

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION**

SPECTRUM WT, BARRETT BRIGHT,  
and LAUREN STOVALL,

Plaintiffs,

v.

WALTER WENDLER, in his individual  
capacity and his official capacity as the  
President of West Texas A&M University,

CHRISTOPHER THOMAS, in his official  
capacity as Vice President for Student  
Affairs at West Texas A&M University,

JOHN SHARP, in his official capacity as  
Chancellor of the Texas A&M University  
System,

ROBERT L. ALBRITTON, JAMES R.  
BROOKS, JAY GRAHAM, MICHAEL A.  
HERNANDEZ III, TIM LEACH, BILL  
MAHOMES, ELAINE MENDOZA,  
MICHAEL J. PLANK, CLIFF THOMAS,  
and DEMETRIUS L. HARRELL JR., in  
their official capacities as members of the  
Board of Regents of the Texas A&M  
University System,

Defendants.

Case No.: 2:23-cv-00048-Z

Hon. Matthew J. Kacsmaryk

**PLAINTIFFS' BRIEF  
IN SUPPORT OF  
RULE 62(d) MOTION FOR  
INJUNCTION PENDING APPEAL**

JT MORRIS

TX Bar No. 24094444

CONOR T. FITZPATRICK\*

MI Bar No. P78981

FOUNDATION FOR INDIVIDUAL RIGHTS  
AND EXPRESSION

700 Pennsylvania Ave., SE; Ste. 340  
Washington, DC 20003

Tel: (215) 717-3473

Fax: (267) 573-3073

jt.morris@thefire.org

conor.fitzpatrick@thefire.org

ADAM B. STEINBAUGH\*

CA Bar No. 304829

JEFFREY D. ZEMAN\*

MI Bar No. P76610

FOUNDATION FOR INDIVIDUAL RIGHTS  
AND EXPRESSION

510 Walnut St.; Ste. 900  
Philadelphia, PA 19106

Tel: (215) 717-3473

Fax: (267) 573-3073

adam@thefire.org

jeff.zeman@thefire.org

\* Admitted *Pro Hac Vice*

*Counsel for Plaintiffs*

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## INTRODUCTION

From the public square to public universities, the First Amendment demands that the government remain neutral not only in our “political system,” but also our “cultural life.” *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 641 (1994). That neutrality extends to public universities. Recent months have only confirmed why university presidents—from the campus quad to the floor of Congress—cannot be trusted to act as censors-in-chief. Yet the president of West Texas A&M University, Walter Wendler, believes he can unilaterally decide what expression belongs at West Texas A&M. But the First Amendment ensures he cannot.

Before Plaintiffs even took the campus stage for a PG-13 charity drag show in March 2023, President Wendler cancelled it. In a written edict explaining his decision, Wendler banned all drag shows from campus, decrying them as “artistic expression which denigrates [ . . . ] women,” all while admitting “the law of the land” compelled him not to censor the students. He was right about the last part. The First Amendment protects stage performance, just as it prohibits university officials from imposing a viewpoint-driven prior restraint over that protected expression.

Wendler has all but confirmed his drag ban remains in full effect, refusing to revoke his edict and recently declaring his “rejection of future drag shows.” (Brief for Appellee Wendler at 32, *Spectrum WT v. Wendler*, No. 23-10994 (5th Cir. Dec. 28, 2023) (“Wendler CA5 Br.”)) And with Plaintiffs’ appeal of this Court’s denial of a preliminary injunction still pending in the Fifth Circuit, Wendler’s ban is posed to strike once again, muzzling Plaintiffs’ planned drag show for March 22, 2024, absent immediate relief.



In September 2023, the Court denied Plaintiffs a preliminary injunction, finding it was “doubtful that Plaintiffs will suffer irreparable harm in the coming months while this issue is litigated.” (ECF 59 at 25.) But now, the irreparable harm is on Plaintiffs’ doorstep. And since the Court’s September 2023 ruling, two more courts have recognized that the First Amendment protects drag performances. *Woodlands Pride, Inc. v. Paxton*, No. H-23-2847, 2023 WL 6226113 (S.D. Tex. Sept. 26, 2023) (permanently enjoining Texas’s statutory drag performance ban); *Imperial Sovereign Ct. of Mont. v. Knudsen*, No. CV 23-50-BU-BMM, WL 6794043 (D. Mont. Oct. 13, 2023) (enjoining Montana’s statutory drag ban).

For these reasons, the Court should grant an injunction pending appeal. Given the imminent irreparable harm to Plaintiffs’ First Amendment rights, Plaintiffs intend to seek an injunction pending appeal from the Court of Appeals by Friday, February 9, 2024. *See McCoy v. La. State Bd. of Ed.*, 332 F.2d 915, 917 (5th Cir. 1964) (granting relief because “unless an injunction pending appeal is granted, appellant will be denied her constitutional rights for another school term or longer.”).

### **STATEMENT OF FACTS**

**Spectrum WT, like many recognized student groups, has a message to share.**

Plaintiff Spectrum WT is a recognized student organization at West Texas A&M. (ECF 28, First. Am. Verif. Compl. (“FAC”) ¶ 10.) It provides a space for “LGBT+ students and allies to come together,” to “raise awareness of the LGBT+ community,” and to “promote diversity, support, and acceptance on campus and in the surrounding community.” (*Id.* ¶ 11.) To help spread its message, Spectrum WT hosts various events, like a prom, movie night, and discussions about LGBTQ+ history. (*Id.* ¶ 13.)

Plaintiff Barrett “Bear” Bright is an undergraduate student at West Texas A&M and Spectrum WT’s President. (*Id.* ¶ 14.)

**West Texas A&M opens Legacy Hall to students and the public for expressive activities.**

West Texas A&M policy, consistent with Texas law, forbids administrators from “deny[ing] [a student] organization any benefit generally available to other student organizations” because of “political, religious, philosophical, ideological, or academic viewpoint expressed by the organization or of any expressive activities of the organization.” (ECF 28-3, West Texas A&M Policy No. 08.99.99.W1, Rule 1.3; Tex. Educ. Code § 51.9315(g).)

Student organizations at West Texas A&M—and any member of the public—may reserve university facilities for group functions and events. (FAC ¶¶ 28, 32–34.) These facilities include Legacy Hall, a performance venue in the Jack B. Kelley Student Center. (*Id.* ¶¶ 28, 33–34.) The university holds out Legacy Hall as suitable for expressive activities like concerts, weddings, and parties. (*Id.* ¶ 32.) University policy places no limits on the content of events in these venues, guaranteeing students use of Legacy Hall for “any special event,” including “social gatherings or functions.” (*Id.* ¶ 38, ECF 28-2.)

The University has historically opened Legacy Hall to both student organizations and the public have regularly used for expressive activity—including drag shows. (*Id.* ¶¶ 39–41.) Other events have included beauty pageants for both men and women, annual singing competitions, concerts, dances, and religious and political events. (*Id.* ¶ 40.)

**Spectrum WT’s first drag show meets the university’s criteria, but President Wendler cancels it and bans all drag shows on campus.**

In November 2022, Spectrum WT began planning its first annual drag show, with proceeds from ticket sales to benefit an LGBTQ+ suicide prevention charity. (FAC ¶¶ 52, 74.) Following the university’s regular processes, Spectrum WT reserved Legacy Hall to host a drag show. (*Id.* ¶¶ 85–86, 91–93.) West Texas A&M’s administration supported Spectrum WT’s planning of the drag show throughout the facility request process, helping it navigate the necessary steps to move forward. (*Id.* ¶¶ 86–94, 99–100.) Spectrum WT received “Tentative Confirmation” for its event on February 27, 2023, and was prepared to complete the final logistical issues to hold the event. (*Id.* ¶¶ 91, 99–101.)

On March 20—just 11 days before the show—President Wendler abruptly canceled it. (*Id.* ¶ 105; ECF 28-1.) Wendler told administrators that he was doing so because he believed drag shows discriminate against women. (Decl. Christopher Thomas (ECF 39-1) ¶ 4.)

Publicly, Wendler announced a ban: “West Texas A&M will not host a drag show on campus.” (ECF 28-1.) Like he told Defendant Thomas, VP of Student Affairs at West Texas A&M, Wendler told the public drag “performance . . . discriminate[s] against womanhood.” *Id.* He denounced drag performance as a “demeaning” and “divisive” form of “slapstick sideshow” used to “stereotype,” and “mock[]” “womanhood” for the “amusement of others.” (*Id.*) Wendler declared that a “harmless drag show” was simply “[n]ot possible.” (*Id.*) As a result of Wendler’s ban, Plaintiffs

moved their drag show, at considerable expense, to an off-campus location. (FAC ¶¶ 122–126.)

**Wendler defends the drag ban in the media and the courts.**

President Wendler later revealed in a television interview that his resolve to bar drag shows from campus remained firm: “I wouldn’t have done anything any differently.” (ECF 45-1 at 25:11–27:50.)<sup>1</sup> Just weeks ago, Wendler defended his rationale and acknowledged his “rejection of future drag shows.” (Wendler CA5 Br. at 32.) And Wendler claimed he and other “officials” (presumably including Defendants Vice President Thomas and Chancellor John Sharp) have final, unfettered authority to “assess” the content of students’ planned events and deny Plaintiffs’ “application” to host any future event. (*Id.* at 1–2, 23, 36, 39, 41.)

**Spectrum WT plans a second charity drag show at Legacy Hall.**

On April 11, 2023, Spectrum WT applied to hold a second annual drag show in Legacy Hall on March 22, 2024. App. 5, Decl. of Barrett Bright (“Bright Decl.”), ¶17; App. 34. As with the 2023 performance, Spectrum WT is complying with the administrative requirements necessary to proceed with their performance. (App. 5–6 ¶¶ 17–28.)

Absent an injunction, Defendants will once again force Plaintiffs off the stage they have a First Amendment right to perform on.

**ARGUMENT**

A district court may grant an injunction while an appeal is pending. Fed. R.

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<sup>1</sup> See also Walter Wendler Full Interview, KAMR, Apr. 27, 2023, <https://www.myhighplains.com/video/walter-wendler-full-interview/8598931>, at 25:11–27:50.

Civ. Pro. 62(d). “The factors governing the Court’s discretion on whether to grant an injunction pending appeal are virtually identical to those governing whether to grant a preliminary injunction.” *VanDerStok v. BlackHawk Mfg. Grp. Inc.*, No. 4:22-cv-00691-O, 2023 WL 5978332, at \*16 (N.D. Tex. Sept. 14, 2023) (granting emergency injunction pending appeal) *vacated on other grounds*, *Garland v. Blackhawk Mfg. Grp., Inc.*, 144 S. Ct. 338 (Mem) (2023).

Plaintiffs are entitled to an injunction pending appeal because they satisfy their burden to demonstrate: (1) a likelihood of success on the merits; (2) they will suffer irreparable injury if an injunction is not granted; and (3) the injunction will serve the public interest of vindicating First Amendment rights. *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 16–20 (2020) (granting an injunction pending appeal, assessing each factor, and finding that “there can be no question that the challenged restrictions, if enforced, will cause irreparable harm” to First Amendment freedoms).

**I. The First Amendment Protects Stage Performance, Like Plaintiffs’ Drag Shows.**

While the “First Amendment literally forbids the abridgment only of ‘speech,’ [] we have long recognized that its protection does not end at the spoken or written word.” *Texas v. Johnson*, 491 U.S. 397, 404 (1989). As Justice Thomas explained, the First Amendment protects “a wide array of conduct that can qualify as expressive, including nude dancing, burning the American flag, flying an upside-down American flag with a taped-on peace sign, wearing a military uniform, wearing a black armband, conducting a silent sit-in, refusing to salute the American flag, and flying

a plain red flag.” *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm’n*, 138 S. Ct. 1719, 1741–42 (2018) (Thomas, J., concurring). In short, the First Amendment protects “expressive conduct.” *Johnson*, 491 U.S. at 403. And that includes drag performances like Plaintiffs’, especially because their context leaves no doubt that the performers are expressing something, even if the audience might not agree on what.

**A. The First Amendment protects stage performance of all kinds.**

So when Americans get on stage and express themselves, whether through pantomime, an evocative ballet, or an electric guitar wailing the national anthem, the First Amendment protects it, even if it is not a government official’s cup of tea. *See Se. Promotions v. Conrad*, 420 U.S. 546, 549 (1975) (striking down prior restraint on stage performance based on officials’ personal values). And that protection extends to drag performance. *E.g., Norma Kristie, Inc. v. City of Oklahoma City*, 572 F. Supp. 88, 91–92 (W.D. Okla. 1983) (“Any inequality between [a drag show] and a musical or play is a distinction without a difference.”)<sup>2</sup> Like any stage performance, “[d]rag shows express a litany of emotions and purposes, from humor and pure entertainment to social commentary on gender roles.” *Woodlands Pride*, 2023 WL 6226113, at \*14.

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<sup>2</sup> *See also Woodlands Pride*, 2023 WL 6226113 (enjoining Texas’ statutory drag ban); *Friends of Georges, Inc. v. Mulroy*, No. 2:23-cv-02163-TLP-TMP, 2023 WL 3790583 (W.D. Tenn. June 2, 2023) (Parker, J.) (enjoining Tennessee’s statutory drag ban); *Knudsen*, 2023 WL 6794043; (enjoining Montana’s statutory drag ban); *HM Fla.-ORL, LLC v. Griffin*, No: 6:23-cv-950-GAP-LHP, 2023 WL 4157542 (M.D. Fla. June 23, 2023) (Presnell, J.) (enjoining Florida’s statutory drag ban); *S. Utah Drag Stars v. City of St. George*, No. 4:23-cv-00044-DN-PK, 2023 WL 4053395 (D. Utah June 16, 2023) (Nuffer, J.) (ordering city to grant permit for drag show on public property). To date, *Woodlands Pride*, *Imperial Sovereign Ct. of Mont.*, *Friends of Georges*, and *HM Fla.-ORL* are on appeal.

