



March 16, 2020

President Barry M. Maloney
Worcester State University
President's Office
Shaughnessy Administration Building
Suite A-255
Worcester, Massachusetts 01602

Sent via Electronic Mail (bmaloney@worchester.edu)

Dear President Maloney:

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

FIRE is concerned about the state of freedom of association at Worcester State University (WSU) in light of the Student Government Association's refusal to recognize a proposed student chapter of Turning Point USA (TPUSA) on the basis of the group's political views.

I. The Student Government Association Denies TPUSA Worcester Official University Recognition

The following is our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us. However, if the facts here are substantially accurate, the decision of the Student Government Association (SGA) to deny recognition to Turning Point USA at Worcester State University ("TPUSA Worcester") amounts to a viewpoint-based infringement on students' rights to freedom of association and freedom of expression, violating the university's obligations under the First Amendment.

On February 27, 2020, WSU students Anthony Winship and Alvin Marchena appeared before the SGA to present on behalf of their proposed student organization, TPUSA Worcester.¹ By the February 27 SGA meeting, the chapter had recruited 22 interested members and had held

¹ WORCESTER STATE UNIV. STUDENT GOV'T ASS'N, Minutes (Feb. 27, 2020) (on file with author).

three tabling events,² during which 160 students expressed interest in joining the organization's email list.

Late last year, chapter president Winship and member Marchena started the process of founding a student organization on campus and met with Director of the Office of Student Involvement and Leadership Development (OSILD) Kristie McNamara to discuss the process. There are four steps to becoming a recognized student organization at SWU.³ The group must recruit student members—including through advertised tabling events—and an advisor; develop a charter; submit that charter, a club registration form, a list of general members, and any national affiliates to OSILD; and obtain the approval of the SGA.⁴

On February 27, when Winship and Marchena appeared before the SGA, they spent over an hour fielding questions from student senators about TPUSA. Some of these questions—for example, inquiries about the number of students who had attended the first two group meetings, and whether the organization had selected an advisor—were aimed to help to SGA objectively gauge interest in the organization and its compliance with Worcester policy.

Student senators also questioned Winship and Marchena about, among other things, the chapter's affiliation with the national TPUSA organization; how the group would ensure other students felt “safe and comfortable” with TPUSA on campus; specific reported controversies involving TPUSA chapters on other campuses; and criticism of TPUSA by other national organizations.

Although Winship and Marchena disclaimed any support for the specific controversies related to TPUSA, this line of questioning continued as another senator asked “why if you don't agree with all of their morals and values why you're making a club on campus that isn't with our morals and values.”⁵ Another asked whether Winship and Marchena understood “the concerns that have been raised about the impact this organization might have on campus climate”⁶

At the conclusion of questioning, the SGA entered into executive session, which is limited to senior leadership of the SGA and their advisors. Neither Winship and Marchena nor other members of the public were permitted to observe the executive session. That meeting lasted approximately 40 minutes, after which the SGA called for a vote on the recognition of TPUSA Worcester by secret ballot. The motion to recognize TPUSA Worcester ultimately failed, garnering two votes in favor and ten votes against with no abstentions.

² *Id.* at 1, 3.

³ WORCESTER STATE UNIV. OFFICE OF STUDENT INVOLVEMENT AND LEADERSHIP DEV., *New Student Organization Handbook 2019–2020*, at 6.

⁴ *Id.* at 6–7.

⁵ *Id.* at 12.

⁶ *Id.* at 16.

Winship and Marchena were notified of the decision by email on March 5, 2020. The email cited three reasons for the SGA's refusal to recognize TPUSA Worcester:

- (1) Negative impact on campus climate based on information from reputable sources, including but not limited to the Anti-Defamation League and Southern Poverty Law Center
- (2) Contradictory answers to questions
- (3) Lack of clarity about the relationship between the parent organization and chapter⁷

II. The SGA's Viewpoint-Based Rejection of TPUSA Worcester Cannot Be Reconciled with WSU's Constitutional Obligations

A. *WSU is bound by the First Amendment.*

It has long been settled law that the First Amendment is binding on public colleges like UMM. *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); *see also DeJohn v. Temple Univ.*, 537 F.3d 301, 314 (3d Cir. 2008) (on public campuses, “free speech is of critical importance because it is the lifeblood of academic freedom”).

B. *The SGA's rejection of TPUSA Worcester for its potential impact on “campus climate” is impermissible viewpoint discrimination.*

WSU fundamentally abandons its First Amendment obligations to free speech and freedom of association when it acts to stifle expressive activity on the basis that others do or might find it objectionable or offensive. When authorities target “not subject matter but particular views taken by speakers on a subject, the violation” of expressive rights “is all the more blatant.” *Rosenberger v. Rector & Visitors of the University of Virginia*, 515 U.S. 819, 829 (1995). “Viewpoint discrimination is thus an egregious form” of censorship, and authorities “must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.” *Id.*

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

⁷ Email from the Student Government Association to Anthony Winship and Alvin Marchena (Mar. 5, 2020) (on file with author).

neutral basis. *See, e.g., Board of Regents of the University of Wisconsin System. v. Southworth*, 529 U.S. 217, 233 (2000) (“When a university requires its students to pay fees to support the extracurricular speech of other students, all in the interest of open discussion, it may not prefer some viewpoints to others.”).

