



Foundation for Individual Rights in Education

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December 1, 2005

President William R. Harvey
Hampton University
100 East Queen Street
Hampton, VA 23668

Sent via U.S. Mail and Facsimile (757-727-5746)

Dear President Harvey:

As you can see from the list of our Directors and Board of Advisors, 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, freedom of speech, and academic freedom on America's college campuses. Our website, thefire.org, will give you a greater sense of our identity and activities.

FIRE is gravely concerned about the threat to freedom of speech and expression posed by the persecution of seven students who distributed progressive informational flyers in Hampton University's Student Center on November 2, 2005. As Hampton surely understands, the freedom to express opinions and invite dialogue with others is a hallmark of liberty and is essential to a vibrant, civil community. Hampton University must decide if it will honor the spirit of America's foundational freedoms of speech and expression, or if will instead choose the arbitrary suppression of basic civil liberties on its campus.

This is our understanding of the facts. Please inform us if you believe we are in error. On November 2, 2005, a group of approximately twenty Hampton students participated in a nationwide awareness-raising event by distributing informational flyers on issues such as the war in Iraq, the crisis in the Sudan, and Hurricane Katrina. As reported to us by the students, after about thirty minutes of distributing flyers and answering the questions of interested students inside the Student Center, the students were approached by Hampton University Police officers, who told the students to cease distributing materials, and warned some students that they must remove buttons and stickers they were wearing that read "Resist or Die, November 2." The police also demanded identification information from seven of the participants. All students involved acted in accordance with police officers' directives.

On November 28, the seven students whose information was taken down by police received letters from Dean of Men Woodson H. Hopewell stating that they “were observed posting unauthorized materials, which advocated student participation in a protest activity that had not been registered or approved. Some of the materials advocated actions considered to be a disruption of the academic activities of Hampton University (specifically ‘Nov. 2 student walkout; no school.’).”

Dean Hopewell’s letter further charges the students with violating the Student Code of Conduct by engaging in “actions to cajole or proselytize students,” violating the Policy on Student Demonstrations, and violating the Policy on the Distribution of Unauthorized Materials. Dean Hopewell said that the students were expected to appear at disciplinary hearings on December 2, 2005, and explained that the maximum penalty for these offenses would be expulsion.

The vague and extremely broad charges brought against the students involved in the literature distribution represent a potentially serious abuse of administrative power in an attempt to intimidate students and impede the freedom of speech at Hampton University. For instance, the Student Code of Conduct’s rule that in order “[t]o respect the dignity, feelings, worth, and values of others,” students are forbidden “to accost, cajole, or proselytize students, faculty or staff, parents or others...on or off campus,” carries with it remarkably broad implications for persuasive discourse of any kind at Hampton. Should simply distributing informational flyers and engaging in conversation with interested students be considered “cajoling” or “proselytizing?” If students’ sharing information with other students is considered “cajoling,” and if opening a dialogue in which many students are interested is seen as punishable “proselytizing,” then precious little speech is protected at Hampton.

Second, Hampton’s Policy on Student Demonstrations demands that “[a]ll student demonstrations must, in advance, be registered with and approved by the Chief of Police and the Director of Student Activities/Student Union.” The students involved in the November 2 incident, however, do not appear to have been engaged in a demonstration. Rather, they were witnessed *distributing informational materials*. They were neither protesting nor demonstrating, but were attempting to inform their fellow students of their view on important issues through the distribution of literature—one of the methods of communication that, since its use by our nation’s founders during the time of the American Revolution, has been seen as a special and fundamental right of all Americans.

The third charge levied against the students alleges that they violated the Policy on the Distribution of Unauthorized Materials, which states that “[t]he distribution, posting, affixing with adhesive, staples or other means, of unauthorized handbills or advertisements on University property is strictly prohibited.” While the letter of reprimand from Dean Hopewell accuses the students of “posting” flyers, the students maintain that they were merely handing flyers to students who expressed interest in their content. The university cannot honestly expect to control every exchange of a leaflet, flyer, or handout anywhere on its campus, and to do so would surely produce a campus environment smacking more of Orwell’s *1984* than of the United States in 2005. Furthermore, students have reported to

FIRE that flyers are commonly distributed and posted on campus for all types of activities, from student organizations advertising their events, to fraternities publicizing parties, to students looking for roommates. If the distributing and posting of flyers on Hampton's campus is a common occurrence, then for the university to threaten the students involved in the November 2 incident with expulsion represents the most extreme form of viewpoint discrimination.

