



December 10, 2019

Dr. Susan L. Thomas
President
Truman State University
200 McClain Hall
100 East Normal Avenue
Kirksville, Missouri 63501

Sent via U.S. Mail and Electronic Mail (suethomas@truman.edu)

Dear President Thomas:

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.

Truman State University has established a process for recognizing student organizations that allows administrators to evaluate proposed organizations on vague and subjective criteria, including the possible "reputational" or "emotional risk" caused by an organization's views. That unfettered discretion has led to the university denying recognition to dozens of student groups, including would-be organizations that sought to advocate for first-generation college students, for transgender students, for children with cancer, and for educating fraternity members about the importance of consent in sexual relationships.

Now, for at least the fourth time, the university has unconstitutionally denied recognition of a proposed student organization focused on animal rights or vegetarianism. The university has denied recognition to these organizations after administrators characterized their views as "very very very extreme" or doubted whether vegetarianism was a healthy "lifestyle." The latest denial, against the Animal Alliance, was predicated on the group's use of materials from People for the Ethical Treatment of Animals and concerns about the "emotional" risks that might arise from disagreements with the group's views.

An administrative system which denies students' rights to expression and association because of subjective concerns about "emotional" risk is inconsistent with the First Amendment. We call on Truman State to immediately rescind these policies, grant recognition to the Animal

Alliance, and pledge to establish policies consistent with its obligations under the First Amendment.

I. Statement of Facts

The following is our understanding of the pertinent facts, drawn from emails provided by students and public records provided by Truman State. We appreciate that you may have additional information to offer and invite you to share it with us. Please find enclosed an executed waiver authorizing you to share information with FIRE.

A. *Truman State's Process for Recognizing Student Organizations*

Truman State regularly recognizes proposed student organizations, pursuant to a process that begins with an application.¹ In order to gain official recognition, a proposed organization must first satisfy a number of objective criteria, including demonstrating that at least ten students are interested in the organization, that three students are willing to serve as leaders, and that at least one faculty or staff member is willing to serve as an advisor.² The organization's leaders must then receive approval from the New Student Organization Committee after participating in a hearing.³

i. A significant range of resources and expressive channels are reserved for students in recognized organizations.

Per Truman State's policies, access to a wide range of expressive channels and resources, including funding, turns on whether a student is acting on behalf of a student organization formally recognized by Truman State's administration. For example, events may only be "publicized on the University campus" by student organizations.⁴ Likewise, posting materials in public areas, display of banners, chalking on sidewalks and on classroom chalkboards, tabling for the purpose of distributing information, displaying table tents in dining halls, and hanging posters in residence halls are limited to recognized student organizations.⁵ Registered organizations are also able to receive designated campus mailboxes and e-mail accounts, access copiers, and schedule use of property and facilities.⁶ Additionally, student activity fees

¹ TRUMAN STATE UNIV. UNION & INVOLVEMENT SERVICES, *Application*, <http://csi.truman.edu/application-criteria> (last visited Dec. 6, 2019).

² TRUMAN STATE UNIV. UNION & INVOLVEMENT SERVICES, *Application*, <http://csi.truman.edu/application-criteria> (last visited Dec. 6, 2019).

³ TRUMAN STATE UNIV. UNION & INVOLVEMENT SERVICES, *Hearing Information*, <http://csi.truman.edu/chartering-and-hearing> (last visited Dec. 6, 2019).

⁴ TRUMAN STATE UNIV., TRUMAN STATE UNIVERSITY ADVERTISING POLICIES, <https://www.truman.edu/wp-content/uploads/2018/08/Advertising-Policies-2018.pdf> (last visited Dec. 9, 2019). University departments and administrative offices may also promote events, but no provision is made for individual students or unrecognized or informal organizations.

