



Foundation for Individual Rights in Education

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July 7, 2006

President Dennis L. Hefner
138 Fenton Hall
SUNY Fredonia
Fredonia, NY 14063

Sent via U.S. Mail and Facsimile (716-673-3446)

Dear President Hefner:

As you can see from the list of our Directors and Board of Advisors, 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, due process, freedom of speech, and, in this case, academic freedom on America's college campuses. Our website, thefire.org, will give you a greater sense of our identity and activities.

FIRE is gravely concerned about the threat to free expression posed by the State University of New York – Fredonia's (SUNY Fredonia's) recent denial of promotion to Associate Professor Stephen Kershner. This denial was based upon Kershner's public disagreement with SUNY Fredonia's policies and practices, and is therefore both wildly unconstitutional and morally reprehensible.

This is our understanding of the facts. Please inform us if you believe we are in error. Kershner has been an Associate Professor at SUNY Fredonia since 2002. In January 2006, Kershner was nominated for promotion to full professor—a nomination that garnered support from other professors in his department, including Philosophy Department Chair Raymond Belliotti, Dean of the College for Arts and Sciences Paul J. Schwartz, and Vice President for Academic Affairs Virginia Schaefer Horvath. By all accounts, Kershner's professional achievements are exemplary: he has served on the Student Judicial Board, has published 2 books and 11 articles in scholarly journals, and has won SUNY Fredonia's William T. Hagan Young Scholar Award and the SUNY Chancellor's Award for Excellence in Teaching.

Kershner is outspoken on matters concerning SUNY Fredonia's policies and practices. He writes a bi-weekly column for the local newspaper, the

Dunkirk-Fredonia Observer. In columns on February 1, 2006, and February 15, 2006, Kershnar protested SUNY Fredonia's affirmative action policy as well as the lack of conservatives on the SUNY Fredonia faculty. Both columns were editorials, and therefor explicitly expressed Kershnar's personal opinions. On March 30, 2006, the *Buffalo News* printed an article entitled "College Rules: Fredonia Policy Mandates Tattling," which questioned SUNY Fredonia's new policy requiring that students report violations of the Student Code of Conduct to the proper authorities. The article quoted Kershnar as saying, "[i]t seems a little heavy-handed for that purpose [offering students guidance]. I mean, you don't need to turn the student population into a group of snitches."

On April 1, you wrote a letter to the SUNY Fredonia community clarifying the "media misrepresentations" of the new policy. The following day, Kershnar sent an e-mail to a SUNY Fredonia listserv saying that the *Buffalo News* article did not misrepresent the policy in question, and again stated his opinion that the policy will be arbitrarily enforced. Later that day, you responded to Kershnar's e-mail by writing that "[y]ou have created a problem where none exists.... You need to start acting like a responsible member of this campus community."

On April 27, Kershnar received a letter from you stating that his promotion to full professor was denied. You explained that this decision was not based upon Kershnar's teaching or publications, but upon his "disruptive" and "non-helpful" participation on the Student Judicial Board because of his disagreement with the new Student Conduct Code policy and the "deliberate and repeated public misrepresentation of campus policies and procedures (e.g. student conduct code, affirmative action, admissions) to the media," which you claim "has impugned the reputation of SUNY Fredonia." You further claimed that Kershnar "clearly failed to make the distinction between presenting opinions and making false representations, which reflect poorly on [his] service to this university."

Kershnar reports to FIRE that you suggested that you would approve Kershnar's promotion if he agreed to refrain from deliberately misrepresenting the university's policies or practices. In response to that suggestion, Kershnar drafted a contract, to be in effect for one year, stating that he would not "engage in a deliberate misrepresentation of campus policy or practice in any public writing." Kershnar further suggested that a "Prior-Consent Committee" be appointed to determine if his material deliberately misrepresents the university.

You, however, rejected Kershnar's contract and suggested another agreement that required "[t]he avoidance of any future misrepresentations of any campus policy or practice in public writings." Your contract ruled out *any* misrepresentation—not just *deliberate* misrepresentations, as Kershnar had suggested. Your version would have also been in effect for an indeterminate length of time. Kershnar refused to sign this contract, and currently remains an associate professor at SUNY Fredonia.

SUNY Fredonia's actions represent a shameful attempt to silence a respected faculty member whose views do not accord with those of the administration. Your letter rejecting Kershner's promotion admitted that it was the expression of his personal opinions that made him unfit to be a full professor. Kershner's expression, however, while disagreeable to affirmative action proponents or defenders of the new Student Conduct Code policy, contained no false assertions and no misrepresentations of SUNY Fredonia's policies, as it was clear at all times that he was expressing his own opinions, to which he is certainly entitled.

As you know full well, SUNY Fredonia is a public university and therefore has an overarching legal obligation, in addition to its moral obligation, to ensure the First Amendment rights of its faculty. There is no doubt that Kershner's expression—in the *Dunkirk-Fredonia Observer*, as quoted in the *Buffalo News*, and on the university listserv—is fully protected speech, guaranteed by both the U.S. Constitution and decades of Supreme Court decisions. As the Court ruled in the landmark case of *West Virginia Board of Education v. Barnette* (1943): “If 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.” The Court concluded that “the purpose of the First Amendment to our Constitution” was precisely to protect “from all official control” the domain that was “the sphere of intellect and spirit.” In penalizing Kershner for his personal opinions on controversial matters, SUNY Fredonia has wielded its power to invade Kershner's private sphere and silence his personal positions. This is an action that no government agency, especially an institution of higher learning, should undertake.

Both in your April 2 e-mail to Kershner and in your April 27 denial of his promotion, you imply that Kershner's public statements are a sign that he is irresponsible and does a disservice to the SUNY Fredonia community. But should a public university not welcome varied opinions? Is that not the very definition of the “marketplace of ideas?” By penalizing Kershner for the sole crime of publicly stating his disagreement with SUNY Fredonia's policies and practices, you have sent the message that minority opinions are intolerable, and that they alone block one's ability to advance within the university.

Your proposal of a contract demanding that Kershner submit his future written materials to a process of prior review truly embodies the most autocratic elements of the university system. You effectively made Kershner's promotion dependant upon his waiver of his constitutional right to express his opinions. The effects of such an oppressive agreement would have not only deterred Kershner's public expression, but would have chilled speech across the SUNY Fredonia campus, leaving professors and students alike to question their freedom to speak and think as they see fit. Rest assured, it is your illiberal actions, and not the personal opinions of one professor, that have impugned the name of SUNY Fredonia.

FIRE requests that you reexamine your denial of promotion to full professor to Stephen Kershner. We are categorically committed to using all of our resources to support Professor Stephen Kershner and to see this process through to a just and moral conclusion. Please spare SUNY Fredonia the embarrassment of fighting against the Bill of Rights, by which it is legally and morally bound. We request a response on this matter by July 21, 2006.

Sincerely,

A handwritten signature in blue ink, appearing to read "Greg Lukianoff".

Greg Lukianoff
President

cc:

Raymond A. Belliotti, Chair of the Philosophy Department, SUNY Fredonia
Paul J. Schwartz, Dean of Arts and Humanities, SUNY Fredonia
Virginia Schaefer Horvath, Vice President for Academic Affairs, SUNY Fredonia
Tracy S. Bennett, Vice President for Administration, SUNY Fredonia
Stephen Kershner