



February 2, 2022

Richard Muma  
Office of the President  
Wichita State University  
1845 Fairmount St.  
Campus Box 001  
Wichita, Kansas 67260

*Sent via Electronic Mail (richard.muma@wichita.edu)*

Dear President Muma:

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 by Wichita State University's differential treatment of student journalists and non-student journalists when issuing media parking passes at sporting events. Student journalists serve a vital role in keeping the university community and the Wichita community informed of campus activity. Denying these journalists the same basic privileges as other journalists solely because of their status as students undermines this role and sends the message that the university considers student journalists to be second-class journalists.

**I. Journalists from *The Sunflower* Receive Different Parking Permits than Non-Student Journalists**

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

On January 21, 2022, student journalist Emmie Boese published an opinion piece in *The Sunflower* concerning student journalists' parking privileges at Wichita State sporting events.<sup>1</sup> Boese is the assistant sports editor for *The Sunflower*, an independent, student-run newspaper based at Wichita State.<sup>2</sup> Working for *The Sunflower* provides students with "on-

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<sup>1</sup> Emmie Boese, *Opinion: Reducing Parking Privileges on Game Day is a Poor Choice*, THE SUNFLOWER (Jan. 22, 2022), <https://thesunflower.com/59990/opinion/opinion-reducing-parking-privileges-on-game-day-is-a-poor-choice>.

<sup>2</sup> *Id.*

the-job training” as journalists reporting for an award-winning publication.<sup>3</sup> Notably, Wichita State recognizes coverage from *The Sunflower* as “staying on top of Shocker sports,”<sup>4</sup> with Boese specially covering Wichita State’s men’s basketball team.<sup>5</sup>

In her January 21 piece, Boese detailed her experience receiving different parking credentials than other journalists covering the basketball games because she was a member of the student press.<sup>6</sup> Student journalists were assigned parking in a separate lot across the street from the parking allocated to other journalists, farther away from the entrance to the stadium.<sup>7</sup> Boese argued that the distribution of the different credentials was not only unfair, but raised safety concerns caused by the different parking assignment, including the need to carry large bags of equipment through crowds and walk a greater distance alone after dark.<sup>8</sup>

## **II. Student Journalists Should Not Receive Differential Treatment Solely Because They Are Students**

Student journalists at Wichita State should not receive different parking credentials from other journalists solely because of their status as students, as they are otherwise no different than other members of the press. Classifying student journalists as inferior to professional journalists because of their student identity disregards the important function of the student press and is inconsistent with the university’s obligations under the First Amendment.

### ***A. Student Press Plays a Vital Role in Keeping Communities Informed***

The press, including the student press, is an important conduit for the public’s right to know. Courts have recognized that members of the press act as “surrogates for the public” in keeping a watchful eye on the operations of government.<sup>9</sup> These operations include those of public universities—including Wichita State—and their administrators.

Student journalists devote their reporting primarily to covering universities, such as Boese and *The Sunflower’s* coverage of Wichita State, but their utility extends beyond the geographic boundaries of the campus. Not only are student newspapers often the best source for accurate and comprehensive reporting on the campuses they occupy, they are, in some communities, the *only* source for local reporting on both the university and the surrounding area, superseding the role of professional media entirely.<sup>10</sup> As a result, student journalists at

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<sup>3</sup> *The Sunflower*, WICHITA STATE UNIV., [https://www.wichita.edu/academics/fairmount\\_college\\_of\\_liberal\\_arts\\_and\\_sciences/elliott/Sunflower.php](https://www.wichita.edu/academics/fairmount_college_of_liberal_arts_and_sciences/elliott/Sunflower.php) (last visited Jan. 31, 2022).

<sup>4</sup> *Id.*

<sup>5</sup> Boese, *supra* note 1.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Richmond Newspapers v. Virginia*, 448 U.S. 555, 573 (1980).

<sup>10</sup> Dan Levin, *When the Student Newspaper Is the Only Daily Paper in Town*, N.Y. TIMES (Oct. 19, 2019), <https://www.nytimes.com/2019/10/19/us/news-desert-ann-arbor-michigan.html>.

Wichita State and other institutions bring important value to maintaining informed communities and should be treated the same as other journalists.

