



Foundation for Individual Rights in Education

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June 18, 2009

President Thomas J. Haas
Grand Valley State University
22 Zumberge Library
Allendale, Michigan 49401

Sent by U.S. Mail and Facsimile (616-331-3503)

Dear President Haas:

As you can see from the list of our Directors and Board of Advisors, FIRE unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, freedom of speech, due process, legal equality, freedom of association, religious liberty, and freedom of conscience on America's college campuses. Our website, www.thefire.org, will give you a greater sense of our identity and activities.

FIRE is concerned about the threat to freedom of conscience posed by Grand Valley State University's (GVSU's) job announcements requiring applicants to have "a demonstrated commitment to the principles of diversity." This requirement imposes a political litmus test on job candidates and implies that faculty members must espouse fundamental viewpoints with which they might not personally agree.

GVSU posted a job listing for a Visiting Assistant Professor of Music (Flute) on April 17, 2009, and as of today the position remains open (see <https://www.gvsujobs.org/applicants/jsp/shared/position/JobDetails.jsp?time=1242134704355>). The position primarily involves "the teaching and mentoring of university[-]level flute students [and] performance with various faculty ensembles and may include a secondary teaching area" in the Music Department. Under "Required Qualifications," the posting states in part:

The successful candidate will demonstrate the ability to successfully teach at the un[iv]ersity level in the areas of individual flute studio instruction and chamber music coaching. They will be team-oriented and willing to collaborate in faculty performances and have the capacity to recruit undergraduate flute students. Preference will be given to candidates who have earned a D.M.A. or Ph.D. **GVSU hopes to attract applicants with a demonstrated commitment to the principles of diversity with the skills necessary to effectively develop and lead in a cultural climate that recognizes, respects and celebrates dif[f]erences.** [Emphasis added.]

The identical language in boldface above appears in a position opening announcement for an Assistant Professor of Music (Piano), which was posted on February 18, 2009. The language dates back at least to October 2007, when it was used to advertise a full-time, tenure-track faculty position in Trombone.

The evaluative criterion of a “demonstrated commitment to the principles of diversity,” which appears as a *required qualification* for such positions, not only unacceptably interferes with potential and actual faculty members’ moral and intellectual agency, but is also so vague as to cause confusion and invite abuse. Although requiring candidates to acknowledge and demonstrate this “commitment” may seem admirable and innocuous, in practice this requirement amounts to an ideological loyalty oath to entirely abstract principles and concepts of “diversity,” which can represent vastly different things to different people. This flexibility might seem to be a virtue until a professor or job applicant realizes that he or she is to be judged on the existence of his or her “commitment” to such an abstract concept.

Moreover, “diversity,” in current academic life, very commonly involves a particular set of opinions on topics such as race and ethnicity—topics about which reasonable scholars strongly disagree. It is very unlikely that the listings mean, as they might in the field of music, diversity of musical styles or influences (Beethoven? John Coltrane? Eminem?) or other differences relevant to the field. In any case, “diversity” and “the principles of diversity” are left extremely vague, referring only to the “differences” that are putatively “recognize[d], respect[ed,] and celebrate[d]” in GVSU’s “cultural climate.”

If GVSU truly believes in tolerance (leaving aside issues of academic freedom in, for example, preferring one style of music to another rather than being forced to celebrate all styles without discrimination between better and worse, or choosing to base grades or honors on clear differences between better players and worse players, regardless of one’s background), GVSU, as a public university, simply cannot require professors to adhere to a political orthodoxy, no matter how much the college may believe in the tenets of that orthodoxy and wish others to embrace those tenets. Professors are fully able to meet GVSU’s stated mission of “contribut[ing] to the enrichment of society through excellent teaching, active scholarship, and public service” whether or not they demonstrate a “commitment” to whatever it is that GVSU means by “diversity” and “the principles of diversity.”

As a public institution, GVSU is legally and morally bound by the First Amendment and the decisions of the Supreme Court concerning academic freedom at public colleges and universities. In *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967) the Supreme Court noted that “[o]ur Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned.” This being the case, the Court further explained that the First Amendment “does not tolerate laws that cast a pall of orthodoxy over the classroom . . . [which] is peculiarly the ‘marketplace of ideas.’” In the landmark case of *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 642 (1943) the Court made clear the importance of freedom of conscience in our liberal democracy: “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.” The Court concluded that “the purpose of the First

Amendment to our Constitution” was precisely to protect “from all official control” the domain that was “the sphere of intellect and spirit.”

