November 20, 2017

VIA E-MAIL

Bernie L. Patterson, Chancellor
University of Wisconsin Stevens Point
2100 Main Street
Room 213 Old Main
Stevens Point, WI 54481-3897
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Re: Violation of Students' First Amendment Rights at University of Wisconsin Stevens Point

Dear Chancellor Patterson:

We represent Turning Point USA at University of Wisconsin Stevens Point ("TPUSA"). The University violated TPUSA's constitutional rights by denying its application to be recognized based upon the viewpoint of its speech. Although the University has now reversed that decision and granted recognition to TPUSA, the unconstitutional policy applied to deny TPUSA is still in force and must be revised.

By way of introduction, ADF's Center for Academic Freedom is dedicated to ensuring freedom of speech and association for students and faculty so that everyone can freely participate in the marketplace of ideas without fear of government censorship.[1]

FACTUAL BACKGROUND

Emily Strangfeld is a student studying political science at the University. Emily, along with many other students, formed a Turning Point USA group at the University. TPUSA is an

[1] Alliance Defending Freedom has achieved successful results for its clients before the United States Supreme Court, including six victories before the highest court in the last six years. *See e.g. Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S.Ct. 2012 (2017) (striking down state burden on ADF's client's free exercise rights); *Zubik v. Burwell*, 136 S. Ct. 1557 (2016) (per curiam) (successful result for religious colleges' free exercise rights); *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218 (2015) (unanimously upholding ADF's client's free-speech rights); *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2759 (2014) (striking down federal burdens on ADF's client's free-exercise rights); *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014) (upholding a legislative prayer policy promulgated by a town represented by ADF); *Arizona Christian Sch. Tuition Org. v. Winn*, 131 S. Ct. 1436 (2011) (upholding a state's tuition tax credit program defended by a faith-based tuition organization represented by ADF).

organization whose mission is to promote the principles of fiscal responsibility, free markets, and limited government—viewpoints not sufficiently represented by other student groups at the University. Emily submitted an application that satisfied the requirements to become a recognized student organization. On November 9, the Student Government Association (SGA) held a hearing to consider whether to accept the application and recognize TPUSA as a student organization. During the hearing, SGA questioned Emily and David Herda, a student and officer of TPUSA, for almost an hour about their beliefs and the viewpoints for which TPUSA would be advocating. Although TPUSA satisfied the requirements for recognition, SGA voted to deny recognition without explanation. The hearing was attended by several administrators including Vice Chancellor Al Thompson.

Following the hearing, Emily informed Troy Seppelt, Assistant Vice Chancellor for Student Affairs, that she wanted to appeal SGA's decision. On November 14, Emily and David met with Vice Chancellor Thompson and Assistant Vice Chancellor Seppelt to discuss the denial and the appeals process. Vice Chancellor Thompson informed Emily and David that there was no formal written appeals process. Vice Chancellor Thompson indicated that he had the final authority to grant or deny recognition. And that he had complete discretion in making that decision.

On November 17, Vice Chancellor Thompson sent a letter to Emily and David reversing SGA's decision. In the letter, Vice Chancellor Thompson indicates that TPUSA satisfies the requirements necessary to obtain official recognition as a student organization.

LEGAL ANALYSIS

I. The University's Recognized Student Organization Policy violates the First Amendment.

As Vice Chancellor Thompson recognized in his statement, "state colleges and universities are not enclaves immune from the sweep of the First Amendment."[2] In fact, "the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools,"[3] because "the core principles of the First Amendment 'acquire a special significance in the university setting, where the free and unfettered interplay of competing views is essential to the institution's educational mission.'"[4] The University's denial of recognition to TPUSA was unconstitutional because SGA denied recognition based expressly on the viewpoint of TPUSA's speech, the possible negative reactions of listeners, and the group's association with the national TPUSA organization.

The University's New Student Organization Guide (the "RSO Policy") sets forth the process and the requirements to become a recognized group. The RSO Policy establishes seven steps to become a recognized group. The first six steps are objective requirements (e.g., obtain five students willing to serve as members or officers, secure an advisor, draft a constitution, etc.). However, the final step renders the entire process completely subjective by requiring a group to

[2] *Healy v. James*, 408 U.S. 169, 180 (1972).
[3] *Id.* (quoting *Shelton v. Tucker*, 364 U.S. 479. 487 (1960)).
[4] *Coll. Republicans at S.F. State Univ. v. Reed*, 523 F. Supp. 2d 1005, 1016 (N.D. Cal. 2007) (quoting *Doe v. Univ. of Mich.*, 721 F. Supp. 852, 863 (E.D. Mich. 1989)).

attend an SGA Senate meeting to determine whether SGA approves the application. The RSO Policy grants complete discretion to SGA to approve or deny the application even if the group satisfies all six of the objective criteria. The Guide describes the final step as follows: "[The SGA Senate] will ask you a few questions and vote. If they vote yes, you are a new permanent student organization. If they vote no, you will not be considered as a valid student organization." In other words, SGA has unbridled discretion to approve or deny recognition to a student group for any or no reason at all. Indeed, it is clear that this is exactly what happened here, as TPUSA was denied recognition by SGA.

