



Foundation for Individual Rights in Education

210 West Washington Square, Suite 303 · Philadelphia, PA 19106

Tel: 215.717.3473 · Fax: 215.717.3440 · fire@thefire.org · www.thefire.org

David French
PRESIDENT

April 6, 2005

Greg Lukianoff
DIRECTOR OF LEGAL AND
PUBLIC ADVOCACY

Interim Chancellor Vicki Lord Larson
University of Wisconsin-Eau Claire
Park and Garfield Avenue
Eau Claire, Wisconsin 54702-4004

BOARD OF DIRECTORS

Alan Charles Kors
CHAIRMAN

Harvey A. Silverglate
VICE CHAIRMAN

William J. Hume
Joseph M. Maline
Michael Meyers
Marlene Mieske
Daphne Patai
Virginia Postrel
Ed Snider
James E. Wiggins
Kenneth J. Williams (d. 2003)

BOARD OF ADVISORS

David Brudnoy (d. 2004)
Lloyd Buchanan
T. Kenneth Cribb, Jr.
Candace de Russy
William A. Dunn
Benjamin F. Hammond
Nat Hentoff
Roy Innis
Wendy Kaminer
Woody Kaplan
Leonard Liggio
Herbert London
Peter L. Malkin
Milton Rosenberg
John R. Searle
Ricky Silberman
Christina Hoff Sommers

URGENT

Sent by U.S. Mail and Facsimile (715) 836-2902.

Dear Chancellor Larson:

It is with disappointment that the Foundation for Individual Rights in Education (FIRE) writes the University of Wisconsin-Eau Claire for the second time in five months concerning issues of free expression on campus. As you can see from our Directors and Board of Advisors, FIRE unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, due process, legal equality, voluntary association, freedom of speech, and religious liberty on America's college campuses. Our website, thefire.org, will give you a greater sense of our identity and activities.

Our December 16, 2004, letter to former Chancellor Donald J. Mash addressed two major controversies at UWEC: the proposed "religious service learning ban" and the maintenance of viewpoint neutrality in student segregated fees distribution. After receiving our letter, UWEC decided to reconsider and revise the proposed "ban" on religious service learning. We are continuing to monitor the outcome of this issue as the language of the revised service learning policy has yet to be finalized.

In addition, on February 7, 2005, the UWEC Student Senate decided to fund *The Flip Side* student magazine, which the Senate initially claimed could not receive funding because it was not "ideologically neutral." Though *The Flip Side* declared this decision a "victory," we have recently learned that in order to avoid future confusion like that garnered by *The Flip Side*'s funding, the Student Senate has amended its bylaws on the "Organized Activity Funding Policy" in direct violation of the expressive rights of *all* students. Members of the Student Senate have demonstrated an alarming misunderstanding of the university's obligation to uphold the First Amendment when distributing funds to student organizations. As a state institution, the university and its administrators should

understand that **UWEC has a non-delegable duty to ensure that the First Amendment rights of its students are protected, and that no federal, state, local, or university rule, policy, or regulation can trump the exercise of rights guaranteed by the United States Constitution.**

The following is our understanding of the facts, based on reports from *The Spectator* student newspaper. Please correct errors if any exist. On March 14, 2005, the UWEC Student Senate passed bill number 49-B-1 amending the “Organized Activity Funding Policy” to include the criterion that “[t]he [organized] activity shall not endorse a particular ideological, religious, or partisan viewpoint.” The amendment was proposed by, among others, Student Senate Finance Director Matt Wisnefske. Wisnefske had been quoted in *The Spectator* during previous debates about *The Flip Side* as saying, “We want to exclude any groups that would be religious in nature, political in nature or anything that would have a political agenda (from being funded through student segregated fees).” The decision to approve this deeply troubling amendment is directly at odds with federal law and decades of Supreme Court cases.

According to *The Spectator*, Kimberly Barrett, associate vice chancellor of Student Development and Diversity was present during the March 14 meeting. The Student Senate bill 49-B-1 indicates that former Student Senate President Chad Wade also supported the amendment and subsequently sent a copy of the bill to you, Vice Chancellor Andrew Soll, Director of Business Services Dave Gessner, University Senate Chair Susan Harrison, Associate Vice Chancellor Barrett, and Associate Dean Jodi Thesing-Ritter. According to the bill, the reasons for the additional language were that formerly:

[the] [b]ylaws regarding Organized Activity Funding have been unnecessarily vague;...it is imperative that a procedure be established to protect the Senate from legal action and clarify the criteria of those organizations that can be funded;...lack of these procedures has caused unnecessary confusion among students, student organizations, and Student Senate; and...the Finance Commission will use these guidelines to effectively determine the responsible distribution of Student Segregated Fees.

By supporting this amendment, Wisnefske, Wade, and other Student Senate members have demonstrated either ignorance or misunderstanding of the constitutional principle of “viewpoint neutrality.” As the agent of a state university, the Student Senate Finance Commission has an obligation to distribute student-fee funds to student organizations in a viewpoint-neutral manner. This constitutional duty overrides any university or state statutory requirement that a funded group’s mission or content fit the Student Senate’s interpretation of what “endorses a particular ideological, religious, or partisan viewpoint.” In other words, **the PFC must distribute funds to student organizations based on objective criteria and regardless of the viewpoints espoused, whether or not they find those points of view “biased” or objectionable.** Disregarding this principle in student organization funding decisions is both morally wrong and unconstitutional. Indeed, the Student Senate’s misunderstanding of and lack of regard for this principle has resulted in the committee’s granting itself the power to censor arbitrarily—a result the First Amendment does not permit on a public campus.

