

Foundation for Individual Rights and Education
631 Walnut Street, Suite 400 Philadelphia, Pennsylvania 19106
Tel: 215-381-1734 Fax: 215-381-1303
fire@thefoundation.org • www.foundationforindividualrights.org

March 28, 2007

President Robert I. Greenhall
Kingston, Rhode Island 02881-1303

URGENT

Sent via U.S. Mail at approximately 4:15 PM (EST) 3/28/07

Dear President Greenhall:

As you can see from the attached letter, the Board of Directors of the Foundation for Individual Rights and Liberties (FIR) is deeply concerned about the political and ideological freedom of expression on your website, www.firfoundation.org, and our activities.

FIRE has been a proud member of the URI College Republican Society since its formation. We have been proud to support the URI Senate's mandatory student body election process. As a result of our support, the URI Senate has been able to fund the Student Body Election Process. We are deeply disappointed that the URI Senate has decided to curtail Senate activities and punish members of the URI College Republican Society.

This is our first time in error. On White Heterosexual newspaper, we advertised a scholarship for qualified students, what do you think of a White Heterosexual

Board of Advisors, the Foundation for Individual Rights and Liberties (FIR) is a group of individuals across the country who are dedicated to the promotion of liberty, legal quality, due process, and, in this case, American college campuses. Our sense of our identity and mission is to support the rights of individuals in the field of civil and public intellectual freedom of expression. We are a group of individuals who are dedicated to the promotion of liberty, legal quality, due process, and, in this case, American college campuses. Our sense of our identity and mission is to support the rights of individuals in the field of civil and public intellectual freedom of expression.

the fact that the URI College Republican Society (URI CRS) has been a proud member of the URI Senate since its formation. We have been proud to support the URI Senate's mandatory student body election process. We are deeply disappointed that the URI Senate has decided to curtail Senate activities and punish members of the URI College Republican Society. We are deeply disappointed that the URI Senate has decided to curtail Senate activities and punish members of the URI College Republican Society.

h and overcome? Over 100 URI students submitted applications for the scholarship to College Republicans.

the February 19, 2001 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 Godeau that the group violated "with negligence or malice Article IX, Section A, Part 3, subparagraph (f) 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 punishment for advertising the scholarship, the College Republicans would have to print an apology to be published in the *Cigar*. On March 5, Godeau 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 Godeau 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 W-I-A-V scholarship... [W]e felt it important that the [College Republican] 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 upheld the College Republicans' final appeal of SOARC's punishment. A March 28 letter from Yates to Godeau, informing Godeau of the precise terms of the punishment, reveals precisely how problematic SOARC's insistence on an apology is. Apparently aware in some dimension of the profound unconstitutionality of a public entity coercing a public apology for political speech and a public university, Yates attempts to parse away the illegality of SOARC's demands:

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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., or less regarding public communication of any corporation or its affiliates falls entirely under the purview of regulations governing corporate directives and corporate communication. These 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 fact 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 of the student newspaper is an unconstitutional punishment, 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.

...any recruiter will m... interested stud... in Room 1... 23 at 11 a.m.'), like compelled
...ents of opinion, ar... subject to First A... amendment so... atiny." *Rumsfeld v. Forum for*
4... *Academic & Institutional Rights, Inc.* 547 U... S. 47 (2006)... citing *Riley v. Nat'l Fed'n of*
B... 487 U.S. 781, 797 (1988) ("These... cases cannot... be distinguished simply
... because they involved co... compelled statements... of opinion w... hile here we deal with
... compelled statements of... : either form... of compulsion... burdens protected speech.")

...Al C and the Student... have blatantly... ly overstepped... d their bounds in seeking to
...ppl the College Repu... icans to publicl... apologize for... actions that they support. As
...ents in institutional go... rnance, models... or the Student... Senate, and the ultimate
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...g all of our resources... o solving this ma... er through to... just and moral conclusion. We
...e a response to this... tter by Welnes... y, April 18.

Sincerely,

G. J. Lukianoff
President

- ... Cohen, Dean of Students, URI
- ... is a Boyd, Assistant Director of Student Leadership Development, URI
- ... Beverly Swan, Provost and Vice President for Academic Affairs, URI
- ... Thomas R. Dougan, Vice President for Student Affairs, URI
-en McDermott, Assistant Director for Student Affairs, URI
-ce Hamilton, Faculty Advisor, URI Student Senate
- Cavanaugh, President, URI Student Senate
-ie Mean, Vice President, URI Student Senate
-tates, Chairman, Student Organizations Advisory and Review Committee
- O. RC), URI Student Senate
-n Bilodeau, President, URI College Republicans