



560 W. Crossville Rd., Ste. 104
Roswell, Georgia 30075
www.SLFLiberty.org

April 22, 2024

Ms. Linda Thompson
President
Westfield State University
president@westfield.ma.edu

Re: Student Government Abuse of Power and Violations of Student's First Amendment Rights

Dear President Thompson:

We are writing to you with concerns about the recent treatment of conservative and libertarian students at Westfield State University (Westfield State).¹ Westfield State's Student Government Association (SGA) has denied these students the opportunity to form a recognized student organization, thus precluding the students from gaining access to student organization funding and inhibiting their freedom of speech and freedom of association rights. SGA's decision to deny recognition of the TPUSA chapter appears based on the views of the students and the proposed organization. As the representative body of *all* students, SGA has failed to fulfill its obligation to its constituents, even those with whom SGA members may disagree.

Southeastern Legal Foundation is a national, nonprofit legal organization dedicated to defending liberty and Rebuilding the American Republic[®]. We educate the public about students' First Amendment rights on college campuses and take legal action when the rights of students are violated. This letter seeks to inform Westfield State that its actions may not be in accord with the First Amendment.

Factual Background

Starting at least as early as September 2023, students at Westfield State undertook efforts to form a chapter of Turning Point USA (TPUSA), a national organization dedicated to educating and training students to promote freedom, free markets, and limited government. In accord with these values, in October 2023, the students held a free speech beach ball event on campus grounds outside of Ely Campus Center. The event was a low-key way for TPUSA to introduce itself to students on campus and promote free speech by allowing students to write messages on a very large beach ball. Of importance, students participating in the event could write *any* lawful message, political or otherwise, on the beach ball, including messages unrelated to or even contrary to the values advanced by TPUSA. Following the event, on October 17, 2023, SGA released a statement

¹ Southeastern Legal Foundation does not represent any student at Westfield State University and has not yet accepted the matter for litigation. Furthermore, Southeastern Legal Foundation does not have an office in Massachusetts or otherwise maintain a systemic or continuous presence in the state. Nor is any attorney employed by Southeastern Legal Foundation licensed to practice law in Massachusetts.

entitled “Official Statement from the Student Government Association (SGA) Regarding Incidents Involving an External Political Group.” An emphasized part of the release stated that the SGA “condemns in the strongest possible terms language and actions designed to intimidate and/or discriminate against students.” The release went on to “encourage students to familiarize themselves with the Bias Incident Report Form in order to report any future incidents,” strongly implying that the beach ball event warranted the filing of a bias incident report.

By the early part of the spring 2024 semester, the students had collected the signatures and contact information for close to forty fellow students interested in the new TPUSA chapter. Around this time, the students engaged with SGA in the process of forming an officially recognized chapter of TPUSA at Westfield State. While members of SGA were outwardly cordial, one focus of the process was on TPUSA’s perception and how its presence on campus would make other students feel.

Although SGA’s February 6, 2024,² and February 20, 2024,³ meeting minutes are not entirely clear, SGA denied recognition of TPUSA at Westfield State in February 2024. In support of the denial, SGA stated “[t]he events and activities hosted and planned thus far by TPUSA are not congruent with the values outlined in the constitution—those being non-partisan. The [Rules and Regulations] committee also recognizes the potential risk with a chapter being established on campus.” Thereafter, SGA suggested to the students that they consider “re-establishing the Republican Club,” instead. Given SGA’s press release following the beach ball event, the focus of its questions to the students, and its seeming willingness to grant recognition to some partisan clubs and organization, SGA’s reason for denying TPUSA’s application appears to be pretext for viewpoint discrimination. Further supporting the potentially pretextual nature of the denial, one member of SGA, who gave the closing remark on the TPUSA denial, stated that TPUSA’s presence on campus was “stressful for minorities and people of color” and that she valued these latter groups involvement in the process regarding recognizing TPUSA.⁴

As a result of SGA’s denial, TPUSA cannot gain access to SGA-issued financial resources for recognized student organizations and is assigned a lower priority than recognized organizations when trying to reserve space for meetings. Additionally, SGA did not advise the students of any process to appeal SGA’s decision to deny recognition to TPUSA. And no process for appealing SGA’s decision to deny recognition to a club or organization appears within SGA’s electronically published Constitution and Bylaws.

