



March 15, 2021

Gay Perez  
Assistant Vice President of Student Affairs  
Executive Director of Housing & Residence Life  
University of Virginia  
Gibbons House  
425 Tree House Drive  
Charlottesville, Virginia 22904

*Sent via Electronic Mail (gperez@virginia.edu)*

Dear Assistant Vice President Perez:

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 appreciates that the University of Virginia is one of the few institutions in the country whose policies earn a "green light" rating from FIRE for protecting campus free speech rights. However, we are concerned by UVA's response to the display on the exterior door of the residence of Hira Azher, a UVA student. Our understanding of the facts, derived from Azher's tweet about the matter,<sup>1</sup> follows. We welcome any additional information UVA has to offer that would impact our analysis.

Azher's display—a photo of which is enclosed—depicts a hooded member of the Ku Klux Klan, the Angel of Death, a Kwame Ture quote ("In order for non-violence to work your opponent must have a conscience"), and the words "UVA HAS NONE!" and "BURN IT ALL DOWN."

On March 10, UVA's Housing and Residence Life sent a letter to Azher requiring removal of this display—and asserting that UVA had previously removed a "similar" display from Azher's residence—on pain of "further discipline," including "potential removal from University housing." The university asserted that the display is "threatening" and carries the "potential for incitement," citing the 2017 violence in Charlottesville.

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<sup>1</sup> Hira Azher (@hiraazh), TWITTER (Mar. 13, 2021, 10:47 AM), <https://twitter.com/hiraazh/status/1370763394182230022>.

UVA asserts that the display's compulsory removal is "consistent with the First Amendment[.]" It is not.

As a public university, UVA's restrictions on student expression must comport with the First Amendment.<sup>2</sup> UVA's requirement that Azher's display be removed—premised on its content, which the university views as having the "potential for incitement"—violates the First Amendment because the display does not amount to unprotected incitement.

Speech amounts to incitement, and therefore falls among the "well-defined and narrowly limited classes of speech" unprotected by the First Amendment,<sup>3</sup> only where the language "specifically advocate[s] for listeners to take unlawful action," is "directed to inciting or producing imminent lawless action," and is "likely to incite or produce such action."<sup>4</sup>

First, the display does not evidence an intent to direct others to engage in lawless action. Political discourse has long been steeped in themes of violence. Azher's display follows in the tradition of Thomas Jefferson—UVA's founder and a principal author of what ultimately became the First Amendment<sup>5</sup>—who famously predicted that revolution and violence would be necessary to preserve liberty, writing: "The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. It is [its] natural manure."<sup>6</sup>

Because rhetoric tinged with violent themes often intersects with charged political expression, and the "language of the political arena . . . is often vituperative, abusive, and inexact," the First Amendment requires an exacting standard to be met before a statement constitutes an unprotected "incitement."<sup>7</sup> Language is not divorced from context and need "not be read literally on [its] face," as "[r]easonable persons understand" speech from its context and need not "mistake" speech "for literal commands or directives to immediate action."<sup>8</sup> Rigid explication "would indulge a fiction which neither common sense nor the First Amendment will permit."<sup>9</sup>

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<sup>2</sup> *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 822 (1995).

<sup>3</sup> *Chaplinsky v. New Hampshire*, 315 U.S. 568, 574 (1942).

<sup>4</sup> *Nwanguma v. Trump*, 903 F.3d 604, 609–10 (6th Cir. 2018) (then-candidate Trump's repeated "get 'em out of here" statements to a crowd at a rally, concerning protesters, did not constitute specific advocacy of violence, even if the statements could be understood as encouraging violence); see also *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) (incitement standard requires a showing that speech was "directed to inciting or producing imminent lawless action and . . . likely to incite or produce such action").

<sup>5</sup> *Everson v. Bd. of Educ.*, 330 U.S. 1, 11 (1947).

<sup>6</sup> Letter from Thomas Jefferson to William Stephens Smith, Nov. 13, 1787, available at <https://founders.archives.gov/documents/Jefferson/01-12-02-0348>.

<sup>7</sup> *Watts v. United States*, 394 U.S. 705, 708 (1969); see also *Burnham v. Ianni*, 119 F.3d 668, 671 (8th Cir. 1997) (finding that a state university violated the First Amendment by removing photographs depicting its professors bearing weapons related to their academic interests).

