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By email [bacow@tufts.edu](mailto:bacow@tufts.edu) and first class mail  
Lawrence Bacow, President  
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By email [james.glaser@tufts.edu](mailto:james.glaser@tufts.edu) and first class mail  
James Glaser, Dean of Undergraduate Education  
Tufts University  
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RE: *The Primary Source*

Dear President Bacow and Dean Glaser:

I am writing to support the appeal of the student journal, *The Primary Source*, and ask that you reverse the ruling of the Committee on Student Life (CSL) that the journal violated the school's harassment code. The ruling poses a serious threat to freedom of speech and academic freedom which are "of transcendent value to all of us ... [thus requiring the] vigilant protection of constitutional freedoms [which are] nowhere more vital than in the community of American schools." *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967).

The CSL found that the journal violated the university's harassment policy by publishing two pieces: a December 2006 mock carol, "O Come All Ye Black Folk," and an April 2007 mock ad that was harshly critical of the Muslim religion. As a result of these findings, the CSL has imposed a requirement that from now on, "all materials published in *The Primary Source* (whether characterized as satirical or otherwise) must be attributed to named author(s) or contributor(s)." In addition, the CSL has called on the student government to consider the behavior of student groups in making its decisions in the future about recognition and funding.

While the ACLU of Massachusetts does not condone or agree with the views expressed in those two publications, the offensiveness of the speech does not turn it into prohibited harassment within the meaning of the university's policies. We believe that distinguishing between offensive speech and specifically targeted harassment which rises to the level of interfering with another student's right to obtain an education is crucial to respecting the dual interests in equality in education and freedom of speech. Tufts' harassment policy makes that important distinction, yet the CSL has interpreted the university's harassment policy much too broadly and we ask you to reverse this error.

**The Committee on Student Life has construed university policy on harassment too broadly.**

The Committee's interpretation and application of Tufts' policy against harassment is inconsistent with both Tufts' written harassment policy and recent public statements by Tufts leaders, including President Bacow.

The Harassment Policy in the *Pachyderm* student handbook provides an appropriate focus on conduct which interferes with the right of an individual student to equality in obtaining an education. It provides, as it should, that members of the community "should be able to live, study, and participate in university life as equals." *Pachyderm* at 124. It prohibits "[h]arassment or discrimination *against individuals* on the basis of race, religion, gender identity/expression, ethnic or national origin, gender, sexual orientation, disability, age, or genetics ..." *Id.* (emphasis supplied).

Other equally important policies set forth in the *Pachyderm* emphasize the University's recognition of the need for freedom of speech and academic freedom in the environment of a post-secondary educational institution. The "Tufts University Policy on Political Activities," for example, states: "The university is committed to free and open discussion of ideas and opinions." *Pachyderm* at 137. The Tufts University policy on "Gatherings, Demonstrations, and Disturbances" states that "Tufts believes free inquiry and expression are indispensable in attaining the goals of the university. Toward this end, Tufts encourages members of the university community to develop the ability to exercise critical judgment, and supports the rights of individuals to express their views and opinions." *Pachyderm* at 142. The handbook further states that: "Tufts is an open campus committed to the free exchange of ideas. It is inevitable that some programs and speakers will be offensive to some members of the community." *Id.* at 143.<sup>a</sup>

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<sup>a</sup> The 103<sup>rd</sup> edition of the *Pachyderm* contains a message from the Dean of Student Affairs, Bruce Reitman, that the diverse members of the Tufts community:

"will not always agree with one another.... [and] [i]t is almost certain that at times each of us will feel wounded or hurt by something that another has said or done. No rules can prevent this. We would not be an interesting campus if we all held similar opinions about everything – or if we were not willing to engage in conversation with others whose views we find hard to understand.

You should anticipate stimulating and sometimes controversial dialogue about issues important to you. You should also anticipate that you may be shocked when another student voices an opinion radically different from yours. We should cherish the opportunity to be learning in a place where controversial expression is embraced."

