

FIRE

Foundation for Individual
Rights and Expression

April 28, 2023

Scott McQuilkin
Office of the President
Whitworth University
300 West Hawthorne Road
Spokane, Washington 99251

Sent via U.S. Mail and Electronic Mail (president@whitworth.edu)

Dear President McQuilkin:

FIRE is disappointed to have not received a response to our April 17 letter¹ expressing concern about the Whitworth student government's denial of TPUSA's request to invite Chinese dissident Xi Van Fleet to speak on campus. The student government has admitted its decision was viewpoint based²— a clear violation of the university's commitment to free expression.³

Whitworth should be commended for recently correcting course after canceling a Pride Club's Queer Church event on similar grounds. However, it must ensure that all views may be expressed on campus, including TPUSA's. To ensure the university meets its moral, legal, and accreditation obligations⁴ to provide free expression on campus, Whitworth must overturn the student government's decision and allow TPUSA to host speakers of its choice, including Van Fleet. Whitworth must also educate its student government on its obligation to make decisions impacting students' expressive rights in a viewpoint- and content-neutral manner.

¹ Enclosed.

² Associated Students of Whitworth University Meeting Minutes (April 12, 2023), *available at* https://www.whitworthaswu.com/_files/ugd/233032_6d343bf89139444aa5a69a423c8d01a5.pdf.

³ While Whitworth is a private, religious institution, it makes clear commitments affirming students' expressive freedoms. *Whitworth's Statement on Freedom of Expression and Civil Discourse for Our Campus Community*, WHITWORTH UNIV., <https://www.whitworth.edu/cms/administration/academic-affairs/statement-on-freedom-of-expression-and-civil-discourse> [<https://perma.cc/V9YY-US4D>]. Given these commitments, students will reasonably expect expressive rights commensurate with the First Amendment. *See, e.g., Marquez v. Univ. of Wash.*, 648 P.2d 94, 96 (Ct. App. Wash. 1982) ("It is now generally accepted that the relationship between a student and university is primarily contractual[.]").

⁴ *Standard Two – Governance, Resources, and Capacity*, 2020 Standards, NW COMM'N ON COLL. AND UNIV., *available at* <https://nwccu.org/accreditation/standards-policies/standards>.

We request a substantive response to this letter no later than the close of business on Friday, May 12, 2023, confirming that the denial will be reversed.

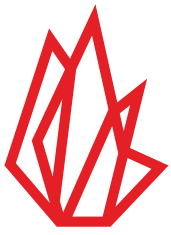
Sincerely,

A handwritten signature in black ink, appearing to read "Sabrina Conza".

Sabrina Conza
Program Officer, Campus Rights Advocacy

Cc: Timothy Caldwell, Associate Dean for Student Life
Georgia Goff, President, Associated Students of Whitworth University

Encl.



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April 17, 2023

Scott McQuilkin
Office of the President
Whitworth University
300 West Hawthorne Road
Spokane, Washington 99251

URGENT

Sent via U.S. Mail and Electronic Mail (president@whitworth.edu)

Dear President McQuilkin:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is aware of reports that Whitworth University's student government denied the Turning Point USA student chapter's request to invite Chinese dissident Xi Van Fleet to speak on campus—ostensibly because of Van Fleet's expression on Twitter.²

Though as a private, religious university Whitworth is not bound by the First Amendment, it makes commitments to free speech through its official policies,³ such as affirming “freedom of expression for its students, staff and faculty” in line with the “Constitutional understandings of free expression[.]”⁴ Additionally, Whitworth's Student Bill of Rights commits that “students are free to express their views . . . on any matter of interest to the student body” and “[s]tudents

¹ For more than 20 years, FIRE has defended freedom of expression, conscience, and religion, and other individual rights on America's college campuses. You can learn more about our recently expanded mission and activities at thefire.org.

² The recitation of facts here reflects our understanding of the pertinent facts based on information shared with us by *Campus Reform*. We appreciate that you may have additional information to offer and invite you to share it with us.

³ See, e.g., *Marquez v. Univ. of Wash.*, 648 P.2d 94, 96 (Ct. App. Wash. 1982) (“It is now generally accepted that the relationship between a student and university is primarily contractual[.]”).

⁴ *Whitworth's Statement on Freedom of Expression and Civil Discourse for Our Campus Community*, WHITWORTH UNIV., <https://www.whitworth.edu/cms/administration/academic-affairs/statement-on-freedom-of-expression-and-civil-discourse> [<https://perma.cc/V9YY-US4D>].

are also free to support causes and give opinions as long as their means of expression is orderly and does not disrupt the regular operation of the institution.”⁵

As an agent of the university delegated authority by the administration, the Associated Students of Whitworth University’s actions must comply with the university’s commitments and policies. Given these strong promises, ASWU may not condition speaker approval on the “ideology or the opinion or the perspective of the speaker[.]”⁶ Instead, it must make decisions concerning student organizations’ invited speakers on a viewpoint-neutral basis.⁷

If reports of AWSU’s denial of TPUSA’s event are inaccurate and it predicated it instead on viewpoint-neutral criteria, we urge the university to identify those concerns. We caution, however, that abstract concerns that speech will later lead to violence, or that viewpoints will cause “distress and fear,” are not a basis to curtail another’s expression.⁸

