



Foundation for Individual Rights in Education

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May 6, 2010

Michael K. Young, President
University of Utah
Office of the President
201 South Presidents Circle, Room 203
Salt Lake City, Utah 84112

URGENT

Sent via U.S. Mail, Electronic Mail (president@utah.edu) and Facsimile (801-581-6892)

Dear President Young:

As you can see from our list of 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, due process, legal equality, voluntary association, freedom of speech, and religious liberty on America's college campuses. Our website, www.thefire.org, will give you a greater sense of our identity and activities.

The Student Press Law Center (SPLC) is the nation's only legal assistance agency devoted exclusively to educating high school and college journalists about the rights and responsibilities embodied in the First Amendment and supporting the student news media in their struggle to cover important issues free from censorship.

FIRE and the SPLC are gravely concerned about the University of Utah's decision to charge nine senior staff members of *The Daily Utah Chronicle* with violations of university policy for engaging in constitutionally protected speech and to place administrative holds on the records of the accused students, endangering their ability to receive their diplomas at tomorrow's graduation ceremonies.

These actions are unacceptable. As a public university both legally and morally bound to respect the First Amendment rights of its students, the University of Utah cannot lawfully punish students for exercising their First Amendment rights. We urge you to drop all charges against each student immediately and allow them to graduate and receive their diplomas without further incident or delay.

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

Continuing a tradition dating back eleven years, the April 28 issue of *The Daily Utah Chronicle* contained two “hidden” words (“penis” and “cunt”) visible when the first letter of the senior staff members’ farewell columns were read in sequence. A picture of the words thus formed was published on the popular internet humor site FailBlog.org.

Yesterday, on Wednesday, May 5, the nine senior staff members who had authored the columns in question were informed in an e-mail from Lori McDonald, Associate Dean of Students, that they had been charged with violating university policy and that administrative holds had been placed on their records. Specifically, each was charged with the following two infractions of the Student Code of Rights and Responsibilities:

A.2. Intentional disruption or obstruction of teaching, research, administration, disciplinary proceedings or other University activities.

A.6. Unauthorized or improper use of any University property, equipment, facilities, or resources, including unauthorized entry into any University room, building or premises.

Associate Dean McDonald has informed the accused students that she cannot meet with them until next week. Graduation is tomorrow. Because the students have holds on their records, we understand that they may not receive the diplomas they have earned for completing their courses of study. Again, this is unacceptable.

The University of Utah’s contention that the “hidden” words published in the April 28 issue of *The Daily Utah Chronicle* constitute “[i]ntentional disruption or obstruction of teaching, research, administration, disciplinary proceedings or other University activities” is entirely without merit. The mere act of publishing the words in question, no matter how offensive or sophomoric, cannot reasonably be said to intentionally disrupt or obstruct university activity. Offended students, faculty, or administrators were under no duty to read the paper, let alone read the first letter of each individual column to spell out the hidden words.

Nor can the hidden words be reasonably construed as “unauthorized or improper use” of University of Utah property. While *The Daily Utah Chronicle* is organized under the university’s Publications Council, which in turn is appointed directly by the university’s Board of Trustees, both of these bodies have a constitutional obligation to uphold students’ First Amendment rights to freedom of expression and freedom of the press. Further, Article I, Section V of the University of Utah Publications Council Policies and Procedures makes explicitly clear that *The Daily Utah Chronicle* enjoys a robust right to freedom of expression and freedom of the press:

The Council and all supported publications shall promote and protect academic, creative, and journalistic freedom. The Council endorses the Joint Statement on Rights and Freedoms of Students of the American Association of University Professors.

[...]

The student press should be free of censorship and advance approval of copy, and its editors and managers should be free to develop their own editorial policies and news coverage.

[...]

Editors and managers should subscribe to canons of responsible journalism. **At the same time, they should be protected from arbitrary suspension and removal because of student, faculty, administrative, or public disapproval of editorial policy or content.** [Emphasis added.]

By the Publications Council's own policies, the punishment of the student columnists is prohibited. Any further investigation or punishment of the student staff members for their involvement in the publication of the columns at issue here violates not only the First Amendment, but also the University of Utah's own policies.

Let us be clear that while the content in question might offend members of the campus community, it is unquestionably protected expression under the First Amendment. The principle of freedom of speech 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 Supreme Court stated in *Texas v. Johnson*, 491 U.S. 397, 414 (1989) 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." Similarly, the Court wrote in *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667, 670 (1973) 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.'"

Editorial comments—even when they include "offensive" language—comprise the core of our country's honored tradition of freedom of the press. The landmark Supreme Court cases *Cohen v. California*, 403 U.S. 15 (1971) and *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46 (1988) clearly protect—as core political speech—shocking or deeply offensive material, farce, profanity, and exaggeration, and they confirm the essential role of parody, satire, and hyperbole precisely because such rhetorical instruments effectively challenge readers' deepest assumptions and beliefs. No campus that claims to take seriously the free speech rights of students may retaliate against students or a student publication because others on campus felt offended by fully protected speech.

Further, a public university such as the University of Utah cannot lawfully ban "four-letter words," no matter how offensive some may find them. In *Cohen*, for example, the Supreme Court overturned the conviction of a man for wearing a jacket emblazoned with the words "Fuck the Draft" into a county courthouse. The Court held that the message on Cohen's jacket, however vulgar, was protected speech, writing that "one man's vulgarity is another's lyric." In

Papish, the Court determined that a student newspaper article entitled “Motherfucker Acquitted” was constitutionally protected speech. Indeed, the Supreme Court has held that the Constitution protects many kinds of expression arguably much more offensive than what was printed in *The Daily Utah Chronicle*. For example, in *Hustler v. Falwell*, 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. Under these standards, there can be no question that the *The Daily Utah Chronicle*’s speech is protected by the First Amendment.

FIRE and the SPLC hope to see this matter resolved with respect for the principles of freedom of speech and freedom of the press. Each of the nine members of the senior staff of *The Daily Utah Chronicle* must be allowed to graduate and receive their diplomas tomorrow.

With this letter we enclose a signed FERPA waiver from Rachel Hanson, outgoing editor-in-chief of *The Daily Utah Chronicle*, authorizing you to discuss these matters with FIRE and the SPLC. Because of the urgency of this situation and the continuing violation of the First Amendment rights of the students involved, we request a response by 9:00 AM Mountain Standard Time tomorrow.

Sincerely,



Will Creeley
Director of Legal and Public Advocacy
Foundation for Individual Rights in Education



Adam Goldstein
Attorney Advocate
Student Press Law Center

cc:

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