



February 10, 2020

Dean Van Galen
Chancellor, UW-River Falls
116 North Hall
410 S. 3rd Street
River Falls, WI 54022
chancellor@uwrfl.edu

Re: *Unconstitutional Suppression of Student Expression on Campus*

Dear Chancellor Galen,

Alliance Defending Freedom has been retained by Sofie Salmon, a Freshman at UW-River Falls, who was told by a campus administrator that she could not engage in expression in the public outdoor areas of campus without paying for a reservation. The administrator threatened to call the police if Sofie did not silence herself or move to the outskirts of campus. The University's policies are unconstitutional and require immediate revision.

To avoid litigation and comply with the First Amendment we request that you immediately revise UW-River Falls' policies on expression to permit students to engage in expression in public outdoor areas without prior restraint.

By introduction, ADF's Center for Academic Freedom is dedicated to, and with a track record of, ensuring freedom of speech and association for students and faculty so that everyone can freely participate in the marketplace of ideas without fear of government censorship.¹

¹ Alliance Defending Freedom has consistently achieved successful results for its clients before the United States Supreme Court, including nine victories before the highest court in the last nine years. *See, e.g., NIFLA v. Becerra*, 138 S. Ct. 2361 (2018) (upholding ADF's client's free speech rights against the State of California); *Masterpiece Cakeshop, LTD. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 1719 (2018) (upholding ADF's client's First Amendment rights); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017) (upholding ADF's client's First Amendment rights); *Zubik v. Burwell*, 136 S. Ct. 1557 (2016) (representing Geneva College and Southern Nazarene University in consolidated cases) (upholding ADF's clients' First Amendment rights); *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218 (2015) (unanimously upholding ADF's client's free-speech rights); *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014) (representing Conestoga Wood Specialties Corp. in consolidated case) (striking down federal burden's on ADF's client's free-exercise rights); *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014) (upholding a legislative prayer policy

Factual Background

On September 6, 2019, excited to start her first semester in college, Sofie Salmon decided to walk around campus to express her appreciation for free speech and recruit members to start a conservative club on campus. To do so, she and a couple of friends rolled an oversized beachball around (calling it a “free speech ball”) so that students could express themselves by writing messages on it.

In doing so, Sofie did not block any sidewalks, impede traffic, hinder instruction, or in any way disrupt the campus educational environment. She stayed only in public outdoor areas where other students often walk and talk.

Even so, UW-River Falls Conference and Contract Services Manager Kristin Barstad approached Sofie and told her that she must stop and leave immediately. When Sofie asked why and what policy forbade her from speaking, Ms. Barstad was unable to cite a specific policy but stated that even though Sofie was a student she would have to pay to reserve space to engage in expression. The only place she could speak without permission from the University, Sofie was told, is on the public sidewalk on the edge of campus.

When asked what the consequences would be if she kept talking with other students without permission, Sofie was told that the police would be called. Under this threat, Sofie reluctantly packed up and returned to her dorm.

Several weeks later, Sofie attempted to find the University’s policies regulating speaking in public outdoor areas and was unable to locate the policies Ms. Barstad mentioned on your website. So, she emailed Ms. Barstad to ask where she could find the applicable policies and how she could reserve space in the future. *See Exhibit 1*. The only reply Sofie received was from another administrator advising her on how to form a student club. While Sofie was grateful for that information, she still wished to the regulations for speaking outdoors and replied requesting that information again. *See Exhibit 2*. She never received a response.

Analysis

As I’m sure you are well aware, “state colleges and universities are not enclaves immune from the sweep of the First Amendment.”² In fact, “the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools,”³ because “the core principles of the First Amendment ‘acquire

promulgated by a town represented by ADF); *Ariz. Christian Sch. Tuition Org. v. Winn*, 131 S. Ct. 1436 (2011) (upholding a state’s tuition tax credit program defended by a faith-based tuition organization represented by ADF).

² *Healy v. James*, 408 U.S. 169, 180 (1972).

³ *Id.* (quoting *Shelton v. Tucker*, 364 U.S. 479, 487 (1960)).

a special significance in the university setting, where the free and unfettered interplay of competing views is essential to the institution's educational mission.”⁴

Thus, public universities have a constitutional obligation to uphold the marketplace of ideas through clear, objective policies that promote the ability of students to engage in the free exchange of ideas and competing views on campus.

