reach millions. Whether it's through Twitter, e-mail, or word of mouth, all of FIRE's allies can play a key role in our mission by spreading our message and helping to solidify our reputation—a reputation that guarantees that outlets like the *Congressional Quarterly Researcher* or Fox Business Network will know where to turn for a principled defense of liberty.

In the coming year, your support is more crucial than ever. In the midst of the ongoing recession, more and more Americans have begun to question the exorbitant costs of higher education and examine the nature of our university system. As increased attention is turned on colleges, FIRE has a real opportunity to highlight how these high costs are tied to administrative bloat and collegiate overreach, thereby shedding greater light on the myriad abuses of liberty on campus. I urge you to continue to share FIRE's stories and help us reach an even larger audience in 2011. With your help, we can expose even more violations of freedom on campus and truly transform the campus culture for the better.



# University Recognizes Young Americans for Freedom: Conservative and Libertarian Groups Were Too 'Similar' to Coexist

The University of South Florida (USF) has reversed its denial of recognition to the conservative Young Americans for Freedom (YAF) student group. USF had argued that YAF was too "similar" to the libertarian Young Americans for Liberty to warrant recognition. After USF denied YAF's application for recognition, YAF came to FIRE for help. "Let




me get this straight: USF recognizes over 60 multicultural groups, no fewer than 20 engineering clubs, and even a group solely devoted to appreciation for Nerf products, but a conservative group was considered too similar to a libertarian organization to be allowed on campus?" FIRE President Greg Lukianoff asked. "We are very pleased that USF has rectified this double standard and recognized Young Americans for Freedom."

The travails of University of South Florida Young Americans for Freedom began in April 2010, when YAF submitted its Chapter Constitution for official recognition. USF rejected the application months later in an e-mail from Student Programs Coordinator Edna Jones Miller to YAF Founding Chairman Anthony Davis. Miller wrote that "the purpose of your proposed organization may be fairly similar, if not the same, as another existing organization that is established at the USF Tampa campus" and that "no other student organization can exist with the same or similar mission/purpose."

This is not the first time this argument has been made against a conservative student organization in Florida. In 2003, the University of Miami refused to recognize Advocates for Conservative Thought (ACT), a student organization created for "the exposition and promotion of conservative principles and ideas" because, the university argued, it already had recognized the College Republicans. After ACT's four failed attempts, FIRE intervened and ACT finally received official recognition.

FIRE wrote USF President Judy Genshaft on October 15, 2010, clarifying that YAF and Young Americans for Liberty are significantly different in ideology and mission. FIRE also noted that USF's policy unconstitutionally gives administrators too much discretion to reject new student organizations, failing the Supreme Court's requirement that government representatives use "narrow, objective, and definite standards" when subjecting First Amendment rights to a permit system (*Shuttlesworth v. Birmingham*, 394 U.S. 147, 150–51 (1969)).

On October 28, USF Dean for Students Kevin Banks replied to FIRE's letter, provisionally recognizing YAF pending approval of the group's constitution. Meanwhile, USF has yet to revise its unconstitutional policy of preventing groups "with the same purpose/goals" from obtaining official recognition.

"Other than the College Republicans, YAF is the largest and oldest conservative student organization in the United States," FIRE Vice President of Programs Adam Kissel said. "Yet, USF proclaimed ignorance and confusion about how YAF differs from Young Americans for Liberty, which was founded just two years ago following Ron Paul's presidential campaign."

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broad and vague harassment provisions. Every one of those lawsuits has resulted in the challenged policy either being declared unconstitutional or revised as part of an out-of-court settlement. If passed, the bill is likely to violate students' rights while leading colleges into expensive, embarrassing, and unsuccessful litigation.

The bill also fails to define what constitutes a "hostile or abusive" educational environment, leaving that determination to college administrators. Unfortunately, FIRE's extensive experience defending student speech demonstrates that college administrators are often incapable of enforcing unclear policies governing student speech either fairly or rationally. FIRE's case archive provides hundreds of examples of students and faculty members who have faced censorship, investigation, or punishment for parody, satire, speaking out against campus policies or public figures, and discussing important issues facing our society through protest and even through art.

