



April 27, 2012

Dr. Charles W. Steger, President
Mr. George Nolen, Rector (on behalf of the Board of Visitors)
Ms. Kay Heidbreder, University Legal Counsel
Virginia Polytechnic Institute and State University
210 Burruss Hall
Blacksburg, VA 24061

Re: Protecting Students' Free Speech at Virginia Tech

Dear Ladies and Gentlemen:

It has recently come to our attention that Virginia Tech maintains a student fee policy that unlawfully discriminates against religious groups and viewpoints. The policy, which is located in the Student Activity Fee Allocation Policies and Procedures, states that “[o]rganizations will not be provided funding to support religious worship or religious proselytizing.” We write to inform you of this constitutional infirmity with the University’s student fee policy and to urge you to rectify it as soon as possible.

By way of introduction, the Alliance Defense Fund (ADF) is a legal alliance that defends religious liberty and other fundamental rights. ADF is dedicated to ensuring that religious and conservative students and faculty may exercise their rights to speak, associate, and learn on an equal basis with all other students and faculty.

**Religious Viewpoint Discrimination in Allocating
Student Fees Violates the First Amendment**

The Supreme Court has made it clear that public universities may charge students a fee in order to fund extracurricular activities.

The University may determine that its mission is well served if students have the means to engage in dynamic discussions of philosophical, religious, scientific, social, and political subjects in their extracurricular campus life outside the lecture hall. If the University reaches this conclusion, it is entitled to impose a mandatory fee to sustain an open dialogue to these ends.

Bd. of Regents of Univ. of Wisc. Sys. v. Southworth, 529 U.S. 217, 233 (2000). Nearly all public universities, including Virginia Tech, collect student fees for this very purpose.

The Supreme Court has also made clear, however, that a public university must distribute these student fees in a manner that is consistent with First Amendment protections. The Court

has explained that “[t]he proper measure, and the principal standard of protection . . . is the requirement of viewpoint neutrality in the allocation of funding support.” *Id.*

In its seminal case on student fee disbursements, *Rosenberger v. Rector and Visitors of University of Virginia*, 515 U.S. 819 (1995), the Supreme Court found unconstitutional a University of Virginia policy that prohibited the allocation of student fees to “religious activities.” *Id.* at 825. Relying on this policy, the university denied funding to a student newspaper solely on the basis of its “religious editorial viewpoint.” *Id.* at 827. The Court held that the university’s actions constituted clear viewpoint discrimination, which is “an egregious form of content discrimination,” in violation of the First Amendment. *Id.* at 829. The Seventh Circuit reached the same conclusion in *Badger Catholic, Inc. v. Walsh*, 620 F.3d 775, 777 (7th Cir. 2010). It ruled that a university policy that prohibited allocation of student fees for “worship, proselytizing, and religious instruction” violated First Amendment’s prohibitions on content- and viewpoint- discrimination.

Virginia Tech’s student fee allocation policy violates the clear holdings of *Rosenberger* and *Badger Catholic*. The policy makes these funds broadly available to a multitude of student groups expressing a virtually limitless range of views, yet bans the use of these funds for “religious worship or religious proselytizing.” This is exactly the type of religious content and viewpoint discrimination struck down in *Rosenberger* and *Badger Catholic*, and in many Supreme Court cases. *See, e.g., Widmar v. Vincent*, 454 U.S. 263, 269-70 (1981) (exclusion of student group from use of university facilities based on its “religious worship and discussion” was impermissible content-based discrimination); *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 393-94 (1993) (prohibiting church from using school facilities to show film about child-rearing and family values because of the religious perspective of the film constituted unlawful viewpoint discrimination); *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001) (barring religious club from using school facilities to teach morals and character development to children from a religious perspective constituted unlawful viewpoint discrimination). The University clearly opens itself up to legal liability if it continues to maintain this discriminatory policy.

Conclusion

Public universities are the quintessential “marketplace of ideas,” *Healy v. James*, 408 U.S. 169, 180 (1972), and are “one of the vital centers for the Nation’s intellectual life,” *Rosenberger*, 515 U.S. at 836. A public university should invite robust debate and dialogue on every conceivable issue, be open to the widest possible array of ideas and views, and adopt policies that encourage the fullest possible exercise of First Amendment freedoms. Virginia Tech’s student fees allocation policy—which bans funding for religious worship or proselytizing—is inimical to these goals.

The University can resolve these problems by simply eliminating its ban on the use of student fees for “religious worship and religious proselytizing.” Failing to take these actions would unnecessarily make the University vulnerable to a federal lawsuit and an award of costs and attorneys’ fees under 42 U.S.C. § 1988.

I hope this information has been helpful to you. Please notify my office by **May 11, 2012**, that the University will be enacting the above policy revision. ADF attorneys are available to assist with these revisions, if such assistance is needed. If we do not hear from you by that time, we will begin the process of seeking judicial review of the policy.

Sincerely,


J. Matthew Sharp
Litigation Staff Counsel