



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

July 31, 2007

Robert L. Shibley
VICE PRESIDENT OF
OPERATIONS

President Lawrence S. Bacow
Ballou Hall
Tufts University

Samantha K. Harris
DIRECTOR OF LEGAL AND
PUBLIC ADVOCACY

Medford, Massachusetts 02155

Sent by U.S. Mail and Facsimile (617-627-3300)

Alan Charles Kors
CO-FOUNDER AND
CHAIRMAN EMERITUS

Dear President Bacow:

FIRE is disappointed to write to you once again to express our continuing concern about Tufts University's punishment of the student journal *The Primary Source* (*TPS*)

BOARD OF DIRECTORS

Harvey A. Silverglate
CO-FOUNDER AND
CHAIRMAN

William J. Hume
Joseph M. Maline
Marlene Mieske
Daphne Patai
Virginia Postrel
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
Milton Rosenberg
John R. Searle
Ricky Silberman
Christina Hoff Sommers

Verses,” and “The seven nations in the world that punish homosexuality with death all have fundamentalist Muslim governments.” CSL ruled on May 10 that *TPS* “violated the university’s harassment policy in both cases.”

As we said in our April 24 letter, printing a parody, no matter how objectionable to some, is in no way tantamount to “harassment.” The Supreme Court has held that “in the context of student-on-student harassment,” the behavior in question may legally constitute hostile environment harassment “only where the behavior is so severe, pervasive, and objectively offensive that it denies its victims...equal access to education.” *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 652 (1999). Similarly, the Department of Education’s Office for Civil Rights declared unequivocally in a 2003 open letter to college administrators that hostile environment harassment requires unwelcome behavior “sufficiently serious (*i.e.*, severe, persistent and pervasive) as to limit or deny a student’s ability to participate in or benefit from an educational program.” Clearly, the parody here in question could not possibly be construed as an example of “hostile environment harassment.” Offended students, after all, could have easily avoided exposure to the articles in question and were at all times free to disagree with the sentiments expressed. Tufts’ decision that *TPS*’ political expression constitutes “harassment” is therefore a clear and brazen distortion of a defined legal term.

FIRE also argued that *TPS*’ expression constituted core political speech; that is, through both articles in question, *TPS* expressed its view on controversial political issues. Yet the CSL ignored the expressive elements in *TPS*’ articles, attributing to the paper’s staffers only malicious intent. The CLS decision concluded with an explanation that:

We find that the above-mentioned carol and commentary, rather than promoting political or social discourse, as claimed by the members of *The Primary Source*, instead **were designed to harass and intimidate members** of the Tufts community because of their race (black) and religion (Islam). (Emphasis added)

To conclude that *TPS*’ December and April articles had no ideological, satirical, or political value, and that their only possible intention was to “harass and intimidate,” willfully ignores that these articles addressed affirmative action and radical Islam, two of the most pervasive political issues of our day. *TPS*’ articles are no less core political speech than a pro-affirmative action statement or Islamic Awareness week itself.

You demonstrated that you understood that *TPS*’ expression did not constitute harassment in your comments in the “Viewpoints” section of the *Tufts Daily* on April 24, where you wrote in response to the April article on Islamic Awareness Week, “what should be our community response? As was the case with the Source’s offensive parody ‘O Come All Ye Black Folk,’ some have called for censure or more. I disagree.

Unfortunately, less than three weeks after you publicly claimed to respect students' rights to engage in "offensive speech," the CSL acted unanimously to subvert your promise and Tufts' contractual promises of free speech to all of its students. Indeed, the CSL went even further by imposing unjust punishments upon *TPS*. First, the CSL recommended "that student governance consider the behavior of student groups in future decisions concerning recognition and funding." A January 18 article in the *Tufts Daily*, entitled "Community initiatives underway in response to Primary Source carol," documented the fact that "many members of the community called upon the Senate to reconsider the amount of funding that The Primary Source receives." With students already eager to cut funding for *TPS*, the CLS recommendation reads like a virtual promise that the Tufts Community Union Senate will cut *TPS*' funding because of its controversial speech.

The CSL's second punishment is also disconcerting, as it prohibits *TPS*' use of unsigned articles or editorials. The panel ruled that "[f]rom now on, all material published in *The Primary Source* (whether characterized as satirical or otherwise) must be attributed to named author(s) or contributor(s)." This punishment runs afoul of both standard journalistic practice and the First Amendment protection of anonymous speech. As the ACLU of Massachusetts highlighted in a letter to you on May 30, the Supreme Court has ruled that "[t]he decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible...Accordingly, an author's decision to remain anonymous...is an aspect of freedom of speech protected by the First Amendment." *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 341-342 (1995). Given Tufts' finding that students' expression of controversial political opinions constitutes harassment, *TPS* writers now have more reason than ever to publish articles anonymously. If *TPS* had printed the names of individual students responsible for the articles in question, those students would likely face individual disciplinary action. The threat of being found guilty of harassment for merely publishing satire will certainly chill speech at *The Primary Source*. While this may please some students and administrators, such action is fundamentally at odds with your and Tufts' stated values.