Despite these important statements of university policy on freedom of speech, the CSL decision gives only a passing acknowledgement to these principles. Instead, the CSL decision interprets the harassment policy so broadly as to punish speech which may be offensive and hurtful to the feelings and sensibilities of *entire groups* – a sweeping view of prohibited harassment that would do serious damage to the concept of the university as a place for vigorous debate and dissent.

While individuals have a right to equal treatment and educational opportunity without invidious discrimination based on such things as race or religion, that right does not include a right for groups of people – defined, e.g., by their race, religion or national origin, to be free from exposure to offensive or hurtful opinions of others. The concept of group defamation or group libel has long been discredited by U.S. courts. See *American Booksellers Assn. v. Hudnut*, 771 F.2d 323, 331 n.3 (7<sup>th</sup> Cir. 1985) (*Beauharnais* group libel ruling no longer good law); *Collin v. Smith*, 578 F.2d 1197, 1205 (7<sup>th</sup> Cir. 1978) (same). Invariably, campus harassment codes which attempt to limit speech in this way are found to be impermissibly vague and overbroad, creating a chilling effect on expression on campus.

The Tufts' harassment policy aligns with these court holdings by adopting a narrower definition of harassment as applying to individuals and as expression or behavior "that constitutes a threat, intimidation, psychological attack, or physical assault." *Pachyderm* at 124. In contrast, the decision of the CSL adopts a more sweeping definition of harassment than the Tufts policy, finding that the code is violated when members of groups react to offensive speech by feeling "ridicule and embarrassment" and not "valued" or "respected." CSL decision at 3.

Although Tufts is a private university, we believe that Tufts student and faculty deserve the same degree of academic freedom as their counterparts at public universities enjoy. We thus urge you to adhere to the narrow meaning of prohibited harassment and abide by the university's own policies on and public commitment to freedom of speech as the cornerstone of academic freedom.

**The sanction imposed on *The Primary Source*, prohibiting it from publishing any anonymous articles, violates basic principles of freedom of speech.**

The CSA ordered a "Consequence" based on its finding that *The Primary Source* had violated the harassment policy: "From now on, all material published in *The Primary Source* (whether characterized as satirical or otherwise) must be attributed to named author(s) or contributor(s)."

This punishment runs afoul of the protection under the First Amendment that has been accorded by the U.S. Supreme Court to anonymous speech.

Despite readers' curiosity and the public's interest in identifying the creator of a work of art, an author generally is free to decide whether or not to disclose his or her true identity. The decision in favor of anonymity may be motivated by fear of economic or official

retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible ... Accordingly, an author's decision to remain anonymous, like other decisions concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech protected by the First Amendment.

*McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 341-342 (1995). In light of these important principles underlying the First Amendment, we urge you to rescind the "Consequence" imposed by the CSL.

### **Alternatives to censorship**

In contrast to the censorship inherent in the CSL decision, the approach set forth in President Bacow's *Viewpoints* article, entitled "Islam and *The Primary Source*," (published in the *Tufts Daily*, April 24, 2007) follows Tufts policy on both harassment and freedom of speech. The article explicitly states your disagreement with calls for censure or other punishment of *The Primary Source*. Indeed, that approach was recently praised by New York City Mayor Michael Bloomberg at Tufts' graduation, although he apparently had not been informed of the CSL ruling. <http://www.tufts.edu/home/feature/?p=commencement2007&p4=4>

Your April 24 *Viewpoint* article set a good example of the rights and obligations of the leadership of a university to speak out critically about views with which it disagrees. You provided suggestions to the Tufts Community about appropriate ways to respond to obnoxious or offensive speech, including ignoring the journal, publishing articles or letters to the editor, and confronting the editors of the publication and asking them to defend the opinions expressed in it "directly and personally."

