



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
SENIOR VICE PRESIDENT

William Creeley
DIRECTOR OF LEGAL AND
PUBLIC ADVOCACY

Adam Kissel
VICE PRESIDENT OF
PROGRAMS

Alan Charles Kors
CO-FOUNDER AND
CHAIRMAN EMERITUS

BOARD OF DIRECTORS

Harvey A. Silverglate
CO-FOUNDER AND
CHAIRMAN

Barbara Bishop
William J. Hume
Richard Losick
Joseph M. Maline
Marlene Mieske
Daphne Patai
Virginia Postrel
Daniel Shuchman

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
Muriel Morisey
Steven Pinker
Milton Rosenberg
John R. Searle
Christina Hoff Sommers

January

Candace or Steve Baard
East Carolina University
Office of the Chancellor
East Front Street

Greenville North Carolina
Office of the Mayor
Municipal Administration Center
100 South Main Street
Greenville, North Carolina 27633

In a November 9 article in *The Daily Reflector*, a local newspaper Hardy's quoted in a public statement saying that the decision by *The East Carolinian* to publish a photo of a streamer that showed frontal nudity was in very poor taste and that East Carolina University does not agree with that decision and does not support it. Hardy added that with the freedom of the press comes a certain level of responsibility about what is appropriate and effective in order to get the message across. According to the *Reflector*, Iso stated that the decision to publish the pictures was made by the editor of the *Reflector* and so reported that Iso said that as a state employee he cannot easily interfere with decisions made by the student staff and would be a violation of privacy if he did that.

The East Carolinian is an independent student-run newspaper funded by student activity fees, operated independently of EC's pedagogical or academic interests and produced without reference to or involvement with EC's educational curriculum. The constitution of EC's Media Board protects *The East Carolinian's* freedom of expression and acknowledges its editorial independence.

Editorial policy of an individual student shall be excluded from board control. The board shall uphold and support the First Amendment guarantees granted to the printed media under the First Amendment.

It is a wise policy. Most importantly, it respects the First Amendment rights of student journalists. However, it is the additional benefit of student independence from liability incurred by student expression, as courts have indicated that institutions exerting control over student publications may be found liable for the content published therein. See e.g., *Lewis v. St. Cloud State University*, 9 N.D. 100, 101, 2001 WL 100 (Minn. App. 2001) because state university systems forbid university from exercising any editorial control over the contents of the university's student-run newspaper. University could not be found liable for allegedly defamatory content published therein, *Mazart v. State*, N.Y. 100, 101, 2001 WL 100 (N.Y. Ct. App. 2001). 9 r 9 9 un e

unlike the contrary to the important protection of constitutional freedoms now are more
vital than the community of American schools

The First Amendment protects the right of *The East Carolinian* to print and disseminate
photographs such as those published in the November issue of the First Amendment
protection as obscenity speech must meet the exacting three-prong test announced by the
Supreme Court in *Miller v. California*, 384 U.S. 461 (1966).⁹ However with regard to the
photograph in question, the average person applying contemporary community
standards would not find that the published work taken as a whole appeals to the prurient
interest and national interest in sex, the work does not depict or describe in a patently
offensive way sexual conduct, and the work taken as a whole does not appear to be
literary, artistic, political or scientific value. *The East Carolinian* report in that issue
disseminated news about a streamer to the university community does not qualify as
obscene under *Miller* and thus protected under the First Amendment.

EC may not punish or restrict protected expression published by *The East Carolinian*.
Courts have concluded that adverse administrative action by a public university against a
student newspaper as a result of protected speech violates the First Amendment. See e.g.,
Husain v. Springer.

