



## 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  
James E. Wiggins

### 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  
Ricky Silberman  
Christina Hoff Sommers

April 2, 2009

William P. Leahy, S.J., President  
Boston College  
Botolph House  
18 Old Colony Road  
Chestnut Hill, Massachusetts 02467

*Sent via U.S. Mail and facsimile (617-552-3090)*

Dear Father Leahy:

As we wrote you in January 2004, the Foundation for Individual Rights in Education (FIRE; [www.thefire.org](http://www.thefire.org)) unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, due process, legal equality, freedom of association, religious liberty, and freedom of speech and conscience on America's college campuses.

FIRE is concerned about the apparent contradiction between Boston College's stated promises of freedom of expression and Boston College's actions restricting speech over the past several years. In short, while a private Catholic college such as Boston College (BC) has a First Amendment right to apply censorship in the name of its own mission and values if it so chooses, even a private Catholic college such as BC is morally and contractually bound to its own promises of freedom of expression.

When I worked for the Boston Theological Institute (of which the BC Department of Theology is a member) in the 1990s, I came to appreciate the diversity of expressions of religious faith in the Boston area. I understand that BC has a distinctive mission and a unique place in the Boston community. Yet, the contradiction between BC's promises of freedom of speech and its recent actions has left students and faculty members in the dark regarding what may be expressed on campus without the fear of censorship by BC.

Here are the facts; please correct us if you believe we are in error. BC's "Statement of Rights and Responsibilities" promises that "**All student members of the Boston College community have certain rights**" (emphasis in original), including "[t]he right to learn, which includes **the right of access to ideas, the right of access to facts and opinions, the right to express ideas, and the right to discuss those ideas with others**" (emphasis added).

The “Statement of Rights and Responsibilities” also promises to all students “[t]he right to be free of any action that unduly interferes with a student’s rights and/or learning environment” and “[t]he right to express opinion, which includes the right to state agreement or disagreement with the opinions of others and the right to an appropriate forum for the expression of opinion.”

Moreover, BC’s policy on “Student Demonstrations” appears to promise the same rights of expression on BC’s campus as those that are provided to every U.S. citizen:

A meaningful commitment to society must include the examination of the roots of society and a willingness to challenge aspects of society that are the subject of debate and uncertainty. The very nature of such a commitment **presupposes the necessity of the presentation of opposing viewpoints and an openness to confrontation between ideas. The involvement of the University or its students in this process cannot achieve any meaning if the methods of engagement, reason, and dialogue are inhibited or constrained. No greater injury to the intellectual climate of an academic institution or the academic freedom of its members can occur than the curbing of the free exchange of ideas by imposition of fear or repression.** The tactics of intimidation and coercion are never more repugnant than when applied to stifle the reasoned partisanship of opinions.

The right to express opinions in public is an important part of the engagement of the citizen in the affairs of the community ... [Emphasis added.]

These promises, however, appear to be contradicted by the elaboration of “certain responsibilities” incumbent upon BC students. As given in the “Statement of Rights and Responsibilities, these include “the responsibility to respect the values and traditions of Boston College as a Jesuit, Catholic institution” and “[t]he obligation to refrain from conduct in the general community which adversely affects Boston College.” In addition, the promise to students regarding free expression appears to be immediately contradicted by the following statement quoting BC’s “Notice of Non-Discrimination”:

Founded by the Society of Jesus in 1863, Boston College is dedicated to intellectual excellence and to its Jesuit, Catholic heritage. Boston College recognizes the essential contribution a diverse community of students, faculty and staff makes to the advancement of its goals and ideals **in an atmosphere of respect for one another and for the University’s mission and heritage.** Accordingly, Boston College commits itself to maintaining a welcoming environment for all people and extends its welcome in particular to those who may be vulnerable to discrimination, on the basis of their race, ethnic or national origin, religion, color, age, gender, marital or parental status, veteran status, disabilities or sexual orientation.

Boston College rejects and condemns all forms of harassment, wrongful discrimination and disrespect. [Emphasis added.]

