



January 28, 2022

Dr. William P. Gilligan
Interim President and Professor Emeritus
Emerson College
180 Tremont Street, 14th Floor
Boston, Massachusetts 02116

URGENT

Sent via Electronic Mail (william_gilligan@emerson.edu)

Dear President Gilligan:

FIRE¹ is concerned that Emerson College is moving to revoke recognition of a student chapter of TPUSA because the organization, despite substantial efforts, is unable to obtain a full-time faculty advisor, almost certainly because the group's political viewpoint, or the efforts by Emerson's administration to sanction the organization, have dissuaded faculty members—even those who agree with the group—from advising it.

Because of this, the derecognition is inherently a result of viewpoint-based opposition to the group's views. Enforcement of the requirement, when the college could easily meet its institutional interests by furnishing the group with a staff or administrative advisor, is contrary to Emerson's promises of free expression. Accordingly, FIRE calls on Emerson to waive the requirement or provide an advisor to TPUSA.

I. Emerson's TPUSA Chapter Will Lose Recognition if it Does Not Obtain the Support of a Faculty Member

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.

Last fall, TPUSA was embroiled in a controversy concerning the distribution of the "China Kinda Sus" stickers, which Emerson College subsequently conceded were intended to criticize China's government, not its people. In the wake of that incident, Emerson's

¹ As you may recall from previous correspondence, 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.

administration publicly condemned TPUSA for “anti-Asian bigotry and hate” amidst “a rise in anti-Asian sentiment[.]”²

On January 18, 2022, the Program Coordinator for Student Engagement and Leadership emailed the leadership of TPUSA informing the group it would be derecognized by the college if they did not find a faculty advisor.³ Loss of recognition means the organization will be “frozen until a new advisor is found,” resulting in it losing “access to funds or ability to reserve space,”⁴ as well as being “unable to use Emerson’s brand and likeness[.]”⁵ A follow-up email laid out the restrictions the group faces:

[A]ll social media platforms, graphics, and organization email accounts will need to be updated so that they do not contain Emerson’s brand or likeness, meaning that the use of Emerson’s name cannot be in any graphics, org email accounts, social media account names, or EmConnect titles associated with the org. Independent student organizations are also not eligible to do Instagram takeovers on the official Emerson instagram account because of these policies.⁶

TPUSA had drawn interest from part-time or affiliated faculty, but was informed by the Emerson staff member that faculty advisors must now be “a full-time faculty or staff member,” and that Emerson could not approve TPUSA’s recognition because it had not obtained that support.⁷ The staff member explained that this was to avoid difficulty in maintaining an advisor, as “there is no guarantee that affiliated faculty will be coming back semester to semester.”⁸

TPUSA has reached out to more than 50 professors, but has not been able to locate a faculty member willing to risk the social, political, or career consequences that might attend affiliation with a controversial organization.

II. TPUSA’s Derecognition is Based on Viewpoint Issues That Render Its Derecognition a Violation of Emerson’s Promises of Free Expression

Emerson’s promises of free expression prohibit the college from requiring that student organizations, as a condition of obtaining formal recognition and its attendant rights, obtain the endorsement of its faculty or staff. TPUSA’s inability to find a full-time faculty advisor is a product of opposition to the group’s views—opposition no doubt accentuated by Emerson’s

² EMERSON TODAY, RECENT EVENT ON THE BOSTON CAMPUS, <https://today.emerson.edu/2021/09/30/recent-event-on-the-boston-campus> (Sept. 30, 2021).

³ Email from Jenna Coviello, Program Coordinator for Student Engagement and Leadership, to Sammi Neves, President, Emerson College-Turning Point USA (Jan. 18, 2022, 12:43 p.m.) (on file with author).

⁴ EMERSON COLL., STUDENT ENGAGEMENT AND LEADERSHIP, <https://www.emerson.edu/departments/student-affairs/undergraduate-student-handbook/student-engagement-leadership#studentorg> (last visited Jan. 26, 2022).

⁵ Coviello, *supra* note 3.

⁶ Email from Coviello to Neves (Jan. 25, 2022, 3:46 p.m.) (on file with author).

⁷ *Id.*, see also EMERSON COLL., CREATING A NEW STUDENT ORGANIZATION, <https://www.emerson.edu/departments/seal/student-organizations> (last visited Jan. 26, 2022).

⁸ *Id.*

own public statements condemning the group. Yet this significant burden on the group is easily remedied, and the college’s institutional interests addressed, by providing the group with a staff advisor, permitting an affiliated faculty member to fill the role, or waiving the requirement entirely.

A. *Emerson Makes Promises of Free Expression to Its Students.*

Although private institutions like Emerson are not bound by the First Amendment, Emerson has adopted policies guaranteeing students “certain rights,” including the “right to freedom of speech,” “freedom of political belief and affiliation,” and “freedom of peaceful assembly.”⁹ Emerson then reinforces these commitments with a statement on students’ expressive rights, laudably highlighting the “high importance” of the First Amendment and urging that this “right to freedom of speech” is “not only a right but a community responsibility.”¹⁰

Having made these commitments, Emerson is obligated to keep them, as both a moral duty and legal obligation.¹¹

B. *TPUSA is Threatened with Loss of its Status as a Recognized Student Organization Because of its Viewpoint.*

TPUSA’s student leadership has attempted in good faith to find another faculty advisor, and has drawn interest from part-time or affiliated faculty, but it has been unsuccessful in attracting an advisor among full-time faculty, and now faces derecognition. To be sure, faculty members, engaging in their own rights to freedom of association, have a cognizable associative right to decline to form a relationship with TPUSA because of disagreement with the group’s views.¹² But if TPUSA is derecognized, its status as a registered student organization in good standing would improperly change as a direct result of community members’ opposition to its viewpoint.

