



August 8, 2024

Mark Mone  
Office of the Chancellor  
University of Wisconsin-Milwaukee  
Chapman Hall 202  
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Milwaukee, Wisconsin 53201

*Sent via U.S. Mail and Electronic Mail (mone@uwm.edu)*

Dear Chancellor Mone:

FIRE,<sup>1</sup> a nonpartisan nonprofit dedicated to defending freedom of speech, is concerned by the University of Wisconsin-Milwaukee's suspension and ongoing investigation of five pro-Palestinian student groups for a July 19 Instagram post. The post, written in the name of an umbrella group called "UWM Popular University for Palestine," said, "We refuse to normalize extremists and extremist groups walking around our campus" and, "Any organization that has not separated themselves from Israel will be treated accordingly as extremist criminals."<sup>2</sup> It concluded by telling readers to "Stay tuned."<sup>3</sup> As a public institution, UWM must refrain from investigating or punishing students for expression protected by the First Amendment.<sup>4</sup> As explained below, now that several weeks have passed, unless UWM has evidence that the Instagram post was not protected political expression, it must close the investigation and end the groups' suspension.

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<sup>1</sup> For more than 20 years, the Foundation for Individual Rights and Expression has defended freedom of expression, conscience, and religion, and other individual rights on America's university campuses. You can learn more about our mission and activities at [thefire.org](https://thefire.org).

<sup>2</sup> Dion J. Pierre, *Anti-Israel Coalition at University of Wisconsin-Madison Issues Threat to Jewish Community*, THE ALGEMEINER (July 24, 2024, 9:51 AM), <https://www.algemeiner.com/2024/07/24/anti-israel-coalition-university-wisconsin-milwaukee-issues-threat-jewish-community/>.

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

<sup>4</sup> See *Healy v. James*, 408 U.S. 169, 180 (1972) ("[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.'" (internal citation omitted).

UWM announced its investigation on July 20, just a day after UWM Popular University for Palestine’s Instagram post, labeling the post “hateful” and “intimidating.”<sup>5</sup> On July 31, your office told the campus community that Students for Justice in Palestine, the Muslim Student Association, Students for a Democratic Society, Young Democratic Socialists of America, and Un-PAC, which were “associated” with the posting organization, had been “temporarily suspended ... as part of UWM’s ongoing investigation.”<sup>6</sup>

UWM policies and practices regarding student expression must comport with the First Amendment’s “bedrock principle” of viewpoint neutrality,<sup>7</sup> even when that expression involves ideas and views that some find offensive.<sup>8</sup> That principle does not change with respect to speech that many would deem “hateful.”<sup>9</sup> Government entities cannot, for example, punish the wearing of a jacket emblazoned with the words “Fuck the Draft” (even in a courthouse),<sup>10</sup> penalize satirical articles that depict a famous pastor losing his virginity to his mother in an outhouse,<sup>11</sup> or punish a student for posting a picture to social media with a caption sardonically referencing the Holocaust.<sup>12</sup> UWM therefore cannot, consistent with its obligations under the First Amendment, punish the coalition for allegedly offensive expression.

In its statement, UWM cites allegedly “intimidating language” as a basis for its investigation and the groups’ subsequent suspension.<sup>13</sup> But public universities can punish such language only if it constitutes an unprotected true threat, or a statement through which “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.”<sup>14</sup> Rhetorical hyperbole, endorsement of violence generally,<sup>15</sup> and even assertion of the “moral propriety or even moral necessity for a resort to force or violence”<sup>16</sup> are all protected by the First Amendment.

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<sup>5</sup> *UWM denounces social media post targeting Jewish campus community*, UNIV. OF WIS. MILWAUKEE (July 20, 2024), <https://uwm.edu/chancellor/uwm-temporarily-suspends-student-groups-associated-with-intimidating-instagram-posts/> [<https://perma.cc/KZ8D-BEV4>].

<sup>6</sup> *UWM temporarily suspends student groups associated with intimidating Instagram posts*, UNIV. OF WIS. MILWAUKEE (July 31, 2024), <https://uwm.edu/chancellor/uwm-temporarily-suspends-student-groups-associated-with-intimidating-instagram-posts/> [<https://perma.cc/LH9J-6ARK>].

<sup>7</sup> *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (“If 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.”).

<sup>8</sup> *Snyder v. Phelps*, 562 U.S. 443, 458 (2011); *Iancu v. Brunetti*, 588 U.S. 388, 396-97 (2019).

<sup>9</sup> *Matal v. Tam*, 137 S. Ct. 1744, 1764 (2017).

<sup>10</sup> *Cohen v. California*, 403 U.S. 15, 25 (1971).

<sup>11</sup> *Hustler Mag., Inc. v. Falwell*, 485 U.S. 46, 50 (1988).

<sup>12</sup> *Cl.G ex rel. C.G. v. Siegfried*, 38 F.4th 1270 (10th Cir. 2022).

<sup>13</sup> *UWM denounces social media post*, *supra* note 5.

<sup>14</sup> *Virginia v. Black*, 538 U.S. 343, 359 (2003).

<sup>15</sup> *Watts v. United States*, 394 U.S. 705, 708 (1969) (man’s statement, after being drafted to serve in the Vietnam War—“If they ever make me carry a rifle the first man I want to get in my sights is L. B. J.”—was rhetorical hyperbole protected by the First Amendment, not a true threat to kill the president).

<sup>16</sup> *Noto v. United States*, 367 U.S. 290, 297–98 (1961).

UWM Popular University for Palestine's Instagram post says nothing about engaging in violent or unlawful activity. If, having had several weeks to conduct its investigation and speak to members of the affected groups, UWM has not uncovered evidence that the associated groups actually intend to commit violence or otherwise engage in unlawful activity, it must reinstate the groups immediately. If UWM is continuing to take adverse actions against these student groups for their speech even after determining they did nothing more than engage in protected political expression, it is risking legal liability for unconstitutionally chilling campus speech.

FIRE requests a substantive response to this letter no later than August 22, 2024, acknowledging UWM's First Amendment duties and informing us of the outcome of its investigation.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron P. Corpora". The signature is fluid and cursive, with a long horizontal stroke at the end.

Aaron Corpora  
Program Analyst, Campus Rights Advocacy