



## Foundation for Individual Rights in Education

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David French  
PRESIDENT

April 19, 2005

Greg Lukianoff  
DIRECTOR OF LEGAL AND  
PUBLIC ADVOCACY

President James Wright  
Dartmouth College  
Office of the President  
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Hanover, New Hampshire 03755

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Dear President Wright:

By now, I am sure you are familiar with the Foundation for Individual Rights in Education (FIRE) and our commitment to protecting individual rights—particularly freedom of speech—on America’s college and university campuses. I am writing to you today regarding the ongoing controversy over Dartmouth College’s commitment to free speech, as Dartmouth has been coming under increasing pressure to reaffirm that commitment.

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As you know, FIRE’s speechcodes.org website rates Dartmouth College as a “red light” institution for freedom of speech. This rating is based primarily on your May 10, 2001, letter to the Dartmouth community regarding a controversy involving the Zeta Psi fraternity. In that letter, you stated:

After the Trustee announcement, I met with the presidents of the CFS [Coed, Fraternity, and Sorority] organizations and told them that the administration would work with their organizations in meeting these new challenges. In return, we expected each of them to contribute to the community, to be supportive of our educational mission and our community values. Specifically, I said that I expected them to take action to address allegations of conduct that was demeaning to women and others, that was racist, or that was homophobic. As a community committed to fairness, respect, and openness, we have no patience with or tolerance for bigotry or demeaning behavior. I affirm here, with deep personal conviction, that Dartmouth is and will be an actively anti-sexist, anti-racist, and anti-homophobic institution and community.

...In a community such as ours, one that depends so much upon mutual trust and respect, it 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.

Your remarks sweep broadly enough (especially when combined with the content of Dean James Larimore's May 11, 2001, letter) to restrict freedom of speech in exactly the same manner as a formal speech code. The reasons for this assessment are contained in FIRE's February 28, 2005, letter to Dartmouth trustee T. J. Rodgers (attached). Moreover, the inclusion of the letters in a prominent place on Dartmouth's website gave the clear impression that the letters were, in fact, policy statements rather than merely aspirational expressions of a personal philosophy.

However, three events give FIRE cause to consider reevaluating its rating of Dartmouth. First, you have recently made statements on the subject of speech that indicate that your administration will actively protect rights to free speech and academic freedom. In these remarks, taken from your September 24, 2004, convocation address, you stated,

[There are] two values central to our academic purpose: our commitment to freedom of expression and our obligation to foster here a true inclusive community.... [The] corollary of freedom of speech is the freedom to criticize that which is said. And sometimes this freedom to disagree becomes an obligation.... Academic communities at their best are places that challenge more than they reinforce.

While these remarks were not enough to change Dartmouth's rating (as we explained in our February 28, 2005, letter), the remarks take on added significance in the wake of the additional developments described below.

Second, FIRE has observed that your letter of May 10, 2001, apparently has been removed from Dartmouth's website. Formerly available at <http://www.dartmouth.edu/~sli/documents/president010510.html>, a link to that address now turns up a message stating that "This Page Has Moved." While the page states that "no content was deleted," a search of Dartmouth's website no longer turns up any results for the May 10, 2001, letter.

Finally, on April 18, 2005, Robert Donin, General Counsel for the college, wrote a guest column for *The Dartmouth* in which he stated:

The Foundation for Individual Rights in Education has cited comments in community letters written by President Wright and Dean Larimore shortly after the Zeta Psi decision as the basis for FIRE's contention that Dartmouth has a "speech code." Those two letters do express the writers' personal convictions about racist, sexist and homophobic behavior and the effect of such behavior on the College community.

Removed from the context of the Zeta Psi case, these comments might imply a broader regulation of expression. But the letters were prompted by, and addressed to, the specific case at hand. (Both letters were commenting on the decision already reached by Dean Martin Redman concerning Zeta Psi, rather than setting

forth policies that led to that decision.) The assertion that the letters constituted official “policies” subjecting students to penalties for discriminatory or unpopular speech per se is incorrect.

Taken together, these three developments indicate that neither your May 10, 2001, letter nor Dean Larimore’s May 11, 2001, letter represent binding statements of college policy, and they cannot be relied upon to support any student or faculty complaints based on the content or viewpoint of controversial speech. FIRE respectfully requests that you confirm this understanding and that you confirm that Dartmouth’s excellent statement of Freedom of Expression and Dissent (contained on page 9 of the Student Handbook) is the college’s definitive declaration of student rights to free speech.

