



March 10, 2016

President Michael S. Roth  
Wesleyan University  
Office of the President  
229 High Street  
Middletown, Connecticut 06459

Joshua S. Boger  
Chair, Board of Trustees  
Wesleyan University  
Middletown, Connecticut 06459

*Sent via U.S. Mail and Electronic Mail (mroth@wesleyan.edu, joshua.boger@gmail.com)*

Dear President Roth and Dr. Boger:

The Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, freedom of speech, and freedom of conscience on America's college campuses. Our website, [thefire.org](http://thefire.org), will give you a greater sense of our identity and activities.

FIRE writes Wesleyan University and its Board of Trustees today concerning the *Wesleyan Argus* student newspaper, whose future funding is imperiled by a Wesleyan Student Assembly (WSA) resolution passed in response to controversy over the views published in the *Argus'* opinion section. If implemented as proposed, this measure will result in a dramatic reallocation of funding currently available not only to the *Argus*, but to numerous Wesleyan student publications. The WSA proposal would account for a publication's popularity with the student body in allocating funding, creating a very real risk that outlets will be punished for publishing content perceived as controversial or offensive. This is impermissible and dangerous at a liberal arts institution that proudly claims to value freedom of expression, as Wesleyan does. If the WSA does not recognize and rectify this error, Wesleyan bears the moral responsibility to ensure that student media, and student organizations in general, can exist free from the threat of discrimination based on content or viewpoint.

The current controversy over student media at Wesleyan was ignited by the publication of an opinion column in the *Argus* by Wesleyan student Bryan Stascavage criticizing the Black Lives Matter movement. The controversy caused by the column resulted in protest against the *Argus*, with roughly 150 Wesleyan students signing a petition calling for its funding to be revoked until a number of demands were met, including “Social Justice/Diversity” training for campus publications and the mandatory allocation of front-page space for “marginalized groups/voices.” On October 18, the WSA passed Resolution 3.37, “Stipends, Academic Credit, and Digitalization for on Campus Publications,” which tentatively creates \$17,000 in new funding for student media. \$15,000 of this funding will be directed to the creation of 20 “work study allotments for student writers or editors,” with the remainder directed to “Targeted Facebook Ads that will make student publications more visible than ever.” (FIRE wrote to WSA president Kate Cullen on October 11, urging the WSA not to cut funding to the *Argus* in response to its content. A copy of that letter is enclosed.)

The initial funding to implement Resolution 3.37 will be raised by cutting \$17,000 from the *Argus*’ annual print budget—reducing its allocation from roughly \$30,000 this academic year to \$13,000 for the academic year beginning in Fall 2016—although the resolution also calls for a yearlong study of possible alternative methods of raising these funds.

The \$17,000 in funding under Resolution 3.37 is to be distributed through a “ranking system” in which the four top student publications each receive shares. According to the resolution:

Having student government decide which student publications get the funding is probably not a good idea. Instead the decision of which four publications will get stipends and Facebook advertising funding will be decided by the student body with a vote and tracked online readership numbers, much like how consumers in the real world choose to buy the newspaper and magazines of their choice.

Funding for work-study positions and Facebook ads under the proposed resolution is to be distributed to the first and second place publications as measured by the size of their online readership as well as by a vote of the student body. As hypothesized by the resolution, the *Argus* would, under the new system, receive a maximum of \$25,100 in funding for placing first in both the student vote and the measured readership, including \$10,500 for work-study positions and \$1,600 for Facebook ads. If the *Argus* did not place in either category, it would receive \$13,000 in total funding, with no funding for either work-study positions or Facebook ads. None of the resolution’s scenarios allow for the *Argus* to continue receiving print funding at its current levels. (A copy of Resolution 3.37’s breakdown of the proposed funding distribution is enclosed, and the resolution in its entirety is available at <http://www.kaiwes.com/future-of-media/>.)

