



January 11, 2022

President Ana Mari Cauce
Office of the President
University of Washington
301 Gerberding Hall
Box 351230
Seattle, Washington 98195

Sent via U.S. and Electronic Mail (pres@uw.edu)

Dear President Cauce:

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 by the University of Washington's restrictions on land acknowledgment statements in faculty course syllabi, requiring that faculty either use the university's chosen statement or refrain from speaking on this topic in their syllabi. This viewpoint-based rule—as well as the university's actions in response to a professor who contravened that rule—violates the university's legal obligations as a public institution bound by the First Amendment.

I. UW Requires Faculty to Include the University-Selected Land Acknowledgment Statement, and No Other Statement on the Topic, in Their Syllabi

The following is our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us.

In the “best practices for inclusive courses” of UW’s Paul G. Allen School of Computer Science & Engineering, the school lists the following “Indigenous Land Acknowledgement” statement: “The University of Washington acknowledges the Coast Salish peoples of this land, the land which touches the shared waters of all tribes and bands within the Suquamish, Tulalip and Muckleshoot nations.”¹

Stuart Reges is a Teaching Professor at the Allen School. On December 8, 2021, Reges criticized land acknowledgment statements in an email to faculty and included a modified

¹ UW, Allen School, *Best practices for inclusive teaching* (rev. Sept. 2020), available at <https://bit.ly/3teDCbE>.

statement he put in his syllabus: “I acknowledge that by the labor theory of property the Coast Salish people can claim historical ownership of almost none of the land currently occupied by the University of Washington.”²

On January 4, 2022, Allen School Director and Professor Magdalena Balazinska ordered Reges to remove his “inappropriate” and “offensive” statement from his syllabus.³ Reges refused and criticized the Allen School’s inconsistency in requiring him to delete from his syllabus a land-use statement at odds with that of the School, while allowing other professors to include in their syllabi modified statements that are less critical of the School’s version.⁴

In response, Balazinska countered that she “will ask any instructor who uses a land acknowledgment other than the UW land acknowledgment to remove or replace it.”⁵ Balazinska also claimed Reges’s land acknowledgment statement “is causing a disruption to instruction in your class” and “is not related to the course content,” and informed Reges she unilaterally “removed that section from [his] syllabus.”⁶ Balazinska then emailed Reges’s class apologizing because his syllabus allegedly “contained an offensive statement under the heading of ‘Indigenous Land Acknowledgment.’”⁷ Students attempting to access the original syllabus were presented with the message that it had “been temporarily removed due to offensive statements.”⁸

On January 7, 2022, Balazinska announced to all students in Reges’s Computer Science and Engineering course that they may switch into a new course section, at the same time as Reges’s section, with a different instructor.⁹ In a January 9 email to a news network, Balazinska criticized Reges’s “invocation of Locke’s labor theory of property” in his statement because it allegedly “dehumanizes and demeans Indigenous people.”¹⁰

II. UW’s Actions Violate Faculty First Amendment Rights

It has long been settled law that the First Amendment is binding on public universities like UW.¹¹ Accordingly, the decisions and actions of a public university—including the pursuit of

² Stuart Reges, Course Syllabus, *Computer Science & Engineering 143 Computer Programming II* (last visited Jan. 7, 2022), available at <https://bit.ly/3JULu7T>.

³ Email exchange between Reges and Balazinska (Jan. 4, 2022) (on file with author).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Email from Balazinska to Computer Science & Engineering 143 Computer Programming II students and staff (Jan. 5, 2022) (on file with author).

⁸ Coolcazang (@Coolcazang), REDDIT (Jan. 3, 2022, 7:03 PM), available at <https://bit.ly/3r7h5dU>. Balazinska replaced Reges’s syllabus with one without his land acknowledgment statement. Stuart Reges, Course Syllabus, *Computer Science & Engineering 143 Computer Programming II* (last visited Jan. 10, 2022), available at <https://courses.cs.washington.edu/courses/cse143/22wi/handouts/01.pdf>.

⁹ Jason Rantz, *UW administrator goes to war over Seattle professor’s hilarious land acknowledgment joke*, MYNORTHWEST (updated Jan. 10, 2022), <https://mynorthwest.com/3301858/rantz-uw-admin-war-seattle-professors-land-joke>.

