FIRE

Foundation for Individual Rights in Education

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October 21, 2011

President Bruce Shepard
Western Washington University
Old Main 440
516 High Street
Bellingham, Washington 98225

URGENT

Sent via U.S. Mail and Facsimile (360-650-6141)

Dear President Shepard:

As you can see from our list of 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, religious liberty, and freedom of speech on America's college campuses. Our website, thefire.org, will give you a greater sense of our identity and activities.

FIRE writes you today out of grave concern about the threat to freedom of expression presented by Western Washington University's (WWU's) ill-considered decision to investigate a student under WWU's policy against "Harassment and/or Threats of Violence" on the basis of a written message on a paid parking ticket.

This is our understanding of the facts. Please inform us if you believe we are in error.

On or near September 30, 2011, WWU student Jacob Ramirez was issued a parking ticket by WWU's Parking Services division. Ramirez paid the ticket by personal check and mailed the ticket for processing on October 6. On both the check and the ticket Ramirez wrote, "Fuck the Police."

In a letter dated October 19, WWU University Judicial Officer Michael L. Schardein informed Ramirez that he had been reported for an alleged violation of WWU's Student Rights and Responsibilities Code. Specifically, Schardein accused Ramirez of violating WWU's policy on Harassment and/or Threats of Violence, informing Ramirez that "Parking Services and the University Police reported you mailed them payment for a parking violation with the 'F' word

written on your check and on the parking ticket." Schardein contended that Ramirez's statement violated the policy's prohibition of "unwanted and/or intimidating contact and/or communication of a threatening nature." An administrative hold has been placed on Ramirez's university account while WWU's investigation is pending. Ramirez is scheduled to meet with Schardein on Tuesday, October 25.

To be clear: WWU may not punish Ramirez for engaging in speech protected by the First Amendment. That the First Amendment's protections fully extend to public universities such as WWU has long been settled law. See, e.g., *Healy v. James*, 408 U.S. 169, 180 (1972) (internal citation omitted) ("[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'"); *Widmar v. Vincent*, 454 U.S. 263, 268–69 (1981) ("With respect to persons entitled to be there, our cases leave no doubt that the First Amendment rights of speech and association extend to the campuses of state universities").

The message on Ramirez's parking ticket is protected by the First Amendment. Simply using profanity towards the police does not rob expression of First Amendment protection. In *Houston v. Hill*, 482 U.S. 451 (1987), the U.S. Supreme Court held that "the First Amendment protects a significant amount of verbal criticism and challenge directed at police officers." Similarly, in *Lewis v. New Orleans*, 415 U.S. 130 (1973), the Court struck down on First Amendment grounds a New Orleans ordinance that prohibited "curs[ing] or revil[ing] or [] us[ing] obscene or opprobrious language toward or with reference to any member of the city police while in the actual performance of his duty." In determining that the ordinance could only pass constitutional muster if "it is not susceptible of application to speech, although vulgar or offensive, that is protected by the First and Fourteenth Amendments," the Court reversed the Louisiana Supreme Court's judgment sustaining the conviction of a woman who had allegedly used profanity in criticizing a police officer who had stopped her vehicle. *Id.* at 134. The Court's clarity with regard to the use of profanity in criticizing law enforcement must be heeded by WWU, which, as a public institution, is of course both legally and morally bound by the Court's decisions.

WWU's characterization of Ramirez's speech as "unwanted and/or intimidating contact and/or communication of a threatening nature" is incorrect. Ramirez's expression fails to meet the exacting legal definition of a "true threat" articulated by the Supreme Court in *Virginia v. Black*, 538 U.S. 343, 359 (2003), in which the Court held that only "those statements where 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" are outside the boundaries of First Amendment protection. The Court also noted in *Black* that speech only constitutes "intimidation in the constitutionally proscribable sense of the word" when "a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death." *Id.* at 360. While the term "Fuck the Police" may be considered offensive by many, WWU strains credulity to its breaking point in claiming that writing such a phrase on a parking ticket is impermissibly "intimidating" or of a sufficiently "threatening nature" as to merit punishment.

Further, the Supreme Court has made clear that language cannot be prohibited simply because it is vulgar. In *Cohen v. California*, 403 U.S. 15 (1971), the Supreme Court overturned the conviction of a man who wore a jacket bearing the words "Fuck the Draft" into a county courthouse. In holding that his expression was entitled to constitutional protection, the Court wrote that "one man's vulgarity is another's lyric. Indeed, we think it is largely because governmental officials cannot make principled distinctions in this area that the Constitution leaves matters of taste and style so largely to the individual." *Id.* at 25. Further, no public institution may retaliate against a student for speech fully protected under the First Amendment because administrators or others on campus feel offended or annoyed, as such an exception to the First Amendment would permit public institutions to deny students freedom of expression virtually at their whim. In *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667 (1973), the Supreme Court held that "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 alone of 'conventions of decency'" in upholding the First Amendment right of a college student newspaper to publish an article with the headline "Motherfucker Acquitted."

The First Amendment's guarantee of freedom of expression does not exist to protect only non-controversial speech; indeed, it exists precisely to protect speech that some members of a community may find controversial or offensive. In *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949), the Court held that "a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger." In *Texas v. Johnson*, 491 U.S. 397, 414 (1989), the Court explained the rationale behind these decisions well, saying that "[i]f 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."

Further, the investigation of protected speech is a violation of the rights of the person being investigated. *Sweezy v. New Hampshire*, 354 U.S. 234, 245, 248 (1957). Thus, merely waiting for the process of Ramirez's October 25 meeting to run its course does not absolve you or WWU of moral and legal responsibility to immediately end the investigation of Ramirez's protected speech. The First Amendment demands that in cases like Ramirez's, once it is clear that the speech is protected, the investigation must end immediately.

FIRE urges Western Washington University to rectify its error and promptly end its investigation of Ramirez for his protected speech. Further, we ask that WWU make clear that its police department may not investigate students simply for their perceived rudeness or disrespect. While we hope this situation can be resolved amicably and swiftly, we are committed to using all of our resources to see this situation through to a just and moral conclusion. Please spare the university the embarrassment of fighting against the Bill of Rights, by which it is legally and morally bound.

With this letter we enclose a signed FERPA waiver from Jacob Ramirez, permitting you to fully discuss his case with FIRE. Due to the impending disciplinary proceedings against

Ramirez, we ask that you act immediately to clear him of his charges, and respond to FIRE by October 28, 2011.

Sincerely,

Peter Bonilla
Assistant Director, Individual Rights Defense Program

Encl.

cc:
Theodore W. Pratt, Jr., Dean of Students, Western Washington University
Michael L. Schardein, University Judicial Officer, Western Washington University
Randy Stegmeier, Director, Public Safety, Western Washington University