Those concerned about speech rights on the Internet also have great reason to worry, as the bill requires university harassment policies to cover behavior that occurs online or off campus—anywhere in the world. In practice, this requirement is likely to compel universities to monitor student behavior in unprecedented ways—including close and comprehensive monitoring of social networking sites like Facebook and Twitter—in order to ward off potential lawsuits.

"For over a decade, FIRE has been successfully fighting the illiberal influence of speech codes at our nation's colleges and universities. But this bill threatens the significant progress made by FIRE and those students, faculty, alumni, and citizens who share our commitment to free speech on campus," said Will Creeley, FIRE's Director of Legal and Public Advocacy. "We must not let tragedy serve as a justification for rolling back the First Amendment."

# Under Pressure from FIRE, Northern Illinois U. Finally Recognizes 'Students for Sensible Drug Policy,' But Discriminatory Double Standards Persist




Northern Illinois University (NIU) has finally given full recognition to NIU Students for Sensible Drug Policy (SSDP) after the Student Association Senate twice denied the group any recognition, which had prevented SSDP from meeting or posting flyers on campus. Unfortunately, Senate policy still denies funding to all "political" and "religious" student organizations. This arbitrary standard classifies Christian, Muslim, and Jewish organizations as "religious" and therefore ineligible for funding, while the campus Baha'i Club is funded as a "cultural" group. Similarly, groups such as Model United Nations are considered "political" while many "social justice" or "advocacy" groups—including student pro-life, pro-choice, antiwar, women's rights, vegetarian, and victims' rights groups—are fully recognized.

SSDP first came up for recognition on October 24, 2010, as a "Social Justice, Advocacy, and Support" group because it advocates "that the War on Drugs is failing our generation and our society" and seeks "to reduce the harms caused by drug abuse and drug policies." After extensive inquiries into the specific nature of the group's viewpoint, the Senate denied recognition to SSDP but offered it a chance to be recognized as a "political" group, which would render it ineligible for funding.

On November 7, the Senate then issued hopelessly vague definitions of "political" and "religious" groups that guarantee an unconstitutional double standard. Indeed, Advocates for Choice, Campus Antiwar Network, Consumer Education Society, PAVE (Promoting Awareness, Victim Empowerment), Students for Life (NIU), Vegetarian Education Group, and Women's Rights Alliance are eligible for funding as "Social Justice, Advocacy, and Support" groups, yet funding is denied to the Committee for the Preservation of Wildlife and the Model United Nations, an academic simulation of the UN. Similarly, the Baha'i Club, dedicated to discussion of the Baha'i faith, is eligible as a "Diversity and Cultural" organization, while Campus Crusade for Christ, Hillel, Latter Day Saint Student Association, Muslim Students Association, Newman Catholic Student Center, Pagan Student Association, and many more are not eligible for funding.

The new definitions even prohibit a student group from receiving Activity Fee funding if any of its activities result in any individual, anywhere, "petitioning the Federal, State, or Local legislative or executive bodies for policies advocated by that group"—amazingly violating the First Amendment right to petition government for the redress of grievances.

FIRE wrote NIU President John G. Peters on November 18, explaining that the Senate is bound by the First Amendment and that NIU is obligated to step in if the Senate fails to uphold students' rights. FIRE's letter reminded NIU of the Supreme Court's rulings in *Rosenberger v. University of Virginia* (1995) and *Board of Regents v. Southworth* (2000), which established that public universities like NIU are required to grant political, religious, and other expressive organizations equal access—on a viewpoint-neutral basis—to student fee funding distributed to other student organizations. NIU Deputy General Counsel for Administration Gregory A. Brady replied on December 3, announcing a special Senate meeting on December 5. At that meeting, the Senate denied SSDP's petition for recognition a second time.

