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NO FREE SPEECH FOR SUNY PROFS?

By GREG LUKIANOFF & ROBERT L. SHIBLEY

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August 1, 2006 -- SUNY-Fredonia recently denied a promotion to professor Stephen Kershnar explicitly because of his out-of-classroom speech - a violation of his basic free-speech rights.

Famous professors like Paul Krugman and Noam Chomsky regularly make public comments on controversial issues, but those who lack the protection of fame or tenure can risk their

careers by saying something that administrators do not like. In Kershnar's case, he publicly criticized a policy that said students could be in violation of rules "if they fail to remove themselves from situations and/or report the incident to the proper authorities," observing that this would "turn the student population into a group of snitches."

Kershnar had also dared to suggest in a column for the local newspaper that \$260,000 in salaries for SUNY-Fredonia's diversity and educational-development offices would be better spent on "hiring more faculty or attracting talented students."

In another column, he criticized the university for having "balkanized" fields of study such as Women's Studies and Multi-Ethnic Studies, and said that shutting conservative views out of academia "hinders the free discussion of ideas and shows the concern for diversity to be nothing more than a mask for a political agenda."

While these may not be popular opinions at many universities, there can be no doubt that Kershnar was fully within his rights to publicly comment on such hot-button issues.

Yet the school's administration didn't see it that way. In denying Kershnar promotion to full professor in April, SUNY-Fredonia President Dennis Hefner wrote, that although Kershnar's teaching was considered excellent and his publications sufficient for promotion, his "deliberate and repeated public misrepresentation of campus policies and procedures (e.g. student conduct code, affirmative action, admissions)" had "impugned the reputation of SUNY-Fredonia" and made him unsuitable for promotion.

Yet what Hefner called "misrepresentations" were little more than differences of opinion.



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It gets worse. Responding to Hefner's suggestions, Kershner offered to submit his writings for one year to a university committee before publishing them. He called this a "prior consent committee," hoping this might remind Hefner that requiring prepublication review of a professor's speech was not only unconscionable, but an unconstitutional "prior restraint."

Yet Hefner missed this cue, actually coming back with an even tougher counteroffer that would require Kershner to get "unanimous consent" for his writings about the university from a university committee - apparently for the rest of his career.

Keep in mind that President Hefner is a public employee, heading an institution bound by the First Amendment and charged with a special duty to protect open dialogue on important public issues. As the Supreme Court wrote in the landmark opinion of *Sweezy v. New Hampshire* (1957), "The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any straitjacket upon the intellectual leaders in our colleges and universities would imperil the future of our nation."

Professor Kershner's travails should serve as a wake-up call to those who believe that our nation's colleges and universities should be a "marketplace of ideas," where professors and students feel they are able to express their points of view, to point out problems and shortcomings within and outside of the university and to suggest remedies for these problems.

While free speech too often comes under assault on campuses these days, President Hefner's brazen attempt to control a professor's public speech is in a class by itself. Kershner should get the promotion he merits and Hefner - or anyone else who seeks to use the office of university president to silence opinions they dislike - should be out of a job.

Greg Lukianoff is president of the Foundation for Individual Rights in Education (FIRE). Robert L. Shibley is vice president of operations for FIRE.

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