⁵ *Id.*

⁶ TRUMAN STATE UNIV., STUDENT ORGANIZATION RECOGNITION AGREEMENT, <http://csi.truman.edu/student-organization-recognition-agreement> (last visited Dec. 5, 2019).

collected by the university are distributed by the Funds Allotment Council, which makes funding available only to organizations granted a “full charter” by the administration.⁷

ii. Truman State’s process evaluates organizations for “risk”

As mentioned above, proposed student groups must participate in a hearing before the New Student Organization Committee, populated by four staff members from the Organizational Development team and three students.⁸

The “final decisions” about whether to grant recognition “are based both on the committee’s recommendation” and a rubric filled out by committee members. The rubric asks committee members to evaluate, on a 1-to-5 scale, a number of subjective factors, including:

1. The committee member’s “sense” about how interested the students are about the organization, and whether they are “passionate”;
2. Whether the organization has an “ability to maintain members”;
3. Whether the organization provides a “[b]enefit” or “[c]ontribution to campus and/or community”;
4. Whether the organization is “unique” or “similar to” other organizations;
5. Whether the organization is able to “address potential risk to members and the University.”⁹

The rubric asks each committee member whether they “recommend this organization for charter” and to explain their reasoning. If the committee approves the organization, a “final decision” is made, but it is not clear who makes the decision nor whether there is any requirement that the final decisionmaker accept the recommendation of the committee members.¹⁰

Once recognized, organizations are required to participate in an annual online “Risk Management Workshop.”¹¹ The Center for Student Involvement, responsible for student organization services at Truman State, describes the types of “risks” student organizations may encounter.¹² These include not only physical risks that might arise during a particular event, but also “[r]eputational” risks (those that might lead to “negative publicity” for the

⁷ TRUMAN STATE UNIV., FUNDS ALLOTMENT COUNCIL CONSTITUTION, Art. VIII, § 1, Cl. 1., <http://fac.truman.edu/files/2018/04/Constitution-2018-2019.pdf> (last visited Dec. 9, 2019).

⁸ *Hearing Information*, *supra* note 3.

⁹ TRUMAN STATE UNIV., RUBRIC FOR NEW STUDENT ORGANIZATION HEARING, <http://csi.truman.edu/files/2019/10/PDF-Rubric-for-Hearings-Oct-2019.pdf> (last visited Dec. 9, 2019).

¹⁰ *Id.*

¹¹ TRUMAN STATE UNIV., *Organization Policies*, <http://csi.truman.edu/organization-policies> (last visited Dec. 6, 2019).

¹² TRUMAN STATE UNIV. UNION & INVOLVEMENT SERVICES, *Risk Management*, <http://csi.truman.edu/risk-management> (last visited Dec. 6, 2019).

organization or Truman State) and “emotional risks” (such as “harassment, emotional trauma, extreme fear or anxiety, offense or disgust,” or “rejection.”)¹³

B. *Truman State Denies Recognition to Almost Half of All Proposed Groups*

Since the spring of 2015, at least 89 applications were made for recognition of a student organization. Of those, at least 43 were rejected for various reasons. These include:

1. The Philosophy and Religion Club, rejected due to, in part, concerns about “risk management”;
2. A Quidditch club, rejected due to “copyright issues”;
3. “Consent is so Frat,” rejected due to “risk management” and the existence of other “avenues,” such as the bodies governing fraternities;
4. A chapter of Campus Outreach, a Christian organization, was initially rejected in 2017 because it served a “[u]nique student need” and “failed to demonstrate independence from external entity,” but was subsequently approved in 2018;
5. A chapter of International Justice Mission, an organization dedicated to ending slavery around the world, was initially rejected in 2017 because it was a “duplication of Truman’s mission” and its proposals were “solely philanthropic,” but was accepted in 2018;
6. The “Trans Alliance” was rejected, with a committee member writing that they were concerned that “people will not be able to offer the support needed (emotionally) and there is always the possibility that someone will say something to a person who is not a part of the group that a member does not want everyone else to know,” and that they were “unsure of the sustainability” of the group because they didn’t “know how large the population of transgender individuals is on campus.” (“TruTrans,” an organization with a similar mission of providing a support group for transgender students, was later approved.)
7. “ARM” was rejected, with a committee member writing that the group mixed four different religions, which “could cause issues within the organization” and the member wasn’t sure what their meetings would be about: “If it’s the discussion of different religions then I could see some members not attending some meetings because it’ll cover a religion they do not prescribe to”;
8. A “Love Your Melon” organization, affiliated with a company that creates hats for children with cancer, was rejected because it was not “differentiated from other groups on campus,” specifically an annual fundraiser for children’s cancer research, and because the Committee found posed too “high of emotional and physical risk” arising from visits to the hospital.

