



## Foundation for Individual Rights in Education

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November 5, 2008

President Glenda O. Barron  
Temple College  
2600 South First Street  
Temple, Texas 76504-7435

*Sent via U.S. Mail and Facsimile (254-298-8277)*

Dear President Barron:

As you can see from the list of 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, due process, and, in this case, freedom of expression and academic freedom on America's college campuses. Our website, [www.thefire.org](http://www.thefire.org), will give you a greater sense of our identity and activities.

FIRE is concerned about the threat to freedom of expression posed by Temple College's demand that English Professor Kerry Laird remove a cartoon and a quotation of philosopher Friedrich Nietzsche from his office door. The posting of such materials is protected at public colleges by the United States Constitution and the canons of academic freedom. In addition, the posting of materials by professors on their office doors, whether or not others agree with the content of such materials, is a longstanding tradition at academic institutions, not least because it provides food for thought for anyone who passes by. Moreover, ordering Laird to remove his posted material while allowing other professors to retain their own is blatant, unconstitutional viewpoint discrimination, and it has no place at Temple or any public institution of higher learning. Finally, any threat to Laird's future employment because of his resistance to Temple's unconstitutional demands is a further violation of Laird's constitutional rights.

This is our understanding of the facts; please inform us if you believe we are in error.

In the fall term of 2008, Laird posted on his office door a cartoon that included the line, "KIDS: DON'T FUCK WITH GOD OR BEARS WILL EAT YOU." On October 23, 2008, Lesley B. Keeling-Olson, Interim Director

of the Division of Liberal Arts, ordered Erin Latona, Communications Department Chair, to make sure the cartoon was removed. When Laird returned from working at the college's Writing Center that day, he found that the cartoon had been removed. Later that day, Laird complained to Keeling-Olson about the removal. Keeling-Olson warned him that if he challenged the removal, he would be putting himself in jeopardy of losing a future teaching contract with the school.

Shortly afterward on the same day, Laird posted the line "Gott ist tot" ("God is dead"), a quotation from Friedrich Nietzsche's *Also sprach Zarathustra (Thus Spoke Zarathustra)*, on his office door. This line became the second target of Temple College's censorship. Mark Smith, Interim Vice President of Educational Services and Chief Academic Officer, demanded that this posting also be removed. He communicated his demand via Keeling-Olson and Latona.

On October 25, Latona e-mailed Smith and asked not to be included in this violation of Laird's rights. Latona argued that "doing so may put me in a position of infringing upon [Laird's] freedom of academic expression." Latona also noted that asking Laird to remove the sign "would convey a lack of tolerance for religious freedom." Finally, Latona pointed out Temple College's double standard in this matter:

There are many offices around campus, including "open" offices (reception areas, etc.) visible to students, that contain Biblical messages and phrases, such as, "With God all things are possible," and "I pray, therefore I am," just to name a couple that I've seen personally.

The advice implicit in Latona's admirable resistance, however, went unheeded by Smith. On October 27, Keeling-Olson e-mailed Laird demanding that Laird remove the quotation from his door:

Per Mark [Smith] - Discussing such topics in class is permissible when the discussion topic is appropriately a part of the course material being discussed. (i.e., teaching a class on moral philosophies.) This is where academic freedom/expression is applicable. Per the employee Handbook "Each faculty member is entitled to full freedom in the classroom in discussing the subject which he teaches." Simply posting a cartoon or note on a door that can be considered offensive, insightful [inciting], and/or controversial is not a part of academic freedom and does not reflect well on Temple College and has the potential of creating a hostile or intimidating learning/work environment[.]

Under the threat of being charged with religious harassment, Laird acquiesced, removing the Nietzsche quotation from his door.

On October 28, student Misti Kennair e-mailed Smith, seconding Latona's observation that speech promoting Christianity on campus is not treated equally with speech that does not:

I am an agnostic and I am inundated daily with biblical quotes posted all over this school...If this quote is removed by this administration, then I propose all quotes promoting Chris[tianity] on campus also be forcibly removed.... I am hoping that

your concern for offending Christian students on campus will translate into concern for all religious beliefs present, and you will prove that diversity is alive and well at Temple College.

In response, Smith e-mailed Kennair later that day without responding to the charge of a double standard on campus. Smith's e-mail suggested, falsely, that Laird's personal expression on his own office door amounted to an official endorsement of religion by the college:

Temple College as a public institution cannot be represented as showing preference toward any religious philosophy/perspective or toward the opposite, being atheism. The same practice goes for politics.

Worse still, Smith argued that "offensive" and "controversial" speech is not protected at Temple College:

The decision to have the quote removed was that the quote can be considered very controversial and offensive to others. In fact, other people have already expressed that the wording is offensive!

