



February 17, 2017

Michael E. Engh, S.J.
Office of the President
Santa Clara University
500 El Camino Real
Santa Clara, CA 95053

Sent via U.S. Mail and Electronic Mail (president@scu.edu)

Dear President Engh:

The Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

FIRE is concerned about the state of freedom of speech and freedom of association at Santa Clara University (SCU) following the Associated Student Government's (ASG's) rejection of prospective student group Turning Point USA (TPUSA) on the basis of the group's political stances. This viewpoint-based rejection of TPUSA is antithetical to the free speech promises SCU makes to its students and must be reviewed by SCU's administration.

The following is our understanding of that facts; please inform us if you believe we are in error.

On January 26, 2017, SCU Director of Center for Student Involvement Tedd Vanadilok gave a presentation titled "White Nationalist, Alt-Right & Other Groups on College Campuses" to ASG Senators. The presentation included information on *Breitbart* editor Milo Yiannopoulos, white nationalist Richard Spencer, and Identity Evropa, a white nationalist group responsible for posting flyers on SCU's campus earlier that month. TPUSA was also one of the groups included in Vanadilok's presentation.¹ After the presentation, ASG Senators discussed TPUSA's inclusion in the list and potential presence on campus (transcription errors in original).²

Ye Chit Ko: We have to consider if this RSO [Turning Point USA] would actively segregate or offend any group on campus.

Ahmer Israr: This is a college campus any person can be offended by things. I've worked with Turning Point and they do not support racism or nazism.

¹ Amber Athey, *TPUSA deemed 'direct threat,' denied recognition at Santa Clara*, CAMPUS REFORM, (Feb. 7, 2017), <https://www.campusreform.org/index.cfm?ID=8748>.

² *Senate Minutes 1.26.17*, ASSOCIATED STUDENT GOVERNMENT SANTA CLARA UNIVERSITY, (Feb. 2, 2017), <http://www.asgscu.com/single-post/2017/02/02/Senate-Minutes-12617>

Austin Gray: I have an issue with them actively supporting a person that I think is clearly not aligned with our school's values.

Maureen O'Neil: What is the proper protocol with approaching people who are putting up these identity evropa posters.

Tedd Vanadilok: If you feel harassed it's your right to contact campus safety. If you see it happening or you hear them speaking on campus call campus safety.

Jaia Rovaris: How many people have to vote to pass a club? Can we say no on a vote if the topic is something that we're not comfortable with?

Neil Datar: At the end of the day you're representing your whole class not just your own personal beliefs so you have to take that into account. The vote must be 50%+1.

On February 2, 2017, prospective TPUSA members Thayne Kollmorgen, Caleb Alleva, and Spencer McLaughlin attended an ASG meeting to offer a presentation on their group.³ They stated that their TPUSA chapter sought to engage students in debate and activism regarding economics and government policies and described their mission as follows:

The mission of Turning Point USA is to promote ideas of limited government, free markets, and capitalism to students across America. We strive to educate young adults on the importance of fiscal responsibility through non-partisan debate, dialogue, and discussion.

Kollmorgen, Alleva, and McLaughlin took questions from ASG Senators. Parts of the exchange are included below (transcription errors in original).⁴

At-Large Senator Sam Perez: How are you different from the college libertarians and college republicans?

We will appeal to blue dog democrats who have free market views. This is not a party affiliated club, we are not going to talk about or endorse people we will only talk about policy and free market.

At-Large Senator Ahmer Israr: Would you say that you're different from college republicans is solely your views on free trade?

We stand for voluntary exchange and we're going to talk about how that can apply to people's lives.

³ *Senate Minutes 2.2.17*, ASSOCIATED STUDENT GOVERNMENT SANTA CLARA UNIVERSITY, (Feb. 6, 2017), <http://www.asgscu.com/single-post/2017/02/06/Senate-Minutes-2217>

⁴ *Id.*

Sophomore Senator Alex Perlman: You've spoken about activism and I want to know what your line is for activism, I know other chapters have actively tried to get professors fired

We're not trying to be provocative and we don't want to start fights. We want to bring people together

At-Large Senator Kayla Williams: Why did you choose to affiliate with Turning Point USA instead of having your own RSO?

TPA has an extensive donor network and it's more viable and efficient to affiliate.

At-Large Senator Ye Chit Ko: Are you going to participate in the Professor Watchlist?

The people who get on this list are extremist and an example is a professor at Oregon who said the communist regime was the greatest thing that's happened. The list is more like a rate my professor type thing, we think people should be informed about people like this who have wacky ideas. We would never advocate for someone to get fired.