The prohibition of “disrespect” is an excellent example of the threat to freedom of expression posed by a school policy that seeks to enforce certain moral standards among students. Although students generally have a right to be free from true harassment, they do not have a legal right to be insulated from any affront to their dignity or feelings. Indeed, some forms of expression, such as parody and satire, are intended to bite—this is what lends them their effectiveness, as in Jonathan Swift’s *A Modest Proposal*. Well-intentioned attempts at humor that might feel disrespectful to their targets, such as a satire intended to make students think about the morality of their motivations for service trips (described below), often improve rather than hurt campus discourse. Yet, BC has banned “all forms of ... disrespect.”

This conflict in policies is having a clear effect on what BC does in practice. Over the past several years, FIRE has noted numerous actions by BC that seem to violate the promises of free expression given by BC to students—presumably in the name of BC’s mission, heritage, values, traditions, or reputation on campus and in the community.

Most recently, according to the March 31 edition of *The Boston Globe*, BC not only banned former Weather Underground member William Ayers from campus but also refused to permit him to speak on campus via satellite to an audience limited to members of the BC community. The *Globe* article makes clear that the negative view of Ayers in the Boston area was the main factor in this censorship:

Boston College, citing pressure from Brighton residents and Boston police officers, refused to allow former radical William Ayers to deliver a student-sponsored lecture via satellite yesterday ... BC said it had received hundreds of complaints about Ayers since Boston radio host Michael Graham blasted his scheduled visit during his Friday program. Many critics, including Boston police officers, threatened to protest the event ...

Patrick Rombalski, BC’s vice president of student affairs, said in a statement yesterday that administrators would not allow the visit nor the teleconference “out of concern for the safety and well-being of our students and respect for the local community where the alleged actions of the Weather Underground continue to reverberate today.” ...

[University spokesman Jack] Dunn said the outcry over Ayers’s scheduled visit convinced administrators “that we have an obligation to our host community to be sensitive to their concerns and to ensure the safety of our students.”

But this inconsistency with BC’s promises of free expression did not start this year. Indeed, FIRE wrote you when, in 2003, BC attempted to restrict the press freedom of the independent student newspaper, *The Heights*, after an advertisement for a Boston nightclub generated complaints from students and alumni. As we noted in our letter to you on January 13, 2004, BC asked *The Heights* to sign a new lease that would require *The Heights* to form an “advisory board” controlled by the BC administration; would prohibit advertisements for cigarettes, alcohol, and family planning and similar agencies; and “fully comply” with Boston College policies. Ultimately, as reported in *The Chronicle of Higher Education* on February 20, 2004, *The Heights* agreed to some of BC’s demands and was forced to pay a higher rent in order to maintain a higher degree of independence than initially sought by BC.

Later, in a June 2006 incident, Father Joseph Marchese ordered that all 3,000 copies of an orientation issue of *The Heights* titled *The Guide* be confiscated from campus distribution stands and then discarded. An opinion column in *The Guide* read:

[O]rientation is pretty miserable for most people—or at least it was for me. Long speeches, small group chats, and weird, random roommates all distract you from the summer of fun you were having back home. But ... I promise life at Boston College gets much, much better.

According to an October 7, 2006, article in *The Heights*, Father Marchese also asserted BC's power of prior review over material that would be available on campus during orientation.

Then, in an incident which began a year ago yesterday, BC contacted the BC Police Department and apparently disciplined six students who, on April Fools' Day 2008, posted flyers that satirized students who travel on "service trips." Posing as an advertisement for a "Black Baby Petting Zoo," the flyer mocked white students who travel on such trips abroad purportedly to volunteer but actually "to cleanse your whiteness." According to Dean of the Office of Student Development Paul Chebator, the students' motivation was "a social critique of people who go on service trips and come back and forget about social justice issues" (*The Heights*, May 3, 2008).

Chebator admitted that the students' intent was not racist but that the flyer "could be construed as racist, and the University does not tolerate such behavior." In addition, Sheilah Shaw Horton, Interim Vice President for Student Affairs wrote in *The Heights* on May 3 that the students "indicated that their intent was not to offend, but to offer social commentary on April Fool's Day.... [T]hese students will be held accountable for their actions ... Regardless of the students' misguided attempt at humor, members of this community may be offended [and] Boston College condemns such thoughtlessness as it violates the very core of our spiritual, moral and political principles and beliefs."

These choices by Boston College—to censor and punish speech, to disinvite a scheduled speaker, to assert control over the student press, and to assert prior review of publications—would be violations of the First Amendment at any public college.

