



February 24, 2022

Betty Rider
Office of the President
Elizabethtown College
Alpha Hall
One Alpha Drive
Elizabethtown, Pennsylvania 17022-2298

Sent via U.S. Mail and Electronic Mail (riderea@etown.edu)

Dear President Rider:

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 writes to you today out of continued concern for the state of freedom of expression at Elizabethtown College in light of its disciplining a chapter of Turning Point USA for the content of TPUSA members' online fundraiser. Etown's determination that TPUSA made a fraudulent statement is unfounded, and the college's sanction requiring TPUSA to subject its future fundraisers, postings, handouts, and other club-related business to prior administrative review is inconsistent with the freedom of expression that Etown promises its students. FIRE calls on Etown to reverse the "dishonesty" finding and lift the sanction imposing a prior review of TPUSA's written materials.

I. Etown Punishes TPUSA for Its Online Fundraiser

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

In October 2021, some members of the university's TPUSA chapter made plans to attend the national TPUSA event, AmericaFest, which took place December 18-21, 2021.¹

Etown policy requires the completion of a travel request form for all domestic travel sponsored by a college club, organization, program, or department.² The form states: "Unvaccinated students are required to stay by themselves in a single room when staying

¹ AMERICA Fest 2021, TURNING POINT USA, <https://www.tpusa.com/amfestadult> (last visited Feb. 10, 2022).

² ELIZABETHTOWN COLL., STUDENT TRAVEL PROTOCOL FOR DOMESTIC TRIPS, *available at* <https://bit.ly/3oQphz2>.

overnight during a college sponsored travel activity.”³ Relying on Etown’s stated policy, TPUSA chapter president Alex Russo told fellow club members that the chapter could not ensure compliance with this requirement because the national TPUSA organization was providing housing accommodations, and whether those accommodations would be consistent with Etown’s precondition was uncertain.⁴ As a result, Russo said that the college would not approve the trip and that TPUSA would not be able to finance it with club account funds or Student Senate funds.⁵ Russo added that they could still raise funds as individuals.⁶

To that end, Russo created a fundraiser on the website GoFundMe to help fund his and other members’ individual trips to AmericaFest.⁷ The GoFundMe page said, “We are asking for some help covering the costs of travel (our school is unwilling to assist us at this time).”⁸ The description also stated that donations would be divided equally among 13 members of the chapter. The fundraiser ultimately raised \$60 from two donations.

On February 4, 2022, Associate Dean of Students Jenn Crowder notified Russo that the chapter is in potential violation of the college’s solicitation and fundraising policy, which requires off-campus student group fundraisers to be approved by the Office of Institutional Advancement and the group’s advisor.⁹

Etown also charged TPUSA with violating the college’s “Dishonesty” policy for making a “fraudulent” statement on the GoFundMe page indicating that Etown was not willing to assist in helping fund the trip, because, according to Etown, “no request for funds has been made to the College.”¹⁰

Following a hearing, Etown found TPUSA responsible for violating the non-solicitation and dishonesty policies, as well as COVID-19 regulations.¹¹ Regarding the fundraiser, Etown stated:¹²

You shared that you decided to post the GoFundMe link not as a member of an Elizabethtown College recognized organization, but rather as individuals. However, as shared by the Board, you still used the College’s name and affiliation, which to a reasonable person would indicate that this was official club business.

³ *Travel Request Form*, ELIZABETHTOWN COLL. (on file with author).

⁴ Text Message from Alex Russo to AMFEST Crew Group Chat (Oct. 25, 2021, 7:46 PM) (on file with author).

⁵ *Id.*

⁶ *Id.*

⁷ *Help Us Get To AMERICA FEST 2021!!!*, GoFundMe, <https://bit.ly/34KeJdR> (last visited Feb. 11, 2022).

⁸ *Id.*

⁹ Letter from Jenn Crowder, Assoc. Dean of Students, Elizabethtown Coll., to Alexander Russo, Feb. 4, 2022 (on file with author); ELIZABETHTOWN COLL., 2021-2022 STUDENT HANDBOOK AND CODE OF CONDUCT App’x J, <https://www.etown.edu/offices/student-life/2021-2022%20Code%20of%20Conduct%207-30.pdf>.

¹⁰ Letter from Crowder, *supra* note 9. The letter also states TPUSA may have violated college policy by holding meetings where attendees did not wear masks. As this issue falls outside of FIRE’s limited mission, we take no position on this issue, other than to note that any policy concerning masks or other COVID-19 safety measures must be clearly delineated and enforced in a viewpoint-neutral manner.

¹¹ Letter from Crowder to Russo, February 16, 2022 (on file with author).

