



Foundation for Individual Rights in Education

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October 19, 2012

President Lou Anna K. Simon
Michigan State University
Office of the President
450 Administration Building
East Lansing, Michigan 48824

Sent via U.S. Mail and Facsimile (517-355-4670)

Dear President Simon:

As you will remember from our previous correspondence, the Foundation for Individual Rights in Education (FIRE) 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, freedom of conscience, and academic freedom on America's college campuses.

FIRE is concerned by the threat to free expression posed by the Michigan State University (MSU) student government's decision to deny the Michigan State College Libertarians' request for funding to bring a speaker to campus, stating that it could not fund student groups with "political agendas." This decision violates the student government's—and, consequently, MSU's—obligation to allocate funding to student organizations in a content- and viewpoint-neutral manner under the First Amendment, by which both the student government and MSU are legally and morally bound. We write today to urge you to reverse this decision immediately.

The following is our understanding of the facts. Please inform us if you believe we are in error.

The Associated Students of Michigan State University's (ASMSU's) Funding Board has the responsibility of "providing funding to qualified Registered Student Organizations (RSO's)." ASMSU's website makes clear that the Funding Board "is sponsored by the MSU undergraduate student tax collected by ASMSU," and specifies that "[g]roups can apply for funding for a wide variety of projects such as speakers, conferences, and educational programming events that are free, open, and accessible to the public." Groups are eligible to apply for funding between \$100 and \$4,500 for particular events and initiatives, and are eligible to receive Funding Board allocations not more than once per

academic year or twice per three academic years. The Funding Board acts as an agent of the university in this capacity. As a result of this delegation of authority, MSU is both legally and morally responsible for any Funding Board violations of the First Amendment right to freedom of speech.

In September 2012, the Michigan State College Libertarians, a recognized student organization, applied to the Funding Board for \$4,450 in funding to host a lecture by economist and author Tom Woods. The College Libertarians' application stated that Woods' lecture, planned for November 8, would consist of a discussion of his book *Meltdown* and would provide "a comprehensive lecture on the 2008 economic collapse" and "a perspective from the Austrian School of economics, which differs from mainstream economics that are more often taught in our universities." The application also describes the College Libertarians' mission as to "promote philosophical libertarianism" and to "spread the ideas of liberty, peace, and prosperity in a non-partisan fashion." The College Libertarians presented their application to the Funding Board in an interview held September 18, 2012.

On September 20, College Libertarians President Robert Fox was informed by Funding Board Comptroller Anna Ricelli that the Funding Board had "tabled our discussion" of the group's application "for the time being." On September 26, ASMSU Vice Chair for Student Funding Michael Mozina notified Fox via email that, following discussion with ASMSU President Evan Martinak,

it is clear [sic] stated that we cannot fund groups with political agendas. Its [sic] not fair for the rest of the Student Body for ASMSU to seem like we are pushing a particular political agenda and in return can lead to legal action that puts us in a tough situation.

The Funding Board's rejection of the College Libertarians' application violates the group's First Amendment rights and leaves the First Amendment rights of all other expressive student organizations at MSU at risk.

That the First Amendment's protections fully extend to public universities like MSU is settled law. See *Widmar v. Vincent*, 454 U.S. 263, 268–69 (1981) ("With respect to persons entitled to be there, our cases leave no doubt that the First Amendment rights of speech and association extend to the campuses of state universities"); *Healy v. James*, 408 U.S. 169, 180 (1972) (citation omitted) ("[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'").

Further, student organizations such as the College Libertarians enjoy fundamental First Amendment freedoms. MSU is required to grant expressive student organizations equal access—on a content- and viewpoint-neutral basis—to funding allocated for the activities of student organizations. See *Board of Regents of the University of Wisconsin System v. Southworth*, 529 U.S. 217, 233 (2000) ("When a university requires its students to pay fees to support the extracurricular speech of other students, all in the interest of open discussion, it may not prefer

some viewpoints to others.”); *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819, 836 (1995) (“For the University, by regulation, to cast disapproval on particular viewpoints of its students risks the suppression of free speech and creative inquiry in one of the vital centers for the Nation’s intellectual life, its college and university campuses.”); *Widmar*, 454 U.S. at 277 (holding that after university had “created a forum generally open to student groups,” the “content-based exclusion of religious speech ... violates the fundamental principle that a state regulation of speech should be content-neutral.”). In summary, the ASMSU Funding Board, as agents of the university, cannot require certain student groups to set their views or politics aside as a precondition for receiving benefits available to others.