C. *Truman State Repeatedly Denies Recognition to “Extreme” Vegetarian Groups Due to “Risk” to Health.*

¹³ *Id.*

In addition to rejecting these organizations, Truman State has a long history of denying recognition to student organizations promoting vegetarianism or veganism.

In March of 2017, students sought to establish a Vegetarian Club at Truman State. In evaluating its self-described purpose (to, among other things, “inform others on the molestation of other animals so more people support equality for those animals”), the university raised “concerns” that the mission was “very very very extreme.”

The committee member evaluating the group wrote:

The organization doesn't apply to everyone, I'm not nor will I probably ever be a vegetarian It is a diet/lifestyle choice that people make for their own independent reasons. There have also been studies coming out the last few years that point to being vegetarian/vegan might end up being worse for some people due to the lack of nutrients they get while on these diets/lifestyles. So there could be the potential risk of miseducating people interested in joining the club/lifestyle.

One evaluation form, presumably authored by a different member of the committee, noted that the group's plan to recruit members used the word “convert,” which the committee member characterized as “[e]vangelizing.”

On March 7, 2017, the Vegetarian Club was informed that it had been rejected due to “risk management,” citing the “nature” of the organization. An administrator explained to the group that the university “see[s] serious risk in giving students information on what to eat to be vegetarian and where to get it in the Kirksville community,” and “dietary suggestions should be left to professionals due to the potential for health complications.”¹⁴ In internal records, however, the reasons for the rejection also listed the group's “purpose” in addition to the “risk management” issues.

On April 28, 2017, a second attempt to start a vegetarian club, “Roots,” was also rejected because students may only reapply for recognition one full year after being denied.¹⁵

In October of 2017, a third attempt to start a vegetarian club, the “Veggie Club,” was also rejected, this time because the group mentioned a desire to reserve kitchen spaces, which were not “facilities necessary for the activities the organization is planning to hold.”¹⁶ In an email to the would-be advisor for the group, a Truman State administrator explained that the committee didn't see much “impact beyond meeting up with one another – which does not

¹⁴ E-mail from Taylor Collins, Center for Student Involvement, Truman State Univ., to Jimmy Clemens (March 7, 2017) (on file with author).

¹⁵ Draft e-mail from Taylor Collins to Damon Pee, Program Advisor for Organizational Engagement and Leadership, Center for Student Involvement, Truman State Univ. (March 31, 2017 10:43 AM) (on file with author).

¹⁶ E-mail from Taylor Collins to Ethan (Oct. 12, 2017, 2:48 PM) (on file with author).

require a charter,” even though the advisor expressly highlighted the group’s desire to use other meeting spaces on campus.¹⁷

D. *Truman State Denies Recognition to Animal Alliance*

On October 16, 2019, Naomi Mathew, a sophomore at Truman State, proposed to establish the “Animal Alliance” club.¹⁸ The Animal Alliance met the objective criteria for establishing a group, including providing an application form, identifying an advisor, and identifying more than ten interested students.

On November 5, Mathew responded to an email from “the team” posing a series of questions about the group’s application.¹⁹ Mathew was also asked about her plan to “address” the “emotional risk of this subject matter,” how the Animal Alliance planned “to address the emotional risk of having a police presence at events and how that could potentially escalate a situation.”²⁰ Mathew explained that calling the police was “not the preferred response” and that she hoped “nothing would escalate to that level.”²¹ Mathew was also questioned about what “training” the group’s members would “undergo to address potentially hostile students.”²² Notes written by hand (presumably that of a committee member) on a copy of the group’s responses to the questions highlight the “Risk Org Assumes w/ Affiliation w/ PETA” without elaboration.

