

March 6, 2006

PRESIDENT ROBERT C. DYNES  
CHANCELLORS

Re: U.S. Supreme Court Decision Upholding Solomon Amendment

President Dynes and Chancellors:

As we have discussed at various meetings of the Council of Chancellors, the U. S. Supreme Court was asked to review the constitutionality of the Solomon Amendment, the federal law requiring colleges and universities to provide on-campus access to military recruiters equivalent to any other recruiting employer. In November 2004, the Third Circuit Appellate Court issued an opinion holding that the Solomon Amendment was an unconstitutional violation of the First Amendment rights of law schools. The Supreme Court has today issued an opinion overturning the Third Circuit decision and upholding the constitutionality of the Solomon Amendment. (*Rumsfeld v. Forum for Academic and Institutional Rights (FAIR)*, 547 U.S. \_\_\_, March 6, 2006).

In today's opinion, the Court held that Congress could, if it wished, use its authority to "raise and support" the Army and Navy in order to directly impose on colleges and universities a requirement of equal access for military recruiters. The Court therefore held that the Solomon Amendment is not unconstitutional because it is less restrictive than a direct requirement would be (because colleges and universities still have the option to decline to accept federal funding and ban military recruiters if they so choose). The Court held that the Solomon Amendment regulates college and university conduct, rather than speech, and that that any "compelled speech" by colleges or universities (such as posting notices on behalf of the military, just as for any other recruiting employer) is merely incidental to the conduct that is being regulated. The Court also found that colleges and universities are free to express an anti-discrimination message, to make clear that the required conduct of permitting military recruiters on campus is not perceived as a message in support of the policies of the military. Finally, the Court held that the Solomon Amendment does not violate the rights of law schools to "freedom of expressive association," a concept developed by the Court several years ago to conclude that the Boy Scouts had a right to exclude homosexual troop leaders. The Court found that, unlike in the Boy Scouts decision, colleges and universities are not being required to accept military recruiters as part of their institution but rather are being required to interact with the military recruiters as third parties, which does not infringe on their rights of expressive association.

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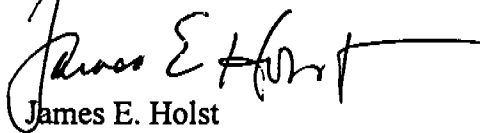
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The Court repeatedly emphasized that the Solomon Amendment does not prevent colleges and universities from expressing disapproval of military policies: “The Solomon Amendment neither limits what law schools may say nor requires them to say anything. Law schools remain free under the statute to express whatever views they may have on the military’s congressionally mandated employment policy, all the while retaining eligibility for federal funds.” (Slip Op. at 10). The Court emphasized that law schools are entitled to “put signs on the bulletin board next to the door, [] engage in speech, [or] help organize student protests.” (Slip Op. at 10).

Please let University Counsel Maria Shanle or me know if you have any questions.

Sincerely,



James E. Holst

cc: Acting Provost Hume  
Senior Vice President Mullinix  
Senior Vice President Darling