



FIRE, joined by coalition of free speech advocates, files amici curiae brief in Feminist Majority Foundation v. University of Mary Washington

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Yesterday, FIRE—joined by the [Cato Institute](#), the [National Coalition Against Censorship](#), and Professor [Nadine Strossen](#)—filed an *amici curiae* brief in the case of Feminist Majority Foundation v. University of Mary Washington. FIRE’s brief urges the U.S. Court of Appeals for the Fourth Circuit to uphold a [district court’s ruling](#) that the University of Mary Washington and its former president did not violate the plaintiffs’ civil rights in its handling of a series of hostile social media posts.

The controversy giving rise to this case began in late 2014, when the student plaintiffs in this case—members of the UMW student group Feminists United on Campus—publicly opposed a motion to recognize fraternities and sororities on UMW’s campus. Shortly thereafter, anonymous users began posting angry, crude, and offensive messages on the now-defunct social media app Yik Yak. As the plaintiffs continued their public advocacy, [successfully calling for UMW to punish its rugby team](#) after several members were recorded singing a bawdy rugby song at an off-campus party, others continued to respond angrily on Yik Yak.

In May 2015, the plaintiffs [filed an administrative complaint](#) against UMW with the Department of Education’s Office for Civil Rights. The OCR complaint alleged that the university had failed to adequately address the Yik Yak posts and, as a result, had allowed a sexually hostile environment to exist for the plaintiffs in violation of UMW’s obligations under Title IX, the federal law prohibiting sex discrimination at institutions receiving federal funds. After then-UMW president Richard Hurley [publicly defended](#) the university against those accusations, the plaintiffs amended their OCR complaint in the fall of 2015 to further allege that Hurley’s defense of UMW constituted impermissible [retaliation](#).

Then, in May 2017, the plaintiffs [filed a federal lawsuit](#) in the U.S. District Court for the Eastern District of Virginia, echoing the allegations made in their 2015 OCR complaint. In September 2017, the district court [held in favor of UMW](#) and its former president, concluding that UMW had not been “deliberately indifferent” to the plaintiffs’ claims of harassment ([as required to](#)

establish Title IX liability for peer-on-peer harassment) and that Hurley had not engaged in retaliation. The plaintiffs appealed that ruling to the U.S. Court of Appeals for the Fourth Circuit.

The outcome of the appeal has significant implications for the First Amendment rights of college students, faculty, and staff.

First, the Yik Yak posts—while “not to our taste, to say the least” (as the Cato Institute put it)—were protected expressions of opinion made in response to the plaintiffs’ political advocacy. As we wrote in our brief:

Appellants are “adults who have intentionally and voluntarily entered into the political arena to weigh in on and advocate for or against issues related to gender.” They advocated vigorously against a proposal to recognize fraternities and sororities on campus, something others in the community passionately supported. They also successfully petitioned the university to punish its rugby team after several team members were recorded participating in a vulgar rugby chant at an off-campus party—a measure others in the community strongly opposed.

Appellants’ advocacy angered others and moved them to respond. In the marketplace of ideas, public political advocacy on controversial issues is frequently met with anger and incivility; that speech is angry, uncivil, and even vulgar does not deprive it of constitutional protection in this context.

Second, the right to free speech must allow individuals and institutions the right to defend themselves against public accusations of wrongdoing. Our brief argues that if then-president Hurley’s public response to the plaintiffs’ equally public criticism constitutes retaliation, then Title IX “would function as a gag order under which accused institutions and individuals were forced to remain silent in the face of damaging and even false accusations, in violation of their right to free speech.”

Finally, as the Electronic Frontier Foundation points out in its own amicus brief in this case, the outcome of this case has potentially significant implications for the right to anonymous speech—something the EFF describes as “an honorable tradition that has long enjoyed robust First Amendment protection.” As the EFF notes, “Absent anonymity, many would-be speakers would remain silent out of fear of violence, prosecution, civil litigation, job loss, social ostracism, and other unjustified retaliation. This self-censorship would diminish the breadth and depth of our public discourse on all manner of issues.”

FIRE and our coalition were represented in the filing by Virginia attorney Charles Henter. We will keep you posted on the latest developments as this case progresses.