



FIRE

Foundation for Individual
Rights and Expression

May 17, 2023

Neeli Bendapudi
Office of the President
The Pennsylvania State University
201 Old Main
University Park, Pennsylvania 16802

Sent via U.S. Mail and Electronic Mail (president@psu.edu)

Dear President Bendapudi:

FIRE¹ is concerned by a Penn State administrator's interference with a political student group's decision to expel a member.² While the administrator eventually reversed course and allowed the group to exercise its discretion, we write today to remind you that the First Amendment, which binds Penn State,³ protects the rights of student groups to make associational decisions. In the future, Penn State must allow student groups to determine their own membership—which includes the right to admit, expel, or discipline members at the group's sole discretion.

Our concern arises out of Associate Director of Student Organizations Kristen Carr's email to the College Independents⁴ leadership, as the group was in the process of expelling a member for disrupting group functions, in which she initially told the group they could not do so because a student group "cannot hold a student accountable to behaviors that are not connected to the organization."⁵ Carr subsequently appeared to reverse course, informing the

¹ As you may recall from prior correspondence, the Foundation for Individual Rights and Expression is a nonpartisan nonprofit dedicated to defending freedom of expression, conscience, and religion, and other individual rights on America's college campuses. You can learn more about our recently expended mission and activities at thefire.org.

² 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.

³ It has long been settled law that the decisions and actions of a public university must comply with the First Amendment. *Healy v. James*, 408 U.S. 169, 180 (1972).

⁴ College Independents is a political group that promotes "respectful discussion and exchange of ideas" from a "wide variety of viewpoints." *College Independents*, Org Central, PENN. ST. UNIV., <https://orgcentral.psu.edu/organization/pennstateindependents> [<https://perma.cc/7CWW-D377>].

⁵ Email from Kristen Carr, Associate Director of Student Organizations, to College Independents (Mar. 6, 2023, 10:44 AM) (on file with author).

group while it was expelling the member that it was properly following its constitution.⁶ She also advised the group that any issues with the member’s conduct after receiving notice of the expulsion “may be referred to the Office of Student Accountability and Conflict Response for review.”⁷

As you have recently articulated so well, the First Amendment binds Penn State to uphold student rights to an array of expressive freedoms.⁸ Among these is the freedom of association, which has for centuries lied at the heart of the American system of government and individual rights.⁹ This core freedom extends to students enrolled in public universities, protecting the “right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.”¹⁰ The right of expressive association is a natural complement to freedom of expression because the right to speak, as the Supreme Court has observed, is “often exercised most effectively by combining one’s voice with the voices of others.”¹¹ As the College Independents members’ interests in associational freedoms are strong, Penn State would overstep its bounds and burden the group’s associational rights if it restricted its ability to expel or discipline members, especially for conduct that occurs outside of group activities.

Student groups must be able to make their own associational decisions as to their membership—especially when a member poses a threat of interfering in a group’s operations through conduct outside of the group. The leaders of the group cannot perform their roles effectively if they are contradicting the group’s tenets when not participating in group-sanctioned activities, just as group members who consistently criticize or contradict the group’s mission outside of group-sanctioned activities would undermine the group’s mission. Indeed, the First Amendment provides considerable deference for organizations to “control” their expressive activity, regardless of whether those decisions are “fair or unfair.”¹²

While we are pleased this situation came to a favorable conclusion, we request a substantive response to this letter no later than the close of business on Wednesday, May 31 confirming that, in the future, Penn State will allow student organizations to make their own decisions concerning the removal and discipline of members.

⁶ Email from Carr to College Independents (Apr. 21, 2023, 9:11 AM) (on file with author).

⁷ Email from Carr to College Independents (Apr. 21, 2023, 9:23 AM) (on file with author).

⁸ WATCH: President Bendapudi addresses controversial speakers visiting Penn State, PENN. ST. UNIV. <https://psu.campusesp.com/posts/6546> [<https://perma.cc/D48Z-XHLS>].

⁹ *6th Cong. Dist. Republican Comm. v. Alcorn*, 913 F.3d 393, 401 (4th Cir. 2019).

¹⁰ *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984); see also, e.g., *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 888 (1982) (“[T]he First Amendment restricts the ability of the State to impose liability on an individual solely because of his association with another.”).

¹¹ *Rumsfeld v. Forum for Acad. & Inst. Rights*, 547 U.S. 47, 68 (2006).

¹² *Miami Herald Publ’g Co. v. Tornillo*, 418 U.S. 241, 258 (1974).

Please know that we deeply appreciate Penn State's recent efforts to protect free expression on its campus. We suspect the administrator's quick retraction here was a result of those efforts, but we would appreciate confirmation.

Sincerely,

A handwritten signature in black ink, appearing to read "Graham Piro". The signature is fluid and cursive, with the first name "Graham" and last name "Piro" clearly distinguishable.

Graham Piro
Program Officer, Campus Rights Advocacy

Cc: Kristen Carr, Associate Director of Student Organizations
Andrea Dowhower, Interim Vice President for Student Affairs
Kalee Schotsch, Residence Life Coordinator