No matter if one views drag performance as political commentary, high art, or slapstick entertainment, the First Amendment protects it. Just like a political pamphlet or Picasso's *Guernica*, entertainment "may affect public attitudes and behavior in a variety of ways, ranging from direct espousal of a political or social doctrine to the subtle shaping of thought which characterizes all artistic expression." *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 501 (1952). Thus, the Supreme Court has "long recognized that it is difficult to distinguish politics from entertainment, and dangerous to try." *Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 790 (2010). Likewise, when art meshes with "live entertainment, such as musical and dramatic works" it still "fall[s] within the First Amendment guarantee." *Schad v. Borough of Mount Ephraim*, 452 U.S. 61, 65 (1981). That is why the First Amendment protects stage performance like drag, even if it presents its audience with a mishmash of the political, the artistic, and pure entertainment. In the end, the performance communicates something, and that is what matters for First Amendment protection.

**B. Because Plaintiffs' drag shows are inherently expressive, the First Amendment protects them.**

The First Amendment protects Plaintiffs' planned charity drag shows. First Amendment protection for expressive conduct like drag performance does not turn on genre or the mode of expression but whether it is "inherently expressive." *Rumsfeld v. FAIR*, 547 U.S. 47, 66 (2006) (citing *Johnson*, 491 U.S. at 406). If "conduct . . . is intended to be communicative" and "in context, would reasonably be understood by the viewer to be communicative," the First Amendment protects it. *Clark v. Cmty. for*

*Creative Non-Violence*, 468 U.S. 288, 294 (1984) (citing, *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969) and *Spence v. Washington*, 418 U.S. 405 (1974)).

On appeal, Plaintiffs are likely to succeed on the merits because the Court's decision denying a preliminary injunction departed from that standard in three ways. First, the Court held that for the First Amendment to apply, expressive conduct must "obviously convey or communicate a discernable, protectable message," (ECF 59 at 6.) But the Supreme Court rejected that view nearly 30 years ago: "[A] narrow, succinctly articulable message is not a condition of constitutional protection." *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp.*, 515 U.S. 557, 569 (1995). If the First Amendment were "confined to expressions conveying a particularized message, [it] would never reach the unquestionably shielded painting of Jackson Pollock, music of Arnold Schoenberg, or Jabberwocky verse of Lewis Carroll." *Id.* Thus, even if "an observer" of Plaintiffs' drag show "may not discern that the performers' conduct communicates 'advocacy in favor of LGBTQ+ rights,'" (ECF 59 at 13), the First Amendment still protects Plaintiffs' drag show, just as it protects a ballet or symphony even if some observers may not "discern" the performance's true message.

Second, this Court concluded First Amendment expression requires an "overtly political' message[s]." *Id.* at 5. But that overlooks how the Free Speech Clause protects non-political expressive conduct from nude dancing at a strip club to kneeling in prayer. *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 566 (1991); *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2421 (2022).



Third, the Court concluded that “campus protest’ cases” require expressive conduct to “convey [an] ‘intentional and overwhelmingly apparent’ message.” ECF 59 at 5 (citing cases). But none of the cases this Court relied on concerned a public university, much less held that university students have watered down First Amendment rights. The Supreme Court explained its decisions “leave no room for the view that . . . First Amendment protections should apply with less force on college campuses than in the community at large,” and its protection is “nowhere more vital” than on college campuses. *Healy v. James*, 408 U.S. 169, 180 (1972). And as the Supreme Court affirmed in *Johnson*, the First Amendment protects expressive conduct so long as there is an intent to convey a message and viewers would understand the conduct as expressive. 491 U.S. at 404; *compare* ECF 59 at 11, n. 14.

If an “intentional and overwhelmingly apparent message” were the standard, *Hurley* would not have affirmed, just six years after *Johnson*, that the First Amendment “unquestionably” protects the abstract expression of Pollock, Schoenberg, and Carroll. *Hurley*, 515 U.S. at 569. So it does not matter if observers “get” what an artist is trying to express. “In determining whether conduct is expressive, we ask whether the reasonable person would interpret it as *some* sort of message, not whether an observer would necessarily infer a *specific* message.” *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1270 (11th Cir. 2004) (raising fist during Pledge of Allegiance is expressive conduct).

In denying Plaintiffs a preliminary injunction, the Court held that “ballet, orchestra, paintings, sculptures,” and other non-verbal expression would still be

protected without *Hurley* because they “either ‘convey a particularized message’ or are ‘works of fine art.’” ECF 59 at 11 n.14. But there is no constitutional difference between dancing on a stage in drag versus a tutu. The Founders forever divested government officials like President Wendler from imposing their artistic preferences on the public. *Cohen v. California*, 403 U.S. 15, 25 (1971) (the Constitution “leaves matters of taste and style so largely to the individual” because government officials “cannot make principled distinctions” between what is “palatable” or “distasteful”); *Brown*, 564 U.S. at 796 n.4 (“cultural and intellectual differences are not constitutional ones.”)

**C. The context of Plaintiffs’ PG-13 drag shows underscores why they are protected expression.**

Drag shows, like those planned by Spectrum WT and its students, are expressive conduct because they are communicative—even if their motifs, themes, or intended messages vary between performers. That is clear when applying the correct test for expressive conduct: whether “in context, [drag shows] would reasonably be understood by the viewer to be communicative.” *Clark*, 468 U.S. at 294. Indeed, the context of expressive activity is key. *Johnson*, 491 U.S. 405; *Canady v. Bossier Par. Sch. Bd.*, 240 F.3d 437, 440 (5th Cir. 2001) (citations omitted). It separates an expressive civil rights sit-in from sitting down. *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 901 F.3d 1235, 1241 (11th Cir. 2018) (citation omitted). Context is also why Americans understand that a coach kneeling at the 50-yard line is expressing himself. *See generally Bremerton Sch. Dist.*, 142 S. Ct. at 2426–27. And it separates an expressive stage performance from merely putting on clothes.

In denying Plaintiffs’ a preliminary injunction, the Court isolated drag shows from their context, suggesting that “a person’s choice of dress or appearance in an ordinary context does not possess the communicative elements necessary to be considered speech[.]” ECF 59 at 11 n.15 (quoting *Zalewska v. Cnty. of Sullivan*, 316 F.3d 314, 320 (2d Cir. 2003)). But context separates an organized, choreographed drag show on stage under bright spotlights from the day-to-day “choice of dress.” (*Id.* at 9 n.11). Spectrum WT intends to communicate a message with performances wearing gender non-conforming clothes, on stage, in a venue intended for student expression, dancing to themed music. Its performance would take place in front of a willing, ticketed audience invited to an event advertised for supporting an LGBTQ+ charity. Viewers of Plaintiffs’ shows would understand them as expressive. Plaintiffs’ flyers for the event leave no doubt as to its context as a pro-LGBTQ+ event, by LGBTQ+ groups, in support of an LGBTQ+ charity. (FAC ¶ 94.)

In discounting the context of Plaintiffs’ show, the Court relied on *Tagami v. City of Chicago*. ECF 59 at 13 (citing 875 F.3d 375, 378 (7th Cir. 2017)). But in *Tagami*, the Seventh Circuit held the First Amendment did not protect a woman publicly baring her breasts as a form of protest because there were no “facts from which it might reasonably be inferred that onlookers would have readily understood that this public display of nudity was actually a political protest against the City’s public-indecency ordinance.” *Id.* Contrast that with the Supreme Court holding that nude dancing *on a stage* is protected expressive conduct, because live entertainment conveying a message and mere public nudity are different. *See City of Erie v. Pap’s*

*A.M.*, 529 U.S. 277, 289 (2000). Defendants have never contended Plaintiffs’ planned drag show constitutes obscenity or otherwise falls into a category of unprotected speech. So while Plaintiffs’ PG-13 show is worlds away from nude dancing, the constitutional principle applies the same: The First Amendment protects it.

**D. Neither *Rumsfeld v. FAIR* nor history weakens First Amendment protection for drag shows.**

Denying Plaintiffs’ preliminary injunction motion, this Court held *Rumsfeld v. FAIR* means that without “accompanying political speech or dialogue,” observers won’t understand a drag show is “communicat[ing] . . . LGBTQ+ rights,” rendering drag performance unprotected. ECF 59 at 12–13 & n.16. But *FAIR* is a compelled-speech case, not one limiting protection for expressive conduct. 547 U.S. at 62–65. Law schools wanting to bar military recruiters claimed the government was compelling them to speak in favor of the military by allowing recruiters on campus. Chief Justice Roberts, who authored *FAIR*, recently explained why the decision is narrow: it “involved the schools providing rooms for the military recruiter, and . . . what the Court said is empty rooms don’t speak.” *303 Creative v. Elenis*, No. 21-476, oral arg. trans. 65:1-9 (Dec. 5, 2022). A stage filled with costumed performers dancing to music under the lights is no empty room.

While the Supreme Court in *FAIR* noted that excluding military recruiters was “expressive only because the law school accompanied their conduct with speech explaining it,” 547 U.S. at 66, nowhere did it hold that an accompanying explanation divests inherently expressive conduct of First Amendment protection. Nor could it— an explanation often augments the message inherently expressive conduct conveys,

like an inscription under a painting, or the liner notes of a music album. Indeed, the Grammys have given an award for Best Album Notes since 1964. Johnny Cash’s liner notes from *At Folsom Prison* did not divest his album of First Amendment protection.

Imagine a painter revealing her latest work. If half the audience sheds tears because the painting evokes sadness, the painter does not lose First Amendment protection if she explains her work is meant to convey happy thoughts. The audience understood the painting communicated *something*—and that is what matters. *Hurley*, 515 U.S. at 569; *Fort Lauderdale Food Not Bombs*, 901 F.3d at 1241. In the same way, drag performers do not lose the First Amendment if their intended message differs from how another perceives it. So it matters not that President Wendler says he perceives the “artistic expression” of drag shows to be “mocking” and “cartoon-like . . . amusement.” (ECF 28-1.)

*FAIR* reaffirmed *Johnson*’s recognition that the First Amendment protects “inherently expressive” conduct. 547 U.S. at 66. And because live entertainment, music, and theatre—all intrinsic to drag shows—are inherently expressive, the First Amendment protects them, with explanation or without. *Schad*, 452 U.S. at 65–66 (collecting cases). These mediums *are* expression. Getting on stage and performing *is* expression and has been since the Ancient Greeks took to the Athenian stage.

Nor does *New York State Rifle & Pistol Association* change the outcome here. ECF 59 at 3 (citing 142 S. Ct. 2111, 2161 (2022)). *Bruen* requires the *government* to justify regulation of Second Amendment rights by pointing to text, history, and tradition. *Bruen*, 142 S. Ct. at 2126, 2131–33. It does not require Americans to prove

a historic right against their government controlling ideas and expression. *See id.* at 2132. (observing that “the First Amendment protects *modern* forms of communications . . .”) (citation omitted) (emphasis added). The Constitution establishes that enduring freedom and the Supreme Court’s long line of jurisprudence upholding the First Amendment’s guarantees for unpopular expression controls.

**E. First Amendment protection for drag performance is just as robust at public universities.**

First Amendment protection for drag shows apply with no “less force on college campuses than in the community at large.” *Healy*, 408 U.S. at 180. The need to preserve adult college students’ ability to “generate, debate, and discuss both general and specific ideas, hopes, and experiences” is why “courts must be especially vigilant against” limits on campus expression. *Speech First, Inc. v. Fenves*, 979 F.3d 319, 339 (5th Cir. 2020) (vacating the denial of a preliminary injunction against university verbal harassment policy).

The Supreme Court’s holding in *Papish* shows this principle in action. *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667 (1973) (per curiam). There, campus officials sanctioned a student after she published a newspaper featuring on its cover a vulgar and “indecent” cartoon—“depicting policemen raping the Statue of Liberty and the Goddess of Justice” *Id.* at 667. Rejecting the dissent’s admonishment about “lewd” speech, the Supreme Court announced that expression “on a state university campus may not be shut off in the name alone of ‘conventions of decency.’” *Id.* at 670. If the First Amendment protected the cartoon in *Papish*, it protects campus drag

shows like Spectrum WT's, featuring clothed performers dancing to non-profane music. (FAC ¶¶ 76–83; App. 5, Bright Decl. ¶19)

This Court departed from *Papish* and turned instead to *Fraser*—a case regulating minors' speech in K–12 schools. ECF 59 at 15 (citing *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 685 (1986)). But the interests of universities and their adult students differ from elementary schools and their pupils. That's why the “teachings of *Tinker*, *Fraser*, *Hazelwood*, *Morse*, and other decisions involving speech in public elementary and high schools, cannot be taken as gospel in cases involving public universities.”<sup>3</sup> *McCauley v. Univ. of the V.I.*, 618 F.3d 232, 247 (3d Cir. 2010); *see also Mahanoy Area Sch. Dist. v. B. L.*, 141 S. Ct. 2038, 2049 n. 2 (2021) (Alito, J., concurring) (explaining that “[f]or several reasons, including the age, independence, and living arrangements of such students, regulation of their speech may raise very different questions from those presented” in a K-12 speech case.)

