



September 12, 2017

Darrell Darnell
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Sent via Electronic Mail (ddarnell@gwu.edu)

URGENT

Dear Mr. Darnell:

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.

We are concerned for the state of freedom of expression at the George Washington University (GWU) following the public announcement that the university is investigating, for the second time, flyers clearly satirizing and criticizing views the anonymous author(s) believe to be hateful expression. Political satire and anonymous speech are central to the freedom of expression the university promises to its students, and such an investigation risks a chilling effect unbecoming of a university.

Accordingly, FIRE calls upon the George Washington University to immediately and publicly abandon its efforts to identify the satirist(s) responsible for the flyers.

I. Facts

The following is our understanding of the facts, which is based on public reports. Please inform us if you believe we are in error.

In 2007, the GWU chapter of Young America's Foundation (YAF) conducted, as part of a nationwide campaign, an "Islamofascism Awareness Week," which purported to criticize "Islamofascism and its violence against women, gays, Christians, Jews and religious

people.”¹ The *GW Hatchet* reported that the event, part of “a nationwide event that organizers say is meant to combat violent, radical Muslim ideologies[,]” was “hosted on campus by the GW Young America’s Foundation, which was recently targeted by a satirical poster campaign mocking the event as racist.”²

The poster at issue includes the text “HATE MUSLIMS? SO DO WE!!!” and goes on to identify features of a “typical Muslim,” including “lasers in eyes,” “venom from mouth,” “suicide vest,” “hidden AK-47,” and “peg-leg for smuggling children and heroin.” It invites readers to “find out more” by attending YAF’s “Islamofascism Awareness Week.” The poster concludes by encouraging readers to search the internet for “The Power of Nightmares,” a documentary series “about the use of political fear for political gain.”³

While the content was uniformly found to be offensive, there is no indication that there was confusion over the satirical intent of the poster. Student leaders debated the effectiveness of the satire,⁴ but no one who read beyond the headline believed the poster to be a sincere attempt to convince readers that supposed Islamofascists can shoot lasers from their eyes.⁵

The University Police Department mounted an investigation into the flyers,⁶ and several students subsequently “signed confessions with” the police department, taking “responsibility” for the flyers.⁷ That letter explained that the posters sought to “counter the true hate speech that is embodied by the upcoming Islamofascism Awareness Week” by raising awareness of the “institutionalized and glorified type of Islamophobia” through an “exaggeration of the racism” behind the group’s views.⁸

YAF’s members were also subjected to the university’s efforts to curb controversial speech. A university official instructed YAF to “draft a statement which states that you will not

¹ Osita Nwanevu, *Trump Adviser Stephen Miller Ran a National Islamophobic Campaign While at Duke*, SLATE, Feb. 15, 2017, http://www.slate.com/blogs/the_slatest/2017/02/15/stephen_miller_ran_a_national_islamophobic_campaign_while_at_duke.html.

² Hadas Gold, *All sides holding events on Islam*, GW HATCHET, Oct. 22, 2007, <https://www.gwhatchet.com/2007/10/22/all-sides-holding-events-on-islam/>.

³ *The Power of Nightmares: The Rise of the Politics of Fear*, IMDB, <http://www.imdb.com/title/tt0430484/>.

⁴ Andrew Ramonas, *After meeting, mixed views on anti-Muslim posters*, GW HATCHET, Oct. 8, 2007, <https://www.gwhatchet.com/2007/10/08/after-meeting-mixed-views-on-anti-muslim-posters/>.

⁵ See, e.g., Melissa Conroy, *Examining Hateful Words and Images: The Case of Towelhead*, The Martin Marty Center for the Advanced Study of Religion, Sept. 11, 2008, <https://divinity.uchicago.edu/sightings/examining-hateful-words-and-images-case-towelhead-melissa-conroy> (describing the posters as “clearly satirical”).

⁶ Eric Roper, *Seven GW students admit to hanging controversial posters*, GW HATCHET, Oct. 8, 2007, <https://www.gwhatchet.com/2007/10/08/seven-gw-students-admit-to-hanging-controversial-posters/>.

⁷ Andrew Ramonas and Eric Roper, *Seven students take responsibility in controversial poster campaign*, GW HATCHET, Oct. 11, 2007, <https://www.gwhatchet.com/2007/10/11/seven-students-take-responsibility-in-controversial-poster-campaign/>.