¹² *Id.*

Additionally, whether intentional or not, you did make a claim that the College was “unwilling” to provide support to the organization to help fund the conference. As demonstrated by information provided during the hearing, this was not true. No requests were ever officially made to the College for funding. Your advisor, who was called as a witness, stated she did not know about the fundraiser, which according to policy and procedure—the advisor must approve any fundraiser prior to its start.

Etown placed TPUSA on disciplinary probation until December 21, during which Russo is required to meet regularly with the Assistant Director of Student Activities & Commuter Engagement to “review any postings, handouts, or other club-related business (hard-copy or electronic), fundraisers, travel, etc. to ensure that College policy and procedure are upheld and to prevent any ‘late night’ drafts from becoming public concern and further causing misperceptions of the club’s true intentions.”¹³ Other sanctions included the immediate removal of the GoFundMe page and the return of the donations to the donors; mandatory training for members of TPUSA’s executive cabinet; and a requirement that TPUSA allow an Office of Student Activities staff member to attend the club’s meetings at will to ensure compliance with college policies.

II. Etown’s “Dishonesty” Finding Is Groundless and the Accompanying Sanction Violates Etown’s Commitment to Free Expression

Regardless of whether Etown had grounds to discipline TPUSA for violating COVID-19 policies or failing to obtain its advisor’s approval for the fundraiser, Etown’s determination that TPUSA made a “fraudulent” statement is unfounded and cannot serve as a basis for punishing the group. This finding is especially concerning as it appears to underlie the onerous sanction requiring TPUSA to meet with an administrator regularly for prior review of its written materials. Both the “dishonesty” charge and the prior-review sanction are contrary to Etown’s robust promises of free expression.

A. Etown makes institutional commitments to freedom of expression.

Although the First Amendment is not binding on private institutions like Etown, the college has made morally and legally binding commitments to protect its students’ freedom of speech.

For example, Etown’s student handbook pledges that students have the “right” to “express diverse opinions, and to advocate for change with a commitment to civil discourse and human dignity.”¹⁴ Under the college’s “educational philosophy and goals,” students “are encouraged to develop and challenge their own values, while seeking to understand and appreciate

¹³ *Id.*

¹⁴ ELIZABETHTOWN COLL., ELIZABETHTOWN COLLEGE 2021-2022 STUDENT HANDBOOK AND CODE OF CONDUCT 23, <https://www.etown.edu/offices/student-life/2021-2022%20Code%20of%20Conduct%207-30.pdf> (emphasis added).

alternative perspectives.”¹⁵ This commitment is also reflected in the college’s “Blue Jay Pledge of Integrity,” in which students and faculty “pledge to respect the free exchange of ideas both inside and outside the classroom.”¹⁶

Etown’s promises of free expression are important not only to students, but to the college’s accreditation. Etown 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.”¹⁷ Etown must adhere to these obligations to maintain its accreditation.¹⁸

B. The GoFundMe page did not contain any fraudulent statements.

The statement on the GoFundMe page—“[w]e are asking for some help covering the costs of travel (our school is unwilling to assist us at this time)” —is not fraudulent and cannot serve as a basis for punishing TPUSA.

First, the statement is not fraudulent because it is an objectively reasonable interpretation of the precondition set forth in Etown’s policies. In other words, it is reasonable to believe, based on the college’s policy statements, that the college would not be willing to provide material support for an event that does not qualify for college support. Further, it is unlikely that either of the two donations to the group were motivated or influenced by this particular statement.

Even if the statement *is* false, any interest Etown may have in “truthful discourse” does not afford “broad censorial power” over allegedly false statements.¹⁹ As the Supreme Court of the United States explained in its seminal decision in *New York Times Co. v. Sullivan*:²⁰

That erroneous statement is inevitable in free debate, and that it must be protected if the freedoms of expression are to have the “breathing space” that they “need . . . to survive[.]”

¹⁵ *Educational Philosophy and Goals*, ELIZABETHTOWN COLL., <https://www.etown.edu/about/philosophy.aspx> (last visited Oct. 4, 2021).

¹⁶ *Student Rights and Responsibilities*, ELIZABETHTOWN COLL., <https://www.etown.edu/offices/student-rights/index.aspx> (last visited Oct. 1, 2021).

¹⁷ MIDDLE STATES COMM’N ON HIGHER EDUC., STANDARDS FOR ACCREDITATION AND REQUIREMENTS OF AFFILIATION 5 (rev. 2015), <https://msche.box.com/shared/static/6upfla8coxha663p0j10u3gatow38jel.pdf> (emphasis added).