At-Large Senator Austin Gray: You said that this club is mostly economic but you mentioned talking about culture and I don't understand how that comes into this.

When we say culture we're talking about the Founding Fathers and their economic focus and what this country was built on. Just to look at these principles. When we refer to culture we refer to economic culture.

First-Year Senator Helen Kassa: Piggybacking on Austin's question you originally said American pride and that sounds more like a social belief than an economic one.

The pride is in America, American free markets and capitalism.

Helen Kassa: I am unnerved that you this organization is associated with someone like Milo Yiannopoulos, I'm concerned that maybe years from now this club will touch on social issues and what the stance will be.

Milo is more of a provocateur who talks mostly about social issues and not economic ones and he is not someone who we would want to have on campus. TPA requires that as a chapter you are not supposed to talk about social issues.

Later in the meeting, the Senators allowed public discussion of TPUSA before voting on its recognition. Members of the campus community argued that TPUSA "is against our ideals" and expressed concerns that SCU's TPUSA chapter would engage in the same type of events other TPUSA chapters have, including inviting Yiannopoulos to campus. McLaughlin contested this claim and stated that SCU's TPUSA chapter did not intend to invite Yiannopoulos. At-Large Senator Ahmer Israr argued that the opposition to TPUSA's recognition was "politically based"

and stated that SCU's TPUSA chapter did not need to be censured because of the actions of chapters at other universities.

The ASG Senators again discussed their concerns over TPUSA's mission and ASG's recognition of the chapter (transcription errors in original):⁵

Junior Senator Jack Herstam: I've never felt the weight of my presence as much as I do now. Being fair in judgements is something we promise to do. Looking at any RSO that passes will be held to standards

Junior Senator Amy Monzon: We have to consider when we approve a club we are not approving them for a quarter we are approving them for an undeterminable length of time. You have to think about who will be affected.

[. . .]

Perez: A lot of people don't feel safe with this organization and I can't vote for something like that

At-Large Senator Ye Chit Ko: They are running under their name, but these are students on our campus.

At-Large Senator Ahmer Israr: Fundamentally their viewpoints don't matter, it is their ability to speak out as an organization, we should allow all views to be represented. Conservative students are also a minority group on campus and don't feel comfortable speaking in class

[. . .]

Sophomore Senator Alex Perlman: The way I'm trying to look at this, the benefits being part of this organization are outweighed by the amount of people who feel uncomfortable with people being part of this charter organization

Junior Senator Mac McOsker: I don't see this as a partisan thing, I just think this is a bad national group I'm all for free trade but this is more than that. I don't agree with the national organization and I don't think this fair to say this is just about economics.

At-Large Senator Ahmer Israr: We are infringing on their free speech by not accepting them.

At-Large Senator Sam Perez: I don't think by not approving this club we are infringing on their free speech

At-Large Senator Maureen O'Neil: This club has said they want to use their charter so they have resources and they don't want to start from the ground up but a lot of other

⁵ *Id.*

clubs already do that. It's not infringing on free speech when we are saying no to this organization .

First-Year Senator David Warne: Disagreeing with this club is infringing on their beliefs.

First-Year Senator Helen Kassa: All the students concerns are valid and it's not our place to validate people's concerns. A single person does not represent a group.

At-Large Senator Ye Chit Ko: Free speech has been brought up a lot and we need to draw the line between free speech and hate speech.

After agreeing that there was no reason to postpone the vote, the Senators voted to reject TPUSA's application for recognition.

The next day, ASG Senator Karsten Andersen emailed Alleva suggesting that, if TPUSA were to attempt to gain recognition next semester, its members should consider renaming the group the "Free Trade Club" to address concerns about the group's ties to the national TPUSA organization. Andersen also expressed concerns that TPUSA may be too similar to existing campus groups.

While SCU is a private university and thus not legally bound by the First Amendment, it is both morally and contractually bound to honor the explicit, repeated, and unequivocal promises of freedom of expression it has made to its students. For example, SCU's "Student Events, Activities, and Organizations" policy states:⁶

We are best served by an educational experience enriched by exposure to differing, and, indeed, to antithetical, opinion. Debating of "uncomfortable" ideas or points of view ought not to be shunned just because it is uncomfortable, for it may stimulate us to think and to think seriously. Thoughtful dialogue in search of truth leads to critical thinking, informed learning, and an honest exchange of facts, beliefs, and points of view. The belief system allowed to go untested is likely to be found weakest in the face of argumentative challenge.

[. . .]

Because as a university we remain irrevocably committed to intellectual discourse, we acknowledge, affirm, and defend the right of every member of the campus community to freedom of expression, freedom of association, and freedom of exercise of faith in accordance with the University's stated mission and goals.