<sup>8</sup> *McCullum v. CBS*, 202 Cal. App. 3d 989, 1002 (1988).

<sup>9</sup> *Id.*

Azher’s display cannot reasonably be read as a literal call for lawless action, but would instead reasonably be read as figurative and hyperbolic political rhetoric advocating for systemic change. The rhetorical call to “burn down” an institution is an oft-deployed rhetorical device,<sup>10</sup> not advocacy of imminent arson. UVA’s interpretation of Azher’s display would place Azher in the unlikely position of advocating that readers raze the building in which she sleeps.

Second, even if the display could reasonably be read as encouraging unlawful activity, speech encouraging others to engage in unlawful conduct meets the incitement standard only where it is intended to and likely to result in *imminent* lawless activity. The assertion of the “moral propriety or even moral necessity for a resort to force or violence”—like the Ture quote—remains protected speech.<sup>11</sup> Azher’s display would amount to speech “not directed to any person or group” and advocate action “at some indefinite future time,” which is “not sufficient” to remove it from the First Amendment’s embrace.<sup>12</sup>

Third, past violence in Charlottesville does not dilute Azher’s First Amendment rights, as there is “no room for the view that, because of the acknowledged need for order,” including in the wake of serious violence on university campuses, “First Amendment protections should apply with less force on college campuses than in the community at large.”<sup>13</sup> Instead, that violence—during which a white supremacist murdered a protester—should stiffen the university’s resolve to protect speech, not to use it as a basis to curtail expressive rights.

Given the urgent nature of this matter, we request receipt of a response to this letter no later than the close of business on Wednesday, March 17, 2021, confirming that UVA will not require removal of Azher’s display.

Sincerely,



Adam Steinbaugh  
Director, Individual Rights Defense Program

Cc: Allen W. Groves, Associate Vice President & Dean of Students

Encl.

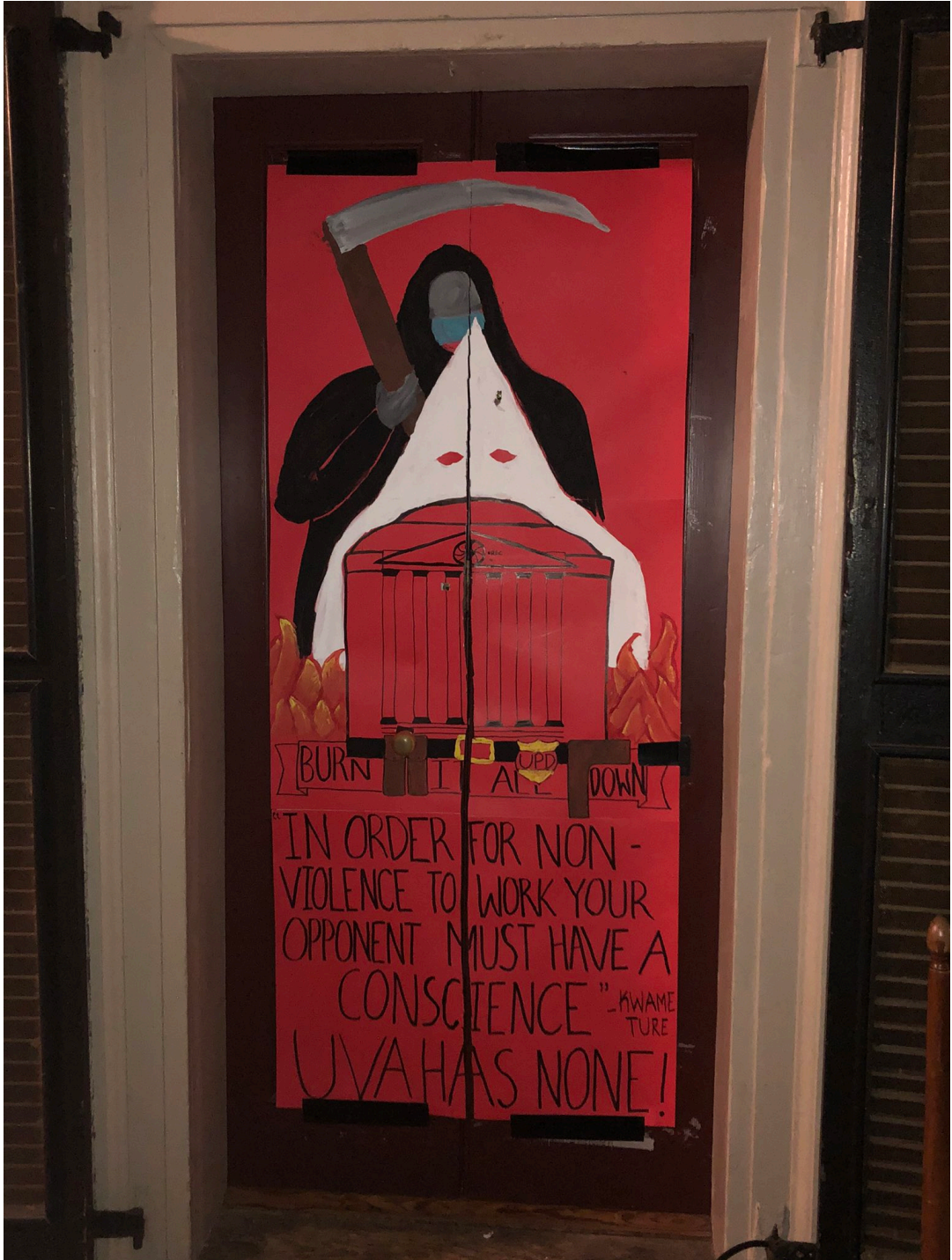
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<sup>10</sup> See, e.g., *Burn it Down: Abolition, Insurgent Political Praxis, and the Destruction of Decency*, ABOLITION, Apr. 22, 2018, <https://abolitionjournal.org/burn-it-down>; Jim Geraghty, *No, Let’s Not Burn the System Down*, NAT’L REVIEW, Mar. 14, 2016, <https://www.nationalreview.com/2016/03/donald-trump-2016-voters-above-burning-system-down>.

