

Dear Professor Johnson:

Thank you for the letter that you submitted, on behalf of you and 34 of your colleagues, expressing your grave concern regarding the "Affirmative Action Bake Sale" held on campus on March 19th. My understanding of the activity is that the students, in protesting affirmative action, suggested a form of behavior that the University does not engage in. I also deeply believe that their underlying message—that this is a community that should not care about its inclusive nature—is fundamentally wrong. Indeed, the University's policies on how it conducts its own operations, and why, are clearly stated in terms of an inclusive community.

At the same time, as you recognize, the University also holds as a cherished belief the norms underpinning free speech, and that includes the right of individuals to criticize official University policy. The "bake sale" was, in my opinion, clearly symbolic speech, picking up on a belief—any form of consideration of race in admissions is wrong—that (among others) four of nine justices of the Supreme Court of the United States effectively agree with. The bake sale was so much along the lines of clearly-articulated symbolic speech, as well as being an isolated event, not directed at any one individual, that it would be almost impossible for it to be considered one that created a "hostile environment," as that term is used in any legal sense. Nor do I think an examination into whether University policies were otherwise complied with is one that the administration should undertake, as that would be an investigation based, in the first instance, on the "content" of speech. (I am told that the bake sale did not receive any SA funds.)

Holding to a norm of free speech can be difficult, and sometimes uncomfortable. But particularly in an academic environment, adhering to free speech recognizes that diversity includes diversity of opinion, and controversial speech can—and should—engender a campus debate in which all members of the community are free to participate. In this instance, you suggest that "the students who participated in this activity ought to be told quite clearly that their views are bigoted, intolerant, and patronizing." Your letter does so, quite effectively. I would urge you, in the best tradition of free speech, and the values of a university community, to make your views on the nature of the bake sale known to both the students who participated in the activity as well as to other members of the community.

I understand why you would like the "administration" to condemn this speech. But it is different when "the institution" speaks than when individual members of the institution speak. Because my comments would necessarily carry the imprimatur of the institution, I cannot respond in the way that you would like. Given my institutional commitment to free speech, and my firm belief that this was indeed symbolic speech (even if objectionable to some), any statement I would make disagreeing with the speech would also have to contain a vigorous defense of the right of the College Republicans to engage in that speech. That is not nearly as powerful as is the response of individual members of the community who, in fulfillment of the highest ideas of a learning community, use this occasion to present their own considered views on why the ideas expressed in the bake sale were wrong or even outrageous.

Too, any member of the community who believes, contrary to what I suggest above, that the sale crossed the line between permitted speech and activity that created a "hostile environment," or otherwise violated College or University policies, is free to pursue those claims under established procedures. But for the administration to move against this activity when it appears so clearly to be symbolic speech would be a matter that, itself, would have grave repercussions, both internally and externally.

Sincerely yours,

Thomas H. Jackson