



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

David French
PRESIDENT

August 20, 2004

Greg Lukianoff
DIRECTOR OF LEGAL AND
PUBLIC ADVOCACY

President Karen A. Holbrook
Office of the President
Ohio State University
205 Bricker Hall
190 North Oval Mall
Columbus, Ohio 43210-1357

BOARD OF DIRECTORS

Alan Charles Kors
CHAIRMAN

Harvey A. Silverglate
VICE CHAIRMAN

Sent by U.S. Mail and Facsimile (614-292-1231)

William J. Hume
Joseph M. Maline
Michael Meyers
Marlene Mieske
Daphne Patai
Virginia Postrel
Ed Snider
James E. Wiggins
Kenny J. Williams (d. 2003)

Dear President Holbrook:

As you can see from 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, due process, legal equality, voluntary association, freedom of speech, and religious liberty on America's college campuses. 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
William A. Dunn
Thor L. Halvorssen
Benjamin F. Hammond
Robert E. Hanrahan, Jr.
Nat Hentoff
Roy Innis
Wendy Kaminer
Woody Kaplan
Leonard Liggio
Herbert London
Peter L. Malkin
Milton Rosenberg
John R. Searle
Ricky Silberman
Christina Hoff Sommers

We have been contacted by a coalition of Christian and Muslim student organizations, including the Muslim Student Association, InterVarsity Christian Fellowship, the Christian Graduate Student Alliance, Campus Crusade for Christ, Mosaic, and Reformed Christian Students, who have grave concerns about The Ohio State University's existing and proposed student organization regulations. According to both existing and proposed Ohio State regulations, religious student organizations are and will be prohibited from discriminating on the basis of—among other things—“religion” as a precondition for receiving full recognition at the university.

We consider this matter to be of utmost urgency, with the most essential constitutional and moral values at stake. We understand that each of the religious student groups listed above uses religious criteria when making religious decisions, including decisions regarding group leadership, group message, and, sometimes, group membership. Ohio State, through its current student organization policies, has taken the position that the use of religious criteria to make religious decisions conflicts directly with the requirements of its anti-discrimination policy. In other words, if a religious student organization wishes

to exist at Ohio State, the group will have to relinquish its right to choose to be made up of individuals who share the group's faith and to be run in accordance with the principles of that faith. It should be obvious that Ohio State's policies (both current and proposed) violate the groups' associational, religious, and free speech rights as promised by the United States Constitution.

We understand that Ohio State is currently a defendant in a lawsuit, filed by the Christian Legal Society, which challenges the constitutionality of Ohio State's current student organization policy. The organizations listed above desire to avoid litigation, but realize that Ohio State's policies interfere with their exercise of fundamental First Amendment freedoms. These organizations are committed not only to vindicating their constitutional rights but to doing so in a coalition that represents literally thousands of Ohio State students.

As you are no doubt aware, Ohio State cannot constitutionally control a religious student organization's message or composition. Not only is Ohio State required to grant religious organizations equal access to campus facilities (*see Widmar v. Vincent*, 454 U.S. 263 (1981)), it is also required to grant religious organizations equal access—on a viewpoint neutral basis—to student fee funding. *See Rosenberger v. University of Virginia*, 515 U.S. 819 (1995) and *Board of Regents v. Southworth*, 529 U.S. 217 (2000). Moreover, Ohio State cannot compel a religious organization to include individuals who, as participants, members, or leaders, will impair the organization's ability to share its chosen message. *See Hurley v. Irish-American Gay, Lesbian and Bisexual Group*, 515 U.S. 557 (1995) and *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000). Simply stated, Ohio State cannot require private student groups to conform to the university's "message" or "mission" as a precondition for receiving recognition, benefits, or facilities access. *See Healy v. James*, 408 U.S. 169 (1972).

The above case citations represent Supreme Court statements of constitutional law. No federal, state, local, or university statute, policy, or regulation can trump the exercise of First Amendment rights guaranteed by the United States Constitution. This is a basic statement of constitutional law, but universities have confused their obligations under Title IX and Title VI to such an extent that the U.S. Department of Education's Office of Civil Rights was forced to issue a letter last year that clearly and unequivocally stated that these statutes cannot be read to require universities to enact policies that violate the First Amendment.

Ohio State cannot and must not forbid a religious student organization from making decisions using religious criteria. A Muslim organization has a right to be Muslim. A Jewish organization has a right to be Jewish. A Christian organization has a right to be Christian. It is intolerance—not tolerance—to forbid such voluntary associations. At public universities, to do so is a denial of core constitutional rights. To avoid further litigation and a public campaign by FIRE and a coalition of Christian and Muslim organizations, FIRE requests that Ohio State explicitly recognize the positive right of religious student organizations to exist on campus with same benefits as secular organizations and to maintain their distinctively religious character. Concretely, FIRE requests that Ohio State add the following language to its student organization policy—language that will fully protect the constitutional rights of religious student organizations at the university:

“The University recognizes an affirmative First Amendment obligation to provide religious student organizations with access to campus facilities and student activity fee funds on a viewpoint-neutral basis. Further, the University recognizes that religious student organizations themselves enjoy protected status under University nondiscrimination policies. It is thus a constitutional and policy imperative that the University permit religious student organizations to maintain their distinctive religious character, and any nondiscrimination policy that prevents members of religious organizations from utilizing their religious convictions in connection with the conduct and governance of a religious student organization would itself be discriminatory. Therefore, no portion of the University's nondiscrimination policy may be read to prohibit religious student organizations from utilizing religious criteria when making religious decisions – including but not limited to decisions regarding the selection and conduct of group leaders.”

This language, if adopted, would not only address the constitutional problems presented by Ohio State's current and proposed policies, but also serve as a model formulation of constitutional freedoms. We hope that Ohio State—as one of America's most influential public universities—will lead the nation in creating a student organization system that nurtures rather than tramples the constitutional rights and academic freedom of each member of the university community.

If, on the other hand, Ohio State chooses to endorse censorship and oppression, it will have to answer for that choice not only in the court of law but also in the court of public opinion. We request simply that you restore to the members of Ohio State's religious student organizations their essential rights and dignities, and we hope to see this matter resolved with fairness, common sense, and legal equality toward your students.

I look forward to hearing from you.

Sincerely,

The image shows a handwritten signature in blue ink. It consists of a large, stylized 'D' followed by a horizontal line, and then a series of loops and strokes that form the name 'French'.

David French
President

cc:

Barbara Snyder, Executive Vice-President and Provost, Ohio State University
William H. Hall, Vice President for Student Affairs, Ohio State University
Tami Longaberger, Chair, Board of Trustees, Ohio State University
Daniel M. Slane, Vice Chair, Board of Trustees, Ohio State University
David O. Frantz, Secretary of the Board, Board of Trustees, Ohio State University
Douglas G. Borrer, Board of Trustees, Ohio State University

(next page)

Jo Ann Davidson, Board of Trustees, Ohio State University
Robert M. Duncan, Board of Trustees, Ohio State University
Chad A. Endsley, Board of Trustees, Ohio State University
Karen L. Hendricks, Board of Trustees, Ohio State University
Brian K. Hicks, Board of Trustees, Ohio State University
Dimon R. McFerson, Board of Trustees, Ohio State University
Walden W. O'Dell, Board of Trustees, Ohio State University
Emily M. Quick, Board of Trustees, Ohio State University
Robert Trube