



November 13, 2019

President Scott R. Pilarz
The University of Scranton
Office of the President
Scranton Hall
Scranton, Pennsylvania 18510

Sent via U.S. Mail and Electronic Mail (scott.pilarz@scranton.edu)

Dear President Pilarz:

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 about the state of freedom of association at The University of Scranton in light of the Scranton Student Government's refusal to recognize a proposed student chapter of Turning Point USA (TPUSA) after a lengthy application process and approval by a majority vote of Student Government senators.

I. The Student Government Denies TPUSA Scranton Official University Recognition

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. However, if the facts here are substantially accurate, the Student Government's decision to deny TPUSA Scranton recognition amounts to a viewpoint-based infringement on students' right to freedom of association; it is inconsistent with Scranton's promises to its students and must be reversed.

On October 4, 2019, Scranton students Cody Morgan, Michael Abromovage, Joseph Chabuel, McKayla Kathio, and David Pennino presented to the Student Government on behalf of their proposed student organization, a Scranton chapter of TPUSA ("TPUSA Scranton"). As of the October 4 Student Government meeting, Morgan had recruited 37 interested members.

Several weeks earlier, as Morgan and his classmates started the process of meeting with students who might be interested in joining their TPUSA chapter, Student Government President Fahad Ashraf responded to another student's social media post, which expressed

concern about the chapter. Ashraf’s post indicated that, in certain cases, the Student Government may review a proposed student organization and say “yikes, nope, denied.”¹ He also implied that even if TPUSA received a sufficient number of Student Government votes to become an official student organization, he would have the ability to veto that vote.²

Although Ashraf subsequently recused himself from the process, at the October 4 Student Government meeting Morgan and his classmates spent three hours fielding questions from student senators about TPUSA. Some of these questions—for example, the number of students who had attended the first two group meetings³—were questions aimed to gauge interest in the organization.

In pursuit of their effort to determine whether TPUSA’s “mission is in direct opposition to the mission of the university,”⁴ Student Government members questioned Morgan and his colleagues concerning, among other things: TPUSA’s political affiliations; the group’s connection to Charlie Kirk, TPUSA’s national president; connections to other national organizations; and the signs Morgan and his colleagues brought to their last meeting.⁵ One student senator questioned TPUSA’s assertion that it is nonpartisan because “it is affiliated with Turning Point USA, which is a conservative group” and stated that they were “just a little confused on whether or not the entire organization is conservative.”⁶

This line of questioning continued as another senator said, “I found a couple things online, things that leaders of the organization, Charlie Kirk, talked about. Things that he said that I don’t believe align with the university’s mission . . .”⁷ Another asked, “What principles then in this club do you think gives [sic] students a sort of radical foundation if the club is just meant to promote politics?”⁸ Yet another counseled that “[i]f I were in your shoes, I would go back to the drawing board. Associating yourself with this club is just going to be too stigmatizing.”⁹

In an apparent effort to minimize the potential for “stigmatizing” events, at one point a student senator suggested TPUSA Scranton constitution be amended to list specific events the organization planned to hold on campus, essentially binding the chapter to only those activities. The amendment was not ultimately passed.¹⁰

The student senators entered closed door discussions twice while considering TPUSA Scranton’s proposal. Morgan and his colleagues were not present for the closed-door discussion, and the discussion is not reflected in the minutes. The Student Government

¹ Fahad Ashraf (@fahadxashraf), INSTAGRAM (Sept. 2019, 5:26 PM) (screenshot on file with author).

² *Id.*

³ UNIV. OF SCRANTON STUDENT GOV’T, Minutes (Oct. 4, 2019) (on file with author).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

ultimately voted to approve TPUSA Scranton as a registered student organization at the October 4 meeting.

On October 8, the Student Government convened a special meeting as a follow up to the October 4 meeting to discuss TPUSA Scranton.¹¹ According to the meeting minutes, Student Government Vice President Jeffrey Colucci initiated a third closed-door discussion about TPUSA Scranton.

Following that meeting, Morgan received a phone call from Colucci informing him that TPUSA Scranton's application had not in fact received enough votes to become a student organization. Colucci would not provide Morgan with an explanation of this decision in writing. Morgan requested the minutes from the October 8 special meeting from Colucci, who provided them, but because the entire substance of the meeting occurred during a closed-door discussion, the minutes only reflect who attended the meeting and Colucci's opening statement that the purpose of the meeting was to discuss TPUSA Scranton.

II. The Student Government's Viewpoint-Based Rejection of TPUSA Scranton Violates Scranton's Explicit Free Speech Promises

A. *Scranton promises its students freedom of expression.*

Although Scranton is a private university and is therefore not bound by the First Amendment, it is both morally and contractually bound to honor the explicit promises of freedom of expression it has made to its students.

