

Ohio Court of Appeals Affirms \$30 Million Libel Verdict Against Oberlin College

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The Ohio Court of Appeals affirmed a judgment in excess of \$30,000,000 against Oberlin College, holding that Oberlin was responsible for libelous statements made during the course of a student protest. *Gibson Bros., Inc. v. Oberlin College*, 2022 WL 970347 (Ohio Ct. App. March 31, 2022). The court's rationale, if followed elsewhere, could lead to significantly broader institutional and corporate liability for statements by students and employees.

The case arose out of an incident in which an employee of the Gibson Brothers Bakery and Food Mart accused a black student of shoplifting, and then pursued and held the student until police arrived. Over the next few days, large groups of student protestors gathered outside the bakery and among other things handed out a flyer describing the incident as an "assault," and stating that the bakery had a "long account of racial profiling and discrimination." The day following the incident, the student senate passed a resolution calling for a boycott. It likewise described the incident as an assault on the student and stated that the bakery had a "history of racial profiling and discriminatory treatment of students...." The resolution was emailed to the entire campus and posted on the senate bulletin board, where it remained for over a year. The court found the statements to be factually untrue, because the student pled guilty to the shoplifting charge and admitted racial profiling did not occur, and the College presented no evidence of any past racial profiling or instances of discrimination at the bakery.

The court acknowledged that there was no evidence that Oberlin participated in drafting the flyer or the student senate resolution. Instead, the court found Oberlin liable on the theory that one who republishes a libel, or who aids and abets the publication of a libelous statement, can be liable along with the original publisher. As to the flyer, the court cited the following as evidence sufficient to support a jury finding that Oberlin had either republished or aided and abetted its publication:

- Oberlin's Dean of Students attended the protests as part of her job responsibilities;
- the Dean of Students handed a copy of the flyer to a journalist who had not yet seen it and told students they could use a college copier to make more copies of the flyer;

- the associate director of a multicultural resource center was seen carrying a large number of flyers, which he appeared to be distributing to others to redistribute to the public; and
- the College provided a warming room with coffee and pizza at a site near the protests.

As to the student senate resolution, the court cited:

- the senate was an approved organization;
- the College created the senate's authority to adopt and circulate the resolution;
- the senate faculty moderator was the Dean of Students; and
- despite having knowledge of the content of the resolution, neither the President nor the Dean of Students took any steps to require or encourage the student senate to revoke the resolution or to remove it from the bulletin board.

The court then held that despite the publicity the bakery received once the dispute arose, at the time of the protests and resolution the bakery and its owners were private persons, not public figures. Thus, the bakery only had to show that Oberlin had been negligent, rather than that it acted with reckless indifference as to the truth or falsity of the statements published.

Particularly in these polarized times, university administrators should be aware of and take steps to manage legal risks when external disputes become the subject of campus discussion and activism. Student organizations, faculty and administrators should be reminded that, to the extent they participate in protests or other public commentary outside their official roles, they should make clear they are acting for themselves and not the institution. Institutional responses to causes espoused by students or faculty need to be carefully vetted to assure that any factual assertions about third parties are accurate.

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