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FIRE QUARTERLY

SPRING 2022



EXILED

ONE TEXAS COLLEGE'S CRUSADE TO OUST FACULTY

FIRE'D UP AND READY TO GO



Here at FIRE, we defend student and faculty rights year round, from New Year's Day to New Year's Eve. The weather's heating up and the birds are in full song outside our Philadelphia headquarters, just across from Independence Hall, but we're not taking any vacation from fighting campus censorship.

Just ask Joe Cohn, FIRE's legislative and policy director. Joe and his team have been spending their days, nights, and weekends the past few months taking on a nationwide avalanche of state bills that, if passed, would encroach upon the academic freedom of professors at state universities coast to coast. Thanks to your generous support, we've mounted a much-needed response to serious legislative threats to free discussion and debate in our public college classrooms. From Tallahassee to Salt Lake City, Indianapolis

to Columbia, FIRE has worked overtime to remind lawmakers that — as the Supreme Court put it more than a half-century ago — the First Amendment “does not tolerate laws that cast a pall of orthodoxy over the classroom.”

Or ask Darpana Sheth, our vice president of litigation. Under Darpana's leadership, FIRE attorneys worked long nights to secure the victories we'd already won last spring. For example, earlier this year, FIRE achieved justice for Jared Nally, editor-in-chief of the nation's oldest Native American student newspaper. Jared was ordered by his college's president to stop reporting on issues facing his fellow students. After FIRE filed a federal lawsuit, the president was removed, the college's policies were reformed, and student press rights were restored. We're proud of this win for student journalists — and there's more litigation on the way. With new lawsuits filed in February and March, our attorneys are just warming up.

Joe and Darpana aren't the only staffers putting in serious hours to win the fight for free speech. Because of the hard work of our communications team, for example, millions of Americans have seen our new national ad campaign over the past few months. Whether watching the Winter Olympics, scrolling across Facebook, leafing through the *The New York Times* or the *Dallas Morning News*, or strolling on the National Mall, FIRE's message of free speech for all has been front and center. We even drove a mobile billboard through the streets of Boston just to make sure nobody missed Emerson College's censorship of a student group.

That's not all, of course — but it's all I can fit in this letter! As you'll see in these pages, FIRE is off to a hot start in 2022. To keep the wins coming, FIRE's not taking any days off around here. On behalf of my colleagues, and the students and faculty we defend, thank you for making FIRE's work possible.

Will Creeley

FIRE'S LEGISLATIVE TEAM: COMING TO A STATEHOUSE NEAR YOU!

FIRE's legislative and policy department has picked up in 2022 where it left off in 2021, not only fighting to expand protections for free expression on campus, but also defending against bills that threaten academic freedom and due process.

The wave of bills we saw in 2021 that sought to regulate discussions of race and gender in education has only accelerated, this time with more of these measures going beyond K-12 schools and threatening to restrict speech in college and university classrooms.

We used personal outreach, written testimony, in-person testimony, and public pressure to win several defensive victories, including in Georgia, Indiana, West Virginia, Wisconsin, and Wyoming. In each of these states, bills that threatened to restrict discussions in higher education were amended to leave the classroom open to all ideas. Additionally, a similar bill in South Dakota was introduced without a higher education curricular ban, in part because of our proactive engagement.

These wins follow several in 2021, when zero bills were enacted restricting college curricula.

Unfortunately, Florida appears set to become the first state to enact a higher education curricular ban after the legislature greenlit HB 7, which as of press time is awaiting the governor's signature. FIRE repeatedly urged legislators to amend HB 7 to remove plainly unconstitutional language banning “instruction that espouses, promotes, advances, inculcates, or compels” students to believe a variety of concepts related to race and sex. Our warnings went unheeded, and we are exploring our options to defend academic freedom.

While defending academic freedom is a major point of focus, FIRE remains engaged on other key issues. We recently testified against a bill in Maine — which regulates how universities investigate and adjudicate claims of sexual misconduct — that lacks several meaningful due process protections. Additionally, we engaged in Wyoming to combat an amendment to the state appropriations bill that would have eliminated all gender studies programming at the University of Wyoming. After our intervention, this amendment was dropped.