⁸ Adam Kokesh, *et al.*, letter to President Knapp, archived at: <http://web.archive.org/web/20080414190628/http://files.gwhatchet.com/i/071008/letter.pdf>.

allow hate speech to be part of any of YAF’s events, literature, written or verbal communication” and warned of unidentified “consequences[.]”⁹

On Friday, September 8, 2017, copies of the same flyer were reported to the university, which issued the following statement:¹⁰

On Friday, Sept. 8, the George Washington University was notified of hateful fliers designed to look as if they were posted by an on-campus conservative student organization. The offensive fliers were immediately removed, and GW’s Police Department is investigating the matter[.]

The university does not tolerate actions that make any member of the GW community feel unsafe. We expect that all our students, no matter what opinions they hold, will conduct themselves in the spirit of mutual respect that has long been a hallmark of this university.

There is no indication that YAF, or any organization, is hosting another “Islamofascism Awareness Week” at the university.

A statement issued by YAF reported that “[a]uthorities at GW are looking at security footage to identify those responsible” and called on the university to “hold accountable those who perpetrated this attempt to undermine conservative students by distributing these posters.”¹¹ The statement urged that “[t]argeting a religion and attempting to defame another organization in doing so is childish, revolting, and distasteful.”

II. Analysis

While the George Washington University is a private university and thus not legally bound by the First or Fourteenth Amendments, it is both morally and contractually bound to honor the promises of freedom of expression it has made to its students. Student free speech should be protected consistent with First Amendment rights.

For example, the university asserts, in its “Statement of Student Rights & Responsibilities,” that “[f]ree inquiry and free expression are indispensable to the attainment of” the university’s goals, including the “pursuit of truth, the development of students, and the general well being of society.”¹² The university counts itself as “committed to the

⁹ Adam Kissel, *George Washington University Badgers Innocent YAF Students*, FOUND. FOR INDIV. RIGHTS IN ED., Oct. 12, 2007, <https://www.thefire.org/george-washington-university-badgers-innocent-yaf-students/>.

¹⁰ George Washington University, *University Statement Regarding Offensive Fliers on Campus*, Sept. 9, 2017, <https://mediarelations.gwu.edu/university-statement-regarding-offensive-fliers-campus>.

¹¹ Spencer Brown, *Leftists Recycle Decade-Old ‘False Flag’ In Desperate Attempt To Undermine GW YAF*, YOUNG AMERICA’S FOUNDATION, Sept. 9, 2017, <http://www.yaf.org/news/leftists-recycle-decade-old-false-flag-desperate-attempt-undermine-gw-yaf/>.

¹² *Statement of Student Rights & Responsibilities – Preamble*, GEORGE WASHINGTON UNIV., available at: <https://studentconduct.gwu.edu/preamble>.

protection of free speech,” including the right of students to “distribute pamphlets,” and observes that “[n]o one group or organization holds a monopoly on dissent or on freedom to hear all sides.”¹³

Satire and parody are time-honored modes of expression intended to draw attention to, and criticize, views or conduct the speaker means to hold in contempt. In *Hustler Magazine v. Falwell*, 485 U.S. 46 (1988), the Supreme Court of the United States ruled that the First Amendment protects even the most blatantly ridiculing, outlandishly offensive parody. In that instance, the First Amendment protected a mock-up advertisement purporting to interview the Reverend Jerry Falwell, who described losing his virginity to his own mother in an outhouse.

Satire, of course, may be offensive and is often intended to offend. The principle of freedom of speech does not exist to protect only non-controversial speech; indeed, it exists precisely to protect speech that some members of a community may find controversial or offensive. The right to free speech includes the right to say things that are deeply offensive to many people. *See, e.g., Terminiello v. Chicago*, 337 U.S. 1, 4 (1949) (noting that “[Free 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.”). Indeed, much protected expression—including parody and satire—exists precisely to challenge, to amuse, and even to offend, and does not lose its immunity from official intermeddling for doing so.

Satire need not be explicitly labeled as such in order to be understood as satire or parody. In fact, a satirical piece would lose its value if it must be explicitly labeled as such. Having a “superficial degree of plausibility” is, of course, “the hallmark of satire.” *New Times, Inc. v. Isaacks*, 146 S.W.3d. 144, 160–61 (Tex. 2004) (in the context of a defamation claim, whether a publication would be taken as a serious expression of fact is not dependent upon the presence of a disclaimer, which is “one of many signals the reasonable reader may consider in evaluating a publication”).

