



April 28, 2022

Richard Muma
Office of the President
Wichita State University
1845 Fairmount St.
Wichita, Kansas 67260

Sent via U.S. Mail and Electronic Mail (richard.muma@wichita.edu)

Dear President Muma:

The Foundation for Individual Rights in Education (FIRE), a nonpartisan nonprofit dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses, is concerned by reports that ShiftSpace Gallery, a student-run art gallery at Wichita State University, could lose university funding after it criticized a student senator in a Facebook post. While members of the Student Government Association took offense to ShiftSpace's post, it does not fall into any category of speech unprotected by the First Amendment, which is binding on Wichita State as a public institution. Nor can the university apply a policy implicating *staff* speech to a *student-run* art gallery. Wichita State thus must ensure ShiftSpace does not lose university funding because of its Facebook post.

I. Wichita State's Student Government Association Rescinds Funding of ShiftSpace Gallery After Critical Facebook Post

The following reflects our understanding of the pertinent facts based on public information, though we appreciate you may have additional information and invite you to share it with us. On April 1, 2022, ShiftSpace, a "roaming" student-run art gallery open to "any currently enrolled Wichita State student,"¹ criticized Student Government Association Fine Arts senator John Kirk in a post on ShiftSpace's public Facebook page, in response to his comments during a Student Senate meeting about budget cuts imposed on the gallery. In ShiftSpace's view, Kirk was not supportive of the gallery.²

¹ ShiftSpace, WICHITA ST. UNIV., https://www.wichita.edu/academics/fine_arts/adci/galleries/shiftspace/ [<https://perma.cc/NZF3-3HXF>].

² Julia Nightengale and Lindsay Smith, *ShiftSpace Gallery criticized a Student Government senator, now it could lose its funding*, SUNFLOWER (Apr. 21, 2022) <https://thesunflower.com/62864/news/shiftspace-gallery-criticized-a-student-government-senator-now-it-could-lose-its-funding/>.

Specifically, ShiftSpace’s post stated: “This is the support we are getting from our fine arts senator, John Kirk. He’s up for re-election. Let’s show him how ignoring and neglecting a significant portion of his constituency effects [sic] his poll numbers.”³ ShiftSpace later edited the post to remove the criticism, but Kirk complained to the Student Government Association’s Elections Commission, which is “responsible for the administration of Student Government Association elections,”⁴ alleging ShiftSpace had broken student government policy prohibiting Wichita State faculty and staff members from using university resources to support specific candidates.⁵

An SGA member told the Sunflower that ShiftSpace, “as a University entity,” violated Student Government Association policy.⁶ The SGA member said ShiftSpace had violated in particular a provision stipulating that “No faculty or staff member can utilize University resources to support specific candidates.”⁷

ShiftSpace is now facing the threat of a loss of funding, as the group is accused of violating another provision among the SGA’s rules and regulations stipulating that any entity that is not in compliance with the student government’s Constitution, Bylaws, Statutes, and/or resolutions is not eligible for student government funding.⁸

II. ShiftSpace’s Facebook Post Is Student Speech Protected by the First Amendment

It has long been settled law that the First Amendment binds public universities like Wichita State,⁹ such that its decisions and actions—including the pursuit of disciplinary sanctions,¹⁰ recognition and funding of student organizations,¹¹ and maintenance of policies implicating

³ *Id.*

⁴ Election Commission, WICHITA STATE UNIV., https://www.wichita.edu/student_life/sga/Elections/election_commission.php, [[<https://perma.cc/G997-TQX3>]].

⁵ Nightengale and Smith, *supra* note 2.

