



Foundation for Individual Rights in Education

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March 8, 2005

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President Salme Steinberg
Northeastern Illinois University
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URGENT

Sent by U.S. Mail and Facsimile (773-442-5070)

Dear President Steinberg:

As you can see from our Directors and Board of Advisors, the Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, freedom of religion, academic freedom, due process, and, in this case, freedom of speech and expression on America's college campuses. Our website, www.thefire.org, will give you a greater sense of our identity and activities.

FIRE is profoundly concerned by the Northeastern Illinois University (NEIU) administration's threat to punish the NEIU College Republicans if they hold an "affirmative action bake sale" on campus. "Affirmative action bake sales" constitute a form of satirical political protest, and therefore enjoy the fullest protection of the First Amendment of the U.S. Constitution. Respect for the dignity and individuality of each member of NEIU's student body demands the most profound respect for your students' freedom of expression—even when some in the community might be offended by that expression. As you know full well, if everyone banned what he or she took offense to we all would be reduced to silence.

This is our understanding of the facts, taken from reports from the NEIU College Republicans and an e-mail from Dean of Students Michael Kelly to John Tait, president of the NEIU College Republicans. The NEIU College Republicans had been planning to hold an affirmative action bake sale protest on February 25, 2005. These bake sales have become a widely used form of political parody directed against affirmative action. In previous protests, organizers have prominently displayed a menu with satiric prices in which black, Hispanic, and/or female students are charged less than Asian, white, and/or male students for the

same items. The bake sales are intended to spark debate about affirmative action policies, not to raise revenue, and aim to satirize university policies that opponents of affirmative action believe accord some groups more favorable treatment than others.

After word of the planned protest spread, Dean Kelly e-mailed Mr. Tait on February 18, 2005, warning the College Republicans that they would be punished if they went through with the protest. Dean Kelly's e-mail cited NEIU's nondiscrimination policy, which reads:

Northeastern Illinois University subscribes to the principles of equal opportunity and affirmative action and does not discriminate against any individual on the basis of age, color, disability, gender, national origin, race, religion, sexual orientation, or veteran status.

He also wrote that since "[t]his policy is applicable to all members of the NEIU Community, including students and student clubs," he "strongly urge[d] the College Republicans to either charge one price to all or to halt the event entirely." Dean Kelly went on to write that NEIU would punish both the club and its individual members through the student government association and the university disciplinary process if they held the protest.

Shockingly, Dean Kelly also stated, "In addition, any disruption of university activities that would be caused by this event is also actionable under the SGA and student disciplinary guidelines." Since it is hardly likely that the action of selling cookies at a table would be a "disruptive" activity, NEIU can only be referring to potential "disruptions" caused by counter-protestors. The e-mail concluded by saying, "I suggest, if you wish to debate or comment on the issue of affirmative action, your group should choose a different method—one that does not run contrary to University policies."

NEIU's threat to punish students for their affirmative action protest and to somehow apply the university's nondiscrimination policy to such an event gravely threatens the constitutional rights of its students.

As you are aware, parody and satire are important—indeed, vital—components of political speech and are at the core of our country's honored traditions. Protests that rely on satire—such as the proposed "affirmative action bake sale" as well as feminist "wage gap bake sales" that aim to protest the gap between men and women's average earnings—exist to challenge, to amuse, to provoke, and, indeed, to offend. We strongly encourage you to read the landmark Supreme Court cases of *Cohen v. California* (1971) and *Hustler Magazine, Inc., et al. v. Jerry Falwell* (1988). Taken together, the precedents set by these cases protect even highly offensive material, farce, profanity, and exaggeration, and they confirm that parody and satire play essential roles in our society precisely because they challenge our deepest assumptions and beliefs.

The great irony of NEIU's attempt to squelch a potentially unpopular political protest is that a special function of the university as a whole, in any free society, is to serve as the ultimate forum for free speech. Any university serious about the search for truth should be seeking, at all times, to expand open discourse, to develop intellectual inquiry, and to engage and challenge the way individuals think. A university that is intolerant of the often messy reality of a free society is

incapable of teaching students to live in freedom. By threatening the members of the College Republicans for their expression, NEIU sends the message to its students that speech is to be feared, monitored, and ultimately restrained if it is deemed sufficiently controversial. This message is completely incompatible with a free society and stands in stark opposition to the values of higher education. NEIU should remember, at all times, the U.S. Supreme Court's timeless expression of the important role of our universities in *Sweezy v. New Hampshire* (1957):

The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. **To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation.** No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made.... Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die. [Emphasis added.]

Thus, NEIU's enforcement of unconstitutional speech restrictions is wholly misplaced at an institution preparing students to be engaged citizens in a pluralistic democracy.

Further, the administration's threat to punish the College Republicans for "disruptive" actions that might be taken by those objecting to the protest is a shameful and blatant attempt to establish a "heckler's veto" at NEIU. By making it clear that NEIU will hold the College Republicans responsible for any disruption caused by other students, the university has created an incentive for those who disagree with the College Republicans' viewpoint to react violently in order to suppress expression of that viewpoint. This confers a veto of student speech to the least tolerant and most illiberal members of the student body. The adoption of such a policy in society at large would result in a downward spiral towards mob rule, and such a policy should certainly never govern an educational institution whose very purpose is to be a center of open and free inquiry and expression.

NEIU is not the only university that has attempted to shut down an affirmative action bake sale protest on the grounds that it is "discriminatory." The University of California at Irvine, the University of Colorado, and the College of William and Mary also attempted last school year to shut down affirmative action bake sale protests on similar grounds. FIRE intervened in each of these cases and the institutions relented, realizing that attempting to silence this type of political protest would run afoul of the First Amendment and open the institution to legal liability.

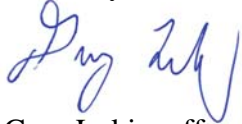
FIRE is categorically committed to seeing this situation through to a just and moral conclusion. To this end, we request your administration's written assurance to the NEIU College Republicans that any affirmative action bake sake protest will be allowed to proceed unhindered by the administration, that no "heckler's veto" will be permitted, and that no university policy or contrivance will be used to infringe upon the free speech of students at NEIU.

Please spare Northeastern Illinois University the embarrassment of fighting, with taxpayer funds, no less, against the Bill of Rights, by which it is both legally and morally bound. We urge NEIU

to show the courage necessary to admit its error, renounce its unjust policy, and tell the world that free speech is to be celebrated, honored, and broadened—not feared, suppressed, and restricted. Let your students exercise their basic legal, moral, and human rights; let them protest as their consciences dictate. Because of the importance of this matter and the rights of NEIU students that are at stake, FIRE requests a response by March 17, 2005.

We trust you will make the right decision.

Sincerely,

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

Greg Lukianoff
Director of Legal and Public Advocacy

cc:

Lawrence P. Frank, Provost and Vice President for Academic Affairs, Northeastern Illinois University
Melvin C. Terrell, Vice President for Student Affairs, Northeastern Illinois University
Michael T. Kelly, Dean of Students, Northeastern Illinois University
Kendra Young, President, Northeastern Illinois University Student Government Association
John Tait, President, Northeastern Illinois University College Republicans