



July 1, 2021

Lisa Fragala
Board of Education
Lane Community College
4000 East 30th Avenue
Eugene, Oregon 97405

Sent via U.S. Mail and Electronic Mail (fragalal@lanecc.edu)

Dear Chairwoman Fragala:

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 threat to freedom of expression, including freedom of the press, at Lane Community College ("Lane") in light of a recent recommendation by the Student Activities Fee Committee (SAFC)—a recommendation affirmed by the Lane Community College Board of Education—to reduce funding for student newspaper *The Torch* because of displeasure with the publication's content. This decision threatens the free press rights of student journalists at Lane and contravenes Lane's obligations under the First Amendment.

The Board of Education must rectify this situation by immediately reinstating *The Torch's* traditional student activities fee allocation and reaffirming its commitment to free expression, including a free press.

I. Lane Student Activities Fee Committee Reduces Funding for Student Newspaper in Response to Content

The following is our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us.

Each December, student organizations, including student newspaper *The Torch*, submit annual reports and requests for allocations of student activities fees for the following school year.¹ These requests are considered by the SAFC, which then makes a recommendation to the Lane Community College Board of Education regarding both the allocation of student

¹ *Student Activity Fee Committee*, LANE CMTY. COLL., <https://www.lanecc.edu/copps/documents/student-activity-fee-committee> (last visited June 11, 2021).

activities funding and the total fee to be paid to each student in the subsequent school year.² The Board then may approve this recommendation.³ Per this process, *The Torch* submitted an annual report requesting its traditional \$2.90-per-student fee allocation.

On March 19, 2021, SAFC met to discuss requests, including that of *The Torch*. During this meeting, members of SAFC criticized the content of *The Torch*. For example, SAFC member Shana Weiland criticized *The Torch*'s content, saying, "unfortunately, I only see *The Torch* at student government functions or Council of Clubs functions when there is drama to be reported."⁴ Weiland added that the "drama" he sees reported in *The Torch* is "not what I look for news about, that's not where I hold journalists in high esteem, in reporting on what's saucy and exciting for the people who need that in their lives."⁵ He explained that he would prefer if *The Torch* did more reporting "holding [powerful] people accountable."⁶

Another SAFC member, Laura Leader, agreed, saying that Weiland had brought up "a really good point about journalistic integrity."⁷ She explained, "that's something to consider" in making their funding recommendation.⁸ In fact, at one point, Weiland cautioned that SAFC members should take his criticism of *The Torch* with a grain of salt since "value estimation . . . is not really our job."⁹ Leader, however, disagreed, remarking that evaluating the content of *The Torch* helps SAFC members to answer their charge of evaluating how the publication benefits students.¹⁰

Immediately after this discussion, SAFC voted to reduce *The Torch*'s allocation to \$2.60 per student.¹¹ *The Torch* appealed this decision, pointing to both irregularities in the process by which SAFC made this determination—specifically, that SAFC had considered content and *The Torch*'s value in comparison to the value of other groups—and that *The Torch* had new, more detailed information to share about its expenditures and financial situation.

SAFC met again on April 9 to consider *The Torch*'s appeal. During this meeting, Leader pointed out to fellow members of SAFC that there had been a breach of viewpoint neutrality in the March 19 meeting: "[A]t one point, there was discussion of the merit of the press, and when it's hard-hitting factual journalism as opposed to a little bit more sensationalized, and that maybe was doing an evaluation based on our own perceived idea of what the press is and should be . . ." ¹² After Leader said this, the SAFC voted to maintain the \$2.60 per student

² *Id.*

³ *Id.*

⁴ Lane Community College Student Activity Fee Committee, *Mar. 19, 2021 Meeting*, ZOOM, <https://bit.ly/3yd870v>, at 03:40:23.

⁵ *Id.* at 03:40:34.

⁶ *Id.* at 03:40:45.

⁷ *Id.* at 03:41:15.

⁸ *Id.* at 03:41:20.

⁹ *Id.* at 03:41:26.

¹⁰ *Id.* at 03:41:38

¹¹ *Id.* at 03:42:07.

¹² Lane Community College Student Activity Fee Committee, *April 9, 2021 Meeting*, ZOOM, <https://bit.ly/3qJgBtV>, at 00:42:46.

allocation that it had agreed on at the March meeting.¹³ However, Leader then called into question that vote, reopening discussion about *The Torch*'s allocation.¹⁴

During the discussion that followed, SAFC member Emily Scherer mentioned that, although the original \$2.60 vote may have been influenced by bias, the committee could determine that \$2.60 is the correct allocation for *The Torch* in an unbiased way going forward.¹⁵ Leader also pointed out that “in all honesty, I feel like we kind of got the procedure wrong here,” explaining that *The Torch* was the only group that received a large decrease in funding.¹⁶ After this discussion, SAFC voted to change *The Torch*'s funding to \$2.70 per student, which is a 20 cent decrease from its traditional allocation.¹⁷

The SAFC met once again on May 1, during which it again discussed funding for *The Torch*. During this meeting, SAFC advisor Josh Baker raised questions about equity in how the committee had allocated funds to the newspaper, remarking that *The Torch* is “the only group with a debt or a deficit . . . that we decided on a decrease for.”¹⁸ The committee ultimately did not take another vote on *The Torch*'s funding during the May 1 meeting, leaving the publication's recommended allocation for the 2021-22 school year at \$2.70 per student, a decrease from its prior annual allocation.