⁶ *Id.*

⁷ Chapter 5, *General Election Regulations and Procedures, Section 6, Activities of Third Parties*, The Rules and Regulations of the Association, WICHITA STATE UNIV. STUDENT GOV. ASS’N, (“No faculty or staff member can utilize University resources to support specific candidates. This shall include but it not limited to email list servers, resource rooms, room reservations, and finances. This shall not be interpreted to restrict the ability of any faculty or staff member to publicize the dates and times of the General Election or to encourage voter participation in the General Election, provided that no suggestion is made to encourage voting for any specific candidate.”), available at https://www.wichita.edu/student_life/sga/PublicInformation/documents/RulesandRegulations3.pdf (last visited Apr. 26, 2022) [<https://perma.cc/4XSP-V5HV>].

⁸ *Id.*

⁹ *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).

¹⁰ *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 667–68 (1973).

¹¹ *Bd. of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 221 (2000).

student and faculty expression¹²—must comport with the First Amendment. The sanction imposed on ShiftSpace here does not do so.

Additionally, the Student Government Association’s own policies commendably emphasize the importance of student rights to free expression: “As citizens, students shall enjoy the same freedom of speech, peaceful assembly, and right of petition that other citizens enjoy and as members of the academic community, they are subject to the obligations which accrue to them by virtue of this membership.”¹³

First Amendment standards for student speech should apply here insofar as ShiftSpace’s description specifically lists “social media manager” as a role filled by a student,¹⁴ and it is abundantly clear that the Facebook post thus came from a student—not a faculty or staff member. As the speech is protected in that it does not fall into any of the “historic and traditional categories” of unprotected speech such as obscenity, defamation, incitement, and fighting words,¹⁵ it cannot constitutionally be punished on any of the grounds advanced here.

These principles, however, do not shield a speaker from every consequence from his or her 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 that the First Amendment prefers to censorship.¹⁶ Indeed, Kirk is welcome to reply publicly to ShiftSpace’s Facebook post defending his record. But, the First Amendment limits the *types* of consequences imposed and who may impose them, and does not allow the denial of funding that Wichita State’s Student Government Association has imposed.

III. The Policy Implicating University Staff and Faculty Speech Does Not Apply to ShiftSpace

A policy implicating university staff expression should not apply to ShiftSpace as a student-run art gallery. ShiftSpace’s own website prominently describes the gallery as “student-run.”¹⁷ Like many student clubs, the gallery is run with the help of a faculty adviser. Nonetheless, the gallery is clear that “students take on *every* gallery role.”¹⁸ These include: “Curator, preparer, community outreach coordinator, social media manager, and more.”¹⁹ So, constitutional issues aside, policies implicating faculty and staff speech simply do not apply, as ShiftSpace’s expression cannot be considered that of the university, or of its faculty or staff.

¹² *Dambrot v. Central Mich. Univ.*, 55 F.3d 1177 (6th Cir. 1995).

¹³ *Supra* note 7, Article IV: Student Citizenship, Section 1. Exercise of Rights of Citizenship.

¹⁴ Nightengale & Smith, *supra* note 2.

¹⁵ *United States v. Stevens*, 559 U.S. 460, 468–69 (2010) (quoting, in part, *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 127 (1991).)

¹⁶ *Whitney v. California*, 274 U.S. 357, 377 (1927).

¹⁷ Nightengale & Smith, *supra* note 2.

¹⁸ *Id.* (emphasis added).

¹⁹ *Id.*

IV. Conclusion

It is improper to punish ShiftSpace under a policy implicating Wichita State faculty and staff speech because doing so would rest upon misapprehension of ShiftSpace's organization and operation. Moreover, punishing a student-run gallery for protected speech by revoking its funding, thereby threatening its very existence, is an egregious violation of ShiftSpace's First Amendment rights. Given the urgent nature of this matter, we request receipt of a response to this letter no later than the close of business on Thursday, May 5, 2022, confirming the SGA will restore funding for ShiftSpace.

Sincerely,



Graham Piro
Program Officer, Individual Rights Defense Program

Cc: Student Government Association, Wichita State University
Olivia Gallegos, Student Body President
John Kirk, Fine Arts Senator & Budget and Finance Chair
Student Government Judicial Branch
Office of General Counsel