FIRE took SSDP's case to the public on December 6. Roughly one week later, NIU Associate Vice President John R. Jones III officially notified SSDP that NIU was granting full recognition to SSDP as an advocacy group. NIU also announced that it is establishing a task force to revise NIU's funding and recognition policies by the end of the spring semester.

FIRE Legal Network attorney Eric Sterling, a member of the national SSDP Board of Directors, has provided additional guidance to NIU SSDP. "We are grateful to FIRE and Eric Sterling for their help and to NIU's administration for stepping in to preserve our rights," said Jeremy Orbach, founder of NIU SSDP. "Now, we want to see our fellow student organizations get treated fairly, too."

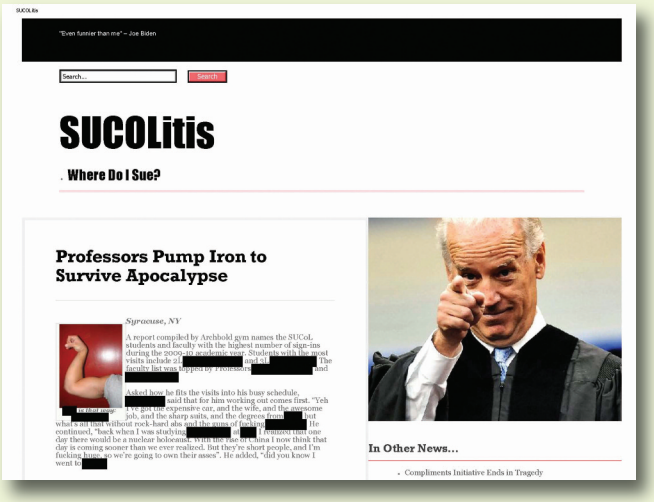
# Syracuse University Threatens 'Harassment' Charges over Satirical Blog; Seeks Gag Order on Alleged Author

Syracuse University College of Law (SUCOL) has been threatening a student with "harassment" charges for months because of the content of a satirical blog about life in law school. The law school has refused to tell him what expression in particular justified the charges or even who is charging him, and worse still, it is considering a gag order on law student Len Audaer, his attorney, and any media outlets that receive information about the case.

"Because of his alleged involvement with a blog intended to resemble *The Onion*, Syracuse has held harassment charges over Len Audaer's head for several months," FIRE President Greg Lukianoff said. "Now the university is trying to force him into silence, despite the fact that Audaer still doesn't know the identity of his accuser or even what expression is at issue. Syracuse University College of Law should be demonstrating the importance of free speech and due process to its students by example; instead, it seems to prefer the example of the Queen of Hearts from *Alice in Wonderland*."

Audaer's ordeal began on October 15, 2010, when he was summoned to a meeting with SUCOL Associate Professor of Law Gregory Germain due to "extremely serious" charges. In the meeting, held on October 18, Audaer learned that the charges involved "harassment" for his alleged involvement with *SUCOLitis*. (Syracuse has offered no proof that Audauer was actually involved with any of the content on the site.) The anonymous, satirical blog attributed obviously fake quotes to SUCOL students, faculty, and staff, and included a disclaimer stating, "No actual news stories appear on the site."

FIRE wrote Syracuse University Chancellor Nancy Cantor on October 25, pointing out that the investigation violates Syracuse's promises of free speech and that the content of *SUCOLitis* falls far outside of Syracuse's—and the state and federal definitions—of harassment. SUCOL Dean Hannah R. Arterian responded on November 1, stating that the investigation would continue.




On December 14, FIRE learned that Germain had demanded that Audaer and his attorney, Mark Blum (SUCOL '91), sign a gag order in order to receive any information from Syracuse about the charges. Provisions for such an order are nowhere to be found among SUCOL's procedures for addressing code of conduct violations.

The proposed gag order effectively prevents any media from reporting on the case using this information, and it effectively prevents Audaer from interviewing witnesses. It prohibits disclosure of any information obtained from Syracuse during Audaer's prosecution, including the complaint, the blog entries, and witness testimony, unless each recipient of the information agrees to certain conditions.