## **II. Because the First Amendment Protects Drag, Plaintiffs Are Likely to Succeed on the Merits of Their Appeal.**

West Texas A&M's ban on drag shows violates the First Amendment three times over. It imposes a prior restraint on stage performance. It discriminates based on viewpoint. And it is a content-based restriction in a designated public forum. Strict scrutiny applies to each violation, a burden Defendants cannot satisfy.

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<sup>3</sup> The Fifth Circuit has once cited *Fraser* in the public college employment context, upholding discipline of a professor who cursed at and harassed his students. *Martin v. Parrish*, 805 F.2d 583, 585 (5th Cir. 1986) (citing *Fraser*, 478 U.S. 675 (1986)). A narrow decision holding a university may punish an employee for hurling profanities at their students has no bearing on the student expressive rights at issue here.

**A. Wendler’s edict is an unconstitutional prior restraint.**

If there were ever a compelling basis for an injunction pending appeal, it is a prior restraint, “the most serious and least tolerable infringement of First Amendment rights.” *Neb. Press. Ass’n v. Stuart*, 427 U.S. 539, 559 (1976). President Wendler banned Plaintiffs’ performance before they ever took the stage. That is a classic prior restraint, as Plaintiffs alleged and showed in moving for a preliminary injunction. FAC ¶¶ 193–216; ECF 31 at 19–21. This demonstrates Plaintiffs are likely to prevail on the merits of their appeal. Although the Court passed over the prior restraint before, it should now stop the prior restraint and remind university officials that they cannot muzzle speech based on personal views.

President Wendler’s stance mirrors that of the censorial officials in *SE Promotions*, 420 U.S. 546. There, a group asked to use a city-operated municipal auditorium to present the rock musical *Hair*. *Id.* at 547. The auditorium directors denied the application, reasoning that allowing the play “was not in the best interest of the community” and the board would only “allow those productions which are clean and healthful and culturally uplifting, or words to that effect.” *Id.* at 549. The Supreme Court struck down the directors’ censorship as an unconstitutional prior restraint. Likewise, President Wendler imposed a prior restraint by barring Plaintiffs’ drag shows from campus forums because the message does not meet Wendler’s criteria about what “demean[s] women.” (ECF 28-1.)

Actions “regulating speech contingent on the will of an official—such as the requirement of a license or permit that may be withheld or granted in the discretion of an official—are unconstitutional burdens on speech classified as prior restraints.”



*Chiu v. Plano Indep. Sch. Dist.*, 339 F.3d 273, 280 (5th Cir. 2003). And here, Defendants are “regulating speech contingent on the will” of President Wendler, denying Plaintiffs their First Amendment rights.

The Fifth Circuit’s decision in *Gay Student Services v. Texas A&M University* provides even more reason to hold that President Wendler’s edict imposes a prior restraint. 737 F.2d 1317 (5th Cir. 1984). There, the court held Texas A&M University violated the First Amendment when an administrator refused to recognize the Gay Student Services student group “clearly based on his perception that the organization *would* attempt to convey ideas about homosexuality,” which he believed were harmful. *Id.* at 1323. The court explained when a “restriction upon student expression takes the form of an attempt to predict in advance the content and consequences of that expression, it is tantamount to a prior restraint and carries a heavy presumption against its constitutionality.” *Id.* at 1325 (quoting *Univ. of S. Miss. Chapter, Miss. C.L. Union v. Univ. of S. Miss.*, 452 F.2d 564, 566 (5th Cir. 1971)).

As in *Gay Student Services*, Wendler’s edict rests on his subjective views about Plaintiffs’ expression and his attempt to “predict in advance the content and consequences” of Plaintiffs’ expression. *Id.* His edict leaves no doubt, accusing drag of having a “demeaning,” “derisive,” “mocking,” “objectifying,” and “inappropriate” message. (ECF 28-1.) The Supreme Court and Fifth Circuit made clear the government cannot restrain expression based on criteria like Wendler’s.

In fact, the only way public officials can justify a prior restraint on access to a public forum—if ever—is by pointing to “narrow, objective, and definite standards to

guide” officials in granting or denying access. *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 150–51 (1969). Wendler’s skewed criteria are none of those things. And even if they were, the university lacks safeguards to “obviate the dangers of a censorship system” based on viewpoint-based determinations, including: (1) the state bearing the burden of proving that the speech is unprotected; (2) an adversarial proceeding and judicial determination of whether the speech is protected; and (3) ensuring that “within a specified brief period,” the school “either issue[s] a license or go[es] to court to restrain” the speech. *Freedman v. Maryland*, 380 U.S. 51, 58–59 (1965); *see also Se. Promotions*, 420 U.S. at 559–60 (finding the moral standards used to censor *Hair* failed the *Freedman* safeguards). Wendler has never argued his ban satisfies *Shuttlesworth*’s demanding test, instead hoping his prior restraint continues to hide in plain sight. The Court should enjoin the prior restraint pending appeal.

**B. President Wendler is engaging in viewpoint discrimination.**

President Wendler’s ban on campus drag shows because he disagrees with their message—real or perceived—violates the First Amendment’s bar against viewpoint discrimination. “Viewpoint discrimination is . . . an egregious form of content discrimination. 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.” *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995). And “censorship based on a state actor’s subjective judgment that the content of protected speech is offensive or inappropriate is viewpoint discrimination.” *Robinson v. Hunt County*, 921 F.3d 440, 447 (5th Cir. 2019) (citing *Matal v. Tam*, 137 S. Ct. 1744, 1763 (2017)).

President Wendler’s own words leave no doubt: He banned drag shows because he finds their message “derisive, divisive and demoralizing misogyny, no matter the stated intent.” (ECF 28-1.) That is viewpoint discrimination. *See Iota Xi Chapter of Sigma Chi Fraternity v. George Mason Univ.*, 993 F.2d 386, 392 (4th Cir. 1993) (rejecting as unconstitutional viewpoint discrimination university’s attempt to punish fraternity members for hosting an “ugly women competition”).

To the same end, this Court should enjoin Defendants’ ongoing viewpoint-based censorship of Plaintiffs’ PG-13 charity drag show pending appeal.

**C. Excluding Plaintiffs’ drag show from campus public forums violates the First Amendment.**

President Wendler’s denial of Legacy Hall to Plaintiffs also violates the First Amendment, to their ongoing injury. When a public university opens a space to student expressive activity, it creates a designated public forum. *See Justice for All v. Faulkner*, 410 F.3d 760, 769 (5th Cir. 2005) (holding that when a university opens parts of its university for student expression, it creates a designated public forum). Because West Texas A&M opens facilities like Legacy Hall to students and student organizations for performances like theater, music, and dancing (FAC ¶¶ 33–37), “the University must therefore satisfy the standard of review appropriate to content-based exclusions.” *Widmar v. Vincent*, 454 U.S. 263, 270 (1981).

Under the First Amendment, “a government . . . has no power to restrict expression because of its message, its ideas, its subject matter, or its content” unless it satisfies strict scrutiny. *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015) (cleaned up). To meet that high bar here, Defendants “must show that [their] regulation is

necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end.” *Widmar*, 454 U.S. at 270.<sup>4</sup> They cannot meet that burden.

A ban on drag shows is content-based (if not outright viewpoint-based, as shown above). It singles out a particular type of expression—drag—for differential treatment, despite leaving like expression, such as ballet, beauty pageants, cheerleading, and competitive dance, untouched. That is textbook content discrimination. *Reed*, 576 U.S. at 169 (content discrimination exists when the government “singles out a specific subject matter for differential treatment”).

No matter a prior restraint, viewpoint discrimination, or a content-based restriction on expression in a designated public forum, all roads lead to strict scrutiny. Defendants cannot meet that hefty burden, making a swift injunction pending appeal to protect Plaintiffs’ expressive freedoms even more compelling.

**D. Defendants cannot meet strict scrutiny.**

Defendants’ content-based ban of campus drag shows—including canceling Plaintiffs’ March 31, 2023 show—fails strict scrutiny. And *Widmar* shows why. In *Widmar*, the University of Missouri at Kansas City denied an evangelical Christian student group the use of university facilities otherwise “generally available for . . . registered student groups.” *Widmar*, 454 U.S. at 264–65. The Supreme Court explained that such restrictions, which single out a particular subject for differential

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<sup>4</sup> Universities may impose content-neutral “reasonable time, place, and manner regulations.” *Widmar*, 454 U.S. at 276. As West Texas A&M is prohibiting drag shows outright, and is discriminating based on content to boot, the time, place, or manner test is inapplicable. It is content-based censorship, and thus presumptively unconstitutional. *Reed*, 576 U.S. at 163.

treatment, are subject to “the most exacting scrutiny.” *Id.* at 276. The Court held that the university unlawfully “discriminated against student groups and speakers based on their desire to use a generally open forum to engage in” protected expression and that the university’s stated goal, “achieving greater separation of church and State,” was not sufficiently “compelling’ to justify content-based discrimination against respondents’ religious speech.” *Id.* at 269, 278.

Here, advancing President Wendler’s belief that drag shows promote “misogyny” is not a compelling state interest. (ECF 28-1.) Banning drag shows does not prevent tangible harm to women. Any women (or men) who might take offense at drag can simply not attend. Likewise, those who agree with President Wendler’s distaste for the students’ expression can “effectively avoid further bombardment of their sensibilities simply by averting their eyes.” *Cohen*, 403 U.S. at 21. In short: don’t like drag shows? Don’t go to one. The government cannot wield its strong arm to enforce personal taste.

Nor is Defendants’ ban on drag shows narrowly tailored or the least restrictive means of furthering their goals. *See U.S. v. Playboy Ent. Grp.*, 529 U.S. 803, 813 (2000) (content regulation permissible only if the government “chooses the least restrictive means to further the articulated interest”) (cleaned up). A content-based law is not narrowly tailored if it leaves untouched a significant amount of expression causing the same problem. *Reed*, 576 U.S. at 172. Yet Defendants have not banned any other type of expression from campus which might tend to disparage or demean women. *See Iota Xi*, 993 F.2d at 393 (“[A] public university has many constitutionally

permissible means to protect female and minority students” short of punishing expression). And a government’s objection to a speaker’s message is not even a legitimate government interest, let alone a compelling one.

Nor can Wendler’s censorship rest on a supposed interest in protecting children. Plaintiffs’ planned drag shows *prohibit* children from attending unless accompanied by a parent or guardian. (FAC ¶ 80; App. 5, Bright Decl. ¶19) There was and is no danger of children “in the audience” at Plaintiffs’ drag shows, performed on a university campus after-hours, without a parent’s or guardian’s blessing. And Defendants have no compelling interest in dictating “what [they] think[] parents *ought* to want.” *Brown*, 564 U.S. at 804. Rather, expression falling short of obscenity standards “cannot be suppressed solely to protect the young from ideas or images” that an official “thinks unsuitable for them.” *Erzoznik v. City of Jacksonville*, 422 U.S. 205, 213–14 (1975). A supposed interest in protecting minors from PG-13 drag shows also fails narrow tailoring, because Wendler does not prevent student organizations from holding events showing PG-13 or R-rated movies if minors are present.

While Defendants might argue that *Christian Legal Society v. Martinez* (“*CLS*”) governs here, it does not. *See* Wendler CA5 Br. at 32 (citing 561 U.S. 661 (2010)). *CLS* analyzed a student group’s exclusion from a narrow type of forum—recognition of student organizations—that neither side disputed was a limited public forum. *See* 561 U.S. at 679. By contrast, all signs point to Legacy Hall being a designated public forum open to *anyone*, not just students.

What’s more, the student group in *CLS* sought “not parity with other

organizations, but a preferential exception from [University] policy” that required registered organizations “to open eligibility for membership and leadership to all students.” 561 U.S. at 668–69. But Plaintiffs seek no preferential exception. They simply seek parity without viewpoint discrimination, that all other recognized student groups (and the public) enjoy under university policy and practice dedicating Legacy Hall to expressive activity. Wendler’s edict “singles out” drag performers because he finds their message offensive, unlike the policy the Supreme Court found neutral in *CLS*. 561 U.S. at 685. That viewpoint discrimination echoes the unconstitutional actions in *Papish* and *Rosenberger*, not the policy in *CLS*. *Papish*, 410 U.S. at 667–70; *Rosenberger*, 515 U.S. at 829.

### **III. Plaintiffs Will Suffer Irreparable Harm Absent Immediate Relief.**

Plaintiffs have a drag show scheduled in Legacy Hall for March 22, 2024. (App. 5–6, Bright Decl. ¶¶17–23). Without immediate relief, Wendler’s ban will exclude Plaintiffs from the very stage they have a First Amendment right to perform on. The Fifth Circuit has “repeatedly held . . . that the loss of First Amendment freedoms for even minimal periods of time constitutes irreparable injury justifying the grant of a preliminary injunction.” *Texans for Free Enter. v. Tex. Ethics Comm’n*, 732 F.3d 535, 539 (5th Cir. 2013) (cleaned up).

President Wendler has signaled every intent to “reject future drag” shows on campus, which would include Plaintiff’s performance planned at Legacy Hall for March 22, 2024. Wendler CA5 Br. at 32. He even boasted to the media that “he wouldn’t have done anything differently” than he did when censoring Plaintiffs in March 2023. (ECF 45-1 at 25:11–27:50.) Absent an injunction to stop irreparable

harm to Plaintiffs' expressive freedoms, history will likely repeat itself.

