



Foundation for Individual Rights in Education

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May 11, 2009

President Beheruz N. Sethna
Office of the President
The University of West Georgia
Sanford Hall
1601 Maple Street
Carrollton, Georgia 30118

Sent via U.S. Mail and Facsimile (678-839-4766)

Dear President Sethna:

As you can see from the list of our Directors and Board of Advisors, the Foundation for Individual Rights in Education (FIRE; www.thefire.org) unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals from across the political and ideological spectrum on behalf of liberty, free speech, legal equality, due process, the right of conscience and, as in this case, freedom of the press on America's college campuses.

FIRE is deeply concerned about the threat to freedom of the press presented by the recent decision of the university's Student Activity Fee Budget Allocation Committee (SAFBA) to reduce funding to *The West Georgian*, the university's student newspaper, because of the newspaper's content. FIRE is also deeply concerned about the recent decision of the Student Government Association of The University of West Georgia (SGA) to ask your administration to freeze funding to the newspaper as a result of what the SGA perceives as negative "public opinion" regarding matters of content treated in the newspaper. By reducing *The West Georgian's* funding, SAFBA has brazenly violated the First Amendment. In its call to the university's administration to freeze *The West Georgian's* funding, the SGA is asking you to violate the First Amendment as well.

SAFBA is authorized to allocate portions of the mandatory activity fee paid by the university's students. Due to the power vested in it by the university as a public institution of higher learning, SAFBA is an agent of The University of West Georgia (UWG) and is morally and legally bound by the United States Constitution. FIRE urges you to stop SAFBA and the SGA from imposing further unconstitutional punishments upon *The West Georgian* and to immediately rescind those already enacted.

This is our understanding of the facts. Please inform us if you believe we are in error. For years, *The West Georgian* has been funded in part by the mandatory activity fee funds allocated by SAFBA. In Fiscal Year 2008 and Fiscal Year 2009, SAFBA allocated to the newspaper \$45,000 and \$46,500 respectively. The newspaper's allocation for Fiscal Year 2010, however, was reduced by \$11,500 to only \$35,000 because some of its content was deemed inappropriate by SAFBA.

SGA members reportedly have been very unhappy with *The West Georgian's* coverage of SGA matters, such as its reporting on accusations of corruption over the past year. Recently, for instance, in a March 25, 2009, article, "Alan Webster Captures 2009-2010 SGA Election," Editor-in-Chief Ellis Smith reported:

The SGA under [outgoing President Rob] Kelly received praise for its focus on diversity and unity, but was marred by accusations of corruption, organizational incest and racializing the student body.

The voting membership of SAFBA officially consists of the SGA President, the SGA Treasurer, four students appointed by the SGA, and two faculty or staff members appointed by the university's president. Although the mission statement of SAFBA promises that it "shall conduct its business in an unbiased and judicious manner," *The West Georgian* was the only organization to have its funding decreased for Fiscal Year 2010, according to the FY 2010 SAFBA Budget Worksheet.

According to the document titled "SAFBA Recommendations FY 2010," which was attached to an April 9, 2009, e-mail sent by Campus Center Director Linda Picklesimer, SAFBA reduced the newspaper's funding for two reasons. The funding was decreased by \$4,500 because committee members "felt that the West Georgian [sic] has not been responsive this past year to the needs of the students." In addition, apparently for the first time in years, SAFBA decided to interpret Funding Guideline 7 (see http://www.westga.edu/campus/index_8616.php) so as to cut all \$7,000 in funding to the newspaper's advisor.

Guideline 7 states in relevant part that "Student Activity Fees should not be used to support professional salaries." While other guidelines (1, 3, 4, and 5) use the word "must" as a requirement, Guideline 7 uses the word "should" and is not a requirement. It appears that SAFBA has used its discretion unfairly and unconstitutionally to punish *The West Georgian* in FY 2010, not only changing its interpretation and enforcement of the rules this year, but also directly punishing the newspaper on the basis of its content.

According to an April 30, 2009, e-mail by Melanie McClellan, Vice President for Student Affairs and Enrollment Management, she forwarded the SAFBA recommendations to you for approval. It appears that you approved the cut of \$11,500 in the newspaper's FY 2010 allocation.

The decreased funding was not the only unconstitutional punishment promulgated by SGA members against *The West Georgian*. On April 22, 2009, the newspaper printed a satirical anti-fraternity piece by student Jacob Lovell titled "Join a Frat with Buck Futter, Jr.: Join a Frat, Key

a Car.” That day, new SGA President James Alan Webster authored a bill titled “Senate Bill 09-10.001 – Suspension of ‘The West Georgian,’” intended to severely punish the newspaper for causing controversy on campus because of the content of such articles. The bill states in relevant part:

[T]he Student Government Association recommends to the University’s administration on behalf of the student body temporary yet immediate freezing of funds allocated to “The West Georgian” newspaper due to overwhelming public opinion of the adverse [e]ffects of published material on the subjects of diversity, unity, and general welfare of the student body.