The Lane Board of Education met May 19 to consider the SAFC's recommendations.¹⁹ While there was some discussion that the Board needs to reconsider SAFC's policies and procedures in the future to ensure fairness, the Board ultimately voted to approve SAFC's recommendations, formalizing *The Torch*'s reduction to a \$2.70-per-student fee allocation.²⁰

II. Reducing Student Media Funding Based on Content Violates the First Amendment

The First Amendment is binding on public colleges like Lane.²¹ SAFC's recommendation, and the Board's ratification of it, violates the First Amendment.

It is well-established that public institutions of higher education “may not constitutionally take adverse action against a student newspaper, such as withdrawing or reducing the paper's

¹³ *Id* at 00:43:50.

¹⁴ *Id* at 00:44:54.

¹⁵ *Id* at 00:53:20.

¹⁶ *Id* at 00:48:15.

¹⁷ *Id* at 01:30:18.

¹⁸ Lane Community College Student Activity Fee Committee, *May 1, 2021 Meeting*, ZOOM, <https://bit.ly/3yd7YKv>, at 01:55:55.

¹⁹ Lane Community College Board of Education, *May 19, 2021 Meeting* (on file with author).

²⁰ *Id*.

²¹ *Healy v. James*, 408 U.S. 169, 180 (1972) (“[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, ‘the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.’”) (internal citation omitted); see also *DeJohn v. Temple Univ.*, 537 F.3d 301, 314 (3d Cir. 2008) (on public campuses, “free speech is of critical importance because it is the lifeblood of academic freedom”).

funding, because it disapproves of the content of the paper.”²² For example, the United States Court of Appeals for the Second Circuit has held that “at a minimum, when a public university establishes a student media outlet and requires no initial restrictions on content, it may not censor, retaliate, or otherwise chill that outlet’s speech, or the speech of the student journalists who produce it, on the basis of content or viewpoints expressed through that outlet.”²³

The unwavering agreement of federal circuits regarding the free press rights of collegiate journalists led the Second Circuit to note that “all the circuits that have considered the issue have determined that, at the very least, when a public university creates or subsidizes a student newspaper and imposes no *ex ante* restrictions on the content that the newspaper may contain, neither the school nor its officials may interfere with the viewpoints expressed in the publication without running afoul of the First Amendment.”²⁴

The United States Court of Appeals for the Ninth Circuit, the decisions of which are binding on Lane, similarly stated, in a case involving a funding cut for a student newspaper, that “the government may not withhold benefits for a censorious purpose,” including “when the state singles out and burdens the press by revoking a subsidy, particularly where, as here, the record includes unusually compelling allegations that the government acted with discriminatory intent.”²⁵

In addition to these weighty constitutional obligations, Oregon state law similarly protects the right of student journalists to be free from retaliation for the content of their publications, declaring that Oregonian collegiate journalists “are responsible for determining the news, opinion, feature and advertising content of school-sponsored media.”²⁶ The intent of this statute is to strengthen student journalists’ expressive rights, and it proscribes public institutions from making funding determinations based upon the content of student publications.

Here, SAFC’s recommendation that funding for *The Torch* be reduced appears to be based on members’ unhappiness with the content of the publication. Specifically, SAFC believed *The Torch*’s content to be too “drama[ti]c,” particularly regarding its critical coverage of Lane’s student government. Reducing *The Torch*’s funding in response to this displeasure is untenable under the constitutional and statutory protections for the press.

A. Offering other, pretextual reasons for the funding reduction does not render the defunding constitutional.

The other, pretextual reasons given for defunding *The Torch* do not cure the constitutional concerns with SAFC’s decision. During the SAFC meetings regarding *The Torch*’s funding, especially the later meetings, the committee proffered reasons for reducing the publication’s

²² *Stanley v. Magrath*, 719 F.2d 279, 282 (8th Cir. 1983); see also *Rosenberger v. Rector and Visitors of the Univ. of Va.*, 515 U.S. 819, 829–30 (1995).

²³ *Husain v. Springer*, 494 F.3d 108, 124 (2d Cir. 2007).

²⁴ *Id.* (emphasis in original).

²⁵ *Koala v. Khosla*, 931 F.3d 887, 898–99 (9th Cir. 2019).

²⁶ OR. REV. STAT. § 350.260(2).

allocation that were not related to content. For example, the committee cited the newspaper's move to online-only publishing as potentially meaning *The Torch* would need fewer funds. But none of these pretextual reasons for reducing the publication's funding would render SAFC's recommendation—and, by extension, the Board's approval—constitutional. The fact that SAFC discussed content as part of its reason for reducing *The Torch's* allocation, and the decision to reduce funding after that discussion, tainted the decision in violation of the First Amendment.

III. The Board Must Renew *The Torch's* Traditional Allocation

The Torch's editorial decisions about what type and how much content to produce are protected by the First Amendment. Because it is clear the decision to reduce the publication's stipend funding was impermissibly based on displeasure with its content, Lane must immediately reverse course and remit the full amount of requested—and budgeted—stipend funding to *The Torch*. Further, Lane must reaffirm its commitment to upholding the First Amendment ideal of freedom of the press by publicly clarifying that it will not act against *The Torch* based upon disagreement with its editorial choices or reporting.

We request receipt of a response to this letter no later than the close of business on July 25, 2021.

Sincerely,



Lindsay Rank

Program Officer, Individual Rights Defense Program

Cc: Mindie Dieu, Associate Vice President of Student Affairs, Lane Community College