



Foundation for Individual Rights in Education

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July 31, 2007

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

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

Dear President Bacow:

FIRE is disappointed to write to you once again to express our continuing concern about Tufts University's punishment of the student journal *The Primary Source* (*TPS*). We note with dismay that, despite receipt of FIRE's April 24 letter and numerous public admonitions, Tufts has yet to reverse its ruling that *TPS*' December 2006 and April 2007 issues constituted harassment and created a hostile environment for Tufts students.

As we stated in our previous letter, neither *TPS*' December Christmas carol nor its April parody of "Islamic Awareness Week" constitute "hostile environment harassment," as both articles were political satire and students were under no obligation to read either article. Further, the latter article contained what the authors described as examples of "astonishingly intolerant and inhuman behavior," which were actually verifiable facts about the Muslim world. Not only would the publication of such facts unquestionably be protected outside the Tufts community, but Tufts' own stated commitments should make them welcome even on the Tufts campus. Tufts' actions therefore undermine basic freedom of expression, the centrality of satire to the democratic process, and the explicit promises that Tufts has made to its students.

On May 10, 2007, Tufts' Committee on Student Life (CSL) issued its ruling on the April 30 hearing regarding two complaints filed against *TPS* during the 2006-2007 school year. The first complaint, filed by student David Dennis, claimed that *TPS*' 2006 Christmas carol, "Oh Come All Ye Black Folk," which mocked affirmative action at Tufts, constituted harassment and created a hostile environment on campus. Similarly, the second complaint, filed by members of the Muslim Student Association (MSA), charged *TPS* with harassment and creating a hostile environment for printing an article on April 11 titled "Islam—Arabic Translation: Submission," which relied on quotes from the Koran and factual assertions such as: "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,” and “The seven nations in the world that punish homosexuality with death all have fundamentalist Muslim governments.” CSL ruled on May 10 that *TPS* “violated the university’s harassment policy in both cases.”

As we said in our April 24 letter, printing a parody, no matter how objectionable to some, is in no way tantamount to “harassment.” The Supreme Court has held that “in the context of student-on-student harassment,” the behavior in question may legally constitute hostile environment harassment “only where the behavior is so severe, pervasive, and objectively offensive that it denies its victims...equal access to education.” *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 652 (1999). Similarly, the Department of Education’s Office for Civil Rights declared unequivocally in a 2003 open letter to college administrators that hostile environment harassment requires unwelcome behavior “sufficiently serious (*i.e.*, severe, persistent and 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, could have easily avoided exposure to the articles in question and were at all times free to disagree with the sentiments expressed. Tufts’ decision that *TPS*’ political expression constitutes “harassment” is therefore a clear and brazen distortion of a defined legal term.

FIRE also argued that *TPS*’ expression constituted core political speech; that is, through both articles in question, *TPS* expressed its view on controversial political issues. Yet the CSL ignored the expressive elements in *TPS*’ articles, attributing to the paper’s staffers only malicious intent. The CLS decision concluded with an explanation that:

We find that the above-mentioned carol and commentary, rather than promoting political or social discourse, as claimed by the members of *The Primary Source*, instead **were designed to harass and intimidate members** of the Tufts community because of their race (black) and religion (Islam). (Emphasis added)

To conclude that *TPS*’ December and April articles had no ideological, satirical, or political value, and that their only possible intention was to “harass and intimidate,” willfully ignores that these articles addressed affirmative action and radical Islam, two of the most pervasive political issues of our day. *TPS*’ articles are no less core political speech than a pro-affirmative action statement or Islamic Awareness week itself.

You demonstrated that you understood that *TPS*’ expression did not constitute harassment in your comments in the “Viewpoints” section of the *Tufts Daily* on April 24, where you wrote in response to the April article on Islamic Awareness Week, “what should be our community response? As was the case with the Source’s offensive parody ‘O Come All Ye Black Folk,’ some have called for censure or more. I disagree. **The First Amendment protects freedom of speech and that includes most offensive speech.**” Furthermore, the “Message from the Dean of Student Affairs” counsels students that, rather than being shocked by “controversial dialogue” at Tufts, they “**should cherish the opportunity to be learning in a place where controversial expression is embraced.**” [Emphases added.]

