



June 13, 2019

Dr. Alan Cureton
Office of the President
University of Northwestern
Riley Hall 1413
3003 Snelling Avenue North
St. Paul, Minnesota 55113

Sent via U.S. Mail and Electronic Mail (alancureton@unwsp.edu)

Dear President Cureton:

The Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

FIRE is concerned about the state of freedom of expression at the University of Northwestern (UNW) in light of the administration's viewpoint-based refusal to honor an invitation extended to Star Parker by the UNW Young Americans for Freedom (YAF) chapter. As a university that promises its students freedom of expression, UNW may not refuse to approve a student group's event over its chosen speaker's viewpoint or the anticipated reaction to the speaker.

I. Facts

The following is our understanding of the pertinent facts, based on our discussions with involved students and review of applicable documents. We appreciate that you may have additional information to offer and invite you to share it with us.

Young Americans for Freedom is a conservative organization founded by, among others, William F. Buckley Jr. The student chapters are now affiliated with another conservative

organization, the Young America's Foundation.¹ Hayley Tschetter, a student at UNW, is the chairwoman of the YAF chapter at UNW.

On February 7, 2019, Tschetter emailed Kayla Hoye, UNW Director of Student Programming, about YAF hosting Star Parker, a conservative columnist, on campus.² Hoye and Tschetter agreed on a date for the event, March 21, and Tschetter reserved a space for Parker on this date.³ On February 14, Tschetter sent YAF's contract to Hoye for the UNW administration's approval. Hoye replied that she could not agree to the contract, stating that UNW would not agree to some of YAF's conditions. By email, Tschetter asked for an explanation for this refusal. Hoye identified two specific concerns:

The first main concern is that it is an open event. UNW really only does events for our community, not ones open to the larger community.

Therefore, it would be different if you were having a speaker just come speak to your club. Speakers open to all UNW students would have more strictness and then like I said we don't typically do truly open events.

Second, there were quite a few concerns about Star. Our staff has been very adamant about bringing speakers to campus who educate and expand worldviews, but we really don't bring speakers who radically hold beliefs that UNW as a whole would not agree with. Again, it may be different if we were able to bring a panel and provide a variety of thought, but in the past UNW has stayed away from sensationalized speakers. I foresee us continuing to do this.

After reviewing some of Star's material online we didn't feel she was a good fit for our community. I would recommend planning far in advance for future activities so that we can discuss appropriate speakers for UNW.⁴

In a meeting between the UNW YAF chapter and UNW Vice President of Student Life Nina M. Barnes on March 18, Barnes explained that Parker has spoken at UNW twice before and is a "lightning rod" that "puts things in a strong way" and "pushes the envelope," resulting in a

¹ Grant Strobl, *Meet the conservatives on campus*, DETROIT NEWS, May 18, 2016, <https://www.detroitnews.com/story/opinion/2016/05/18/meet-conservatives-campus/84576694>.

² Emails between Hayley Tschetter and Kayla Hoye, Director of Student Programming, Univ. of Northwestern (Feb. 7-20, 2019) (on file with author).

³ Email from UNW Event Services to Hayley Tschetter (Feb. 14, 2019) (describing details of YAF reservation for event featuring Star Parker) (on file with author).

⁴ Tschetter and Hoye emails, *supra* note 1 (emphasis added).

“provocative” event likely to “draw attention.” Barnes stated that the administration rejected YAF’s contract because it requires UNW to open the event to the public and bear the costs of any disruption, which she claimed would be difficult and costly for UNW to do because it does not have a campus police force. In response, YAF offered to allow UNW to close to the event to nonstudents, and to negotiate logistics with UNW via email in order to successfully put forth the event.

In early April, Tschetter reached out to you and Barnes to request additional information about why UNW rejected YAF’s contract.⁵ Barnes replied, distinguishing between “national” and “local” speakers that:

At Northwestern, discussing current events and topics from a variety of vantage points is an important aspect of the educational process. However, engaging national speakers to take part in these discussions is well beyond the scope of a student club. Clubs regularly host local speakers [and] are welcome to do so, after following the university’s approval process, but these gatherings are for the Northwestern community.⁶

On June 3, UNW Vice President for Institutional Advancement April Moreton circulated a list of talking points concerning the dispute to the university’s employees.⁷ The email conceded that the university had sent Tschetter an email that “was not clear about the beliefs of the University or the situation at hand.”

