



Foundation for Individual Rights in Education

601 Walnut Street, Suite 510 • Philadelphia, Pennsylvania 19106
T 215-717-3473 • F 215-717-3440 • fire@thefire.org • www.thefire.org

Greg Lukianoff
PRESIDENT

Robert L. Shibley
VICE PRESIDENT

William Creeley
DIRECTOR OF LEGAL AND
PUBLIC ADVOCACY

Alan Charles Kors
CO-FOUNDER AND
CHAIRMAN EMERITUS

BOARD OF DIRECTORS

Harvey A. Silverglate
CO-FOUNDER AND
CHAIRMAN

Barbara Bishop
William J. Hume
Richard Losick
Joseph M. Maline
Marlene Mieske
Daphne Patai
Virginia Postrel
Daniel Shuchman

BOARD OF ADVISORS

Lloyd Buchanan
T. Kenneth Cribb, Jr.
Candace de Russy
William A. Dunn
Benjamin F. Hammond
Nat Hentoff
Roy Innis
Wendy Kaminer
Woody Kaplan
Leonard Liggio
Herbert London
Peter L. Malkin
Muriel Morisey
Steven Pinker
Milton Rosenberg
John R. Searle
Christina Hoff Sommers

November 18, 2010

Nancy Cantor, Chancellor
Syracuse University
300 Tolley Administration Building
Syracuse, New York 13244

Sent via U.S. Mail and Facsimile (315-443-3073)

Dear Chancellor Cantor:

While FIRE awaits the resolution of Syracuse University College of Law's chilling investigation of law student Leonard Audaer—now in its second month—for his alleged publication of clearly protected satire, we sadly must write to you regarding another violation of Syracuse University's promises of free speech. FIRE is gravely concerned by the threat to free speech posed by Department of Public Safety (DPS) Director Anthony Callisto's public assertion that he would use DPS police power to censor "offensive" Halloween costumes on campus.

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

On October 11, 2010, Thomas V. Wolfe, Syracuse's Senior Vice President and Dean of Student Affairs, e-mailed all Syracuse students encouraging them to "be thoughtful and sensitive when choosing [their] costume[s]," lest their costumes "threaten [their] safety or that of others":

Before you go out, please consider how your portrayal of ethnicity and race, gender, class, religion, culture, sexual orientation, or disability might affect others.

In the past, even well-intentioned (but un-thoughtful) costume choices created significant bias-related tensions in our community. To avoid this, consider a thoughtful conversation with others about how Halloween celebrations can build a spirit of community, in which no one is mocked, stereotyped, or inappropriately represented. Take this opportunity to protect yourself and your peers by choosing not to engage in behaviors that threaten your safety or that of others.

Syracuse's Division of Student Affairs, which includes DPS, was listed as one of the many administrative bodies at Syracuse that endorsed the statement.

Then, on October 14, *The Daily Orange* reported on Wolfe's e-mail and quoted Callisto:

If DPS patrol officers see a biased costume during Halloween weekend, they will act on it, Callisto said.

“If we detect that there’s a person with an offensive costume, we’d likely require them to remove it, and we would file a judicial complaint,” Callisto said. “There are costumes that could be very offensive to members of protected class communities.” [Emphasis added.]

Callisto also reportedly said:

Students need to remember that what you see on Comedy Central or on other cable comedy stations doesn't make it right here at Syracuse University ... What's difficult for people to remember, sometimes, is what might be appropriate for a cable television outlet is not going to be appropriate in a place like Syracuse University, a place that really celebrates diversity. [“DPS to crack down on insensitive Halloween costumes,” available at <http://www.dailyorange.com/news/dps-to-crack-down-on-insensitive-halloween-costumes-1.1690181>.]

These statements violate Syracuse's promises of free expression, which it is legally and morally bound to uphold. While Syracuse University may legitimately encourage its students not to “mock[],” “stereotype[],” or “inappropriately represent[]” others through Halloween costumes, Syracuse may not require students to refrain from such expression under pain of punishment or investigation. DPS may not threaten students with “a judicial complaint” simply for wearing a costume that “could be very offensive to members of protected class communities,” nor may DPS force students to remove such costumes.

As a private institution, Syracuse has chosen to promise freedom of speech to its students. For instance, Syracuse asserts that it is “committed to the principle that freedom of expression is essential to the search for truth, and consequently welcomes and encourages the expression of different and varied opinions, and of dissent.” Syracuse's harassment policy also explicitly does not apply to expression within “the bounds of protected free speech.” Under such promises, students do not have to ensure that their expression is consistent with “a place that really celebrates diversity.” In *Texas v. Johnson*, 491 U.S. 397, 414 (1989), the U.S. Supreme Court wisely noted 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.” Under such principles and Syracuse's own promises, there can be no question that an “offensive” Halloween costume is protected expression at Syracuse and out of the reach of Syracuse's police.

It also cannot be credibly asserted that wearing a Halloween costume, in itself, can be a threat to campus safety. Does Wolfe really believe that Syracuse students will be unable to control their violent impulses if they see a Halloween costume that they believe is offensive? Even if this is indeed what Wolfe believes about Syracuse students, by putting the power to censor in the hands

of the most sensitive and violent people in the community, Syracuse effectively enacts a “heckler’s veto,” which is anathema to free speech on campus.

Nor is the threat to free speech posed by Wolfe and Callisto confined to Halloween. Students are now on notice that the university’s police will intervene if students wear anything that might be seen as offensive by any of their peers. T-shirts with controversial or satirical statements are apparently out of bounds and subject to police action at Syracuse. Students are likely to decide not to wear these items out of fear that a DPS officer may determine them to be “very offensive to members of protected class communities.”

I hope you understand how disrespectfully Syracuse has acted toward its own students, diminishing their rights and disparaging their self-control: expression that is allowed on a public sidewalk bordering Syracuse’s campus has been declared so offensive that it could provoke violence among members of the Syracuse University community.

FIRE asks that Syracuse University disavow the claim that it will ever use the university’s police force to patrol the protected expression of Syracuse students. Syracuse must notify its students that they will not be investigated or prosecuted for wearing “offensive” costumes or apparel. Please spare Syracuse the embarrassment of another fight against students’ rights.

We ask for a response to this letter by December 7, 2010.

Sincerely,



Adam Kissel

Vice President of Programs

cc:

Thomas V. Wolfe, Senior Vice President and Dean of Student Affairs

Anthony Callisto, Director of Public Safety

Gerald M. Martin, Director, Office of Judicial Affairs

James K. Duah-Agyeman, Director, Office of Multicultural Affairs

Chase Catalano, Director, LGBT Resource Center

Terra Peckskamp, Director, Office of Residence Life

Roy S. Gutterman, Director, The Tully Center for Free Speech