While Resolution 3.37’s provisions may not take effect until Fall 2016 and the *Argus*’ funding for the current academic year is not affected, certain provisions of the resolution give FIRE cause for serious concern, and should give serious concern to the Wesleyan

administration and trustees as well. In short, basing funding for student publications, or student groups in general, on their popularity with Wesleyan students effectively enshrines viewpoint and content discrimination in Wesleyan's process for funding student organizations—an illiberal outcome deeply at odds with Wesleyan's commitments to freedom of expression.

Wesleyan University, though private and thus not bound by the First Amendment, proudly supports the free expression of its students and faculty in its policies. Wesleyan's Joint Statement on the Rights and Freedoms of Students, for example, states that “[a]cademic institutions exist for the transmission of knowledge, the pursuit of truth, the development of students, and the general well-being of society. Free inquiry and free expression are indispensable to the attainment of these goals.” Wesleyan's Statement on Academic Freedom likewise states:

In accordance . . . with the ideals of academic freedom, every member of the Wesleyan community should feel that he or she can enter into controversy without fear of being silenced or constrained. This community's commitment to the free exchange of ideas and pursuit of knowledge requires a wide range of protections for speech and expression, even when noxious or offensive.

In committing to these ideals, Wesleyan hews to the Supreme Court's famous observation that “[t]he college classroom with its surrounding environs is peculiarly the ‘marketplace of ideas.’” *Healy v. James*, 408 U.S. 169, 180 (1972) (internal citation omitted).

Funding student publications based on their popularity, as Resolution 3.37 seeks to do, is incompatible with the principles of free expression to which Wesleyan proudly subscribes. While supporters of the resolution proclaim that its proposed funding mechanism will function “much like how consumers in the real world choose to buy the newspaper and magazines of their choice,” the situations are not comparable in fundamental ways and should not be treated as such. While in the “real world” consumers are free to decide for themselves which media they pay to consume, Wesleyan students pay a mandatory \$270 Student Activity Fee to support the activities of all student organizations. These fees are distributed by Wesleyan's student government and subsidize a wide variety of expressive organizations, including political and religious organizations, activist and issue-oriented organizations, artistic organizations, and, of immediate relevance to this case, media organizations.

The Supreme Court of the United States has ruled, in the public university setting, that the forum for expressive activity created by the collection and distribution of mandatory student activity fees requires access to be granted on a content- and viewpoint-neutral basis. *See Board of Regents of the University of Wisconsin System v. Southworth*, 529 U.S. 217, 233 (2000) (“When a university requires its students to pay fees to support the extracurricular speech of other students, all in the interest of open discussion, it may not prefer some viewpoints to others.”); *Rosenberger v. Rector and Visitors of the University of*

*Virginia*, 515 U.S. 819, 836 (1995) (“For the University, by regulation, to cast disapproval on particular viewpoints of its students risks the suppression of free speech and creative inquiry in one of the vital centers for the Nation’s intellectual life, its college and university campuses.”).

Wesleyan should take particular note that the *Southworth* Court strongly indicated that deciding student organization funding by a majority vote of a student body is inconsistent with the principle of viewpoint neutrality. See *Southworth*, 529 U.S. at 235 (overturning a referendum allowing students, by majority vote, to fund or defund student groups because “[i]t is unclear to us what protection, if any, there is for viewpoint neutrality in this part of the process. . . . To the extent the referendum substitutes majority determinations for viewpoint neutrality it would undermine the constitutional protection the program requires”); see also *Amidon v. Student Association of the State University of New York at Albany*, 508 F.3d 94, 103 (2d Cir. 2007) (holding that a student body vote on funding is viewpoint discriminatory because it “injects a substantial risk of undetectable viewpoint discrimination into the allocation process.”).

While Wesleyan University, as a private institution, is not legally bound by these court rulings on viewpoint neutrality, it would be well advised to heed the Supreme Court’s guidance if Wesleyan’s multiple commitments to freedom of expression are to have meaningful effect.

