



Foundation for Individual Rights in Education

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January 29, 2008

Catherine Tobin
Vice President for Organizations
University of Virginia
P.O. Box 400114
Charlottesville, VA 22904-4224

URGENT

Sent via U.S. Mail and Electronic Mail (catherinetobin@virginia.EDU)

Dear Ms. Tobin:

As you can see from our Directors and Board of Advisors, the Foundation for Individual Rights in Education (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, freedom of speech, religious liberty, and, in this case, freedom of association on America's college campuses. Our web page, www.thefire.org, will give you a greater sense of our identity and activities.

FIRE is deeply concerned about the threat to freedom of association posed by the University of Virginia Student Council's denial of official recognition to the Burke Society based on the group's membership restriction to students with shared conservative beliefs.

This is our understanding of the facts; please inform us if you believe we are in error. The Burke Society at the University of Virginia is a group of students dedicated to conservative principles as outlined in Article II of their proposed constitution. They are seeking official status as a Contracted Independent Organization (CIO) at the University of Virginia. In early December, the group submitted a standard online application for CIO status per UVA policy to gain "access to certain University services and benefits" such as access to facilities on campus.

On January 3, 2008, the group received a rejection letter stating that the organization's constitution lacked a clear purpose and discrimination policy. The group revised the constitution and resubmitted its online application. The resubmitted application was apparently lost in transit.

At 4:00 pm on January 22, 2008, you met with Burke Society founders Rick Eberstadt and Luke Mancini to discuss the lost application. At the meeting, Eberstadt and Mancini gave you hard copies of the organization's constitution and purpose statement. At about 6:42 pm that evening, you left a message on Mancini's cell phone stating concerns about the requirement that members adhere to the group's conservative principles (Article II) and that applicants for membership be approved by two-thirds of the current members (Article III).

The Student Council voted on the application and denied recognition to the Burke Society at 7:00 pm that evening. In an e-mail to Mancini later that evening, you explained the rejection in these terms: "Because group restricts membership to only those that have conservative values, does not comply with UVA policy and thus is denied." On the following day, Mancini, Eberstadt, and student Anne Bowie met with you and with Chris Husser, Assistant Director for Student Involvement, who confirmed the rejection on that ground and on the ground that the Burke Society may not require that new members be approved by two-thirds of the current membership.

The Burke Society constitution was alleged to be in violation of the university's Non-Discrimination Policy, which states:

Consistent with Federal and State law, the University does not discriminate in any of its programs, procedures or practices on the basis of age, color, disability, national or ethnic origin, political affiliation, race, religion, sex (including pregnancy), sexual orientation, or veteran status.

On Monday, January 28, 2008, the Burke Society submitted an appeal to the Student Council. Tonight, Tuesday, January 29, 2008, they have a hearing before the Student Council.

Denying a political or ideological student organization the right to associate with other students who share the group's beliefs violates the freedom of association to which all UVA students are entitled by law. Any organization at UVA is entitled to the full protections of the First Amendment, including the right to exclude students who disagree with the purpose and mission of the organization. The U.S. Supreme Court unequivocally reaffirmed its commitment to this principle in *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000). In that decision, the Court pointed out that "implicit in the right to engage in activities protected by the First Amendment is a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends." This right, the Court proclaimed, is "crucial in preventing the majority from imposing its views on groups that would rather express other, perhaps unpopular, ideas." Consequently, the Court held that "forced inclusion of an unwanted person in a group infringes the group's freedom of expressive association if the presence of that

person affects in a significant way the group's ability to advocate public or private viewpoints." Full freedom of association is a basic principle guaranteed by the First Amendment, and as a public institution of higher learning, UVA has a moral and legal obligation to uphold its students' First Amendment rights.

This obligation also applies to UVA's Student Council. The Student Council is authorized to allocate portions of the student activities fee paid by UVA undergraduates. Due to the power vested in it by UVA as a public institution of higher learning, it is clear that the Student Council is an agent of UVA and is morally and legally bound by the United States Constitution.

All student organizations—especially those based upon political beliefs—have an interest in preserving their specific ideological character. UVA's Students for a Free Tibet, for example, should be able to deny membership to students who support China's occupation of Tibet, and the Queer & Allied Activism group should likewise have the right to exclude homophobes. This necessity is equally relevant in the case of the Burke Society, since its stated purpose is "to affirm certain eternal truths" listed in Article II of its proposed constitution. The Burke Society's members' constitutional rights require the university to allow the group to deny membership to students who do not support the organization's principles.

The university recognizes this fact in its own practice if not in its policy. The University Democrats at UVA currently have CIO status. On its website, the group describes itself as "dedicated to developing progressive young leaders and getting Democratic candidates elected to office at every level." Would it make any sense for the university to require the University Democrats to allow individuals to join the group who believed in developing *anti*-progressive young leaders or who were dedicated to *preventing* Democrats from being elected to office?

Of all universities, the University of Virginia should be especially aware of the requirements of the First Amendment. In *Rosenberger v. Rector and Visitors of the University of Virginia* (1995), the Supreme Court determined that the university violated the free speech rights of a Christian campus newspaper when it denied the paper funding because of the paper's religious viewpoint. The Court highlighted a key constitutional principle: viewpoint neutrality. The Court affirmed this principle five years later in *Board of Regents of the University of Wisconsin System v. Southworth* (2000). These cases dictate that a state university may not discriminate based on the message advocated by students or student groups. Public institutions such as the University of Virginia must recognize and allow liberal groups to be liberal, libertarian groups to be libertarian, and conservative groups to be conservative.

FIRE urges the Student Council to act immediately to correct this injustice by allowing The Burke Society, and all Contracted Independent Organizations at UVA, to choose members on the basis of their views. Without the right to band together with others for a

common cause, freedom of association means nothing. FIRE further requests that UVA establish a clear policy stating that any group may choose its membership on the basis of support for the group's mission.

FIRE hopes that this matter can be resolved amicably and swiftly, with fairness, common sense, and respect for the principle of free association. We are, however, committed to using all of our resources to seeing this matter through to a just and moral conclusion. Because of the urgency of this situation and the continuing violation of the Burke Society's constitutional rights, we request a response by February 4, 2008.

I look forward to your response.

Sincerely,



Samantha Harris
Director of Legal and Public Advocacy

cc:

John T. Casteen III, President, University of Virginia
Tyler Bowles, Co-Chair of CIO Appropriations, University of Virginia
Jeremy Wickman, Co-Chair of CIO Appropriations, University of Virginia
Lauren Tilton, Student Council President, University of Virginia
Allen W. Groves, Acting Dean of Students, University of Virginia
Chris Husser, Assistant Director for Student Involvement, University of Virginia