



Foundation for Individual Rights in Education

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April 24, 2007

President Lawrence S. Bacow
Ballou Hall
Tufts University
Medford, MA 02155

Sent by U.S. Mail and Facsimile (617-627-3300)

Dear President Bacow:

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, will give you a greater sense of our identity and activities.

FIRE is deeply concerned about Tufts University's attempt to censor the independent student publication *The Primary Source (TPS)* by investigating the paper for harassment. Tufts' attempt to quash unpopular or potentially offensive speech is a direct attack on freedom of the student press and shows a lack of respect for students' freedom of expression, as well as a lack of confidence in students' ability to recognize satire and appreciate dissent.

This is our understanding of the facts. Please inform us if you believe we are in error. *TPS* is an independent, conservative student newspaper. On April 8, 2007, *TPS* received notice that a complaint had been filed with the Tufts Community Union Judiciary (TCUJ) and the Committee on Student Life (CSL) against *TPS* for printing its annual Christmas carol parody in December, 2006. The December parody, entitled "Oh Come All Ye Black Folk," caused controversy on campus, prompting *TPS* to explain that the parody "was written with the intention of making fun of affirmative action by using satire. The idea was to compose a carol from the perspective of an admissions officer in order to reveal the harmful nature of affirmative action." The complaint accuses *TPS* of "harassment," "encouragement of hostile environment at Tufts," "breach of community standards," and "libel." At a midnight meeting on April 19, TCUJ dismissed the complaint because it was filed after the applicable filing deadline, but the complaint will be heard at a CLS hearing on Monday, April 30.

New charges of “harassment” and “creating a hostile environment” were filed against *TPS* within the past week by the Muslim Students Association, alleging a “deliberate attack” by *TPS* on Muslims at Tufts because of a “discriminatory article” that ran in the April 11 issue of *TPS*. The article in question, entitled “Islam, Arabic Translation: Submission,” purports to be “an itinerary to supplement the educational experience” during Islamic Awareness Week. The complaint details that the Tufts Muslim community is outraged by the April 11 article and past actions of *TPS*, including its printing of the controversial Mohammed cartoons last year. The April 11 hearing will adjudicate both the complaint regarding the Christmas carol and the complaint regarding the April 11 article.

While Tufts, as a private university, is not directly bound by the First Amendment’s guarantee of freedom of the press, the university has a moral and contractual obligation to live up to its promises to respect its students’ freedoms, of which freedom of the press is among the most basic. Like most universities advancing a liberal education, Tufts is ostensibly committed to free expression. The Tufts University policy on “Political Activities” states that Tufts “is committed to free and open discussion of ideas and opinions,” and the school’s policy governing “Gatherings, Demonstrations and Disturbances” states:

Tufts is an open campus committed to the free exchange of ideas. It is inevitable that some programs and speakers will be offensive to some members of the community. That offensiveness will not be seen as a reason to prevent the program. In fact, the university will strive to uphold the right of a campus organization to invite speakers or hold programs, even controversial ones, and to hold them without interruption.

Similarly, Tufts’ “Message from the Dean of Student Affairs” reads:

You should anticipate controversial dialogue about issues important to you and that you may be shocked when another student voices an opinion radically different from yours. We should cherish the opportunity to be learning in a place where controversial expression is embraced.

It is extremely difficult, if not impossible, then, to reconcile these admirable commitments to free expression with Tufts’ actions in the present case. Printing a parody, no matter how objectionable to some, is in no way tantamount to “harassment.” As the Office for Civil Rights of the United States Department of Education stated in a July 28, 2003 letter to college administrators, harassment is legally understood to require “something beyond the mere expression of views, words, symbols or thoughts that some person finds offensive.” Rather, to legally constitute “hostile environment harassment,” the behavior in question must be “sufficiently serious (*i.e.*, severe, persistent or pervasive) as to limit or deny a student’s ability to participate in or benefit from an educational program.” Clearly, the parody here in question could not possibly be construed as an example of “hostile environment harassment.” Offended students, after all, were under no duty to read *TPS*.

TPS’ pattern of controversial expression represents a clear exercise in parody and satire, areas of political speech comprising the core of our country’s honored traditions. Parody and satire exist to challenge, to amuse, and even to offend. In *Hustler Magazine v. Falwell*, 485 U.S. 46 (1988),

for ready example, the Supreme Court ruled that the First Amendment protects even the most outlandishly offensive parody—in that case, a cartoon suggesting that the Reverend Jerry Falwell lost his virginity in a drunken encounter with his mother in an outhouse. Highly offensive material is protected under the First Amendment and should likewise be protected on any campus that claims to protect its students’ right to free expression. If speech of this nature is considered outside of the parameters of protected speech at Tufts, then no expression is safe.

FIRE was encouraged to read your comments in the “Viewpoints” section of the *Tufts Daily* today, where you wrote that you will not respond with censure because “[t]he First Amendment protects freedom of speech and that includes most offensive speech.” Nevertheless, the complaints against *TPS* should have never progressed to the level of a CLS hearing; there is nothing to adjudicate in this matter. We hope that Monday’s hearing will not result in sanctions against *TPS* and we urge Tufts University to reject any possibility of punishment for *TPS* for engaging in political satire. We further ask that Tufts University take its commitments to a liberal education and the encouragement of “the free exchange of ideas” seriously and work to assure its students that freedom of expression is to be celebrated, not feared.

FIRE hopes to resolve this situation amicably and swiftly; we are nonetheless committed to using all of our resources to oppose the censorship of *TPS* or any other campus publication punished for engaging in protected expression. We request a response on this matter by Friday, April 27, 2007.

Sincerely,

Tara Sweeney
Senior Program Officer

cc:

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