In public statements, Wesleyan president Michael Roth has been supportive of the free speech rights of the *Argus* and Wesleyan’s student population on the whole. In an October 24, 2015, column in the *Hartford Courant*, for example, he rightly noted, “Protests against newspapers, of course, are also part of free speech. But punishment, if successful, can have a chilling effect on future expression.” In that same editorial, President Roth also wrote that “[s]tudents are trying to figure out how to bring more perspectives to the public with digital platforms, and I am confident they can do this without undermining the *Argus*.”<sup>1</sup> Wesleyan must recognize, however, that the WSA’s proposal does more than undermine the *Argus*—it undermines the rights of all student publications.

Conditioning a publication’s funding on its popularity with the student body risks exactly the chilling effect Roth cautions against: Student publications will be far less likely to take controversial stances or publish potentially controversial material if they may be punished by the student body to the tune of thousands of dollars for doing so. What’s more, allocating funding according to the majority preferences of the student body makes it far likelier that voices and opinions rarely heard at Wesleyan would be undeservedly consigned to second-class status. To truly live up to its ideals as an institution of higher education committed to the principles of freedom of expression, Wesleyan must protect minority viewpoints as strongly as it does majoritarian views.

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<sup>1</sup> Michael S. Roth, *The Uncomfortable Truth About Free Speech*, HARTFORD COURANT, Oct. 24, 2015, available at <http://www.courant.com/opinion/op-ed/hc-op-roth-wesleyan-argus-freedom-of-speech-1023-20151023-story.html>.

Supporters of Resolution 3.37, seeking to allay fears that it would result in a decimation in the *Argus*' funding, have noted that "[i]t is expected The Wesleyan Argus would do well in an all campus vote and also in ranking of online readership."<sup>2</sup> This, however, misses the point: It is no more acceptable for the proposed system to fund the *Argus* at the expense of other publications than it is for the system to fund other publications at the expense of the *Argus*.

It is FIRE's hope that the Wesleyan Student Assembly will see the flaws in its current proposal, and will disavow any possible avenues for viewpoint discrimination in funding student organizations in the future—including the present proposal to condition funding for student media on the results of a popular vote of the student body. We also reiterate the concerns expressed in our previous letter, and call on the WSA to make clear that it will not retaliate against the *Argus* by cutting its funding due to student opposition to its content. Should the WSA fail to do so, it will be incumbent on the Wesleyan administration to see that the rights of all student organizations are protected, and that funding is allocated to student organizations on a content- and viewpoint-neutral basis, in accordance with the principles of freedom of expression for which Wesleyan proudly stands.

We request a response to this letter by March 31, 2016.

Sincerely,



Peter Bonilla

Director, Individual Rights Defense Program

Encl.

cc:

Wesleyan University Board of Trustees

Kate Cullen, President, Wesleyan Student Assembly

Wesleyan Student Assembly Leadership Board

Michael J. Whaley, Vice President for Student Affairs

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<sup>2</sup> See <http://www.kaiwes.com/future-of-media/>.



October 9, 2015

Kate Cullen  
President, Wesleyan Student Assembly  
Wesleyan University  
45 Wyllys Avenue  
Middletown, Connecticut 06459

*Sent via Electronic Mail (saltemuscull@wesleyan.edu)*

Dear Ms. Cullen:

The Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, freedom of speech, and freedom of conscience on America's college campuses. Our website, [thefire.org](http://thefire.org), will give you a greater sense of our identity and activities.

FIRE writes to the Wesleyan Student Assembly (WSA) today to express our concern for the implications for freedom of expression at Wesleyan University presented by the potential defunding of *The Wesleyan Argus* following controversy over a student's opinion column. The column in question critiqued the Black Lives Matter movement and resulted in calls to boycott the *Argus* as well as to physically destroy its print copies, and appears now to have led to a resolution which, if passed, could significantly reduce the funding the *Argus* receives through student fees collected by the WSA. Such action against the *Argus*, if carried out, constitutes retaliation against the newspaper due to the viewpoint of one of its writers and violates the principles of freedom of expression and Wesleyan's own commitments to free speech. We strongly urge the WSA to reject calls to reduce or eliminate funding for the *Argus*.