Though the Funding Board’s “Code of Operations” makes no mention of funding political activity, or of political expression of any kind, the current Funding Board application instructions note that Funding Board allocations may not be used “[t]o sponsor partisan political events or fundraisers.” This language is problematic in that it fails to distinguish between activities the Funding Board may be prohibited from subsidizing—for example, a student event endorsing a candidate for political office *on behalf of MSU as an institution*, or partisan activities that a reasonable person might mistake as representing the official views of the university—and the activities of the College Libertarians, whose proposed event sought simply to raise awareness of contemporary economic issues. Refusing to provide any funding for this event on the basis of the College Libertarians’ alleged “political agenda[]”—or for that matter funding for any “partisan political events”—raises serious concerns about the amount of discretion the Funding Board has to decide whether or not a group’s activities may be deemed “partisan” or “political” and thus ineligible for funding. Such discretion is almost certain to be applied arbitrarily and unevenly, leading to unfair and unconstitutional double standards. This is a constitutionally unacceptable outcome.

Given the multiplicity of political, advocacy, and issue-oriented groups at MSU, FIRE is concerned that the Funding Board regularly discriminates against student organizations in violation of its mandate to distribute funds in a content- and viewpoint-neutral manner. Such a ban on funding not only threatens groups like the College Democrats, College Republicans, and Young Democratic Socialists; it could easily affect advocacy organizations like MSU’s chapters of the American Civil Liberties Union, Amnesty International, and Greenpeace as well. Numerous issue-oriented groups are at risk, including such varied groups as Students for Concealed Carry on Campus and Students for Fair Trade, as well as groups on both sides of the debate over abortion rights, Students for Life and Students for Choice. One would think debate over the range of issues presented by such diverse groups to be a central element of the college experience. Indeed, the Supreme Court has noted that “speech concerning public affairs is more than self-expression; it is the essence of self-government,” reflecting “our profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.” *Garrison v. Louisiana*, 379 U.S. 64, 74–75 (1964) (internal quotations omitted). Does MSU truly mean to relegate all of these groups to second-class status simply because their activities may intersect with politics?

The ASMSU Funding Board’s fear of possible legal action if it is seen as “pushing a particular political agenda” is misplaced. The Supreme Court has made clear that student groups may not be discriminated against in receiving funding based on their chosen viewpoints—including

political viewpoints. Further, with respect to the university's obligations and the obligations of its agents under section 501(c)(3) of the Internal Revenue Code, Internal Revenue Service training materials have noted that "[t]he actions of students generally are not attributed to an educational institution unless they are undertaken at the direction of and with authorization from a school official," as the agency has drawn a distinction between "the individual political campaign activities of students" and their university. Judith E. Kindell and John Francis Reilly, "Election Year Issues," Exempt Organizations Continuing Professional Education Technical Instruction Program for Fiscal Year 2002, 365 (2002), *available at* <http://www.irs.gov/pub/irs-tege/topici02.pdf>. Noting that "civic engagement is an important part of college life, and First Amendment protections come into play," Ada Meloy, general counsel for the American Council on Education, has summarized IRS guidance in this area by writing that "even openly partisan student groups may use an institution's facilities without violating any rules" because such activities "further the goal of fostering students' civic engagement while avoiding the perception of institutional bias." Ada Meloy, "Legal Watch: Political Activity on Campus," *available at* <http://www.acenet.edu/the-presidency/columns-and-features/Pages/Legal-Watch-Litigation-and-regulation-in-academe.aspx>.

Granting expressive groups access to an equal playing field does not constitute an endorsement of their various views by the Funding Board, nor will any reasonable observer mistake it for doing so. On the contrary, ensuring all eligible student groups have equal rights to funding signals that the Funding Board is living up to its obligation to keep the marketplace of ideas open to student groups of all persuasions. Contrary to the Funding Board's concerns that funding the political expression of student groups would not be "fair" to MSU students, such an outcome is not only fair, it is the only outcome acceptable at a public university bound to uphold the First Amendment.

To comply with its obligations under the First Amendment, the Funding Board must reconsider the College Libertarians' application using only reasonable, content- and viewpoint-neutral criteria. The Funding Board must also make clear to recognized student organizations that it will not discriminate against them on their basis of their viewpoints when allocating funding, and clarify its policies as necessary. If the Funding Board fails to accomplish these ends, Michigan State University must step in to protect the First Amendment rights of its students.

FIRE is committed to using all the resources at our disposal to see this matter through to a just conclusion. Please spare MSU the embarrassment of fighting against the Bill of Rights.

We respectfully ask for a response to this letter by November 9, 2012.

Sincerely,



Peter Bonilla

Associate Director, Individual Rights Defense Program

cc:

Denise B. Maybank, Interim Vice President for Student Affairs and Services

Cathy Neuman, Assistant Director of Student Life

Michael Mozina, Vice Chair for Student Funding, Associated Students of Michigan State
University

Anna Ricelli, Comptroller, Funding Board, Associated Students of Michigan State University

Evan Martinak, President, Associated Students of Michigan State University