**IV. The Balance of Harms and the Public Interest Favor Plaintiffs' First Amendment Rights.**

"[I]njunctive protections protecting First Amendment freedoms are always in the public interest." *Texans for Free Enter.*, 732 F.3d at 539 (quoting *Christian Legal Soc'y v. Walker*, 453 F.3d 853, 859 (7th Cir. 2006)). This is especially true on campus, where "courts must be especially vigilant against assaults on speech in the Constitution's care." *Speech First, Inc.*, 979 F.3d at 339. By contrast, President Wendler has not identified any potential harm to the university or himself from the drag show proceeding other than offense to women and to his own worldview. That is not enough to overcome upholding the First Amendment.

**V. The Court Should Not Require a Bond Because Plaintiffs Seek Only to Protect Their First Amendment Rights.**

The Court should decline to require a bond for an injunction under Rule 62(d). This Court has full discretion regarding whether to require security for an injunction. *Id.* Because Plaintiffs are engaging in public-interest litigation to vindicate First Amendment rights, the Court should waive the bond requirement. *See, e.g., City of Atlanta v. Metro. Atlanta Rapid Transit Auth.*, 636 F.2d 1084, 1094 (5th Cir. 1981). *Gbalazeh v. City of Dall.*, No. 18-cv-0076, 2019 WL 2616668, at \*2 (N.D. Tex. June 25, 2019) (citing *City of Atlanta* and waiving bond requirement when granting preliminary injunction on First Amendment grounds).

**CONCLUSION**

The Court should grant an injunction pending appeal under Rule 62(d).



Respectfully submitted,

/s/ JT Morris

JT MORRIS  
TX Bar No. 24094444  
CONOR T. FITZPATRICK\*  
MI Bar No. P78981  
FOUNDATION FOR INDIVIDUAL  
RIGHTS AND EXPRESSION  
700 Pennsylvania Ave., SE  
Ste. 340  
Washington, DC 20003  
Tel: (215) 717-3473  
Fax: (267) 573-3073  
jt.morris@thefire.org  
conor.fitzpatrick@thefire.org

ADAM B. STEINBAUGH\*  
PA Bar No. 326475  
JEFFREY D. ZEMAN\*  
Pa. Bar No. 328570  
FOUNDATION FOR INDIVIDUAL  
RIGHTS AND EXPRESSION  
510 Walnut St.; Ste. 900  
Philadelphia, PA 19106  
Tel: (215) 717-3473  
Fax: (267) 573-3073  
adam@thefire.org  
jeff.zeman@thefire.org

\* Admitted *Pro Hac Vice*

*Attorneys for Plaintiffs  
Spectrum WT, Barrett Bright,  
and Lauren Stovall*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 31, 2024, a true and correct copy of the foregoing document was transmitted via using the CM/ECF system, which automatically sends notice and a copy of the filing to all counsel of record.

/s/ JT Morris

JT Morris

FOUNDATION FOR INDIVIDUAL  
RIGHTS AND EXPRESSION

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION**

SPECTRUM WT, BARRETT BRIGHT,  
and LAUREN STOVALL,

Plaintiffs,

v.

WALTER WENDLER, in his individual  
capacity and his official capacity as the  
President of West Texas A&M University,

CHRISTOPHER THOMAS, in his official  
capacity as Vice President for Student  
Affairs at West Texas A&M University,

JOHN SHARP, in his official capacity as  
Chancellor of the Texas A&M University  
System,

ROBERT L. ALBRITTON, JAMES R.  
BROOKS, JAY GRAHAM, MICHAEL A.  
HERNANDEZ III, TIM LEACH, BILL  
MAHOMES, ELAINE MENDOZA,  
MICHAEL J. PLANK, CLIFF THOMAS,  
and DEMETRIUS L. HARRELL JR., in  
their official capacities as members of the  
Board of Regents of the Texas A&M  
University System,

Defendants.

Case No.: 2:23-cv-00048-Z

Hon. Matthew J. Kacsmaryk

**APPENDIX TO PLAINTIFFS’ BRIEF IN SUPPORT OF  
RULE 62(d) MOTION FOR INJUNCTION PENDING APPEAL**

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Dated: January 31, 2024

Respectfully submitted,

/s/ JT Morris

JT MORRIS

TX Bar No. 24094444

CONOR T. FITZPATRICK\*

MI Bar No. P78981

FOUNDATION FOR INDIVIDUAL

RIGHTS AND EXPRESSION

700 Pennsylvania Ave., SE

Ste. 340

Washington, DC 20003

Tel: (215) 717-3473

Fax: (267) 573-3073

jt.morris@thefire.org

conor.fitzpatrick@thefire.org

ADAM B. STEINBAUGH\*

PA Bar No. 326475

JEFFREY D. ZEMAN\*

Pa. Bar No. 328570

FOUNDATION FOR INDIVIDUAL

RIGHTS AND EXPRESSION

510 Walnut St.; Ste. 900

Philadelphia, PA 19106

Tel: (215) 717-3473

Fax: (267) 573-3073

adam@thefire.org

jeff.zeman@thefire.org

\* Admitted *Pro Hac Vice*

*Attorneys for Plaintiffs*

*Spectrum WT, Barrett Bright,*

*and Lauren Stovall*

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/s/ JT Morris

JT Morris

FOUNDATION FOR INDIVIDUAL  
RIGHTS AND EXPRESSION

# **DECLARATION OF BARRETT BRIGHT**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

SPECTRUM WT, BARRETT BRIGHT,  
and LAUREN STOVALL,

Plaintiffs,

v.

WALTER WENDLER, in his individual  
capacity and his official capacity as the  
President of West Texas A&M University,  
*et al.*,

Defendants.

Case No.: 2:23-cv-00048

**DECLARATION OF BARRETT  
BRIGHT IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
INJUNCTION PENDING APPEAL**

Under 28 U.S.C. § 1746, I, Barrett Bright, declare as follows:

1. I am over the age of 18 and have personal knowledge of the facts in this declaration.
2. I am a Plaintiff in the present case and a citizen of the United States of America.
3. I am an undergraduate student enrolled at West Texas A&M University ("West Texas A&M"). I am a civil engineering major taking a 10-credit course load to finish my degree. My academic work occupies a significant amount of my time and focus.
4. I am also the President of Spectrum WT, a plaintiff in the present case.
5. Spectrum WT is a recognized student organization in good standing at West Texas A&M. It has around 20 members who are undergraduate or graduate students enrolled at West Texas A&M. It has existed since around 2009.

6. Spectrum WT's mission is to provide a safe space for LGBTQ+ students and allies to come together, to raise awareness for the LGBTQ+ community, and to promote diversity, support, and acceptance on campus and in the surrounding community.

7. Spectrum WT sought to hold its first annual drag show in Legacy Hall at West Texas A&M on March 31, 2023. We planned our show to avoid risqué types of performances, even going so far as to require performers to avoid using music with profanity. Our show was to be held in Legacy Hall, an event space the university holds out as suitable—and frequently used—for stage performances. Because it is an enclosed venue, only people who bought tickets to see the performance would be in attendance.

8. To organize the March 2023 event, our organization followed the policies, procedures, and practices identified by West Texas A&M, including the Facility Use Request Procedure and the Campus Organizations Handbook.

9. Our March 2023 event proceeded to the “Tentative Confirmation” stage, had passed the university’s risk assessment protocol, and university staff had helped us design the event flyers.

10. On March 14, 2023, a university administrator informed us our event was “scheduled and approved as “Tentative” while waiting for the list of performers and their songs—the final step necessary to move to “Confirmed” status.

11. On March 20, 2023, President Wendler canceled the performance. I first learned that he was doing so when Vice President Christopher Thomas told me that



President Wendler was canceling it because Wendler believed that drag shows discriminate against women.

12. That day, President Wendler distributed an email to all students, faculty, and staff pledging that there would be no drag show on the university's campus, as it was "not possible" to have a "harmless" drag show and drag shows were discriminatory.

13. West Texas A&M provides a "Campus Organizations Handbook" identifying the stages for approval of campus events. As president of a registered student organization, I am familiar with the Handbook. A true and correct copy of West Texas A&M's Campus Organizations Handbook is attached as **Exhibit 1**. This document is available on the West Texas A&M University website at <https://www.wtamu.edu/files/docs/Campus%20Org%20Handbook.pdf>.

14. The stages for reservation of university facilities are:

- a. **Virtual EMS Request (HOLD):** A request to reserve a space, allowing staff to "ensure there are no other conflicting events in that space."
- b. **Tentative Approval:** After JBK Event Services staff confirm details concerning the date, time, and audio-visual needs for the event. At this point, organizers are permitted to begin advertising the event. Tentative approval is supposed to occur within three days of a request.
- c. **Confirmed Status:** All details have been confirmed. This is supposed to happen at least five weeks before the event.

15. Organizers are also required to submit a risk assessment and a risk assessment matrix at least two weeks before the event.

16. Organizers who do not wish to use the university's food vendor are required to submit a catering exemption form.

17. On April 11, 2023, I submitted a request to use the Alumni Banquet Facility for a "Buff-a-Woah Drag Show," to be held on March 22, 2024. A true and correct copy of the Virtual EMS Request is attached as **Exhibit 2**.

18. Spectrum has since renamed the event to the "Don't be a Drag, Drag Show" and changed the requested location from the ABH Dr. Hazel Kelley Wilson Banquet Hall to Legacy Hall.

19. Like the March 2023 performance that President Wendler cancelled, Spectrum WT intends that the March, 22 2024 drag show be PG-13; free of alcohol and music with profanities and closed to minors unless accompanied by a parent or guardian, chiefly to allow younger brothers or sisters to support student performers. To ensure compliance, Spectrum will check identification at the entrance to the event.

20. We are also required to submit a risk assessment and a risk assessment matrix at least two weeks before the event. I submitted the risk assessment form on January 5, 2024 and intend to submit an amended risk assessment form on January 31, 2024.

21. The risk assessment matrix is substantially similar to the one submitted for the March 2023 event, and approved by West Texas A&M's risk assessment administrators in 2023.

22. On January 5, 2024, Spectrum received an emailed response from Richard C. Smith, Assistant Vice President, Risk and Compliance, of West Texas

A&M University. A true and correct copy of Vice President Smith's email is attached as **Exhibit 3**.

23. Vice President Smith's email stated that the March 2024 event was at the "TENTATIVE" stage. His email indicated that West Texas A&M University "will review your request and get back to you within the next two weeks."

24. That two-week period lapsed on January 19, 2024. Risk Assessment wrote Spectrum and thanked Spectrum "for being so responsive."

25. I monitor the Student Events calendar and, although many other events have been added to the Student Events Calendar for the days and weeks after March 22, 2024, our event has not been added as of today.

26. Each participant in the March 2024 performance will be required to sign a Release Form.

27. Before the event, Spectrum intends to submit the required paperwork regarding catering.

28. Spectrum is working on designing promotional material for the event and will work with University staff to that end.

29. I am a principal student organizer of the March 22, 2024, performance. I intend to participate in it. I also know of specific other members of Spectrum WT and other students who also intend to perform. And I know of specific other members of Spectrum WT—and other students who are not members—who intend to attend the performance.

30. I believe that President Wendler will cancel the event again because:

- a. In his March 20, 2023, cancellation of our drag show, Wendler said that “West Texas A&M University will not host a drag show on campus” and that a “harmless drag show” was “[n]ot possible.”
- b. I am aware that in a television news interview about a month after we filed this lawsuit, President Wendler said he “wouldn’t have done anything differently.”
- c. I am aware that President Wendler has said in his December 28, 2023, brief in the United States Court of Appeals for the Fifth Circuit that he referenced the “rejection of future drag shows,” claimed that drag performances are not protected by the First Amendment, and insisted that “officials” need to screen the content of events.

31. Spectrum intends to hold the drag show because it believes that it is an effective way to express ourselves and reach others on campus. Each performance is unique, collectively celebrating the diversity of the LGBTQ+ community.

32. As a recognized student organization, cancellation of our event will harm our ability to express ourselves and to reach our intended audience. Our organization’s mission seeks to promote LGTBQ+ diversity, support, and acceptance on campus. If our events cannot be held on campus, it hinders our ability for our organization and its members to reach fellow students.

33. Cancellation also deprives us of facilities that we pay for with our student fees. Each semester, each of our members pays a fee that funds the Jack B. Kelley Student Center.

34. And if President Wendler cancels our performance again, we will have lost the resources we have expended on preparing for this performance. These include the time that I and other members have spent planning the event, coordinating with other students and organizations, and preparing publicity.

I declare under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge.

Dated: January 30, 2024

  
Barrett Bright

*Spectrum WT, et al., v. Wendler, et al.*

# **Exhibit 1**

**to Declaration of Barrett Bright in  
Support of Plaintiffs' Rule 62(d)  
Motion for Injunction Pending  
Appeal**

# Campus Organizations HANDBOOK

Provided by the Student Engagement and Leadership Office  
Jack B. Kelley Student Center, Suite 103  
806.651.2313  
[www.wtamu.campuslabs.com](http://www.wtamu.campuslabs.com)

## Why Does Your Group Need to Register?

Becoming a registered campus organization is a required process at West Texas A&M University. It provides a terrific opportunity to serve the campus community, develop skills within a large group and have a good time in the process. A WTAMU registration involves privileges and responsibilities as listed below.

## Privileges

- Access to campus facilities
- Access to Campus Organization Funds (COFC)
- Support from the Office of Student Engagement and Leadership (OSEL)
- Listing in the Buff Link Directory
- Use of West Texas A&M University name to signify campus affiliation
- Involvement opportunities such as; NSO Org Fairs, Buff Branding events, Join the Herd 2.0, etc.
- Check-out equipment such as; yard games, popcorn machine, karaoke machine, etc.

