



October 5, 2021

Cecilia M. McCormick, J.D.
Office of the President
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URGENT

Sent via U.S. Mail and Electronic Mail (mccormickcecilia@etown.edu)

Dear President McCormick:

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 free expression at Elizabethtown College ("Etown") in light of the administration's viewpoint-based refusal to permit a student organization, the Etown chapter of Turning Point USA ("TPUSA"), to host an invited guest speaker, Joe Basrawi. As a college that promises its students freedom of expression, Etown may not refuse to approve a student group's event because of its chosen speaker's viewpoint or the anticipated reactions of others to the speaker.

I. Etown Refuses to Approve TPUSA's Proposed Guest Speaker

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.

In August 2021, Alex Russo, the student president of the Etown chapter of TPUSA, invited Joe Basrawi, a conservative political commentator and TPUSA Ambassador,¹ to campus to speak at a TPUSA event. Russo reserved the Brinser Lecture Room in Steinman Center for

¹ Joe Basrawi (@JoeBasrawi), TWITTER, <https://twitter.com/JoeBasrawi> (last visited Oct. 1, 2021). The TPUSA Ambassador program "aims to identify current and potential thought leaders and personalities that advance TPUSA's mission of spreading the values of free markets and limited government." *TPUSA Ambassador Application*, TURNING POINT USA, <https://www.tpusa.com/ambassadorapp> (last visited Oct. 1, 2021).

September 27 for “Club Meeting and Group Activity,” but the reservation did not mention that there would be an outside speaker.² Basrawi chose critical race theory in education as the topic of his planned talk. The TPUSA chapter advertised the event on its Instagram page, posting a flyer entitled “Critical Hate Theory” and reading: “Join Turning Point USA as we hear from political commentator Joe Basrawi to discuss conservative values.”³

On September 20, Carina Carpenter, the Assistant Director of Community Living and Student Activities, called Russo and told him the event could not proceed with the word “hate” in the title, and that guest speakers need to be approved by the college. After the phone call, Carpenter emailed Russo the information the college needed before they could approve Basrawi’s speaking appearance.⁴ Russo immediately replied with the requested information.⁵ Russo also said his designers were changing the event advertisement and that the existing one would be taken down. After changing the advertisement to say “Critical Race Theory” instead of “Critical Hate Theory,” Russo was under the impression that the event was on track for approval.

On September 23, Dean of Students Nichole Gonzalez asked Russo to meet with her and Associate Dean of Students Jenn Crowder “to discuss concerns with your proposed speaker for Monday.”⁶ Russo and TPUSA officer Gavin Phillips attended the meeting, where Gonzalez told them that the Basrawi event would not be approved. In a follow-up email, Crowder confirmed that the event was not approved.⁷ She also noted that TPUSA is planning future programs and that she had “directed [Russo and Phillips] to the Club and Org handbook so they were aware of the approval process to avoid publicizing events prior to approval, etc. which was an issue with this event.”

Russo replied to that email to memorialize what was discussed at the meeting.⁸ According to Russo’s email, Gonzalez told him and Phillips that she and the college administration feel “TPUSA is an organization, and Joe Basrawi is an individual, that seeks to cause division and disorder on campuses,” and that Basrawi would do exactly that by speaking about critical race theory. The administrators raised concerns that Basrawi “was not a Critical Race Theorist and would cause division and damage in the college community, specifically marginalized groups.” Russo’s email further noted the administrators said they “were strongly opposed to the speaker, claiming he is intentionally disruptive,” and Gonzalez “expressed concern that the college cannot sanction an event allowing or promoting an alternative or negative view of CRT.” The administrators also said TPUSA “needed to follow proper Club and Organization Handbooks in order to approve future events properly.” Russo and Phillips were allowed to

² Event Confirmation: Club Meeting and Group Activity, Sept. 20, 2021 (on file with author).

³ The flyer can be viewed here: <https://bit.ly/3oKFJlh>.