As Sofie's attorneys, we have attempted to find and interpret the policies under which she was threatened with arrest. The potentially-applicable policies we were able to find were not easily accessible by students through typical search terms on your website. In addition, the policies are vague and as applied to Sofie are unconstitutional.

Administrative Policy AP-01-103, AWS 21.06, and the University Centers' Policy and Procedures Manual all appear to have some guidelines relating to facility and grounds use, but none specifically articulate how they apply to students who are not acting as part of a registered student organization. According to the administrator who threatened to call the police on Sofie, her expression as a student on campus appears to be treated the same as an outside organization seeking to speak on campus. Thus, Sofie was told she must reserve a space ahead of time and pay a fee to do so.

As a result, as explained below, UW-River Falls' policies are unconstitutional because they act as a prior restraint on speech, grant administrators unbridled discretion to disfavor speakers due to their viewpoint, are vague, and not tailored to any compelling interest.

Limiting student speech to a select location on campus is unreasonable and violates the free speech rights of every student.⁵ The public spaces of campus must be open to free speech for all students. Not only is the “college classroom with its surrounding environs . . . peculiarly the ‘marketplace of ideas,’”⁶ but the Supreme Court “has [also] recognized that the campus of a public university, at least for its students, possesses many of the characteristics of a public forum.”⁷

Thus, “to the extent the campus has park areas, sidewalks, streets, or other similar common areas, these areas are public forums, at least for the University's students, irrespective of whether the University has so designated them or not. These areas comprise the irreducible public forums on the campus.”⁸ Thus, they

⁴ *Coll. Republicans at S.F. State Univ. v. Reed*, 523 F. Supp. 2d 1005, 1016 (N.D. Cal. 2007) (quoting *Doe v. Univ. of Mich.*, 721 F. Supp. 852, 863 (E.D. Mich. 1989)).

⁵ See, e.g., *Roberts v. Haragan*, 346 F. Supp. 2d 853, 863 (N.D. Tex. 2004).

⁶ *Healy*, 408 U.S. at 180.

⁷ *Widmar v. Vincent*, 454 U.S. 263, 267 n.5 (1981).

⁸ *Roberts*, 346 F. Supp. 2d at 861; accord *Justice for All v. Faulkner*, 410 F.3d 760, 766-69 (5th Cir. 2005); *Smith v. Tarrant Cnty. Coll. Dist.*, 694 F. Supp. 2d 610, 625 (N.D. Tex. 2010) (“Typically, at least for the students of a college or university, the school's campus is a designated public forum.”);

must be open to free debate and expression for all students at your school. The university may “open up more of the residual campus as public forums for its students, but it can not [sic] designate less.”⁹

Of course, public universities may establish reasonable “time, place and manner” restrictions on expressive activity to limit disruptions to university activities. But these restrictions must be content neutral and “narrowly tailored” to “serve a significant governmental interest,” and they must “leave open ample alternative channels for communication.”¹⁰

Here, the University treats individual students that are not part of a registered club the same as if they were not members of the university community.¹¹ Indeed, far from recognizing the public areas of campus as a public forum or even a designated public forum for students, UW-River Falls policies apparently forbid individual students from engaging in any expression or distribution of literature unless it is pre-approved and the speakers are assigned a specific location.¹² Furthermore, the University’s policies restrict the content of expression,¹³ prohibit anonymous speech,¹⁴ prohibit spontaneous speech,¹⁵ and grant unbridled discretion to administrators who may approve or disapprove of the speech based on its content or viewpoint.¹⁶ Each restriction violates the First Amendment.

First, a blanket ban on expression and literature distribution absent pre-approval is not a reasonable time, place, and manner restriction, nor is it narrowly tailored to any significant interest.¹⁷ “[A] law requiring a permit to engage in such speech constitutes a dramatic departure from our national heritage and constitutional tradition.”¹⁸ Second, limiting expression to what administrators deem

Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov't, 100 P.3d 179, 190 (Nev. 2004) (“Typically, when reviewing restrictions placed on students’ speech activities, courts have found university campuses to be designated public forums.”); *Univ. of Cincinnati Chapter of Young Ams. for Liberty v. Williams*, 2012 WL 2160969, at *4 (S.D. Ohio June 12, 2012) (citing *McGlone v. Bell*, 681 F.3d 718, 732 (6th Cir. 2012)) (noting that the Sixth Circuit found that such campus locations are public fora); *Hays Cnty. Guardian v. Supple*, 969 F.2d 111, 116 (5th Cir. 1992); *Pro-Life Cougars v. Univ. of Hous.*, 259 F. Supp. 2d 575, 581-82 (S.D. Tex. 2003).

