



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

May 29, 2007

The Honorable Michael Bloomberg
Office of the Mayor
City Hall
New York, New York 10007

Sent via U.S. Mail and Facsimile (212-788-8123)

Dear Mayor Bloomberg:

The Foundation for Individual Rights in Education (FIRE) was very pleased to see your strong endorsement of the basic principles of free speech in your commencement address at Tufts University last weekend. You may be distressed to learn, however, that it appears you have been badly misled by the Tufts administration concerning the university's respect for free speech in the incident you mentioned. You said:

This past December, *The Primary Source*—which is a campus magazine—printed some things that much of the community ardently disagreed with and many considered quite offensive. But instead of suppressing the publication (which might very well have happened on other campuses) and despite the emotion of the moment, I think the students and the faculty and all of Tufts University deserve an enormous amount of respect because you respected the rights of others to express themselves. You discussed the piece...you debated it...you picked it apart. It was a classic example of free speech versus free speech. And in that battle, I've always thought everybody wins.

We would share your enthusiasm for Tufts' decision had the university indeed decided to use this incident as an opportunity for debate and discussion. Unfortunately, it did not. Instead of "respect[ing] the rights of others to express themselves" when confronted with speech they found offensive, the Tufts community put the speakers on trial.

On May 10, *The Primary Source (TPS)* was found guilty by the campus judiciary (which consists of both students and faculty members) of "harassment" for publishing two satirical articles. Harassment is a serious offense, subject to federal regulation on college campuses. The Supreme Court has defined student-on-student harassment as a pattern of behavior that discriminates on the basis of

race or gender and that is so “severe, pervasive, and objectively offensive” as to have a “systemic effect” of denying a student the opportunity to receive an education. However tasteless they may be, jokes in student magazines come nowhere near this standard and are, in fact, strongly protected by the First Amendment.

Tufts apparently also failed to inform you that *TPS* was found guilty of harassment not only for the December parody, which mocked race-based admissions, but also for an article appearing in *TPS*’ April 11 issue. Specifically, the offending item was a satirical advertisement entitled “Islam—Arabic Translation: Submission,” that satirized Tufts’ “Islamic Awareness Week” by pointing out what the authors described as “astonishingly intolerant and inhuman behavior” in the Muslim world. The article relies on quotes from the Koran and factual assertions including: “Author Salman Rushdie needed to go into hiding after Iran’s Ayatollah Khomeini declared a fatwa calling for his death for writing *The Satanic Verses*, which was declared ‘blasphemous against Islam,’” and “The seven nations in the world that punish homosexuality with death all have fundamentalist Muslim governments.”

While most of these statements are flatly true (our own research indicates there are, in fact, eight Islamic countries that punish homosexuality by death), Tufts nonetheless found that the article constituted harassment because it allegedly “targeted members of the Tufts Muslim community for harassment and embarrassment,” and “Muslim students felt psychologically intimidated by the piece.” To FIRE’s knowledge, such a ruling is unprecedented: a university that clearly promises its students a commitment to robust free speech has found a student paper guilty of harassment for publishing verifiable facts. If publishing factual statements constitutes “harassment,” then “harassment” has become the exception that swallows the rule of free speech. From your inspiring speech, I think we can both agree that, while students have every right to object, engage and debate articles they find offensive, neither the article in December nor this satirical article should be deemed harassment.

It is remarkable that President Bacow apparently did not mention the harassment ruling to you. Following Tufts’ decision, he has been at the center of a national controversy, receiving unfavorable attention from the *New York Post*, FOX News, and *The Washington Times*, among other media outlets. Bacow has even defended the decision. After receiving an e-mail criticizing the panel’s decision, Bacow responded on May 12:

I believe in freedom of speech and expressed my own views in the attached article that was published in the *Tufts Daily*. I have no problems with students expressing political opinions, however unpopular.

That said, they should take responsibility for what they write. The Committee on Student Life did not limit *The Primary Source*’s capacity to publish. They only held that they must sign their articles. I don’t think this is unreasonable.

Bacow’s response is deeply troubling for a number of reasons. First, it demonstrates that while Bacow knew about the harassment ruling well before your speech, he let you proceed with a speech praising the university for refusing to punish the paper. Second, Bacow completely ignores the fact that the paper was found guilty of “harassment,” a brazen distortion of a defined

legal term. Third, Bacow says he supports curtailing anonymous or pseudonymous speech. As you well know, it is common practice for newspapers not to sign their editorials or to author articles as an institution. Furthermore, anonymous and pseudonymous writing has been crucial not only in the founding of the United States, but throughout our country's history. Sadly, that *TPS* was found guilty of such a serious offense has only proven the need for anonymity at Tufts. If a sole author had been named, that student might have been faced with expulsion for "harassment."

Lastly, not only was *The Primary Source* found guilty of a serious offense and required to publish the names of the author of every subsequent article, but the finding against *TPS* also ominously hinted that its future funding will be cut because of its controversial articles.

As we share a common belief in the essentiality of free and open discourse both on and off campus, I ask your help in convincing Tufts University President Bacow to overturn this dangerous decision.

Warmest regards,



Greg Lukianoff
President

cc:

Patricia E. Harris, First Deputy Mayor

Stu Loeser, Press Secretary

Carol A. Robles-Roman, Deputy Mayor for Legal Affairs and Counsel to the Mayor

Kevin Sheekey, Deputy Mayor for Government Affairs

Shea Fink, Senior Advisor

Dennis M. Walcott, Deputy Mayor for Education and Community Development

James Anderson, Communications Director

Edward Skyler, Deputy Mayor for Administration

Nat Hentoff, FIRE Board of Advisors

Michael Meyers, New York Civil Rights Coalition

Dorothy Rabinowitz, *The Wall Street Journal*