Contrary to recent statements from your administration, FIRE is not an “interest group.” As you can see from our Board of Directors and Board of Advisors (and as you know from personal experience and interaction), FIRE is a nonpartisan organization made up of civil liberties leaders from across the political spectrum. Our only “interests” are free speech, religious liberty, due process, freedom of conscience, and legal equality on campus. FIRE is committed to accurately evaluating a college’s free speech policies, and it is eager to clear up any confusion regarding the relationship between the May 10 and May 11, 2001, letters and Dartmouth’s statement of Freedom of Expression and Dissent.

Thank you for taking the time to address the concerns raised by this letter, and we look forward to your response.

Sincerely,

A handwritten signature in blue ink, appearing to read "D French". The signature is written in a cursive, somewhat stylized font.

David French  
President

cc: T. J. Rodgers

Encl.



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David French  
PRESIDENT

February 28, 2005

Greg Lukianoff  
DIRECTOR OF LEGAL AND  
PUBLIC ADVOCACY

Mr. T. J. Rodgers  
President and Chief Executive Officer  
Cypress Semiconductor Corporation  
3901 North First Street  
San Jose, California 95134-1599

BOARD OF DIRECTORS

Alan Charles Kors  
CHAIRMAN

Re: Dartmouth's Speech Policies

Harvey A. Silverglate  
VICE CHAIRMAN

Dear Mr. Rodgers:

William J. Hume  
Joseph M. Maline  
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Daphne Patai  
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James E. Wiggins  
Kenny J. Williams (d. 2003)

Thank you very much for your February 7, 2005, letter requesting that FIRE “review and upgrade Dartmouth’s free speech rating” on our website, [www.speechcodes.org](http://www.speechcodes.org). As you know, Dartmouth has been rated as a “red light” school on the site, meaning that the college has at least one policy that “clearly and substantially” restricts freedom of speech.

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After we received your letter, President Wright was kind enough to write FIRE on February 21, 2005, thanking us for sending him a copy of our new *Guide to Free Speech on Campus* and enclosing a copy of the remarks he gave at Dartmouth’s convocation on September 21, 2004. These remarks are indeed encouraging, and if they represent the true state of affairs on campus, FIRE certainly would be willing to upgrade Dartmouth’s speech ratings. It is FIRE’s intention to accurately measure the state of free speech policies on campus, and it is our hope that more schools – especially schools as vital to our nation as Dartmouth College – will shed repressive speech restrictions and embrace the marketplace of ideas.

Unfortunately, however, we cannot yet upgrade Dartmouth’s rating. While President Wright’s September 21, 2004, remarks were a positive step, our own investigation of Dartmouth documents and practices reveals two problematic items. First, it appears that President Wright’s May 10, 2001, letter to the Dartmouth community, which substantially restricts free speech, is still in force. Second, our best information indicates that the college continues to take action against the Zeta Psi fraternity, which was punished in 2001 as a result of speech-related activities. For FIRE to upgrade Dartmouth’s speech rating, the college must clearly state that President Wright’s May 10, 2001, letter is no longer an

expression of school policy. FIRE also requests that Dartmouth rescind any speech-related punishment administered under the terms of that letter.<sup>1</sup>

The May 10, 2001, letter, if issued by the president of a public university, would constitute an unconstitutional speech code. President Wright's letter conditions free speech on the reactions of the least tolerant listener, is vague and ambiguous, and clearly singles out certain kinds of speech for punishment simply because they advocate allegedly unacceptable points of view.

The letter contains the following statement:

In a community such as ours, one that depends so much upon mutual trust and respect, it 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.

Note that President Wright clearly places the "feelings" of others over the "right" to free speech. When a person's subjective feelings can trump the objective right to speak, then no one's speech is free. At Dartmouth, if a student wants to make a controversial argument on an emotional topic (such as affirmative action, abortion, or the war on terror), that student must take great care that no one in class or in earshot will be offended by the content of his or her speech. A person is simply not free to speak if he or she can be punished based on complaints from even the most thin-skinned member of the community.

