



August 24, 2018

President Jerry Falwell, Jr.  
Liberty University  
1971 University Boulevard  
Lynchburg, Virginia 24515

*Sent via U.S. Mail and Electronic Mail (JFalwell@liberty.edu)*

Dear President Falwell:

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 concerned by recent media reports about the involvement of Liberty University's leadership in the editorial decisions of *Liberty Champion*, a newspaper described by Liberty University as a "student-run" news outlet.<sup>1</sup> While Liberty's written policies emphasize other university values over students' freedom of expression, the university's treatment of its student press is sharply at odds with your October 2016 statement that Liberty "promotes the free expression of ideas unlike many major universities where political correctness prevents conservative students from speaking out."<sup>2</sup>

The following is our understanding of the facts. Our understanding is necessarily limited to public reports in part because of restrictions reportedly imposed by Liberty on its student press, including non-disclosure agreements. These agreements limit FIRE's ability to make factual inquiries of student journalists without jeopardizing their ability to receive an education at the university. To the extent Liberty believes our understanding of the facts is in error, we invite the university to offer information that would provide a more accurate understanding. If that is the case, we ask also that Liberty release any student journalists from any non-disclosure agreement that would limit their ability to share information concerning their interactions with Liberty administrators.

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<sup>1</sup> LIBERTY UNIV., *Liberty Champion Newspaper Practicum*, <http://www.liberty.edu/academics/communications/dmaj/index.cfm?PID=25454> (last visited Aug. 21, 2018).

<sup>2</sup> Press Release, Statement from Liberty University President Jerry Falwell, Jr. Oct. 13, 2016, *available at* <http://www.prweb.com/releases/2016/10/prweb13764981.htm>.

On August 16, 2018, *WORLD MAGAZINE* published an article recounting instances of censorship allegedly experienced by *Liberty Champion* staff members since late 2016.<sup>3</sup> The incidents reported include the following:

- In October 2016, sports editor Joel Schmiege wrote a column critical of comments made by President Donald Trump during a leaked recording from a 2005 filming of *Access Hollywood*. In it, Trump claimed that he “grab[s] [women] by the pussy.” According to Schmiege, you told his editor not to run the column because the paper already planned to run a piece on Trump that week. Schmiege also claimed that, after he posted the column to his own Facebook page instead, a Liberty graduate student warned him—on behalf of *Champion* adviser Deborah Huff—that he should not do anything similar again in the future.
- One year later, in October 2017, “Red Letter” pastor Jonathan Martin was escorted from campus and threatened with arrest for an unpermitted protest.<sup>4</sup> In the months after Martin’s removal, faculty members reportedly rejected *Champion* staff’s submitted articles about the incident.
- In early 2018, *Champion* writer Jack Panyard interviewed the director and producer of the film *Commander*, which “tell[s] the story of Mark Taylor, who spoke of his vision that Donald Trump would become president.”<sup>5</sup> During the university’s review of the piece, Panyard’s skepticism about Taylor’s story was cut, leading Panyard to remove his name from the article.
- Then, in April 2018, Panyard—who had been chosen by Huff as editor-in-chief the month before—wrote about the university’s treatment of unmarried students living on campus who became pregnant. The story included interviews with a student expelled from campus housing as well as the president of Liberty’s pro-life group, Lifeline. Liberty cut Panyard’s story.
- When Shane Claiborne, another “Red Letter” leader, announced his intention to host a “Revival” in Lynchburg, Virginia, and pray on Liberty’s campus in April, campus police threatened him with a fine and jail time. *Champion* news editor Erin Covey expressed interest in covering the Revival and the Liberty students who announced that they would be speaking at it. When Covey requested comment from you, you replied that same day, “Let’s not run any articles about the event.”
- On April 13, Dean of the School of Communication and Digital Content Bruce Kirk notified *Champion*’s staff that they needed to be interviewed for next year’s staffing positions, contrary to the practice in previous years. In an interview, Kirk asked Panyard how he would ensure that stories like the one Covey attempted to write about the Revival would not occur again.
- On an April 18 phone call with *Champion* staff, you reportedly said that the paper had been “established to champion the interests of the university, disseminate information

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<sup>3</sup> Charissa Crotts et al., *Papered Over*, *WORLD MAGAZINE*, Aug. 16, 2018, [https://world.wng.org/2018/08/papered\\_over](https://world.wng.org/2018/08/papered_over).

