



March 1, 2006

**Via U.S. Mail & E-mail at [jdwiley@bascom.wisc.edu](mailto:jdwiley@bascom.wisc.edu)**

Chancellor John D. Wiley  
University of Wisconsin—Madison  
161 Bascom Hall  
500 Lincoln Drive  
Madison, Wisconsin 53706

**Re: UW, Madison Roman Catholic Foundation  
Student Services Funding Committee's Allocation of Student  
Organization Funds**

Dear Chancellor Wiley:

The Alliance Defense Fund (ADF) is a legal alliance that defends America's first liberty, religious liberty. ADF's Center for Academic Freedom is dedicated to ensuring that religious students across the country enjoy rights to speak, associate, and learn on an equal basis as students of different faiths or no faith at all. It has come to our attention that you are reviewing the University of Wisconsin, Madison Roman Catholic Foundation's ("UWRCF") 2006-07 student organization budget and the decision of the student funding committee ("SSFC") to approve an award of \$147,000 in student fees to the UWRCF. Further, we are aware that the Freedom From Religion Foundation (FFRF) has written to urge you to de-fund the UWRCF, in part because its message is allegedly "antiwoman, antigay, antiabortion, antibirth control, and anti-freedom of conscience." Let us be clear: Any decision to de-fund the UWRCF would be an act of unconstitutional viewpoint discrimination. We urge you to approve UWRCF's funding request.

#### **Statement of Facts**

UWRCF is one of the oldest student organizations at the University. It is an expressive association of members from the University community, and is organized as a non-profit organization under Wisconsin law and section 501(c)(3) of the Internal Revenue Code. Founded in 1883, UWRCF has been a home away from home for over 50,000 students. Many of UWRCF's alumni have served society with great distinction and approximately 400 alumni currently serve the University as staff and faculty. UWRCF received eligibility to apply for and receive SSFC funding two years ago.

Last year UWRCF applied for and received student organization funding from SSFC. However, when the organization applied for funding this year, the SSFC disputed

several of UWRCF's budget items and cut those items from the funding allocation. UWRCF appealed the budget cuts to the University's Student Judiciary, who overturned SSFC's budget cuts and awarded UWRCF most of its requested student fee budget. This budget, and UWRCF's ability to function on a level playing field at the University, now rests in your hands.

### Legal Analysis

The United States Supreme Court has said time and again that when a university opens a public forum, through use of physical space or funding, it cannot favor one speaker over another. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819 (1995). To refuse to fund UWRCF simply because it is a religious organization would constitute impermissible viewpoint discrimination and violate Supreme Court precedent. In cases beginning with *Widmar v. Vincent*, 454 U.S. 263 (1981) and running through *Rosenberger*, the Supreme Court of the United States has made it clear that religious student groups are entitled to equal access to university facilities and student fee funds.

In *Rosenberger*, the Supreme Court held that once the University of Virginia opened a limited public forum to fund student activities, the university could not single out a religious student organization and refuse to fund its activities simply because some of the activities were religious in nature. "The government 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.* at 828. To do otherwise would be unconstitutional viewpoint discrimination. The practical result of the *Rosenberger* decision was the funding of an evangelical Christian magazine, *Wide Awake*, which – among other things – advocated converting students to the Christian religion.

Indeed, the University of Wisconsin system is no stranger to the student organization funding issue. Although the United States Supreme Court has held that the University may require students to pay a student activity fee, that fee is constitutional *only if* the university apportions the fees in a viewpoint neutral manner. *Board of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 233-34 (2000). Otherwise the fee program represents nothing more than unconstitutional forced speech: "Viewpoint neutrality is the justification for requiring the student to pay the fee in the first instance and for insuring the integrity of the program's operation once the funds have been collected." *Id.* at 234.

When SSFC makes a line item cut in UWRCF's budget on the basis that the item is religious in nature, SSFC engages in unconstitutional viewpoint discrimination. SSFC may ensure that student organizations spend their allotted money efficiently, but it may not delve into the viewpoints and purposes of activities to determine whether they comply with SSFC's idea of what student organizations should (or should not) do or advocate. For example, if SSFC apportions money to some student organizations to pay for rent and maintenance, it must do so on an equal basis for all other student organizations.