One condition would ban media recipients from posting excerpts of disclosed documents "to prevent misleading selective posting of information." Media outlets would be required to assent to this condition in writing.

Further, anyone whose name is mentioned in a document to be published must provide written permission. Since Ted Turner and Ellen DeGeneres are named in a blog post, the gag order would, by its own language, require written permission from them before reprinting the blog post.

"Supreme Court Justice Louis Brandeis wrote that sunlight is the best disinfectant, but Gregory Germain is trying to keep this case in the dark," FIRE Vice President of Programs Adam Kissel said. "After more than three months, Germain won't even reveal the basic information that Audaer needs to defend himself. Gregory Germain's utter disregard for Len Audaer's most basic rights is truly shameful."

The *New York Post* ran Kissel's op-ed on this case on December 20, and the case has been covered by *The Chronicle of Higher* Education, the *Las Vegas Review–Journal*, NPR station WRVO, and others.

# From the CFN
CAMPUS FREEDOM NETWORK

## Apply for FIRE's 2011 Summer and Legal Internships!

FIRE is now accepting applications for the 2011 Summer Internship and Legal Internship Programs. FIRE internships provide incomparable opportunities for undergraduates and law students to spend the summer defending individual rights on campus.



FIRE's 2010 Summer Interns

For undergraduates, FIRE offers a 10-week, paid Summer Internship Program. FIRE interns do substantive work on behalf of rights, liberty, and individual dignity. Interns help with administrative tasks, write about FIRE cases and issues, and develop strategies for protecting open discourse on their own campuses. Interns also participate in weekly seminars with FIRE staff and other prominent experts on civil liberties. We are looking for intelligent and energetic current undergraduates who are interested in FIRE's mission and work. The 2011 Summer Internship Program will run from Monday, June 6, through Friday, August 12, at FIRE's Philadelphia office in Center City.

FIRE's Legal Internship Program gives rising second- and third-year law students the opportunity to work closely with FIRE attorneys to promote liberty on campus. Legal interns perform vital research and write memoranda on current FIRE cases and issues. Participants are also encouraged to explore their own interests within FIRE's focus on constitutional law on campus and will develop writing samples and legal scholarship with the assistance of FIRE attorneys. Legal internships may be paid or unpaid, depending on individual students' particular needs. However, pursuit of independent funding and public interest fellowships is encouraged.

In a post advertising the internship to his fellow Students For Liberty members, 2010 intern Casey Given wrote:

"As a former intern myself, I can testify about the value of a summer with FIRE. Unlike a stereotypical internship, I was not treated as an inconsequential coffee slave, but rather as a valued student leader in the liberty movement. And, oh, how I learned! FIRE interns get a crash course in civil liberties, thoroughly learning about the law and philosophy behind subjects such as freedom of expression, religion, and association. By the end of summer, I had learned so many techniques to promote individual rights that I brought by to my libertarian club at Berkeley. On top of that, an internship with FIRE is just plain fun! The Philadelphia office is a lively place full of lots of great characters that will keep you smiling all day. Thus, I encourage any college student interested in fighting for individual rights to apply."

The deadline for the undergraduate internship is **March 31, 2011**. FIRE considers applications for legal internships year-round and on a rolling basis. For more information on how to apply, check out FIRE's Jobs page at www.thefire.org/about/jobs.

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.

# FIRE Awards 'Freedom in Academia' Essay Winner

On December 17, FIRE announced the winners of the Third Annual "Freedom in Academia" Essay Contest. Kristen Lemaster, a senior at Shiloh High School in Shiloh, Georgia, received first prize and a $5,000 college scholarship for her essay "Freedoms and Education." Mollyanne Gibson, a homeschool student from Topeka, Kansas, wrote the second prize essay, "Freedom of Expression in Higher Education." She will receive a $2,500 college scholarship. Five runners up were also selected, and each will receive a $1,000 scholarship: Abigail Averill, Zach Beims, Miriam Creach, Adam Spangler, and Jackson Wilson.