⁹ *Roberts*, 346 F. Supp. 2d at 862.

¹⁰ *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).

¹¹ See Kyle Hooten, *UW Official Tells Conservative Student with ‘Free Speech Ball’ to Move or Face the Cops*, CampusReform.org, Sept. 6, 2019, <https://www.campusreform.org/?ID=13677>.

¹² UWRF, University Centers’ Policy and Procedures Manual, 6; see also *supra* note 11.

¹³ UWRF, University Centers’ Policy and Procedures Manual, 6 (students not part of an official group may only rent space for expression “[i]f, in the judgment of University Center’s staff, the meetings or activities . . . will contribute to serve the university’s purpose . . .”).

¹⁴ Hooten, *supra* note 12, Policy Manual, *supra* note 12, at 6.

¹⁵ *Id.*

¹⁶ Policy Manual, *supra* note 13.

¹⁷ *Watchtower Bible & Tract Soc’y of N.Y. v. Vill. of Stratton*, 536 U.S. 150, 166–167 (2002).

¹⁸ *Id.* at 166.

to “serve the university’s purpose”¹⁹ is per-se content discrimination prohibited by the First Amendment, as well as vague and permitting unbridled discretion.²⁰

Third, the registration requirement by necessity mandates that individual speakers must identify themselves to the administration. But the United States Supreme Court has repeatedly made clear that bans on anonymous speech violate the First Amendment.²¹ Fourth, requiring pre-approval for expressive use of the grounds effectively bans spontaneous speech or demonstration and operates as a prior restraint. Such spontaneous speech is protected by the First Amendment,²² and “[a]ny system of prior restraints of expression comes to [the Supreme] Court bearing a heavy presumption against its constitutional validity.”²³ Lastly, the policy grants unbridled discretion to administrators because it fails to limit their discretion with “*narrow, objective, and reasonable standards* by which the [facility use] will be judged,” permitting viewpoint discrimination.²⁴

Conclusion

The Supreme Court’s “precedents . . . 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.”²⁵ The First Amendment requires public universities to permit students to engage in expression in public outdoor areas without pre-approval requirements and without granting administrators discretion to determine if the content of speech is acceptable or not.

UW-River Falls’ policies currently violate the First Amendment and our client’s rights. On behalf of our client, we therefore ask that you respond to us in writing—no later than February 24—with the following: 1) identifying the policy applied to prohibit Sofie from speaking, and 2) agreeing to revise the outdoor facility use policies to ensure that administrators do not prohibit students from speaking spontaneously in public outdoor areas. Specifically, the revision must remove prior restraints on speech and curb administrators’ discretion to restrict speech by requiring any constraints to be limited to reasonable time, place, and manner restrictions that are narrowly tailored to significant government interests. Policies must guide administrators with exhaustive, content- and viewpoint-neutral criteria to use whenever restrictions are imposed on student speech. Furthermore,

¹⁹ Policy Manual, *supra* note 13.

²⁰ *Westfield High Sch. L.I.F.E. Club v City of Westfield*, 249 F. Supp. 2d 98, at 104, 123–24 (D. Mass. 2003) (holding high school policy limiting distribution to “curriculum or activity related literature” was unconstitutional).

²¹ *See, e.g., Talley v. California*, 362 U.S. 60, 64 (1960); *Watchtower Bible & Tract Soc’y*, 536 U.S. at 166–167.

²² *Watchtower Bible & Tract Soc’y*, 536 U.S. at 167–68.

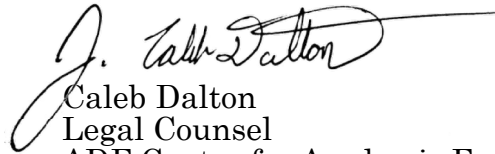
²³ *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963). *See also Westfield*, 249 F. Supp. 2d at 127 (holding that high school’s prior restraint on literature distribution as unconstitutional).

