



December 15, 2016

Lawrence P. Ward, Ed.D.  
Vice President for Student Affairs and Dean of Students  
Babson College  
Hollister Hall, Suite 201  
231 Forest Street  
Babson Park, Massachusetts 02457-0310

**Urgent**

*Sent via U.S. Mail and Electronic Mail (lward@babson.edu)*

Dear Vice President Ward:

The Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

FIRE is deeply concerned about the threat to freedom of expression at Babson College posed by the pursuit of student conduct charges against two students over their display of a flag and involvement in speech celebrating the election of Donald J. Trump in the November 2016 presidential election. The continued pursuit of charges and a hearing, after Babson College's own investigation cleared the students of much of the alleged conduct, is at odds with Babson's promise to protect its students' freedom of expression.

The following is our understanding of the facts. Please inform us if you believe we are in error.

On November 8, 2016, Donald J. Trump was elected President of the United States, defeating Wellesley College alumna Hillary Clinton. The day after the election, two Babson College students—later identified as Parker Rand-Ricciardi and Edward Tomasso—allegedly drove around Wellesley College's campus in a pickup truck with a "Trump" flag attached, repeating slogans popularized by Trump's campaign.<sup>1</sup> While driving through Wellesley College's campus, they passed Harambee House, which provides support to students of African

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<sup>1</sup> John R. Ellement, *Two Who Drove Through Wellesley College Waving Trump Flag Were Babson Students*, BOSTON GLOBE, Nov. 10, 2016, <http://www.bostonglobe.com/metro/2016/11/10/two-who-drove-through-wellesley-college-waving-trump-flag-were-babson-students/JUePnYiEVMMrY7deirQq6J/story.html>.

descent.<sup>2</sup> After being stopped by Wellesley security and a local police officer, the students were asked to leave Wellesley’s campus and did so “without incident.”<sup>3</sup>

Babson College launched an investigation, headed by Associate Director of Community Standards Jaclyn Calovine.<sup>4</sup> Tomasso and Rand-Ricciardi were charged with harassment and disorderly conduct under Babson’s Community Standards.<sup>5</sup>

Babson’s investigation was unable to corroborate some allegations, and suggested that others were false. For example, Tomasso had been accused by two Wellesley students of spitting in the direction of their car while he was stopped by Wellesley security and a local police officer. One of those students later clarified that she never saw the incident and the other could not be interviewed during the course of Babson’s investigation. The officers present did not observe either Tomasso or Rand-Ricciardi spit from the vehicle.

Other allegations were likewise unsubstantiated or disproven by Babson’s investigation. No witnesses to the use of racial or homophobic slurs could be located. Babson’s investigator could not determine the source of the allegation that Tomasso and Rand-Ricciardi purposefully went to Harambee House, but instead concluded that the pair turned their vehicle around there—and left—after a student near Harambee House summoned them to speak with her.

Although Babson’s investigation cleared Tomasso and Rand-Ricciardi of the allegations of offensive conduct unrelated to political expression, Babson persists in its pursuit of harassment and disorderly conduct charges against the students. A hearing is set for this Friday, December 16, 2016.

Babson’s Community Standards define “Harassment” according to an objective standard, and explicitly recognize students’ freedom of expression:<sup>6</sup>

Harassment is severe, persistent or pervasive conduct, including any form of communication or expression, any physical act or gesture, or any combination thereof, directed at one or more individuals that has the purpose or effect of: causing physical or unreasonable emotional harm to such individual(s) or damage to their property; placing the individual(s) in reasonable fear of harm to their safety or property; or infringing on the rights of other community

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<sup>2</sup> Harambee House, WELLESLEY COLLEGE, <http://www.wellesley.edu/harambee>.

<sup>3</sup> Ellement, *supra* note 1.

<sup>4</sup> Jack Encarnacao, *Investigator of Babson Students a Hillary Clinton Backer*, BOSTON HERALD, Dec. 9, 2016, [http://www.bostonherald.com/news/local\\_coverage/2016/12/investigator\\_of\\_babson\\_students\\_a\\_hillary\\_clinton\\_backer](http://www.bostonherald.com/news/local_coverage/2016/12/investigator_of_babson_students_a_hillary_clinton_backer).

<sup>5</sup> *Lawyer Demands College Apologize After Ban Lifted on Client*, ASSOCIATED PRESS, Dec. 12, 2016, <http://www.nytimes.com/aponline/2016/12/12/us/ap-us-trump-flag-college.html>.