## Responsibilities

- Abide by procedures and regulations pertaining to campus organizations found in the current *Student Handbook* and *Campus Organizations Handbook* and to state and federal laws
- Attend Org Rally each semester
- Re-register **EVERY** fall and spring semester in Buff Link by the announced deadlines
- Complete the Risk Management process **EVERY** spring semester

## How To Re-Register an Existing Organization

- Existing organizations **MUST** re-register every semester.
- Access your organization in Buff Link (Buff Connect > Buff Link > Sign In > click on your org icon circle on the left hand side of the page > Manage Home > click the blue Re-Registration button
  - If the above steps don't work it is possible that you don't have access to your organization because you are not listed on the current roster. You can come to the OSEL for help.
  - You will have an opportunity to update the org profile, roster (must include all members), and org profile.

- Make sure to check your email. You will receive an approval if all things were done correctly or you will receive a denial if you need to make any corrections.
- **Constitution and By-Laws.** Every campus organization must have an up-to-date constitution or by-laws (cannot be older than 3 years) uploaded in BuffLink.
- Once the registration process is complete, the campus organization is eligible for all the privileges afforded to registered campus organizations at WTAMU.

## How To Register a New Organization

If there is not already an organization on campus that meets your needs, the Office of Student Engagement and Leadership can help you through the process required to create a new one.

- These are the items you will need to collect and prepare prior to registering:
  - Constitution and By-Laws. Every campus organization must have an up-to-date constitution and/or by-laws. This will help in the development of a new organization and in the stability of an existing one. Important things to remember about the constitution are (1) it must be voted on and approved by the general membership, and (2) it must be uploaded into Buff Link at the time of registration and anytime it is changed. You can find a sample constitution [here](#).
  - Secure an advisor for the organization. University regulations require each campus organization to have at least one advisor. The advisor must be a full-time faculty or staff member at WTAMU. (You will need their WT email address.)
  - Secure eight (8) WT students to be added to the organization roster. (You will need each members' WT email address.). Always, include all members on the roster.
  - Of the above members you will need to elect 4 officers: president, vice president, secretary and treasurer.
- When the above items are available you can register your new organization in Buff Link. (Buff Connect > Buff Link icon > Sign In > Organization icon (symbol of two people) > Register an Organization > Scroll down to the bottom of this page and you will see the blue Register a New Organization button)
  - Make sure to check your email. You will receive an approval if all things were done correctly or you will receive a denial if you are missing any of the pieces.
- Become familiar with WTAMU policies concerning campus organizations.
- As soon as the organization is registered, it can begin operating and meeting. A representative of the organization, preferably the president, **MUST** attend Org Rally each semester.
- The president or advisor (depending on the semester) **MUST** also complete the two step Risk Management process.
  - Online training – the link is on the home page of BuffLink
  - Risk Management statement – a hard copy can be pick up in the OSEL, JBK 103.

## Advisor Selection and Responsibilities

Current University regulations require each campus organization to have a primary advisor who is a full-time WTAMU faculty or staff member. It is in the organization's best interest to have a secondary advisor



if your primary advisor is frequently unavailable. We hope the following will help you select an advisor, as well as understand his/her function in your organization.

### **The Role of the Advisor**

An advisor adds to the continuity of your organization by making sure that successive officers of the organization understand the responsibility they share with the officers, as well as explaining to the officers the policies established for campus organizations.

### **Duties of an Advisor**

- To be aware of and have an understanding of those rules pertaining to organizations at WTAMU as well as rules and procedures governing WTAMU students.
- To be aware of liability issues (i.e. hazing, alcohol, etc.) and advise the organization to make reasonable and prudent decisions regarding these issues in planning activities.
- To attend meetings of the organization whenever possible.
- To be available to the officers and members of the organization on a regular basis for advice and consultation.
- Take all necessary trainings that are required by the state of Texas.

### **Hints for Recruiting an Advisor**

- Before making a selection, keep in mind the following:
  - Find someone who will have the time to devote to your organization.
  - Find someone who will take the role willingly and seriously.
- When approaching your potential advisor for the first time, make certain that he/she has a clear understanding of your organization's purpose as well as what will be required of him/her in their role, duties and time commitment.
- Allow the person a reasonable length of time to consider his/her decision.
- If possible, choose someone who shares some of the same interests of your organization, and someone with which members are in contact.
- When starting a departmental club or organization, find someone in that department to be an advisor.

### **How to Work With Your Advisor**

- It is best to meet with your advisor at least one day before your meetings to go over the agenda and topics to be discussed.
- Be open to suggestions and criticisms from your advisor. His/her knowledge and experience will help in solutions and organizational procedures.
- If an advisor cannot attend all your meetings, be sure to meet with him/her after the meeting to brief him/her on what happened.

### **Grade Point Release Form**

(Required only for groups that have grades checked.)

The release of student grades to other students is prohibited unless written permission is obtained from each student, as indicated on the Grade Point Release Form. Grade reports are compiled by the Office of Student Engagement and Leadership at the end of each semester. Groups submitting the Grade Point Release Form must do so by the established deadlines (**Fall: December 1; Spring: May 1**).

Grades will not be disclosed in any fashion unless the release section of the form is signed. Grades will only be released to the organization president, advisor and national office, as needed, to complete national reports, provide academic assistance, and recognize academic excellence. Grade reports released to organization president, advisor and national office may not be released to any other students.

### **Org Rally**

#### **Mission**

The mission of the Org Rally is to enhance the quality of campus life and provide support to campus organizations. A representative, preferably the org president, and advisor of all registered campus

organizations are encouraged to attend Org Rally. A workshop for all organizations that will be held at the beginning of each semester.

**Goals and Objectives**

- To provide a network for organizations to support and promote themselves and other organizations.
- To market major campus events and promote joint programming efforts among organizations.
- To provide leadership training.
- To promote community awareness.
- To increase communication flow to organizations.
- To guide and direct through the *Campus Organizations Handbook*

**Reserving University Facilities**

[reservations.wtamu.edu](http://reservations.wtamu.edu)

Directions to make a reservation can be found on the home page once you are logged in and your name is in the top right corner.

**Event Process Timeline**

Virtual EMS Request (HOLD)	When you submit your reservation (starting April 1 of each academic year), it is only a request. It will remain in Virtual EMS (HOLD) status until we ensure there are no other conflicting events in that space.
Tentative	Once we receive your request, a JBK Event Services Assistants will reach out to confirm details regarding the date, time, and your A/V needs. After these have been confirmed, we will send a tentative confirmation. At this point your group is allowed to advertise the event. We prefer to move all events from hold to tentative within 3 business days of submission into the system.
Confirmed	Once all details have been confirmed for the event, the reservation will be moved into Confirmed status. We prefer this to happen five weeks prior to the event, so please be diligent in submitting your reservations a minimum of two months prior. Keep an eye on your email for updates and/or questions regarding the event.

**Student Org/Department/Individual Details**

Student Org/Department/Individual Details

Student Org/Department/Individual \*

Contact

Contact Name \*

Contact Phone \* Contact Fax

Contact Email Address \*

Please be sure to put your organization, not your name. If you cannot select your organization, please contact us at [jbk@wtamu.edu](mailto:jbk@wtamu.edu) or 806-651-2337 to have that organization added to your account.

**Contact**

Please list two contacts, this should be you, the event organizer, and/or the Advisor, President or VP of the organization.

**REMINDER:** No glitter, confetti, helium tanks, or tape (on walls or fixtures) are allowed in WTAMU facilities.



## Posting Marketing Guidelines

### Any University Facility

- Materials may not be racist or sexist in content; contain obscene words; promote alcohol or other drug usage or any unlawful activity; or violate University rules, Texas A&M University System policies, or local/state/federal laws.
- Your marketing, if applicable, should comply with university graphic standards and should contain the name of the sponsoring organization/department and the name, date and place of the event and contact information.
- Post your marketing, one per event, on the open bulletin board with a thumbtack (no staples, glue guns, tape, etc.). Do not post on doors, windows, ceilings, walls, etc., in any building.
- Please remove your marketing the day after the publicized event.
- Be aware of the posting guidelines in each building. Not all buildings allow you to post your marketing.
- Use this link, <https://www.wtamu.edu/SEESMarketing>, or click [here](#) for more resources and places to post your marketing.

## University Graphics Standards

The University's image – a sum of beliefs, ideas and impressions – is extremely important to the continued growth and development of West Texas A&M University. We want to be seen as a quality institution that emphasizes teaching, research and community service. In order to convey that image to our external constituents, we must present a unified and consistent message. To accomplish this goal, we must rely heavily on coordinated visual materials that comply with published graphics standards.

The Office of Communication and Marketing has the primary responsibility for all campus design work that uses the University seal, logo or word mark, and any printed piece that bears these University "signatures" must be cleared for publication through the Office of Communication and Marketing.

Camera-ready artwork of the University seal and logo is available at <https://www.wtamu.edu/graphicstandards> or click [here](#).

If you would like more information or if you have questions about how you can promote and market your event, contact: Evelyn Montoya, Marketing Coordinator for Student Success and Engagement and

Jack B. Kelley Student Center, Suite 102  
WTAMU Box 60775  
Canyon, Texas 79016-0001  
Phone: 806-651-2051  
Fax: 806-651-2926  
[emontoya@wtamu.edu](mailto:emontoya@wtamu.edu)

## Food Services/Catering

By contract, ARAMARK Food Services shall provide, or provide and serve, all food items on the WTAMU campus. Student groups are not allowed to sell or distribute any food item on the campus unless written permission has been granted by the Director of Food Services (whose office is located in the Dining Hall). The On Campus Catering Exemption Form can be found at <https://www.wtamu.edu/webres/File/Purchasing/On%20Campus%20Catering%20Exemption%20Form.pdf> or click [here](#).

Arrangements for food and beverage requirements are to be made with the Catering Manager, Michael Ives, in the Dining Hall, at 651-2707 or [mives@wtamu.edu](mailto:mives@wtamu.edu). The complete catering guide for student organizations, including menus and rates, is available from the Catering Manager.

## Organizational Risk Management

It is important that leaders of all campus organizations do everything they can to minimize the possibility of accidents and injuries while planning and programming events. Advisors and officers are responsible but there are many practical, common-sense things that your organization can do to minimize the possibilities of problems arising.

There is not a substitute for good planning. If the time is taken to think through a certain event logistically from start to finish, you will discover that just a little planning will make a big difference in how things go and you could discover pitfalls which can be planned for rather than destroy your event.

All groups, for social interaction, may plan a skating party or a ski trip, go to a member's farm to ride horses or impulsively decide to take a swim. You certainly cannot anticipate everything, but just thinking about how accidents and injuries may occur will lead to some good risk management practices.

### West Texas A&M University Risk Management and Insurance Matrix

Exposure To Be Reviewed: \_\_\_\_\_

**Instructions:** **Step 1** - List all event activities and be as inclusive as possible. **Step 2** - Honestly identify risks associated with each activity. **Step 3** - Use the matrix below to assess your activities. Tally the severity and probability scores for evaluation. **Step 4** - Brainstorm methods to manage risks. See if you can reduce the probability or severity of something going wrong. **Step 5** - Submit the Risk Management and Insurance Matrix Form with your Risk Assessment Form for further review. If you have questions, please contact Richard Smith via email at [rcsmith@wtamu.edu](mailto:rcsmith@wtamu.edu).

List of Activities to Occur	Associated Risks*	Severity	Probability	Method to Manage Risks**

\*Possible risks include: medical emergencies, food poisoning/allergens, damage to WTAMU reputation, accidents, injuries, and/or death

\*\*Methods to manage risks include: insuring risk, arranging for security, use of administrative procedures, and/or use of PPE or safety devices

<p style="text-align: center;"><b>Severity</b></p> <p><b>I: May result in death</b></p> <p><b>II: May cause severe injury, major property damage, significant financial loss, and/or result in negative publicity for WTAMU</b></p> <p><b>III: May cause a moderate illness, injury, property damage, financial loss, and/or result in negative publicity for WTAMU</b></p> <p><b>IV: Presents a minimal threat to safety, property, operations, or reputation</b></p>	<b>Risk Matrix</b>				<p style="text-align: center;"><b>Probability</b></p> <p><b>A: Likely to occur immediately or in a short period of time (6&lt;months); expected to occur frequently</b></p> <p><b>B: Likely to occur in the near future (6 months – 1 year); expected to occur periodically over a relatively short timeframe; expected to occur over the life of an event or project</b></p> <p><b>C: May occur if given enough time; probability of occurrence is equal to it not occurring</b></p> <p><b>D: Unlikely to occur at any point</b></p>	
	<b>Probability</b>					
	<b>Severity</b>	<b>A</b>	<b>B</b>	<b>C</b>		<b>D</b>
	I	High Risk	High Risk	High Risk		Medium Risk
	II	High Risk	High Risk	Medium Risk		Medium Risk
III	Medium Risk	Medium Risk	Medium Risk	Low Risk		
IV	Medium Risk	Medium Risk	Low Risk	Low Risk		
<p>High risk areas may be sent to System Risk Management for additional review. Although insurance procurement may not be the answer, discussions should occur regarding self-retention so all parties are aware of the risks associated with the activity.</p>						

*Form Updated 07/22/22*



giving away a faulty product. Make sure your supplier is reliable and use common sense when deciding what products with which you may want to involve your group.