On November 13, 2019, Mathew and Astha Thapa, the would-be president of the organization, attended the hearing on the Animal Alliance application. Handwritten notes on the application suggest that at least one committee member was (1) concerned about the group’s plan to “mobilize” in support of animal advocacy, (2) wanted “proof” that the students were “incredibly passionate” about being “the voice for the animals,” and (3) believed that students could “meetup with like-minded individuals” without being a club. Further, an audio recording taken at the hearing reflects that at least one committee member was concerned about the “risk brought about by [Animal Alliance’s] affiliation with PETA.”²³

¹⁷ E-mail from Damon Pee to Dr. Bridget Thomas, Professor, Truman State Univ. (Oct. 27, 2017, 1:43 PM) (on file with author).

¹⁸ Web Form Submission concerning “New Student Organization” (Oct. 16, 2019, 6:31 PM) (on file with author).

¹⁹ E-mail from Mathew to Organizational Development, Truman State Univ. (Nov. 5, 2019, 10:34 PM) (on file with author).

²⁰ *Id.* Student organizations are asked to identify potential physical, reputational, and emotional risks. The students here, asked to imagine and describe unlikely worst-case scenarios, are then faulted for suggesting they would summon the police in response to an unlikely risk to safety.

²¹ *Id.*

²² *Id.*

²³ Audio recording: Hearing before the New Student Organization Committee at Truman State University (Nov. 13, 2019) (on file with author).

Members of the committee came to different conclusions about each of the factors listed within the “rubric” for proposed organizations. On each of the criteria, committee members came to a range of conclusions. For example:

1. On “preparedness,” identifying the “sense of applicant commitment,” members ranged from a score of 3 (students are “committed to the organization, but may not be prepared for the work to come”) to 5 (students are “passionate” and committed to long-term success);
2. On “originality,” identifying “similarities with existing groups,” members ranged from a score of 2 (“similar to another existing or previous organization”) to 5 (demonstrates an “original opportunity for involvement for Truman students”);
3. On “risk,” identifying the ability to address “risk to members and the University,” members ranged from a score of 2 (“moderate to high risk” with an ability to address “a small amount of the potential risk”) to 4 (“low risk and will be able to successfully manage this risk independently”);
4. On “financial sustainability,” members ranged from a score of 2 (“highly unlikely to survive financially”) to 5 (“able to sustain itself financially through dues, fundraisers, or other means”); and
5. On “facility usage,” members ranged from a score of 2 (has “minimally considered their space needs”) to 5 (has “planned for their continuous space needs and addressed the issue appropriately”).

Following these evaluations, two committee members indicated that they would not approve the group, one member indicated that she would approve the group, and the four other members provided no recommendation. One member who did not support approval of the Animal Alliance wrote that there was a “[h]igh emotional & reputational risk” and that “police for events was concerning.” Another said the group should identify “the difference between veganism goal & animal rights goal . . . more clearly.” Another, who did not provide an express recommendation, wrote that the group did “not seem adequately prepared for the hostility this group would possibly encounter,” and stated that there were “concerns about PETA’s influence on group.” This member also noted that there “is no ANIMAL RIGHTS specific club on campus,” but queried whether “we need a club for this specific [sic].”