<sup>6</sup> BABSON COLLEGE’S COMMUNITY STANDARDS (2016–2017), <http://www.babson.edu/student-life/community-standards/Documents/community-standards.pdf>.

members to fully participate in the programs, activities, and mission of the College.

The College will use the reasonable person standard when evaluating this information. The College will also consider the full context of the conduct, giving due consideration to the protection of the College climate, individual rights, freedom of expression and academic freedom. Not every act that might be considered offensive to an individual or a group constitutes harassment and/or a violation of College policy.

As a private institution, Babson College is not bound by the First Amendment. It is, however, morally and legally bound to honor the commitments it makes to students. Having explicitly promised to recognize individual rights, freedom of expression, and academic freedom, Babson is obligated to uphold its end of the bargain. Babson's undaunted pursuit of these charges undermines this stated commitment.

Tomasso and Rand-Ricciardi's political expression meets neither the letter nor the spirit of Babson College's prohibition on harassment. The students, having left Wellesley's campus upon request, cannot be said to have engaged in either persistent or pervasive conduct, leaving only "severe" conduct. As Babson's investigation failed to corroborate any conduct other than driving a vehicle, waving a flag, and reciting slogans associated with Trump's candidacy, all that remains is their political expression.

If publicly celebrating the election of a preferred presidential candidate constitutes "severe" expression that causes "unreasonable emotional harm" to a reasonable person, there is little room for any political expression at all at Babson, rendering its commitment to freedom of expression a nullity. Punishing students for their political expression would send a clear, chilling signal that Babson students cannot engage in the political process to the point of expressing support for the president-elect, lest another individual who opposed his candidacy be offended. These charges are antithetical to the very premise of a liberal arts education, which demands tolerance of views one finds uncomfortable or offensive.

Babson's "Disorderly Conduct" charges present a similar risk to Babson's commitment to freedom of expression. Babson's Community Standards define disorderly conduct to mean "[i]nappropriate, disorderly, and/or disruptive conduct," illuminating this broad definition through several examples.<sup>7</sup> (The clearest prohibition under "Disorderly Conduct" is against "public urination.") The definition and attendant examples leave to the imagination what, exactly, is proscribed. A prohibition that allows administrators to prohibit and punish a seemingly limitless range of conduct at their discretion fails to provide adequate notice to a reasonable person as to what is or is not prohibited. Worse, if plainly political speech can be said to be "disorderly conduct," then Babson's commitment to freedom of expression is ephemeral at best.

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<sup>7</sup> BABSON COLLEGE'S COMMUNITY STANDARDS, *supra* note 6.

The principle of freedom of speech does not exist to protect only noncontroversial expression; rather, it exists precisely to protect speech that some members of a community may find controversial, offensive, or alarming. Politeness may dictate that one should be magnanimous in victory, but freedom of expression knows no such limitation. Otherwise, authorities or college administrators would be free to limit speech at their own discretion, whenever they subjectively deem it too impolite, obnoxious, or inflammatory. As the Supreme Court stated in *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949), speech “may indeed best serve its high purpose when it induces a condition of unrest . . . or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea.”

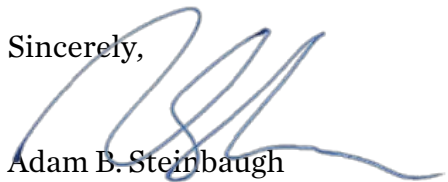
The best response to offensive speech is not formal hearings or the imposition of official sanctions, but more speech. The Supreme Court reiterated this fundamental principle in *Snyder v. Phelps*, 562 U.S. 443, 461 (2011), proclaiming that even picketing soldiers’ funerals could not be penalized consistent with the First Amendment:

Speech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and—as it did here—inflict great pain. [...] [W]e cannot react to that pain by punishing the speaker. As a Nation we have chosen a different course—to protect even hurtful speech on public issues to ensure that we do not stifle public debate.

The students and administrations of both Babson and Wellesley colleges have joined a public chorus condemning the students for their speech. Babson College can go no further, lest it undermine its legal and moral commitment to freedom of expression. Accordingly, we call upon Babson College to cancel the December 16 hearing and publicly confirm that it remains committed to defending freedom of expression.

Given the pressing nature of this situation, we respectfully request a response to this letter by December 16, 2016.

Sincerely,



Adam B. Steinbaugh  
Program Officer, Individual Rights Defense Program