



October 19, 2021

Wichita State University Student Government Association
Student Senate
c/o Jacob Tubach
Speaker of the Senate
Wichita State University
Rhatigan Student Center, Room 219
1845 Fairmount St. Box 56
Wichita, Kansas 67260-0001

Sent via Electronic Mail (sga.speaker@wichita.edu)

Dear Speaker Tubach and Members of the Student Senate:

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 appreciates that members of the Wichita State University (WSU) Student Government Association (SGA) had the foresight to recognize the potential legal issues attendant to denying recognition to a chapter of Turning Point USA (TPUSA) due to objections to the group's speech, its members, or its national organization.¹

We write to clarify that a vote on whether to grant recognition to a student organization is not an endorsement of its views or speech. And as a public university bound by the First Amendment, WSU and its student government may not deny recognition to a student group based on its views or speech. Because this TPUSA chapter satisfies the SGA's criteria for recognition, the Senate's denial of recognition would violate the group's well-established rights under the First Amendment.

¹ In conveying constituents' concerns at the Oct. 13 meeting of the Senate, one member criticized TPUSA members' display of the Gadsden flag, which she said "actively champions the history of slavery in this country, making it now a widely accepted symbol of white supremacy," and "fails to align with the values of the university." At the preceding Oct. 6 meeting, members of the Senate questioned the chapter's leadership about steps they would take to address students that "have expressed discomfort with your organization," and asked "how closely affiliated you would be with the broader national organization and whether you would hold the same values all the time." Members of the Senate also asked if the chapter has "any protocols . . . in place to prevent students from engaging in any discriminatory behaviors . . . in order to avoid hateful or discriminatory discussion in these tabling [events] that you do."

I. Denying TPUSA Recognition Over Its Viewpoints Would Violate Students’ Expressive Rights

Denying recognition to a student organization because of its views impermissibly burdens students’ First Amendment right to organize and express themselves. Accordingly, the WSU SGA, the organization tasked with recognizing student groups on behalf of WSU,² may not deny recognition to TPUSA over the views or protected speech of its members.

A. The First Amendment bars viewpoint-based denial of recognition to student organizations.

The First Amendment is binding on public universities like WSU.³ The actions of a public university must be consistent with the First Amendment, which prohibits denial of recognition or funding due to the “ideology or the opinion or perspective of the speaker[.]”⁴

The freedom of speech embraced by the First Amendment carries “a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends”—a right “crucial in preventing the majority from imposing its views on groups that would rather express other, perhaps unpopular, ideas.”⁵ This is the right that fosters students’ ability to organize around causes or views in order to influence their institutions, communities, and country.

Denying recognition to a student organization impairs students’ ability to engage in their constitutional right of expressive association. At WSU, such a denial carries additional consequences: Recognition allows student organizations to use facilities in Student Involvement, reserve facilities for meetings and events, post or send announcements on university bulletin boards or using university technology, and access other resources.⁶

The Supreme Court of the United States has held that denial of group recognition based on viewpoint, speech, or fear of disruption violates the First Amendment. In *Healy v. James*, for example, the Court held that the president of a public college violated the First Amendment when he refused to grant recognition to a chapter of Students for a Democratic Society (“SDS”).⁷ Following a “climate of unrest” on college campuses, replete with “widespread civil disobedience . . . accompanied by the seizure of buildings, vandalism, and arson,” causing some “colleges [to] shut down altogether,” students sought to form a new chapter of SDS at the college.⁸ The college president refused to grant the group recognition, citing its philosophy and ties to the national SDS organization, which had “published aims . . . which

² WSU, *RSO Chartering, Starting A New Student Organization* (last visited Oct. 18, 2021), https://www.wichita.edu/student_life/organizations/_resources/rsoschartering.php (describing process by which student groups must seek approval by the SGA to be granted official university recognition).

³ *Healy v. James*, 408 U.S. 169, 180 (1972).

⁴ *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995); *see also Bd. of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 221 (2000).

⁵ *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 648 (2000).

⁶ WICHITA STATE UNIV., *STUDENT ORG. & ADVISOR HANDBOOK 2019-2020* at § 2.4, *available at* https://www.wichita.edu/student_life/organizations/_assets/documents/2019-2020/2019-2020RSOHandbook.pdf.

⁷ 408 U.S. at 187–88.

⁸ *Id.* at 171–72.

include disruption and violence.”⁹ The Court held that “denial of official recognition, without justification, to college organizations burdens or abridges” their First Amendment rights.¹⁰

Likewise, although the SGA Senate Ways and Means Committee determined here that the TPUSA chapter has met “each and every requirement” for recognition,¹¹ members of the Senate have raised objections related to the group’s speech or views, or those of its national organization. Yet, ties to a disfavored organization or objections to its viewpoints cannot serve as a basis to override the First Amendment rights of the TPUSA chapter. A Senate vote to grant recognition is not an endorsement of the group, but instead a recognition that it has met the lawful criteria of recognition. Accordingly, if the Senate denies recognition, it would constitute unlawful viewpoint discrimination—“censorship in its purest form.”¹²

B. Student governments and universities may not deny recognition to a student group because others find its speech offensive.