On November 17, a staff member asked Mathew to “elaborate on two aspects of” the organization, including the “process for the organization to receive funds from PETA” and how it planned to “effectively meet all of it’s [sic] goals,” specifically “on education and programming around vegan lifestyles and issues concerning animal rights and plant-based eating.”²⁴ Mathew provided information on how PETA provides funds, suggested other fundraising possibilities (including vegan bake sales, dues, and seeking donors or sponsors), and shared the group’s plans to have educational components during its meetings (such as

²⁴ E-mail from Ray Stewart, Organizational Development Team Lead, Union and Involvement Services, Truman State Univ. to Naomi Mathew (Nov. 17, 2019, 1:04 PM) (on file with author).

watching videos or hearing from speakers), host documentary screenings, and meet with the university's food service provider to advocate for the promotion of vegan food options.²⁵

On November 21, Truman State denied recognition on the basis that the students failed “to establish independence from an external entity as PETA was presented as the main source of support for programming and finances,” and an inability to “sustain membership without sufficient plans to address emotional and reputational risks.”²⁶ The denial cited the rubric and “deliberations” of the committee, which were not open to the public.²⁷

II. Truman State's Policy Is Unconstitutional on its Face and As Applied to Deny Recognition to the Animal Alliance

Truman State's process extends to its administrators the unfettered discretion to grant or deny recognition to proposed student organizations, violating the First Amendment.

A. *The First Amendment applies to the recognition of student organizations at public universities.*

The First Amendment is binding on public colleges like Truman State. *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 670 (1973) (rejecting a Missouri university's sanctions against a student newspaper that published a cartoon depicting policemen raping the Statue of Liberty, as “the 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’”); *see also Healy v. James*, 408 U.S. 169, 180 (1972) (“[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, ‘the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.’”) (internal citation omitted).

When a public university burdens the ability of a student organization to engage in expressive activity, the burden must withstand First Amendment scrutiny. *Healy*, 408 U.S. at 181. In *Healy*, a proposed chapter of Students for a Democratic Society (SDS) was rejected by a public university's president. The Supreme Court of the United States, overturning the denial of recognition, explained that there was “no doubt” that the “denial of official recognition, without justification, to college organizations burdens or abridges” the associational right “implicit in the freedoms of speech, assembly, and petition.” *Id.* at 181.

²⁵ E-mail from Mathew to Organizational Development, Truman State Univ. (Nov. 18, 2019, 6:28 PM) (on file with author).

²⁶ E-mail from Organizational Development, Truman State Univ., to Mathew (Nov. 21, 2019, 4:04 PM) (on file with author).

²⁷ *Id.*

The First Amendment requires that the decision to recognize or fund student organizations must be reasonable and viewpoint-neutral. *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995). This “requirement of viewpoint neutrality includes as a corollary a prohibition on unbridled discretion.” *Southworth v. Bd. of Regents*, 307 F.3d 566, 579–80 (7th Cir. 2002); accord *Roach v. Stouffer*, 560 F.3d 860, 869 (8th Cir. 2009) (a policy regulating expressive activity most imperils First Amendment rights “when the determination of who may speak and who may not is left to the unbridled discretion of a government official”). Because the denial of recognition poses “serious problems” for expressive rights, particularly when recognition is a prerequisite to the use of a university’s expressive channels (such as “campus bulletin boards” or “facilities for holding meetings”), the effect of a “denial of recognition [is] a form of prior restraint, denying to [students a] range of associational activities. . . .” *Healy*, 408 U.S. at 176, 184.

The Supreme Court has consistently struck down regulations that “subject[] the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority.” *Shuttlesworth v. Birmingham*, 394 U.S. 147, 150–51 (1969). “Standards provide the guideposts that check the licensor and allow courts quickly and easily to determine whether the licensor is discriminating against disfavored speech.” *City of Lakewood v. Plain Dealer Publ’g Co.*, 486 U.S. 750, 758 (1988).

B. *Truman State’s policies restricting recognition of student organizations unless they satisfy vague standards violate the First Amendment.*

The “heavy burden” of demonstrating that the denial of recognition comports with the First Amendment rests with the university’s administration. *Healy*, 408 U.S. at 184. Truman State cannot meet that burden.

