



Foundation for Individual Rights in Education, Inc.

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**VIA FACSIMILE – ORIGINAL TO FOLLOW BY U.S. MAIL**

June 14, 2000

John E. Worthen, President  
Ball State University  
2000 University Avenue  
Muncie, IN 47306

**Re: Improper Application of “Non-Discrimination” Policy to  
Student Religious Groups.**

Dear President Worthen:

I am writing in my capacity as Legal Director of FIRE (The Foundation for Individual Rights in Education) regarding Ball State University’s (BSU) recent announcement that “non-discrimination” oaths -- specifically non-discrimination on the basis of “sexual orientation” and “religion” -- would be required to be incorporated into the constitutions of all officially recognized student religious groups. We are writing at the request of BSU’s Christian Student Foundation.

As you can see from the list of our Directors and Board of Advisors, FIRE unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, and — in the case of the Christian Student Foundation (CSF) — the freedom of speech, religion, and due process on America’s college campuses. Our web page, [www.thefire.org](http://www.thefire.org), will give you a fuller sense of our identity and activities.

In the Spring of 1998, Ball State University amended its non-discrimination statement by adding the phrase “sexual orientation.” In the spring of 1999 all student organizations were notified to add the new language to the membership clause of their organization constitutions. The CSF had never included a prohibition in their constitution against discrimination based on “religion.” After receiving the notice the CSF wrote two separate letters and met with the Student Activities Committee requesting clarification of the proposed nondiscrimination oath specifically as it relates to the prohibitions against discrimination on the basis of “religion” and “sexual orientation.”

BSU's website boasts of a community in which its "students have formed religious organizations affiliated with most major religions in America." Surely, as a state institution, BSU would agree that these student religious groups have a right to select their membership and leadership based on criteria that reflect their sincerely held religious beliefs. Clearly, it would be a violation of the First Amendment for a state university to force a Christian group to accept in its leadership someone who rejected the resurrection of Christ and other fundamental tenants of their religious faith. The same would apply to all of the diverse religions that are represented by student groups at Ball State.

For instance, a number of the religious faiths represented by student groups at Ball State require their members to openly condemn unrepentant homosexual practice as a sin. In the case of the CSF, their faith also calls upon them to condemn unrepentant heterosexual practice outside of marriage as a sin. Surely BSU would not suggest that those religions whose faith requires them to openly condemn unrepentant homosexual practice as a sin are no longer welcome to official recognition as a BSU student organization – with the attendant use of facilities and resources – simply because they exercise their sincerely held religious beliefs.

To insist that a religious student organization not discriminate on issues of faith -- and the practice that flows from faith -- not only deprives the individual members of that organization of their rights under the free exercise clause of the First Amendment, but also imposes upon them an ideology alien to their conscience in violation of the free speech clause of the First Amendment. In fact, this issue was settled over fifty years ago by the United States Supreme Court's decision in the case of West Virginia Board of Education v. Barnette.

In 1943 the Supreme Court was faced with a challenge to a daily flag salute requirement imposed on school children as part of a statute requiring schools to teach, foster, and perpetuate "the ideals, principles and spirit of Americanism." Writing for the majority, Justice Robert Jackson condemned the flag salute requirement because it compelled a student "to declare a belief [and] . . . to utter what is not in his mind." The non-discrimination requirements being imposed on the student religious groups at BSU is a "pledge to diversity" just as surely and in the same way that the pledge to the flag rejected by the Supreme Court in Barnette was a "pledge to Americanism."

Explaining why even men of good intentions should not possess the awesome power to compel belief, Justice Jackson noted that nothing would rend society more than "finding it necessary to choose what doctrine and whose program public educational officials shall compel youth to unite in embracing." Justice Jackson concluded that "[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what will be orthodox, in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith [in it]."

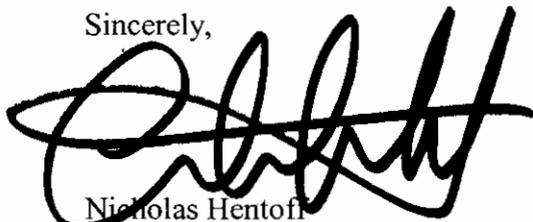
With the new academic year fast approaching we are concerned that this serious situation has been ignored by your administration for far too long. The CSF has been patiently yet anxiously awaiting a response for several months in the face of what can only be described as a deafening silence from BSU. All of the campus religious groups have the right to plan for the new academic year without worrying if their ability to operate freely on campus will be subject to a credal loyalty oath inconsistent with their deeply held religious beliefs and doctrines.

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Consequently, we ask your administration to address this problem directly and to recognize that the forced adoption of "sexual orientation" and "religion" non-discrimination requirements by student religious organizations is an illegal assault on religious liberty in violation of the United States Constitution. The very foundation of American religious liberty is our religious pluralism. BSU has no right to impose a state orthodoxy on the CSF.

While we hope that this issue may be settled rationally and discretely, FIRE is committed to seeing this through to a principled and moral conclusion. In the absence of an answer from you within the next two weeks we will be forced to take whatever appropriate action we deem necessary to protect the rights of the CSF and the other student religious groups whose very existence hangs in the balance.

Sincerely,



Nicholas Hentoff  
Legal Director

Cc: Blaine Brownell, incoming President  
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