



November 14, 2024

Hakim J. Lucas  
C/o Renee W. Jolley  
Office of the President  
Virginia Union University  
1500 North Lombardy Street  
Richmond, Virginia 23220

*Sent via U.S. Mail and Electronic Mail (rwjolley@vuu.edu)*

Dear Dr. Lucas:

FIRE, a nonpartisan nonprofit dedicated to defending freedom of speech,<sup>1</sup> is concerned by Virginia Union University's recent missive threatening discipline against students who publicly criticize the university. Threatening punishment for criticizing the university deeply chills campus expression and indicates that VUU does not take its promises to protect student expression seriously. We urge VUU to uphold its free expression promises and avoid punishing students merely for raising concerns about campus issues.

On October 29, Richmond's CBS 6 News published a story detailing concerns raised by VUU students about the allegedly insufficient police presence on campus.<sup>2</sup> One student discussed her belief that too few officers patrol campus, pointing to examples of car break ins and gates around campus being left open at night, potentially allowing access to criminals from off campus.<sup>3</sup>

Soon after the story was published, the VUU administration emailed the student body reiterating the university's policy regarding official spokespersons and media

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<sup>1</sup> For more than 20 years, FIRE has defended freedom of expression, conscience, and religion, and other individual rights on America's college campuses. You can learn more about our mission and activities at [thefire.org](https://thefire.org).

<sup>2</sup> Tyler Layne, *More than 1,600 students attend VUU. There may only be two police officers on campus: 'There's no security.'* CBS 6 NEWS (Oct. 29, 2024, 5:32 PM), <https://www.wtvr.com/news/local-news/vuu-security-concerns-oct-29-2024>. The recitation here reflects our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us.

<sup>3</sup> *Id.*

communications.<sup>4</sup> Our concerns arise from the final two provisions of that message. First: “Respectful Communication: While we uphold the principles of free speech, any statements made that are harmful or damaging to the university’s reputation are considered violations of this policy.”<sup>5</sup> Second: “Engaging in speech that undermines the university or its values may lead to disciplinary action.”<sup>6</sup>

While VUU is a private institution, it commendably makes independent, strong promises that enrolled students enjoy “the rights of freedom of expression and belief, freedom of association and peaceful assembly[.]”<sup>7</sup> VUU also professes it is committed to “fostering an educational environment that allows for freedom of speech and expression in accordance with the First Amendment to the U.S. Constitution.”<sup>8</sup> These clear commitments mean that students attending VUU can reasonably look to the First Amendment and First Amendment jurisprudence to inform their reasonable expectation of what those rights encompass.

Given these promises, VUU cannot expect students to remain silent about safety concerns, or to share those concerns only privately or with administrators, as criticism of a university and its administrators is protected by free speech principles.<sup>9</sup> After all, “it is a prized American privilege to speak one’s mind” on the leadership of institutions in the country.<sup>10</sup> This right serves not only the individual student’s interest in airing their views, but the public’s interest in learning about the sufficiency of institutional leadership and practices from those directly affected—especially when the criticism involves students’ physical security on campus.<sup>11</sup> VUU’s efforts to quash student criticism is aimed at excluding a key perspective from the

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<sup>4</sup> Screenshot of email on file with author.

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

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

<sup>7</sup> *Student Rights and Responsibilities*, VA. UNION UNIV., <https://www.vuu.edu/vuu-student-handbook> [<https://perma.cc/7Y7D-RBPH>].

<sup>8</sup> *2020-2021 Student Handbook*, General University Policies, Social Media Policy, Policy, VA. UNION UNIV., 52, [https://www.vuu.edu/Content/Uploads/vuu.edu/Files/FINAL\\_Student\\_Handbook\\_2019\\_20.pdf](https://www.vuu.edu/Content/Uploads/vuu.edu/Files/FINAL_Student_Handbook_2019_20.pdf) [<https://perma.cc/ETH9-FU9Z>].

<sup>9</sup> See, e.g., *Beussink v. Woodland R-IV Sch. Dist.*, 30 F. Supp. 2d 1175, 1180 (E.D. Mo. 1998) (“Disliking or being upset by the content of a student’s speech is not an acceptable justification for limiting student speech[.]”); *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 512 (1969) (holding that public educational institutions, at minimum must show “material and substantial interference” with academics or operations to punish students for disruptive speech.). While *Beussink* and *Tinker* concerned K–12 speech, the speech of public university students cannot be restricted more than that of high school students. This means, in the university context, the protections described in *Beussink* and *Tinker* are the floor for student expressive rights, not the ceiling.

