



May 15, 2019

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Williamstown, Massachusetts 01267

*Sent via U.S. Mail and Electronic Mail (msm8@williams.edu)*

Dear President Mandel:

The Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

FIRE is concerned about the threat to freedom of expression at Williams College following the decision by the College Council (CC) to deny recognition to proposed student group Williams Initiative for Israel (WIFI). In this case, the College Council has abused the authority granted to it by Williams College to recognize student organizations and distribute student fees. A college committed to freedom of expression, as Williams purports to be, cannot ratify violations of that freedom by agents to whom the college delegates authority.

## **I. Facts**

The following is our understanding of the pertinent facts. We are informed in significant part by the reporting of student newspaper *The Williams Record*, given that the CC has removed certain documentation of its recent meetings from public view.<sup>1</sup> We appreciate that you may have additional information to offer and invite you to share it with us.

Prospective student group WIFI requested recognition as a registered student organization (RSO) at the CC's April 16, 2019 meeting, and discussions were tabled until the next session. In an anonymous vote on April 23, the CC denied recognition to WIFI after contentious debate at both meetings regarding the group's viewpoint. This result is unusual: *The Williams Record*

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<sup>1</sup> A copy of minutes of the April 23 meeting have been made available by a student journalist. David Dudley Field, *College Council Meeting Notes*, EPHBLOG (Apr. 26, 2019, 7:22 AM), <http://ephblog.com/2019/04/26/college-council-meeting-notes-2>.

reported that WIFI is “the first club in over a decade that complied with all CC bylaws for recognition but failed to gain RSO status.”<sup>2</sup>

According to the *Record*, at both the April 16 and April 23 meetings, “there was heated debate among a number of guests, including representatives of WIFI and students advocating against the club,” about WIFI’s mission, which includes supporting Israel.<sup>3</sup>

One student critic of WIFI’s proposed RSO recognition argued at the April 23 meeting that “there are ways of supporting Israeli statehood that don’t support the occupation or human rights abuses against Palestinians, but there are ways of doing that that definitely do . . . [WIFI’s] inability to take a political stance with reference to those issues was incredibly problematic, and I think it came out during several parts of the conversation.” Another student argued, “Regardless of what angle you approach it from, I think almost everyone will agree that massive abuses are happening, and I think that you need sort of a special consideration and debate when it comes to voting for RSOs that affiliate themselves with a state involved in such a conflict.”

A WIFI member disagreed with the opposition, stating that the group is hoping “to engage in educational initiatives, hold events, bring speakers to campus from a wide variety of political backgrounds with this issue and just put out more information so that students can look at all the available info and make a decision for themselves,” and further noted that WIFI is “not interested in dictating a political position to students or faculty here.”<sup>4</sup>

The *Record* notes a number of departures from the CC’s normal process with respect to WIFI’s proposed recognition, including an anonymous vote, a decision to not livestream the meeting, and redaction of the names of councilmembers and others who spoke during the April 23 meeting from the minutes. The paper’s editorial board criticized the anonymous vote, writing, “We understand that there are exceptional circumstances for withholding guest identities, such as from the April 23 meeting, where there were legitimate safety concerns, but we believe that councilmembers should be named and that their votes should be specified in the minutes document, which may be accessed by anyone with a Williams email account.”<sup>5</sup>

In a May 1 op-ed for The *Record*, WIFI members Molly Berenbaum, Maxwell Plonsker, and Gavin Small wrote, “it is apparent that WIFI was denied official status on purely political grounds, as CC members and guests fought to silence us and effectively turned the meeting into a referendum on Israeli-Palestinian politics.”

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<sup>2</sup> William Newtown, *CC rejects Williams Initiative For Israel*, WILLIAMS RECORD, May 1, 2019, <https://williamsrecord.com/2019/05/cc-rejects-williams-initiative-for-israel>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Editorial Board, *Toward fairness and accountability*, WILLIAMS RECORD, May 1, 2019, <https://williamsrecord.com/2019/05/toward-fairness-and-accountability>.

They further explained:<sup>6</sup>

CC is tasked with determining whether a proposed organization meets the required criteria to become an RSO; its role is not to evaluate the substance of what it perceives to be the organization's ideas or positions. If any member of CC had such strong opinions about what they perceived to be WIFI's political positions that they were unable to be impartial on the matter of the club's approval, they should have recused themselves from the vote rather than vote the club down based on their own personal views.