FIRE genuinely does not understand how BC can reconcile its promises of free expression and openness to confrontation between ideas with its other statements and actions. Please clarify for us and for the BC community whether students do in fact have "[t]he right to learn, which includes the right of access to ideas, the right of access to facts and opinions, the right to express ideas, and the right to discuss those ideas with others," and if so, how BC justifies the actions described above. Again, BC as a private institution has a First Amendment right to freedom of association which permits BC to do such things as censor and punish speech, disinvite a scheduled speaker, assert control over the student press, and assert prior review of publications—all in the name of its own mission and values. But the BC community needs a coherent articulation of the principles that BC invokes when it makes the choice to censor, not a statement of student rights that does not mean what it plainly says.

Some students and faculty members may indeed wish to be part of an institution that places certain values above free speech. But in order to be fair and honest not only to those students and faculty who are considering joining BC but also to those who are already in the BC community, you should either respect the basic tenets of free speech or make clear where BC's limitations exist. Students and faculty members need to understand this aspect of the BC community *before* they commit to BC, or else they may feel wronged when BC's practices do not match its promises. Community members have suffered exactly this disappointment in the case of the disinvitation of William Ayers. For everyone involved, please clarify BC's position on freedom of speech.

FIRE hopes to resolve this question most of all so that members of the BC and wider communities will better understand what BC values. Negative press and motivations for censure by the American Association of University Professors and professional academic associations sometimes follow a college's limitations on freedom of speech and academic freedom. Clarification of this question will help the public understand whether or not such negative press and censure are justified.

We request a response by April 23, 2009.

Sincerely,



Adam Kissel  
Director, Individual Rights Defense Program

cc:

Donald L. Hafner, Vice Provost for Undergraduate Affairs and Professor, Political Science  
Department  
Patrick Rombalski, Vice President for Student Affairs  
Sheilah Shaw Horton, Associate Vice President/Dean for Student Development  
Patrick J. Chebator, Senior Associate Dean for Student Development  
Jean Yoder, Associate Dean/Interim Director, Student Programs Office  
Karl Bell, Assistant Dean of Student Development  
Rev. Joseph Marchese, Director, First Year Experience  
Ken I. Kersch, Founding Director, Clough Center for the Study of Constitutional Democracy and  
Associate Professor of Political Science, History, and Law  
Kenneth Himes, O.F.M., Chairperson, Department of Theology  
Stephen F. Brown, Professor, Department of Theology  
Lisa Sowle Cahill, J. Donald Monan Professor, Department of Theology  
M. Shawn Copeland, Associate Professor, Department of Theology  
Boyd Taylor, Coolman Assistant Professor, Department of Theology  
Catherine Cornille, Associate Professor, Department of Theology  
Robert Daly, S.J., Professor Emeritus, Department of Theology  
John A. Darr, Associate Professor, Department of Theology  
Donald J. Dietrich, Professor, Department of Theology

Harvey Egan, S.J., Professor, Department of Theology  
Yonder Gillihan, Assistant Professor, Department of Theology  
Roberto Goizueta, Professor, Department of Theology  
Charles C. Helfing, Associate Professor, Department of Theology  
Michael J. Himes, Professor, Department of Theology  
Mary Ann Hinsdale, IHM, Associate Professor, Department of Theology  
David Hollenbach, S.J., Director, Center for Human Rights and International Justice  
Rev. Robert P. Imbelli, Associate Professor, Department of Theology  
James Keenan, S.J., Professor, Department of Theology  
Paul R. Kolbet, Assistant Professor, Department of Theology  
Ruth Langer, Associate Professor, Department of Theology  
Frederick Lawrence, Professor, Department of Theology  
John Makransky, Associate Professor, Department of Theology  
H. John McDargh, Associate Professor, Department of Theology  
Bruce T. Morrill, S.J., Associate Professor, Department of Theology  
James W. Morris, Professor, Department of Theology  
John J. Paris, S.J., Walsh Professor of Bioethics  
PHEME PERKINS, Professor, Department of Theology  
Stephen J. Pope, Professor, Department of Theology  
Margaret Amy Schatkin, Associate Professor, Department of Theology  
David Vanderhooft, Associate Professor, Department of Theology  
Thomas E. Wangler, Associate Professor, Department of Theology  
James M. Weiss, Associate Professor, Department of Theology