Nor does the anonymous source of the posters serve as a basis to restrict or investigate them. The ability to remain anonymous allows a speaker to set forth views that may be earnest, yet carry a paralyzing social stigma that inhibits their expression. It also permits expression untethered to the identity of the speaker, undermining critics’ ability to question the idea expressed based upon the identity of its proponent. Yet anonymity also carries a cost, as listeners may approach anonymous speech with greater skepticism. “The 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*

¹³ *The Student as a Campus Citizen*, GEORGE WASHINGTON UNIV., available at: <https://studentconduct.gwu.edu/iv-student-campus-citizen>.

Commission, 514 U.S. 334, 341–42 (1995). University officials have mounted a formal investigation, are reviewing video surveillance, and now characterize the views as “hateful” expressions that the university will not “tolerate.” The decision to remain anonymous is not only a choice protected by well-worn notions of freedom of speech, it was a wise one.

It is of little importance that the university has not yet formally charged or penalized those responsible for the poster; the chilling effect commensurate with the pronouncement of a formal investigation alone undermines the university’s stated commitment to freedom of expression. Official “inquiry alone trenches upon” freedom of expression. *Paton v. La Prade*, 469 F. Supp. 773, 778 (D.N.J. 1978) (high school student’s speech impermissibly chilled when anonymous request for information from a political organization resulted in being labeled a “subversive” and formally investigated). The Supreme Court has likewise observed that investigations “are capable of encroaching upon the constitutional liberties of individuals” and have an “inhibiting effect in the flow of democratic expression.” *Sweezy v. New Hampshire*, 354 U.S. 234, 245–48 (1957).

It’s not clear what the precise message of the satirist is here. The student group pilloried by these posters may complain that the criticism from these posters is unfair. The event at issue was organized by predecessors who have long since graduated from the university, and occurred a decade ago. Yet it occurred, and students should be free to question the legacy of that message, and whether it persists today. They must also be free to assail organizations’ views as they perceive them; free speech means little if students cannot label and criticize views they perceive to be hateful.¹⁴

More fundamentally, it is not the place of the police and university administrators to separate fair satire from unfair satire, nor to set upon a path of imposing discipline based on whether students or officials find the expressed idea, as they understand it, to be offensive. It is never proper for police officials to endeavor to uncover the identity of an anonymous satirist on the subjective belief that the satirist’s views are hateful or erroneous.

¹⁴ Nor does characterizing the organization’s views as hateful amount to defamatory speech. The *sine qua non* of a defamatory statement is that it falsely asserts objectively verifiable facts. *Rosen v. American Israel Public Affairs*, 41 A. 3d 1250, 1256 (D.C. 2012). Statements characterizing the views of another as hateful generally do not amount to actionably false statements of facts, as they are subjective opinions incapable of objective verification. See, e.g., *Raible v. Newsweek, Inc.*, 341 F. Supp. 804, 807 (W.D. Pa. 1972) (observing that “not every annoying and embarrassing publication is a libel,” nor “every lie [. . .] a libel” and holding that “to call a person a bigot or other appropriate name descriptive of his political, racial, religious, economic or sociological philosophies” is not defamatory); *Forte v. Jones*, No. 1:11-cv-0718, 2013 WL 1164929, at *6 (E.D. Cal. Mar. 19, 2013) (distinguishing between accusations of membership within a specific organization and the allegation that a person is a “racist,” with the latter being non-actionable because it “has no factually-verifiable meaning”); *Martin v. Brock*, 2007 WL 2122184, at *3 (N.D. Ill. July 19, 2007) (“statements of opinion that someone is racist” amount to non-actionable name-calling unless they imply the existence of undisclosed defamatory facts); *MacElree v. Philadelphia Newspapers, Inc.*, 674 A.2d 1050, 1055 (although not every accusation of racism is devoid of defamatory construction, “accusations of racism have been held not to be actionable defamation”). The posters here impugn the perceived views of a student organization based on an event it organized and held, even if that event has long since concluded.

III. Conclusion

The threat of punitive measures implied from an investigation by police officials may please some students, administrators, or ideological groups, but it is fundamentally at odds with the university's stated values.

Because the chilling effect caused by an investigation continues until the investigation is publicly abated, and the matter is therefore of some urgency, we request a response to this letter by the close of business on September 13, 2017.

Sincerely,



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cc:

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