In a May 3 statement, you acknowledged that the CC's "decision was made on political grounds":

[The] Council departed from its own process for reviewing student groups, which at no point identifies a proposed group's politics as a criterion for review. The decision also seems to be in tension with CC bylaws, especially Article V, Section 3: "Prohibition Against Discrimination in Student Organizations."

We've always expected the Council to follow its own processes and bylaws. I'm disappointed that that didn't happen in this instance. College leaders have communicated to the organizers of Williams Initiative for Israel that the club can continue to exist and operate without being a CC-approved RSO. This is not a special exception. It's an option that has been open to any student group operating within the college's code of conduct. Even without CC approval, WIFI or any other non-CC organization can still access most services available to student groups, including use of college spaces for meetings and events, and we are guaranteeing them exactly equal resources. I see the communication of this fact to WIFI as a basic matter of fairness and people's right to express diverse views. Differences over such views are legitimate grounds for debate, but not for exercising the power to approve or reject a student group.<sup>7</sup>

Your May 3 statement was subsequently edited to claim that WIFI "can still access **all** services available to student groups," as opposed to the original statement's specification of access to "most services."<sup>8</sup> It is unclear whether the modified statement is intended to assert that WIFI has access to the funding distributed by the CC, which does not recognize WIFI. The College

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<sup>6</sup> Gavin Small, *et al.*, *Why WIFI deserved recognition from CC: Standing against CC's silencing of WIFI*, WILLIAMS RECORD, May 1, 2019, <https://williamsrecord.com/2019/05/why-wifi-deserved-recognition-from-cc-standing-against-ccs-silencing-of-wifi>.

<sup>7</sup> *College Council vote on Williams Initiative for Israel*, WILLIAMS COLLEGE, May 3, 2019, archived at <https://web.archive.org/web/20190503210721/https://president.williams.edu/letters-from-the-president/college-council-vote-on-williams-initiative-for-israel>.

<sup>8</sup> *College Council vote on Williams Initiative for Israel*, WILLIAMS COLLEGE, May 3, 2019, <https://president.williams.edu/letters-from-the-president/college-council-vote-on-williams-initiative-for-israel> (emphasis added).

Council is “entrusted with the responsibility of distributing” the Student Activities Tax paid by each student to the college.<sup>9</sup>

As of today, WIFI remains unrecognized as an RSO by the College Council.

## II. Analysis

Though Williams is a private college, and is not bound by the First Amendment, you have recognized that the College Council violated “fairness and people’s right to express diverse views,” making clear that free expression is an important value to the institution. In the same vein, the college’s “Individual Rights” policy states that Williams “is committed to being a community in which all ranges of opinion and belief can be expressed and debated, and within which all patterns of behavior permitted by the public law and College regulations can take place.”<sup>10</sup>

Having made these commitments, Williams is legally and morally bound to uphold them. *See, e.g., Doe v. Brandeis Univ.*, 177 F.Supp.3d 561, 599–601 (D. Mass. 2016) (noting that it is “well-established” that “the student-college relationship is contractual in nature,” and that contract formed between college and student should be interpreted by student’s “reasonable expectation” of terms of college’s policies). Decades of First Amendment jurisprudence and the common recognition of the First Amendment’s requirement of viewpoint neutrality inform students’ reasonable expectations of a private institution that promises them freedom of expression.

The principle of freedom of speech does not exist to protect only non-controversial expression; it exists precisely to protect speech that some members of a community may find controversial or offensive, including WIFI’s proclaimed or perceived views. Speech “may indeed best serve its high purpose when it induces a condition of unrest . . . or even stirs people to anger.” *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949). “Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea.” *Id.* Freedom of expression at its core means that speech cannot be restricted simply because it may be controversial, particularly in institutions of higher education. *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 670 (1973) (“[T]he 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.’”).

Under the First Amendment, burdens on expression on the basis of a speaker’s viewpoint are closely scrutinized and rarely upheld. When authorities target “not subject matter but particular views taken by speakers on a subject, the violation” of expressive rights “is all the more blatant.” *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995).

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<sup>9</sup> *Student Activities Tax*, WILLIAMS COLLEGE COUNCIL, [https://collegecouncil.williams.edu/?page\\_id=3376](https://collegecouncil.williams.edu/?page_id=3376) (last visited May 13, 2019).