Finally, as paraphrased by Scott Jaschik in a November 4 *Inside Higher Ed* article (<http://www.insidehighered.com/news/2008/11/04/nietzsche>), Smith clarified official Temple policy on the matter: "if someone complains about a specific quote—as someone did about the Nietzsche quote—the person would be asked to remove it."

Temple's policy and its application to Professor Laird are deeply troubling for several reasons. First, as you well know, Temple College is a public college and thus has a binding legal obligation to ensure the First Amendment rights of its faculty. Academic freedom, in addition to freedom of expression, is *not* limited to the classroom alone. The Supreme Court has held that academic freedom is a "special concern of the First Amendment" and that "[o]ur nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to teachers concerned." *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967) (internal citations omitted). Permitting a complaint to result in suppression of clearly protected speech is unconstitutional because it rewards the most active complainers, no matter how irrational or unreasonable, with a "complainer's veto," enabling the censorship of any expression on campus with which they do not agree.

Second, the threat of a possible charge of religious harassment in this case is a complete misunderstanding not only of the First Amendment but also of harassment law. In a letter circulated to colleges nationwide in 2003, the Office for Civil Rights (OCR) of the U.S. Department of Education clarified the legal obligations of public universities with regard to "hostile environment" harassment, stating: "In order to establish a hostile environment, harassment must be sufficiently serious (i.e., severe, persistent or pervasive) as to limit or deny a student's ability to participate in or benefit from an educational program." OCR further reminded colleges that conduct does not constitute punishable harassment merely because a person subjectively feels harassed; rather, harassment must be "evaluated from the perspective of a reasonable person in the alleged victim's position." Cartoons and quotations on an office door

are nowhere close to the standard of seriousness by which speech becomes unprotected under harassment law.

Third, the First Amendment clearly protects “offensive” and, perhaps most of all, “controversial” speech. While the content in question—a cartoon and a quotation that seem to support a position of atheism—might offend members of the campus community, it unquestionably constitutes protected expression under the First Amendment. The principle of freedom of speech does not exist to protect only non-controversial speech; indeed, it exists precisely to protect speech that some members of a community may find “controversial” or “offensive.” The Supreme Court stated in *Texas v. Johnson*, 491 U.S. 397, 414 (1989), that “[i]f there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” Similarly, the Court wrote in *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667, 670 (1973) that “the mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of ‘conventions of decency.’” No public college may retaliate against a professor because others on campus felt offended by fully protected speech.

With regard to the posted cartoon, such items of parody or satire, even when they include “offensive” language and situations, are forms of political speech that are at the core of our country’s honored traditions. They exist precisely to challenge, to amuse, to provoke controversy—and, indeed, to offend. Case law on this subject is unmistakably clear. The landmark Supreme Court cases *Cohen v. California*, 403 U.S. 15 (1971) and *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46 (1988) make clear that the First Amendment protects—as core political speech—shocking or deeply offensive material, farce, profanity, and exaggeration. Further, these cases confirm the essential role of parody and satire in our nation’s discourse, precisely because this form of expression challenges readers’ deepest assumptions and beliefs.

Fourth, the First Amendment proscribes viewpoint discrimination. As the Supreme Court ruled in the landmark case of *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 633-34 (1943): “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.” By ordering Laird to remove posted materials from his office door, Temple College has wielded its power to silence Laird’s personal views, and by permitting other religious materials to remain posted elsewhere on campus, Temple has acted in direct violation of the constitutional prohibition on viewpoint discrimination. This is an action that no government agency, especially a public college, may undertake.

Finally, it is entirely inappropriate for a college official to threaten retaliation against Laird or any other faculty member who challenges Temple’s unconstitutional policy or its application against protected speech. Such a threat is an additional violation of Laird’s rights, including the First Amendment right to petition government officials for the redress of grievances, and potentially exposes Temple to significant liability.

Temple must immediately inform Laird that he remains free to post materials on his office door and that he faces no punishment whatsoever for doing so or for challenging his unconstitutional treatment. Temple must immediately abandon its policy of responding to complaints with censorship. Further, Temple must ensure that no policy or contrivance is used to deny Laird further employment because of the exercise of his rights or because of any real or potential embarrassment caused by public attention to his case.

Please spare Temple College the embarrassment of fighting against the Bill of Rights, by which it is legally and morally bound. We hope to resolve this matter swiftly and amicably. We are, however, committed to using all of our resources to see this matter through to a just and moral conclusion. We request a response to this letter by November 20, 2008.

Sincerely,

A handwritten signature in cursive script, appearing to read "Adam Kissel".

Adam Kissel  
Director, Individual Rights Defense Program

cc:

Mark Smith, Interim Vice President of Educational Services and Chief Academic Officer  
Lesley B. Keeling-Olson, Interim Director of the Division of Liberal Arts  
Erin Latona, English Instructor and Communications Department Chair  
Kerry Laird