Despite these defensive efforts, we continue to promote bills that

proactively support civil liberties in higher education. We testified in support of Indiana HB 1190, a campus free speech bill recently enacted that bans free speech zones, adopts the speech-protective definition of harassment in line with U.S. Supreme Court standards, and bans discrimination against viewpoint-based student organizations.

In Louisiana, we helped draft the language for HB 185, which would enhance the state's existing campus free speech law, and in Kentucky, Missouri, Oklahoma, New Hampshire, Wisconsin, and Virginia, we testified in support of an array of bills to protect free speech and due process on college campuses.

As legislatures continue to craft bills on these important issues, FIRE will remain active in statehouses across the country to ensure that student and faculty rights are protected.

Just before the Quarterly went to press, FIRE celebrated Kentucky Gov. Andy Beshear signing HB 290, which provides crucial campus due process protections. The bill received bipartisan support in the General Assembly and from the statewide College Republicans and College Democrats. The bill follows years of advocacy from FIRE and others.



DEFENDING THE STUDENT PRESS

LAWSUIT: FIRE sues Texas university for withholding public records about how it censored a student publication and took over its editorial independence

Did Tarleton State University censor and seize editorial control over its student newspaper in an attempt to cover up a former professor's inappropriate behavior toward female students? To uncover the truth, FIRE sued Tarleton to obtain records that the university improperly withheld under Texas's Public Information Act.

"Tarleton covered up its records on a professor's 'inappropriate behavior' by demanding that a student newspaper take down articles, then covered up the cover-up by withholding records from the public," said FIRE attorney Gabe Walters. "Sunshine is the best disinfectant, and today there's something shady in Stephenville."

Tarleton quietly paid professor Michael Landis more than \$60,000 in 2018 to leave the university after an investigation found that he had acted inappropriately toward female students. Three years later, Landis threatened to sue an independent student newspaper, the Texan News Service, for defamation.

Landis' threat to sue was toothless. Not only was any defamation suit too late under the statute of limitations, but TNS' reporting was accurate and truthful. But that did not stop Tarleton from pressuring students to take down the articles.

After FIRE wrote to the university in 2021 to defend the student publication, Tarleton falsely claimed that TNS was never independent from the administration.

Provost Karen Murray also wrote that it is "imperative that the TNS operate only as an instructional laboratory for students and interns" and not as an editorially independent paper.

Classifying TNS as an "instructional laboratory" means TNS' adviser will have final editorial discretion over what the paper does and doesn't publish.

While a faculty-edited publication isn't necessarily a bad thing, taking over a formerly student-run publication certainly is. In redefining TNS' identity, the administration essentially stripped the publication of its editorial independence — all so the university could try to cover up an embarrassing situation.

Alarmed by Tarleton's censorship, FIRE lodged public records requests seeking information on efforts to censor TNS and on Landis' threat of a lawsuit. Tarleton provided some records in response, but withheld others, claiming that the withheld information is confidential under the Family Educational Rights and Privacy Act. FIRE's lawsuit points out that some of the records Tarleton withheld under this exemption were actually published by TNS itself and are not "student records" under FERPA. The lawsuit seeks to compel Tarleton to produce the documents and to redact any information that identifies students.



Students attend FIRE's student journalism conference on April 9 at FIRE's Washington, D.C. office.

This year, FIRE launched its **Student Press Freedom Initiative** to protect freedom of the collegiate press through advocacy and litigation efforts, to research the state of student press freedom, and to provide resources for student journalists.



"Student journalists need an ally when administrators threaten censorship, funding cuts, intimidation, or any other weapon in their arsenal to eliminate free expression. FIRE is that ally. We are here to help student journalists in the newsroom and the courtroom."

—**Lindsie Rank,**
FIRE's student press counsel

VICTORY:

After FIRE letter, University of Northern Iowa clarifies resident assistants may speak with media

After FIRE raised concerns, the University of Northern Iowa made clear to resident assistants that they may speak with the media as private citizens. A UNI official told RAs in February that university media relations officials must approve all "RA-themed media responses" to the press. FIRE wrote UNI explaining that government employees, including RAs at public institutions, have the right to speak to the media in their individual capacities on matters of public concern.