These principles hold true even—perhaps especially—where others find an organization’s speech to be deeply offensive. The Supreme Court has repeatedly, consistently, and clearly held that expression may not be restricted on the basis that others find it to be offensive. This core First Amendment principle is why the authorities cannot outlaw burning the American flag,¹³ punish the wearing of a jacket emblazoned with the words “Fuck the Draft,”¹⁴ penalize cartoons depicting a pastor losing his virginity to his mother in an outhouse,¹⁵ or disperse civil rights marchers out of fear that “muttering” and “grumbling” white onlookers might resort to violence.¹⁶

Nor do these principles lose their salience in the context of a public university. Take, for example, a student newspaper’s front-page uses of a vulgar headline (“Motherfucker Acquitted”) and a “political cartoon . . . depicting policemen raping the Statue of Liberty and the Goddess of Justice.”¹⁷ These words and images—published at the height of the Vietnam War—were no doubt deeply offensive to many at a time of deep polarization and unrest. Yet, “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.’”¹⁸

The prohibition against viewpoint discrimination is what has protected groups across the political spectrum when they hold dissenting or unpopular views. For example, it protected chapters of LGBTQ organizations in Arkansas and New Hampshire in the 1970s and 80s when student senates and university trustees, urged by state lawmakers, refused to “support a

⁹ *Id.* at 174–75, n. 4.

¹⁰ *Id.* at 181.

¹¹ WICHITA STATE STUDENT GOV’T ASS’N, *64th Student Senate – October 6, 2021*, YOUTUBE at 1:33:45 (Oct. 6, 2021), https://youtu.be/1ujA_ldLVsY.

¹² *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 62 (1983) (Brennan, J., dissenting).

¹³ *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (the “bedrock principle underlying” the holding being that government actors “may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable”).

¹⁴ *Cohen v. California*, 403 U.S. 15, 25 (1971).

¹⁵ *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 50 (1988).

¹⁶ *Cox v. Louisiana*, 379 U.S. 536, 557 (1965).

¹⁷ *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 667–68, 671 (1973).

¹⁸ *Id.* at 670.

homosexual group” or their expression, which was, at the time, considered “shocking and offensive.” Federal appellate courts held these denials violated the First Amendment, with one court explaining that recognition cannot be curtailed on the basis that some find the group’s views “abhorrent or offensive.”¹⁹ FIRE has also come to the defense of organizations who faced loss of recognition or funding due to their protected speech, including groups on the left and right,²⁰ pro-choice and pro-life organizations,²¹ animal rights and hunting clubs,²² and pro-Israel and pro-Palestinian groups.²³ If universities could deny recognition or funding because of a group’s views, the rights of *all* of these groups would be lost.

II. Conclusion

The great many student groups recognized by the SGA are a testament to the diversity of WSU’s student body. While SGA members may not agree with the viewpoints of all 202 of these groups, the existence of these organizations is made possible by decades of capable SGA leadership recognizing the value of fostering a diverse and vibrant collection of student clubs. That includes student groups that do not necessarily reflect the values of SGA members.²⁴

FIRE urges SGA to meet its legal obligations—and continue to support viewpoint diversity among its fellow students—by ensuring student groups are evaluated on viewpoint-neutral criteria only.

Sincerely,



Zachary Greenberg
Senior Program Officer, Individual Rights Defense Program

Cc: Richard Muma, WSU President

¹⁹ *Gay Students Org. of Univ. of N.H. v. Bonner*, 509 F.2d 652, 661–62 (1st Cir. 1974); *Gay & Lesbian Students Ass’n v. Gohn*, 850 F.2d 361, 362–363 (8th Cir. 1988).

²⁰ Press Release, FIRE, *One day after FIRE files lawsuit, med school approves student’s long-denied club application* (Aug. 19, 2021), <https://bit.ly/3DKg7ZT>; Sarah McLaughlin, *We’re Not Buying Hagerstown Community College’s Excuses for Denying Student Group’s Recognition*, FIRE (Sept. 17, 2015), <https://bit.ly/3pegTdo>.

²¹ Katlyn Patton, *University of Northern Iowa administration must correct its student government’s refusal to recognize ‘hate group’ Students for Life*, FIRE (Oct. 16, 2020), <https://bit.ly/3ARjCMo>; Mary Zoeller, *Georgetown fails to live up to free speech promises by not recognizing pro-choice student group*, FIRE (Mar. 29, 2018), <https://bit.ly/3ve0cQk>.

²² Press Release, FIRE, *Public university rejects animal rights club, citing ‘emotional risk’ to students* (Dec. 10, 2019), <https://bit.ly/3p7bdIG>; Press Release, FIRE, *BULLSEYE: University of Pennsylvania’s Hunting, Archery, and Shooting Club finally approved after FIRE’s intervention* (Apr. 29, 2021), <https://bit.ly/2YTLM5n>.

²³ Press Release, FIRE, *Pro-Israel group denied recognition by Williams College student government, administration’s response falls short* (May 15, 2019), <https://bit.ly/3DES26C>; Press Release, FIRE, *FIRE, NCAC Call on Fordham to Recognize Students for Justice in Palestine* (Jan. 25, 2017), <https://bit.ly/3aHuuBI>.

²⁴ WSU, *Organizations* (last visited Oct. 18, 2021), <https://wichita.campuslabs.com/engage>. For example, the SGA has recognized both the WSU College Democrats and College Republicans.

Stacia Boden, WSU General Counsel