## **Hazing/Harassment**

Preventing hazing and sexual or racial harassment are not usually considered in the context of risk management, but your organization can suffer great consequences if hazing and harassment occur. This is something this University simply will not tolerate. Please read the section carefully. The Student Handbook states this about hazing: HAZING:

Intentional, knowing, or reckless act directed against a student by one person acting alone or by more than one person occurring on or off university premises that endangers the mental or physical health or safety of a student for the purpose of pledging or associating with, being initiated into, affiliating with, holding office in, seeking and/or maintaining membership in any organization or program whose membership consists of students. Consent and/or acquiescence by a student or students subjected to hazing is not a reasonable defense in a disciplinary proceeding. Hazing includes, but is not limited to:

- a. Any type of physical brutality, such as whipping, beating, using a harmful substance on the body or similar activity.
- b. Any type of physical activity that subjects the student to an unreasonable risk of harm or that adversely affects the mental or physical health or safety of a student, such as sleep deprivation, exposure to the elements, confinement in a small space, or calisthenics.
- c. Any activity involving consumption of a food, liquid, alcoholic beverage, drug or other substance which subjects a student to an unreasonable risk of harm or which adversely affects the mental or physical health or safety of a student.
- d. Any activity that intimidates or threatens a student with ostracism, subjects a student to extreme mental stress, shame or humiliation, adversely affects the mental health or dignity of a student, or discourages a student from entering or remaining enrolled at the University, or may reasonably be expected to cause a student to leave the organization or the University rather than submit to acts described above.
- e. Any activity in which a person solicits, encourages, directs, aids or attempts to aid another in engaging in hazing; intentionally, knowingly or recklessly permits hazing to occur; has firsthand knowledge of the planning of a specific hazing incident which has occurred and knowingly fails to report the incident to the VPSEES or the University Police Department.
- f. Any activity in which hazing is either condoned or encouraged or any action by an officer or combination of members, pledges, associates or alumni of the organization of committing or assisting in the commission of hazing. Students who are recipients and/or victims of hazing (and who have not perpetrated hazing behavior on others involved in the fact pattern for which they are reporting) and who report the activities to the VPSEES and/or the University Police Department, will not be charged with a violation of the hazing rule. NOTE: For more information on hazing see Texas Education Code, Sections 37.151-37.155 and Section 51.936 at <http://www.statutes.legis.state.tx.us/?link=ED>

## **Insurance**

In many cases, your organization should require students to have some type of medical, accident and injury insurance. In the majority of instances, students are insured by their parents on a family plan of some sort. It is a good idea to ask students to furnish a copy of their family insurance card (proof of insurance) or purchase some sort of event insurance. The University does not carry insurance on students and cannot be responsible for medical bills or other related expenses.

## **Student Activity Release Form**

It is important that participants are warned of any dangers inherent in an activity and that they sign a document stating that they understand this danger and will assume the responsibility for themselves. A sample form from the Office of General Counsel of the Texas A&M University System is available in the Office of Student Engagement and Leadership for use as a pattern for filling in the parts that are significant to your specific activity. This form is a legal document and should be stated as such. It is a good idea to have everyone sign it at the time they join or pay dues. It is also a good idea to have your members sign a more specific form before each event that carries some risk. This may seem like a lot of paperwork, but very important.

Only students of WTAMU should participate in your activities. If outsiders want to participate, be sure they sign any and all risk forms, too. If you allow children to participate, it is a good idea for minors to have a release from their parents and require parents be present at the event.

If your organization has questions regarding risk management or liability, please don't hesitate to contact the Office of Student Engagement and Leadership. We love to help students!

### Houses/Lodges, Fire Safety and Equipment

Houses/Lodges, fire safety, and equipment are other areas where good risk management must be practiced. A careful check of each is very important to the overall safety of guests and users of a group's facilities and equipment. Guests and users should be made aware of any potential hazard, taught how to use certain equipment, and informed of proper fire evacuation plans. These measures are necessary to safeguard groups from potential legal action stemming from the use of their facilities or equipment. It is good practice to contact the Fire Marshall to have annual inspections of your facilities.

## West Texas A&M University Student Travel Procedures

Effective January 1, 2002

Revised December 7, 2010

Supplements System Policy 13.04 and WTAMU Rule 13.04.99.W1/SA

### 1. GENERAL

The purpose of these procedures is to protect the health and welfare of the West Texas A&M University community by regulating travel that is undertaken by one or more students presently enrolled at the university under certain conditions.

**1.1** It is the intent of West Texas A&M University to promote safety and to encourage safe conduct when traveling to and from university activities or events. Accordingly, in addition to encouraging the use of good judgment, the university has adopted the Student Travel Rule and set out safety procedures designed to encourage safe behavior. These procedures herein apply to all who travel to an activity or event that is organized and sponsored by the university:

**(1)** When the travel will be (a) more than 25 miles from the University or (b) to and from Palo Duro Canyon; and

**(2)** When (a) attendance at the activity or event is required by a student organization properly registered at the university; or (b) the activity or event is funded by the university [including Campus Organizations/Forums Committee (COFC) funds]; or (c) travel is in a state-owned vehicle.

If Travel Is...	Travel Manifest Required?	Individual Release Required?	Parental Release Required?
Less than 25 mi from campus	Optional	Optional	***
To/From Palo Duro Canyon	YES	YES	***
More than 25 mi from campus	YES	YES	***
<b>AND the travel is...</b>			
In a state-owned vehicle	YES	YES	***
Required by a registered student organization	YES	YES	***
The responsibility of students to (1) an off-campus site where a class is meeting; (2) internship, field study, clinical or student teaching sites; or (3) service-learning activities	YES	YES	***
***Participant is under 18			YES

These procedures do not apply when students are responsible for their own transportation to

(1) an off-campus site where a class is meeting; (2) internship, field study, clinical or student teaching sites; or (3) service-learning activities.

**1.2** Traveling to and from university organized or sponsored events and activities may require the use of various modes of transportation and travel under different conditions. Each form of travel requires the student to follow common and mode-specific safety precautions. In addition to following federal and state laws that encourage safe travel, students should use sound judgment and follow the procedures set forth in this document when traveling.

**1.3** University employees who authorize students to drive state-owned vehicles for university-related business and activity are responsible for ensuring that the student has a valid driver's license and is approved to drive university vehicles as determined by the Office of the Vice President for Business and Finance. To be covered on the Texas A&M University System self-insured auto plan, drivers must be employed by WTAMU when driving a state-owned vehicle.

**1.4** Students traveling in university vehicles, to university organized or sponsored events and activities, must return in university vehicles, unless authorized in writing to do otherwise. Only the vice president, advisor, or department head responsible for organizing the travel may authorize travel in a vehicle other than that provided by the university.

## **2.COMPLIANCE AND ENFORCEMENT**

**2.1** Departments that encourage or require one or more students to travel to university organized and sponsored events and activities are responsible for verifying that students are aware of the procedures outlined in this document.

**2.2** Students who fail to comply with the rule and the procedures herein are subject to disciplinary action, up to and including suspension. Student organizations that violate the rule and the procedures herein also are subject to disciplinary action, up to and including suspension. University departments who fail to comply with the rule and the procedures herein are subject to losing the use of university vehicles.

## **3. PROCEDURES**

The following procedures are established to implement the student travel rule.

**3.1** Required Documentation. All required documentation must be submitted to the Director of Student Activities. The following documents should be completed 2 weeks prior to travel.

**(1)** Travel Manifest. All trips, including field trips, need to have a travel manifest (itinerary and participants) completed if the travel will be subject to these procedures as outlined in section 1.1. The completed travel manifest will be routed via the Office of Student Activities to:

**(a)** University Police Department – all group travel

**(b)** Department head – travel that involves field trips, organized teams or performing groups, i.e. athletic teams, university band, dance groups, vocal ensembles, etc.

**(c)** Business Office – travel that involves absence from work by the faculty/staff sponsor and/or university funds for payment of the travel. The manifest should be submitted with the Notification of Absence.

For those organizations or classes in which travel is a regular practice during the semester, a blanket Travel Manifest and Individual Release Forms may be submitted for the entire semester. Travel organizers may attach a list of persons participating in the travel to the Travel Manifest form.

**(2)** Individual Release Forms. Students must be warned of any dangers inherent in an



activity and sign a document (TAMUS Student Activity Release Form) stating that they understand these dangers and will assume the responsibility for themselves. Students under the age of eighteen (18) must have a release form signed by their parents or legal guardian.

**(3) Authorization for Student Travel in Personal Vehicles Form.** Students driving personal vehicles must have department head approval.

### **3.2 Modes of Travel.**

**(1) Vehicles owned by the University.** All employees and students must be approved by the Office of the Vice President for Business and Finance (VPBF) to operate state-owned vehicles. The criteria are available in the VPBF Office. Departments, who request a driver to operate university vehicles regardless of the distance traveled, are responsible for coordinating with the VPBF Office to obtain the driver's motor vehicle record from the Department of Public Safety.

**(a)** If an individual who has been approved to drive the University's vehicles receives a ticket or has restrictions or endorsements added or removed from his/her driver's license, that individual must report this change to the VPBF Office immediately. Failure to do so will result in immediate and permanent removal from the University's approved driver list. In addition, anyone having knowledge of an approved driver receiving a ticket or other status change must report it to the Office of the Vice President for Business and Finance.

**(b)** Travel in vans with a capacity to hold 12 passengers is the only approved mode of travel. Passenger capacity is strictly restricted to no more than ten (10) individuals, including the driver. The weight of passengers and their gear should be distributed evenly throughout the van.

**(2) Privately Owned Vehicles.** While traveling to and from university sponsored or organized activities and events, students using privately-owned vehicles, or any vehicle other than those owned by the university, are expected to follow the safety guidelines outlined in this procedure. Student drivers must have a valid driver's license, current motor vehicle insurance, and current state vehicle inspection. If students use their own vehicles, and/or transport other students as passengers, they should be informed, in advance, that their personal insurance will be primarily responsible for any liability that may arise from such use. Departments or advisors that authorize students to travel in privately-owned vehicles are responsible for ensuring compliance with these requirements (i.e. Authorization Form for Student Travel in Personal Vehicles).

Departments or advisors are not responsible for verifying the legitimacy of the documents the student(s) provide. The student's signature on the authorization form attests that the information is current and correct. The department or advisor needs only to collect the documents, ensure they have been filled out completely, and then submit them to the Director of Student Activities.

**(3) Commercial Travel.** Students traveling by commercial transportation must comply with all federal laws regulating travel and the rules of the specific carrier. This includes laws and rules regarding carry-on baggage and baggage weight restrictions.

**(4) Club Sport Travel.** Each member of the Club Sport will complete a TAMUS Student Activity Release Form, with participant information, at the beginning of each semester. The Club Sport coach/advisor will complete a Travel Manifest prior to each out-of-town event/competition and supply a list of participants for the given event/competition as outlined in 3.1(1) above. The coach/advisor will provide each student participant with information concerning (1) emergency notifications in case any travel-related emergency results in serious injury to the student or (2) driving directions and suggestions specific to travel.

**3.3 Safety Requirements.** Drivers and passengers must act responsibly and use sound judgment when traveling. The procedures set out below do not replace individual judgment in regard to individual safety. Drivers and passengers traveling to and from an activity or event that is subject to these procedures as outlined in section 1.1 must:

- (1) When driving, obey all traffic laws and regulations, including posted speed limits and reduce driving speeds as dictated by adverse road or weather conditions.
- (2) Wear seat belts at all times. The number of occupants in the vehicle will not exceed the number of seat belts and the load shall not exceed the vehicle manufacturer's recommended load capacity (see owner operating manual for specific instructions).
- (3) Avoid the use of personal electronic devices (cell-phones, texting, mp3, ear-phones, etc.) while driving.
- (4) Avoid driving when conditions are hazardous (this includes but is not limited to fog, heavy rain, snow or ice conditions). It may be necessary to stop the trip and check into a motel.
- (5) Not consume, transport, or possess alcoholic beverages, illegal drugs, firearms or weapons.
- (6) Avoid horseplay, racing, or other distracting or aggressive behavior.
- (7) Bring a copy of the participant list, emergency contacts, and Travel Manifest on the trip.

**3.4 Safety Recommendations.** Drivers and passengers are encouraged to follow the safe driving practices as follows:

- (1) Begin the trip well rested.
- (2) Plan routes in advance, and carpool and caravan where possible.
- (3) Divide the trip into segments, stopping for rest as necessary.
- (4) Immediately contact the organization advisor or designated contact person upon departure and arrival if the advisor is not present on the trip.
- (5) Whenever possible, carry at least one cellular telephone or other two-way communication device in each vehicle for emergency purposes. The driver should only use any communication device when the vehicle is not in motion.
- (6) Establish a reasonable departure and arrival time to and from the activity or event.
- (7) Limit driving time to between 6:00 a.m. and 10:00 p.m. unless otherwise approved by the organization advisor or department head.
- (8) Whenever possible on extended trips, have at least one other approved University driver in the vehicle. It is recommended that drivers rotate every two hours. A passenger or second driver should ride in the front passenger seat and remain awake at all times to help the driver maintain alertness. A single driver should not exceed driving over 8 hours per day.
- (9) Follow proper procedures for emergencies and when experiencing mechanical problems as outlined in the Student Organization Handbook.

(10) Read and become familiar with suggestions on “Staying Alert and Fit to Drive” found in the Texas Department of Public Safety’s Commercial Motor Vehicle Drivers Handbook (also outlined in the Student Organization Handbook).

### **3.5 Driver Qualifications and Training**

(1) Driver Qualifications. When traveling to or from activities and events, either organized or sponsored by the university, students must possess a valid driver’s license and maintain current insurance as required by state law. In order to be covered under the auto-liability protection of the Texas A&M University System, all drivers must be employed by WTAMU, acting in course and scope of employment. Students may only use private or commercially-owned vehicles with a current vehicle inspection.