<sup>4</sup> According to *WORLD*, “Red Letter Christians are on the political left and focus on only the quoted words of Jesus.” *Id.*

<sup>5</sup> *Id.*

about happenings on Liberty’s campus, as well as the positive impacts of Liberty in the community and beyond. And as such, the publisher of the publication, which is the university, is responsible for content decisions, to find stories to be covered by *Champion* personnel and makes all of the calls on the articles, photographs and other content.” You reportedly continued, “We’re going to have to be stricter in the future if these protocols aren’t followed.” After the phone call ended, Kirk reportedly said to the students, “In the real world, which this isn’t, let’s just be honest, right? . . . You will be beholden to an organization, to a company. . . . That is just part of life. And it’s part of life for all of us by the way. Put journalism aside for a second. Do I get to do everything that I want to do or does Jerry dictate what I get to do? . . . Somebody else decides what you do and what you don’t say or do.”<sup>6</sup>

- In an April 27 meeting, Kirk warned Panyard that Liberty intended to restructure *Champion*; that Kirk’s position, editor-in-chief, would no longer exist; and that his “services won’t be needed.” Four members of the paper resigned after Panyard’s firing. Kirk told *Champion*’s new staffers, “Your job is to keep the LU reputation and the image as it is. . . . Don’t destroy the image of LU. Pretty simple. OK? Well you might say, ‘Well, that’s not my job, my job is to do journalism. My job is to be First Amendment. My job is to go out and dig and investigate, and I should do anything I want to do because I’m a journalist.’ So let’s get that notion out of your head. OK?”<sup>7</sup>
- *WORLD* further reports that “edited stories before publication must go through a two- or three-stage approval process: first to the faculty adviser, then to a panel of faculty members, and after that possibly to Falwell himself for approval before publishing.” Additionally, “students on the newspaper staff who receive scholarships must now sign a nondisclosure agreement that says those scholarships are ‘conditioned on my full and continuous compliance with all the following Newspaper Rules throughout the fall and spring semesters of the 2018-2019 academic year.’” *Champion* staffers also are not allowed to comment on social media “about any publication of the *Liberty Champion* or its affiliated communication services.”

While Liberty is a private university not legally bound by the First Amendment, the university’s behavior toward its student journalists contradicts your public commentary about the university’s commitment to free expression.

On October 13, 2016—around the same time Schmieg’s article critical of Trump was censored—you released a statement expressing Liberty’s support of freedom of speech in response to claims from student group Liberty United Against Trump.<sup>8</sup> You wrote:

I am proud of these few students for speaking their minds. It is a testament to the fact that Liberty University promotes the free

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<sup>6</sup> *Id.*

<sup>7</sup> An update to *WORLD*’s article reports that, according to Vice President of Special Literary Projects Scott Lamb, Kirk was “not speaking on behalf of the university” but was rather “speaking his own thoughts, giving his own understanding of what he was communicating.” *Id.*

<sup>8</sup> Press Release, *supra* note 2.

expression of ideas unlike many major universities where political correctness prevents conservative students from speaking out.

This portrayal of the university's values differs markedly from the one presented in *WORLD's* coverage. If the reports by *WORLD* are substantially accurate, Liberty has deployed prior review against *Champion* and prior restraint against its journalists in the form of non-disclosure agreements. While Liberty may have the right to subject *Champion* to this level of administrative control and censorship, there is no denying that these tools are so fundamentally at odds with freedom of expression that they are rarely encountered outside of military establishments and prisons.<sup>9</sup> Liberty can be a university that “promotes the free expression of ideas unlike many major universities,”<sup>10</sup> or it can be one that privileges its reputation and institutional messaging over its students' free expression. It cannot honestly claim to be both.

