



## Foundation for Individual Rights in Education

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David French  
PRESIDENT

April 22, 2005

Greg Lukianoff  
DIRECTOR OF LEGAL AND  
PUBLIC ADVOCACY

President Scott Ralls  
Craven Community College  
800 College Court  
New Bern, North Carolina 28562

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*Sent by U.S. Mail and Facsimile (252-638-4232)*

Dear President Ralls:

As you can see from our Directors and Board of Advisors, the Foundation for Individual Rights in Education (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, freedom of religion, academic freedom, due process, and, in this case, freedom of speech and of the press on America's college campuses. Our website, [thefire.org](http://thefire.org), will give you a greater sense of our identity and activities.

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FIRE is gravely concerned about Craven Community College's apparent effort to alter the *The Campus Communicator's* governance structure so that the college can exercise prior review and censorship over the content of the student newspaper. This attempt violates the First Amendment of the United States Constitution and demonstrates Craven Community College administrators' disturbing lack of respect for students' rights as well as a lack of understanding of the constitutional rights of freedom of speech and of the press.

This is our understanding of the facts. Please inform us if you believe we are in error. In its March 2005 issue, *The Campus Communicator* (Craven Community College's main student newspaper) printed a column by Amanda Worley entitled "Between the Sheets." This column consisted primarily of a list of activities readers might use to "jolt tired sex lives." While the column was risqué, nothing in it came close to matching the constitutional definition of "obscenity." Several readers complained about the content of this column to the newspaper's staff as well as to college administrators. These complaints prompted Craven Community College administrators to propose changes to the governance and editorial authority of the newspaper that would drastically reduce the independence of the paper, leaving room for prior review of newspaper content by college administrators.

Attached, please find the Student Press Law Center's (SPLC's) excellent letter of March 21, 2005, to Corey Freidman, the *Campus Communicator's* editor. SPLC's letter is a cogent and on-target analysis of the law regarding Craven Community College's actions. FIRE would particularly like to draw your attention to the following statement in that letter:

The law is clear: at a public college or university, the student editor is responsible for making all decisions regarding the editorial content in his or her student publication. School officials, while they may act in an advisory role, are required to exercise a strictly "hands-off" approach.

According to the *New Bern Sun Journal*, another community college in North Carolina has recognized this legal reality. In a March 24, 2005, article, K.J. Williams wrote:

At Carteret Community College, *The Breakwater*, its monthly student newspaper, has no staff oversight of its content. Adviser David Travis said he does not oversee its content because that would be illegal.

"I provide advice if they ask for it and I provide education to them. But there is no previewing of the paper at all," he said. "You wouldn't want anyone to infringe on your First Amendment freedoms, would you?"

Carteret Community College seems to have grasped what Craven Community College has not: **public institutions have both a legal and moral duty not to engage in censorship or prior review of student publications.**

Several of your own statements on this controversy have given us further cause for concern. For instance, in the *Sun Journal* article of March 25, mentioned above, you are quoted as saying, "Our position as a college is you cannot have an independent and open forum." In addition, according to a recording FIRE has obtained of a March 23 meeting with staff members of *The Campus Communicator* and members of the press, you stated:

We [Craven Community College] are a 115D [the section of North Carolina law governing community colleges] organization. We are not authorized to provide an independent and open forum.... There is nothing that limits open forums; there is nothing that authorizes the Community College System to have an independent forum that is divorced, not connected, to our educational mission.

Craven Community College must recognize that the North Carolina law that governs community colleges does not need to include specific and explicit provisions for an independent or open forum. Such a forum is already provided for by the First Amendment to the U.S. Constitution. A public college like Craven Community College is a state government agency that has both a moral and a legal responsibility not to restrict freedom of the press or freedom of speech on its campus.

FIRE is also aware that Craven Community College has been considering the sale or "outsourcing" of *The Campus Communicator* to Freedom Communications, Inc. While FIRE

takes no position on the sale of the newspaper, please keep in mind that such a sale will not end or lessen Craven Community College's obligation to preserve students' First Amendment right to freedom of the press. Indeed, if another group of students were to start a new campus newspaper, they would enjoy the same rights that the *Communicator* currently enjoys. Selling the newspaper might end the immediate conflict with the *Communicator*, but it would not make future administrative censorship of campus publications any more legally or morally acceptable.

FIRE urges Craven Community College administrators to carefully read the attached letter from the Student Press Law Center and to familiarize themselves with their duty to uphold our nation's laws and constitution. In addition to being unconstitutional, administrative censorship of a college newspaper is an unreasonable and shameful abuse of authority. FIRE requests that the administration of Craven Community College loudly and clearly reject campus censorship, and work to assure its students that freedom of expression is to be celebrated as a foundational American freedom rather than feared as an agent of controversy. FIRE is committed to using all of its resources to oppose any further censorship of *The Campus Communicator* or any other campus publication.

Due to the nature of the situation and the severity of this infringement on students' rights, we respectfully request a reply by Monday, May 2, 2005.