We should also note that the University does not endorse any particular religious belief by funding a student organization that engages in religious expression. The Supreme Court has made it abundantly clear that when student organizations are funded by mandatory student activity fees, then the speech funded by those fees is not “government speech.” See *Southworth*, 529 U.S. at 229 (“If the challenged speech here [speech funded by the student activity fee] were financed by tuition dollars and the University and its officials were responsible for its content, the case might be evaluated on the premise that the government itself is the speaker. This is not the case before us.”); *Rosenberger*, 515 U.S. at 851-52 (“The Student Activities Fund, then, represents not government resources, whether derived from tax revenue, sales of assets, or otherwise, but a fund that simply belongs to the students.”) (Justice O’Connor, concurring).

Some have argued that the University should not fund UWRCF because UWRCF is allegedly a “church.” To be clear, UWRCF is not a church, and it is not operated by the Diocese. UWRCF is a 501(c)(3) not-for-profit student organization that provides activities for members of the University’s community. Like other student organizations, UWRCF’s cultural activities and programs are open to the entire University community. The university’s student organization structure, by its very nature, is designed to “enhance the educational experience” by “‘promoting extracurricular activities,’ ‘stimulating advocacy and debate on diverse points of view,’ enabling ‘participation in political activity,’ ‘promoting student participation in campus administrative activity,’ and providing ‘opportunities to develop social skills.’” See *Southworth*, 529 U.S. at 223 (outlining the interests advanced by the University of Wisconsin’s mandatory student activity fees).

Ironically enough, the Freedom From Religion Foundation’s February 26, 2006, letter illustrates precisely how a properly administered student activity fee system can “stimulat[e] advocacy and debate on diverse points of view.” While the (FFRF) labels UWRCF’s positions as “antigay, antiabortion, antibirth control, and anti-freedom of conscience,” for the UWRCF and its thousands of members, the organization is a source of spiritual, intellectual and cultural engagement and sustenance. For those members, the UWRCF is a manifestation of their freedom of conscience; the freedom to choose a different path in a large, secular state university. Issues of abortion, homosexual behavior, birth control, and conscience can and should be debated on campus. It is the Freedom From Religion Foundation that seeks to stifle debate and cripple the student activity fee system by advocating the funding of only one side of the argument. UWRCF does not seek to de-fund any organization; instead it seeks only its rightful – and equal – place at the table.


The FFRF letter also states that “[i]f you approve this unlawful and misguided expenditure by students—who are not attorneys...the floodgates will be opened” to campus groups “relentlessly demanding funding of their religious pursuits.” See Letter from Annie Laurie Gaylor, Freedom From Religion Foundation, to John Wiley, Chancellor, University of Wisconsin—Madison (Feb. 26, 2006). Isn’t the purpose of the student fee system to open the “floodgates” of expression on campus? Those students

who agree with FFRF's message are certainly free to organize their own student organization and seek funding under viewpoint neutral guidelines. UWRCF would welcome an opportunity to compete with FFRF in a free and equal "marketplace of ideas."

Further, it is important to note that none of the assertions made in FFRF's letter are founded on the law (indeed, the letter cites no legal authority), but are instead hyperbolic statements made to generate public attention and an emotive response. If the university follows the counsel offered by FFRF, it will violate the law.

As the *Southworth* Court opined, "[i]t is inevitable that government will adopt and pursue programs and policies within its constitutional powers but which nevertheless are contrary to the profound beliefs and sincere convictions of some of its citizens." 529 U.S. at 229. Even so, "[f]or the University...to cast disapproval on particular viewpoints of its students risks the suppression of free speech and creative inquiry in one of the vital centers for the Nation's intellectual life, its college and university campuses." *Rosenberger*, 515 U.S. at 836. The religious speech of UWRCF is not of lesser constitutional value than the speech of secular organizations (including the FFRF), and it cannot be denied legal equality on campus. The message to those who wish to deny that equality to UWRCF because of the religious content of its message is simple: the cure for allegedly bad speech is not censorship -- or the unlawful de-funding of one side of a debate -- instead it is more speech.

Very truly yours,



David A. French  
Director, Center for Academic Freedom

DAF/djh

Cc: Annie Laurie Gaylor  
Co-President, FFRF