UNI responded to affirm that the school "strongly values the First Amendment rights of [UNI] students and employees" and pledged not to restrict RAs' right to speak with the media. FIRE commends UNI for moving quickly to respect students' First Amendment rights.

VICTORY:

Wichita State University to give student journalists equal game day parking access

In a win for the student press, Wichita State University agreed earlier this year to improve parking privileges for student journalists at The Sunflower student newspaper. Now, parking privileges for student journalists are on par with those of professional journalists when covering university sporting events.

Previously, administrators had issued journalists at the independent student paper parking credentials that differed from those given non-student journalists who cover Wichita State basketball. FIRE wrote Wichita State arguing that student journalists should receive privileges commensurate with those of non-student journalists, and that giving student journalists worse parking privileges solely because they are students undermines the value of the student press.

Earlier this year, Wichita State Assistant General Counsel Joseph Dempewolf agreed, and now sportswriters at The Sunflower can park in the lot closest to the stadium.

MULTIPLE FIRE ADVERTISING CAMPAIGNS HIGHLIGHT THE URGENCY TO PROTECT FREE SPEECH.

NBA star Enes Kanter Freedom knows the cost of censorship. When he started speaking out against the government of his native country Turkey, Turkish officials put his dad in jail, revoked his passport, and forced his family to disown him.



In our first-ever nationally televised advertising campaign, Kanter Freedom shared his story and highlighted the importance of free speech. The campaign ran during the Beijing Winter Olympic Games and coincided with the conversation surrounding the human rights record of the Chinese government.

"I remember the first time coming to America," said Kanter Freedom, who recently became a United States

citizen and played center for the Boston Celtics. "One of my teammates criticized the president and I said, 'Dude, what are you doing? They might put you in jail.' And he said, 'This is America.' And he explained to me what freedom of speech means. ... Unfortunately if you use your free speech in Turkey, you'll end up in jail."

The advertising campaign was an exciting new addition to FIRE's larger public education campaign in

support of free speech values. Ads ran on primetime throughout the Olympics, as well as on network and cable news shows, including "Meet the Press," "Tucker Carlson Tonight," and "Fareed Zakaria GPS."

NEW YORK TIMES MAGAZINE TAKEOVER!



With a series of arresting messages that strike at the necessity of preserving and defending free speech rights, we ran a series of ads in the New York Times magazine.

The initial ad invoked the Rev. Dr. Martin Luther King Jr.'s famous "I Have a Dream" speech to bring home to Americans across the political spectrum what would be lost if our nation lacked the right to free speech. It ran in January to coincide with the national holiday honoring the civil rights leader. Additional ads proclaimed, "Free Speech is Never as Dangerous as Those Who Try to Silence It," and "Cancel Culture Cancels Culture".

This campaign, spearheaded by the NYC advertising agency DeVito/Verdi, is complemented by a digital media component dubbed "FIRE drills," where ads appear on 100+ news and political websites, as well as on social media, when stories or posts are published that connect to FIRE's mission of defending free speech.



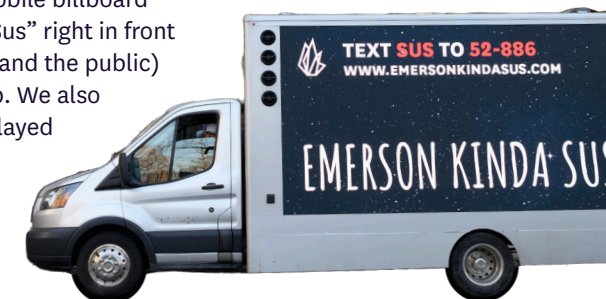
WHAT THE TRUCK?