Sincerely,



Robert L. Shibley  
Program Manager

cc:

Cindy Hess, Executive Vice President for Instruction, Craven Community College  
Diane Tyndall, Associate Vice President for Institutional Advancement, Craven Community College  
Catherine Hewlette, Dean of Arts, Sciences, and Developmental Studies, Craven Community College  
John Fonville, Vice President for Student Services, Craven Community College  
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Earline Sills Williams, Chair, Craven Community College Board of Trustees  
Don Brinkley, Vice-Chair, Craven Community College Board of Trustees  
Mark Goodman, Student Press Law Center  
Corey Friedman  
Mitzi Ponce

Encl.



March 21, 2005

Corey Friedman  
Editor  
*The Campus Communicator*  
104 Student Center  
800 College Court  
New Bern, NC 28562

Dear Mr. Friedman:

Thank you for your telephone call relating some of the recent problems you have encountered as editor of *The Campus Communicator*, Craven Community College's student newspaper. Specifically, you have told me that school officials are considering a change in the paper's governing structure based on a dislike of its recent content.

In an effort to better inform yourself and in anticipation of a meeting with college administrators, you have asked for information regarding the general law under which the collegiate student press in America operates. As the only legal assistance agency in the country devoted exclusively to protecting and educating the student media about their First Amendment and freedom of information rights and having responded to over 2,000 legal assistance requests last year alone, I am happy to respond.

The recent acts by Craven Community College officials that you describe are extremely disturbing -- and illegal. The

U.S. Supreme Court first explicitly recognized that public school students enjoy First Amendment protections in *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969). Although the *Tinker* decision involved symbolic expression of high school students, the Court subsequently applied the same constitutional principles to a case involving censorship of a student publication at a public college. *Papish v. Board of Curators*, 410 U.S. 667 (1973). Recently, the Court again affirmed the strong First Amendment protections afforded college student publications when it struck down a decision by University of Virginia officials to withdraw school funding of a student publication solely because of its content. *Rosenberger v. University of Virginia*, 115 S. Ct. 2510 (1995).

Moreover, in a comprehensive and consistent body of case law that began even prior to the Supreme Court's ruling in *Tinker* and that continues to this day, lower federal courts have made clear that First Amendment protections must be afforded to student media at public colleges and universities, even though the school may provide funds and facilities. See, e.g., *Dickey v. Alabama Board of Education*, 273 F. Supp. 613 (M.D. Ala. 1967); *Kincaid v. Gibson*, 236 F.3d 342 (6th Cir. 2001) (en banc). Indeed, as one court has said, student publications at state-supported schools are entitled to the constitutional protections afforded all members of the

"press," including freedom of expression for editors. *Sinn v. Daily Nebraskan*, 638 F. Supp. 143 (D. Neb.), *aff'd* 829 F.2d 662 (8th Cir. 1976).

The law is clear: at a public college or university, the student editor is responsible for making all decisions regarding the editorial content in his or her student publication. School officials, while they may act in an advisory role, are required to exercise a strictly "hands-off" approach. For example, a school, or those acting on the school's behalf, may not withdraw, withhold or limit funding, fire editors, censor articles or issues, "stack" a publications board, require permission for controversial articles, limit access to facilities or equipment or take any other action whose effect or intent is to mold, manipulate or inhibit constitutionally protected expression. *Bazaar v. Fortune*, 476 F.2d 570 (5th Cir.), *modified en banc per curiam*, 489 F.2d 255 (5th Cir. 1973), *cert. denied*, 416 U.S. 995 (1974); *Lueth v. St. Clair County Community College*, 732 F.Supp. 1410 (E.D. Mich. 1990); *Antonelli v. Hammond*, 308 F.Supp. 1329 (D. Mass. 1969); *Trujillo v. Love*, 322 F.Supp. 1266 (D. Colo. 1971); *Stanley v. Magrath*, 719 F.2d 279 (8th Cir. 1983); *Schiff v. Williams*, 519 F.2d 257 (5th Cir. 1975),

Moreover, courts have been steadfast in holding that administrators cannot censor a student publication merely

because they are unhappy with its content, be it for reasons of political views, physical appearance, or a fear of "inferior quality." Of particular relevance to your situation is the North Carolina case *Joyner v. Whiting*, 477 F.2d. 456 (4th Cir. 1973), where a federal appellate court said that the president of North Carolina Central University could not exert control over the student newspaper merely because the content was controversial. Specifically, the court noted that protected expression cannot be limited by a public college administration's "requiring imprimatur of controversial articles [...] or asserting any other form of censorial oversight based on an institution's power of the purse." *Id.* at 460.

I hope that you are able to resolve the situation you described in an amicable manner. I urge you to share this information with Craven Community College officials and ask that they reconsider their actions immediately. I cannot imagine that they want to find themselves the defendants in a First Amendment legal battle that they would ultimately lose. Nevertheless, if they refuse, we would be happy to consult with members of our nationwide Attorney Referral Network to assist you in finding local *pro bono* counsel. We would also help you contact local and national media to assist you in publicizing the school's actions.

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We hope that this information has been of some help. If you have any questions, please feel free to contact us.

Sincerely,

STUDENT PRESS LAW CENTER

A handwritten signature in black ink, appearing to read 'Adam Goldstein', written over a horizontal line.

Adam Goldstein, Esq.  
New Media Legal Fellow