The following is our understanding of the facts. Please inform us if you believe we are in error.

In an article published by the Student Press Law Center (SPLC) October 7, titled "Wesleyan student government considers cutting the *Argus*' printing budget in half after diversity debate," reporter Tara Jeffries wrote:

The controversy wracking Wesleyan University's campus in response to Bryan Stascavage's Sept. 14 *Argus* opinion piece criticizing Black Lives Matter has culminated in a student-government resolution to divert a bulk of the newspaper's printing budget to work-study positions at various campus publications.

The resolution, which surfaced at the Sunday Wesleyan Student Assembly Senate meeting, would cull up to \$17,000 from *The Argus'* printing budget of about \$30,000 and use it to fund work-study positions at the top campus publications of students' choice, Stascavage said. The work-study positions would be aimed at increasing diversity in the campus' student publications, which are predominantly white. The resolution could not be found online.

Prior to Jeffries' reporting, a boycott petition signed by more than 150 Wesleyan students called for WSA funding to the *Argus* to be revoked until a series of demands were met, including "Social Justice/Diversity training" for all campus publications each semester and mandatory front-page space for "marginalized groups/voices." The petition also announced the boycotters' commitment to "recycling the *Argus*"—a reference to the physical destruction of printed copies of the *Argus*.

The resolution concerning possible future cuts to the *Argus'* funding is scheduled to be debated at the WSA's next meeting, to take place this Sunday, October 11.

To financially punish the *Argus* due to the offense others take at its content contradicts a well-established First Amendment principle: Public universities are required to grant expressive student organizations recognition and access to the funding of student activities on a viewpoint-neutral basis. See *Board of Regents of the University of Wisconsin System v. Southworth*, 529 U.S. 217, 233 (2000) ("When a university requires its students to pay fees to support the extracurricular speech of other students, all in the interest of open discussion, it may not prefer some viewpoints to others."); *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819, 836 (1995) ("For the University, by regulation, to cast disapproval on particular viewpoints of its students risks the suppression of free speech and creative inquiry in one of the vital centers for the Nation's intellectual life, its college and university campuses.").

As a private institution, Wesleyan is not bound by the First Amendment or the Supreme Court's rulings. But the university makes numerous clear commitments to freedom of expression, which the WSA, acting as Wesleyan's agent in distributing funds collected through mandatory student activity fees, is obligated to uphold. The preamble to Wesleyan's Joint Statement on the Rights and Freedoms of Students, for instance, states:

Academic institutions exist for the transmission of knowledge, the pursuit of truth, the development of students, and the general well-being of society. Free inquiry and free expression are indispensable to the attainment of these goals.

Wesleyan's current student handbook further states:

In accordance . . . with the ideals of academic freedom, every member of the Wesleyan community should feel that he or she can enter into controversy without fear of being silenced or constrained. This community's commitment to the free exchange of ideas and pursuit of knowledge requires a wide range of protections for speech and expression, even when noxious or offensive.

Wesleyan's leaders have used the current *Argus* controversy as an opportunity to reaffirm these principles. In a letter posted to President Michael Roth's blog September 19, Roth, Provost Joyce Jacobsen, and Vice President for Equity and Inclusion Antonio Farias wrote:

Debates can raise intense emotions, but that doesn't mean that we should demand ideological conformity because people are made uncomfortable. As members of a university community, we always have the right to respond with our own opinions, but there is no right not to be offended.

Defunding the *Argus* either in part or in full due to student opposition to its content stands in direct opposition to these admirable commitments to free expression. The WSA must not condition the funding it gives to the *Argus*—or to any student organization at Wesleyan—on the popularity of the opinions expressed by its writers. To do so would undermine freedom of expression at Wesleyan, make a mockery of journalistic freedom on its campus, and fail the WSA's responsibility to ensure access to the marketplace of ideas for all students, regardless of their opinions.

