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# Red Light, Green\* Light

By **Scott L. Glabe** | [Friday, May 13, 2005](#)

In what the Foundation for Individual Rights in Education (FIRE) has called “a remarkable development for liberty on campus,” Dartmouth has cleared up the mystery surrounding the College’s speech code. General Counsel Robert Donin, in a May 2 communiqué (see inset), wrote to FIRE to “confirm that neither President James Wright’s May 10, 2001 letter nor Dean of the College James Larimore’s May 11, 2001 letter represents a binding statement of Dartmouth College policy or can be relied upon to support a complaint based on the content or viewpoint of controversial speech” [emphasis added].

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—College Counsel Robert Donin convinced FIRE of Dartmouth’s benign intentions with this letter. [\[page one\]](#) [\[page two\]](#) —

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The letters in question were authored by the administrators as justification for the permanent de-recognition of Zeta Psi fraternity following the discovery of two offensive internal newsletters. Donin had recently claimed that the letters “express the writers’ personal convictions [about] the specific case at hand.” Wright had written that:

[I]t is hard to understand why some want still to insist that their ‘right’ to do what they want trumps the rights, feelings, and considerations of others. We need to recognize that speech has consequences for which we must account.

FIRE reasoned that this declaration could form the grounds for the punishment of insensitive speech and thus accorded Dartmouth a “red” free speech rating, its lowest. Moreover, the College’s contention that these letters did not constitute official policy was undermined by the prominent place they were accorded on Dartmouth’s website.

However, as we previously reported [see TDR 4/22/05], the letters were mysteriously removed after petition candidates Todd Zywicki ‘88 and Peter Robinson ‘79 made free speech a centerpiece of their campaigns to become College Trustees. The fate of Dartmouth’s speech code

seemed unclear, and Donin and President Wright added to the confusion with a series of ambiguous and seemingly contradictory statements.

However, in FIRE's estimation, Donin's letter constitutes a "clear and unambiguous statement" that the College does not in fact have a speech code. Concomitantly, the organization will give Dartmouth its best free speech rating, a distinction shared only by the University of Pennsylvania among Ivy League institutions.

This rating will be, however, firmly affixed with an asterisk. For, while the speech code is gone, speech-based punishment continues—in the form of the perpetual de-recognition of Zeta Psi. Nonetheless, FIRE elected to alter Dartmouth's rating because, in the words of President David French, "Speechcodes.org [FIRE's website] evaluates formal policies, not the free speech culture of the school (which is difficult to objectively define) or individual speech-restrictive actions (which are dealt with through FIRE's complaint process)."

The end result is that the administration has repudiated the very grounds under which Zeta Psi was punished. It follows that the fraternity's sanction is therefore arbitrary, and the removal of Dartmouth's speech code may have limited effect." Administration officials have attempted to play down FIRE's victory; when approached, Dean Larimore seemed largely indifferent to an announcement about "letters we wrote 3-4 years ago." It thus remains to be seen whether Donin's letter will put an end to the long line of limitations on expression.

In addition to the de-recognition of Zeta, "Psi Upsilon fraternity[']s entire brotherhood was banned from holding public parties for months on end because a few brothers chanted a distasteful old cheer late at night," writes former editor-in-chief and current National Review associate editor Alston Ramsay '04 in a letter to French posted on FIRE's website. Along with the College's on-again, off-again prohibition of door-to-door distribution of publications, these events "represent infringements upon free speech for which Dartmouth has in no way, shape, or form atoned."

Yet, while Ramsay "fear[s] that this green light [from FIRE] will give Dartmouth a green light to continue ill-conceived policies like the delivery one, and it gives the administration cover for past actions that were, without a doubt, attacks on free speech," French contends that there is a "better chance" of these policies being ameliorated "in the absence of a speech code than in the presence of one."

It remains to be seen whether the administration has undergone a genuine change of heart. Trustee candidate Robinson writes that

It's one matter for the College to remove from its website two offensive and wrong-headed letters....It will be another matter altogether for the College to commit itself, affirmatively and unambiguously to a policy of true freedom of speech on campus.

French says that Donin's letter constitutes "a wholly positive step," but Robinson cautions that it "represents a necessary and woefully overdue first step—but only a first step." Trustee candidate Zywicki writes that "the next step will be for Dartmouth to positively articulate an official policy on free speech that removes any further ambiguity about whether students or student organizations can be punished on the basis of the content of their speech," a policy that would presumably explicitly repudiate Wright and Larimore's previous stance.

This next step could be long in coming given that, according to the Daily Dartmouth [5/10/05], "[b]oth Wright and Larimore still stand behind their statements regarding the actions of Zeta brothers in their letters supporting Zeta's derecognition."

However, as French notes, punishing speech in future incidents "will be much more difficult politically, procedurally, and legally following the revocation of the speech code."



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“Politically” is key modifier in that statement, for, while President Wright et al. can still arbitrarily punish speech, it will be much difficult for it do so thanks to the light shed on this issue by FIRE, the Review, and the petition candidates. The end result of the interplay between these outside voices, writes Robinson, is that “enough alums finally got fed up...the more alums learn—and, in turn, the more sources of information...that remain independent of the administration’s purring media machine—the better for Dartmouth.”

“In the end, let’s not forget: today, Dartmouth is closer to having a healthy respect for free speech than it has been for many, many years,” former Review staffer and FIRE employee Emmett Hogan ‘01 wrote. “This is undoubtedly cause for celebration.”

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