

## Joined by Broad Coalition, FIRE Files Brief in Support of Student Rights in 'Barnes v. Zaccari'

by [Peter Bonilla](#)

On behalf of a broad coalition of 15 organizations concerned about student rights on public campuses, FIRE filed an [amicus curiae](#) brief yesterday with the United States Court of Appeals for the Eleventh Circuit in the case of *Barnes v. Zaccari*. The brief asks the Eleventh Circuit to uphold a federal district court's [September 2010 ruling](#) denying the defense of qualified immunity to former Valdosta State University (VSU) President Ronald M. Zaccari, arguing that public college administrators who violate the constitutional rights of students should be held liable for doing so.

The brief, authored by FIRE, was jointly submitted to the Eleventh Circuit by FIRE, the American Booksellers Foundation for Free Expression, the American Civil Liberties Union of Georgia, the American Council of Trustees and Alumni, the Cato Institute, the Electronic Frontier Foundation, Feminists for Free Expression, the Individual Rights Foundation, the Libertarian Law Council, the National Association of Scholars, the National Coalition Against Censorship, the National Youth Rights Association, Reason Foundation, the Southeastern Legal Foundation, and Students For Liberty. Atlanta-based attorney [Cory G. Begner of Begner & Begner, P.C.](#) represented FIRE and all signatory organizations in the brief's filing.

Former VSU student T. Hayden Barnes' ordeal began in the spring of 2007, when he peacefully protested Zaccari's plan to spend \$30 million of student fee money to construct two parking garages on campus. By posting flyers and sending emails to Zaccari, student and faculty governing bodies, and the Board of Regents, Barnes expressed his concerns and proposed what he saw as environmentally friendly alternatives. Barnes also penned a [letter to the editor](#) of the VSU student newspaper about the proposed parking garage plans and [wrote to Zaccari](#) to ask for an exemption from the mandatory student fee designated for funding the construction.

In response, Zaccari personally ordered that Barnes be "[administratively withdrawn](#)" from campus. Zaccari claimed that Barnes presented a "clear and present danger" to both Zaccari and the VSU campus on the basis of a [cut-and-paste collage](#) Barnes had posted on his Facebook page that included pictures of Zaccari, a parking deck, and the caption "S.A.V.E.—Zaccari Memorial Parking Garage." Barnes was given no notice or opportunity to defend himself, and came to FIRE for help. In January 2008, Barnes filed suit in cooperation with eminent First Amendment attorney and FIRE Legal Network member Robert Com-Revere.

A September 2010 ruling by the U.S. District Court for the Northern District of Georgia found that because Zaccari expelled Barnes without notice or a hearing, Zaccari violated Barnes' constitutional right to due process as well as the contract created between VSU and Barnes by the student handbook. In its [opinion](#), the district court ruled that because Zaccari ignored "clearly established" law in punishing Barnes, Zaccari does not enjoy "qualified immunity" and is personally liable for damages. United States District Judge Charles A. Pannell Jr. ruled that the "undisputed facts show that Zaccari ignored the lawyers' warnings that withdrawing Barnes would require due process," finding Zaccari's arguments to the contrary "disingenuous."

The district court also held that the Board of Regents of the University System of Georgia breached its contract with Barnes by failing to follow the procedures for student discipline established in VSU's student handbook. The case is now before the Eleventh Circuit on appeal from Zaccari and the Board of Regents of the University System of Georgia.

As Greg states in today's [press release](#), "For too long, public college administrators have been able to ignore the Constitution and treat state institutions like personal fiefdoms." As highlighted in the *amicus* brief, FIRE's experience offers plenty of evidence of this:

For example, Binghamton University's Department of Social Work ordered—without a hearing—the [suspension](#) of masters' student Andre Massena after Massena anonymously posted flyers criticizing the department for having hired the executive director of the Binghamton Housing Authority (BHA), an agency he believed was responsible for unjustly evicting a woman and her children from their home. A week after Massena posted the flyers, he was notified by school administrators that as a result of his speech, he would be forced to take a two-semester leave of absence from the program, among other punishments.... Elsewhere, St. Louis Community College at Meramec found student Jun Xiao guilty of hazing, obstruction or disruption of teaching, disorderly conduct, and failure to comply with directions of a college official after he [sent his classmates e-mails](#) inviting them to join him in signing up for a class at another college. Despite the fact that he was never afforded a hearing or written clarification of the charges against him, Xiao was notified that he had been found guilty, placed on "Disciplinary Probation," and forbidden from sending further emails. [Footnotes omitted; links added.]

The *amicus curiae* brief filed yesterday by FIRE's coalition argues that if the district court's decision to deny Zaccari qualified immunity is reversed, administrators across the country will be emboldened to disregard their constitutional obligations. In the brief, the coalition states that "[d]enial of the defense of qualified immunity is entirely appropriate—and, in fact, required—when a public official acts as Zaccari did here, willfully abandoning the constrictions of binding legal precedent in a determined effort to deprive another of constitutional rights."

FIRE has aided Barnes since learning of his case in October 2007. Since that time, FIRE [wrote repeatedly](#) to University System of Georgia officials, urging them to undo VSU's unlawful actions and uphold the Constitution within the university system. Under pressure from FIRE and the [federal lawsuit](#) against Zaccari and other VSU administrators, the Board of Regents of the University System of Georgia finally [reversed](#) Barnes' expulsion early in 2008, and Zaccari retired months earlier than planned. Then, under further pressure from FIRE, current VSU President Patrick J. Schloss [dismantled](#) VSU's unconstitutional free speech zone in September 2008.

As our brief illustrates, however, there is still much to be done to win justice for Hayden Barnes and ensure the safety of student rights. FIRE will keep *Torch* readers

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updated on the progress of this crucial case.

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