



**Foundation for Individual Rights in Education**

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April 6, 2005

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**URGENT**

*Sent by U.S. Mail and Facsimile (616-331-3503)*

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Dear President Murray,

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, freedom of religion, academic freedom, due process, and, in this case, freedom of speech and expression on America's college campuses. Our website, [www.thefire.org](http://www.thefire.org), will give you a greater sense of our identity and activities.

FIRE is profoundly concerned by Grand Valley State University's upcoming trial of the Grand Valley State University College Republicans for holding an "affirmative action bake sale" on campus. "Affirmative action bake sales" constitute a form of satirical political protest that enjoys the fullest protection of the First Amendment of the U.S. Constitution. Respect for the dignity and individuality of each member of GVSU's student body demands the most profound respect for your students' freedom of expression—even when some in the community might be offended by that expression. As you well know, if everyone could ban what he or she took offense to, we all would be reduced to silence.

This is our understanding of the facts, based on reports and documents provided by the College Republicans as well as published accounts of the incident. On March 21, 2005, the College Republicans held an "affirmative action bake sale" protest at the Kirkhof Center on GVSU's campus. These bake sale protests have

become a widely used form of political parody directed against affirmative action. Protest organizers will typically display a menu with satiric prices in which minority and/or female students are charged less than white and/or male students for the same items. In this case, the College Republicans listed a price for white males of \$2.00 per cupcake, with lower prices for women and racial minorities. The bake sales are intended to spark debate about affirmative action policies, not to raise revenue, and aim to satirize university policies that opponents of affirmative action believe unfairly accord some groups more favorable treatment than others. Members of the College Republicans report that they sold a grand total of one cupcake during their controversial yet nonviolent protest.

After the protest, judicial referrals were filed with GVSU's Student Organization Review Board by at least five students. These students have charged the College Republicans with offenses including the violation of Student Organization Manual and Student Code regulations against discrimination; Student Code sections regulating expression, protest, and association; and the University Discrimination Clause.

As you are aware, parody and satire are important—indeed, vital—components of political speech and are at the core of our country's honored traditions. Protests that rely on satire—such as the College Republicans' affirmative action bake sale as well as feminist “wage gap bake sales” that aim to protest the gap between men and women's average earnings—exist to challenge, to amuse, to provoke, and even to offend. We strongly encourage you to read the landmark Supreme Court cases of *Cohen v. California* (1971) and *Hustler Magazine, Inc., et al., v. Jerry Falwell* (1988). Taken together, the precedents set by these cases protect even highly offensive material, farce, profanity, and exaggeration, and they confirm that parody and satire play essential roles in our society precisely because they challenge our deepest assumptions and beliefs.

GVSU's moral obligation to guarantee its students' free speech rights is clear; its legal obligation to uphold the First Amendment is indisputable. As a public university, GVSU has an overarching legal obligation, in addition to its moral obligation, to ensure the First Amendment rights of its students. The College Republicans' bake sale protest is a clear example of political parody, and the complaining students' reaction against it serves as an illuminating example of why the U.S. Supreme Court has seen fit to so heavily protect this type of expression. The very point of the protest was to parallel what the College Republicans view as discrimination in college admissions through affirmative action policies. Categorizing the “bake sale” as “discrimination” ignores—or willfully misinterprets—the expressive purpose of the event. Any punishment of the College Republicans or its individual members for their constitutionally protected expression would therefore be prohibited by the U.S. Constitution.

Furthermore, at least one GVSU administrator is on record suggesting that the real reason that the university is trying the students for their political expression is that some people found it “offensive.” GVSU Director of Student Life Bob Stoll was quoted in a March 25, 2005, article in *The Grand Rapids Press* as saying, “To do something this offensive is not appropriate.” Thankfully, the First Amendment does not permit state officials to punish expression merely because they deem it inappropriate or offensive.

A special function of the university as a whole is to serve as the ultimate forum for free speech. Any university serious about the search for truth should be seeking, at all times, to expand open discourse, to develop intellectual inquiry, and to engage and challenge the way individuals think. By putting the College Republicans on trial for their expression, GVSU sends the message to its students that speech is to be feared, monitored, and ultimately restrained if it is deemed sufficiently controversial or “offensive.” This message stands in stark opposition to the values of higher education. GVSU should remember, at all times, the U.S. Supreme Court’s timeless expression of the important role of our universities in *Sweezy v. New Hampshire* (1957):

The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. **To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation.** No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made.... Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die. [Emphasis added.]

Thus, GVSU’s enforcement of unconstitutional speech restrictions is wholly misplaced at an institution preparing students to be engaged citizens in a pluralistic democracy.

GVSU is not the only university that has attempted to shut down an affirmative action bake sale or punish students for holding such a protest on the grounds that it is “discriminatory.” The University of California at Irvine, the University of Colorado, and the College of William & Mary have attempted to suppress affirmative action bake sale protests on similar grounds. FIRE intervened in each of these cases and the institutions relented, realizing that an attempt to silence this type of political protest would run afoul of the First Amendment—and open the institution to legal liability.

FIRE is categorically committed to using its resources to see this situation through to a just and moral conclusion that respects your students’ First Amendment rights. Please spare Grand Valley State University the embarrassment of fighting against the Bill of Rights, by which it is

both legally and morally bound. We urge GVSU to cancel the scheduled trial and demonstrate that free speech is to be celebrated, honored, and broadened—not feared, suppressed, and restricted. Let your students exercise their basic legal, moral, and human rights; let them protest as their consciences dictate. Because of the urgency of this matter and the impending trial of the GVSU College Republicans, FIRE requests a response by 5 p.m. EDT on April 7, 2005.

Sincerely,

A handwritten signature in blue ink that reads "Robert L. Shibley". The signature is written in a cursive style with a blue ink color.

Robert L. Shibley  
Program Officer

cc:

Gayle R. Davis, Provost and Vice President for Academic Affairs, Grand Valley State University

Patricia Oldt, Vice President of Planning & Equity and Interim Affirmative Action Director,  
Grand Valley State University

Patricia Smith, Associate University Counsel for Complaints of Discrimination and Harassment,  
Grand Valley State University

Oliver Wilson, Dean of Multicultural Affairs, Grand Valley State University

Kyle Rausch