The law clearly demonstrates the breadth of the student organizations' fundamental First Amendment freedoms. UWEC is required to grant religious and other expressive organizations equal access to campus facilities (*see Widmar v. Vincent*, 454 U.S. 263 (1981)), and it is also required to grant religious and other expressive organizations equal access—on a viewpoint-neutral basis—to student fee funding. *See Rosenberger v. University of Virginia*, 515 U.S. 819 (1995) and *Board of Regents v. Southworth*, 529 U.S. 217 (2000). Moreover, UWEC cannot even compel organizations to include members who would contradict the expressive purpose of the group. *See Hurley v. Irish-American Gay, Lesbian and Bisexual Group*, 515 U.S. 557 (1995) and *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000). In summary, UWEC's Student Senate, as administrators of the university, cannot require private student groups to conform to UWEC's "message" or "mission" of being "unbiased" or "viewpoint-neutral" as a precondition for receiving recognition, benefits, or facilities access. *See Healy v. James*, 408 U.S. 169 (1972).

As we stated in our previous letter:

...[S]tudent administrators are confusing the university's obligation as a state actor with that of its...students who are private citizens. **Through the current student funding criteria, the university is in fact violating its own responsibility to be viewpoint neutral by imposing its own viewpoint (in this case an amorphous and unattainable belief that "bias" must be avoided) on protected expression.** For example, it would be unlawful for university administrators to organize a religious service or political rally and require students to attend; however, it is obligated to allow students to organize and participate in activities related to their respective faiths or political ideologies on campus. To allow students to engage in such activity does not mean that the university endorses a particular religion or viewpoint, but rather it protects the individual rights of all of its students to have beliefs, express those beliefs, and act on those beliefs. [Emphasis added.]

UWEC, as a public institution of higher education, cannot and must not forbid student organizations from determining their mission and membership based on particular ideological, religious, or political viewpoints, and must not deny them funding if they organize events expressing those viewpoints. A religious organization has a right to engage in religious expression. A political organization has a right to engage in political expression. It is tyranny, not tolerance, to prohibit these groups from espousing their respective viewpoints and messages regardless of their "biases." At public universities, it is also a denial of core constitutional rights. UWEC may not dictate the beliefs and viewpoints of its students, nor may it prohibit the protected exercise and expression of those beliefs and viewpoints. As Supreme Court Justice Robert Jackson concluded more than 50 years ago in *West Virginia Board of Education v. Barnette* (1943), "[I]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what will be orthodox, in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." UWEC administrators, as agents of the state of Wisconsin, are indeed such officials. Any religious, political, or other student organization at UWEC is entitled to the full protection of the U.S.

Constitution, including the right to receive student-fee funding for engaging in activities that contribute to effectively conveying its message.

The Spectator recently reported that former Student Senate President Chad Wade has “called the revision of Senate bylaws a victory” and also has said that “senators are not constitutional scholars” in response to what he called “unjustified” criticism of the Student Senate’s “uninformed” actions. Once it is clear that the student government is taking actions that violate the U.S. Constitution, the university has a duty to prevent such violations. UWEC cannot delegate away its obligation to uphold the constitutional rights of its students. In addition to Wade’s comments, the bill for amending the bylaws states clearly that the previous funding procedure “has caused unnecessary confusion among students, student organizations, and [the] Student Senate.” Unfortunately, the students’ recent amendment of the bylaws is not only arbitrary and unenforceable, but also unconstitutional. It does not solve the problem; it makes it worse. UWEC has thus far left this institutional failure unaddressed and uncorrected.

FIRE therefore requests that you immediately ask the Student Senate to recall the unconstitutional “Organized Activity Funding Policy” amendment and restore the funding eligibility of religious, political, and all other expressive organizations and activities on campus. We also ask that UWEC administrators and student government officials fully comply with their obligations to the First Amendment and stop evaluating the viewpoint of student organizations when making student-fee funding decisions.

If, on the other hand, the university decides to continue to allow such infringement on the rights of its students, we are committed to using all of our resources in support of students’ expressive rights and toward seeing this matter through to a just and moral conclusion.

We would appreciate a response by 5 p.m. EDT on Wednesday, April 20, 2005.

Sincerely,



Minnie Quach
Program Officer

cc:

Ron Satz, Provost and Vice Chancellor, University of Wisconsin-Eau Claire
Dr. Kimberly Barrett, Associate Vice Chancellor, University of Wisconsin-Eau Claire
Jodi Thesing-Ritter, Associate Dean of Student Development, University of Wisconsin-Eau Claire
Andrew Soll, Vice Chancellor, Business and Student Services, University of Wisconsin-Eau Claire
Dave Gessner, Director, Business Services, University of Wisconsin-Eau Claire
Dr. Susan Harrison, Chair, University Senate, University of Wisconsin-Eau Claire
Toby E. Marcovich, President, UW Board of Regents, University of Wisconsin System
Aaron Olson, Student Senate President, University of Wisconsin-Eau Claire