Practically speaking, Emerson is *itself* adopting the faculty members’ viewpoint-based objections in derecognizing TPUSA due to an inability to secure a full-time faculty advisor. While an individual professor retains the right to associate or disassociate on the basis of viewpoint with whomever he or she pleases, Emerson has made clear promises of protecting

⁹ EMERSON COLL., RIGHTS & RESPONSIBILITIES FOR STUDENTS/STUDENT ORGANIZATIONS <https://www.emerson.edu/departments/community-standards/code-community-standards/rights-responsibilities-studentsstudent> (last visited Jan. 26, 2022).

¹⁰ EMERSON COLL., STATEMENT ON FREEDOM OF EXPRESSION, <https://www.emerson.edu/departments/community-standards/code-community-standards/statement-freedom-expression> (last visited Jan. 26, 2022). The meaning of Emerson’s commitment to free speech—and how a reasonable student would interpret that promise—is informed by the decades of jurisprudence defining the scope of what the First Amendment’s guarantee of freedom of speech entails. That is emphatically so when Emerson itself references the First Amendment in articulating its commitment.

¹¹ *Doe v. W. New England Univ.*, 228 F. Supp. 3d 154, 169 (D. Mass. 2017) (Under Massachusetts law, the relationship between a student and a college is based on contract, the terms of which are contained in the student handbook and other college materials).

¹² *Roberts v. U.S. Jaycees*, 468 U.S. 609, 623 (1984) (“Freedom of association therefore plainly presupposes a freedom not to associate.”).

its students' free expression and cannot deny TPUSA access to college resources because of faculty member prerogatives based on TPUSA's viewpoint.

A rule requiring that student organizations engage a faculty advisor is content- and viewpoint-neutral on its face, and would not normally prompt questions of free expression. But in this circumstance, given TPUSA's political viewpoint and the heightened controversy surrounding the group, the application of the policy creates a clear burden flowing from opposition to the group's viewpoint.¹³

This disadvantage is further evidenced by TPUSA's continued efforts to find a new advisor. TPUSA has diligently searched for another advisor, contacting at least 50 faculty members. In light of the number of prospective advisors contacted, it is difficult to reach a conclusion other than that faculty members are hesitant to associate with a controversial organization they may disagree with politically—especially given the administration's public comments of disdain for the group.

Emerson's public statements and investigation into TPUSA have also likely contributed to a reluctance on the part of any interested faculty in getting involved with the group. After all, if *unintentionally* violating college policy is enough for a student group to get sanctioned, why would a faculty member *voluntarily* risk the college taking action against them? By investigating the group and finding the group responsible for "anti-Asian bigotry and hate" (even as it recognized that it had no such intent), and issuing a "Formal Warning" to the group, Emerson's administration has now forced the group to operate under constant threat of further discipline—discipline that would be exacerbated by the existence of the "Formal Warning" on the group's record. Further discipline would likely imperil the group's status, and would push any hesitant faculty member away from working with the group.

C. Derecognition of Student Groups for Viewpoint-Based Reasons Violates Emerson's Promises of Free Expression.

In keeping with its commitments of free expression, Emerson must employ only content- and viewpoint-neutral criteria when determining whether a recognized student organization has met its obligations.

Emerson has a responsibility to ensure that student organizations espousing controversial, dissenting, or simply unpopular viewpoints are not denied official recognition and its attendant benefits because of an inability to find a faculty advisor. TPUSA has indicated that at least one visiting professor expressed interest in serving as an advisor for the group.¹⁴ As the group has undertaken a good-faith effort to find an advisor, Emerson should allow the student group to elect to have a part-time or affiliated faculty member as an advisor, and in doing so, accept the fact that they may have to replace their advisor more regularly than groups that can secure full-time faculty advisors. Doing so would keep the responsibility of finding an advisor with the student group, and would uphold the status quo. Such a provision

¹³ *McCullen v. Coakley*, 573 U.S. 464, 485 n. 4 (2014) (discussing that an otherwise-neutral law may be unconstitutional as applied if its use discriminates between speakers of different viewpoints).

¹⁴ If the visiting faculty who have expressed interest end up not representing the group, then the college should still commit to providing the group a staff advisor.

would also address the concern that Emerson has effectively created a *fait accompli* by which TPUSA is forced to find a full-time advisor to maintain its recognition, but interested advisors are disincentivized from assisting the group by Emerson's own public statements.

Alternatively, if a student organization is able to demonstrate an inability to secure a faculty member's participation as an advisor, despite a good-faith effort to do so, Emerson must assign a college staff member to serve in that capacity. This approach would respect the associative rights of Emerson faculty members and advance the college's interest in facilitating communication with student organizations, while eliminating a viewpoint-based penalty on controversial or outspoken student organizations.

III. Conclusion

FIRE is concerned that TPUSA's political viewpoint combined with Emerson's public statements have likely had a significant chilling effect on faculty desire to become involved with TPUSA. Therefore, we call on Emerson to act to maintain TPUSA's status as a recognized student organization.

Given the urgent nature of this matter, we request receipt of a response to this letter no later than the close of business on Friday, February 4, 2022, confirming that Emerson will allow TPUSA to remain a recognized student organization with a temporary faculty advisor as the group looks for a full-time advisor.

Sincerely,



Graham Piro

Program Officer, Individual Rights Defense Program

Cc: Jenna Coviello, Program Coordinator for Student Engagement and Leadership
Erik Muurisep, Assistant Vice President for Campus Life
Jim Hoppe, VP and Dean of Campus Life