As a threshold matter, Truman State limits access to a wide range of expressive resources to recognized student organizations. These include, like the campus in *Healy*, certain public posting areas and the ability to reserve rooms on campus for group meetings. In addition, an organization must gain recognition to access student fees. Well-established Supreme Court precedent requires that access to facilities, resources, and funds be governed by viewpoint-neutral procedures. *Healy*, 408 U.S. at 181; *Bd. of Regents v. Southworth*, 529 U.S. 217, 220 (2000) (requiring “viewpoint neutrality in the allocation of funding support” to student organizations).

But Truman State’s process evaluates organizations not only for objective criteria—such as an ability to gain the support of a particular number of students and establish a leadership structure—but also utilizes criteria that are wholly subjective, such as whether the organization creates an “emotional risk” because of its views or activities, administrators’ “sense” about whether the students are sufficiently “passionate,” whether the organization’s “benefit” is sufficient, and whether the organization is “unique.”

These criteria would fail in even a non-public forum because they are not defined. *See, e.g., Minn. Voters Alliance v. Mansky*, 138 S. Ct. 1876, 1883 (June 14, 2018).²⁸ The subjective nature of the terms is evident in the remarkably different conclusions reached by the committee members applying these criteria. If these were objective evaluations by any measure, committee members would not so greatly differ in concluding that the group is or is not original (scores ranged from 2 to 5, on a scale of 5), that the students were or were not committed to the organization (3 to 5), whether the group posed a “risk” to the university (2 to 4), whether the group was cognizant of their anticipated need for facilities usage (2 to 5), and whether the group is financially sustainable (2 to 5).

These subjective criteria act as little more than a pretext to deny recognition to disfavored groups—authority that not only *can* be abused, but demonstrably *has* been abused. Here, a proposed student organization was again denied recognition following a pattern of objections, set forth in writing, to the students’ views about animal cruelty and meat. Administrators have—again, *in writing*—documented their disagreement with the “extreme” mission statements of vegetarians and vegans, questioned whether their “lifestyle” is popular or healthy, and objected to the “reputational” risk of associating with People for the Ethical Treatment of Animals, an organization known for its provocative advocacy. This is evidence of viewpoint discrimination.

C. *The rationales for denying Animal Alliance recognition cannot be supported.*

All of the specific rationales cited by Truman State for denying recognition of Animal Alliance fail First Amendment scrutiny.

Truman State university first averred that the group would be unable to “sustain membership without sufficient plans to address emotional . . . risks” posed by the group’s advocacy. Members of the committee were concerned that the students might encounter criticism (or “hostility”) from members of the community opposed to their message. Not only is this risk attenuated—one student attested that she had encountered only one person who criticized her for promoting PETA, and who did so politely—but it unconstitutionally subordinates students’ rights to those of a theoretical heckler in violation of well-established First

²⁸ In *Mansky*, the Supreme Court of the United States annulled a Minnesota statute barring “political” apparel inside of a polling place during an election. 138 S. Ct. at 1833. The polling place was a nonpublic forum and the state’s interest in protecting the voting process is of the “more significant” state interests identified by the Court. Nonetheless, the *Mansky* statute failed to satisfy even the “forgiving test” afforded to nonpublic forums because it failed to define “political,” depriving those implementing it from being able to identify a “reasonable line.” *Id.* at 1888–99. This was so even though county officials provided election judges, tasked with implementing the ban, written guidance on when to enforce the statute because it nonetheless permitted judges to decide what was “political” without objective limits on their discretion. *Id.* at 1884, 1891. Here, the vague, subjective criteria used by committee members to determine recognition similarly fail to provide any “reasonable line” with clear, objective standards limiting the decision-makers’ discretion.

Amendment rights.²⁹ Using students’ emotions as a rationale for depriving them of their fundamental expressive rights harkens back to a long-past era of *in loco parentis*, a “relationship [that] has decayed to the point of irrelevance.” *McCauley v. Univ. of the Virgin Islands*, 618 F.3d 232, 243–45 (3d Cir. 2010). Student expression cannot be restricted on the basis that it might offend, or that others might offend in response.

