

September 7, 2004

President John Nazarian
Rhode Island College
600 Mt. Pleasant Avenue
Providence, RI 02908

BY FAX AND MAIL

Dear President Nazarian:

The “discrimination” complaint filed against Professor Lisa Church earlier this year has, as you know, recently received a great deal of attention both on- and off-campus. We understand that a Step 1 hearing on the complaint against her was held on Friday, and that a decision will be rendered shortly. Having reviewed all of the relevant documents relating to her case, we certainly hope and expect that the dangerously amorphous charges against her will be dismissed. However, the purpose of this letter is not to address her pending case, but rather to ask the College to immediately address the much broader issues and concerns that her case has raised.

An outcome favorable to Professor Church should not obscure the fact that the charges against her highlight the absolutely critical need for the College to immediately amend its policies to prevent any similar situations from happening in the future. There can be no question that the college code provisions that have been cited in the charges against Professor Church simply cannot withstand scrutiny under the First Amendment.

Asking professors to “create, promote and ensure a positive climate where individuals may learn, teach and work free from discrimination” is certainly an admirable objective, and one that should be encouraged. But to turn such an aspiration into an enforceable requirement, as the College has apparently done, is not only unrealistic but, as Professor Church’s case demonstrates all too clearly, fraught with significant implications for academic freedom and First Amendment rights on campus. As the college’s own attorney noted in an e-mail prompted by the Church matter, the college “may not enforce an anti-discrimination policy using non-legal standards as to what constitutes ‘illegal discrimination.’” But it has done precisely that by invoking that particular provision against Professor Church. The same is true for your reference to the college’s complaint resolution policy and its expectation of an environment “free from discriminatory, inappropriate, and disrespectful conduct and communication.”

Just as disturbingly, the charge against Professor Church has also brought to the forefront other informal references apparently used by the College and its affirmative action director in determining, for purposes of its anti-discrimination policies, the propriety of certain types of speech on campus. Those references, including the affirmative action director’s statement that “derogatory comments” about protected groups “are not open for debate,” highlight the troubling and seemingly open-ended nature of the College’s position on punishing campus speech that is considered in some sense “discriminatory.”

Of course, the chilling impact that these vague policies have on free speech is not limited to professors. This incident has brought to light the conformist atmosphere in which *students* also must navigate when it comes to speech that some might deem offensive. In that regard, we have reviewed provisions of the College's "New Student Guide for 2004-2005," distributed by the Office of Academic Support and Information Services. The breadth of the Guide's ban on "discrimination" and "racism," violations of which can lead to punishment, is astonishing. Examples of actionable "discrimination" include "jokes" about a person's gender, religion or ethnicity, as well as "judgments based on stereotypes of women" and other protected groups. Incidents of "racism," according to the Guide, "will not be tolerated in any form" and should be brought to the attention of the Director of Affirmative Action "so that they can be immediately addressed." The Guide's definition of prohibited racism includes a ban on "assumptions that all members of one ethnicity are similar," or even the "*belief* that all members of a particular ethnical cultural group are 'experts' on issues affecting that group." (Emphasis added.) It is truly shocking to read a college handbook that holds that a student can be sanctioned for merely holding certain beliefs! It is difficult to think of anything more subversive of a college's true mission.

I will not bore you with a lengthy exposition on the unconstitutionality of college and university "hate speech" codes, as e-mails from your College's legal counsel appear to demonstrate an acute recognition of the legal limits imposed by the First Amendment on such codes. It is simply worth noting that the cases striking down these types of college policies date back at least 15 years, *see Doe v. University of Michigan*, 721 F.Supp. 852 (E.D. Mich. 1989), and have included challenges at colleges and universities large and small. *See, e.g., UWM Post v. Board of Regents of University of Wisconsin*, 774 F.Supp. 1163 (E.D. Wis. 1991); *Dambrot v. Central Michigan University*, 55 F.3d 1177 (6th Cir. 1995); *Bair v. Shippenburg University*, 280 F.Supp.2d 357 (M.D. Pa. 2003). Indeed, even in the *secondary* school setting, courts have begun taking a skeptical look at "hate speech" and "anti-harassment" policies. *See, e.g., Saxe v. State College Area School District*, 240 F.3d 200 (3rd Cir. 2001); *Flaherty v. Keystone Oaks School District*, 247 F.Supp.2d 698 (W.D. Pa. 2003); *Smith v. Mt. Pleasant Public Schools*, 285 F.Supp.2d 987 (E.D. Mich. 2003).

Action to address these issues cannot and should not await final resolution of the charges against Professor Church. Even if the charges are dismissed as the result of the recent hearing, the complainant remains free to pursue two further levels of appeal. We would therefore ask that you immediately begin a review of all college policies, procedures and other written materials – including those brought to light in this case – that have the potential to impact freedom of speech on campus, and to revise them to address that impact.

In the meantime, we would also request that you promptly make clear to all college personnel and students that RIC is committed to robust freedom of speech on campus and that henceforth, no anti-discrimination policies will be interpreted or enforced in a way that impinges upon free speech rights.

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Finally, should any effort be made to extend consideration of the Church case beyond a Step 1 hearing, we ask that you intervene and halt any such effort by declaring that the charges against her simply are not sustainable under the First Amendment.

Thank you in advance for your attention to our views, and I look forward to hearing back from you about this.

Sincerely,

Steven Brown
Executive Director

cc: Professor Lisa Church
Jason Blank