The contest invited high school seniors to watch two short documentaries about key FIRE cases, "Think What We Think...Or Else: Thought Control on the American Campus" and "Political Correctness vs. Freedom of Thought—The Keith John Sampson Story," and then submit an essay explaining why free speech is important on campus and how the schools depicted in the videos violated the spirit of free inquiry that should define a university.

Kristen's winning essay (excerpts included below) argues that the role of education is for students to connect with their individuality as they explore the world, and that universities should provide an open environment where students can develop independent thought.

The essay contest is an important part of FIRE's "Know Before You Go" initiative, which educates high school students about the harms of college censorship before they get to campus. Since we began holding the contest in 2008, nearly 6,000 high school students have submitted essays.

### "Freedoms and Education," By Kristen Lemaster



When Keith John Sampson turned the pages of the book he was reading for leisure during an Indiana University work break, he was not looking to incite any reaction from his coworkers. He was not attempting to offend anyone as he dove into the story of *Notre Dame vs. the Klan: How the Fighting Irish Defeated the Ku Klux Klan*; rather, he hoped to gain a better understanding of the people involved and educate himself about a major episode in America's history. What better place to do that than an American university?

...

One of the most curious phrases concerning education comes from a brilliant physicist and astronomer by the name of Galileo Galilei: "you cannot teach a man anything; you can only help him find it within himself." If nothing can be taught, then what is the purpose of the American university system? What is the purpose of education? Some would say it is imperative that children be taught right from wrong, but perhaps society is the true teacher of such morals. Some would say education is simply to prepare the youth for the "real world," their careers and responsibilities after school, but learning is not confined to the classroom. Galileo was not undermining education; he was offering a more profound and significant reason for its existence. Education is a means of self-exploration and expression, the very concepts on which our nation was founded and the reasons why an American university education is so highly coveted in other nations across the globe.

America has always been a nation that values the individual and celebrates individual liberties by operating on the basis of freedoms of speech, press, assembly, petition, and religion, collectively known as the freedom of expression. However, as both of the FIRE videos showed, these rights are far from being fully exercised and protected.

...

Independent thought can be developed in a variety of ways, but it is most thoroughly developed and explored when one takes advantage of all that is within his reach—including campus libraries. Keith John Sampson's story at Indiana University-Purdue University Indianapolis, like that of the University of Delaware freshmen, highlights the hypocrisy of a particular university, which found Keith John Sampson guilty of racial harassment for merely reading a book that he could have checked out from the university's own library. The Affirmative Action Office "literally judged the book by its cover," as the video eloquently stated, and convicted Sampson without abiding by due process and conducting a hearing, thereby violating a number of the freedoms enumerated in the Constitution. Freedom of expression includes not only the outflow of information—printing newspapers and delivering speeches—but also the intake of such information, including reading books and absorbing the written history and culture of America. What use would Galileo's *The Starry Messenger* be if people had not been allowed to read it and allowed it instead to sit idly on shelves, withholding some of the most fascinating details of the world?

Education and freedom are interdependent in every aspect, from the individual to whole universities. One without the other is a hollowed carving, an exploded star, lacking substance or the means to channel it. Galileo learned so much about the world not necessarily because he was taught it, but because he had the freedom to truly explore it and discover it for himself. Freedom in academia must be maintained in America's higher institutions in order to foster this kind of social and educational growth. What better place to do that than an American university?

# University of Virginia Eliminates All Speech Codes, Earning FIRE's 'Green Light' Rating



In late October, the University of Virginia (UVa) confirmed that it had eliminated the last of its policies that unconstitutionally restricted the free speech of students and faculty members. While more than two-thirds of the nation's colleges maintain policies that clearly and substantially restrict freedom of speech, UVa is now a proud exception, having fully reformed four speech codes. UVa has now earned a coveted "green light" rating from FIRE.

"President Teresa Sullivan and her staff should be commended for making these simple but important changes to guarantee the First Amendment rights of students and faculty members at the University of Virginia," FIRE President Greg Lukianoff said. "Within three months of taking office, President Sullivan has overseen the transformation of UVa from a school that earned FIRE's worst 'red light' rating for restricting protected speech to our highest 'green light' rating. We hope that more colleges will follow UVa's sterling example and reform their codes to protect free speech."

