



Foundation for Individual Rights in Education

601 Walnut Street, Suite 510 • Philadelphia, Pennsylvania 19106
T 215-717-3473 • F 215-717-3440 • fire@thefire.org • www.thefire.org

Greg Lukianoff
PRESIDENT

Robert L. Shibley
VICE PRESIDENT OF
OPERATIONS

Samantha K. Harris
DIRECTOR OF LEGAL AND
PUBLIC ADVOCACY

Alan Charles Kors
CO-FOUNDER AND
CHAIRMAN EMERITUS

BOARD OF DIRECTORS

Harvey A. Silverglate
CO-FOUNDER AND
CHAIRMAN

William J. Hume
Joseph M. Maline
Marlene Mieske
Daphne Patai
Virginia Postrel
James E. Wiggins

BOARD OF ADVISORS

Lloyd Buchanan
T. Kenneth Cribb, Jr.
Candace de Russy
William A. Dunn
Benjamin F. Hammond
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

March 28, 2007

President Robert L. Carothers
Green Hall, 35 Campus Avenue
Kingston, Rhode Island 02881-1303

URGENT

Sent via U.S. Mail and Facsimile (401-874-7149)

Dear President Carothers:

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, will give you a greater sense of our identity and activities.

FIRE is deeply concerned about the threat to free expression posed by the University of Rhode Island (URI) Student Senate's disciplinary action against the URI College Republicans student group for advertising a satirical scholarship for white, heterosexual, American males. Because the Student Senate derives its authority as a public body from its use of a portion of the mandatory student activity fee funds collected by URI, its power as a representative body is implicitly authorized and sanctioned by your administration. As such, you have both the power and legal obligation to curtail Senate action that violates the constitutional rights of URI students. FIRE urges you to stop the Student Senate from imposing an unconstitutional punishment upon the College Republicans.

This is our understanding of the facts; please inform us if you believe we are in error. On November 16, 2006, the URI College Republicans advertised a White Heterosexual American Male (WHAM) scholarship in the campus newspaper, *The Good 5¢ Cigar (Cigar)*. The advertisement stated that the scholarship would consist of \$100 to be granted to an applicant who met the advertised qualifications and completed the essay questions, "In 100 words or less, what does being a White Heterosexual American Male mean to you? As a White Heterosexual American Male, what adversities have you had to deal

with and overcome?” Over 40 URI students submitted applications for the scholarship to the College Republicans.

At the February 19, 2007 Student Senate Student Organizations Advisory and Review Committee (SOARC) meeting, student senators decided that university policies prohibited the College Republicans from distributing the \$100. The College Republicans agreed that they would not disperse the money, as their intention in advertising the scholarship was to express their disagreement with scholarships awarded on the basis of race, gender, ethnicity, or sexual orientation. Since they intended the scholarship as political protest and satire, they believed their political statement had been made and there was no need to disburse the money.

Despite the fact that the College Republicans never distributed the money, SOARC nonetheless stated in a letter to College Republicans President Ryan Bilodeau that the group “did either with negligence or malice violate Article IX, Section A, Part 3, subpart b of the URI Student Senate bylaws,” which state in part,

...no recognized student organization shall discriminate or in any way impede equal opportunity on the bases of race, color, sex, gender, sexual orientation, disability, national origin, marital status, nor religious affiliation nor any other non-merit factor.

SOARC decided that as a punishment for advertising the scholarship, the College Republicans would have to write an apology to be published in the *Cigar*. On March 5, Bilodeau appealed SOARC’s ruling. On March 7, SOARC upheld its initial decision to punish the College Republicans. A memorandum from SOARC Chairman Matt Yates to Bilodeau states that even though the scholarship money was never dispersed, the College Republicans:

had acted in contravention of the URI Student Senate bylaws by advertising the WHAM scholarship...[W]e felt it important that the [College Republicans] describe in detail what they intended, why they may not distribute the scholarship, and apologize for their misleading advertisement and publicity for the scholarship... A letter to the editor of the *Cigar* would suffice for this purpose.