This unbridled discretion continues through the appeals process. First, the appeals process is not formalized in writing. Thus making it easily subject to change and discriminatory application. Second, the appeal is completely subjective because Vice Chancellor Thompson has "complete discretion" to approve or deny the appeal without regard to any objective criteria.

The Supreme Court has made clear that "[a] government regulation that allows arbitrary application is inherently inconsistent with a valid time, place, and manner regulation because such discretion has the potential for becoming a means of suppressing a particular point of view." *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 130 (1992). Because the "decision [of] how much to charge for police protection ... or even whether to charge at all" was "left to the whim of the administrator," without any consideration of "objective factors" or any requirement for "explanation," the ordinance was an unconstitutional prior restraint on speech. *Id.* at 133.

"[T]he government violates the First Amendment when it denies access to a speaker solely to suppress the point of view he espouses on an otherwise includible subject." *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 806 (1985). "It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys." *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995). "In the realm of private speech or expression, government regulation *may not favor one speaker over another*." *Id.* (emphasis added). "Discrimination against speech because of its message is presumed to be unconstitutional." *Id.* "When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant." *Id.* at 829. "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.*

The University's policy, like the ordinance in *Forsyth County*, vests SGA with unbridled discretion to grant or deny recognition to student groups. The policy does not contain any objective criteria to cabin SGA's discretion in making this decision, nor does it contain such objective criteria to cabin the Vice Chancellor's discretion for the appeal. Instead, the policy grants broad discretion to recognize a group based solely upon the SGA's (and the Vice Chancellor's) subjective opinion as to whether a group should be recognized. Although the policy contains six objective criteria, it does not require SGA to recognize a group that has satisfied these criteria.

Not only does the lack of specific criteria for recognition permit SGA to deny recognition based on the content and viewpoint being expressed, but it also allows denial of recognition based on the potential negative reactions of listeners, both issues that led the Supreme Court to declare unconstitutional the permit policy in *Forsyth County*. "Listeners' reaction to speech is not a

content-neutral basis for regulation." *Id.* at 134; *see also Bachellar v. Maryland*, 397 U.S. 564, 567 (1970) ("[I]t is firmly settled that under our Constitution the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers, or simply because bystanders object to peaceful and orderly demonstrations.").

The constitutional infirmities of the RSO Policy cause the student activity fee process to be unconstitutional as well. A student organization is not eligible for funding from SGA unless it is officially recognized by the University. Therefore, even if the student activity fee funding policy requires funding in a viewpoint-neutral manner, the funding process itself is unconstitutional because it requires official recognition pursuant to a viewpoint discriminatory policy. The Supreme Court has made it clear that a college may only require students to pay student activity fees if the policy allocates the funds in a viewpoint neutral manner. "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." *Bd. of Regents of Univ. of Wis. System v. Southworth*, 529 U.S. 217, 233 (2000).

A student activity fee policy that allocates funds based simply upon a majority vote without any objective criteria is not viewpoint neutral and is unconstitutional. *Amidon v. Student Ass'n of State Univ. of New York*, 508 F.3d 94, 102 (2nd Cir. 2007); *Southworth v. Bd. of Regents of Univ. of Wis. System*, 307 F.3d 566, 592 (7th Cir. 2002) (striking down policy for travel grants because it lacked sufficient guidelines to limit discretion). *Id.* As in *Southworth* and *Amidon*, the University's policy requires a group to become recognized before it can receive funding. And the recognition process itself requires approval of SGA without any objective criteria to limit their discretion. The lack of criteria for recognition allows SGA to discriminate based on viewpoint in funding by simply denying recognition to the group. Accordingly, the University's RSO policy is unconstitutional and must be revised. The University is therefore violating the First Amendment rights of Ms. Strangfeld, other TPUSA members, and all U Wisconsin – Stevens Point students by requiring them to pay mandatory student fees into a viewpoint discriminatory system for allocating those funds to student groups.

DEMAND

We commend the University for correcting SGA's clear violation of TPUSA's First Amendment rights. However, the policy pursuant to which this decision was made is still in place and thus can still be used to violate TPUSA's and other students' rights. In fact, SGA has the authority to revoke TPUSA's recognition at any time. Further, Emily and the other TPUSA students are being forced to pay student activity fees pursuant to a viewpoint-discriminatory policy. In light of the clear constitutional problems with the RSO Policy, my clients hereby demand that the University revise the University's RSO Policy to remove SGA's discretion and require SGA to approve any student group that satisfies the six criteria set forth in the RSO Policy.

Please respond by the close of business on **November 27, 2017,** to avoid additional legal action.

Very truly yours,

Tyson C. Langhofer

Tyson C. Langhofer
Senior Counsel

cc: Karen Mueller, Esq.