



# FIRE

Foundation for Individual  
Rights and Expression

May 11, 2023

Jason Hegelmeyer  
Associated Student Government  
Northwestern University  
3F, Norris University Center, 1999 Campus Drive  
Evanston, Illinois 60208-1100

**URGENT**

*Sent via U.S. Mail and Electronic Mail (JasonHegelmeyer2023@u.northwestern.edu)*

Dear Mr. Hegelmeyer:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,<sup>1</sup> is concerned by the Northwestern Associated Student Government's decision to freeze funding for the Northwestern University College Republicans, ostensibly because of flyers posted to promote a May 2 event featuring James Lindsay. While some student senators took offense to the flyers, Northwestern University's strong free expression promises preclude the university—or its student government—from punishing speech due to the views expressed. We urge the ASG to reverse course and restore funding for NUCR, and failing that, we urge the Northwestern administration to step in to ensure continued funding for the group.

According to *The Daily Northwestern*, the day after Lindsay's campus appearance, the ASG passed emergency legislation freezing funding for NUCR, which co-hosted the event with Northwestern's chapter of Young Americans for Freedom.<sup>2</sup> According to ASG co-president Molly Whalen, ASG froze the funding because of flyers promoting the event, one of which "featured sunglasses with a queer pride flag and a skull and crossbones superimposed over the lenses."<sup>3</sup> Whalen said neither Lindsay's nor NUCR's viewpoint factored into the decision to

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<sup>1</sup> 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](https://thefire.org).

<sup>2</sup> Julian Andreone, *ASG Senate passes legislation freezing funds for NUCR indefinitely*, THE DAILY NORTHWESTERN (May 4, 2023) <https://dailynorthwestern.com/2023/05/04/lateststories/asg-senate-passes-legislation-freezing-funds-for-nucr-indefinitely>. The recitation of facts here reflects our understanding of the pertinent facts, which is based on publicly available information. We appreciate that you may have additional information to offer and invite you to share it with us.

<sup>3</sup> *Id.*

suspend funding, but rather the flyers allegedly violated Northwestern’s Policy on Discrimination and Harassment.<sup>4</sup> By freezing the group’s funding, ASG has restricted NUCR’s ability to hold future campus events. It will also chill controversial student expression, sending the stark message that students with dissenting, or merely nuanced views, on controversial topics risk having their funding frozen if their opinions offend ASG leadership.

This is an unacceptable result at Northwestern, which tells students in no uncertain terms they can express their views on campus. University policy clearly states it is “committed to the ideals of academic freedom and freedom of speech—to providing a learning environment that encourages a robust, stimulating, and thought-provoking exchange of ideas.”<sup>5</sup> Northwestern’s demonstration policy also establishes that it “encourages freedom of speech, freedom of inquiry, freedom of dissent, and freedom to demonstrate,” and bestows on community members “a corresponding responsibility to welcome and promote this freedom for all.”<sup>6</sup>

Courts have held that private universities in Illinois have a contractual obligation to honor the promises they make to students in documents like school handbooks.<sup>7</sup> Accordingly, Northwestern students will reasonably expect to enjoy expressive rights on par with those enjoyed by students at public universities bound by the First Amendment, which does not make categorical exceptions for “offensive,” or even “hateful” expression.<sup>8</sup>

The posters described here notably do not even approach Northwestern’s own definition of discriminatory harassment, which applies only to conduct “directed toward someone because of their membership in a protected class . . . that has the purpose or effect of substantially interfering with the individual’s educational or work performance, or creating an intimidating, hostile or offensive working or academic environment.”<sup>9</sup> The policy explicitly warns that an individual’s “subjective belief that behavior is intimidating, hostile, or offensive does not make that behavior harassment.”<sup>10</sup> Instead, the behavior must “be so severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives a member of the community of the

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

<sup>5</sup> *Academic Freedom/Freedom of Speech*, Northwestern Policies Overview, NW. UNIV., <https://www.northwestern.edu/inclusion/respectnu/nu-policies-overview.html#:~:text=Academic%20Freedom%2FFreedom%20of%20Speech,thought%2Dprovoking%20exchange%20of%20ideas> [https://perma.cc/8U7X-VCFG].

<sup>6</sup> *Demonstration Policy*, NW. UNIV., <https://policies.northwestern.edu/docs/demonstration-policy-final.pdf> [https://perma.cc/9NJP-MS98].