For example, the Scranton Office of Student Conduct's "Statement of Philosophy" states that "[f]reedom of thought, freedom of expression, and freedom of the individual must be preserved."¹² Scranton's Mission includes a dedication to "freedom of inquiry and personal development" of its students.¹³ And Scranton's "Free Assembly Policy" reaffirms this commitment in its Mission:

Orderly and rational discussion should continue to be the hallmark of University communications. The promotion of such discussion is one of the principle objectives of any educational community committed to the active pursuit of truth and goodness

¹¹ Univ. of Scranton Student Government, Minutes (Oct. 8, 2019) (on file with author).

¹² SCRANTON UNIV. OFFICE OF STUDENT CONDUCT, STATEMENT OF PHILOSOPHY, <https://www.scranton.edu/studentlife/studentaffairs/student-conduct/index.shtml> (last visited Nov. 6, 2019).

¹³ SCRANTON UNIV., MISSION OF THE UNIVERSITY, <https://catalog.scranton.edu/content.php?catoid=45&navoid=5561> (last visited Nov. 6, 2019).

and unity. This educational community, imbued as it also is with Judeo-Christian ideals, approves of nothing less.¹⁴

Having made these commitments, Scranton is legally and morally bound to adhere to them. Pennsylvania courts have for almost 100 years held that the relationship between a student and a privately funded college is contractual in nature. *See Barker v. Trustees of Bryn Mawr College*, 278 Pa. 121, 122 (1923); *Tran v. State Sys. of Higher Educ.*, 986 A.2d 179, 182 (Commonwealth Court 2009) (citing *Reardon v. Allegheny College*, 126 A.2d 477, 480 (Pa. Sup. Ct. 2007)); *see also Swartley v. Hoffner*, 734 A.2d 915, 919 (Pa. Super. Ct. 1999) (“The contract between a private institution and a student is comprised of the written guidelines, policies, and procedures as contained in the written materials distributed to the student over the course of their enrollment in the institution.”).

Scranton’s commitment to freedom of expression is also a condition of the university’s accreditation. Scranton is accredited by the Middle States Commission on Higher Education, which requires that each institution, as a precondition for accreditation, “possess[] and demonstrate . . . a commitment to academic freedom, intellectual freedom, [and] freedom of expression.”¹⁵ This is a laudable commitment to defend, rather than abrogate, the freedom of expression and association of members of the student body or faculty.

B. The rejection of TPUSA Scranton after several hours of discussion and a secret meeting is a result of viewpoint discrimination.

Decades of First Amendment jurisprudence and the common recognition of the First Amendment’s requirement of viewpoint-neutrality inform students’ reasonable expectations of a private institution, like Scranton, that promises freedom of expression. Accordingly, it fundamentally abandons its institutional commitments to free speech and freedom of association when it acts to stifle speech that it does not like. When authorities target “not subject matter but particular views taken by speakers on a subject, the violation” of expressive rights “is all the more blatant.” *Rosenberger v. Rector & Visitors of the University of Virginia*, 515 U.S. 819, 829 (1995). “Viewpoint discrimination is thus an egregious form” of censorship, and authorities “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.*

These principles apply in the context of student governments that exercise the institutional authority to grant or deny recognition or distribute student fees to student organizations. Courts low and high have repeatedly and consistently held that universities must grant expressive student organizations recognition and access to student fees on a viewpoint-

¹⁴ SCRANTON UNIV., FREE ASSEMBLY POLICY, https://catalog.scranton.edu/content.php?catoid=45&navoid=5564#Free_Assembly_Policy (last visited Nov. 6, 2019).

¹⁵ MIDDLE STATES COMM’N ON HIGHER EDUC., STANDARDS FOR ACCREDITATION AND REQUIREMENTS OF AFFILIATION 5 (13th ed. 2015), http://www.msche.org/wp-content/uploads/2018/06/RevisedStandards_FINAL.pdf.

neutral basis. *See, e.g., Bd. of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 233 (2000) (“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.”).

The questions posed by Scranton’s Student Government to TPUSA student leaders reflect considerable viewpoint-based discrimination. The senators questioned TPUSA Scranton leaders for hours concerning the organization’s political affiliations and repeatedly expressed concerns about some of the views of the national TPUSA organization, which students feared would be reflected by a student chapter of TPUSA. The questions, in addition to an evident misunderstanding of the term “nonpartisan” in at least one case, indicated that particular student senator was considering more than just whether there was sufficient interest in a TPUSA chapter at Scranton.

There is no available record of what transpired during the closed-door discussions on October 4 and October 8. Given the nature of the public questioning, which primarily concerned the political positions of the proposed chapter or its national organization, it would be unwarranted to presume that the Student Government engaged in a viewpoint-neutral discussion of TPUSA during these sessions. The burden rests on Scranton and its Student Government to offer a valid content- or viewpoint-neutral reason for rejecting TPUSA Scranton, and it has failed to do so. To the contrary, Morgan and his colleagues were told that in order to become a registered student organization they must (1) submit a petition and (2) receive a simple majority of votes in favor of their petition. Even if this amounted to a viewpoint-neutral evaluation, the Student Government failed to adhere to even this standard, subsequently rejecting the proposed chapter after it won a simple majority vote.