We urge the Wesleyan Student Assembly to reject any resolution calling for the reduction or elimination of funding to *The Wesleyan Argus* based on viewpoint. We appreciate your attention to FIRE's concerns.

Sincerely,



Peter Bonilla  
Director, Individual Rights Defense Program

cc:

Wesleyan Student Assembly Leadership Board  
Michael Roth, President, Wesleyan University  
Joyce Jacobsen, Provost, Wesleyan University  
Antonio Farias, Vice President for Equity and Inclusion, Wesleyan University



# Which Publications Get Funding

**NOTE: Resolution 3.37 that passed on October 18th creates a working group to make a better ranking system, or to propose a completely different means of allocating stipends.**

## Overview

Having student government decide which student publications get the funding is probably not a good idea. Instead the decision of which four publications will get stipends and Facebook advertising funding will be decided by the student body with a vote and tracked online readership numbers, much like how consumers in the real world choose to buy the newspaper and magazines of their choice. The ranking system is outlined below.

## Ranking System

The top four organizations (using votes and online readership numbers) will get work study positions and Facebook advertising credit. Students can vote for two publications.

1st place readership: 7 stipends, \$800 Facebook ad credit or website staffing costs

1st place votes: 7 stipends, \$800 Facebook ad credit or website staffing costs

2nd place readership: 3 stipends, \$200 Facebook ad credit or website staffing costs

2nd place votes: 3 stipends, \$200 Facebook ad credit or website staffing costs

**20 work study allotments for student writers or editors. \$2,000 for Facebook advertising OR Website staffing (Note: this does not affect limited printing budgets that are granted i.e infrequent magazines and newspapers).**

In addition, if a student publication does not already have an archive in Olin, all issues published during the year will be archived there and in a data base. Organizations that already have archiving privileges will not lose it under this proposal.

## Criteria to be in the Ranking System

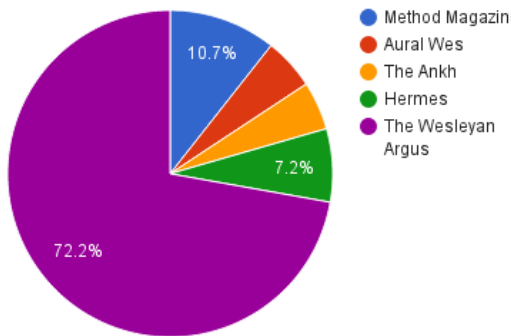
The following criteria must be met in order to be a part of the ranking system:

- Publishes written content at least once a week. (For the past two months at least)
- Has a website where written content is published.
- Google analytics setup on website, and viewing access shared with WSA.
- A signed sheet with 50 student signatures and ID numbers supporting the publication to be in the ranking system.

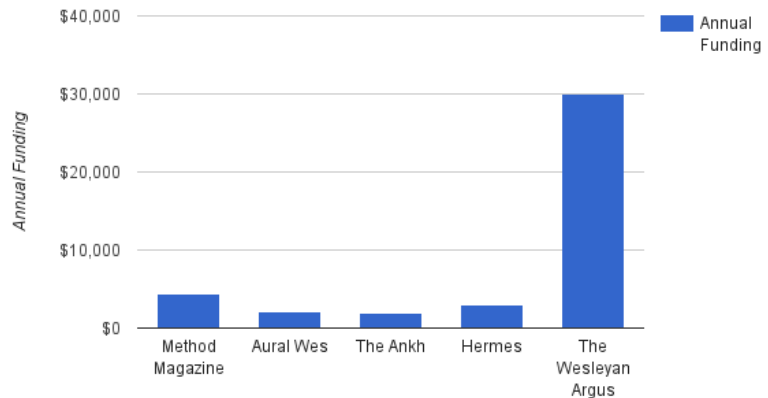
## Current Funding Distribution of Publications

Below are the most recent annual figures for funding of publications. Most publications use their annual money for limited printing and website costs.