<sup>7</sup> *See, e.g., Doe v. Columbia Coll. Chi.*, 933 F.3d at 858 (7th Cir. 2019 (citing *Raethz v. Aurora Univ.*, 805 N.E.2d 696, 699 (Ill. Ct. App. 2004)) (a college and its students have a contractual relationship whose terms are spelled out in school publications); *DiPerna v. Chi. Sch. Of Prof'l Psychology*, 893 F.3d 1001 (N.D. Ill. 2016) (“A college and its students have a contractual relationship, and the terms of that relationship are generally set forth in the school’s catalogues and bulletins.”)

<sup>8</sup> *See, e.g., R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992) (striking down an ordinance that prohibited placing on any property symbols that “arouse[] anger, alarm or resentment in others on the basis of race, color, creed, religion or gender”).

<sup>9</sup> *Policy on Discrimination and Harassment*, NW. UNIV., <https://www.northwestern.edu/sexual-misconduct/docs/discrimination-harassment-policy.pdf> [https://perma.cc/VB93-DJMR].

<sup>10</sup> *Id.*

ability to participate in or to receive benefits, services, or opportunities from the University.”<sup>11</sup> This definition tracks the standard established by the Supreme Court in *Davis v. Monroe County Board of Education*, which properly balances universities’ equally important obligations to prevent actionable harassment on campus while also honoring students’ expressive rights.<sup>12</sup>

These flyers do not meet this stringent standard because they are not directed at any specific student, and thus cannot be said to interfere with any “individual’s educational or work performance,” nor are they “so severe, persistent, or pervasive” that they deprive a student from accessing “benefits, services, or opportunities from the University’s education or employment programs and/or activities.”<sup>13</sup> Those who dislike the flyers, the Supreme Court has noted, are free to “avert their eyes.”<sup>14</sup>

Moreover, the Supreme Court has repeatedly, consistently, and clearly held that expression may not be restricted on the basis that others find it to be offensive. This core First Amendment principle is why the authorities cannot outlaw burning the American flag,<sup>15</sup> punish the wearing of a jacket emblazoned with the words “Fuck the Draft,”<sup>16</sup> penalize a parody ad depicting a pastor losing his virginity to his mother in an outhouse,<sup>17</sup> or disperse civil rights marchers out of fear that “muttering” and “grumbling” white onlookers might resort to violence.<sup>18</sup> In ruling that the First Amendment protects protesters holding insulting signs outside of soldiers’ funerals, the Court reiterated this fundamental principle, remarking 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.”<sup>19</sup>

That the flyers are protected does not shield NUCR from every consequence of its expression—including criticism by students, faculty, the broader community, or the university itself. Criticism is a form of “more speech,” the remedy to offensive expression the First Amendment prefers to censorship.<sup>20</sup> However, Northwestern’s free speech promises preclude the

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<sup>11</sup> *Id.*

<sup>12</sup> For conduct (including expression) to constitute actionable discriminatory harassment in the educational context, it must be (1) unwelcome, (2) discriminatory on the basis of a protected status like race or gender, and (3) “so severe pervasive, and objectively offensive that it can be said to deprive the victim-student of access to the educational opportunities or benefits provided by the school.” 526 U.S. 629, 683 (1999).

<sup>13</sup> *Policy on Discrimination and Harassment*, supra note 9.

<sup>14</sup> *Cohen v. California*, 403 U.S. 15, 25 (1971).

<sup>15</sup> *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (burning the American flag was protected by the First Amendment, the “bedrock principle underlying” the holding being that government actors “may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable”).

<sup>16</sup> *Cohen*, 403 U.S. at 21.

<sup>17</sup> *Hustler Mag., Inc. v. Falwell*, 485 U.S. 46, 50 (1988).

<sup>18</sup> *Cox v. Louisiana*, 379 U.S. 536, 557 (1965).

<sup>19</sup> *Snyder v. Phelps*, 562 U.S. 443, 448, 461 (2011).

<sup>20</sup> *Whitney v. California*, 274 U.S. 357, 377 (1927).

university from wielding institutional power, including through the ASG, to punish speech that is simply disfavored.

Given the urgent nature of this matter, we request a substantive response to this letter no later than the close of business on Friday, May 19, confirming that the ASG will reverse its decision and restore the funding, or that Northwestern's administration will step in to ensure free expression is protected on campus.

Sincerely,

A handwritten signature in cursive script, appearing to read "Graham Piro".

Graham Piro  
Program Officer, Campus Rights Advocacy

Cc: Northwestern Associated Student Government  
Michael Schill, President, Northwestern University  
Molly Whalen, Executive Officer of Accountability, Executive Office