<sup>11</sup> *Noto v. United States*, 367 U.S. 290, 297–98 (1961).

<sup>12</sup> *Hess v. Indiana*, 414 U.S. 105, 108 (1973).

<sup>13</sup> *Healy v. James*, 408 U.S. 169, 180 (1972).



BURN IT ALL DOWN

"IN ORDER FOR NON-VIOLENCE TO WORK YOUR OPPONENT MUST HAVE A CONSCIENCE" - KWAME NINSIN

UVA HAS NONE!





Housing & Residence Life

March 12, 2021

Hira Azher

Dear Ms. Azher,

Employees of the University's Facilities Management Division have been directed by University leadership to remove a large paper sign that was affixed to each panel of the door of your room on the Lawn, because the sign advocates physical violence, and could spur it. The sign included several images -- the Rotunda with a white hood associated with the Ku Klux Klan draped over it, a "Grim Reaper" holding a scythe, and a police belt with a gun and badge bearing the initials "UPD." Under the belt was a banner with the words "Burn It All Down" with images of flames behind the belt. The sign also included a quote attributed to Kwame Ture: "In order for non-violence to work, your opponent must have a conscience." Under this quote, the words "UVA Has None" were added in large block letters. This sign is very similar in appearance to a prior sign that was removed from your door for the reasons explained in this letter.

This sign advocates physical violence. The phrase "Burn It All Down" directly encourages a violent act and therefore has the potential to provoke violence. The quote included on the sign suggests that "nonviolence" is ineffective against UVA, which further encourages violence. It is also significant that these signs appeared in an area that was the site of race-based violence in August of 2017. That context furthers the potential for incitement created by the words and images.

After consulting with counsel, we believe our decision to remove this sign is consistent with the First Amendment and was necessary to safeguard our community. The threatening nature of this lawn sign is particularly apparent in the face of recent history, including the fear and intimidation brought to the Lawn by torch-bearing rioters in on August 11, 2017, the violence that continued the following day, and the January 6, 2021 insurrection at the Capitol that resulted in several deaths.

We have been vigilant in our protection of free speech in this community, even when such speech is critical of the University. When speech goes beyond mere advocacy of a particular point of view and directly promotes physical violence, we can and will take action to restrict it. We believe that removal of this sign is both necessary to protect community safety and consistent with our obligations to protect free speech. If you post this or a similar sign on your door in the future, you will be subject to further discipline, including potential removal from University housing.

Sincerely,

Housing and Residence Life

Box 400320 · Charlottesville, VA 22904 · p 434-924-3736 · housing.virginia.edu