<sup>10</sup> *Bridges v. California*, 314 U.S. 252, 270 (1941).

<sup>11</sup> As a threshold matter, raising concerns about the lack of physical security for students is clearly protected speech on a matter of public concern. See, e.g., *Snyder v. Phelps*, 562 U.S. 443, 453 (2011) (“Speech deals with matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community[.]”); *Connick v. Myers*, 461 U.S. 138, 140 (1983) (students who take employment roles at universities, for example, do not “relinquish First Amendment rights to comment on matters of public interest by virtue of government employment”).

conversation and cannot be squared with free speech principles or the university's commitment to the free speech.

Nor can VUU reconcile its policy requiring “Respectful Communication” with its free speech promises. The university’s interest in policing the civility of students is low, as “the desire to maintain a sedate academic environment does not justify limits on” expressive rights.<sup>12</sup> This principle applies even more so when administrators believe that speech is “vigorous, argumentative, unmeasured, and even distinctly unpleasant.”<sup>13</sup>

Further, VUU cannot, consistent with its free expression promises, enforce its policies to protect speech it approves and punish speech it disfavors. To punish only opinions the university dislikes would constitute impermissible viewpoint discrimination, “an egregious form” of censorship.<sup>14</sup> Authorities must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.<sup>15</sup> And when authorities target “not subject matter but particular views taken by speakers on a subject, the violation” of expressive rights “is all the more blatant.”<sup>16</sup>

To be sure, VUU may restrict or regulate speech made by employees *on behalf of* the university. But students are not employees and cannot be bound to such restrictions.<sup>17</sup> No reasonable person would read the aforementioned news story and presume the quoted student spoke on behalf of the university, not least because the story separately identified a university spokesperson.<sup>18</sup>

As a normative matter, threatening students with discipline merely for criticizing the university will cause a deep chill on student expression. That is especially so when the subject matter at hand is as important as the physical safety of students. VUU cannot respond to issues on its campus of which it has no knowledge—and its enforcement of this policy threatens to punish speech that identifies problems on campus. Instead, prohibition on criticism of the university will only engender anxiety among students and parents about the university’s

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<sup>12</sup> *Rodriguez v. Maricopa Cty. Cmty. Coll. Dist.*, 605 F.3d 703, 709 (9th Cir. 2009) (cleaned up); *see also Hulen v. Yates*, 322 F.3d 1229, 1239 (10th Cir. 2003).

<sup>13</sup> *Rodriguez*, 605 F.3d at 709.

<sup>14</sup> *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995).

<sup>15</sup> *Id.*

<sup>16</sup> *See, e.g., Bd. of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217 233 (2000). (“When a university requires its students to pay fees to support the extracurricular speech of other students, all in the interest of open discussion, it may not prefer some viewpoints to others.”). While again, VUU is not a public university bound by the First Amendment, its commitment to freedom of expression—and how a reasonable student would interpret that promise—is informed by decades of jurisprudence defining the scope of what the First Amendment’s guarantees of freedom of speech and association entail.

<sup>17</sup> Even in the case of students also employed by the university and other university employees, the “critical question” in determining whether speech is that of an employee or private citizen is “whether the speech at issue is itself ordinarily within the scope of an employee’s duties, not whether it merely concerns those duties.” *Lane v. Franks*, 573 U.S. 228, 240 (2014). Student employees are rarely employed for the purpose of giving official comment on behalf of the university.

<sup>18</sup> Layne, *supra* note 2.

transparency and safety. Simply put, VUU's interest in maintaining its public image cannot override its promises of expressive freedom.

We request a substantive response to this letter no later than the close of business on Wednesday, November 27, confirming VUU will not punish any students solely for publicly criticizing the university, and will eliminate any provisions in its communications policy that threaten discipline against students for such public criticism.

Sincerely,

A handwritten signature in black ink, appearing to read "Gm Piro". The signature is fluid and cursive, with the first name "Gm" and the last name "Piro" clearly distinguishable.

Graham Piro  
Faculty Legal Defense Fund Fellow

Cc: Dr. Joy Goodrich, Senior Vice President and Provost of Academic Affairs