



**Foundation for Individual Rights in Education**

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February 27, 2008

Jerilyn S. McIntyre  
President, Central Washington University  
Office of the President  
400 E. University Way, Mailstop 7501  
Ellensburg, WA 98926

**URGENT**

*Sent via U.S. Mail and Facsimile (509-963-3206)*

Dear President McIntyre:

As you can see from our Directors and Board of Advisors, 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, the right of conscience, and academic freedom on America's college campuses. Our web page, [www.thefire.org](http://www.thefire.org), will give you a fuller sense of our identity and activities.

FIRE is gravely concerned about the threat to freedom of expression and association presented by the Associated Students of Central Washington University Board of Directors' (ASCWU/BOD's) decision to hold a hearing today to investigate the possibility of de-funding activities conducted by the Central Washington University (CWU) College Republicans. The decision to re-examine funding for the College Republicans was directly prompted by the content of flyers promoting an on-campus speech hosted by the College Republicans featuring Jim Gilchrist, founder of the Minuteman Project, an anti-immigration advocacy group. The content of the flyers is pure political speech and enjoys the full protection of the First Amendment. As such, any funding decision made by the ASCWU/BOD on the basis of the flyers' content would represent a clear violation of the First Amendment.

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

As a registered student group, the College Republicans currently receive funding from the ASCWU, including approximately \$8,000 for a program called the

Conservative Lecture Series, of which Gilchrist's appearance was a part. In an effort to promote Gilchrist's appearance on February 26, the College Republicans posted flyers around campus and via university e-mail. The flyers read, in relevant part: "Illegal immigration is ruining America." (Indeed, the event's title was "How Illegal Immigration is Ruining America.")

Responding to the use of this specific phrase, the ASCWU/BOD's Equity and Services Council passed a resolution on February 21 resolving to "take a stand against hostile, threatening, and potentially dangerous advertising and programs that do not reflect the ethics, mission and value [sic] of The Equity and Services Council, the ASCWU Board of Directors, and Central Washington University." Following the resolution's adoption, Katie Underwood, President and Chair of the ASCWU/BOD, sent an e-mail to the College Republicans informing them that the ASCWU/BOD "has a duty to the students to intervene" when "communication and promotion creates a hostile environment." Further, Underwood urged the College Republicans to "refrain from statements that are hostile to any group or individual."

Additionally, Anna Boyer, Executive Vice President of the ASCWU/BOD, informed members of the College Republicans in an e-mail that the ASCWU/BOD had determined that the "hostile language used in the advertising... represented a personal attack against students represented at the university," and had subsequently passed the resolution. On February 22, Boyer also communicated to the Services and Activities Fee Committee via e-mail that the ASCWU/BOD "strongly urges the Services and Activities Fee Committee to the review the funding [sic] for the present and future programs coordinated by the College Republicans." Finally, the College Republicans were notified that, because of the flyers' content, a hearing would be held to determine the fate of current and future funding for events proposed by the College Republicans. That hearing is to be held this evening at 5:30 pm.

To be clear: the ASCWU (specifically, the Services and Activities Fee Committee) is authorized to allocate portions of the mandatory student activities fee paid by CWU students. Due to the power vested in it by CWU as a public institution of higher learning, it is clear that the ASCWU is an agent of CWU and is thus morally and legally bound by the United States Constitution.

As such, ASCWU should not investigate—and *cannot* lawfully penalize, including through funding decisions—students for engaging in expression that is unquestionably protected by the First Amendment. CWU has a duty to uphold the First Amendment rights of all of its students, even if their expressive activity offends the sensibilities of some.

Indeed, most speech and expression, however "hostile" or "offensive" some may find it, is nonetheless entirely constitutionally protected. As the U.S. Supreme Court has stated, "the mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of 'conventions of decency.'" *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667, 670 (1973).

Further, the College Republicans' expression does not, as Katie Underwood's memorandum suggested, create a constitutionally unprotected "hostile environment." The Supreme Court has held that for student conduct to constitute hostile environment harassment, it must be "so severe, pervasive, and objectively offensive that it effectively bars the victim's access to an educational

opportunity or benefit.” *Davis v. Monroe County Board of Education*, 526 U.S. 629, 633 (1999). Clearly, the speech in question here—an isolated expressive act, made in the context of promoting a political speech—fails to meet the exacting demands of this precise and well-established legal standard. Moreover, in 2003, the U.S. Department of Education’s Office for Civil Rights (OCR) issued a letter to college presidents specifically to clarify that “the offensiveness of a particular expression, standing alone, is not a legally sufficient basis to establish a hostile environment under the [harassment] statutes enforced by OCR.” It is thus wholly unreasonable and legally untenable to assert that the College Republicans’ flyers were severe, persistent, and pervasive harassment that denied any onlookers the opportunity to benefit from their educational experiences.

In *Rosenberger v. Rector and Visitors of the University of Virginia* (1995) and *Board of Regents of the University of Wisconsin System v. Southworth* (2000), the Supreme Court held that when a public university decides to use student fees to fund a multiplicity of independent student groups, as CWU has done here, each student group retains its status as a private party expressing its personal viewpoint. It is important to remember that any number of private groups, such as private universities, receive funding without becoming agents of the government. Accordingly, the university cannot censor independent student groups, even those who receive student fees, anymore than it can censor *The New York Times*.

The ASCWU must not punish the College Republicans by de-funding their activities and must further recognize that, under the First Amendment, the College Republicans have a right to express their own viewpoint, free from the censorship of the ASCWU.

As president of a public institution, you cannot and must not allow any punitive actions taken against the College Republicans on the basis of core political speech to stand. As leaders in institutional governance, models for the ASCWU, and the ultimate authority in disciplinary matters, CWU administrators have a legal duty to step in where the ASCWU has failed and to check its attempt to trample upon students’ most basic freedom of expression. By fulfilling this responsibility as a public official, you can teach the ASCWU leadership that they must respect the rights of CWU students and help to instill in them an understanding of the full repercussions for 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 seeing this matter through to a just and moral conclusion. Due to the urgent nature of this matter, we request a response by Friday, February 29.

Sincerely,



Samantha Harris

Director of Legal and Public Advocacy

cc:

Jack Baker, Assistant to the Vice President of Student Affairs and Enrollment Management,  
CWU

Wendy Williams, Associate Professor of Psychology, CWU

Katie Underwood, President and Chair, ASCWU/BOD

Anna Boyer, Executive Vice President, ASCWU/BOD

Julia Cain, Services and Activities Fee Committee, ASCWU

Robert Hood, Services and Activities Fee Committee, ASCWU

Justin Jenkins, Services and Activities Fee Committee, ASCWU

Kevin Kimball, Services and Activities Fee Committee, ASCWU

Jeremy McCann, Services and Activities Fee Committee, ASCWU

Sarah Ruiz, Services and Activities Fee Committee, ASCWU

Brent Weisel, Services and Activities Fee Committee, ASCWU