Currently, the university's policies would earn it a rating as a “warning” school in FIRE's Spotlight database, which rates public and private institutions based on the extent to which their written policies uphold freedom of speech.<sup>11</sup> By openly prioritizing its religious mission over its commitment to students' expressive rights, Liberty makes clear that students should not expect the same speech rights as students at public universities, which are bound by the First Amendment, or at private universities that are committed to free speech. Indeed, FIRE labels certain universities as “warning” schools for a reason: Students should be forewarned when a private college explicitly places other values above the right to free speech, so that they can expect censorship.

But your October 2016 statement gives students a reason to expect that they can speak and write freely at Liberty. Until the university is able to reconcile your commitment to protecting student speech with its actual policies and practices, students are likely to be left without a real understanding of their rights at the university they've chosen to attend. This is simply unfair to Liberty's students.

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<sup>9</sup> In analyzing the freedom of speech and of the press under the First Amendment, courts approach prior restraints with great trepidation, viewing prior restraints as “the most serious and the least tolerable infringement on” freedom of expression. *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976). The risk they pose to freedom of expression is so great that the “chief purpose” in adopting the First Amendment was to prevent their use. *Near v. Minnesota*, 283 U.S. 697, 713 (1931). A requirement that one obtain permission from authorities to speak is “offensive—not only to the values protected by the First Amendment, but to the very notion of a free society.” *Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150, 165–66 (2002).

<sup>10</sup> Notably, Liberty is accredited by the Southern Association of Colleges and Schools Commission on Colleges, whose accreditation standards note its members' support for “the right of students to access opportunities . . . for the open expression and exchange of ideas.” SOUTHERN ASS'N OF COLLEGES AND SCHOOLS COMM'N ON COLLEGES, *The Principles of Accreditation: Foundations for Quality Enhancement* (effective Dec. 2017), <http://www.sacscoc.org/pdf/2018PrinciplesOfAcreditation.pdf>.

<sup>11</sup> *Using the Database*, FOUND. FOR INDIVIDUAL RIGHTS IN EDUC., [www.thefire.org/spotlight/using-the-spotlight-database/](http://www.thefire.org/spotlight/using-the-spotlight-database/) (Last visited Aug. 24, 2018).

In an August 21 response in *Newsmax*, you addressed criticism the university faced after the *WORLD*'s coverage.<sup>12</sup> Unfortunately, the rebuttal does not address all of the outstanding issues. Your claim that Kirk “was not speaking as a spokesman for the university, nor as a spokesman for me,” fails to address a fundamental problem. While Liberty can argue that Kirk’s comments to students misrepresent the university’s official position—which would indeed be a welcome development—it cannot reasonably claim that Kirk was not speaking on behalf of the university while advising *Champion* staffers in his official role as Dean of the School of Communication and Digital Content. Students cannot reasonably be expected to assume that senior members of Liberty’s administration are *not* “speaking on behalf of the university” when conducting their official duties.

Additionally, in your response, you voice frustration: “[T]he press cover[s] my involvement as if I am the only person at Liberty University who should have no say in what is published in a newspaper that is owned and operated by the University.” But if *Champion* is truly a “student-run” outlet at a university that “promotes the free expression of ideas,” outside observers would reasonably expect that those in leadership positions at Liberty would refrain from using their power to dictate the paper’s content.

FIRE was heartened to see your October 2016 statement and stands ready to assist Liberty in following through on the commitment you make. We would be pleased to work with the university to develop policies to codify the respect for the free expression that, as you point out, is missing at “many major universities.” The adoption of such policies would make clear to students that, in keeping with your October 2016 statement, they can expect to enjoy free speech rights at Liberty. It would also hopefully signal a new era at Liberty, in which administrative interference with student media such as *Liberty Champion* would be a thing of the past.

We request a response to this letter by September 7, 2018.

Sincerely,



Sarah McLaughlin  
Senior Program Officer, Legal and Public Advocacy

cc:

Bruce Kirk, Dean of the School of Communication and Digital Content

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<sup>12</sup> Jerry Falwell, Jr., *Newsmax Exclusive: Liberty’s Falwell Rejects ‘Censorship’ Claim*, NEWSMAX, Aug. 21, 2018, available at <https://www.newsmax.com/us/censorship-liberty-university-jerry-falwell-allegations/2018/08/21/id/878106>.