FIRE began working with UVa in April 2010 after a FIRE lecture on free speech at UVa, which was hosted by UVa student groups Students for Individual Liberty and Liberty Coalition. FIRE detailed objections to UVa's speech codes at the time in a letter to Dean of Students Allen W. Groves on April 7. UVa student Virginia Robinson, a 2010 FIRE Summer Intern, also helped persuade UVa to reform its speech codes.

First, Dean Groves reformed UVa's "Just Report It!" "bias reporting" system to promise students that protected speech will not be "subject to University disciplinary action or formal investigation" even if it is reported. Then, Assistant Vice President for Information Security, Policy, and Records Shirley Payne removed unconstitutional language from a policy prohibiting Internet messages that "vilify" others and mailing list messages that are "inappropriate."

Finally, UVa's Women's Center confirmed that it had removed two policies with unconstitutional examples of "sexual harassment" from its website. The examples stated that "jokes of a sexual nature," "teasing," and even mere "innuendo" constituted sexual harassment. The policies further suggested that simple flirting could be sexual harassment if it was not "wanted and mutual," and that if a person felt "disrespected," their experience "could indicate sexual harassment."

UVa joins its fellow Virginia public institution The College of William & Mary (W&M) in an elite group of 13 "green light" schools. W&M earned its "green light" in October 2009. FIRE is now turning its attention to three more Virginia public universities, including George Mason, which has a "red light" policy, and James Madison and Virginia Tech, which have "yellow light" policies that threaten free speech.

"Virginia should take pride in the fact that its two leading public universities have led the way for free speech," Kissel said. "Like Dean Groves, other administrators in Virginia and nationwide can read FIRE's pamphlet on *Correcting Common Mistakes in Campus Speech Policies* and work with FIRE to make our nation's colleges and universities into true marketplaces of ideas."

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.



# Legal Transformation Project Achievements

## FIRE Files Friend-of-the-Court Brief with Eleventh Circuit in Augusta State University Case

FIRE has filed a friend-of-the-court brief with the United States Court of Appeals for the Eleventh Circuit in support of Augusta State University (ASU) graduate student Jennifer Keeton, who was required to complete "diversity sensitivity training" and additional remediation assignments after instructors learned of her religious beliefs. FIRE's brief, authored by noted First Amendment expert and University of California, Los Angeles, law professor Eugene Volokh and joined by the National Association of Scholars, argues that imposing unique requirements on certain students because of their expressed viewpoints violates the First Amendment.

## FIRE Legal Scholarship in 'Santa Clara Law Review'

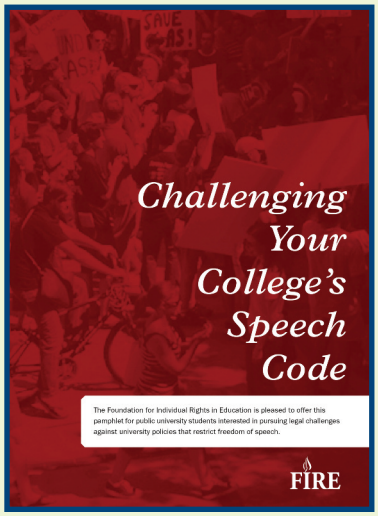
FIRE's Justice Robert H. Jackson Legal Fellow, Erica Goldberg, and former Jackson Fellow Kelly Sarabyn teamed up to write an article on academic freedom that has been published in one of the nation's top law reviews. Erica's and Kelly's article in the *Santa Clara Law Review*, "Institutional Academic Freedom in a Post-'Grutter' World," explores academic freedom as a First Amendment right.

The question of how academic freedom fits within the First Amendment has long plagued scholars and courts. But, as FIRE maintains, academic freedom is a value that is critical to allowing professors, students, and universities to speak and think freely in the face of state intervention. In their article, Erica and Kelly devise a coherent way for courts to afford universities their academic freedom rights without trampling on the First Amendment rights of students or professors. Given that universities often invoke academic freedom improperly, the article fills an important gap in legal scholarship.