Mobile billboard criticizing Emerson College for censoring students criss-crosses Boston

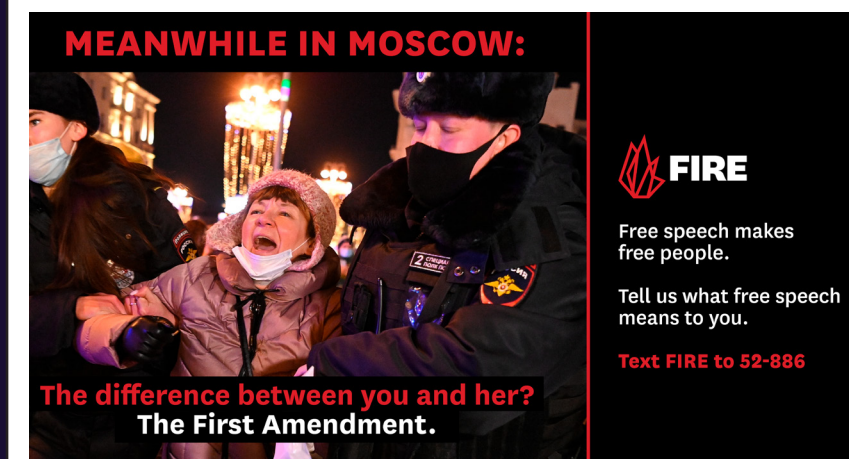
Emerson College had plenty of opportunities to stop punishing members of a conservative student group for passing out stickers critical of the Chinese government (which said "China Kinda Sus" — slang for suspicious). Instead, administrators doubled down on their bogus bias charge by denying the students' appeal.

Emerson was adamant. But so were we.

For three days we parked a mobile billboard proclaiming "Emerson Kinda Sus" right in front of campus so administrators (and the public) couldn't ignore the censorship. We also launched a series of ads, displayed throughout Boston's transit system, to call out Emerson's attempts to squelch political speech. Learn more about the case and the campaign by visiting emersonkindasus.com.



First stop for this message:
The Russian embassy.



As war raged in Ukraine and Russia cracked down on free speech and dissent, we rented a mobile billboard that drove around the Russian embassy while people protested outside. The goal? To highlight the brutal censorship occurring abroad in Russia and the importance of the First Amendment here at home. The headline, "Meanwhile in Moscow," appeared above an image of an anti-war protester being forcefully dragged away by two Russian police officers. Beneath it read the statement: "The difference between you and her? The First Amendment."

LAWSUIT:

A history professor advocated for removing Confederate statues. Then his college fired him.

Another day, another First Amendment lawsuit against Collin College.

In March, history professor Michael Phillips sued Collin College, its president, H. Neil Matkin, and other university officials for violating his constitutional rights by firing him for talking about history and criticizing the college's COVID-19 policies.

If the name Collin College sounds familiar — it should. Phillips is the third professor to sue the college for muzzling faculty criticism, and the fourth, since January 2021, to be fired for criticizing the college's response to the COVID-19 pandemic.

"I never dreamed I would teach at a college where I would be ordered to not share facts, particularly life-saving ones, with my students," said Phillips. "We should model for our students how to hear speech and ideas we don't like, skills necessary for participating in a democracy. Collin College is denying students that lesson."

The saga began in August 2017 when Phillips, an

expert on race relations in Dallas, authored an open letter in the Dallas Morning News on behalf of a group of historians, calling for the removal of Confederate monuments. In the letter, Phillips identified himself as a professor at Collin College. Administrators summoned Phillips to a meeting and told him that the letter violated college policy because it "made the college look bad," and mentioned Phillips's affiliation with the college.

Two years later, a Washington Post reporter interviewed Phillips to provide context for a story about a former Collin College student who targeted Mexicans in a mass shooting at a Texas Walmart. The article referred to Phillips as "a Collin College professor," but Phillips spoke not on behalf of the college, but in his capacity as an expert on the topic of race relations. Administrators issued Phillips an "Employee Coaching Form" for defying Matkin's unconstitutional gag order forbidding faculty members from speaking with the media about the shooting.

In June 2020 and in August 2021, Phillips criticized the college's response to the COVID-19 pandemic on his Facebook page. After his first post, administrators warned him, asking in a disciplinary meeting, "Do you still want to work here?" After his second, the college asked him to sign a formal reprimand.

Then, in Sept. 2021, while teaching about the history of pandemics, Phillips discussed the harm caused by anti-mask advocacy groups during the 1918-19 flu pandemic and suggested that students consider wearing masks. Administrators summoned Phillips to yet another disciplinary meeting and told him that he should never mention masks to students again.