¹⁸ See, e.g., Adam Steinbaugh, *Mount St. Mary’s University President Simon Newman Resigns After Accreditor Questions Commitment to Freedom of Expression*, FIRE (Mar. 1, 2016), <https://www.thefire.org/mount-st-marys-university-president-simon-newman-resigns-after-accreditor-questions-commitment-to-freedom-of-expression> (Middle States Commission on Higher Education sought supplemental report from Mount St. Mary’s concerning university’s integrity following incidents in which university’s president quashed criticism from faculty).

¹⁹ *United States v. Alvarez*, 567 U.S. 709, 718–23 (2012) (plurality opinion). While, again, the First Amendment is not binding on private colleges, longstanding judicial interpretations of the First Amendment’s guarantee of freedom of speech provide a baseline for what students would reasonably expect from an institution—like Etown—that makes promises of free expression.

²⁰ 376 U.S. 254, 271–72 (1964) (quoting *NAACP v. Button*, 371 U.S. 415, 433 (1963)).

This breathing space provides citizens with the assurance that they can contribute to public debate without fear that their government will punish them if they err in their facts or opinions. More speech, not punishment, is how public debate is driven.

While Etown’s commitment to freedom expression does not obligate it to tolerate fraud,²¹ “false statement alone does not subject a speaker to fraud liability. Rather, there must be proof the false statement was (1) knowing and intended to mislead, (2) material, and (3) did mislead.”²²

Because the national TPUSA organization was providing housing, the chapter could not guarantee compliance with Etown’s policy requiring unvaccinated students to stay by themselves in a single room during college-sponsored overnight travel. Under these circumstances, TPUSA was *ineligible* to receive college funding for the trip. As explained above, the GoFundMe page’s description was a fair characterization of Etown’s ability to assist TPUSA with funding. It was neither a false statement nor material to the overall request.

Even if Etown would have waived or interpreted the travel policy in a manner that resulted in it sponsoring the trip despite TPUSA’s failure to comply with the group travel requirements, Russo’s October 25 text message to other TPUSA members shows he believed otherwise. That belief was reasonable given Etown’s unvaccinated-traveler policy. Consequently, neither TPUSA nor Russo knowingly made a false statement or had any intent to mislead others, as would be required to suggest a presence of fraud that could even begin to justify Etown sanctioning its TPUSA chapter or any of the chapter’s members on this basis.

C. Etown’s prior-review sanction unduly burdens TPUSA’s expressive activity.

Etown’s requirement that TPUSA submit all of its “club-related business” to administrative prior review flows from the college’s incorrect determination that TPUSA’s fundraiser contained a fraudulent statement, and violates the group’s expressive rights under Etown policy.

By requiring TPUSA to obtain advance permission from Etown to speak, this mandate imposes a prior restraint on speech—“the most serious and the least tolerable infringement” of expressive rights.²³ Not only does the prior-review sanction apparently require that TPUSA submit *all* of its club-related business to administrative review—including materials like postings and handouts that were not at issue in the current matter—but it also sets forth no specific guidelines or timetable for the approval of such materials. This gives administrators unbridled discretion inconsistent with a commitment to freedom of expression, which seeks to provide guardrails so that decisions are not subject to the personal whims or viewpoints of the authorities. This is why the Supreme Court has long rejected regulations that “condition

²¹ *Alvarez*, 567 U.S. at 723.

²² *United States v. Alvarez*, 617 F.3d 1198, 1212 (9th Cir. 2010), *aff’d*, 567 U.S. 709; *see also Weston v. Northampton Pers. Care, Inc.*, 62 A.3d 947, 960 (Pa. Super. 2013) (speaker’s “knowledge of the untrue character of his representation, is a key element in finding fraudulent misrepresentation”).

²³ *Neb. Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976).

protected speech upon the uncontrolled will of an official—as by requiring a permit or license which may be granted or withheld in the discretion of such official.”²⁴ Rather, prior restraints “must contain narrow, objective, and definite standards to guide” determinations and avoid arbitrary decision-making.²⁵

This onerous restriction imposed on TPUSA is rooted in a baseless finding of fraud and cannot be reconciled with the strong promises Etown makes to its students that they enjoy freedom of expression.

III. Conclusion

FIRE calls on Etown to reaffirm its laudable promises of free expression and ensure that its discipline of TPUSA is consistent with those promises by reversing the finding of “dishonesty” and eliminating the requirement that TPUSA subject its written materials to prior administrative review. We request receipt of a response to this letter no later than March 10, 2022.

Sincerely,



Aaron Terr
Program Officer, Individual Rights Defense Program and Public Records

Cc: Jenn Crowder, Associate Dean of Students

²⁴ *Staub v. City of Baxley*, 355 U.S. 313, 322 (1958).

²⁵ *Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 131 (1992).