



Foundation for Individual Rights in Education

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January 31, 2006

President John C. Hitt
Millican Hall
University of Central Florida
4000 Central Florida Blvd.
Orlando, Florida 32816

URGENT

Sent via U.S. Mail and Facsimile (407-823-2264)

Dear President Hitt:

As you can see from the list of our Directors and Board of Advisors, 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, academic freedom, due process, and freedom of speech on America's college campuses. Our website, thefire.org, will give you a greater sense of our identity and activities.

FIRE is gravely concerned about the threat to free speech posed by the University of Central Florida's (UCF's) charge of harassment against student Matthew Walston for creating a group in opposition to a student senate candidate on the online community Facebook.com. UCF's charge of harassment not only trivializes actual harassment by equating it with language that is simply opinionated, but also chills expression on UCF's campus and ignores constitutional guarantees of freedom of speech that UCF, as a public institution, is obligated to protect.

This is our understanding of the facts. Please inform us if you believe we are in error. In early September, student Matthew Walston created a group called "Victor Perez is a Jerk and a Fool" on the online network Facebook.com (Facebook). At the time, Perez was running for senator in UCF's Student Government Association (SGA) against fellow student Harry "Skip" Moedinger. On September 15, Perez submitted a "Golden Rule Incident Report Form" in which he accused Walston of attempting to "invoke a confrontation with me." His incident report claimed that "the [Facebook] group is intended to accompany the

numerous threats to my life and personal safety by Harry ‘Skip’ Moedinger.” No such threats were attributed to Walston himself in the complaint.

On October 3, Walston received a letter from Nicholas Oleksy, coordinator of UCF’s Office of Student Conduct, notifying him that he was being charged with a “harassment” violation, which according to UCF policy falls under the charge of “personal abuse.” Curiously, that letter listed the date of the incident as July 7, 2005—a date more than two months in advance of the incident alleged in the complaint. Walston is scheduled for a hearing on this matter on February 6, 2006.

The vague and extremely broad charges of “personal abuse” and “harassment” leveled against Walston represent a serious infringement upon his constitutionally protected right to freedom of speech. UCF’s own Golden Rule Student Handbook defines harassment as “behavior (including written or electronic communication such as AOL IM, ICQ, etc.) directed at a member of the University community which is intended to and would cause severe emotional distress, intimidation, or coercion to a reasonable person in the victim’s position, or would place a reasonable person in the victim’s position in fear of bodily injury or death.” It further provides that “[t]his definition...shall not be interpreted to abridge the right of any member of the University community to freedom of expression protected by the First Amendment of the United States Constitution and any other applicable law.”

UCF’s charges against Walston certainly cannot be justified under the First Amendment, or even under the university’s own rules. As the Supreme Court noted in *Terminiello v. Chicago*, 337 U.S. 1 (1949), “freedom of speech, though not absolute...is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest.... There is no room under our Constitution for a more restrictive view.” (Internal citations omitted.) And indeed, the Supreme Court has held that the constitution protects many kinds of expression much more offensive than Walston’s. For example, in *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667 (1973), the Court determined that a student newspaper article entitled “Motherfucker Acquitted” was constitutionally protected speech, and in *Hustler v. Falwell*, 485 U.S. 46 (1988), the Court ruled that the First Amendment protected a cartoon suggesting that the Reverend Jerry Falwell lost his virginity in a drunken encounter with his mother in an outhouse. In *Texas v. Johnson*, 491 U.S. 397 (1989), the Court explained the rationale behind these decisions well, saying 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 these standards, there can be no question that calling someone a “jerk and a fool” is protected by the First Amendment.

Even if one were to disregard any constitutional concerns about free speech, Walston’s creation of a Facebook group called “Victor Perez is a Jerk and a Fool” would not be harassment under the standard set forth in UCF’s student handbook. The appellations “jerk” and “fool” simply present no real threat to Mr. Perez, and the establishment of a Facebook group can hardly be considered to qualify as a pattern of conduct that would constitute harassment on the basis of sex

or any other protected category. While these relatively tame comments might offend or annoy Perez, this is not the same as harassment or a real threat to Perez's physical well-being.

In his complaint, Perez claimed that the Facebook group was "intended to accompany the numerous threats to my life and personal safety by Harry 'Skip' Moedinger." He did not present any evidence, however, that Walston's Facebook group is in any way connected to or "intended to accompany" any possible or perceived threats made against Perez by another member of the UCF community. As of this date, no comments in the "Victor Perez is a Jerk and a Fool" Facebook group include an endorsement of violence. Even if any did, there would be no reason to attribute such an endorsement to Walston merely because he created the group. UCF must not trivialize actual harassment by equating an online group that opposes an elected SGA official with threats of violence.

Furthermore, Victor Perez, who was elected as an SGA senator, is a public figure in the UCF community and is a legitimate subject for criticism or ridicule by members of the UCF student body. Students may endorse the statement that Perez is "a jerk and a fool" by joining a Facebook group with that name and posting messages there, just as they may join a different group on Facebook called "I Love Victor Perez." This group describes Perez as "one of the greatest leaders at UCF and one of the coolest persons around."

Facebook.com is a valuable resource for college students to express themselves freely and to create groups to voice opinions ranging from the unremarkable to the highly controversial. Walston, for example, is a member of 68 different Facebook groups, ranging in focus from "UCF Bush Supporters" to "I Heart Mustangs." These groups provide ample opportunity for students to discuss issues and disagree with one another—in fact, the very first public comment on the "Victor Perez is a Jerk and a Fool" group was posted by a student who *defended* Perez, calling him a "man of integrity, intelligence, and good character." Indeed, Perez himself posted a comment in his own defense on this group's page. As a public institution bound by the First Amendment, UCF should be seeking at all times to expand open discourse, to develop intellectual inquiry, and to engage and challenge the way people think. By reaching out to punish even students' off-campus expression of ideas, UCF is betraying its responsibility as a public university to create an environment where a true "marketplace of ideas" can flourish.

The February 6 hearing on this matter will determine not only the fate of Matthew Walston, but also the fate of free speech at UCF. FIRE urges UCF to make clear the distinction between actual harassment and constitutionally protected speech by canceling Walston's unjustified hearing and reaffirming its commitment to freedom of speech. FIRE hopes that this situation can be resolved thoroughly and swiftly; however, we are categorically committed to using all of our resources in support of Matthew Walston's expressive rights and to seeing this process through to a just and moral conclusion. Please spare the University of Central Florida the embarrassment of fighting against the United States Constitution, by which it is legally and morally bound.

Because of the pressing nature of this matter and the upcoming hearing for Matthew Walston, FIRE requests a response on this matter by February 3, 2006.

Sincerely,



Robert L. Shibley
Program Manager

cc:

Beth Barnes, Vice President and Chief of Staff, University of Central Florida
Patricia S. Mackown, Director, Office of Student Right and Responsibilities, University of Central Florida
Nicolas Oleksy, Coordinator, Office of Student Conduct, University of Central Florida
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Matthew Walston