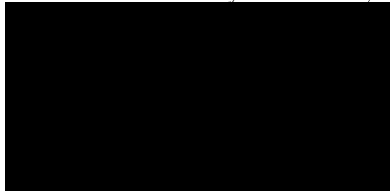




March 29, 2012

George M. Philip
The Office of the President
SUNY University at Albany



Re: Accommodation of Religious Holiday Observances at SUNY Albany

Dear President Philip:

By way of introduction, the American Center for Law and Justice (ACLJ) is an organization dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys have argued before the Supreme Court of the United States in a number of significant cases involving the freedoms of speech and religion, including cases involving public schools.¹

As we understand, SUNY Albany's administration recently decided to end its longstanding practice of closing school for various major Christian and Jewish holidays, Easter and Passover, during the 2012–2013 academic year. This is an unnecessary, ill-advised change that demonstrates hostility to members of the Christian and Jewish faiths.

According to Christine Bouchard, Vice President for Student Success, the University's decision to schedule classes during religious holidays is essentially a result of the "Kegs and Eggs"² riots that occurred on St. Patrick's Day in 2011.³ The University scheduled spring break

¹See, e.g., *Pleasant Grove v. Summum*, 555 U.S. 460 (2009) (holding unanimously that the Free Speech Clause does not require the government to accept counter-monuments when it has a war memorial or Ten Commandments monument on its property); *McConnell v. FEC*, 540 U.S. 93 (2003) (unanimously holding that minors have First Amendment rights); *Lamb's Chapel v. Center Moriches Sch. Dist.*, 508 U.S. 384 (1993) (unanimously holding that denying a church access to public school premises to show a film series on parenting violated the First Amendment); *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990) (holding by an 8-1 vote that allowing a student Bible club to meet on a public school's campus did not violate the Establishment Clause); *Bd. of Airport Comm'rs v. Jews for Jesus*, 482 U.S. 569 (1987) (unanimously striking down a public airport's ban on First Amendment activities).

²*Save Easter and Passover at UAlbany in 2013*, <http://religion.albanyreligion.com/why> (last visited March 27, 2012). On St. Patrick's Day in 2011, some SUNY Albany students caused property damage to homes, cars, and personal property in Albany. *Id.*



the week of St. Patrick's Day to protect its "relationship with the neighbors in the city of Albany."⁴ In so doing, the 2012 spring break covered St. Patrick's Day, but the university also decided to suspend classes for Easter and Passover.⁵ However, the Spring 2013 calendar does not offer the same accommodation.⁶ Classes are scheduled during the Passover and Easter holidays in 2013.

While unfortunate, the 2011 riot is completely unrelated to the University's legal obligation to accommodate the religious observances of its students. The University has other options in dealing with such student misconduct, including engaging local police departments to patrol neighborhoods or making other adjustments to the academic calendar that do not affect major religious holidays. As expressed by some students, the University should not fail to accommodate the religious observances of a large portion of the student body due to the "actions of a small percentage of the student body."⁷

Ms. Bouchard stated that she believes that the University will "honor those who take days off for religious reasons" and that she is confident that the professors will not penalize students for missing classes.⁸ Even if students are guaranteed that professors will not penalize them for missing class, students will still not benefit from the classroom experience for which they have paid tuition. Those who choose not to attend class to observe the religious holidays may not hear lectures or participate in group work, and may have to take extra, non-class time to make up tests or quizzes or other material a professor covered during a class. Meanwhile, students who do not observe the holidays benefit from the time spent in class. The promise that professors will honor a student's absence on Passover or Easter fails to adequately accommodate large numbers of students. In any case, closing the University to avoid possible student misconduct while making up those days on important religious holidays is in itself a penalty for a large number of religious students who should not be penalized for the actions of disruptive students.

Additionally, the recent resolution passed by the Student Association (SA), representative of the students at the University, shows that the students disagree with the University's decision and have demanded accommodation of their religious beliefs.⁹ Moreover, members of the University Policy and Planning Council raised concerns and had reservations in approving the Spring 2013 calendar at the March 25, 2011 meeting.¹⁰ The SA's resolution and the Policy and Planning Council's concerns illustrate that a large population of Christian and Jewish students will certainly be adversely effected by the University's decision.

³Email from Christine Bouchard, Vice President for Student Success, the University at Albany, to Michael F. Longo, student (March 06, 2012, 5:56 PM EST) (on file with author).

⁴*Id.*

⁵*Save Easter and Passover at UAlbany in 2013*, *supra* note 2.