¹⁰ *Id.*

¹¹ *Healy v. James*, 408 U.S. 169, 180 (1972) (“The 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.”) (cleaned up).

disciplinary action¹² and maintenance of policies implicating student and faculty expression¹³—must be consistent with the First Amendment. UW’s actions depart from these obligations in two ways.

First, the Allen School’s requirement that faculty must use the university’s chosen land acknowledgment statement or refrain from speaking on this topic in their syllabi is an impermissible viewpoint-based regulation, violating the First Amendment rights of all faculty. Second, UW’s censorship of Reges’s syllabus and creation of an alternative course section are retaliatory actions taken against Reges due to his views, violating his First Amendment rights.

A. The Allen School’s Land Acknowledgment Rule is an Impermissible Viewpoint-Based Restriction on Faculty Expression

Public universities must “abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker” motivates the restriction.¹⁴ When regulations or authorities target “not subject matter but particular views taken by speakers on a subject, the violation” of expressive rights “is all the more blatant.”¹⁵ Government rules that limit faculty speech based on the ideas or opinions expressed amount to unconstitutional viewpoint discrimination, “an egregious form” of censorship antithetical to the First Amendment.¹⁶

UW recognizes, as enshrined in its Faculty Code, that faculty enjoy “freedom to discuss all relevant matters in teaching . . . and to speak or write without institutional discipline or restraint on matters of public concern[.]”¹⁷ UW policy recognizes that syllabi are one such avenue for faculty speech, providing that the “general principle” of syllabi is “to provide a clear statement of course content and performance expectations from the beginning of a class.”¹⁸ By inviting faculty to include land acknowledgment statements in their syllabi, the Allen School implicitly recognizes that speech about the history of the university’s land, and competing moral or legal claims to it, falls within the permissible faculty uses of syllabi. Under “UW Syllabus Guidelines and Resources,” the university lists several academic policies as “language that *may* be included in syllabi,” adding that “[p]roviding this content in syllabi is *voluntary*, with the exception of the Religious Accommodations syllabus language.”¹⁹ Together, these policies reflect the wide latitude afforded to professors to determine the content of their syllabi.

Having acknowledged the right of faculty to discuss these issues within their syllabi, UW cannot subject that right to viewpoint-discriminatory regulation. Requiring faculty to use

¹² *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 667–68 (1973).

¹³ *Dambrot v. Cent. Mich. Univ.*, 55 F.3d 1177 (6th Cir. 1995).

¹⁴ *Rosenberger v. Rectors & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ UW, Faculty Code, *A Statement of Principle: Academic Freedom and Responsibility* (revised Jan. 9, 2014), <https://www.washington.edu/admin/rules/policies/FCG/FCCH24.html>.

¹⁸ UW, *UW Syllabus Guidelines and Resources* (last visited Jan. 10, 2022), <https://registrar.washington.edu/staffandfaculty/syllabus-guidelines> (emphasis added).

¹⁹ *Id.* (emphasis added).

their syllabi to either repeat *only* UW’s institutional viewpoint—and only in the precise form articulated by UW’s administrators—or remain silent on this political topic is a viewpoint-based regulation, apparently imposed in response to Reges expressing his divergent views on this topic via his syllabus, which Balazinska condemned as “offensive” and “inappropriate.” This requirement calls for UW to read every Allen School faculty syllabus to determine whether it: 1) properly contains UW’s land acknowledgment statement, 2) is permissibly silent on this topic, or 3) contains a nonconforming land acknowledgment statement of the sort Balazinska prohibited, whereby it will be censored. Accordingly, this determination is plainly “based on the specific motivating ideology or perspective of the speaker” and “targets [...] particular views taken by speakers on a subject,”²⁰ and thus represents viewpoint discrimination in violation of UW’s First Amendment obligations.²¹

Additionally, the use of land acknowledgment statements is a contested public issue²² that Balazinska conceded is “not related to the course content.”²³ If Reges’ modified land acknowledgment is extraneous and inappropriate because it is “is not related to the course content,” then the same is true of the Allen School’s own land acknowledgment statement, which is likewise divorced from the academic purpose and policy-notice requirements of UW syllabi. Whether Balazinska’s determination is rooted in a double standard concerning the non-academic nature of syllabi land acknowledgment statements, or opposition to Reges’s opinions on this topic, this viewpoint-based rule cannot stand at a public institution bound by the First Amendment.