This takes us to Jan. 28, when the college informed Phillips — who had recently been named "Educator of the Year" by the East Texas Historical Association — that his contract would not be renewed. (This, despite the fact that the college's Council on Excellence, a group of faculty members who evaluate faculty applying for new contracts, had approved him for a three-year contract extension.)

COLLIN COLLEGE IS THE EPICENTER OF CENSORSHIP IN THE STATE OF TEXAS.

"Professors do not lose their ability to speak out on public issues when they work for the government — particularly when speaking to journalists about their area of expertise," said FIRE attorney Greg Harold Greubel. "Collin College's decision to ignore the Constitution and terminate the Educator of the Year tells you all you need to know about the state of free inquiry at Collin College — and it ain't good."

Public colleges violate the First Amendment rights of their professors by retaliating against them for speaking on public issues. This is exactly what Collin College, Matkin, and college administrators did to Phillips and other faculty members. In his lawsuit, Phillips challenges the constitutionality of the

policies used by the college to justify his termination.

Phillips is the third former Collin College professor represented by FIRE.

Former history professor Lora Burnett recently prevailed in her own First Amendment lawsuit against the school after she was fired for criticizing public officials and the Collin College administration. Under the judgment, Collin College will pay Burnett \$70,000 in damages and approximately \$38,000 in attorneys' fees.



Suzanne Jones

FIRE now also represents Suzanne Jones in the lawsuit she filed against Collin College in September. Like Phillips, Jones was fired for calling for the removal of Confederate monuments and for challenging the college's COVID-19 reopening plans, among other protected activities.

"Collin College is the epicenter of censorship in the state of Texas," said FIRE attorney Katlyn Patton. "How many more lawsuits will it take, and how many more payouts will taxpayers have to shoulder, before Collin College leaders realize that the Constitution applies to them too?"

Bob Schmidt of the Crews Law Firm is serving as local counsel for the lawsuits.

VICTORY!

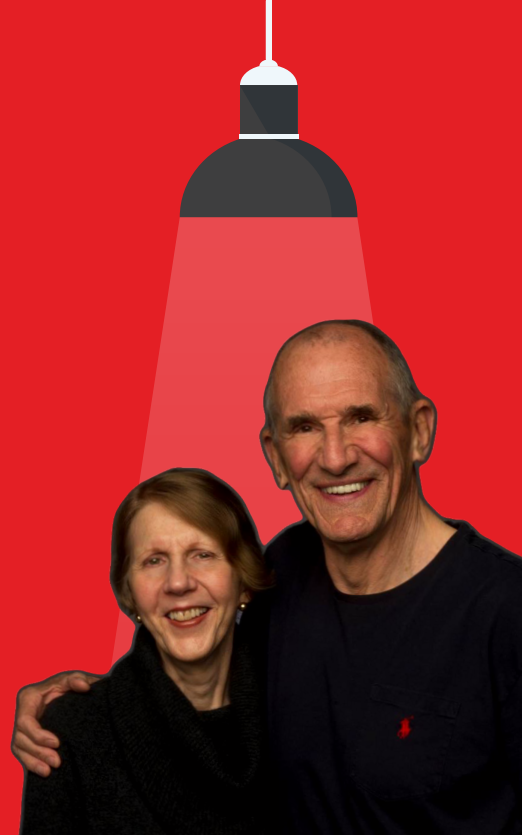
Earlier this year, history professor Lora Burnett accepted Collin College's offer to pay \$70,000 and attorneys' fees, bringing her First Amendment lawsuit to an end. She's now teaching in California and is delighted that Collin College paid for its misdeeds.

I HOPE I AM THE LAST PROFESSOR THAT COLLIN COLLEGE FIRES FOR EXERCISING HER FIRST AMENDMENT RIGHTS.

"I hope I am the last professor that Collin College fires for exercising her First Amendment rights, but if history is any indication, no one who has an opinion is safe from Collin College leaders' thin skin," Burnett said in January. "We should all be protective of the rights granted by the Constitution — and stand up to defend them when they're violated."