We trust you understand it is settled law that the First Amendment’s protections fully extend to public universities like GVSU. See, e.g., *Keyishian v. Board of Regents*, 385 U.S. at 605–06 (“[W]e have recognized that the university is a traditional sphere of free expression so fundamental to the functioning of our society that the Government’s ability to control speech within that sphere by means of conditions attached to the expenditure of Government funds is restricted by the vagueness and overbreadth doctrines of the First Amendment”); *Healy v. James*, 408 U.S. 169, 180 (1972) (citation omitted) (“[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, ‘the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools’”).

Furthermore, dictating political beliefs by requiring that faculty demonstrate a commitment to diversity opposes the principles and statements of the American Association of University Professors (AAUP). The AAUP guidelines of 1915 state:

To the degree that professional scholars, *in the formation or promulgation of their opinions*, are, or by the character of their tenure appear to be, subject to any motive other than their own scientific conscience and a desire for the respect of their fellow-experts, to that degree the university teaching profession is corrupted; its proper influence upon public opinion is diminished and vitiated; and society at large fails to get from its scholars in an unadulterated form the peculiar and necessary service which it is the office of the professional scholar to furnish.
[Emphasis added.]

In short, universities must not tell their professors what they must believe, or even what they should believe, lest the whole process of intellectual inquiry and innovation end before it even starts. Does GVSU disagree with this formulation of a professor’s right to think and teach as he or she will? Would GVSU fire a professor hired to teach and mentor university-level flutists, tenured or not, who genuinely changed his or her mind about his or her commitment to whatever the Department of Music or GVSU defines as “the principles of diversity”? By requiring candidates for this position to demonstrate such a commitment, GVSU impermissibly forces individuals to confess both by word and by act their faith in the opinion that a commitment to diversity is integral into their academic and teaching lives, if not also their personal performance and professional choices. Does GVSU truly wish to violate academic, moral, and constitutional prohibitions against such coercion?

The AAUP guidelines further note:

It is not only the character of the instruction but also the character of the instructor that counts; and if the student has reason to believe that the instructor is not true to himself, the virtue of the instruction as an educative force is incalculably

diminished. There must be in the mind of the teacher no mental reservation. He must give the student the best of what he has and what he is.

Must instructors at GVSU who do not share the university's assumptions about diversity be made an exception to that ringing declaration of the meaning and value of true academic freedom?

This requirement, in short, requires professors to affirm a belief in a particular worldview. This is no different from requiring that instructors demonstrate their belief in Americanism, empiricism, biological determinism, or creationism. These may be perfectly valid intellectual viewpoints, but viewpoints may not be imposed at a public institution (and should not be imposed by any institution devoted to academic freedom) by fiat through official requirements.

Accordingly, FIRE would defend with equal fervor the rights of faculty at GVSU and elsewhere to be protected from prohibitions *against* a commitment to the principles of diversity, or inquisitions into their love of country or celebration of Americanism if, in a change of ideological climate, a public university sought to demand such conformity. GVSU has a right to evaluate a candidate with broad discretion, but its inquisition into appreciation for diversity, as stated above, imposes one fashionable agenda among many, reflecting an unacceptable orthodoxy that intrudes upon the private thought and conscience of free individuals in a free society. This truly does violate the university's constitutional obligation to content neutrality, and it truly is a "loyalty oath" inimical to academic and intellectual freedom.

Finally, I note that in the past two months FIRE has reminded both Virginia Tech and Massachusetts' North Shore Community College of their responsibilities to protect faculty from such incursions into their freedom of conscience. Virginia Tech removed from consideration a requirement that liberal arts faculty seeking tenure and promotion demonstrate involvement in "diversity" activities and initiatives after faculty members complained of its intrusions into their research, teaching, and personal development choices and FIRE brought the matter to the public's attention. Similarly, North Shore Community College removed language demanding an "appreciation of multiculturalism" from its job announcements after a prospective applicant to NSCC's English Department turned to FIRE for help. Both schools acted to restore freedom of conscience for their faculty. GVSU must do the same.

It is a human failing common to us all that we rarely see our own abuses of power. No one, right, left, or center, is innocent of that failing. Once these abuses are called to our attention, however, it becomes a moral imperative to restrain ourselves and to grant to others the academic freedom that we would demand for ourselves. The sad days of "loyalty oaths" to political ideologies have already once darkened the academy. Let us not revive them ourselves or tolerate their resurrection by others.

We ask that this position announcement be revised to accord with the First Amendment and common sense.

FIRE hopes to resolve this situation amicably and swiftly; we are, however, prepared to use all of our resources to see this situation through to a just conclusion. We request a response by July 6, 2009.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Kissel". The signature is fluid and cursive, with the first name "Adam" written in a larger, more prominent script than the last name "Kissel".

Adam Kissel
Director, Individual Rights Defense Program

cc:

Gayle R. Davis, Provost and Vice President for Academic Affairs
D. Scott Richardson, Associate Vice President for Human Resources
Danny K. Phipps, Chair, Department of Music