On June 5, the university posted a video in which you explained the university’s understanding of the situation.⁸ You explained that the university had realized it “couldn’t accommodate” certain conditions within the contract, so the university “put a hold on the event” and told the students “not right now, let’s see what we can do to work it out,” which students “interpreted as a ban.” You said that the university “didn’t ban the speaker,” but only said it “needed to work some things out.” You apologized for the “inappropriate” email, but lamented that it had become public. You explained that it was “possible” that Star Parker could be invited back, but shared your view that a discussion about pro-life issues should “talk about the totality of the pro-life position,” including “not only abortion, but also human trafficking, or poverty, or homelessness, or military buildup, or any of the variables” that attend what UNW views as a “comprehensive” pro-life position. You indicated that the university had repeatedly attempted to meet with the students without success, so the

⁵ Email chain between Hayley Tschetter and Nina M. Barnes, Vice President of Student Life, Univ. of Northwestern (Apr. 10-24, 2019) (on file with author).

⁶ *Id.*

⁷ Email from April L. Moreton, Vice President for Institutional Advancement, Univ. of Northwestern, to all UNW employees (June 3, 2019), *available at* <https://www.yaf.org/news/university-of-northwestern-continues-attacking-yaf-after-banning-star-parker-and-blocking-yaf-chapter>.

⁸ UNIV. OF NORTHWESTERN, *University of Northwestern St. Paul Official Statement*, June 3, 2019, <https://unwsp.edu/news/university-of-northwestern-st-paul-official-statement>.

university “had no recourse” except to “take away their status as a club if they refuse to abide by the institution’s guidelines.”

II. The Viewpoint-Based Rejection of YAF’s Request to Host Parker Cannot Be Reconciled with UNW’s Commitment to Freedom of Expression

UNW’s refusal to approve YAF’s event featuring Parker due in part to Parker’s viewpoints and the expected reaction runs contrary to the free speech promises by which UNW is bound.

A. UNW promises students freedom of expression.

Though UNW is a private university and is not bound by the First Amendment, UNW has made an institutional commitment to free speech through its official policies. UNW’s “Community Policies” states: “[s]tudents and student groups are free to engage in personal expression of political views, activity, expression and association on campus.”⁹

UNW’s commitment to freedom of expression is not merely aspirational; this commitment is also important to its status as an accredited institution of higher learning. UNW is accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools, whose standards require that accredited institutions be “committed to freedom of expression and the pursuit of truth in teaching and learning.”¹⁰ In committing to freedom of expression, UNW rightly hews to the United States Supreme Court’s sound 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).

Having made this commitment, UNW is both and morally and contractually bound to uphold it. The United States Court of Appeals for the Eighth Circuit, the decisions of which are binding on UNW, has recognized that “[t]he relationship between a university and a student is contractual in nature.” *Corso v. Creighton Univ.*, 731 F.2d 529, 531 (8th Cir. 1984); *see also Ben-Yonatan v. Concordia Coll. Corp.*, 863 F. Supp. 983, 987 (D. Minn. 1994) (finding that the relationship between a private Minnesota college and its students “is contractual in nature, and the terms of the contract may be implied from the student handbook.”) (citing *Ikpeazu v. Univ. of Neb.*, 775 F.2d 250, 253 (8th Cir. 1985)). The Minnesota Court of Appeals has likewise held that “[t]he catalogs, bulletins, circulars, and institution regulations given to the student

⁹ *Community Policies, UNW Political Campaign Policy*, UNIV. OF NORTHWESTERN, (rev. Feb., 2014), *available at* <https://confluence.unwsp.edu/display/UN/UNW+Political+Campaign+Policy>.

¹⁰ HIGHER LEARNING COMM’N, CRITERIA FOR ACCREDITATION (rev. June 2014), *available at* <https://www.hlcommission.org/Policies/criteria-and-core-components.html>. Notably, During the 2019-20 year, the Higher Learning Commission is planning to augment this standard by expressly referencing academic freedom and adopting, in its glossary, a comment explaining that academic freedom entails more than just “freedom from constraint.” *See* HIGHER LEARNING COMM’N, CRITERIA FOR ACCREDITATION ADOPTED REVISIONS EFFECTIVE SEPTEMBER 2020, *available at* http://download.hlcommission.org/policy/updates/AdoptedCriteriaRevision_2019_INF.pdf

form part of the contract.” *Alsides v. Brown Inst., Ltd.*, 592 N.W.2d 468, 472 (Minn. Ct. App. 1999).

B. UNW cannot refuse a student group’s speaker request over opposition to the speaker’s viewpoints.

In accordance with the right to expression, UNW authorizes its student organizations to invite speakers to campus. While UNW may place consistent, reasonable, viewpoint-neutral limitations on speaker invitations, UNW cannot limit this expressive right on the basis of the speaker’s viewpoint. UNW’s viewpoint-based denial of YAF’s request to bring Parker to campus cannot be reconciled with these free speech promises.