⁴ Email from Carina Carpenter, Assistant Dir. of Cmty. Living and Student Activities, Elizabethtown Coll., to Alexander Russo (Sept. 20, 2021, 10:11 AM) (on file with author).

⁵ Email from Russo to Carpenter (Sept. 20, 2021, 11:07 AM) (on file with author).

⁶ Email from Nichole Gonzalez, Dean of Students and Exec. Dir. for Coll. Diversity, Equity and Belonging, Elizabethtown Coll., to Russo (Sept. 23, 2021 10:22 AM) (on file with author).

⁷ Email from Jennifer Crowder, Assoc. Dean of Students, Elizabethtown Coll., to Carpenter et al. (Sept. 23, 2021 at 6:08 PM) (on file with author).

⁸ Email from Russo to Crowder et al. (Sept. 23, 2021 at 8:25 PM) (on file with author).

hold the event off-campus if it was not in any way affiliated with Etown. Neither Crowder, Carpenter, nor Gonzalez replied to Russo's email disputing his account of the meeting.

TPUSA held the event with Basrawi off campus on September 27 without incident.⁹

II. The Viewpoint-Based Denial of TPUSA's Speaker Request Violates Etown's Promises of Free Expression

Etown's refusal to approve TPUSA's event with Basrawi due to his viewpoints and the anticipated reaction to his speech is irreconcilable with Etown's commitment to freedom of expression.

A. Etown makes institutional commitments to freedom of expression.

While the First Amendment is not binding on private institutions like Etown, the college has made morally and legally binding commitments to its students' freedom of speech.

For example, Etown's student handbook pledges that students have the "right" to "*express diverse opinions*, and to advocate for change with a commitment to civil discourse and human dignity."¹⁰ Under the college's "educational philosophy and goals," students "are encouraged to develop and challenge their own values, while seeking to understand and appreciate alternative perspectives."¹¹ This commitment is also reflected in the college's "Blue Jay Pledge of Integrity," in which students and faculty "pledge to respect the free exchange of ideas both inside and outside the classroom."¹² In endorsing students' expressive rights, Etown rightly hews to the United States Supreme Court's sound observation that "[t]he college classroom with its surrounding environs is peculiarly the 'marketplace of ideas.'"¹³

Etown's promises of free expression are important not only to students, but to the college's accreditation. Etown is accredited by the Middle States Commission on Higher Education, which requires that each institution, as a precondition for accreditation, "possess[] and demonstrate[] . . . a commitment to academic freedom, intellectual freedom, [and] freedom of expression."¹⁴ Etown must adhere to these obligations.¹⁵

⁹ *Cancelled on Campus Feat Joe Basrawi*, EVENTBRITE, <https://www.eventbrite.com/e/cancelled-on-campus-feat-joe-basrawi-tickets-179058929077#> (last visited Oct. 4, 2021).

¹⁰ ELIZABETHTOWN COLL., ELIZABETHTOWN COLLEGE 2021-2022 STUDENT HANDBOOK AND CODE OF CONDUCT 23, <https://www.etown.edu/offices/student-life/2021-2022%20Code%20of%20Conduct%207-30.pdf> (emphasis added).

¹¹ *Educational Philosophy and Goals*, ELIZABETHTOWN COLL., <https://www.etown.edu/about/philosophy.aspx> (last visited Oct. 4, 2021).

¹² *Student Rights and Responsibilities*, ELIZABETHTOWN COLL., <https://www.etown.edu/offices/student-rights/index.aspx> (last visited Oct. 1, 2021).

¹³ *Healy v. James*, 408 U.S. 169, 180 (1972) (internal citation omitted).

¹⁴ MIDDLE STATES COMM'N ON HIGHER EDUC., STANDARDS FOR ACCREDITATION AND REQUIREMENTS OF AFFILIATION 5 (rev. 2015), <https://msche.box.com/shared/static/6upfla8coxha663p0j10u3gatow38jel.pdf> (emphasis added).

