December 16, 2004

Donald J. Mash
Chancellor
Schofield 204A
University of Wisconsin-Eau Claire
Eau Claire, Wisconsin 54702

URGENT

Sent by U.S. Mail and Facsimile (715) 836-2902.

Dear Chancellor Mash:

As you can see from our Directors and Board of Advisors, FIRE unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, due process, legal equality, voluntary association, freedom of speech, and religious liberty on America's college campuses. Our web page, www.thefire.org, will give you a greater sense of our identity and activities.

We are gravely concerned about two recent controversies at University of Wisconsin – Eau Claire. First, we understand that UWEC is considering adding language to its service learning policy which would ban students from engaging in religious activity for the required service learning credit. We further understand that UWEC believes it is required to do so under the Establishment Clause of the First Amendment of the U.S. Constitution. Second, we also understand that the Student Senate has denied funding to a student magazine for failing to prove that it is not "biased." Both of these issues demonstrate an alarming misunderstanding and misapplication of the First Amendment and potentially infringe on the basic rights guaranteed to students at a public university.

While FIRE would be happy to elabor

the program itself is not religious. For example, the state must provide religious student groups equal access to student activity fee funds (see *Rosenberger v. University of Virginia*, 515 U.S. 819 (1995)) and may even provide educational vouchers to explicitly religious schools (see *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002)). If UWEC decides to proceed with such a ban it must be aware that it does so under no obligation from federal law. UWEC may also want to consider that such a ban could exclude many worthwhile programs from consideration, including Alcoholics Anonymous, the YMCA, Teen Challenge, Catholic Charities, the Salvation Army, various Boys and Girls Clubs and many, many others.

Second, the Student Senate fundamentally misunderstands the idea of "viewpoint neutrality" and its application of this principle is not only wrong, but unconstitutional. According to an article in *The Spectator*, the Student Senate Finance Commission director, Matt Wisnefske, stated that in order to be recognized, *The Flip Side* student magazine had to be "ideologically neutral" and that some "concerns over its material being biased" prevented it from receiving available funding. More recently, Wisnefske was quoted in *The Spectator* as saying, "We want to exclude any groups that would be religious in nature, political in nature or anything that would have a political agenda (from being funded through student segregated fees)." This is a deeply troubling statement that is directly at odds with decades of Supreme Court cases, including *Healy v. James*, 408 U.S. 169 (1972) and *Board of Regents v. Southworth*, 529 U.S. 217 (2000).

The Student Senate's obligation to distribute student funds in a viewpoint-neutral manner does not mean that it can require that any funded group have no viewpoint. **It means that the Student Senate must distribute funds *regardless* of the viewpoint espoused, whether those points of view are "religious" or "progressive" or anything else.** Indeed, the Student Senate's misunderstanding of the principle results in the Student Senate granting itself the power to arbitrarily censor—a result the First Amendment does not permit on a public campus.

In both of these cases, faculty and student administrators are confusing the university's obligation as a state actor with that of its faculty and students who are private citizens. Through the current student funding criteria, the university is in fact violating its own responsibility to be viewpoint neutral by imposing its own viewpoint (in this case an amorphous and unattainable belief that "bias" must be avoided) on protected expression. For example, it would be unlawful for university administrators to organize a religious service or political rally and require students to attend; however, it is obligated to allow students to organize and participate in activities related to their respective faiths or political ideologies on campus. To allow students to engage in such activity does not mean that the university endorses a particular religion or viewpoint, but rather it protects the individual rights of all of its students to have beliefs, express those beliefs, and act on those beliefs.

We understand that the American Center for Law and Justice has already written a similar letter to Professor Kent M. Syverson against the religious service learning ban that has been largely ignored in the debate and highlights points similar to ours. We agree with its assessment that "the proposed amendment raises more constitutional difficulties than it allegedly solves."

FIRE hopes that we can resolve this situation thoroughly and swiftly. We request that the University of Wisconsin at Eau Claire reconsider the proposed ban on religious service learning

in light of the fact that the law requires no su