



**Foundation for Individual Rights in Education**

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September 21, 2011

Chancellor Charles W. Sorensen  
University of Wisconsin–Stout  
Office of the Chancellor  
325 Administration Building  
Menomonie, Wisconsin 54751

**URGENT**

Sent via U.S. Mail and Facsimile (715-232-1416)

Dear Chancellor Sorensen:

As you can see from the list of our Directors and Board of Advisors, the Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, freedom of religion, academic freedom, due process and, in this case, freedom of expression on America's college campuses. Our website, thefire.org, will give you a greater sense of our identity and activities.

FIRE is gravely concerned about the threat to free speech posed by the University of Wisconsin–Stout's (UWS's) censorship and threat of criminal charges against Professor James Miller for satirical postings (enclosed) on his office door. UWS has removed Miller's postings twice, threatened to charge him with "disorderly conduct," and reported him to UWS's threat assessment team. UWS must immediately abandon this profoundly unconstitutional and unconscionable treatment of one of its own faculty members.

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

On September 12, 2011, Miller, a professor in UWS's Department of Speech Communication, Foreign Languages, Theatre and Music, posted a printout on his office door depicting the actor Nathan Fillion from the television series *Firefly*. The posting included a line from an episode: "You don't know me, son, so let me explain this to you once: If I ever kill you, you'll be awake. You'll be facing me. And you'll be armed." On September 16, Miller received an email from UWS Chief of Police/Director of Parking Services Lisa A. Walter, notifying him that she had removed the posting and that "it is unacceptable to have postings such as this that refer to killing."

Miller replied to her by email that morning, advising her, “Respect liberty and respect my first amendment rights.” Walter responded later that morning, claiming that as the Chief of Police she has “responsibilities ... regarding postings that refer to violence and/or harm.” Walter added that “the poster can be interpreted as a threat by others and/or could cause those that view it to believe that you are willing/able to carry out actions similar to what is listed.” Walter further threatened Miller with criminal charges: “If you choose to repost the article or something similar to it, it will be removed and you could face charges of disorderly conduct.”

Later on September 16, Miller put a new poster outside his office door in response to Walter’s censorship. The flyer read “Warning: Fascism,” with a mocking line at the bottom about the violence that may be caused by fascists: “Fascism can cause blunt head trauma and/or violent death. Keep fascism away from children and pets.” The poster also included a cartoon image of a silhouetted police officer striking a civilian. On the afternoon of September 20, he received another email from Walter. The email stated that her office had removed the poster because it “depicts violence and mentions violence and death.” Walter added that UWS’s “threat assessment team,” in consultation with the UW System Office of General Counsel, had decided to have the poster removed, stating that “it is believed that this posting also has a reasonable expectation that it will cause a material and/or substantial disruption of school activities and/or be constituted as a threat.”

On September 20, College of Arts, Humanities and Social Sciences Interim Dean Raymond Hayes emailed Miller, asking him to attend a meeting about the posters on September 26 due to “the concerns raised by the campus threat assessment team.” It is unclear whether Hayes officially summoned Miller or merely requested a meeting. According to Miller, the meeting has been rescheduled for September 30.

UWS’s censorship of Professor Miller and its attempts to intimidate him by threatening criminal charges are outrageous violations of Miller’s First Amendment rights. To be clear: The posters are not a threat, nor would any reasonable person expect them to cause any substantial disruption on or off campus. UWS’s assertions to the contrary are entirely without merit.

Miller’s flyers do not come at all close to meeting the legal definition of a “true threat” articulated by the Supreme Court in *Virginia v. Black*, 538 U.S. 343, 359 (2003), in which the Court held that only “those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals” are outside the boundaries of First Amendment protection. It strains all credulity to think that any reasonable person would interpret Miller’s postings—one referencing a popular television program, the other satirically protesting UWS’s censorship—as signaling intent to carry out any act of violence.

Likewise, no reasonable person would expect either poster to be reasonably likely to lead to “material and/or substantial disruption.” UWS’s suggestion that campus community members are so impressionable and unreasonable that merely seeing a “refer[ence] to violence and/or harm” as depicted on the posters would lead to actual violence or to any material or substantial disruption is both shameful and absurd.

That the First Amendment's protections fully extend to public universities like UWS is settled law. See *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’”).

The First Amendment's guarantee of freedom of expression does not exist to protect only non-controversial speech; indeed, it exists precisely to protect speech that some members of a community may find controversial or offensive. The right to free speech includes the right to express things that are deeply offensive to many people, and the Supreme Court has explicitly held, in rulings spanning decades, that speech cannot be restricted simply because it offends others. In *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667, 670 (1973), the Court held that “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.’” In *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949), the Court held that “a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.” In *Texas v. Johnson*, 491 U.S. 397, 414 (1989), the Court explained the rationale behind these decisions, noting that “[i]f there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” Under these standards, there can be no question that Miller's postings are protected.

UWS should take to heart the Supreme Court's words in *Sweezy v. New Hampshire*, 354 U. S. 234, 250 (1957):

The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. ... Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.

Furthermore, the investigation of protected speech, once it is determined to be protected, is a violation of the rights of the person being investigated. *Sweezy v. New Hampshire*, 354 U.S. 234, 245, 248 (1957). UWS had no permissible reason to remove the postings and has no permissible reason to pursue criminal charges or even a disciplinary meeting with Miller. UWS must immediately end all investigation of Miller's protected speech.

FIRE asks that you fulfill UWS's moral and legal obligations to the First Amendment and common sense. UWS must immediately end its censorship of Miller's protected speech and should immediately apologize to Miller for threatening criminal charges against him. Miller's disciplinary record on this matter must be completely clear, and Hayes must rescind his request for a meeting with Miller. In addition, FIRE asks that UWS notify its faculty and students that

their protected speech will never again be the target of such investigation, censorship, and police intimidation.

This clear overreach by UWS's "threat assessment team" and campus police cannot stand. FIRE hopes to solve this matter amicably and swiftly, but we are committed to using all of our resources to bring about a just resolution in Professor Miller's case. Please spare the University of Wisconsin–Stout the embarrassment of a public fight against the Bill of Rights.

We have enclosed a signed waiver from Professor Miller, permitting you to freely discuss his case with FIRE. Due to the urgent nature of this case, we ask for an immediate response, no later than 5:00 p.m. Eastern Time on Friday, September 23, 2011.

Sincerely,



Adam Kissel

Vice President of Programs

Enclosures

cc:

Lisa A. Walter, Chief of Police/Director of Parking Services, University of Wisconsin–Stout  
Raymond Hayes, Interim Dean, College of Arts, Humanities and Social Sciences, University of  
Wisconsin–Stout

Julie Furst-Bowe, Provost and Vice Chancellor, University of Wisconsin–Stout