Finally, we bring your attention to Mayor Michael Bloomberg's comments in his commencement address at Tufts. Referring to Tufts' case against *TPS*, Bloomberg said:

Instead of suppressing the publication (which might very well have happened on other campuses) and despite the emotion of the mo

media outlets as the *Huffington Post*, *The Phoenix*, *The Boston Herald*, *The New York Sun*, and the *New York Post* (articles enclosed). Additionally, Tufts is one of only three schools that FIRE has put on “Red Alert,” an ignominious distinction reserved for those institutions that have shown particularly severe and ongoing disregard for their contractual or constitutional commitments to uphold students’ fundamental rights. The “Red Alert” distinction serves to warn current and prospective students and parents that students are not free to speak their minds at Tufts, meaning that students are in danger of being censored and sanctioned merely for expressing unpopular opinions on campus.

It is time for Tufts to reestablish its commitment to fostering an open environment of free expression, where students are encouraged to speak their minds without fear of administrative sanction. When the 2007-2008 school year commences, Tufts must grant *The Primary Source* and all publications on campus the basic freedom of the press that students at Tufts have come to expect. We ask that you reverse the “harassment” findings, instruct the Tufts Community Union Senate to fund all publications equally, and once again permit the printing of unsigned editorials. True freedom of the press at Tufts requires no less.

We request a response to this letter no later than August 21, 2007.

Sincerely,



Greg Lukianoff
President

cc:

Hon. Michael Bloomberg, Mayor, New York City
Patricia E. Harris, First Deputy Mayor
Stu Loeser, Press Secretary, Office of the Mayor
Carol A. Robles-Roman, Deputy Mayor for Legal Affairs and Counsel to the Mayor
Kevin Sheekey, Deputy Mayor for Government Affairs
Shea Fink, Senior Advisor to the Mayor
Dennis M. Walcott, Deputy Mayor for Education and Community Development
James Anderson, Communications Director, Office of the Mayor
Edward Skyler, Deputy Mayor for Administration
Jamshed Bharucha, Provost, Tufts University
Margaret E. Newell, Vice Provost, Tufts University
Suna Grassi, Assistant Provost, Tufts University
Bruce Reitman, Dean of Students, Tufts University
Marisel C. Perez, Associate Dean of Students, Tufts University
Veronica Carter, Judicial Affairs Officer, Tufts University
Shiva Bhashyam, Vice Chair of Tufts Community Union Judiciary, Tufts University
Jodie Nealley, Director of the Office of Student Activities, Tufts University
Dickens Mathieu, General Counsel, Tufts University

Lisa Coleman, Executive Director of Institutional Diversity, Tufts University
Tom Alperin, Tufts University Board of Trustees
A. Dana Callow, Tufts University Board of Trustees
Kathryn C. Chenault, Tufts University Board of Trustees
Peter R. Dolan, Tufts University Board of Trustees
Steven B. Epstein, Tufts University Board of Trustees
Fares I. Fares, Tufts University Board of Trustees
Joanne Gowa, Tufts University Board of Trustees
Martin J. Granoff, Tufts University Board of Trustees
Annetta Grisard-Schrafl, Tufts University Board of Trustees
Sharon M. Halverson, Tufts University Board of Trustees
Bernard Harleston, Tufts University Board of Trustees
Irwin Heller, Tufts University Board of Trustees
Hirsh C. Jane, Tufts University Board of Trustees
Deborah Jospin, Tufts University Board of Trustees
Jeff Kindler, Tufts University Board of Trustees
Abby Kohnstramm, Tufts University Board of Trustees
Daniel Kraft, Tufts University Board of Trustees
Ellen J. Kullman, Tufts University Board of Trustees
Daniel Liveris, Tufts University Board of Trustees
David McGrath, Tufts University Board of Trustees
Ioannis Miaoulis, Tufts University Board of Trustees
Joseph Neubauer, Vice Chairman, Board of Trustees
Kathleen O'Loughlin, Tufts University Board of Trustees
Pierre Omidyar, Tufts University Board of Trustees
Wilmer R. O'Reilly, Tufts University Board of Trustees
Karen Pritzer, Tufts University Board of Trustees
Bill Richardson, Tufts University Board of Trustees
Andrew Safran, Tufts University Board of Trustees
James A. Stern, Chairman, Tufts University Board of Trustees
Edward M. Swan, Tufts University Board of Trustees
Alfred I. Tauber, Tufts University Board of Trustees
William Thompson, Tufts University Board of Trustees
Jonathan M. Tisch, Tufts University Board of Trustees
Judith L. Vaitukaitis, Tufts University Board of Trustees
Agnes Varis, Tufts University Board of Trustees
Thomas F. Winkler, Tufts University Board of Trustees
Nat Hentoff, FIRE Board of Advisors
Michael Meyers, New York Civil Rights Coalition
Dorothy Rabinowitz, *The Wall Street Journal*
John Leo, Manhattan Institute for Policy Research
Jason Millman, *The Boston Herald*

Encl.