



Foundation for Individual Rights in Education

210 West Washington Square, Suite 303 · Philadelphia, PA 19106

Tel: 215-717-3473 · Fax: 215-717-3440 · fire@thefire.org · www.thefire.org

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March 14, 2003

Board of Visitors
Virginia Polytechnic Institute and State University
210 Burruss Hall
Blacksburg, VA 24061

To the Members of the Board of Visitors, Virginia Polytechnic Institute:

As you can see from our Directors and Board of Advisors, the Foundation for Individual Rights in Education (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, freedom of religion, academic freedom, due process, legal equality, and, in this case, freedom of speech, association, and expression on America's college campuses.

We are deeply troubled by a resolution passed unanimously by the Board of Visitors on March 10, 2003. That resolution prohibits from "meeting" on campus students, faculty, guest speakers, or organizations that have engaged in—or simply advocate—certain undefined criminal acts. While you may be surprised that such a rule would generate any protest, you should understand that this resolution mirrors some of the most dangerous laws that have come and gone in American history. Similar rules have been used to censor and silence the controversial, the radical, the reactionary, and, all too often, the merely unpopular. The past should teach all of us, regardless of political differences, that granting institutions the power to regulate and suppress beliefs, ideas, and speech results invariably in grave injustices. In addition to abolishing the freedom of association of many of your own students, this resolution, in other times, could have excluded speakers such as John Lennon, Henry David Thoreau, Abbie Hoffman, Samuel Adams, or Martin Luther King, Jr.

On Monday, March 10, 2003 the Board of Visitors, the governing authority of Virginia Tech, passed the following resolution:

Be it resolved: **No person, persons or organizations will be allowed to meet** on campus or any facility owned or leased by the university if it can be determined that such persons or organizations *advocate* or **have participated in illegal acts of domestic violence and/or terrorism. All requests for meetings will be submitted for approval to the President of the university at least 30 days in advance.** The President will have final decision-making power to determine who can meet on university property. [Emphasis added.]

The resolution was passed “contingent upon receiving a written ruling by the attorney general of the Commonwealth of Virginia as to whether the proposed policy complies with existing law.”
[<http://www.bov.vt.edu/03-10meeting/resolution3.html>]

We write to urge you to retract and nullify this resolution. We do not believe that such a resolution is legal under either the U.S. Constitution or the Constitution of the Commonwealth of Virginia. Further, such a policy is wholly contrary to the vital mission of America’s colleges and universities. Even if the attorney general believes—unimaginably—that this provision complies with law, the resolution should be abandoned.

This policy is far more than a policy of tightly regulating “campus guest speakers,” as reported in the national and student press. **The remarkably overbroad and vague language of this resolution expands its reach far beyond campus guest speakers, to anyone, anywhere on campus.** It literally would prevent any student who had committed an act of “domestic violence” or had “advocated...terrorism” (all terms that are subject to wide interpretation) from ever meeting on campus. The policy also gives the president of the University unlimited power over all campus meetings, without reference to the speakers or the content. It could be used to ban virtually any student group, and to disenfranchise even students, faculty, staff, or guests who have repaid their debt to society. The number of unconstitutional ways that this resolution could be applied is mind numbing.

It is a settled issue that “mere advocacy” of lawlessness—even advocating violent overthrow of the government—is protected speech under the federal constitution. In the seminal case of *Brandenburg v. Ohio* (1969), the Supreme Court held that, in order to qualify as punishable incitement, the speech must be “directed to inciting or producing imminent lawless action and is likely to incite or produce such action.” The Supreme Court’s stance was further strengthened in both *Gooding v. Wilson* (1972) and *Hess v. Indiana* (1973)—when the Court found, respectively, that even the words “white son of a bitch, I’ll kill you” and a threat by a student protestor to “take the streets” were protected speech. These holdings were strengthened yet again in *Claiborne Hardware Company v. NAACP* (1982). Even before these decisions, in *Sweezy v. New Hampshire* (1957), the Supreme Court ruled that a teacher uttered **protected** speech when he approvingly advocated the eventual violent overthrow of capitalism.

The resolution also effectively prevents anyone with certain viewpoints from “meeting” with anyone else on campus. The Supreme Court’s decisions in *Rosenberger v. Rector & Visitors of the Univ. of Virginia* (1995) and *Board of Regents v. Southworth* (2002) should serve as strong warnings against efforts by colleges and universities to discriminate against students or student groups on the basis of their viewpoints. In general, public institutions are forbidden from discriminating against their students—and even their faculty and staff—on the basis of their political viewpoints.

Finally, by allowing the president of Virginia Tech “final decision-making power” over **all** meetings, the resolution invests that office with the unbridled power to discriminate against **all** speech and speakers on campus. Ever since the Supreme Court’s decision in *Near v. Minnesota* (1931), over seventy years ago, it has been plainly established that the Constitution does not tolerate such standardless prior restraint by public institutions.

The requirement that all requests to meet on campus be submitted “**at least 30 days in advance**” pushes the policy from mere unconstitutionality into the realm of absurdity. Such a draconian

system of prior approval would have been considered extreme during the reign of Henry VIII, and it seems especially out of place in the twenty-first century.

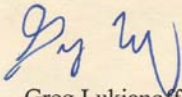
Beyond these compelling legal reasons, the nature of higher education itself requires Virginia Tech to abandon this resolution. A university searches for truth and must at all times seek to expand open discourse, to develop intellectual inquiry, and to engage and challenge the way people think. To forbid those who advocate certain ideas from meeting with anyone else on campus is to impose a sweeping censorship that denies everyone's rights in order to get at those few ideas that you find offensive. A university afraid of controversial ideas, thoughts, words, or people, however, is incapable of teaching its students how to live as citizens in a free and open society.

Virginians are heirs to a great legacy of men who gave their fullest support—indeed, revolutionary support—to free speech: George Mason, Patrick Henry, James Madison, and so on. Another great Virginian, Thomas Jefferson, perhaps said it best: "Error of opinion may be tolerated where reason is left free to combat it." To tolerate "radical" or "inflammatory" speech is not to endorse these ideas; rather, it is to ignite the great American process of debate and discussion in hopes that, through spirited argument, we may inch closer to the truth. Insulating your students from "dangerous arguments" does them a great disservice. We hope that you will live up to the grand tradition of your Virginian forefathers and tell your students that Virginia Tech is unafraid of even the most "dangerous" of ideas.

FIRE urges you not to wait for the opinion of the attorney general, but to rescind and abolish this resolution as soon as possible. While FIRE hopes that this issue can be handled swiftly and amicably, we will stay with this case with persistence and resolution. We are categorically committed to using all of our resources to seeing this dangerous resolution eliminated. Please spare Virginia Tech the embarrassment of fighting against the Bill of Rights by which it is legally and morally bound.

We hope that you will make the right decision.

Sincerely,



Greg Lukianoff
Director of Legal and Public Advocacy
Foundation for Individual Rights in Education

cc:

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