



Foundation for Individual Rights in Education

210 West Washington Square, Suite 303 · Philadelphia, PA 19106

Tel: 215-717-3473 · Fax: 215-717-3440 · fire@thefire.org · www.thefire.org

Alan Charles Kors
PRESIDENT

July 15, 2003

Harvey A. Silverglate
VICE PRESIDENT & TREASURER

President Robert E. Witt
University of Alabama
Box 870100
Tuscaloosa, AL 35487-0100

Thor L. Halvorssen
CHIEF EXECUTIVE OFFICER

Sent via U.S. Mail and Facsimile (205-348-8377)

Erich Wasserman
EXECUTIVE DIRECTOR

Dear President Witt,

Greg Lukianoff
DIRECTOR OF LEGAL AND
PUBLIC ADVOCACY

As you can see from our Directors and Board of Advisors, the Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, due process, academic freedom, freedom of religion, freedom of association, and, in this case, freedom of speech and expression at America's colleges and universities. Our web page, www.thefire.org, will give you a greater sense of our identity and activities.

BOARD OF ADVISORS

David Brudnoy
Lloyd Buchanan
T. Kenneth Cribb, Jr.
Candace de Russy
Benjamin F. Hammond
Nat Hentoff
Roy Innis
Wendy Kaminer
Woody Kaplan
Leonard Liggio
Herbert London
Michael Meyers
Daphne Patai
Virginia Postrel
Milton Rosenberg
John R. Searle
Teddy Shalon
Ricky Silberman
Christina Hoff Sommers
Kenny J. Williams

FIRE is deeply troubled by a draft policy at the University of Alabama—a policy that threatens the free speech rights of your students. Here is our understanding of the facts, based on communication from a UA professor as well as reporting in *The Tuscaloosa News* and UA's student newspaper, *The Crimson White*. In mid-June, the Office of Residential Life instructed students in Byrd Hall, a residential dormitory on UA's campus, to remove a Confederate flag from a hallway on the second floor. Officials cited a policy, still in development, that prohibits certain displays in windows or hallways. A draft of that policy is included with this letter. The news articles did not mention any other policies as being relevant. As it currently stands, the policy reads: "Possessions or displays which are inconsistent with accepted standards or University policies should not be displayed on the outside of room doors or in general view of the public."

It is hardly necessary to discuss the inappropriateness of enforcing a policy that has not even been adopted, much less published and distributed; your administration's apparent unwillingness to pursue the matter when questioned by students and faculty indicates to us that you understand this. We wish, rather, to focus on the very real threat this regulation poses to free expression on your campus.

With a ban on anything that is "inconsistent with accepted standards," the question naturally arises: whose standards should be used? Are the "accepted standards" of the administration now enforceable on your campus? Or does the University of Alabama give administrative force to the standards of select groups of people? Regardless, giving administrations at a public institution the unfettered right to choose which expression is or is not "acceptable" is manifestly unconstitutional.

If, however, the term "accepted standards" means "those standards embraced by a majority of people," then the University of Alabama has effectively rescinded the right of dissent.

Rights have no meaning when they can be overruled at the whim of the majority. Some of history's greatest and most profound ideas were initially contrary to the "accepted standards" of their time. A free society cannot thrive if it will not tolerate the expression of those views that the majority finds abhorrent, troubling, or simply wrong. Without the right to dissent from "accepted standards," a university's intellectual life comes to an end. Those views that are espoused are held not by virtue of their truth but by the force of blind, unquestioned prejudice.

The policy itself gives some hint as to what those "accepted standards" will comprise. It prohibits, "for example, posters of nude men and women." UA may not ban certain expression merely because of the content of that expression. Furthermore, banning "posters of nude men and women" is unconstitutionally overbroad because it sweeps in expression that enjoys First Amendment protection. Would UA punish a student for hanging a picture of Goya's "Naked Maja" or Michelangelo's "David"? Under a consistent application of this policy, the student would be in violation.

The policy continues: "potentially harassing or intimidating visual materials may not be appropriate. Some room displays in public view may constitute a violation of University policies regarding racial or sexual harassment." It is hard to imagine how a simple room display can constitute "harassment." Individuals may not like a particular poster or may find a door display tasteless and offensive, but in neither case would a charge of harassment be warranted. UA's specific inclusion of this line leads us to suspect that your administration considers merely offensive expression to be harassment and is willing to use this policy to ban it. UA's intent to treat such expression as "harassment" reveals a tepid commitment to the values of free expression—and trivializes real harassment itself.

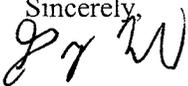
Surely this is not your vision for the University of Alabama. How can your institution fulfill its stated mission to "advance the intellectual and social condition of all the people of the state" when its policies do not tolerate any dissent from "accepted standards"?

As a public institution, bound by the Bill of Rights, the University of Alabama may not prohibit its students from engaging in constitutionally protected expression. On your campus, **the only "accepted standard" should be the First Amendment of the United States Constitution.** This policy, in word and—as we have seen—in application, imperils the constitutional rights of all your students and your faculty.

This unconstitutional policy threatens the human, legal, and academic rights of your students and your faculty. We encourage you to abandon it. Please spare the University of Alabama the embarrassment of fighting against the most basic tenets of free speech and dissent, by which it is legally and morally bound.

We look forward to hearing from you.

Sincerely,



Greg Lukianoff
Director of Legal and Public Advocacy

cc:

Judy L. Bonner, Interim Provost
Susan Herndon Caples, Dean of Students
Dorothy Martin, Assistant Vice President for Administration
Susan Bigham, UAS Office of Counsel
David Beito, President, Alabama Association of Scholars
Charles Nuckolls, Director, Alabama Association of Scholars
Byron Rush White, Byrd Hall Professor-in-Residence

Encl.