Erica Goldberg

## FIRE Unveils New Pamphlet for Students Interested in Challenging Their College's Speech Code




FIRE's lawyers have released a new informational resource for public university students interested in serving as plaintiffs in a First Amendment challenge to their universities' policies restricting free speech.

The new pamphlet, "Challenging Your College's Speech Code," answers students' most pressing questions regarding the process of using legal challenges to get speech codes removed from their campuses. The pamphlet is intended to help interested students understand how speech codes deprive them of their basic First Amendment rights, the prevalence of speech codes on college campuses nationwide, and, most importantly, how they can take action to stand up for their fellow students' speech rights.

With this pamphlet, FIRE hopes that students interested in pursuing speech code litigation have the answers they need to get started. We are excited to provide this helpful guide to students interested in standing up for First Amendment rights at their universities. We believe it will lead to a better understanding among students of what is at stake in these cases, and how their involvement can make all the difference on their campuses.

# From the Board Chairman

## Harvey A. Silverglate



This year, I've decided to address FIRE's supporters myself, rather than rely on our staff—growing in both size and ingenuity—to be the sole face of our organization.

Ever since Professor Alan Charles Kors and I co-founded FIRE more than a decade ago, I have watched with wonderment how the professionals whom we have placed on the front lines have fought the battle for liberty, decency, and true academic values, which are so endangered in the distressing culture on most college campuses. Every year, they communicate with you, and indeed with the whole country, to recount the victories along with the remaining problems and challenges in this battle.

But as 2011 opens, it's about time that I say something from the vantage point of co-founder as well as current Chairman of the Board of Directors. After all, there are some things that our staffers simply cannot say about themselves that I am in a better position to communicate to you.

Every one of you who has given FIRE any financial support, in any amount, has helped enable the work of the single most talented, hard-working, and ingenious group of full-time academic civil libertarians ever assembled. Since FIRE's founding in 1999, today's staff and their predecessors have won 191 public victories, with many more cases resolved privately, at 139 colleges and universities with a total enrollment of nearly three million students. That's a lot of students whose college education was at least a little unburdened from the stultifying oppressiveness of politically correct, tendentious, unfair administrative (and sometimes even professorial) outrages.

FIRE's supporters have funded the rewriting of 94 unconstitutional or otherwise repressive policies affecting more than 1.9 million students at 81 of these universities, as well as across the entire California and Wisconsin state university systems. Our staff, along with the volunteer lawyers around the country who have taken up our cases, has a 100% success rate in lawsuits against unconstitutional speech codes that seek to enforce orthodoxy in what is fit (and what is unfit) to come out of the minds and mouths of college students—and even, not so incidentally, in what sense of the world may reside in their hearts and consciences.

FIRE has been a hugely successful vehicle for educating the news media and the American public about what is wrong with college administrations that seek to dictate students' attitudes rather than educate their minds. Our organization has, for good reason, become the leading authority on civil liberties in higher education, and we are recognized across the political and ideological spectrum as a serious voice in the battle for rights on campus. FIRE has earned a reputation as a legitimate broker and a major player when it comes to campus liberty, and we are increasingly leveraging this authority to quicken the pace of change. Indeed, we recently won a monumental ruling in federal court that stripped college administrators of the qualified immunity that, until now, has protected them and their institutions from having to pay for their arrogant and authoritarian ways.

All of this, and more, is made possible through the efforts of our superb staff and the countless citizens, on and off the campuses, who have rallied behind the banner of campus liberty—not to mention human decency—when the need has arisen. FIRE's major quest for its second decade is to change the culture on campuses of higher education so that leaders of colleges and universities do the right thing—not because FIRE is watching, but because they come to realize that higher education can work only when it is infused by the spirit of academic freedom, free thought, and liberal education.

This work, and these results, would not have been possible without the financial support of the increasing number of foundations and—importantly—individuals who see fit, each year, to part with hard-earned dollars in the campaign to make our colleges and universities educational institutions of higher learning, rather than ideological training camps.