Annual Funding



Annual Funding



## Post-Print Reduction Funding Distribution (by case)

**NOTE: Resolution 3.37 that passed on October 18th does not deal with any funding issues. No funding cuts are in that resolution, but rather a year long print consumption and readership study that would require a completely separate vote next year to either increase or decrease print amount.**

### Readership and Voting First Place

If The Wesleyan Argus won first in readership AND votes they would receive **14 work study positions** (14 work-study \* \$750 a year per student = \$10,500) and **Facebook and website funding** (\$1,600). **Therefore their total funding would be \$25,100 annually** (\$13,000 printing costs + \$10,500 stipend costs + \$1,600 digitalization costs).

### Readership First Place and Voting Second Place (or vice-versa)

If the Wesleyan Argus won first place in readership a vote and first place in readership they would receive **10 work study positions** (10 work study \* 750 a year per student = \$7,500) and **Facebook and website funding** (\$1,000). **Therefore their total funding would be \$21,500 annually** (\$13,000 printing costs + \$7,500 work-study costs + \$1,000 digitalization costs).

### Readership First Place and Not Placed Vote

If The Wesleyan Argus won first in readership they would receive **7 work study positions** (7 work-study \* \$750 a year per student = \$5,250) and **Facebook and website funding** (\$800). **Therefore their total funding would be \$19,050 annually** (\$13,000 printing costs + \$5,250 work-study costs + \$800 digitalization costs).

### Voting First Place and Not Placed Readership

If The Wesleyan Argus won first in votes they would receive **7 work study positions** (7 work-study \* \$750 a year per student = \$5,250) and **Facebook and website funding** (\$800). **Therefore their total funding would be \$19,050 annually** (\$13,000 printing costs + \$5,250 work-study costs + \$800 digitalization costs).

### Not placed on either Voting or Readership

If the Wesleyan Argus didn't place they would not receive stipends or Facebook and/or website funding. **Therefore their total funding would be \$13,000 annually** (printing costs + current labor costs).

# Stipend Details

**NOTE: Resolution 3.37 that passed on October 18th creates a working group to determine the exact payment amounts for writer and editors.**

## Overview:

Currently writers and editors for Wesleyan's most popular publications do not get paid, and as a result students on financial aid are often an underrepresented voice in current dialogue and Wesleyan's historical archive. This proposal seeks to provide a small monthly payment to twenty students on financial aid that consistently contribute articles or work as an editor for a ranked publication. Writers that receive a stipend must also be getting academic credit so that there is oversight.

## Assumptions made:

- 2.5 hours spent writing or editing a week (actual hours usually higher, but would be unfeasible)
- Connecticut Minimum Wage \$10.10 (effective January 1st 2017)
- Approximately 15 weeks in a semester (and 30 in a year)
- Payment cycle can be made weekly, and there would be someone willing to manage administering the funds and deducting from the student's work study allotment.

## Calculations:

\$15,000 dollars total

20 Students

$\$15,000/20$  students = \$750 per student a year

$\$750/30$  weeks in a school year = \$25 a week per student (around \$90 a month b/c not all months have four weeks of school)

**\$90-\$100 A MONTH PER STUDENT THAT CONTRIBUTES AN ARTICLE (OR IS AN EDITOR) TO A RANKED PUBLICATION.**

## Details for Weekly Publications:

- The publication must accept the student's weekly article and deem it up to standards. (Usually 600-700 words an article)
- The student must stay on for increments of a month or will not get paid at all (i.e can't just do one or two weeks a month because of administrative burden).
- Each month the publication will confirm under signed contract that the student has fulfilled their weekly article or editing duties. Some administrative oversight will be done to catch cheaters.

## Details for Monthly Publications:

- The publication must accept the student's monthly piece or editing and deem it up to standards.