



Foundation for Individual Rights in Education

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David French
PRESIDENT

March 25, 2005

Greg Lukianoff
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Mr. Mark T. Dunn
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Sent via U.S. Mail and Facsimile (309-828-8321)

Dear Mr. Dunn:

Thank you for your timely response to our letter to Northeastern Illinois University President Steinberg. We appreciate the NEIU administration's willingness to engage FIRE on this topic. However, FIRE's stance remains unchanged: NEIU must allow the NEIU College Republicans to hold an "affirmative action bake sale" protest without interference from the administration, and must not permit any potential counter-protesters to exercise a "heckler's veto" over the message the College Republicans wish to communicate.

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First, I would like to address your statement that "[i]t was [your] understanding that the factual circumstances are not as described in [FIRE's] letter, but the matter is still being reviewed on that score." FIRE would be very interested to know what "factual circumstance" might be materially different from what we stated in our letter to NEIU of March 8, 2005. The material facts in this case are (1) that the NEIU College Republicans desired to hold an affirmative action bake sale protest on February 25, 2005 (and continue to desire to hold such a protest), and (2) that the NEIU administration, through Dean Michael Kelly's February 18, 2005, e-mail to the NEIU College Republicans, warned the group and its members that they would face punishment if they held the protest. FIRE possesses a copy of this e-mail, and neither fact was disputed in your letter. The facts we have presented indicate a violation of the Constitution of the United States of America, and no relevant fact has been offered to counter the existence

of this violation. Additional factors that do not address this violation are, therefore, irrelevant.

Your letter goes on to discuss the fact that NEIU has proposed alternative methods for the College Republicans to communicate their message of opposition to affirmative action to the NEIU community. FIRE discussed this with NEIU College Republicans President John Tait on March 22, 2005, and while Mr. Tait acknowledged having discussions with the administration, he also repeated to FIRE that the College Republicans wish to hold an affirmative action bake sale protest on NEIU's campus. If there is any uncertainty about the College Republicans' intentions, we would like to make it clear in this letter that they *do* wish to hold an affirmative action bake sale protest and *do not* wish to hold a substitute event, although they may consider holding *additional* events about the issue.

NEIU's position that an affirmative action bake sale would be "contrary to University policies" is uniquely untenable considering that the university has in the past allowed at least one "pay equity bake sale" to take place on its campus. Pay equity (or "wage gap") bake sales are hosted by feminist activists who charge different prices to men and women for baked goods in order to protest what they see as discrimination against women in the workplace. Two sources, including the NEIU Feminist Majority Leadership Alliance's own website, confirmed to FIRE that NEIU has allowed such a sale or sales in the past (see <http://www.neiu.edu/~fmla/pastevents.htm>). It is clear evidence of unconstitutional viewpoint discrimination on the part of NEIU to allow pay equity bake sale protests to take place on campus while forbidding affirmative action bake sale protests. NEIU must recognize that the U.S. Constitution requires that both the feminists' protest and that of the College Republicans be permitted on NEIU's campus.

The fact that university officials are engaged in an attempt to talk the College Republicans out of holding their chosen protest does not excuse the fact that NEIU has threatened the students with punishment if they exercise their First Amendment rights. The only thing that has kept the College Republicans from going ahead with their plans for a bake sale protest is the fear of an unjust and unconstitutional punishment from NEIU that they would then have to spend time and resources appealing. While the students would undoubtedly be successful in any court case because of the clear-cut nature of NEIU's constitutional violation (as explained in FIRE's first letter to President Steinberg), the NEIU College Republicans wish to avoid an ugly battle that would result only in unnecessary expense and bad publicity for the university.

As a state institution of higher education, NEIU has a legal and moral obligation to free speech and the First Amendment of the United States Constitution. Therefore, FIRE requests that NEIU immediately inform the NEIU College Republicans that they may conduct their protest without fear of punishment, and without the threat of facing a "heckler's veto" from would-be student censors, as discussed in our first letter to NEIU. FIRE continues to be committed to using all of its resources to defend the rights of the NEIU College Republicans. Because of the very serious

nature of this constitutional violation, FIRE and the NEIU College Republicans request a reply by Wednesday, March 30, 2005, at 5:00 p.m. Eastern Time.

Sincerely,

A handwritten signature in blue ink, consisting of a stylized 'D' followed by 'F' and 'h'.

David French
President

cc:

Salme Steinberg, President, Northeastern Illinois University

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