(2) Driver Training. All employees and students who operate vehicles owned by the university must successfully complete mandatory van operator training provided by the Environmental Safety Office. Departments that authorize students to operate vans are responsible for ensuring compliance with this requirement.

CONTACT FOR INTERPRETATION: Director of Student Engagement and Leadership

## **Travel Policies and Guidelines**

### **13.04.99.W1/SS**

Approved December 7, 2001

Revised January 19, 2011

Supplements System Policy 13.04

### **1. OVERVIEW**

West Texas A&M University (WTAMU) is supportive of student activities both on and off campus, but also recognizes that the safety of its students is of utmost importance. The requirements outlined in this rule apply to student travel that is more than 25 miles from campus to an activity or event that is organized, registered, funded, or sponsored by WTAMU. Students traveling on behalf of the university must obtain prior approval through the appropriate vice president or department head.

### **2. TRAVEL SAFETY GUIDELINES**

During travel situations specified above, students must abide by the following safety guidelines.

**2.1** In accordance with state law, drivers must use seat belts and other available safety restraints and require all passengers to do likewise.

**2.2** Drivers, occupants and their luggage should not exceed the official maximum capacity of the vehicle used.

**2.3** Drivers must possess a valid state driver’s license that is appropriate for the classification of vehicle being driven. Drivers must be approved by the Office of the Vice President for Business and Finance to operate state-owned vehicles. All approved drivers must be employed by WTAMU when driving a state vehicle.

**2.4** Operator fatigue should be considered when selecting drivers. On lengthy trips, alternate approved drivers should be used to avoid fatigue.

### **3. TRAVEL SAFETY PROCEDURES**

Specific procedures for student travel have been developed to augment the above requirements.

These procedures are available online or you can contact the OSEL at 806-651-2313.

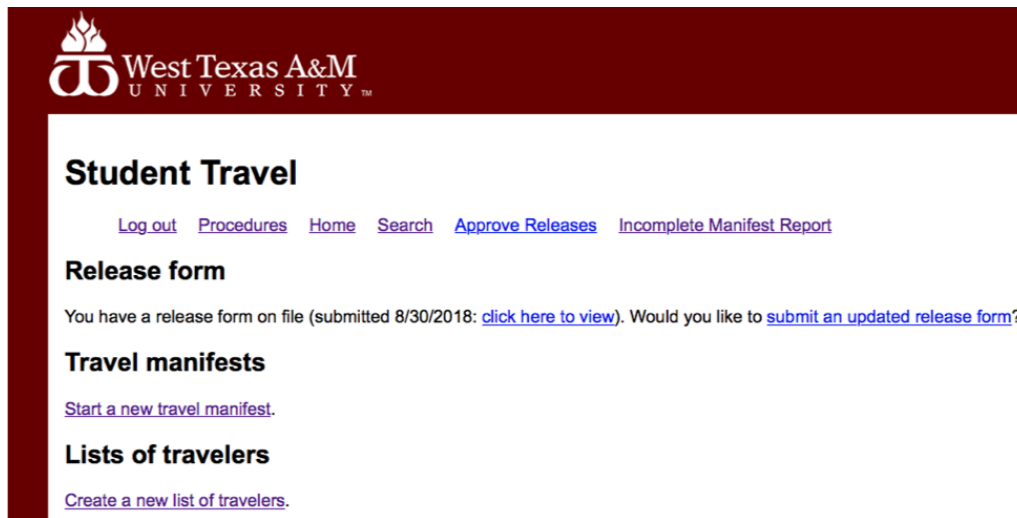
## Online Travel Manifest Instructions

Use the following link to access the online travel manifest system: (Firefox or Chrome is preferred)

<https://apps.wtamu.edu/student-travel/>

(The username and password are what you normally use to sign into your computer.)

You should see the following screen:



### STEP 1 - Release Form:

- If you do not already have a release form online, you will need to do one. Release forms are good for 2 years, so you may or may not need to submit a new one depending on the last time you traveled. 'Submit a release form' will appear under the RELEASE FORM section if you don't have a current release form on file.
- Each person traveling will need to go online (using the same link from above), and submit a release form online.
- They need to identify themselves with a specific group so they will need to check the box of the group. (Ex. Rogers LEAD, BSM, etc.)
- You will not be able to complete the manifest until every person has completed a Release Form.
- Any outside travelers (non-WTAMU) will have to complete a paper release form signed and then uploaded to the manifest.

### STEP 2 – Lists of Travelers:

- Click on 'Create a new list of travelers.'
- You should then see the following:

# Student Travel

[Log out](#) [Procedures](#) [Home](#) [Search](#) [Approve Releases](#) [Incomplete Manifest Report](#)

## Traveling Hippies: Spread cheer conference (2/28/2019 - 3/3/2019)

\* What would you like to do?

[Add a traveler to this manifest](#)

Add a traveler to this manifest

\* Type of traveler

\* Buffalo Gold Card number

\* First name

\* Last name

[Update traveler list](#)

- You will be making two lists: 1-advisors (non-Student) and 2-students. Will submit from this screen twice.
- Make the name of the list specific for each list.
  - Example List 1: TH Advisors 2019
  - Example List 2: TH Students 2019
- You will input the following information for each person traveling.
  - First and Last Name
  - Buff ID
- Please create a list that includes every person that might have the possibility of traveling.
  - You can always remove people from the manifest. You cannot add to the manifest.
  - If you do not include everyone in the list, you may have to recreate the list.
- Once you have created the lists, you will see them listed (ex. Track and Field):
  - The type of list is in black.

## Lists of travelers

[Create a new list of travelers.](#)

- [LEAD WT](#) (students)
- [Office of Student Engagement and Leadership](#) (students)
- [RA PALO DURO](#) (students)
- [Rogers LEAD WT Orientation](#) (advisors)

### STEP 3 – Travel Manifest

- From the Student Travel Homepage, click on ‘*Start a New Travel Manifest*’
- You should then see the following at the top of the page:

# Student Travel

[Log out](#) [Procedures](#) [Home](#) [Search](#) [Approve Releases](#) [Incomplete Manifest Report](#)

## Manifest

\* Name of travel group

My travel group does not appear in this list

\* Please provide the name of your travel group

Traveling Hippies

\* Purpose of trip

Spread cheer conference

Number of WTAMU student travelers

3

Number of WTAMU staff/faculty advisor travelers

1

Number of non-WTAMU travelers

1

\* Are you requesting COFC funding

Yes

### Transportation

\* Is at least one traveler traveling by plane?

No

\* Is at least one traveler traveling by university vehicle?

Yes

\* If traveling by university vehicle, please identify the driver(s) BY NAME

Darcy Webber

- Name of travel group: Select what sport you are traveling with.
- Purpose of trip: Be specific. Example: *Spreading cheer conference*
- Number of students attending: This number will need to be precise.
- Number of staff/faculty advisors: This number will need to be precise as well.
- Are you requesting COFC funding? Answer accordingly.

### Transportation

Number of travelers traveling by plane

WTAMU students and WTAMU faculty/staff advisors (exclude non-WTAMU volunteers)

Number of travelers traveling by university vehicle

WTAMU students and WTAMU faculty/staff advisors (exclude non-WTAMU volunteers)

Number of travelers traveling by personal vehicle

WTAMU students and WTAMU faculty/staff advisors (exclude non-WTAMU volunteers)

Number of travelers traveling by chartered/nonchartered public carrier (bus, rental car, etc.)

WTAMU students and WTAMU faculty/staff advisors (exclude non-WTAMU volunteers)

\* Is at least one traveler traveling by non-WTAMU vehicle?

Yes ↕

\* If traveling by non-WTAMU vehicle, please identify the driver(s) BY NAME

Sarah Nease

\* Is at least one traveler traveling by chartered/nonchartered public carrier (bus, rental car, etc.)?

No ↕

---

Departure from WTAMU

\* Date of departure

02/28/2019

Select the date

MM/DD/YYYY

\* Time of departure

12:00pm

examples: 11:30am, 2pm

---

Return to WTAMU

\* Date of arrival back at WTAMU

03/03/2019

Select the date

MM/DD/YYYY

\* Estimated time of arrival back at WTAMU

6:00pm

examples: 11:30am, 2pm

---

The email address at which you wish to receive notifications about this manifest

dwebber@wtamu.edu

Save and continue

- In this section, you will need to provide the total number of travelers in the correct mode of travel.
  - This number must match the numbers you provided earlier.
  - If you choose charter, including rental vehicles, you will need to provide the charter company name.
- Departure and Return from WTAMU: Select the date and provide a time.
  - The time format must match the example, including 'am' or 'pm'
- The email address box will automatically fill with your email address.
- Save and Continue

The page will continue on with your Travel Manifest created, but not complete:

## Student Travel Manifest #2620

[Log out](#) [Procedures](#) [Home](#) [Search](#) [Approve Releases](#) [Incomplete Manifest Report](#) [Create a duplicate of this manifest](#)

### Traveling Hippies: Spread cheer conference (02/28/2019 - 03/03/2019)

This manifest is incomplete

#### Incomplete tasks

- You must identify at least one destination
- Student travelers: indicated 3, identified 0
- Advisor travelers: indicated 1, identified 0
- Non-WTAMU travelers: indicated 1, identified 0
- You have indicated travel by non-WTAMU vehicle, but you have not completed a non-WTAMU vehicle authorization

#### Update this manifest

- [Add a destination](#)
- [Edit the traveler list for this manifest](#)
- [Add a non-WTAMU vehicle authorization](#)
- [Edit this manifest](#)
- [DELETE this manifest](#)

#### Manifest detail

- From the home screen, choose the manifest you are working on (will be listed under Travel Manifests)
- The screen will look similar to (Student Travel Screen):

You will notice at this point the section '*Manifest Status*':

- Listed will be items that are not complete and will prevent the manifest from being submitted.
  - Any item listed in red, will need completed before the manifest can be submitted.
  - Once the item is corrected, it will turn green.
- You want everything to turn GREEN!! Start with the destination, and work through each of the required sections.
- The most common items you will see listed are:
  - Not all the travelers listed will have a current release form online.
  - The number of travelers on the traveler list does not match the number indicated by the person preparing the manifest (as seen above).
  - Select add destination.

#### STEP 4- Destination

You will need to add the destination(s) of your travel

- If you have multiple destinations along the trip, you may add more than one.

The screen will look like:

## Student Travel

[Log out](#) [Procedures](#) [Home](#) [Search](#) [Approve Releases](#) [Incomplete Manifest Report](#)

### Traveling Hippies: Spread cheer conference (2/28/2019 - 3/3/2019)

\* Destination

\* Does any part of your stay at this destination involve travel outside the United States?

\* Staying in accommodations?

#### Arrival

\* Date of arrival at destination

  MM/DD/YYYY

\* Estimated time of arrival at destination

 examples: 11:30am, 2pm

#### Departure

\* Date departing this destination

  MM/DD/YYYY

\* Estimated time departing this destination

 examples: 11:30am, 2pm

- Provide the details of your destination:
  - Destination: ex. Tarleton – Stephenville, TX
  - Organization has been to this same location in the past two years?
    - You will need to select yes or no.
  - Staying in Accommodation: will need specific details:
    - Name of Hotel (or private residence)
    - Address of Hotel
    - Phone Number of Hotel



- Date and Time of arrival of your Destination (time must match the form given in the example)
- Date and Time of departure of your Destination (time must match the form given in the example)
- Save: will take you back to the Student Travel Screen

#### STEP 5 – Traveler List

- From the Student Travel screen, choose 'Edit the Traveler List for this Manifest'.
- The screen will look like:

## Student Travel

[Log out](#) [Procedures](#) [Home](#) [Search](#) [Approve Releases](#) [Incomplete Manifest Report](#)

### Traveling Hippies: Spread cheer conference (2/28/2019 - 3/3/2019)

\* What would you like to do?

Add a traveler to this manifest

Add a traveler to this manifest

\* Type of traveler  
Select one...

\* Buffalo Gold Card number

\* First name

\* Last name

Update traveler list

- From the drop down, 'copy a traveler list into this manifest': You will do this twice, for both the Advisor list and Student list.
- Update traveler list
- Once they are attached, you will be able to go in and remove anyone from the manifest, but it will not remove from the original travel list.
  - Remember, you cannot add to the travel list from here. Once they are removed, they are removed from the manifest only.
  - You are given the option to add a single traveler to the manifest.

#### Step 6: Non-Authorized WTAMU vehicle (Personal Transportation)

- If you selected your mode of transportation as a non-WTAMU vehicle, you will need to provide the following information:
  - Vehicle Make
  - Vehicle Model
  - Vehicle Color
  - Vehicle Year
  - License Plate State and Number

The screen will look like the following:

## Student Travel

### Non-WTAMU Vehicle Authorization

Spirit Squad: TEST (6/18/2022 - 6/18/2022)

\* Will everyone who will be driving this vehicle have a valid driver's license for the duration of this trip?

\* Does the owner's auto insurance policy cover everyone who will be driving the vehicle for the duration of this trip?

\* Will this vehicle have valid registration (and inspection, if applicable) for the duration of this trip?

Vehicle

\* Make

\* Model

\* Color

\* Year

\* License plate state

\* License plate number

- Continue adding as many vehicles as needed
- Once you have added all the vehicles that will be used for transportation, you will then need to go and select which travelers will be in which vehicle.
- Scroll to the bottom of your Travel Manifest until you see the heading “Non-WTAMU vehicle authorization.” This is where you should see the vehicles you have just added
- Click “edit occupant list” and select by clicking which of your already added travelers will be in that vehicle

## INTERNATIONAL TRAVEL

If you are traveling out of the country, you will need to complete the Export Control Survey. Please submit travel manifest's at least two weeks prior to traveling, to ensure secure travel.