Though FIRE generally believes that a liberal policy of free expression best serves the educational mission of any university, we also recognize and respect the right of private institutions to define their identities and make policies that reflect their distinct convictions. However, Hampton University has at several points stated a commitment to the basic freedoms that are guaranteed in the Constitution and that students and citizens across America expect to enjoy. The Student Code of Conduct, for instance, states that "it is understood that intellectual stimulation is nurtured through the sharing of ideas. Therefore, the University will maintain an open and curing (*sic*) environment." The most recent edition of the Student Handbook also affirms "the right of every student to exercise freely his/her full right as a citizen in off-campus activities in connection with local, national, or international organizations for intellectual, religious, social, political, economic or cultural purposes." How can Hampton justify encouraging its largely adult students to exercise their fundamental rights off campus while drastically limiting those very same rights on campus? Hampton even recognizes this reality when it states that in the classroom, students not only have the right but are **responsible** "for exercising [their] right of free inquiry, expression and advocacy..."

Hampton has also affirmed its commitment to freedom of the press. In October 2003, the university seized and destroyed all copies of an edition of the student newspaper, *The Hampton Script*, because the student editors refused to print a letter from the president on the front page, but instead printed it on the third page. This stunning action on the part of the university prompted intense public outcry and the withdrawal of funding from the American Society of Newspaper Editors, as well as a six-week investigation by a joint student-faculty task force, which finally established that students at Hampton "have the right to a free press in order to practice their craft in the **unfettered fashion envisioned by the framers of the First Amendment of the Constitution.**" [Emphasis added.] In that case, Hampton was forced to decide between becoming an oppressive institution where speech is controlled by the administration, or an institution in which students are free to exchange ideas and speak openly about issues that matter to them. Happily, Hampton demonstrated its commitment to constitutional freedoms and chose the latter.

You now face a similar decision. Hampton obviously values its commitment to upholding order and to expecting the highest integrity from its students. Hampton must demonstrate, however, that it also takes seriously its statement that "[a]s a comprehensive institution of higher learning, Hampton University has a long history of developing and nurturing responsible citizenship. We pride ourselves in the quality of our students and their contributions to the global community." If responsible citizenship is truly a value at Hampton, and if the university genuinely wants to equip students to contribute to the global community, then the December 2 hearings must not result in disciplinary action.

FIRE also asks you to consider the historical significance of Hampton University's heritage. As a Virginia institution, Hampton is heir to a great legacy of men who gave their fullest support—indeed, revolutionary support—to establishing the fundamental freedoms of Americans: George Mason, Patrick Henry, James Madison, Thomas Jefferson, and of course George Washington. These men pledged their lives, their fortunes, and their honor to establish the rights that Hampton University, by threatening to expel students merely for distributing literature, threatens to deny to its own students. In addition, Hampton's campus is home to the "Emancipation Oak," which Hampton's website identifies as "the site of the first Southern reading of President Lincoln's Emancipation Proclamation" to the newly freed slaves whom Hampton University was founded to educate. The very fame of this tree, which is the symbol of the university itself, stems from the controversial and groundbreaking document that was read in its shade. Is Hampton University truly prepared to risk that such an event might never be able to happen again on its campus simply because a present or future administrator might refuse to "authorize" the distribution of such a document?

FIRE asks that Hampton University reconsider its decision and dismiss the charges against the seven students who chose to peacefully act according to the dictates of their consciences. To restrict freedom of expression is to risk stifling the free and open flow of ideas upon which higher education relies. Surely, this cannot describe your vision for Hampton University.

FIRE is committed to supporting the rights of your students and, ultimately, to seeing this matter through to a just and moral conclusion. In light of the nature of the charges and possible seriousness of the possible penalty for these students, FIRE requests a response by December 9, 2005.

I look forward to your response.

Sincerely,



Robert L. Shibley
Program Manager

cc:

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