On behalf of our Board of Directors, I thank you and look forward to many more years of collaboration—for as long as it takes to restore decency on our campuses.



# Fanning the Flames: The Top 5 Reasons to Support FIRE

Last year, FIRE received the support of thousands of people across the country, all of whom had one thing in common: an unwavering dedication to liberating our college campuses from censorship and turning them into true marketplaces of ideas. What's so amazing about FIRE's work is that it attracts people of all different backgrounds, political persuasions, religions, and ages. We are thankful for each and every one of you, for your passion for our work, and for what drives you to support FIRE's mission.

**Why do we here at FIRE think you should support our work? Here are the top 5 reasons:**

**#5:** FIRE is a uniquely nonpartisan organization, recognized across the political and ideological spectra as a serious and effective voice on behalf of student rights on our nation's campuses. We have deservedly earned a reputation as a principled defender of civil liberties and in 2010 alone have been invited to contribute articles and give interviews to many diverse and impressive media outlets.

**#4:** FIRE is proactive, working hard to stop college censorship before it starts. Not only do we remind college administrators of their moral and legal obligations to uphold student rights on their campuses, but we also educate current and prospective college students, parents, organizations, and even administrators, so that they too can become free speech advocates on campus.

**#3:** FIRE is often the only place students and professors can turn for protection when their rights are violated by their universities' highest authorities—and we don't let them down. FIRE takes on and wins cases for individuals and student groups, restoring justice so that they may freely continue to pursue their interests and their academic and professional careers.

**#2:** FIRE is committed to upending the current incentive structure that encourages college administrators to suppress expression on campus. By increasing the costs of censorship, FIRE strives to make it in administrators' best interests to protect student rights and promote discussion on campus—and to thereby turn them into advocates for free speech whether they like it or not! Recruiting administrators as allies is crucial to creating lasting and meaningful reform in higher education.

**#1:** FIRE is constantly changing campus culture to respect individual thought and expression, and in turn, we are safeguarding the very future of our nation's democracy. Our work aims to prevent an entire generation of students from incorrectly learning not only that they have fewer rights than they actually do, but that silencing "offensive" speech is in fact the good and noble thing to do rather than to respond with more speech.

Is the reason you support us on this list? If not, email us at support@thefire.org or call us at 215-717-3473 and tell us why you donate to our cause. We will even send you a free T-shirt if you share with us your motivation for giving, and we will print the best response in the next *FIRE Quarterly*. We're looking forward to hearing from you!

## Follow FIRE on Twitter, Facebook, and YouTube!

FIRE has always been at the forefront of social networking and Internet technology, so it's no surprise that one of the most popular ways to get FIRE news and updates is now through accessing our Twitter, Facebook, and YouTube accounts. To "follow" FIRE, go to twitter.com/theFIREorg, facebook.com/thefireorg, and youtube.com/user/TheFIREorg.

## About the Publication

*The FIRE Quarterly* is published four times per year by the Foundation for Individual Rights in Education.

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.

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# FIRE's Greg Lukianoff on *Stossel*

**FIRE President Greg Lukianoff appeared on *Stossel* on the Fox Business Network on November 11 to discuss free speech on America's college campuses and to talk about a few of FIRE's most outrageous cases.** Joining Greg was former FIRE intern and Bucknell University student Kirby Thomas, who was involved with two FIRE cases at Bucknell that landed the school on FIRE's Red Alert list. Also featured was former Valdosta State University student Hayden Barnes, who discussed his ongoing legal battle with Valdosta State administrators following his expulsion for engaging in peaceful protest on campus. In advance of the show, Stossel held an "affirmative action bake sale" in a midtown Manhattan shopping center—a common act of political protest on college campuses. Stossel met with some criticism during the event, though at least no Bucknell University administrators came around to tell him that such satirical examples of political theatre are against the law—something that Bucknell University continues to falsely argue. If you missed the show, it is now available on Hulu!