Lora Burnett



DONOR SPOTLIGHT: BILL & JOAN JOHNSON

We are most impressed with FIRE's focus on free speech. Certain things go against the grain of human nature, requiring one to defend their opponents' right to speak, even when you know they are wrong. You must be willing to question your deepest beliefs. It is hard work to not fall into the habit of believing you have all the answers.

FIRE is apolitical in a world choking on partisanship. FIRE fights for the principles of free expression that form the very core of the Enlightenment values that have created remarkable human progress over the past 300 years.

Bill and Joan are valued members of FIRE's Ember Club. They have shown their fierce commitment to our mission by helping us grow our core advocacy work, and also by investing in new initiatives like our Campus Free Speech Rankings. FIRE is deeply grateful to have them on our team.

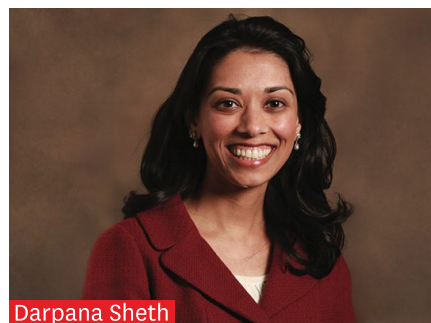
You can learn more about the Ember Club at thefire.org/donate. If you would like to discuss membership and benefits, please do not hesitate to contact Ashley Adams at ashley@thefire.org or 215-717-3473.

FIRE ANNOUNCES ARTHUR D. HELLMAN FELLOWSHIP IN FIRST AMENDMENT LITIGATION FOR LAW STUDENTS

FIRE is honored to announce that we have revitalized our highly competitive summer law student program to establish the Arthur D. Hellman Fellowship in First Amendment Litigation to train a new generation of First Amendment litigators. The Hellman Fellowship is a paid opportunity offering a \$6,000 stipend for a 10-week program that runs from June through August.

As a Hellman Fellow, law students will have the opportunity to work with FIRE's civil rights attorneys, advancing FIRE's mission to defend freedom of speech, expression, and thought at U.S. colleges and universities. The fellowship is an important tool in the establishment of a structured pipeline to attract, train, and inspire law students committed to freedom of speech. Fellows will build a long-term relationship with FIRE, with

the possibility of returning to work with us as full-time employees, joining our Legal Network where they can take their own cases pro bono, authoring supporting amicus briefs, or serving as our local counsel.



"FIRE is grateful to Mr. Hellman for his generous investment in the future of free speech and democracy," said FIRE Vice President of Litigation Darpana Sheth. "And we can't

think of a better namesake for the Hellman Fellows whom we hope will proudly carry forth FIRE's mission."

Hellman is a nationally recognized scholar of the federal courts and the First Amendment. In his career, Hellman helped foster a better understanding of the First Amendment and free speech more generally. At the University of Pittsburgh School of Law, Hellman taught First Amendment law for more than 25 years. Hellman is also a senior author of a First Amendment casebook, "First Amendment Law: Freedom of Speech and Freedom of Religion." As a long-time supporter of FIRE, Hellman believes that preserving the spirit of free inquiry at colleges and universities is essential to maintaining a vibrant and healthy American democracy.

RAPID FIRE

GEORGETOWN'S INVESTIGATION OF ILYA SHAPIRO'S TWEETS DRAGS ON

Georgetown University Law Center continues to face a barrage of criticism for its suspension of Ilya Shapiro over now-deleted tweets criticizing President Biden's promise to nominate a black woman to the Supreme Court.

In January, the tweets from Shapiro — executive director of Georgetown Law's Center for the Constitution — went viral on Twitter. Georgetown Law Dean William Treanor denounced the tweets as "appalling" and "at odds with everything we stand for at Georgetown Law." FIRE immediately slammed Georgetown Law for suspending Shapiro over his political expression and rallied more than 300 supporters to contact Georgetown demanding an end to this investigation.

This is a developing story.

Seventy-four days into the investigation, FIRE again criticized Georgetown, noting that the Catholic university's investigation of the tweet was longer than:

- The entire reign of at least 11 popes
- 12 round-trips to the moon
- The time it took the U.S. Senate — a body not known for its speed — to discuss and confirm a Supreme Court justice for a lifetime appointment.