Multiple cases have held that colleges (and even high schools) cannot condition free speech rights on listener reactions. See, for example, *Sypniewski v. Warren Hills Regional Board of Education*, 307 F.3d 243 (3<sup>rd</sup> Cir. 2002) (striking down secondary school speech regulations because the focus of the regulations was "entirely on the reaction of listeners.... [B]y itself, an idea's generating ill will is not a sufficient basis for suppressing its expression"); *Saxe v. State College Area School District*, 240 F.3d 200 (3<sup>rd</sup> Cir. 2001) ("In any case, it is certainly not enough that the speech is merely offensive to some listener"); *Dambrot v. Central Michigan University*, 839 F. Supp. 477, 482 (E.D. Mich. 1993) aff'd 55 F.3d 1177 (6<sup>th</sup> Cir. 1995) (striking down Central Michigan's "discriminatory harassment" policy because the policy's language prohibited – in the Court's words – "any behavior" that "offends any individual"); and *Doe v. Michigan*, 721 F. Supp. 852 (E.D. Mich. 1989) (striking down the Michigan speech code and holding: "Nor could the University proscribe speech simply because it was found to be offensive, even gravely so, by large numbers of people.") All these cases are simply following the Supreme Court's clear guidance: "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because

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<sup>1</sup> The letter at issue can be found on Dartmouth's website at <http://www.dartmouth.edu/~sli/documents/president010510.html>. In spite of President Wright's recent convocation address, there is no indication on the site that the letter no longer expresses presidential policy, nor is there an indication that any punishments imposed in furtherance of this policy have been rescinded. Thus, FIRE considers this letter to be an expression of college policy and evaluates it as such.

society finds the idea itself offensive or disagreeable.” *Texas v. Johnson*, 491 U.S. 397, 414 (1989).

Further, President Wright’s letter is not limited to targeting speech that hurts the feelings of other students. Speaking of a conversation with members of Dartmouth’s fraternity and sorority community, Mr. Wright states:

Specifically, I said that I expected them to take action to address allegations of conduct that was demeaning to women and others, that was racist, or that was homophobic. As a community committed to fairness, respect, and openness, we have no patience with or tolerance for bigotry or demeaning behavior. I affirm here, with deep personal conviction, that Dartmouth is and will be an actively anti-sexist, anti-racist, and anti-homophobic institution and community.

President Wright condemns “bigotry” and “demeaning” behavior without defining these terms. How is a student to know if his or her speech is defined as “demeaning” or bigoted? FIRE has seen far too many examples of how such limitations are used to punish even the tamest expression. There is simply no objective definition of bigotry or of demeaning speech, and there is thus no way for a student to be certain that he or she is complying with Dartmouth policy – unless that student merely parrots President Wright’s views or shuts his or her mouth entirely.

In 2003, the U.S. District Court for the Middle District of Pennsylvania struck down a university policy similar to President Wright’s statement. Shippensburg University had enacted a “Racism and Cultural Diversity Policy Statement” that provided:

It is the unequivocal position of Shippensburg University to prohibit racism/ethnic intimidation and harassment; and to affirm cultural diversity, social justice and equality.

Racism shall be defined as the subordination of any person or group based upon race, color, creed or national origin. It shall be a violation of this policy for any person or group to maliciously intend to engage in any activity (covert or overt that attempts to injure, harm, malign or harass), that causes the subordination, intimidation and/or harassment of a person or group based upon race, color, creed, national origin, sex, disability or age.

Shippensburg University’s commitment to racial tolerance, cultural diversity and social justice will require every member of this community to ensure that the principles of these ideals be mirrored in their attitudes and actions.

*See Bair v. Shippensburg*, 280 F. Supp. 2d 357 (M.D. Penn. 2003). The Shippensburg policy also stated that “the expression of one’s beliefs should be communicated in a manner that does not provoke, harass, intimidate, or harm another.” The Court struck down these regulations, holding that they would not pass muster even when applied to children in a high school.

While we do not doubt that President Wright's letter was motivated by laudable goals of fostering civility and tolerance on campus, the free marketplace of ideas should not be closed to protect the sensibilities and "feelings" of today's students. Truly racist speech may be repugnant, but it is constitutionally protected – as is sexist speech and homophobic speech. Perhaps more importantly, while an attempt to ban "racist" speech may seem virtuous, it is all too often used as an excuse to punish students who simply dissent from the prevailing campus opinion on any topic. Consider the following recent examples of the misuse of accusations of "hate speech" or "harassment" or "racism" to ban clearly protected speech:

- Gonzaga University attempted to ban an advertisement that included the name of a book (*Why the Left Hates America*) because, an administrator argued, the use of the word "hate" constituted "hate speech."
- Cal Poly charged a student with harassment when he posted fliers advertising a speech by a black conservative author.
- Shippensburg University required students to take down posters and flyers supportive of the American military effort in Afghanistan on the grounds that such flyers were "offensive" to Muslim students (this action helped spawn FIRE's speech code lawsuit.)
- The University of New Hampshire convicted a student of "affirmative action" violations and evicted him from the dorms when he posted a flier proposing that women could "lose the freshman 15" by taking the dorm stairs rather than the elevators.
- Numerous schools have required students to remove displays of the American flag on the grounds that the flag is "threatening" or "offensive" to foreign students.
- The University of Colorado at Boulder (the same university that is now examining the writings of Ward Churchill) censored affirmative action protests and permitted a mob to physically attack College Republicans holding an "affirmative action bake sale."