²⁴ *Westfield High Sch.*, 249 F. Supp. 2d at 125.

²⁵ *Healy*, 408 U.S. at 180.

any restriction on speech much be supported by a written decision, justified by clear criteria, with the ability to appeal in order to “render [the government’s decisions] subject to effective judicial review.”²⁶ Absent such assurances, our client will be forced to consider litigation to vindicate her rights. If UW-River Falls is committed to revising its policies, we would be pleased to work with you during that process. We have collaborated successfully with administrators at colleges and universities nationwide to amicably and efficiently revise unconstitutional policies.

Sincerely,


Caleb Dalton
Legal Counsel
ADF Center for Academic Freedom

By local counsel:

Karen Mueller
Legal Counsel
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Enclosures:

1. Email from Sofie Salmon to Kristin Barstad
2. Follow up email from Sofie Salmon to Karyn Wells

²⁶ *Thomas v. Chi. Park Dist.*, 534 U.S. 316, 323 (2002).

From: Sofie Salmon

Sent: Wednesday, November 6, 2019 3:18 PM

To: Kristin Barstad [REDACTED]

Subject: Student policies

Dear Ms. Barstad:

I am a freshman at UW River Falls and am very interested in starting a student organization dedicated to advancing conservative values on campus. You may recall that a few weeks ago some friends and I were trying to recruit members for the student organization using a free speech ball that we were taking around campus. Although we were not aware of any restrictions on our ability to recruit members with a free speech ball we alerted the administration as to what we were doing so they would know what was going.

While we were speaking you approached us and told us that we had to stop or move off campus as we were violating university policy with our occupation of space (even though we were moving around). We were also informed that since we were not yet a University registered club, we were to be treated as an external guest and were violating university policy and would need to register to use a space and pay a fee. You mentioned that our only other option was to locate to a corner of campus near the street. On the spur of the moment, you were not able to point us to a specific policy, but you did tell us that if we were not willing to move, you would call the campus police to escort us out.

I was really surprised about this as I'd never heard of these policies and it is confusing me as to how I'm supposed to go about talking with other students without paying a fee or having to book a space. I looked all over the website and haven't been able to locate any information on policies we might have violated, nor the policy requiring payment for the use of space. Could you point me to the policies that are applicable to students speaking on campus and paying to reserve space so I can understand in the future what the guidelines are and how I can recruit for our club? Thanks!

Sincerely,
Sofie Salmon

From: Sofie Salmon [REDACTED]
Sent: Friday, November 15, 2019 2:25 PM
To: Karyn Wells [REDACTED]
Subject: Re: New Student Organization

Hello Ms. Wells,

Thank you for the information on starting a new organization. I will keep working on that. In the meantime, can you help me with the questions I originally emailed about regarding the policies on speaking in public and reserving space? It was very disconcerting to be threatened with having the police called on me and I cannot find any policies about speaking to other students or reserving outdoor space on the website. It makes it really hard to know what I can and cannot do when I cannot figure out what the policies are.

Thank you,

Sofie Salmon

From: Karyn Wells [REDACTED]
Sent: Friday, November 8, 2019 7:55 AM
To: Sofie Salmon [REDACTED]
Subject: New Student Organization

Greetings Sofie!

I received your email below from Kristin Barstad, who mentioned you are interested in starting a new student organization at UW-River Falls. My office works directly with students to support them in this process. Below you will find the minimum requirements for starting a Recognized Student Organization (RSO). Be sure to scroll down to the bottom to find the link to the New Student Organization Handbook – this will be a great resource for you as you begin this process.

Please take a look at the information and reach out with any questions you have!

I look forward to hear from you.

Best,

Karyn Wells

Minimum Requirements: Recognized Student Organizations

- Complete the [new student organization application](#), including a constitution and set of bylaws.
- The organization must consist of at least 4 members, three-quarters of your members must be students enrolled at UWRF
- Find a UWRF faculty or staff member to be your Advisor

- Extend membership and all membership privileges, including voting and eligibility to hold office, to all UWRF students

To learn more about the benefits of becoming a registered student organization, and to access the New Student Organization Handbook Click [here!](#)



From: Sofie Salmon [Redacted]
Sent: Wednesday, November 6, 2019 3:18 PM
To: Kristin Barstad [Redacted]
Subject: Student policies

Dear Ms. Barstad:

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