FIRE

Foundation for Individual Rights in Education

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December 21, 2012

President David M. Dooley
University of Rhode Island
Office of the President
Green Hall
35 Campus Avenue
Kingston, Rhode Island 02881

Sent via U.S. Mail and Facsimile (401-874-7149)

Dear President Dooley:

The Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, freedom of speech, and freedom of conscience on America's college campuses. Our website, thefire.org, will give you a greater sense of our identity and activities.

FIRE is concerned by the possible threat to freedom of speech at the University of Rhode Island (URI), where Professor Erik Loomis has been the subject of heated controversy over the protected content of his posts on the social media website Twitter. URI must clearly and unambiguously affirm Loomis' First Amendment right to free expression and must recognize that investigating or punishing Loomis on the basis of protected speech would violate the First Amendment.

This is our understanding of the facts. Please inform us if you believe we are in error.

In the wake of the recent school shootings in Newtown, Connecticut, Loomis posted several messages to his Twitter account in which he criticized the National Rifle Association and its Chief Executive Officer and Executive Vice President, Wayne LaPierre. In one tweet he wrote, "I was heartbroken in the first 20 mass murders. Now I want Wayne LaPierre's head on a stick." Loomis' tweets have been widely reported in the media, and many people from outside the university have demanded that he be sanctioned or terminated for his comments. Loomis has reportedly received death threats in response to his comments. He has since deactivated his Twitter account.

On December 18, you issued a statement, which reads in full:

> The University of Rhode Island does not condone acts or threats of violence. These remarks do not reflect the views of the institution and Erik Loomis does not speak on behalf of the University. The University is committed to fostering a safe, inclusive and equitable culture that aspires to promote positive change.

URI's limited response to the controversy thus far raises concerns regarding URI's commitment to free expression. FIRE is particularly concerned by your statement in this context that URI "does not condone … threats of violence." While URI is free to comment on the matter, your statement carries the worrying implication that it considers Loomis' comments to constitute true threats falling outside the First Amendment's protections. This notion is mistaken and must be publicly corrected and rejected.

The Supreme Court has defined "true threats," which are not protected by the First Amendment, as "those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." *Virginia v. Black*, 538 U.S. 343, 359 (2003). The Court further elaborated that speech may lose protection as "intimidation," a form of "true threat," when "a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death." *Id*. at 360. Loomis' remarks do not meet either of these standards.

In order to fall beyond the First Amendment's boundary, then, the speech in question must be more than the simple political hyperbole at issue here. Indeed, political hyperbole similar to that employed by Loomis has been found protected by the Court before. For example, the Supreme Court has held that the statement "[i]f they ever make me carry a rifle the first man I want to get in my sights is L.B.J.," spoken by an opponent of the Vietnam War draft, was not a true threat on the President's life but rather was a constitutionally protected although "very crude offensive method of stating a political opposition to the President." *Watts v. United States*, 394 U.S. 705, 708 (1969). In light of this clear precedent, Loomis' remarks constitute protected speech.

We remind URI that it has long been settled law that the First Amendment is fully binding on public universities. See *Widmar v. Vincent*, 454 U.S. 263, 268–69 (1981) ("With respect to persons entitled to be there, our cases leave no doubt that the First Amendment rights of speech and association extend to the campuses of state universities."); *Healy v. James*, 408 U.S. 169, 180 (1972) (internal citation omitted) ("[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, 'the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.'").

The Supreme Court has also repeatedly held that speech may not be punished merely because many may find it to be offensive or disrespectful. See *Texas v. Johnson*, 491 U.S. 397, 414 (1989) ("If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."); *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667, 670 (1973) ("[T]he mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of 'conventions of

decency.'"); *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949) ("[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.").

We further remind you that the investigation of protected speech may constitute a violation of the rights of the person being investigated. *Sweezy v. New Hampshire*, 354 U.S. 234, 245, 248 (1957). The First Amendment demands that in cases like these, once it is clear that the speech is protected, the investigation must end immediately.

To be clear: Loomis' comments are fully protected statements of personal and political opinion. By fostering the impression that his comments may reasonably be understood as unprotected threats, URI's response chills the free expression of all members of the URI community, and students and faculty will be far less likely to speak their opinions for fear that the university will fail to protect their right to free expression. This is an unacceptable outcome at a public university morally and legally bound by the First Amendment, and one that puts at risk the essential characteristic of the university as a haven of free expression and inquiry. *See*, *e.g.*, *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957) ("The essentiality of freedom in the community of American universities is almost self-evident…. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation.").

FIRE asks that the University of Rhode Island immediately make clear to Loomis and to the entire URI community that he will not be investigated or punished for protected expression. We ask that URI take a principled stand for the First Amendment rights of all its students and faculty.

We request a response to this letter by December 28, 2012.

Sincerely,

Will Creeley
Director of Legal and Public Advocacy

cc:
Donald H. DeHayes, Provost & Vice President for Academic Affairs
Louis J. Kirschenbaum, President, URI Chapter, American Association of University Professors