Members of the broader Tufts community acted consistently with that advice and have done these things, sometimes quite eloquently. For example, Elisa Robinson, parent of a Tufts student, published another *Viewpoint* on January 22, 2006 in response to the "Christmas Carol." Robinson's article did not pull any punches, describing *The Primary Source* piece as an example of a "racist tirade[]." Few would suggest that her heated language is inappropriate on a college campus and, indeed, her criticism of *The Primary Source* was the kind of vigorous response that is called for.

Other responses included a call by the TCU Senate for a forum on journalistic integrity "to promote dialogue on responsible journalism, [but] not to involve itself in censorship of any form." *Tufts Daily*, February 1, 2007. And in March, there was a meeting of members of the campus media with professional journalists to discuss the rights and responsibilities of the student press. *Semester in Review*, *Tufts Daily*, April 30, 2007.

All of these actions and other *Viewpoints* published in the *Tufts Daily* provided students and other members of the community with ideas and information from which they could learn and evaluate what had appeared in the *Primary Source*. Such exchanges embody the discussion and debate from which students learn how to evaluate and think for themselves. Such a

marketplace of ideas exposes students to viewpoints that may need to be confronted and discredited, not hidden, which would be the result from censorship and punishment of disfavored speech.

**Freedom of expression, even for hateful ideas, is paramount in a university setting, whether public or private.**

A Federal court, in finding a speech code in a public university unconstitutional, relied in part on an example of defense of free speech in the private university setting which is instructive here.

In 1986, a sophomore at Yale was put on probation for two years by a University discipline board for disseminating a malicious flier intended to ridicule the homosexual community. The board eventually reversed the sanction, but only after a second hearing was held at which the student was represented by historian C. Vann Woodward, author of the University's 1975 report on free speech. *New York Times*, Oct. 15, 1986, at A27. That report concluded that 'freedom of expression is a paramount value, more important than civility or rationality.' *New York Times*, Sept. 22, 1986, at B4. Writing about the case, Professor Woodward observed:

It simply seems unnatural to make a fuss about the rights of a speaker who offends the moral or political convictions passionately held by a majority. The far more natural impulse is to stop the nonsense, shut it up, punish it – anything but defend it. But to give rein to that inclination would be to make the majority the arbiters of truth for all. Furthermore, it would put the universities into the business of censorship. *New York Times*, Oct. 15, 1986, A27.

*Doe v University of Michigan*, 721 F. Supp. 852, 867-868 (E.D. Mich. 1989).

Professor Woodward's comments were influential at Yale. The "Woodward Report" on freedom of expression in academia is considered a model for colleges and universities, emphasizing "the special responsibility for a university community to uphold its members' rights to 'think the unthinkable, discuss the unmentionable, and challenge the unchallengeable,' even in the face of words and acts that members find abhorrent." Dean Peter Salovey, editorial, *Yale Daily News*, January 29, 2007 (available at <http://www.yale.edu/yalecollege/students/administration/documents/speech.html#woodward>).

Not only was Professor Woodward a defender of freedom of speech, but his work as a historian was tremendously important in understanding and fighting against racism. His example should inform the response of Tufts leadership in regard to the application of its policies on harassment and academic freedom.

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We understand that Dean Glaser has before him *The Primary Source's* appeal of the ruling of the Committee on Student Life. That appeal is focused on due process concerns because the university's procedures appear to rule out consideration of substantive matters addressed below. To limit an appeal in this way is itself a denial of due process and is inappropriate where serious issues are raised that the CSL decision is at odds with university policies on freedom of speech. We urge you to reverse the Committee's decision, reiterate Tufts' commitment to academic freedom, and continue to speak out as a university against intolerance, bigotry, and discourse lacking in the thoughtfulness appropriate to a university community.

Sincerely,

Sarah Wunsch

cc: Barbara Grossman, Chair, CSL (by email: [barbara.grossman@tufts.edu](mailto:barbara.grossman@tufts.edu))  
*The Primary Source*