



January 19, 2011

Via U.S. Mail & Facsimile at
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Office of the President
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Mrs. Rose Beebe
Chair of the Health Sciences Division
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Re: Rescheduled Pinning Ceremony & First Amendment Retaliation

Dear Dr. Gnage, Dr. Richards, and Mrs. Beebe:

When we wrote you on December 13, 2010, our clients feared that West Virginia University, Parkersburg ("WVUP") officials would retaliate against them for merely informing you that the First Amendment allows prayers in pinning ceremonies for nursing programs. As it now appears that those concerns have become a reality, we now write to advise you to reverse course immediately or risk federal litigation.

FACTUAL BACKGROUND

As our prior letters outline in greater detail, on November 10, 2010, Ms. Kathy Frum, one of the nursing faculty, informed the forty-four nursing students assembled for class that they would need to vote on three questions regarding the pinning ceremony. And she assured them that the majority vote would govern on each issue. In the votes that followed, the students chose to feature student speakers in the pinning ceremony and not to invite a non-student speaker. Then they voted overwhelmingly (*i.e.*, 40 to 4) to include prayers in the event.

In the following days, WVUP established an electronic means for students to submit essays if they wanted to be considered as one of the student speakers. The nursing faculty then selected three students, including Mrs. Terra Parsons, to speak at the pinning ceremony. Not only did WVUP inform these students of their selection, but it even highlighted them as delivering reflections in the programs for the December 16, 2010 ceremony.

On November 12, 2010, Mrs. Frum notified the students that WVUP had eliminated the prayers from the pinning ceremony because the students were not unanimous. Predictably, this sudden decision to ignore more than 90% of the students created controversy, which Mrs. Beebe addressed at a meeting with them on December 8, 2010. Despite students' objections, Mrs. Beebe steadfastly refused to restore the prayers, clinging to the arbitrarily imposed unanimity requirement.

Throughout this time, Mrs. Parsons played a lead role in advocating for the prayers and in pointing out that the Constitution permits public prayers in these ceremonies. She provided Mrs. Frum with a letter explaining the relevant constitutional precedents.¹ She played a vocal role in the December 8th meeting, trying to persuade Mrs. Beebe to let the student exercise their freedoms. In the process, Mrs. Beebe acknowledged that she had seen the letter Mrs. Parsons had given Mrs. Frum.

When the December 8th meeting failed to resolve matters satisfactorily, several students contacted us. Our December 13th letter explained how the Constitution protects public prayers at university graduation ceremonies like this one. And it encouraged you to respect the religious heritage of your students and allow them to exercise their liberties to the fullest. When you failed to respond, we sent additional letters on December 15th, seeking some assurances that the vote of your students would be respected the next day. Inclement weather, however, forced you to postpone the ceremony, which we now understand is rescheduled for January 21, 2011.

Yesterday afternoon, Mrs. Beebe called Mrs. Parsons. During this conversation, Mrs. Beebe stated that none of the student speakers would be permitted to speak at the pinning ceremony. When Mrs. Parsons asked for the reason behind this sudden change, Mrs. Beebe explained that "the faculty" had voted not to allow the student speakers and to feature another speaker instead. Later, Mrs. Parsons learned that the faculty had selected a non-student speaker, indicating that WVU-Parkersburg has now ignored the voice of the students on all three issues presented to them.

LEGAL ANALYSIS

But more importantly, the decision to eliminate the student speakers from Friday's pinning ceremony constitutes First Amendment retaliation and exposes the officials involved to potential personal liability.

The U.S. Court of Appeals for the Fourth Circuit recently reiterated that "[t]he First Amendment right of free speech includes not only the affirmative right to speak, but also the right to be free from retaliation by a public official for the exer-

¹ See Letter from Mr. Travis C. Barham, Litigation Staff Counsel, Alliance Defense Fund, to Dr. Michael J. Kearns, President, Mohave Community College, and Ms. Linda Reisdorph, Director of Nursing, Mohave Community College (May 11, 2010), available at <http://oldsite.alliancedefensefund.org/userdocs/MohaveCommunityCollegeLetter.pdf>.

cise of that right.”² In saying this, it merely echoed what the Supreme Court recognized sixty years ago: “The freedom of speech . . . embraces at least the liberty to discuss publicly and truthfully all matters of public concern without . . . fear of subsequent punishment.”³ Yet Mrs. Parsons is now on the verge of losing her opportunity to speak because of her role in advocating for public prayers.