If reports are substantively accurate, we urge Whitworth to recognize the dangerous precedent set by denying a speaking appearance based on speech. A look at the history of disinvitations shows that restrictions on invitations or speaking appearances deemed “dangerous” can impact speakers and student groups of all views. These principles have protected the right to invite speakers who offer dissenting, unorthodox, or controversial views, including religious speakers,⁹ conservative commentators,¹⁰ civil rights activists,¹¹ anti-war activists,¹² those who refused to testify about suspected “Communist or subversive connections,”¹³ those convicted

⁵ *Student Bill of Rights*, WHITWORTH UNIV., <https://www.whitworth.edu/cms/administration/student-life/student-handbook/student-bill-of-rights> [<https://perma.cc/6532-ABAM>].

⁶ *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995); *Bd. of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 221 (2000).

⁷ *Id.* An institution committed to freedom of expression, and which permits its faculty or students to invite speakers, may not limit invitations on the basis of “orthodoxy or popularity of their political or social views[.]” *Brooks v. Auburn Univ.*, 296 F. Supp. 188, 192–95 (M.D. Ala. 1969). When a college “opens the lecture halls” to outside speakers, “it must do so nondiscriminatorily.” *Stacy v. Williams*, 306 F. Supp. 963, 971 (N.D. Miss. 1969). Subjecting invitations to a “philosophical” litmus test would be “censorship in its rawest form.” *Brooks*, 296 F. Supp. at 192–95.

⁸ *See, e.g., Cox v. Louisiana*, 379 U.S. 536, 557 (1965) (Police officers’ purported concern that “muttering” and “grumbling” white onlookers might resort to violence was not a basis to restrict civil rights marchers’ First Amendment rights).

⁹ *Id.*

¹⁰ *Young America’s Found. v. Kaler*, 370 F. Supp. 3d. 967, 974 (D. Minn. 2019) (Ben Shapiro, “political commentator, nationally syndicated columnist, author, radio talk show host, and attorney.”).

¹¹ *Pickings v. Bruce*, 430 F.2d 595, 597–600 (8th Cir. 1970) (representatives of the Southern Students Organizing Committee invited to show and discuss a film); *see also, Smith v. Univ. of Tenn.*, 300 F.Supp. 777, 779 (E.D. Tenn. 1969) (Dick Gregory, a comedian, civil rights activist, and presidential candidate).

¹² *Brooks*, 296 F. Supp. at 190–91.

¹³ *Dickson v. Sitterson*, 280 F. Supp. 486, 488 (M.D.N.C. 1968). There, students challenged a statute prohibiting invitations to members of the Communist Party after students, in a demonstration of the law’s absurdity, sat in a grassy area on the perimeter of campus to listen to a critic of the House Un-American Activities Committee speak from “behind a stone wall which separated the public street from the University campus.” *Id.* at 494. The absurd spectacle—students on campus, listening to the banned speaker steps away—was memorably photographed. *See* N.C. Dep’t of Natural & Cultural Resources, *Speaker Ban Roiled UNC-Chapel Hill Campus*, <https://www.ncdcr.gov/blog/2014/06/25/speaker-ban-roiled-unc-chapel-hill-campus> (last visited Feb. 8, 2022).

of felonies or crimes of moral turpitude,¹⁴ advocates of the overthrow of the government,¹⁵ advocates of the “Occupy” movement,¹⁶ and, perhaps most controversially, candidates for public office.¹⁷

While we appreciate the university’s administration or student government might object to any number of these speakers, it is against this backdrop that Whitworth’s decision to protect freedom of expression must be understood. That commitment obligates the administration to abstain from making decisions about who may speak based on the viewpoints of students, faculty, or speakers, precisely to provide the “breathing space” that freedom of expression requires.¹⁸ When the university’s student government, operating as an extension of the administration, violates these important commitments, Whitworth must step in and correct course.

Given the urgent nature of this matter, we request receipt of a response to this letter no later than the close of business on Monday, April 24, 2023, identifying a viewpoint-neutral basis for denying the event or confirming that the denial will be reversed.

Sincerely,



Sabrina Conza
Program Officer, Campus Rights Advocacy

Cc: Timothy Caldwell, Associate Dean for Student Life
Georgia Goff, President, Associated Students of Whitworth University

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Ari Cohn, *Western Michigan University Bans Rapper, Burdens Free Expression*, FIRE, Apr. 18, 2014, <https://www.thefire.org/western-michigan-university-bans-rapper-burdens-free-expression> (discussing lawsuit over university’s veto of student group’s invitation to Boots Riley).

¹⁷ *Stacy v. Williams*, 306 F. Supp. 963, 971 (N.D. Miss. 1969).

¹⁸ *New York Times Co. v. Sullivan*, 376 U.S. 254, 271–72 (1964) (“free debate” requires tolerance of false statements, in order to provide “breathing space” for speech); *Rosenberger*, 515 U.S. at 829, 836 (1995) (recognizing viewpoint discrimination in higher education as “an egregious form of content discrimination” incompatible with freedom of speech).