



SPEECH FIRST

1300 I St NW Suite 400E
Washington, DC 20005

October 19, 2020

Dr. Martin Abraham
Interim President
Western Illinois University
1 University Circle
Macomb, IL 61455

Sent via Electronic Mail (MA-Abraham@wiu.edu)

RE: Free Speech at Western Illinois University

Dear President Abraham:

Speech First is an organization that is dedicated to preserving the First Amendment by fostering a lively marketplace of ideas on college campuses throughout the United States. We seek to defend and preserve First Amendment principles of free speech and expression through our advocacy and litigation. As President of Speech First, I am writing to implore you to protect these First Amendment principles on your campus.

It is my understanding that on October 2, 2020, an organization called Students for Trump hosted a voter registration drive in front of the University Union at WIU. As the student volunteers registered voters and distributed materials, a WIU employee told them they were not allowed to be there, that their voter registration drive was illegal, and that they must leave. Students for Trump believed they were participating in constitutionally protected First Amendment activity and continued to distribute their materials and register students to vote. At this point, a group of WIU employees—in their official work attire—and students surrounded the group’s table, forming a human barricade preventing Students for Trump from communicating their message to the student body. Students for Trump withstood this officially sanctioned harassment for over an hour before packing up and leaving.

This incident flagrantly violated your students’ fundamental First Amendment rights and you have a duty to ensure it does not happen again. Government cannot impose restraints on the marketplace of ideas without overcoming tremendous barriers and the Supreme Court has long recognized that “[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools [of higher education].” *Healy v. James*, 408 U.S. 169, 180 (1972). Indeed, “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 of ‘conventions of decency.’” *Papish v. Board of Curators of Univ. of Mo.*, 410 U.S. 667, 670 (1973).

Students for Trump had every right to register voters at the University Union, yet WIU employees impermissibly prevented them from partaking in expressive activity. Students for Trump complied with WIU's policy on distributing printed materials and collecting signatures, yet they were still forced to leave.¹ Indeed, WIU's policy manual provides that "Western Illinois University is a 'free speech area,' including and especially the University Union. Any demonstrations are permitted on University premises as long as they do not disrupt the academic experience or threaten the safety of students and staff."² Despite WIU's claim that it supports free speech, university employees still prevented Students for Trump from voicing their views.

By shutting down the students' table, WIU engaged in blatant viewpoint discrimination. Here, your employees surrounded a student voter registration table and physically prevented students from expressing their views to the broader student body. This type of direct physical smothering of a message based on viewpoint violates the First Amendment's protection of core political speech. *See, e.g., Okwedy v. Molinari*, 333 F.3d 339, 344 (2d Cir. 2003) ("A public-official defendant who threatens to employ coercive state power to stifle protected speech violates a plaintiff's First Amendment rights, regardless of whether the threatened punishment comes in the form of the use (or, misuse) of the defendant's direct regulatory or decisionmaking authority over the plaintiff, or in some less-direct form.").

From my review of the evidence, your employees seem to believe that they were within their rights to shut down Students for Trump's message because it is "offensive." But "a state university may not suppress expression because it finds that expression offensive." *Piarowski v. Illinois Community College*, 759 F.2d 625, 630 (7th Cir. 1985). This "right to speak freely and to promote diversity of ideas and programs is . . . one of the chief distinctions that sets us apart from totalitarian regimes." *Terminiello v. City of Chicago*, 337 U.S. 1, 4 (1949).

The actions of WIU's employees deprived not only Students for Trump of their ability to engage in First Amendment activity, but also the entire student body from engaging with them. The First Amendment protects not only the speaker but the listener as well: "[f]reedom of speech presupposes a willing speaker. But where a speaker exists, as is the case here, the protection afforded is to the communication, to its source and to its recipients both." *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council*, 425 U.S. 748, 756 (1976). Or as Frederick Douglass put it, "[t]o suppress free speech is a double wrong. It violates the rights of the hearer as well as those of the speaker." By forming a human barricade around Students for Trump's table, WIU opposed this diversity of ideas, eliminating an entire viewpoint from campus discussion. American universities are "peculiarly the marketplace of ideas," training future leaders "through wide exposure to that robust exchange of ideas which discovers truth out of a multitude of tongues, rather than through any kind of authoritative selection." *Keyishian v. Bd. of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 603 (1967). WIU employees impermissibly and unconstitutionally suppressed Students for Trump's message and

¹ *See* W. ILL. U., APPENDIX J - POLICY ON DISTRIBUTION OF PRINTED MATERIALS AND COLLECTION OF SIGNATURES, http://www.wiu.edu/vpas/human_resources/civil_service_handbook/appendix_j.php.

² *See* W. ILL. U., POLICY MANUAL 15 (2018), <https://bit.ly/31ggFFX>.

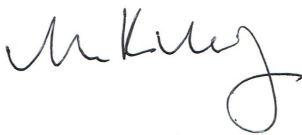
speech—part of which was simply promoting civic engagement through a voter registration drive. This violation of First Amendment protections must be remedied.

WIU should amend its policies and procedures to make clear that this behavior by WIU employees will not be tolerated. This incident was symptomatic of a larger problem. WIU has been deemed a red light school for free speech by the Foundation for Individual Rights in Education (FIRE), indicating that at least one of University’s speech codes “clearly and substantially restricts freedom of speech.”³ In light of these policies, it is little wonder that your employees and students felt emboldened to physically suppress Students for Trump’s speech. In addition to disciplining the employees who shut down the table, the University should issue a statement condemning the behavior of those WIU employees and making the University’s stance on protecting free speech clear. Finally, Students for Trump should be allowed and encouraged to return and participate in lively First Amendment activity.

As the president of a university, you have an emphatic duty to stand against the “mobocratic spirit”⁴ that led your employees to suppress your students’ fundamental right to Free Expression. Without the vigorous exchange of ideas on campuses protected by the First Amendment, “our civilization will stagnate and die.” *Sweezy v. N.H. ex rel. Wyman*, 354 U.S. 234, 250 (1957). We urge WIU to uphold the First Amendment principles it claims to value. WIU has fallen short, but we are hopeful that through concerted effort, a lively marketplace of ideas will once more flourish on WIU’s campus.

Thank you for your time and consideration of these pivotal First Amendment issues. We look forward to hearing from you.

Sincerely,



Nicole Neily
President, Speech First

CC: Elizabeth Duvall, General Counsel

³ See FIRE, *School Spotlight: Western Illinois University*, <https://bit.ly/3dwDb2t>.

⁴ Abraham Lincoln, *The Perpetuation of Our Political Institutions: Address Before the Young Men’s Lyceum of Springfield, Illinois* (Jan. 27, 1838).