¹⁵ See, e.g., Adam Steinbaugh, *Mount St. Mary's University President Simon Newman Resigns After Accreditor Questions Commitment to Freedom of Expression*, FIRE (Mar. 1, 2016), <https://www.thefire.org/mount-st->

B. Etown cannot refuse a student group's speaker request because of opposition to the speaker's views.

Consistent with the right to free speech, Etown allows student groups to invite speakers to campus. While Etown may place reasonable, viewpoint-neutral restrictions on speaker appearances, the college's commitment to free expression precludes it from vetoing speaker invitations due to the speaker's viewpoint.

After TPUSA invited Basrawi to campus, Dean Gonzalez summoned Russo to a meeting "to discuss concerns with your proposed speaker." Russo's account of that meeting—which Gonzalez and Crowder did not dispute when given the opportunity—indicates that Etown administrators refused to approve the request because they were opposed to Basrawi's views on critical race theory and believed his speech would cause division and disorder on campus. Thus, Etown's denial of TPUSA's request to host Basrawi was rooted in opposition to his views and how they would be received on campus.¹⁶

Viewpoint-based restrictions on speech cannot be squared with Etown's commitments to the expression of "diverse opinions" and the "free exchange of ideas." That Basrawi may express viewpoints that some or most at Etown may find wrong or offensive is not an acceptable reason to bar students from inviting him to speak. The principle of freedom of speech does not exist to protect only non-controversial expression; it exists precisely to protect speech that some or even most members of a community may find controversial or offensive. As the Supreme Court explained in *Terminiello v. Chicago*:

[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.¹⁷

Speech is not free when authorities can restrict it because it might offend or anger others. In matters of politics and social relations, there is scarcely an opinion or position that is not offensive to *someone*. Views on critical race theory are no exception. Both proponents and critics of the set of ideas associated with critical race theory have accused the other side of promoting hatred and division.¹⁸ If listener reactions were the standard for what speech is permissible, neither Basrawi nor a speaker who sought to promote critical race theory would be welcome to speak on campus. Indeed, this standard—applied consistently—would prevent

marys-university-president-simon-newman-resigns-after-accreditor-questions-commitment-to-freedom-of-expression.

¹⁶ This is true even if the only objections to the speech came from others—e.g., students, faculty, or members of the community—and not Gonzalez or Crowder. "Listeners' reaction to speech is not a content-neutral basis for regulation." *Forsyth Cty. v. Nationalist Movement*, 505 U.S. 123, 134 (1992).

¹⁷ 337 U.S. 1, 4 (1949).

¹⁸ See, e.g., Anthony Zurcher, *Critical race theory: the concept dividing the US*, BBC (July 22, 2021), <https://www.bbc.com/news/world-us-canada-57908808>; Barbara Sprunt, *The Brewing Political Battle Over Critical Race Theory*, NPR (June 29, 2021), <https://www.npr.org/2021/06/02/1001055828/the-brewing-political-battle-over-critical-race-theory>.

student groups from obtaining approval for speakers on *any* contentious political issue, foreclosing the free and open exchange of ideas that Etown has promised its students.

The simple solution is to allow views on all sides of an issue to be aired. In this way, Etown can truly fulfill its stated goal of encouraging students “to develop and challenge their own values, while seeking to understand and appreciate alternative perspectives.” Etown’s administration and students who are opposed to TPUSA’s or Basrawi’s views on critical race theory are free to add their own voices to the discussion and to organize events featuring speakers with different perspectives on the subject. However, given its commitment to freedom of expression, Etown cannot preferentially shape the debate by restricting some students’ ability to contribute to it, whether through their own speech or by inviting likeminded speakers to campus. The proper response to disfavored speech is counterspeech, not censorship.