Additionally, SCU's "Statement of Community Values" claims that "hampering my community's right to the communication of ideas and ideals just because they don't represent my

⁶ *Student Handbook 2015–16*, SANTA CLARA UNIVERSITY, https://www.scu.edu/media/offices/student-life/purge/SCU_Student_Handbook_2015-16_FINAL.pdf (last visited Feb. 14, 2017).

own” is inconsistent with university members’ commitment to “valu[ing] diversity and learn[ing] from diverse people, ideas, and situations.”⁷

ASG’s viewpoint-based rejection of TPUSA’s application for recognition is at odds with SCU’s stated commitments to foster debate of “uncomfortable” ideas and protect students’ right to speak and associate freely. In order to uphold the principles to which the university commits itself, SCU must reconsider ASG’s decision.

As a threshold matter, SCU’s “Student Organizations” policy grants the university the right to review ASG’s decisions and intervene when necessary:

The University administration reserves the right to review such decisions, offer guidance on them, and even intervene when necessary if the educational values and mission of the University appear to be undermined. Santa Clara University seeks to encourage the exercise of responsible freedom, however, student representatives should be allowed the greatest possible discretion in making these judgments.⁸

The principle of freedom of speech does not exist to protect only non-controversial expression; it exists precisely to protect speech that some members of a community may find controversial or offensive. The Supreme Court of the United States stated in *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949), that speech “may indeed best serve its high purpose when it induces a condition of unrest . . . or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea.” The Court has explicitly held, in rulings spanning decades, that speech cannot be restricted simply because it may be controversial. See *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667, 670 (1973) (“[T]he mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of ‘conventions of decency.’”) Again, although SCU is a private institution and not bound by the First Amendment, it makes extensive promises of free expression to its students—promises it must honor.

In discussing matters of societal and political importance, one would be hard-pressed to find an opinion or position that is not controversial to *someone*. By refusing to grant TPUSA recognition because some members of the campus community are opposed to its real or perceived stances, ASG is hindering free and open dialogue on campus, to the great detriment of SCU students’ education. Allowing and encouraging open—and sometimes controversial—debate is not always an easy endeavor, but, as SCU notes, “[t]he belief system allowed to go untested is likely to be found weakest in the face of argumentative challenge.” Put simply, it is not the place of ASG to dictate to students what their organization should be named, or what it should advocate for.

The viewpoint-based rejection of TPUSA in this case contradicts the principles established by the Supreme Court when it held that public universities are required to grant expressive student organizations recognition and access to the funding of student activities on a viewpoint-neutral basis. See *Board of Regents of the University of Wisconsin System v. Southworth*, 529 U.S. 217,

⁷ *Id.*

⁸ *Id.* at 60.

233 (2000) (“When a university requires its students to pay fees to support the extracurricular speech of other students, all in the interest of open discussion, it may not prefer some viewpoints to others.”). The same must hold true at a private institution that, like SCU, is committed to free speech. Although ASG is not legally bound by the First Amendment, it fundamentally abandons SCU’s institutional commitments to free speech and freedom of association and undermines First Amendment principles when it acts to stifle speech that it does not like.

Furthermore, if ASG were to vote on every application on the basis of student opposition to its chapter’s beliefs and ties to a national organization, SCU would likely see the number of its registered student organizations dwindle. Surely ASG and SCU understand that any recognized group on campus that takes a religious or political stance could be considered offensive or unwelcome to those who disagree with that group’s beliefs. Some organizations currently recognized by SCU—College Republicans, College Democrats, Students for Justice in Palestine, GREEN Club, and HeForShe, to name just a few—would likely face opposition by someone on campus, but that does not lessen the contributions they may make to campus life.

FIRE understands that ASG must listen to and address the voices of its campus community, including those who object to TPUSA’s recognition, but that does not mean it must violate the principles to which SCU has committed in doing so. Students who oppose TPUSA are not without means to express that opposition, and ASG should seek to encourage them to use their own voices rather than hampering TPUSA’s members’ ability to use theirs.

If TPUSA’s rejection is allowed to stand, the laudable ideals SCU has consistently claimed to value will be tarnished. To honor the commitments it has made to open debate, freedom of speech, and freedom of association, SCU must intervene to review TPUSA’s application for recognition in a viewpoint-neutral manner, and reaffirm that SCU stands by the promises it makes to students.

We request a response to this letter by March 3, 2017.

Sincerely,



Sarah McLaughlin
Program Officer, Individual Rights Defense Program

cc:

Lidia Diaz-Fong, President, Associated Student Government
Fred Feyzi, Vice President, Associated Student Government