**B. *The First Amendment Applies to Wichita State as a Public University and Prohibits it from Discriminating Against Student Press***

It has long been settled law that the First Amendment is binding on public universities like Wichita State.<sup>11</sup> Accordingly, the decisions and actions of a public university—including the pursuit of disciplinary sanctions,<sup>12</sup> recognition and funding of student organizations,<sup>13</sup> interactions with student journalists,<sup>14</sup> conduct of police officers,<sup>15</sup> and maintenance of policies implicating student and faculty expression<sup>16</sup>—must be consistent with the First Amendment.

**i. *Wichita State’s differing parking credentials improperly discriminate against student media***

Pursuant to the First Amendment, a public entity cannot discriminate against certain press entities based on the content of or viewpoint espoused by the publication’s coverage.<sup>17</sup> “[O]nce there is a public function, public comment, and participation by some of the media, the First Amendment requires equal access to all of the media[.]”<sup>18</sup> Further, “the protection afforded newsgathering under the first amendment guarantee of freedom of the press requires that this access not be denied arbitrarily or for less than compelling reasons.”<sup>19</sup>

Here, it appears Wichita State maintains a practice of providing different parking credentials to members of the student press from those provided to other members of the media. Through this practice, Wichita State effectively discriminates against student journalists like Boese and others at *The Sunflower* because of their identity as students, which is contrary to the university’s obligations under the First Amendment. As stated by the Supreme Court in *Citizens United v. FEC*, “Quite apart from the purpose or effect of regulating content, moreover, the Government may commit a constitutional wrong when by law it identifies certain preferred speakers.”<sup>20</sup> By giving student journalists lesser parking privileges, Wichita

<sup>11</sup> *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).

<sup>12</sup> *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 667–68 (1973).

<sup>13</sup> *Bd. of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 221 (2000).

<sup>14</sup> *Stanley v. Magrath*, 719 F.2d 279, 282 (8th Cir. 1983); see also *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829–30 (1995).

<sup>15</sup> *Glik v. Cunniffe*, 655 F.3d 78, 79 (1st Cir. 2011).

<sup>16</sup> *Dambrot v. Central Mich. Univ.*, 55 F.3d 1177 (6th Cir. 1995).

<sup>17</sup> *Consumers Union of the U.S. v. Periodical Correspondents’ Ass’n*, 365 F. Supp. 18, 22–23 (D.D.C. 1973), *rev’d on other grounds*, 515 F.2d 1341 (D.C. Cir. 1975), *cert. denied*, 423 U.S. 1051 (1976).

<sup>18</sup> *ABC v. Cuomo*, 570 F.2d 1080, 1083 (2d Cir. 1977).

<sup>19</sup> *Sherrill v. Knight*, 569 F.2d 124, 129 (2d Cir. 1977).

<sup>20</sup> 58 U.S. 310 at 340 (2010).

State has deemed professional journalists the preferred speakers and impermissibly deprived the public of the opportunity to make that determination itself.<sup>21</sup>

ii. **Assigning student journalists lesser parking privileges at sporting events is not justified**

Choosing to prioritize members of the professional press over the student press when granting basic privileges for covering university events also disregards the commitment student journalists at Wichita State bring to reporting about the university. There are circumstances where Wichita State may understandably be selective in allocating privileges to reporters without impermissibly discriminating based on their point of view or identity, such as limitations on the space or time available for media presence; Boese herself acknowledges this.<sup>22</sup> However, assigning lesser parking credentials to student journalists solely because they are members of the student press is arbitrary and serves no apparent purpose beyond distinguishing members of the student press as inferior to those of the professional press.

**III. Conclusion**

We urge Wichita State to reconsider its practice of allocating different parking permits at university sporting events to members of the student press. Not only does this practice impose additional burdens on student journalists because of their identity as *students*, but it also frustrates the university's public relations goal of fostering a positive relationship with members of the media.

We request receipt of a response to this letter no later than the close of business on Wednesday, February 16, 2022, confirming that Wichita State will implement a plan that provides students journalists parking privileges commensurate with those afforded to professional journalists, accounting for any issues concerning space or logistics.

Sincerely,



Anne Marie Tamburro  
Program Officer, Individual Rights Defense Program

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<sup>21</sup> *Id.* (“By taking the right to speak from some and giving it to others, the Government deprives the disadvantaged person or class of the right to use speech to strive to establish worth, standing, and respect for the speaker’s voice. The Government may not by these means deprive the public of the right and privilege to determine for itself what speech and speakers are worthy of consideration.”).

<sup>22</sup> Boese, *supra* note 1.