### Student Travel

[Log out](#) [Procedures](#) [Home](#) [Search](#) [Approve Releases](#) [Incomplete Manifest Report](#)

#### Export Control Survey for Traveling Hippies: Spread cheer conference (2/28/2019-3/3/2019)

If you have questions about how to respond to this survey, please contact Janet Wood (806-651-2982, [jawood@wtamu.edu](mailto:jawood@wtamu.edu)) of the export control office.

\* Will you be traveling to an embargoed destination?

: For current list consult the [Treasury Department](#)

\* Will you take information or technology not widely available in the public domain or items subject to Export Control regulations?

: e.g., technology; software, and information related to the design, production, testing, maintenance, operation, modification, or use of controlled items or items with military applications. This does not include basic marketing information on function or purpose; information regarding general scientific, mathematical or engineering principles commonly taught in universities; or information that is generally accessible in the public domain.

\* Will you be taking biological or hazardous material?

: See [Federal Select Agents and Toxins list](#)

\* Will you take materials or equipment?

: e.g., GPS, advanced laptops, software, or scientific equipment. This does not include basic/standard laptops, tablets or smartphones, and general commercial software. See [Computer equipment](#) note below.

\* Will your activities involve presenting or sharing information not available in the public domain?

: See [Publicly Available/Public Domain Exclusion](#) note below.

\* Do you know or have any reason to believe that the information you will be sharing or the activities you will engage in while traveling will have a military use or will provide a military service?

: e.g., Will the information you carry with you or the discussions you engage in aid in the design, development, production, or use of nuclear explosive devices, chemical/biological weapons, or missiles?

\* Will you be furnishing financial assistance or anything of value, including services to a blocked or sanctioned country, individual, or entity?

: This includes agreements performable outside the United States, payments to foreign vendors, engaging in collaborative projects/activities. See [the current list of sanctioned individual or entities](#) and [the list of embargoed countries](#).

If you have questions contact Janet Wood, her info is listed above the questions.

**NON-WT Travelers**

- Non-WT travelers will have to complete and sign a hard copy of the release form and upload it to the manifest
- Click “upload the release form” highlighted in blue and upload the document from your computer.
- The same thing will need to be done for the Export control survey click “upload the survey” highlighted in purple and upload the document from your computer.
- These forms are not fillable forms you must (print, sign, and scan back into your computer) in order to upload the form.
- The ONLY person that can upload the forms for NON-WT TRAVELERS is the manifest preparer.

External Travelers		
Traveler	Release form	Export control survey
Sandra Bullock	<a href="#">release form for Sandra Bullock submitted 2/28/2019</a> you need to <a href="#">upload the release form for Sandra Bullock</a>	clear you need to <a href="#">upload the survey for Sandra Bullock</a>

**Please make sure everything is green and submitted for approval. If you are having any issues with submitting a manifest, please contact Sabrina Pugh at 651-2313.**

**Money Matters**

**COFC**

Campus Organizations/Forums Committee (COFC) funds some organization activities. To be eligible for these funds, the organization must be recognized by the University, be in good standing with the Office of Student Engagement and Leadership, have not received any other form of campus funding, and demonstrate the benefits of the allocation. The COFC Guidelines and Application may be obtained in the Office of Student Engagement and Leadership.

**Recommended Guidelines for the Management of Funds**

Most registered campus organizations at WTAMU are not funded by the University. These organizations raise money in a variety of ways, including the collection of dues, soliciting donations, and sponsoring fundraisers. Because campus organizations are registered with the University rather than functional entities of the University, the University will not be involved in the collection, deposit, or maintenance of an organization’s funds beyond providing some guidelines related to sound business practice:

- Registered campus organizations should establish and maintain a checking account in the name of the organization. Organizational funds should not be mixed with the private funds of any officer or member.
  - An EIN is necessary to open a bank account. See below for instructions.
- When establishing or renewing an account, two signatures should be required on checks.
- Debit cards are not recommended because it is possible to use a debit card and not have a proper paper trail.
- Venmo and/or cash apps are not recommended because this could cause the mixing of personal and organization funds.
- All financial obligations should be paid promptly.
- Deposits should be made promptly, and appropriate security should be maintained over any cash or checks collected.
- Receipts should be issued for any money collected by the organization.
- Balance the checkbook monthly.
- Always have a budget for each semester and stick to it! Have a budget committee to set guidelines for dues and fines and to develop the semester budget.

- It is recommended that the treasurer be required to submit monthly reports to an appropriate executive officer and/or to the advisor.

### **Organizational Employer Identification Number**

1. Complete the EIN Application that can be found at [https://irs.ein-tax-id-number.com/application/?gclid=Cj0KCQjwhqaVBhCxAARIsAHK1tiNI07dOv4-xmCpldTaygGKX2zW6pTbavcEQm3eY-4JOSMoFx\\_ay0HAaAnnkEALw\\_wcB](https://irs.ein-tax-id-number.com/application/?gclid=Cj0KCQjwhqaVBhCxAARIsAHK1tiNI07dOv4-xmCpldTaygGKX2zW6pTbavcEQm3eY-4JOSMoFx_ay0HAaAnnkEALw_wcB)
2. Fill out form completely. Here are some helpful steps:
  - Non-profit organization
  - Use the complete name of the organization no acronyms.
  - Type of Non-profit – Education
  - Responsible party should be the organization advisor.
  - Closest reason for applying – Banking
  - Primary Activity – Other
  - Specific Products/Services – Education
  - General questions – should all be No unless you are reapplying for an EIN
  - Contact the OSEL for any further questions.

### **Raffles**

Per the definition below, student organizations are NOT allowed to have raffles, “opportunity to win”, etc. The ONLY way to have a raffle is by collecting participants information to win a prize but no money can be collected. For example, giving away a pair of earbuds but it doesn’t cost money for people to participate.

#### **Raffles What is a raffle?**

CREA defines a raffle as "the award of one or more prizes by chance at a single occasion among a single pool or group of persons who have paid or promised a thing of value for a ticket that represents a chance to win a prize."

### **Solicitations of Private Donations**

It is important to coordinate all fundraising efforts so that the private support West Texas A&M University receives is not jeopardized. Many former students, friends, corporate executives, and foundation officials are sensitive about being approached by numerous entities representing WTAMU. As a guideline, any new fundraising effort anticipated by any group associated with the University should be coordinated through the Assistant Vice President for Philanthropy Operations, Lezlie Davis, at 651-2070.

### **Services Provided by the Office of Student Engagement & Leadership**

#### **Copy Services**

Each registered organization is eligible to have copies made by the OSEL (JBK 103) to copy minutes, agenda, flyers and other materials. The OSEL will provide the first 150 copies (black and white on white paper) each long semester at no charge. If an organization wants colored copies or colored paper, the organization must provide the colored paper and will be charged. The cost for copies over the 150 limit or for colored copies is .10 per copy.

#### **Program Planning Assistance**

If you need help planning an event or activity, your student consultant can offer you experienced advice. The staff can help find efficient means of publicity, budgeting, advice, less expensive means to obtain services, food services advice, and any other aspect of successful programming planning.

#### **Poster Printing Services**

Every registered organization is eligible to use the Poster Printer in the Office of Student Engagement and Leadership. The charge is \$7.00 per poster and must be paid when services are rendered.

#### **Campus Organizations Directory**

Each semester every organization is required to re-register on BuffLink. When the re-registration is complete then your organization is added back to the BuffLink directory. The purpose of this directory is

to have an updated listing of all campus organizations, their presidents and advisors. This is available to all potential and current students. It may be viewed by going to [www.wtamu.edu](http://www.wtamu.edu) > click on Student Life > Student Orgs

### **Check-out Items**

Registered organizations are able to check out miscellaneous items from the OSEL free of charge unless the items are not returned or they are returned damaged. Here is a short list of items that we have but if you don't see what you need contact the OSEL at 806-651-2313 to inquire if we have what you need.

- Table cloths
- Bose speaker
- Yard games
- Popcorn machine
- Miscellaneous decorations

*Spectrum WT, et al., v. Wendler, et al.*

## **Exhibit 2**

**to Declaration of Barrett Bright in  
Support of Plaintiffs' Rule 62(d)  
Motion for Injunction Pending  
Appeal**

**From:** [jbk@wtamu.edu](mailto:jbk@wtamu.edu)

**Sent:** Tuesday, April 11, 2023 8:07 PM

**To:** [Barrett Bright](#)

**Subject:** Reservation #137158 Submitted - "Buff-a-Woah Drag Show" - Your request has been received and will be processed soon.

Reservation No.: 137158  
Student  
Org/Department/Individual: Spectrum WT

Type	Date	Start	End	Building	Room	Event	Status
New	4/26/2023 Wed	12:30 PM	10:30 PM	ABH	ABH Dr. Hazel Kelley Wilson Banquet Hall	Buff-a-Woah Drag Show	Virtual EMS Request (Hold)

*Spectrum WT, et al., v. Wendler, et al.*

## **Exhibit 3**

**to Declaration of Barrett Bright  
in Support of Plaintiffs' Rule  
62(d) Motion for Injunction  
Pending Appeal**



**From:** [University Risk Assessment Process](#)

**Sent:** Friday, January 5, 2024 4:56 PM

**To:** [Barrett Bright](#)

**Subject:** Risk Assessment at WTAMU - TENTATIVE

Barrett Bright,

Thank you for submitting your request for risk assessment at West Texas A&M University. Currently, your event/activity is **TENTATIVE**. The University will review your request and get back to you within the next two weeks.

NOTE: Your request is not approved until you receive a confirmation email from the Risk Management office with "**APPROVED**" in the subject line.

If you have any further questions about your request and/or need to clarify your responses, simply reply to this email.

Thank you,

Richard C. Smith

Assistant Vice President, Risk and Compliance

(806) 651-2740

[rcsmith@wtamu.edu](mailto:rcsmith@wtamu.edu)

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**Recipient Data:**

**Time Finished:** 2024-01-05 16:54:38 CST

**IP:** [REDACTED]

**ResponseID:** R\_7dl9IVO06evvOgx

**Link to View Results:** [Click Here](#)

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**Response Summary:**

Please provide event information below:\* designates required field

Date of Request: 1/5/2024

Person Requesting Approval\* Barrett Bright

Title\* President of Spectrum

Sponsoring Organization / Department: (if applicable) Spectrum

Phone (xxx-xxx-xxxx)\* [REDACTED]

Email\* [\[REDACTED\]@buffs.wtamu.edu](mailto:[REDACTED]@buffs.wtamu.edu)

Organization's Advisor(if applicable) Kristina Drumheller

Does your Advisor know about the event and the risk(s) involved?

Yes

Please provide the event information below: \* designates required field

Date of Event\* March 22nd

Event Start Time\* 12:30pm

Event Name\* *No acronyms or abbreviations please* Don't be a Drag, Drag Show

Estimated Attendance\* 100

Description of Event\* *Describe in detail the planned activities that will take place during the event (e.g. sports, running games, dancing, live music, jump houses, fire pits, etc.)* Spectrum is hosting a charity drag show in order to raise donations for The Trevor Project. Student and local performers will perform lip-sync dance performances on stage in costumes. Non-alcoholic mocktail drinks will be served to the audience as an additional fundraiser. All participants and attendees are required to be over the age of eighteen, and this policy will be enforced by checking IDs at the door.

Event End Time\* 11:30pm

Age Range of Participates\* 18+

Event Location(s)\* Legacy Hall

Reservation # (if applicable) 137159

Will food be served at your event/activity?

What type of food will be served?

mocktails

Will alcohol be served at your event/activity?

No

Will money be present at your event/activity?

Yes

How will the money be secured?

In a lockbox, secured through card purchases as well.

Does this event/activity require a contract to be signed by the organization?

No

Does this event/activity, as currently planned, present a risk of damage to property?

No

Does the event/activity, as currently planned, present more than an everyday risk of physical inj...

Yes

Please explain what risk exists to participants AND what steps are being taken to mitigate those...

the activity of dancing comes with the risk of injury, to negate this, performers will be practicing before hand.

Are minors (individuals less than 18 years of age) specifically invited to attend the event/activ...

No

Does the event include any inherently dangerous activity? Examples might be: Fire, pyrotechnics...

No

Does this event/activity pose a risk of embarrassment, humiliation, coercion, physical assault, o...

Yes

Please explain the risk to participants AND what steps are being taken to mitigate those risks.

as with any kind of performance, there is a risk of embarrassment on stage. The steps to mitigate this risk will be the practicing as mentioned before.

This event will be insured by which of the following:

None

Please attach the completed Hazard Matrix. This needs to be provided with each risk assessment s...

[https://wtamuuw.az1.qualtrics.com/WRQualtricsControlPanel/File.php?F=F\\_2VF1avHNofJfNpU](https://wtamuuw.az1.qualtrics.com/WRQualtricsControlPanel/File.php?F=F_2VF1avHNofJfNpU)

Are any of the activities the event contemplates specifically excluded from coverage by the terms...

No

Is this event/activity co-sponsored?

Does this event/activity require waivers to be signed by participants?

No

It is the responsibility of the group/organization to ensure that the use of University facilitie...

[https://wtamuuw.az1.qualtrics.com/WRQualtricsControlPanel/File.php?F=F\\_xAijmlg2NBjYEwN](https://wtamuuw.az1.qualtrics.com/WRQualtricsControlPanel/File.php?F=F_xAijmlg2NBjYEwN)