According to Hoye, UNW’s rejection of Parker was based on the notion that Parker is a “sensationalized” speaker that “radically hold[s] beliefs that UNW as a whole would not agree with” and does not “educate and expand worldviews.” Likewise, Barnes cited the negative reaction to Parker’s previous speeches at UNW, and asserted that inviting “national speakers” to campus “is well beyond the scope of a student club.” These comments make clear that UNW’s refusal to approve YAF’s event was due to its opposition to Parker’s viewpoints, and the anticipated reaction to her expression.

That Parker may express viewpoints that some or all at UNW may find offensive is not a reasonable basis to bar students from inviting her to speak. The principle of freedom of speech does not exist to protect only non-controversial expression; it exists precisely to protect speech that some members of a community may find controversial or offensive. As the Supreme Court of the United States explained in *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949):

“[Speech] may indeed best serve its high purpose when it induces a condition of unrest . . . or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea.”

It is axiomatic that speech cannot be restricted simply because it may offend some or many. In discussing matters of societal and political importance, one would be hard-pressed to find an opinion or position that is not controversial to *someone*. See, e.g., *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 670 (1973) (“[T]he mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of ‘conventions of decency.’”); see also *Snyder v. Phelps*, 562 U.S. 443, 461 (2011) (in holding that the picketing of soldiers’ funerals was protected speech, the Court noted that “[a]s a Nation we have chosen . . . to protect even hurtful speech on public issues to ensure that we do not stifle public debate.”).

In blocking Parker from speaking at UNW because, in the administration’s view, some members of the campus community may be opposed to her real or perceived stances, UNW restricted its students’ rights to contribute to free and open dialogue on campus. Of course,

UNW's administration can add its own voice to the discussion to share its views on what the totality of the pro-life position should be, including on issues related to human trafficking, poverty, homelessness, and military buildup. However, the administration's views on what the debate *should* look like cannot come at the expense of students' ability to share their own views on what issues should drive the discussion, as YAF seeks to do by inviting Parker to campus. Nor do these views need to be at odds with one another: A "comprehensive" discussion can be advanced by both students and the university's administration, with students initiating the discussion through Parker's invitation and perhaps continuing with a series of speakers invited by the administration addressing this multifaceted and politically-charged topic. YAF's initiative is the first step, not an impediment, to providing the educational experience envisioned by UNW's administration. That YAF and Parker seek to focus on a small part of this debate, rather than the entire subject, is not a reason to prevent them from addressing the UNW community in the first place, and restrictions founded on the notion that a speaker presents too narrow a view is itself viewpoint discrimination.

Furthermore, if UNW were to deny every student group's speaker request on the basis of potential opposition to the speaker's beliefs, as it suggested here, there would be precious few speakers allowed to address its student body. Surely UNW understands that any speaker that takes a religious or political stance could be considered offensive or unwelcome to those who disagree with that speaker's beliefs.¹¹ As a university that explicitly extols its preference for free inquiry and abhorrence for censorship, UNW may not take a speaker's viewpoints into account when considering student group event requests.

UNW's laudable commitment to fostering debate, including on the important issue of abortion, should land the university squarely on the side of more student-led events regarding this topic. As you have rightly stated, a comprehensive education starts with understanding the many sides of any issue—a principle shared by YAF, and the animating purpose behind its desire to invite Parker to UNW.

¹¹ Were UNW to preemptively limit students' expressive events on the basis that those who object to the speaker's views might become disruptive, the university would effectuate and endorse a "heckler's veto," and thereby incentivize future disruptive conduct. The end result would be incompatible with a university dedicated to the exploration of opposing views: Those wishing to silence speech with which they disagree merely have to threaten disruption and the university will impose restrictions on student groups' expressive rights.

III. Conclusion

UNW's decision to censor YAF's event sends a chilling message to all UNW student groups, who may be deterred from inviting controversial speakers to campus.

FIRE calls on UNW to publicly reaffirm its laudable commitments to free speech and allow YAF to reschedule its event without the threat of rejection over any invited speaker's views.

We request receipt of a response to this letter by the close of business on June 27.

Sincerely,

A handwritten signature in blue ink that reads "Zach". The signature is cursive and fluid, with a long horizontal stroke at the end.

Zach Greenberg
Program Officer, Individual Rights Defense Program

CC:

Kayla Hoye, Director of Student Programming
Nina M. Barnes, Vice President of Student Life