⁶*Id.*

⁷*Id.*

⁸Email from Christine Bouchard, *supra* note 3.

⁹Restore Easter and Passover Break at UAlbany, Student Ass'n, §1112-170R (Mar. 21, 2012) (on file with author).

¹⁰Meeting Minutes from the Albany Univ. Policy and Planning Council 2-3 (Mar. 25, 2011), *available at* http://www.albany.edu/UPPC_032511.pdf.

I. The University’s new calendar demonstrates hostility toward religion and departs from the American tradition of the government accommodating religious practices.

The recent calendar changes demonstrate an unwarranted hostility toward religious students and staff. The Supreme Court has explained that “the Constitution . . . affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any. . . . Anything less would require the ‘callous indifference’ we have said was never intended by the Establishment Clause.”¹¹ The Court has noted that there is no “constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence.”¹² “[H]ostility toward religion . . . has no place in our Establishment Clause traditions.”¹³

In addition, the Court has noted that, “[w]hen the state . . . cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. . . . To hold that it may not would be to find in the Constitution a requirement that the government show a callous indifference to religious groups.”¹⁴ “Government policies of accommodation, acknowledgment, and support for religion are an accepted part of our political and cultural heritage.”¹⁵ “[A]t the time the Bill of Rights was ratified, it was accepted that government should, when possible, accommodate religious practice.”¹⁶ Further, “the government may (and sometimes must) accommodate religious practices . . . without violating the Establishment Clause.”¹⁷

In this situation, the Constitution supports the University’s past tradition of accommodating religious observances, which is consistent with the longstanding national tradition of adjusting public schedules to alleviate significant burdens upon religious exercise whenever possible. By all accounts, the past practice was quite successful in taking religious considerations into account while also furthering the administration’s interests. By contrast, the terms of the new calendar signal a hostility toward religious adherents. This hostility is neither required nor justified by the Constitution.

II. The new policy departs from New York State’s tradition of religious accommodation.

New York State law encourages broad accommodation of student religious observances in public universities as well as at public elementary and secondary schools. For example, the code sections governing the State University of New York state that the State Education Department is required to “make a bona fide effort to schedule state mandated examinations on days other than days of religious observation.”¹⁸

¹¹*Lynch v. Donnelly*, 465 U.S. 668, 673 (1984).

¹²*Zorach v. Clauson*, 343 U.S. 306, 314 (1952).

¹³*Van Orden v. Perry*, 545 U.S. 677, 704 (2005) (Breyer, J., concurring).

¹⁴*Zorach*, 343 U.S. at 313–14.

¹⁵*Allegheny County v. ACLU*, 492 U.S. 573, 657 (1989).

¹⁶*City of Boerne v. Flores*, 521 U.S. 507, 557 (1997) (O’Connor, J., dissenting).

¹⁷*Corp. of Presiding Bishop v. Amos*, 483 U.S. 327, 334 (1987).

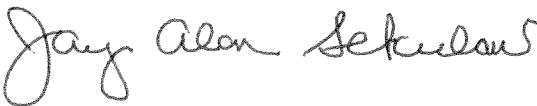
¹⁸N.Y. Consol. Law. Serv. Educ. § 208-a.

In addition, state law says that “[a]ny student in an institution of higher education who is unable, because of his or her religious beliefs, to attend classes on a particular day or days shall, because of such absence on the particular day or days, be excused from any examination or any study or work requirements.”¹⁹ Make-up assignments and alternate exam times must be provided for students who miss classes due to religious observances. The law also says “it shall be the duty of the faculty and of the administrative officials of each institution of higher education to exercise the fullest measure of good faith. No adverse or prejudicial effects shall result to any student because of his or her availing himself or herself of the provisions of this section.”²⁰ It is clear that the state legislature has signaled the importance of accommodating student religious observances whenever possible, not simply meeting the bare minimum legal requirements. And “the fullest measure of good faith” surely includes acknowledging and accommodating key religious holidays in the University’s schedule.


Conclusion

SUNY Albany should reconsider and reject the proposed changes to the academic calendar. Refusing to accommodate religious observances now after many years of previously doing so strongly signals to current and prospective students and their families that University’s once welcoming approach to students of faith has changed. It is not too late to correct what appears to be an ill-advised change in SUNY Albany policy.

Sincerely,


Jay Alan Sekulow
Chief Counsel


Jordan Sekulow
Executive Director


Robert W. Ash
Senior Counsel

¹⁹N.Y. Consol. Law. Serv. Educ. § 224-a.

²⁰*Id.*