<sup>10</sup> *Code of Conduct*, WILLIAMS COLLEGE, <https://dean.williams.edu/student-handbook/code-of-conduct> (last visited May 13, 2019).

“Viewpoint discrimination is thus an egregious form” of censorship, and authorities “must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.” *Id.*

In discussing matters of societal and political importance, one would be hard-pressed to find an opinion or position that is not controversial to *someone*. By refusing to grant WIFI recognition because some members of the campus community are opposed to its real or perceived stances, the CC restricts free and open dialogue on campus, to the detriment of Williams students’ expressive rights. More to the point, the CC engaged in the very viewpoint discrimination forbidden under any common understanding of “freedom of expression.” Encouraging open, and sometimes controversial, debate is not always an easy endeavor. But it is a far better alternative than abusing authority to prevent those debates from happening at all.

Prohibiting viewpoint-discrimination is particularly critical when the college delegates its authority to student governments—for example, to recognize student organizations or to allocate student fees levied and collected by the college. The Supreme Court has held that a public college that maintains a student funding system for recognized student organizations must ensure that the distribution of student funds is conducted in a viewpoint-neutral manner. *Bd. of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 233 (2000) (“When a university requires its students to pay fees to support the extracurricular speech of other students, all in the interest of open discussion, it may not prefer some viewpoints to others.”). Viewpoint-neutral distribution ensures that although fees may be used to advance views some students find objectionable, those students have the ability to request fees to engage in counterspeech of their own.

The same operating principles must hold true at Williams, a private institution committed to free speech. Although the CC is not legally bound by the First Amendment, it fundamentally undermines First Amendment principles when it acts to stifle speech that it does not like. That the CC, rather than Williams itself, used its authority to make such decisions does not absolve the college of its responsibility to act when those principles are violated.

Furthermore, if the CC were to vote on every application on the basis of student opposition to the organization’s beliefs, as it did with WIFI, Williams would likely see the number of its registered student organizations dwindle. Surely Williams and the CC understand that any recognized group on campus that takes a religious or political stance could be considered offensive or unwelcome to those who disagree with that group’s beliefs. Some organizations currently recognized by the CC—Williams College Feminist Collective, Williams Secular Community, Williams Catholic, Students for Justice in Palestine, Society for Conservative Thought, to name just a few<sup>11</sup>—would likely face opposition by *someone* on campus, but that does not lessen the contributions they may make to campus life. Indeed, students from WIFI wrote that they “celebrated” that Students for Justice in Palestine “have been given a platform

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<sup>11</sup> Registered Student Organizations (RSO’s), WILLIAMS COLLEGE, <https://student-life.williams.edu/student-involvement/student-organizations> (last visited May 10, 2019).

to support their cause” and voiced that they were “requesting only that students with a different perspective be given that same platform and opportunity to be heard.”<sup>12</sup>

FIRE understands that the College Council exists to address the voices of its campus community, including those who object to WIFI’s recognition. But students who oppose WIFI’s mission and views are certainly not without means to express that opposition. The College Council may encourage them to use their own voices, and form their own organizations, but it cannot hamper WIFI members’ ability to use theirs. Moreover, Williams may not delegate functions to a student government that uses that authority to violate the expressive rights Williams promises all students.

Given that Williams is currently considering new policies addressing freedom of speech on its campus,<sup>13</sup> now would be an appropriate time to grant WIFI RSO status, ensuring equal access to the funds and resources available to all other RSOs. Williams should further revise or implement policies to guarantee that, going forward, prospective student groups will not face viewpoint discrimination from agents of the college.

We hope to soon praise Williams College for granting registered student organization status to WIFI and preserving freedom of expression on its campus for all students.

We request receipt of a response to this letter by the close of business on May 29, 2019.

Sincerely,



Sarah McLaughlin

Senior Program Officer, Legal and Public Advocacy

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<sup>12</sup> Small, *supra* note 6.

<sup>13</sup> Jeremy Bauer-Wolf, *Free Speech ‘Meltdown,’* INSIDE HIGHER ED, Apr. 23, 2019, <https://www.insidehighered.com/news/2019/04/23/williams-college-rework-free-speech-policies-after-controversies>.