Unfortunately, less than three weeks after you publicly claimed to respect students' rights to engage in "offensive speech," the CSL acted unanimously to subvert your promise and Tufts' contractual promises of free speech to all of its students. Indeed, the CSL went even further by imposing unjust punishments upon *TPS*. First, the CSL recommended "that student governance consider the behavior of student groups in future decisions concerning recognition and funding." A January 18 article in the *Tufts Daily*, entitled "Community initiatives underway in response to Primary Source carol," documented the fact that "many members of the community called upon the Senate to reconsider the amount of funding that The Primary Source receives." With students already eager to cut funding for *TPS*, the CSL recommendation reads like a virtual promise that the Tufts Community Union Senate will cut *TPS*' funding because of its controversial speech.

The CSL's second punishment is also disconcerting, as it prohibits *TPS*' use of unsigned articles or editorials. The panel ruled that "[f]rom now on, all material published in *The Primary Source* (whether characterized as satirical or otherwise) must be attributed to named author(s) or contributor(s)." This punishment runs afoul of both standard journalistic practice and the First Amendment protection of anonymous speech. As the ACLU of Massachusetts highlighted in a letter to you on May 30, the Supreme Court has ruled that "[t]he decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible...Accordingly, an author's decision to remain anonymous...is an aspect of freedom of speech protected by the First Amendment." *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 341-342 (1995). Given Tufts' finding that students' expression of controversial political opinions constitutes harassment, *TPS* writers now have more reason than ever to publish articles anonymously. If *TPS* had printed the names of individual students responsible for the articles in question, those students would likely face individual disciplinary action. The threat of being found guilty of harassment for merely publishing satire will certainly chill speech at *The Primary Source*. While this may please some students and administrators, such action is fundamentally at odds with your and Tufts' stated values.

Finally, we bring your attention to Mayor Michael Bloomberg's comments in his commencement address at Tufts. Referring to Tufts' case against *TPS*, Bloomberg said:

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.

Obviously, Mayor Bloomberg was misinformed (possibly deliberately so) of the finding against *TPS*. Having been erroneously lauded for handling the situation fairly before students, faculty, parents, alumni, and a national audience, it is high time for Tufts to reverse its findings against *TPS*, finally proving Tufts worthy of the praise Mayor Bloomberg so mistakenly offered.

FIRE has been joined by the ACLU of Massachusetts, outraged alumni, concerned citizens, and journalists from across the country in calling for Tufts to reverse the ruling against *TPS*. Tufts' actions to betray freedom of expression on campus have elicited negative attention from such

media outlets as the *Huffington Post*, *The Phoenix*, *The Boston Herald*, *The New York Sun*, and the *New York Post* (articles enclosed). Additionally, Tufts is one of only three schools that FIRE has put on “Red Alert,” an ignominious distinction reserved for those institutions that have shown particularly severe and ongoing disregard for their contractual or constitutional commitments to uphold students’ fundamental rights. The “Red Alert” distinction serves to warn current and prospective students and parents that students are not free to speak their minds at Tufts, meaning that students are in danger of being censored and sanctioned merely for expressing unpopular opinions on campus.

It is time for Tufts to reestablish its commitment to fostering an open environment of free expression, where students are encouraged to speak their minds without fear of administrative sanction. When the 2007-2008 school year commences, Tufts must grant *The Primary Source* and all publications on campus the basic freedom of the press that students at Tufts have come to expect. We ask that you reverse the “harassment” findings, instruct the Tufts Community Union Senate to fund all publications equally, and once again permit the printing of unsigned editorials. True freedom of the press at Tufts requires no less.

We request a response to this letter no later than August 21, 2007.

Sincerely,



Greg Lukianoff
President

cc:

Hon. Michael Bloomberg, Mayor, New York City
Patricia E. Harris, First Deputy Mayor
Stu Loeser, Press Secretary, Office of the Mayor
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 to the Mayor
Dennis M. Walcott, Deputy Mayor for Education and Community Development
James Anderson, Communications Director, Office of the Mayor
Edward Skyler, Deputy Mayor for Administration
Jamshed Bharucha, Provost, Tufts University
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Marisel C. Perez, Associate Dean of Students, Tufts University
Veronica Carter, Judicial Affairs Officer, Tufts University
Shiva Bhashyam, Vice Chair of Tufts Community Union Judiciary, Tufts University
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Jason Millman, *The Boston Herald*

Encl.