

November 21, 2005

Robert L. Shibley, Program Manager
Foundation for Individual Rights in Education
601 Walnut Street, Suite 510
Philadelphia, PA 19106

Re: Stetson University, Inc.

Dear Mr. Shibley:

This firm represents Stetson University, Inc. (the "University"). We received your letter dated November 2, 2005 addressed to the President of the University.

First, we agree with your observation that Stetson, as a private university, is not bound by the First Amendment dictates with respect to freedom of speech, press, and religion. As you know, the First Amendment to the United States Constitution is a restriction on the federal Congress and does not restrict a private institution such as Stetson University from regulating speech.

Students who enroll at the University are subject to the policies, procedures, and requirements of the University as outlined in the "Connections" Student Handbook. These policies include the Student Code of Conduct. For example, the preamble to the Student Code of Conduct includes the following statement:

By enrolling in Stetson University, the student accepts the responsibility to become fully acquainted with the University's regulations, to comply with the University's authority, to respect the rights and property of others, and to recognize that student actions reflect upon the students involved as well as upon the entire University community. The University reserves the right to take appropriate disciplinary action for any conduct which unreasonably interrupts and/or infringes upon orderly life in the University community or infringes upon the rights of others. . . . **Stetson University values a community environment free of discrimination and harassment and therefore prohibits conduct which prevents free academic interaction and opportunity or which creates an intimidating, hostile or offensive study, residential, or work environment.** The University has a special concern for incidents in which students appear to have been targeted or placed in jeopardy because of their race/ethnicity, gender, sexual preference, national origin, or religion. . . . All such behaviors may lead

November 21, 2005

Page 2

to disciplinary action that may include suspension or expulsion from the University. [bold added]

As noted in Dr. Beasley's memorandum dated October 31, 2005, the University has two concerns with respect to the "Common Sense" publication. First, the University is concerned that the "Common Sense" publication may be associated with the University by the publication's readers. In an effort to eliminate any confusion, the University requests the editors delete the registered marks of the University and publish a disclaimer indicating that the views expressed in the publication are not the views of Stetson University. This request is not intended to restrict free expression, but rather to make it clear that the views expressed in the "Common Sense" publication are the views of the author of the publication and are not necessarily the views of anyone else.

The unauthorized use of the University's registered mark violates the federal Lanham Act, in addition to state trademark and anti-dilution statutes. Specifically, the Florida Anti-Dilution Statute makes it unlawful to use the University's marks, or any similar marks, if "there exists a likelihood of injury to business reputation or of dilution of the distinctive quality of the mark ... notwithstanding the absence of competition between the parties or of confusion as to the source of the goods or services." *See Fla. Stat. §495.151.*

The second concern expressed in Dr. Beasley's October 31, 2005 memorandum is that there are elements of the publication which lack sensitivity to and respect for the diversity and inclusiveness of the Stetson community. Specifically, the derogatory joke about Mexican persons and the presentation on the last page which appears to target the sexual orientation of an individual lack sensitivity to and respect for specific persons and groups.

Expression of derogatory comments about Mexican persons is not a "conservative" view. The editors of "Common Sense" are free to express their views on immigration policies, border security and a host of other related issues. However, jokes and other derogatory comments that target particular ethnic groups or nationalities are demeaning, discriminatory, and inconsistent with legitimate political discourse. Frankly, it is patently ridiculous to suggest that a joke about Mexican persons is somehow political expression of the sort you describe in your letter.

The editors of "Common Sense" might ask why Jay Leno is able to say a joke on the *Tonight Show* that might be objectionable if published in "Common Sense." The answer is that students who choose to enroll at Stetson University agree to follow the Student Code of Conduct and other policies and procedures of the University. Jay Leno, on the other hand, is not subject to the University's policies because he is not a student, faculty member or employee of the University.

Likewise, the portrayal on the last page of the "Common Sense" publication is a photograph of a particular person's dormitory window with a rainbow flag and a question mark. This picture seems to be questioning some personal characteristic of the individual who lives in that particular dormitory room. The editors of "Common Sense" are free to express their views on sexual orientation, same sex marriage, and related topics. However, the editors did not express an opinion on the last page of their publication, but instead targeted a particular individual based

November 21, 2005

Page 3

on perceptions of his sexual orientation. There is a difference between expression of opinion on the one hand and targeting an individual on the other.

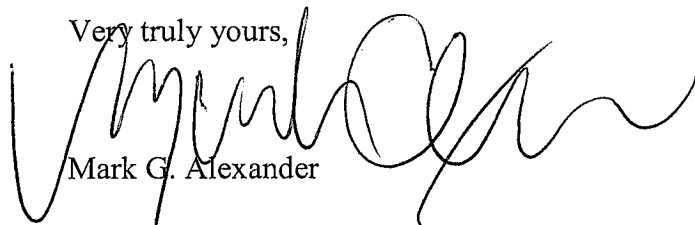
In your letter, you also mention an e-mail message dated October 12, 2005 from Shelley Wilson. Ms. Wilson expressed her personal views and was not speaking on behalf of the University. However, the University will send to "The Bread Basket" a letter explaining that Ms. Wilson's opinions are her own and not made on behalf of the University.

Your letter also raises concerns about other publications. However, your observations fail to note the distinctions between different kinds of statements. The examples noted from other publications are not derogatory or targeted towards particular groups or individuals.

Finally, the "Common Sense" states that the editors intend to file an application for qualification as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. Based on the information I have now, it does not appear that "Common Sense" is an educational, religious or charitable organization that would qualify for tax-exempt status. The kind of political speech described in your letter is not consistent with tax-exempt status under the tax code. Be advised that the University has not authorized any statements made to the Internal Revenue Service that in any way suggests, implies or represents any connection between "Common Sense" and Stetson University.

In summary, the University's position is described in Dr. Beasley's memorandum of October 31, 2005. From this point forward, please direct any communication to me. If you have any questions, please let me know.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Mark G. Alexander', written over a horizontal line.

Mark G. Alexander

MGA:ls

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