As the First Amendment guarantees “the freedom of speech” and “the right of the people . . . to petition the Government for a redress of grievances,”⁴ Mrs. Parsons unquestionably “engaged in protected First Amendment activity.”⁵ “Matters of public concern”⁶ include those of “social, political, or other interest to a community.”⁷ Her speech addressing the pinning ceremony, constitutional rights, and the role of religion in public events clearly qualifies as such. And her efforts to appeal to Mrs. Beebe and other WVUP officials, both directly and through counsel, also receive constitutional protection. So she easily clears the first hurdle to proving retaliation.

By removing Mrs. Parsons and the other student speakers from Friday’s pinning ceremony, Mrs. Beebe and WVUP are depriving them of an opportunity to address their classmates at this memorable event. WVUP officials duly chose them for this role weeks before the original pinning ceremony, and taking it away now silences them, which certainly constitutes “some action that adversely affect[s] [their] First Amendment rights.”⁸

For the last piece of her retaliation claim—causation⁹—Mrs. Parsons easily satisfies the Fourth Circuit’s two requirements: showing “that [WVUP officials] w[ere] aware of her engaging in protected activity” and “some degree of temporal proximity.”¹⁰ From speaking to Mrs. Beebe in an open meeting before all the nursing students to approaching Mrs. Frum with a legal letter supporting her position, Mrs. Parsons left no doubt in any WVUP administrator’s mind as to where she stood on the propriety of including prayer in the pinning ceremony. And the only relevant events that occurred in the month between being selected as a speaker in December and speaking with Mrs. Beebe yesterday involved constitutionally protected expression: her comments to Mrs. Beebe at the December 8th meeting, her remarks to Mrs. Frum privately, and the letters from her counsel.

² *Constantine v. Rector & Visitors of George Mason Univ.*, 411 F.3d 474, 499 (4th Cir. 2005) (quoting *Suarez Corp. Indus. v. McGraw*, 202 F.3d 676, 685 (4th Cir. 2000)).

³ *Thornhill v. Alabama*, 310 U.S. 88, 101–02 (1940).

⁴ U.S. CONST. amend. I.

⁵ *Constantine*, 411 F.3d at 499.

⁶ *Thornhill*, 310 U.S. at 101.

⁷ *Ridpath v. Bd. of Governors of Marshall Univ.*, 447 F.3d 292, 316 (4th Cir. 2006) (citations omitted).

⁸ *Constantine*, 411 F.3d at 499.

⁹ *Id.*

¹⁰ *Id.* at 501.

For almost forty years, the Supreme Court has held that “state colleges and universities are not enclaves immune from the sweep of the First Amendment” and that its “precedents . . . leave no room for the view that . . . First Amendment protections should apply with less force on college campuses than in the community at large.”¹¹ On campus or off, “the prohibition against retaliation for protected speech [i]s clearly established.”¹² Hence, the officials involved in this retaliation against Mrs. Parsons—and the other student speakers—expose themselves to personal liability.

DEMAND

Over the past two months, WVUP has amply demonstrated its disdain for its students and their liberties. From eliminating prayers that 90% of them supported to now ignoring them on all three issues, it has shown that voting is merely an archaic ritual that has meaning only if the administration likes the results. And by removing Mrs. Parsons and her colleagues from the program, it has shown that those who take a lead role in sparking peaceful debate, asserting their liberties, and differing with administrators will be targeted for retaliation and reprisals. All of this in what is supposed to be the “marketplace of ideas.”¹³

While we have advised our client of her right to seek relief in federal district court, we much prefer to resolve this matter amicably and avoid the time and effort of litigation. And as the rescheduled pinning ceremony is still two days away, there may still be time for you to un-ring the constitutional bell. If you share our desire, please inform our office in writing **by 5:00 p.m. on January 20, 2011** that you will reinstate Mrs. Parsons and her fellow speakers to their roles in the ceremony, without placing any restrictions on the content of their speeches or the viewpoints they may express.

In addition, by virtue of this letter, you are now on notice that this matter may lead to litigation. Accordingly, please cease and desist all activities that may destroy tangible or electronic evidence that may be relevant to this matter. This includes, but is not limited to, all documents and electronically stored information (including e-mails), discussing or referencing in any way the nursing program’s pinning ceremony and our client, Mrs. Parsons.

Sincerely,



Travis Christopher Barham

Litigation Staff Counsel

ADF CENTER FOR ACADEMIC FREEDOM

¹¹ *Healy v. James*, 408 U.S. 169, 180 (1972).

¹² *Ridpath*, 447 F.3d at 320.

¹³ *Keyishian v. Bd. of Regents of Univ. of N.Y.*, 385 U.S. 589, 603 (1967).

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