The questions posed by Worcester’s SGA to TPUSA student leaders reflect considerable viewpoint-based discrimination. The senators questioned Winship and Marchena for more than an hour about the organization’s values and repeatedly expressed concerns about the views of the national TPUSA organization, which SGA members feared would be reflected by a student chapter of TPUSA. The questions indicated that several student senators were considering more than whether there was sufficient interest in a TPUSA chapter at Worcester.

There is no available record of what transpired during the executive session at the end of the February 27 meeting. However, given the subjects of the lengthy public questioning, which primarily concerned the political positions of the proposed chapter and its national organization, it would be unwarranted to presume that the SGA executives engaged in a viewpoint-neutral discussion of TPUSA during these sessions. The burden rests on WSU and its SGA to offer a valid—and not merely pretextual—content- or viewpoint-neutral reason for rejecting TPUSA Worcester. We are not aware of any such rationale, as TPUSA otherwise met the objective requirements necessary for recognition. Moreover, the email summarizing the SGA’s decision not to approve the organization itself expressly identifies viewpoint-discriminatory rationale as supporting the refusal to recognize TPUSA, namely concerns about the organization’s viewpoint and its “impact on campus climate.”

Further, the minutes from the February 7 meeting indicate the student senators engaged in naked viewpoint-discrimination in their determination into whether TPUSA satisfied its desire that the mission of each student organization be “keeping the values of [WSU].”⁸ Given WSU’s obligations as a public institution bound to uphold its students’ freedoms of expression and association, it cannot reject a proposed student organization on the basis that its viewpoints might lead it to engage in discussion and inquiry to which the SGA or its members object.

Many of the student senators’ concerns appear to have been motivated by a dislike for the views and individuals associated with the national organization TPUSA. This, however, does not permit the student senators to engage in viewpoint-discrimination. In *Healy v. James*, 408 U.S. 169 (1972), Central Connecticut State College refused to recognize a chapter of Students for a Democratic Society on similar grounds because the organization’s philosophy was “antithetical to the school’s policies” and the chapter’s independence from the national organization was “doubtful.” *Id.* at 175–76. 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 Supreme Court, however, flatly rejected the assertion that “mere disagreement” with

⁸ Minutes, *supra* note 1, at 3.

a group's philosophy was a sufficient basis to deny the group recognition. *Id.* at 188. Even in that case, where disagreement with the student organization's viewpoint was coupled with a concern about physical violence, the college's commitment to freedom of expression bound it to prioritize students' freedom of expression and refrain from engaging in viewpoint-based discrimination.

The principle of freedom of speech does not exist to protect only non-controversial expression. Rather, it exists precisely to protect speech that some or even most members of a community may find controversial or offensive. The Supreme Court has explicitly held, in rulings spanning decades, that speech cannot be restricted simply because it offends others, on or off campus. *See, e.g., Texas v. Johnson*, 491 U.S. 397, 414 (1989) ("If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."); *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667, 670 (1973) ("[T]he mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of 'conventions of decency.'"). The freedom to offend some listeners is the same freedom to move or excite others. As the Supreme Court observed in *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949), speech "may indeed best serve its high purpose when it induces a condition of unrest . . . or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea." The Court reiterated this fundamental principle in *Snyder v. Phelps*, 562 U.S. 443, 461 (2011), proclaiming that "[a]s a Nation we have chosen . . . to protect even hurtful speech on public issues to ensure that we do not stifle public debate."

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

By refusing to grant TPUSA Worcester recognition because some members of the SGA and campus community are opposed to its real or perceived views, the SGA is hindering free and open dialogue on campus to the detriment of all WSU students. It is not the place of the SGA to dictate the causes for which students should advocate. If the SGA were to engage in this kind of viewpoint-based discrimination in consideration of every application to become a registered student organization, it would certainly see the number of registered student organizations on campus dwindle. Other groups on campus—such as the Socialist Alternative and Intervarsity, a religious student organization—are just as likely to express views *someone* on campus may find offensive or objectionable. Surely WSU and the SGA recognize that some

amount of controversy does not lessen the value of the expression of diverse viewpoints on campus.

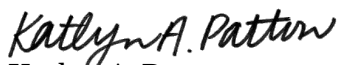
Students, including student senators, who object to TPUSA's views are not without redress on campus and the SGA should encourage them to voice their objections. The answer, however, is to use their own voices to do so, not the SGA's power to deny recognition of student groups.

III. Conclusion

If the SGA's rejection of TPUSA Worcester is not reversed, WSU will have failed in its constitutional obligation to uphold its students' rights to freedom of expression and association. WSU must ensure that student organizations are evaluated for recognition in a viewpoint-neutral manner. As long as TPUSA Worcester has satisfied these viewpoint-neutral requirements, WSU must grant the group official recognition.

We request a response to this letter by April 13, 2020.

Sincerely,



Katlyn A. Patton

Program Officer, Individual Rights Defense Program and Public Records

Cc:

Maribel Mateo, Student Government Association President

Kristie McNamara, Director, Office of Student Involvement and Leadership Development

Nikki Kapurch, Special Assistant to the President and Liaison to the Board of Trustees