



Foundation for Individual Rights in Education

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June 30, 2009

President Brian C. Mitchell
Bucknell University
219 Marts Hall
Lewisburg, Pennsylvania 17837

Sent by U.S. Mail and Facsimile (570-577-3369)

Dear President Mitchell:

The Foundation for Individual Rights in Education (FIRE) is deeply disappointed to be writing you a second time in the matter of Bucknell University's mistreatment of the Bucknell University Conservatives Club (BUCC).

The response we received to our May 21, 2009, letter, from General Counsel Wayne A. Bromfield on June 11, is false and misleading. Bromfield's letter misrepresents Bucknell policy and anti-discrimination law and misrepresents the application of policy against BUCC in three instances: when BUCC's distribution of handbills was shut down, when its affirmative action bake sale was shut down, and when its application for a second affirmative action bake sale was denied. In addition to correcting these misrepresentations, we remind you that FIRE has documentary evidence of the claims made below. Consistent with its promises of freedom of expression, Bucknell must permit BUCC to hold an affirmative action bake sale and to distribute noncommercial handbills in a non-disruptive manner.

First, Bromfield produces no policy that prohibits the non-disruptive distribution of handbills anywhere on campus. As administrator Judith Mickanis has admitted in writing, she invoked Bucknell's "Sales and Solicitation" policy in order to prohibit the distribution of fake dollar bills, satirizing President Obama's stimulus plan, by BUCC on March 17. This policy has no position on the non-disruptive distribution of noncommercial handbills. If there is another policy that prohibits such activity, it has never been produced or cited by anyone at Bucknell. As FIRE wrote to Bucknell on May 21, distributing noncommercial handbills and other noncommercial written material has been central to American social and political activism and discourse since before the founding of the United States. Any policy that labels such discourse as "solicitation," bans it from being "out in the open," restricts it to being distributed from "behind tables," and subjects it to prior review is inimical to any university, like Bucknell, that claims to value freedom of expression. To maintain such a policy is a betrayal of the mission of a university with any pretense of being a free marketplace of ideas and is antithetical to the idea of a free society itself.

Second, Bromfield falsely represents the reason that Dean of Students Gerald W. Commerford cited to shut down BUCC's affirmative action bake sale on April 7. Bromfield's letter suggests that Commerford shut down the bake sale because of discriminatory pricing. In fact, however, video of the event shows that Commerford seized on a discrepancy between the pricing on the group's Sales and Solicitation Form and the pricing on display at the event. The video shows that Commerford made no effort at all to portray the shutdown as related to unlawful discrimination. In fact, Commerford stated that BUCC would be able to "re-register at another time" and hold the event at some future time.

Third, Bromfield misstates the law and ignores the documented facts of April 21, when Commerford denied BUCC's request for another affirmative action bake sale. Although Kutztown University and many other universities have correctly assessed affirmative action bake sales as protected political speech—such sales are a kind of political theater—Commerford and Bromfield have taken the opposite position. DePaul University, Northeastern Illinois University, University of California-Irvine, University of Colorado-Boulder, and The College of William & Mary all reversed course after initially attempting to prohibit students from holding such protests. We also know of no school that has banned the similar "pay equity bake sales" that display differential pricing by race and gender corresponding to the relative average wages of different groups. Bucknell stands alone among U.S. colleges and universities in its repeated, false assertions that such sales are discriminatory and prohibited by law.

Even if Commerford and Bromfield were correct in their assessments, however (which they are not), Commerford rejected a request to have the event with completely optional pricing such that other students could participate in BUCC's protest however they wished. Under such circumstances, it would be even more ludicrous and, frankly, impossible, to successfully claim discriminatory pricing. Yet Commerford completely rejected this option, saying on a recorded audio tape, "No, no, no, no, no, no, no, no, no, because it's a discriminatory [pricing] policy."

Fourth, to make matters still worse, Commerford added (again, in the conversation recorded on audio), "It's a political issue, ok; it needs to be debated in its proper forum, ok, and not on the public property on the campus." When a BUCC member then asked, "There is no way we can have an event like this?" Commerford replied, "No." As our first letter to you pointed out, Commerford defended this extreme restriction in an April 24 article in *The Bucknellian*.

Bromfield produces no policy stating that discussion of political issues is to be so tightly controlled at Bucknell. Instead, he apparently sees no problem whatsoever in Bucknell dictating that BUCC must accept one of the venues offered by Bucknell in order to be allowed to discuss political issues. Few universities in America, public or private, have asserted such control over the way that student groups are allowed to present political issues.

Beyond Bucknell's deficient statements of the law and of its own policies, FIRE is especially disturbed that Bucknell's response to us reflects either complete ignorance of or disturbing disregard for the facts on the part of either General Counsel Bromfield himself or the Bucknell administration at large. Rather than simply listen to advisors or administrators who might not be willing to present you with the unpleasant facts of the case, we urge you to review for yourself the evidence available on the FIRE website (links to the e-mails and recorded conversations

referenced above are available at <http://thefire.org/index.php/article/10735.html>). This is not a case where FIRE and Bucknell simply disagree on what happened. In this case, no reasonable person can look at the evidence and observe facts that are different from those that FIRE has presented. To be explicit, these are that (1) neither the Bucknell solicitation policy cited nor any other policy located by FIRE applies to the non-disruptive distribution of noncommercial handbills (BUCC's "Obama stimulus dollars"), (2) Dean Commerford said nothing about the supposed "discriminatory" nature of the affirmative action bake sale protest when shutting it down and in fact told the students that they could simply have the protest at another time, and (3) no college policy either cited by Bucknell or that FIRE has been able to locate requires that political issues only be debated in a "proper forum" or that such issues may not be debated on the "public property" of the campus.

These facts are not going away. They are easily observable by any reasonably intelligent person, and they clearly conflict with Bucknell's factual assertions. For General Counsel Bromfield or any other Bucknell administrator to deny these facts is the equivalent of asserting that the earth is flat. It is unethical, it hurts the reputation of Bucknell, and it shows that those making those assertions are willing to lie in order to serve their own personal or political agendas. Bucknell's students, faculty, and alumni deserve better than this from the custodians of their institution.

FIRE therefore calls upon you a second time to reverse course and admit the errors of Bucknell administrators. Declare that Bucknell University does in fact value freedom of expression. Bucknell alumni, the Associated Press, the *Philadelphia Inquirer*, the *Wall Street Journal*, and the American public remain interested to know if at Bucknell free speech is celebrated, honored, and broadened—or feared, suppressed, and restricted through deceitful justifications.

Again, Bucknell must permit BUCC to hold an affirmative action bake sale and to distribute noncommercial handbills non-disruptively. Please respond by July 15, 2009.

Sincerely,



Robert L. Shibley
Vice President

cc:

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