To the extent Etown prohibited Basrawi from speaking on campus out of fear that members of the college community opposed to his views might become disruptive, the college violated TPUSA’s expressive rights by ratifying an impermissible “heckler’s veto.” The Supreme Court has rejected this form of censorship, for good reason: It enables individuals who dislike a speaker’s message to suppress it simply by creating or threatening a disturbance.¹⁹ When authorities capitulate to the heckler’s veto, they incentivize future disruptive conduct, and viewpoints across the political spectrum become vulnerable to censorship. Etown may punish those who react to speech with violence or misconduct, but it may not silence the speaker. A college such as Etown that is dedicated to free trade in ideas and opinions must reject the heckler’s veto.²⁰

Etown’s promises of free expression also preclude the institution from censoring subjectively offensive language in a student group’s event advertisements. Accordingly, Etown had no authority to require TPUSA to remove the term “Critical Hate Theory” from its online flyer in the first place. The college’s interest in its own image and reputation does not justify such censorship. While the flyer mentioned “Elizabethtown College,” where the event was originally scheduled to take place, the body of the flyer said, “Join Turning Point USA as we hear from political commentator Joe Basrawi to discuss conservative values!” and displayed the organization’s logo. No reasonable observer of the flyer would believe the event was endorsed or sponsored by Etown or any organization other than TPUSA. Courts routinely

¹⁹ *Forsyth Cnty.*, 505 U.S. at 135 (speech cannot “be punished or banned, simply because it might offend a hostile mob”); see also *Iota Xi Chapter of Sigma Chi Fraternity v. George Mason Univ.*, 773 F. Supp. 792, 795 (E.D. Va. 1991) (“One of the most persistent and insidious threats to first amendment rights has been . . . the ‘heckler’s veto,’ imposed by the successful importuning of government to curtail ‘offensive’ speech at the peril of suffering disruptions of public order.”) (cleaned up), *aff’d* 993 F.2d 386, 389–90, 392 (4th Cir. 1993).

²⁰ Gonzalez also said that TPUSA’s publicizing of Basrawi’s planned appearance prior to its approval by the college “was an issue with this event.” However, nothing in the Student Club and Organization Handbook prohibits student organizations from advertising an event prior to official approval. The handbook does require approval for event advertising to be hung up in the Baugher Student Center or in residence halls. See ELIZABETHTOWN COLL., ELIZABETHTOWN COLLEGE STUDENT CLUB AND ORGANIZATION HANDBOOK 2021-2022, at 7–8, <https://www.etown.edu/campus-life/Spring%202021-Fall%202022%20Club%20Handbook.pdf>. But this rule does not apply to TPUSA’s advertising of the event, which was limited to posts on the group’s Instagram page. Moreover, the totality of the circumstances indicates that Etown’s denial of TPUSA’s speaker request was not simply due to a failure to observe club handbook procedures; rather, it was motivated at least in part by the administrators’ expressed objections to Basrawi’s views.

reject efforts by colleges and universities to restrict student expression on the theory that others may confuse permitting such speech with official institutional endorsement.²¹

III. Conclusion

Etown's refusal to approve TPUSA's event denied the group's members their expressive rights and impoverishes the campus discourse by preventing robust and open discussion on issues of significant public interest.

FIRE calls on Etown to recommit to its laudable principles of free expression and affirm that future speaker requests made by TPUSA and other student groups will be considered in a viewpoint-neutral manner. We request receipt of a response to this later no later than October 11, 2021.

Sincerely,



Aaron Terr

Program Officer, Individual Rights Defense Program and Public Records

Cc: Nichole Gonzalez, Dean of Students & Executive Director for College Diversity, Equity and Belonging
Jennifer Crowder, Associate Dean of Students
Carina Carpenter, Assistant Director of Community Living and Student Activities

²¹ See, e.g., *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 841 (1995) (concern that a student organization's expression might be "attributed to the University is not a plausible fear"); *Gerlich v. Leath*, 861 F.3d 697, 713 (8th Cir. 2017) (prohibiting a university from imposing viewpoint-based restrictions on student use of its trademarked name in club materials).