



Foundation for Individual Rights in Education

210 West Washington Square, Suite 303 · Philadelphia, PA 19106
Tel: 215.717.3473 · Fax: 215.717.3440 · fire@thefire.org · www.thefire.org

David French
PRESIDENT

November 1, 2004

Greg Lukianoff
DIRECTOR OF LEGAL AND
PUBLIC ADVOCACY

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Office of the President
University of New Hampshire
201 Thompson Hall
Durham, New Hampshire 03824

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Sent via U.S. Mail and Facsimile (603-862-3060)

Dear President Hart,

The Foundation for Individual Rights in Education (FIRE) is pleased that UNH decided to repeal its clearly unconstitutional findings against Timothy Garneau on October 27, 2004. As we stated in our letter of October 22, Garneau's posting of a flier does not constitute harassment, disorderly conduct, or a violation of any constitutionally defensible affirmative action policy.

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The new decision, issued after Garneau's appeal was initially rejected, finds Garneau guilty only of "dishonesty" for lying to Stoke Hall Director Brad Williams about posting the flier. The hearing officer imposed the following sanctions:

- Disciplinary Probation extended through May 30, 2006
- Ethics meeting with Jason Whitney, completed by November 15, 2004
- Relocation to another residence hall on campus if space is available. To be completed by November 15, 2004 if residence life supports the sanction of relocation

The latest decision indicates that UNH no longer finds Garneau guilty of committing offenses that justify excluding him from the dormitory. However, it is essential to note that one of the terms of the new decision also states that if he chooses to appeal this decision he will not be allowed to move back into the dorms until the appeal is complete. In other words, UNH's decision states that if

Garneau decides to appeal, he will remain homeless longer. This is unfair by any standard. UNH should not hold the threat of continuing homelessness over a student's head as a condition of exercising his rights. We request that Garneau be allowed to return to the dorms immediately so that he can pursue his appeal from a safe, reasonable shelter, rather than attempting to do so while living out of his car.

FIRE also objects to the "Ethics Meeting" with Jason Whitney. First, after unfairly and unlawfully evicting a student from his dorm for clearly protected expression, UNH lacks the credibility to lecture anyone about ethics. Second, mandatory "ethical training" is a deeply troubling form of thought reform which legitimizes a particular ideology at the expense of the student's right to freedom of conscience. While the university's previous position was based on telling a student what he *must not* say, mandatory thought reform emphasizes what attitudes and beliefs students *must* have to be in line with the university—sanctioned views on subjects as complex and important as morality.

One great and beautiful truth lies at the heart of the cases that govern the imposition of state-required "values": the state may not and should not be the sole arbiter of truth. The Supreme Court recognized this principle in its opinion in *West Virginia Board of Education v. Barnette* (1943), a case decided during the darkest days of World War II. Justice Robert H. Jackson declared, "Freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order. ***If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.***" [Emphasis added.] Mandatory ethical training offends this time-honored constitutional—and moral—principle.

Finally, FIRE believes that Brad Williams' behavior should be taken into consideration in this case. Garneau lied to Williams because he believed that the hall director was out of control and on a crusade to punish clearly protected speech. Williams' subsequent actions and UNH's subsequent decision to find him guilty of offenses in stark opposition to the United States Constitution proved this fear completely reasonable.

Despite his extensive efforts to "atone" for offending students, Garneau has been evicted from his campus home, forced to live out of his car, and made to ask his parents for help, in addition to having been publicly humiliated and found guilty of serious offenses that could derail his future academic plans. The personal, psychological, and financial hardships to which UNH's original unconstitutional actions subjected him cannot be overstated. FIRE therefore believes that Garneau has suffered more than enough to make up for any offense of "dishonesty." We ask

that you overturn any further punishment of Timothy Garneau and allow him to return his life to some semblance of normality.

Please note that Mr. Garneau has signed a waiver, attached, that allows you to communicate directly with FIRE. Please respond to this letter by the end of the day on Tuesday, November 2, 2004.

Sincerely,

A handwritten signature in blue ink, appearing to read "Greg Lukianoff".

Greg Lukianoff

Director of Legal and Public Advocacy

cc:

Bruce Mallory, Provost and Executive VP for Academic Affairs, University of New Hampshire

Anne Lawing, Senior VP for Student Affairs, University of New Hampshire

Scott Chesney, Director of Residential Life, University of New Hampshire

Brad Williams, Stoke Hall Director, University of New Hampshire

Esther Tardy-Wolfe, Director of Judicial and Mediation Programs, University of New Hampshire

Jason Whitney, Judicial Officer, University of New Hampshire

David Cross, Director of UNH Counseling Center, University of New Hampshire

Pat Gormley, Special Assistant to the President for Affirmative Action, University of New Hampshire

Timothy Garneau

Mona Garneau