B. UW Unlawfully Retaliates Against Reges by Censoring His Syllabus and Creating an Alternative Course Section

The First Amendment bars any “adverse government action against an individual in retaliation for the exercise of protected speech activities” which “would chill a person of ordinary firmness from continuing to engage in that activity[.]”²⁴ For public university faculty, even “governmental action which falls short of a direct prohibition on speech may violate the First Amendment by chilling the free exercise of speech.”²⁵ This standard may be satisfied by a university’s “[f]ormation of the alternative [course] sections . . . [not] done to further a legitimate educational interest,” particularly where that response is expressly premised on the professor’s speech.²⁶

²⁰ *Boardman v. Inslee*, 978 F.3d 1092, 1110 (9th Cir. 2020) (internal citations and quotations omitted).

²¹ Even if faculty wanted to modify UW’s land acknowledgment to reflect a more assertive or bellicose position than that taken by the university, that statement would likewise not be permitted under the current policy, rendering UW’s policy discriminatory against multiple viewpoints.

²² See, e.g., Graeme Wood, ‘Land Acknowledgments’ Are Just Moral Exhibitionism, *THE ATLANTIC* (Nov. 28, 2021), <https://www.theatlantic.com/ideas/archive/2021/11/against-land-acknowledgements-native-american/620820>; Harmeet Kaur, *Land acknowledgments are often an empty gesture, some Indigenous people say*, CNN (updated Nov. 22, 2021), <https://www.cnn.com/2021/11/22/us/native-americans-land-acknowledgments-cec/index.html>.

²³ Email exchange between Reges and Balazinska, *supra* note 3.

²⁴ *Keenan v. Tejada*, 290 F.3d 252, 258 (5th Cir. 2002).

²⁵ *Levin v. Harleston*, 966 F.2d 85, 89 (2d Cir. 1992).

²⁶ *Id.*; see also *Silva v. Univ. of N.H.*, 888 F. Supp. 293, 318 (D.N.H. 1994) (university creation of alternative courses contributed to “a deprivation of plaintiff’s property and liberty interests in his employment as a tenured professor” at a public university).

UW's censorship of Reges's syllabus and creation of an alternative course in response to his "inappropriate" and "offensive" speech place UW firmly on the path to retaliation, and we urge the university to abandon this course of action immediately. UW administrators' opposition to Reges's views or the risk that they may engender disagreement among colleagues or students are not lawful bases to restrict that speech, as the "desire to maintain a sedate academic environment does not justify limitations on a teacher's freedom to express himself on political issues in vigorous, argumentative," or even "distinctly unpleasant terms."²⁷ Yet the university's course of conduct would deter—and is specifically intended to deter—faculty from continuing to engage in protected speech. Without evidence of substantial disruption or obstruction of any other legitimate educational interest, UW may not chill Reges's First Amendment rights merely because an administrator found his views offensive.

III. Conclusion

UW is free to encourage its faculty to include land acknowledgment statements in their syllabi, but may not mandate that they either include statements expressing a specific viewpoint or remain silent on this issue, or punish them for refusing to make this choice. FIRE calls on UW to ensure that faculty, if they choose to address this topic in their syllabi, can use the university's statement or craft their own.

We request receipt of a response to this letter no later than the close of business on Tuesday, January 25, 2022, confirming that UW has rescinded its viewpoint-discriminatory regulation of syllabus land acknowledgment statements and restored Reges's original syllabus.

Sincerely,



Zachary Greenberg
Senior Program Officer, Individual Rights Defense Program

Cc: Magdalena Balazinska, Paul G. Allen School of Computer Science & Engineering,
Professor and Director
David M. Kerwin, University of Washington Division of the Attorney General's Office,
Division Chief

²⁷ *Rodriguez v. Maricopa Cty. Cmty. Coll. Dist.*, 605 F.3d 703, 709–10 (9th Cir. 2010) (cleaned up).