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September 10, 2010

President Michael F. Adams

Sent via U.S. Mail and Facsimile (706-542-0995)

Dear President Adams:

As you know from our letter of December 17, 2008, the Foundation for Individual Rights in Education (FIRE; thefire.org) unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals from across the political and ideological spectrum on behalf of liberty, free speech, legal equality, due process, the right of conscience, and academic freedom on America's college campuses. In that letter, we informed you that the University of Georgia (UGA) maintains unconstitutional speech policies and that UGA administrators risk personal legal liability if these policies are enforced. Our letter was acknowledged by Executive Director for Legal Affairs Stephen M. Shewmaker in a reply on January 27, 2009.

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

UGA Parking Services maintains a website at http://parking.uga.edu and requests feedback from the public:

> If you have any questions, comments (**negative & positive**) or suggestions, we'd like to hear them. Your comments will be used

our cases leave no doubt that the First Amendment rights of speech and association extend to the campuses of state universities").

The charges against Lovell violate his First Amendment right to free expression.

Lovell's e-mail is in no way "threatening." His e-mail utterly fails to meet the exacting legal definition of a "true threat" articulated by the Supreme Court in *Virginia v. Black*, 538 U.S. 343, 359 (2003), in which the Court held that only "those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals" are outside the boundaries of First Amendment protection. The idea that anything in Lovell's e-mail threatens anyone, disrupts Parking Services, or is in any other way "disorderly conduct" strains credibility beyond the breaking point.

Further, no public institution may retaliate against a student for speech fully protected under the First Amendment because others on campus feel offended or annoyed or unreasonably claim to feel subjectively "threatened." If allowed, such an "exception" to the First Amendment would permit public institutions to deny students freedom of expression virtually at their whim.

The First Amendment's guarantee of freedom of expression 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 right to free speech includes the right to say things that are deeply offensive to many people, and the Supreme Court has explicitly held, in rulings spanning decades, that speech cannot be restricted simply because it offends people. In *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667, 670 (1973), the Court held 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.'" In *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949), the Court held that "a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger." In *Texas v. Johnson*, 491 U.S. 397, 414 (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 Lovell's e-mail is protected.

In addition, the investigation of protected speech is a violation of the rights of the person being investigated. *Sweezy v. New Hampshire*, 354 U.S. 234, 245, 248 (1957). Thus, merely waiting for the process of the September 13 meeting to run its course does not absolve you or UGA of moral and legal responsibility to immediately end the investigation of Lovell's protected speech. The First Amendment demands that in cases like Lovell's, once it is clear that the speech is protected the investigation must end immediately.

Further, any punishment of Lovell arising from his protected speech leaves you and UGA administrators at risk of being held personally liable for damages. As our December 17, 2008, letter to you stated, qualified immunity normally shields public officials such as administrators at public universities from personal liability for the exercise of their discretionary duties. However,

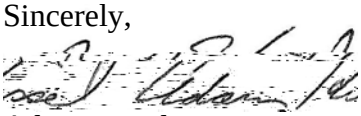
under 42 U.S.C. § 1983, a federal civil rights statute, individuals who have been deprived of a federal statutory or constitutional right may pursue monetary damages against the responsible official acting under color of state law. Under Section 1983, public officials are entitled to qualified immunity only if their actions do not violate "clearly established" law of which a reasonable person in the official's position would be aware. See *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

Again, that public university students like Lovell enjoy the protection of the First Amendment is long-settled law. Moreover, unconstitutional speech codes like those maintained by the University of Georgia have been consistently defeated in federal and state courts in decisions dating back over 20 years. *Dambrot v. Central Michigan University*, 55 F.3d 1177 (6th Cir. 1995) (declaring university discriminatory harassment policy facially unconstitutional); *DeJohn v. Temple University*, 537 F.3d 301, 319 (3d Cir. 2008) (invalidating university sexual harassment policy due to overbreadth); *McCauley v. University of the Virgin Islands*, No. 09-3735 (3d Cir. Aug. 18, 2010) (invalidating university policies prohibiting "offensive" and "unauthorized" signs, conduct causing "emotional distress," and conduct that causes "mental harm" or that "demeans" or "degrades" another); *Doe v. University of Michigan*, 721 F. Supp.

With this letter we enclose a signed FERPA waiver from Jacob Lovell, permitting you to fully discuss his case with FIRE.

We ask for a response by 5:00 PM, September 13, 2010, the deadline for Lovell to schedule his disciplinary conference.

Sincerely,



Adam Kissel
Vice President of Programs

Encl.

cc:
Rodney D. Bennett, Vice President for Student Affairs
Kimberly Ellis, Associate Dean of Students
Donald A. Walter, Manager, Parking Services
Stephen M. Shewmaker, Executive Director for Legal Affairs