VICTORY! UNC GREENSBORO: BEN SHAPIRO SPEAKS AT GREEN LIGHT UNIVERSITY, SAYS PROTESTORS 'CANNOT STOP IT'

The University of North Carolina at Greensboro lived up to its "green light" rating in April when it affirmed the First Amendment rights of students to invite Ben Shapiro, podcaster and cofounder of conservative news media company The Daily Wire, to speak on campus. Faced with numerous pleas for censorship, the university held firm. The event went off without a hitch, and the university's response to Shapiro's appearance should serve as a model for institutions nationwide.

INVESTIGATION: AUDIO REVEALS SEVERE DISRUPTION OF YALE FEDERALIST SOCIETY PANEL

Much ink has been spilled over the March Yale Law School Federalist Society event that — depending on which article you read — either went off mostly unhindered or suffered severe disruptions. Now, FIRE's investigation based on audio recordings of the event confirms that protesters substantially disrupted the discussion and that Yale ignored its own policies by doing next to nothing to stop the disruption.

The Yale Federalist Society event sought to bring progressives and conservatives together for a discussion on civil liberties. More than 120 protesters appeared to bang on walls, stomp on the ground, chant "Fuck you FedSoc," and scream at the panelists, creating so much noise that classes in the building were disrupted.

This inaction is inexcusable at a prestigious college that maintains policies guaranteeing students robust free speech rights, banning disruptions of expressive events, and requiring administrators to remove disruptive attendees if they fail to heed warnings. Universities cannot stand idly by when confronted with illiberal heckler's vetoes.

VICTORY! EMORY LAW RECOGNIZES FREE SPEECH STUDENT GROUP AFTER SEVEN MONTHS OF VIEWPOINT-BASED REJECTION

After almost two semesters of paternalistic rejections, the student group Emory Free Speech Forum finally attained its temporary charter from the Emory University School of Law. This is a welcome development, but it should not have taken 7 months for Emory to realize the irony of denying expressive rights to a group focused on free expression..

The group is dedicated "to fostering critical discourse and open dialogue surrounding important issues in law and society." This mission proved too controversial for the Student Bar Association, Emory Law's student government, which denied the organization recognition because the very notion of engaging in unfettered debate in law school would "likely [have given] rise to a precarious environment — one where the conversation might very easily devolve."

After FIRE's intervention, Emory relented on March 23 and granted the group its long-awaited charter.



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BUT WAIT! There's more...



CATHOLIC UNIVERSITY INVESTIGATES STUDENT FOR 'DISORDERLY' MEMES

Catholic University of America charged a student with violating its code of conduct for an Instagram post featuring a meme with characters from the children's show "Arthur." FIRE wrote to Catholic that punishing a student for satirical posts runs counter to its promises of free expression. We announced our advocacy on April 1 — and had to specify that the case was not, in fact, an April Fools' joke.

FIRE TO ELON MUSK: HELP TWITTER LOOK TO FIRST AMENDMENT PRINCIPLES TO PROTECT FREE EXPRESSION

FIRE President and CEO Greg Lukianoff sent an open letter to Elon Musk in April, encouraging the company's largest shareholder to use his influence to preserve and prioritize humanity's fundamental right to free expression. To do this, Greg encouraged Musk to look to First Amendment law for guidance on implementing free speech-friendly policies, eliminate viewpoint-discriminatory policies and practices, and use specific categories to clearly define sanctionable speech.



LINFIELD FINALLY DROPS BOGUS INVESTIGATION OF PROFESSOR WHO STILL DOESN'T KNOW THE ALLEGATIONS AGAINST HER

After 27 days of silence and following criticism from FIRE, embattled Linfield University ended its sham investigation into English professor Reshmi Dutt-Ballerstadt. Linfield told Dutt-Ballerstadt she was being investigated by an outside investigator after she posted on her social media accounts pointing out tension between Linfield's English department and business school. FIRE criticized the unwarranted investigation into clearly protected speech and its refusal to share any additional information about the basic nature of the allegations.