



Foundation for Individual Rights in Education

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January 6, 2006

Kevin P. Reilly
University of Wisconsin System President
1720 Van Hise Hall
1220 Linden Drive
Madison, Wisconsin 53706-1559

Re: UW Policies Banning RA-Led Bible Studies in Dormitories

Sent by US Mail and Facsimile (608-262-3985)

Dear President Reilly:

As we are sure you are aware, the Foundation for Individual Rights in Education (FIRE) is the organization that originally exposed the policy at the University of Wisconsin–Eau Claire (UWEC) that forbade resident assistants (RAs) to lead Bible or other holy book studies in their own dorm rooms or dormitories. FIRE’s mission is to protect, promote, and defend individual liberty on America’s college and university campuses. Therefore, in response to your public request for input on the policies in place at UWEC and at the University of Wisconsin–Madison (UWM) that ban RA-led Bible studies, FIRE would like to remind you and other officials considering the situation of the important issues and fundamental rights that are at stake in this controversy.

First, it is of the utmost importance that the University of Wisconsin System (UW System) recognizes that the policy that was in effect at UWEC (and that has now been suspended) is unconstitutional. FIRE’s first communication with UWEC (attached) regarding the controversy stemmed from a letter and e-mail message from Associate Director of Housing and Residence Life Deborah Newman to undergraduate RA Lance Steiger that promulgated an otherwise unwritten policy banning RAs from leading Bible studies in their own dorm rooms or dormitories. Associate Director Newman’s stated rationale was that she wanted RAs to be “approachable” and did not want students to “feel judged or pushed in a direction that does not work for them.”

This policy constituted unconstitutional viewpoint discrimination against students who wish to express religious viewpoints rather than secular ones. As FIRE discussed in its letter to UWEC Chancellor Vicki Lord Larson, the Supreme Court has considered several cases in which universities sought to proscribe religious expression or activities while allowing or even encouraging similar secular

expression or activities, such as *Widmar v. Vincent*, 454 U.S. 263 (1981), *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819 (1995), and *Board of Regents of the University of Wisconsin System v. Southworth*, 529 U.S. 217 (2000). In each case, the Court held that discrimination by universities against those with religious viewpoints was unconstitutional, particularly when they merely asked for the same rights as those granted to secular individuals or organizations. Further, FIRE's discovery that UWEC RAs had led, in their official capacities, controversial political programs such as *The Vagina Monologues*, the "Tunnel of Oppression," a "Privilege Walk," and a seminar called "The F-Word" that called feminism a "socially necessary way of thought" demonstrated not only that UWEC's policies were facially unconstitutional but also that UWEC was in fact treating students differently according to their beliefs.

Second, when making the decision whether to ban RA-led Bible or other holy book studies in their own dorms or dorm rooms, it is important to note that neither UWEC nor the UW System as a whole are in any way required to have such a ban by the U.S. Constitution or by concerns about religious tolerance—in fact, just the opposite is true. In *Wigg v. Sioux Falls Sch. Dist.* 49-5, 382 F.3d 807 (8th Cir. 2004), a recent case in the neighboring Eighth Circuit, the court cited the Supreme Court cases of *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001), and *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993), in determining that a school district could not keep an elementary school teacher from leading a Bible club on school grounds but after school hours, despite any Establishment Clause concerns that the school might have had about appearing to promote religion.

Similarly, the UW System need have no fear that failing to ban the RA-led Bible studies will put it at risk for an Establishment Clause violation. In *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819 (1995), Justice Kennedy wrote that "the guarantee of [religious] neutrality is respected, not offended, when the government, following neutral criteria and evenhanded policies, extends benefits to recipients whose ideologies and viewpoints, including religious ones, are broad and diverse." Since RAs already participate in a wide variety of ideological and other activities within their dorms, as discussed above, and are free to host voluntary gatherings for reading secular material, the UW System cannot reasonably be accused of establishing religion if it allows some RAs to conduct religious activities on their own time, and need have no serious concerns about litigation on that score.

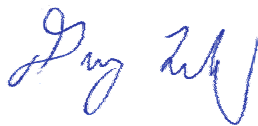
Third, despite indications to the contrary from UWEC, it is patently inaccurate to claim that RAs in their own dorm rooms or dormitories are actively engaging in state employment at all times and therefore subject to state regulation of their personal behavior. While UWEC has claimed that RAs' rooms are basically equivalent to other state employees' offices, it is the rare state employee who sleeps, eats, and engages in recreational or intimate activity in his or her office. Simply put, being an RA should not be made into the equivalent of a 160-hour-a-week desk job.

It is far more logical to recognize that the RA's dormitory or room is his or her home, and that while he or she has work duties to perform from there, he or she also has a private sphere of activity that should not be regulated by the state. If an RA were to engage in leading a Bible study or any other activity that impaired his or her job performance, UW System institutions would certainly have the right to intervene to ensure that the job of being an RA was done competently and with care. Likewise, if an RA were to coerce students under his or her

supervision to attend Bible study, the university would certainly be justified in interceding. However, there is no indication that this has been the case with any RA who has led a Bible study in his or her room. Indeed, the original concern of UWEC was that an RA who was known to be religious might not be as “approachable” as an RA who did not have or who hid his or her own religious beliefs. Yet by acknowledging that the university could not stop an RA from leading a Bible study outside his or her own dormitory, UWEC encouraged those RAs to engage in behavior that would make them not just unapproachable but actually less available than they might otherwise be.

FIRE sincerely hopes that in making a decision about this policy, the UW System will consider the legal precedent we have cited in this letter and our previous letter to Chancellor Larson, along with the moral arguments we have made about infringing upon the fundamental rights of its students. Further, media accounts and newspaper editorials have made it clear that a policy that prohibits RAs from engaging in religious activities in their own homes and on their own time is extremely unpopular with the people of the state of Wisconsin, whom the UW System exists to serve. We urge the UW System to take into account America’s tradition of religious tolerance and pluralism and refuse to punish its own students merely because their interests lie in pursuits that are religious rather than purely secular. And finally, we advise that the UW System consider the lawsuit filed against it by UWEC RA Lance Steiger and realize that to fight an inevitably losing battle for religious repression of university students is an abuse of not just taxpayer money but the trust of the people of Wisconsin. Let your students exercise their basic legal, moral, and human rights; let them study and worship as their consciences dictate.

Sincerely,



Greg Lukianoff
Interim President

cc:

Patricia A. Brady, General Counsel, University of Wisconsin System
Vicki Lord Larson, Interim Chancellor, University of Wisconsin–Eau Claire
John D. Wiley, Chancellor, University of Wisconsin–Madison
State Senator Ron Brown
State Representative Robin G. Kreibich
State Representative Scott Suder
Lance Steiger

Encl.