At the March 14 meeting of the Student Senate, the Senate denied the College Republicans’ final appeal of SOARC’s punishment. A March 28 letter from Yates to Bilodeau, informing Bilodeau of the precise terms of the punishment, reveals precisely how problematic SOARC’s insistence on an apology is. Apparently aware in some dim sense of the profound unconstitutionality of a public entity coercing a public apology for political speech at a public university, Yates attempts to parse away the illegality of SOARC’s demands:

West Virginia Board of Education v. Barnette does not apply in this case for two reasons. First, as the URI College Republicans under the law is a subsidiary of the URI Student Senate, Inc., orders regarding public communication of any corporation or its affiliates falls entirely under the purview of regulations governing corporate directives and corporate communication. Those regulations give any corporation broad discretion to craft its public communications. Second, *Barnette* only protects against compelled statements which have as their content a belief, ideology, or idea; it does not prevent compelled speech of facts or declamation, which is the compelled element of speech in this case.

Despite the pretense of legal support for SOARC's untenable position, Yates' two "reasons" amount to little more than an impermissible end run around the First Amendment protection against compelled speech to which the College Republicans are obligated by law. Simply put, demanding that the College Republicans publish a SOARC-approved apology in the student newspaper is an unconstitutional punishment, as it forces the College Republicans to engage in public expression with which they do not agree. Along with the right to speak freely, the First Amendment protects speakers from being compelled to profess statements against their will.

That the URI Student Senate imagines itself to be a corporate entity free of constitutional responsibility, enjoying "broad discretion to craft its public communications," ignores the fact that the Senate is responsible for distributing a significant portion of the mandatory student activity fee collected by URI from every student. As such, the Student Senate acts as an authorized extension of the university. Just as URI cannot compel student speech, neither can its Student Senate. As a state institution, URI must understand that it has a non-delegable duty to ensure that the First Amendment rights of its students are protected. Neither the administration nor the Student Senate, as an agent of the administration, may lawfully force students to make statements in which they do not believe.

Contrary to Yates' characterization, *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943), is directly applicable in the situation presented here. As Justice Robert Jackson wrote more than sixty years ago in *Barnette*, "[I]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." Compelled speech flatly contradicts the First Amendment's protection of free speech, is utterly inconsistent with the role of university as a "marketplace of ideas" and simply cannot be enforced at a public institution.

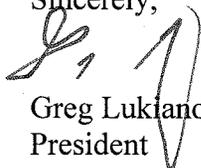
Further, Yates' understanding of the First Amendment's protection against compelled speech is mistaken. Yates writes that under *Barnette*, the First Amendment "does not prevent compelled speech of facts or declamation, which is the compelled element of speech in this case." In fact, *Barnette* and the subsequent line of compelled speech jurisprudence hold just the opposite, as succinctly stated by the Court in *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*: "compelled statements of fact ('The U.

S. Army recruiter will meet interested students in Room 123 at 11 a.m.’), like compelled statements of opinion, are subject to First Amendment scrutiny.” *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.* 547 U.S. 47 (2006), citing *Riley v. Nat’l Fed’n of Blind*, 487 U.S. 781, 797-98 (1988) (“These cases cannot be distinguished simply because they involved compelled statements of opinion while here we deal with compelled statements of ‘fact’: either form of compulsion burdens protected speech.”)

SOARC and the Student Senate have blatantly overstepped their bounds in seeking to compel the College Republicans to publicly apologize for actions that they support. As leaders in institutional governance, models for the Student Senate, and the ultimate authority in disciplinary matters, URI administrators have a legal duty to step in where the Student Senate has failed and to check its attempt to trample upon students’ most basic freedom of conscience. Make URI’s practices governing student organizations consistent with the U.S. Constitution, by which the university is legally and morally bound; require the Student Senate to abandon its requirement that the College Republicans publicly apologize for advertising its scholarship.

FIRE hopes to solve this matter amicably and swiftly. We are, however, committed to using all of our resources to seeing this matter through to a just and moral conclusion. We request a response to this letter by Wednesday, April 18.

Sincerely,



Greg Lukianoff
President

cc:

Fran Cohen, Dean of Students, URI
Melissa Boyd, Assistant Director of Student Leadership Development, URI
M. Beverly Swan, Provost and Vice President for Academic Affairs, URI
Thomas R. Dougan, Vice President for Student Affairs, URI
Maureen McDermott, Assistant Director for Student Affairs, URI
Bruce Hamilton, Faculty Advisor, URI Student Senate
Neil Cavanaugh, President, URI Student Senate
Rosie Mean, Vice President, URI Student Senate
Matt Yates, Chairman, Student Organizations Advisory and Review Committee
(SOARC), URI Student Senate
Ryan Bilodeau, President, URI College Republicans