Simply put, so long as President Wright's May 10, 2001, letter remains operative, students at a public community college enjoy greater free speech rights than students at Dartmouth. In the last 30 days, FIRE has received information indicating that the restrictions imposed by the 2001 letter are still being enforced. Representatives of the Zeta Psi fraternity, the fraternity that was severely punished after a Dartmouth student found a torn-up internal newsletter in the trash, have informed FIRE that the fraternity continues to suffer from that incident. In a February 2, 2005, e-mail to Zeta Psi officials, Ellen Arnold from the College Counsel's office stated, "As you know, the College rules prohibit active Dartmouth students from living in a fraternity that is not recognized by the College. As a result, the College would object to and may seek to sanction active Dartmouth students living at Zeta Psi." This threat to sanction Dartmouth students living in Zeta Psi's house leaves the fraternity's house unusable (town regulations prohibit use of the building for anything other than rental to fraternity members or undergraduate students). It is distressing that this fraternity still suffers from the effects of the college's speech policies, and that action was taken as recently as this month to further harm the fraternity.

As a private college, Dartmouth is of course free to set its own speech policies, but it is unfortunate and unacceptable that it has exercised this freedom in such a manner as to rob students of the right to participate in a truly free marketplace of ideas. As I have said to you before, Dartmouth is more than just a college; it is an institution of national importance – a place where many of our nation’s leaders are educated. It is shameful that those students are being taught that the best way to address dissent is through censorship and that hurt feelings trump fundamental rights. A nation cannot long remain free if its elite institutions continue to teach their students that fundamental freedoms can be sacrificed on the altar of distorted notions of “community” and “tolerance.” As the Supreme Court stated in *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957):

The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. ***To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation.*** No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made.... Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die. [Emphasis added.]

President Wright’s recent convocation remarks are promising, but they do not fully address the issues raised above. For example, in this speech, President Wright said:

We are sustained by vigorous discourse, as well as by respect and civility. Now, your right to challenge these values, or any others is clear. ***But as president I assume the obligation to define and defend them and to protect here a learning community that welcomes us all*** – a community where, regardless of our race or gender or sexual orientation, we are all respected and valued and one in which different political and religious views are encouraged. [Emphasis added.]

This statement, which reserves to President Wright the ability to “define and defend” not just “vigorous discourse” but also “respect and civility,” raises an obvious question: does the May 10, 2001, letter represent Dartmouth’s defense of “respect and civility?” Does President Wright view the letter as consistent with the goals expressed in his September 21, 2004, convocation address? If so, Dartmouth’s understanding of academic freedom and the marketplace of ideas is grossly deficient.

In sum, clarity is needed. For Dartmouth to receive FIRE’s best ranking, it must do two things: (1) declare that President Wright’s May 10, 2001, letter does not represent a binding statement of college policy; and (2) rescind any punishment imposed against students or student groups based on the exercise of speech that would have been constitutionally protected if expressed at a public university.

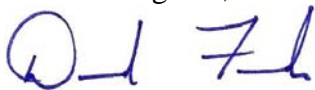
I want to thank you and President Wright (who is copied on this letter) for your willingness to address free speech at Dartmouth. Given the focus on academic freedom generated by the recent controversies at Harvard University and the University of Colorado, Dartmouth has an



opportunity to become a national leader in defending free speech and academic freedom. As the Harvard faculty considers censuring a president for engaging in provocative dialogue and as the Colorado Board of Regents takes the unusual and dangerous step of examining a professor's writings to determine whether he will be terminated, Dartmouth can set a different kind of example – an example of a college that aspires to civility and tolerance, but not at the expense of the marketplace of ideas and free expression. After more than 200 years, the First Amendment still stands as a unique beacon of freedom in the world. Dartmouth would do well to respect that freedom and to voluntarily provide its students with equivalent protection.

Thank you again for your time and attention. If you have any questions, please do not hesitate to contact me.

Warmest regards,

A handwritten signature in blue ink, appearing to read "D. A. French". The signature is written in a cursive, slightly stylized font.

David A. French  
President

cc: James Wright, President, Dartmouth College