The bill also seems to encourage the university to take action to cut funding to the newspaper in the future, recommending “that the University take further action to find a more official avenue of allocation of institutional funds to extend interesting, informative, accurate and responsible information in a manner that sheds a positive light on the University.” According to an April 29, 2009, story in *The West Georgian*, this bill passed on April 23.

In addition, in a May 5, 2009, e-mail from Smith to McClellan, Smith alleges the following relevant facts about Kelly and Elizabeth Anderson, members of SAFBA at the time of the decision to cut *The West Georgian*’s funding:

3. Kelly and Anderson have previously expressed a desire to de-fund the newspaper in front of witnesses, and are members of a group titled “Students against the biases of The West Georgian.” [...]

7. SAFBA members Elizabeth Anderson and Rob Kelly led protests against The West Georgian last semester, for which I have a audio record. Elizabeth Anderson also appeared before the Student Publications Board in an attempt to have me removed as Editor for content of which she disapproved. The minutes of that meeting are available from Dr. [Pauline] Gagnon.

8. Since the committee members who responded to our request noted that they recommended funding the paper at the previous level (minus \$7,000 for a full-time faculty member), the members who haven’t responded (Anderson, Kelly) must have been the ones who recommended the additional, content-motivated cut[.]

As you know, UWG is legally and morally bound by the First Amendment and the decisions of the Supreme Court concerning freedom of speech at public colleges and universities. That the First Amendment’s protections fully extend to public universities like UWG is settled law. See, e.g., *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.)

In *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819 (1995) and *Board of Regents of the University of Wisconsin System v. Southworth*, 529 U.S. 217 (2000) the Court held that when a public university decides to use student fees to fund a multiplicity of independent student groups, as UWG has done here, each student group retains its status as a private party expressing its personal viewpoint. Unlike an “official” university publication, student newspapers like *The West Georgian* are independent organizations whose speech is protected by the First Amendment. Accordingly, the university cannot censor or punish such publications, even those which receive student fees, any more than the government can censor *The New York Times*. The funds of *The West Georgian* cannot be withdrawn when SAFBA or the SGA finds its speech disagreeable. Nor can rules be selectively, differentially, or unequally enforced in order to contrive a seemingly innocuous reason for punishing the newspaper for its protected speech.

The university must reinstate the entire amount of funding that was cut from *The West Georgian*'s allocation and must recognize that, under the First Amendment, *The West Georgian* has a right to express its own viewpoint, free from the censorship of SAFBA, the SGA, the university, and any organization acting in the university's name.

As president of a public institution, you cannot and must not allow these actions to stand. As a state institution, the university must understand that it has a non-delegable duty to ensure that the First Amendment rights of its students are protected and that it is legally liable if these rights are not respected. FIRE calls upon you to immediately clarify *The West Georgian*'s status as an independent newspaper. As leaders in institutional governance, models for the SGA, and the ultimate authority in disciplinary matters, you and other university administrators have both a legal and a moral duty to step in where SAFBA and the SGA have failed in order to check their attempts to trample upon students' most basic freedom of press. By fulfilling this responsibility as a public official, you can teach the SAFBA and SGA leadership that they must respect the rights of university students and student organizations and help to instill in them an understanding of the full repercussions involved in repeatedly and recklessly defying the Constitution.

FIRE hopes to solve this matter amicably and swiftly. We are, however, committed to using all of our resources to see this matter through to a just and moral conclusion. We request a response to this letter by May 25, 2009.

Sincerely,



Adam Kissel
Director, Individual Rights Defense Program

cc:

Linda Picklesimer, SGA Advisor and Director of Campus Center
Chris Geiger, Associate Director, Center for Student Involvement

Melanie McClellan, Dean of Students and Vice President for Student Affairs and Enrollment Management

James Alan Webster, SGA President

Asia Andrews, SGA Treasurer

Jazime Stamps, SGA Judicial Chair

Carolyn Comstock, SGA Secretary

Jo Etta Miller, SAFBA

Hema Ramanathan, SAFBA

Rob Kelly, SAFBA

Elizabeth Anderson, SAFBA

Trent Ross, SAFBA

Kaylia Diah, SAFBA

Joseph Weiman, SAFBA

Frank LoMonte, Executive Director, Student Press Law Center