The university next faulted the group for failing to plan for “reputational risks” and expressed concerns about “PETA’s influence” on the group.³⁰ This rationale for denying recognition to student groups has been expressly rejected by the Supreme Court. In *Healy*, the Central Connecticut State College refused to recognize a chapter of Students for a Democratic Society on similar grounds—the organization’s philosophy was “antithetical to the school’s policies” and the chapter’s independence from the national organization was “doubtful.” 408 U.S. at 175–76. The college president had concerns about incidents of violence associated with the national organization and said he refused to sanction an organization that held views he felt to be “counter to the official policy of the college.” *Id.* at 187. The Court observed that it has “consistently disapproved” of restrictions on fundamental rights “solely because of a citizen’s association with an unpopular organization.” *Id.* at 185–86. It is the right of the students, not the university, to determine with whom or what organizations they will associate.

III. Conclusion

Truman State’s recognition process yields inconsistent and indefensible results, laying bare the subjective, unconstitutional nature of its evaluations. Groups that are denied recognition one year because of their affiliation with external organizations or their “philanthropic” purpose are granted recognition the next. Groups are evaluated for whether or not they are “unique,” but a Christian group was rejected for serving a “unique” student interest. A group apparently proposing to visit cancer-stricken children in the hospital is denied recognition despite its laudable purpose on the basis that its mission might be difficult for adult students to undertake. And here, a student organization is denied recognition—again—because of the possibility that someone might disagree with its views. Denying students the fundamental right to organize and express themselves on a public university campus in order to protect

²⁹ If authorities can silence the speaker in deference to the anticipated reaction of his critics, “the law in effect acknowledges a veto power in hecklers who can, by being hostile enough, get [authorities] to silence any speaker of whom they do not approve.” *Bible Believers v. Wayne County*, 805 F.3d 228, 234 n.1 (6th Cir. 2015). The heckler’s veto cannot be effectuated by institutions bound by the First Amendment. *See, e.g., Forsyth County v. Nationalist Movement*, 505 U.S. 123 (1992) (speech cannot be burdened or punished “simply because it might offend a hostile mob,” as “[l]isteners’ reaction to speech is not a content-neutral basis for regulation”).²⁹

³⁰ Nor is the related concern about the “finances” of the organization sufficient to deny recognition. The students indicated that they have a variety of external organizations or entities upon which they can rely, if needed, and further indicated that they only intend to engage in organizing that does not require substantial resources. Moreover, the students are seeking access to the resources the university provides to student organizations from the funds paid by students, whether through student fees, through tuition, or through the tax revenue the state has allocated to the university. Denying resources on the basis that students lack resources is illogical, at best. In any event, it is doubtful that this rationale is anything more than a pretext for the committee members’ disagreement with PETA or the students’ views.

them from their would-be critics is antithetical to the spirit of a university and to the letter of the First Amendment.

It has “long been recognized that if a university creates a limited public forum, it may not engage in viewpoint discrimination within that forum.” *Gerlich v. Leath*, 861 F.3d 697, 709 (8th Cir. 2017) (denying qualified immunity to administrators who prohibited use of university’s trademarks by a student organization on viewpoint-discriminatory basis). A public college administrator who violates clearly established law will not retain qualified immunity and can be held personally responsible for monetary damages for violating First Amendment rights under 42 U.S.C. § 1983. *See Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

We request receipt of a response to this letter no later than the close of business on Friday, December 20, 2019, confirming that Truman State will recognize Animal Alliance and suspend use of subjective criteria for evaluating recognition of student organizations. FIRE is committed to using all of the resources at its disposal to see this matter through to a just conclusion.

Sincerely,



Adam Steinbaugh
Director, Individual Rights Defense Program



Lindsay Rank
Program Officer, Individual Rights Defense Program

Cc:

Janna Stoskopf, Vice President for Student Affairs
Laura Bates, Director of the Student Union and Campus Activities
Adam McMichael, Assistant Director of Union and Involvement Services

Encl.