Further, the minutes from the October 4 meeting indicate the student senators engaged in naked viewpoint-discrimination in their determination into whether TPUSA satisfied their apparent additional requirement that the mission of each student organization not be “in direct opposition to the mission of the university.”¹⁶ Given that the university’s stated mission dedicates it to “freedom of inquiry,”¹⁷ it cannot reject a proposed student organization on the basis that its viewpoints might lead it to inquiry to which the Student Government or its members object.

Many of the student senators’ concerns appear to stem from a dislike for the views and individuals associated with the national organization TPUSA. This, however, is not a defensible rationale to engage in viewpoint-discrimination. In *Healy v. James*, 408 U.S. 169 (1972), Central Connecticut State College refused to recognize a chapter of Students for a Democratic Society on similar grounds—the organization’s philosophy was “antithetical to the school’s policies” and the chapter’s independence from the national organization was “doubtful.” *Id.* at 175–176. The college president had concerns about incidents of violence

¹⁶ Minutes, *supra* note 3.

¹⁷ UNIV. OF SCRANTON, JESUIT TRADITION, <https://www.scranton.edu/about/jesuit-tradition/index.shtml> (last visited Nov. 11, 2019).

associated with the national organization and said he refused to sanction an organization that held views he felt to be “counter to the official policy of the college.” *Id.* at 187. The Supreme Court, however, flatly rejected the assertion that “mere disagreement” with a group’s philosophy was a sufficient basis to deny the group recognition. *Id.* at 188. Even in this instance, where disagreement with the student organization’s viewpoint was coupled with a concern about physical violence, the college’s commitment to freedom of expression bound it to prioritize students’ freedom of expression and refrain from engaging in viewpoint-based discrimination. Again, while Scranton is a private university, it has promised its students freedom of expression, and well-established Supreme Court precedents, including *Healy*, inform students’ reasonable understanding and expectations from that promise.

The principle of freedom of speech does not exist to protect only non-controversial expression. Rather, it exists precisely to protect speech that some or even most members of a community may find controversial or offensive. The Supreme Court has explicitly held, in rulings spanning decades, that speech cannot be restricted simply because it offends others, on or off campus. *See, e.g., 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.”); *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667, 670 (1973) (“[T]he 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.’”). The freedom to offend some listeners is the same freedom to move or excite others. As the Supreme Court observed in *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949), speech “may indeed best serve its high purpose when it induces a condition of unrest . . . or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea.” The Court reiterated this fundamental principle in *Snyder v. Phelps*, 562 U.S. 443, 461 (2011), proclaiming that “[a]s a Nation we have chosen . . . to protect even hurtful speech on public issues to ensure that we do not stifle public debate.”

In *Cohen v. California*, the Court aptly observed that although many would see as “the immediate consequence of this freedom may often appear to be only verbal tumult, discord, and even offensive utterance,” that people will encounter offensive expression is “in truth [a] necessary side effect[] of the broader enduring values which the process of open debate permits us to achieve.” 403 U.S. 15, 24–25 (1971). “That the air may at times seem filled with verbal cacophony is, in this sense not a sign of weakness but of strength,” because “governmental officials cannot make principled distinctions” between what speech is sufficiently inoffensive, and the “state has no right to cleanse public debate to the point where it is . . . palatable to the most squeamish among us.” *Id.* at 25.

By refusing to grant TPUSA Scranton recognition because some members of the Student Government and campus community are opposed to its real or perceived views, the Student Government is hindering free and open dialogue on campus, to the detriment of all Scranton students. It is not the place of the Student Government to dictate the causes for which

students should advocate. If the Student Government were to engage in this kind of viewpoint-based discrimination in consideration of every application to become a registered student organization, it would certainly see the number of registered student organizations on campus dwindle. Other groups on campus—such as the College Democrats or College Republicans—are just as likely to express views *someone* on campus may find offensive or objectionable. Surely Scranton and Scranton’s Student Government recognize that some amount of controversy does not lessen the value of the expression of diverse viewpoints on campus.

Students, including student senators, who object to TPUSA’s views are not without redress on campus and the Student Government should encourage them to voice their objections. The answer, however, is to use their own voices rather than the authority of the Student Government to grant or deny recognition of student groups to do so.

III. Conclusion

If the Student Government’s rejection of TPUSA Scranton is not reversed, it will stand in contrast to Scranton’s stated promises of freedom of expression to its students. Scranton must ensure that these promises are enforced in a viewpoint-neutral manner, and that TPUSA Scranton is granted recognition.

We request a response to this letter by November 26, 2019.

Sincerely,


Katlyn A. Patton

Program Officer, Individual Rights Defense Program and Public Records

Cc:

Jeffrey Colucci, Student Government Vice President
Lauren S. Rivera, Assistant Vice President for Student Life and Dean of Students
Robert W. Davis, Vice President for Student Life
Maribeth Smith, Assistant to the President