Analysis

It is well-settled that a college campus is the “marketplace of ideas” where students are exposed “to that robust exchange of ideas which discovers truth.”⁵ Indeed, freedom of speech and

² Westfield State University Student Government Association, Agenda Tuesday, Feb. 6, 2024, at 4, available at <https://www.westfield.ma.edu/documents/sga-minutes-2624pdf> (stating that discussing on TPUSA constitution was “tabled”).

³ Westfield State University Student Government Association, Agenda Tuesday, Feb. 20, 2024, at 7–8, available at <https://www.westfield.ma.edu/documents/sgaminutes22024> (reporting denial of recognition of TPUSA chapter as student organization).

⁴ *Id.* at 8.

⁵ *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967).

academic inquiry are “vital” on college campuses, because only through thoughtful debate and discourse can real education occur.⁶ This peculiar environment is why the Supreme Court has often likened students’ free speech rights on their campuses to that most firmly guaranteed right of every person to speak their mind on public streets and in public parks.⁷

Furthermore, “[a]mong the rights protected by the First Amendment is the right of individuals to associate to further their personal beliefs.”⁸ “While the freedom of association is not explicitly set out in the Amendment, it has long been held to be implicit in the freedoms of speech, assembly, and petition.”⁹ Deriving from these principles, it is apparent that “[t]here can be no doubt that denial of official recognition, without justification, to college organizations burdens or abridges that associational right.”¹⁰ Thus, the effect of a university’s denial of recognition to a student organization is a form of prior restraint, and the “heavy burden” to justify the denial as necessary to satisfy a legitimate interest rests on the university.¹¹

I. Westfield State cannot grant SGA unchecked authority to approve or deny student groups and SGA cannot engage in viewpoint discrimination.

The Supreme Court has stated that “[i]t is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys” or because of “the specific motivating ideology or the opinion or perspective of the speaker.”¹² “For [a] [u]niversity . . . to cast disapproval on particular viewpoints of its students risks the suppression of free speech and creative inquiry in one of the vital centers for the Nation’s intellectual life, its college and university campuses.”¹³ Moreover, a public university cannot prohibit an entire subject or category of speech, such as all political speech.¹⁴ These standards apply both to college administrators and to student government associations who have—or appear to have—authority over the student body.

Colleges and universities generally do not give SGAs *carte blanche* to approve or deny recognition of student groups or approve or deny funding based on certain views. Instead, they place reasonable restrictions on SGA authority. For example, if student leaders are tasked with approving or denying recognition to student groups, there is often a narrow list of reasons for which denial may be granted. The list may include failure to create a constitution and failure to gather enough signatures in support of a petition. But SGA cannot and should not be permitted to deny recognition to a student group based on the whims of its own members—or even the whims

⁶ *Healy v. James*, 408 U.S. 169, 180 (1972).

⁷ See *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 802–03 (1985); *Widmar v. Vincent*, 454 U.S. 263, 267 n.5 (1981).

⁸ *Healy*, 408 U.S. at 181.

⁹ *Id.* (citing *Baird v. State Bar of Ariz.*, 401 U.S. 1, 6 (1971); *NAACP v. Button*, 371 U.S. 415, 430 (1963); *Louisiana ex rel. Gremillion v. NAACP*, 366 U.S. 293, 296 (1961); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958)).

¹⁰ *Id.*

¹¹ *Id.* at 184 (citing *Near v. Minnesota*, 283 U.S. 697, 713–16 (1931); *Org. for a Better Austin v. Keefe*, 402 U.S. 415, 418 (1971); *Freedman v. Maryland*, 380 U.S. 51, 57 (1965)).

¹² *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828–29 (1995).

¹³ *Id.* at 836.

¹⁴ The only time that this type of restriction is constitutional is if it serves a compelling government interest and is narrowly tailored to achieve that interest. *Papish v. Bd. of Curators of Univ. of Mo.*, 410 U.S. 667, 670 (1973); *Boos v. Barry*, 485 U.S. 312, 321 (1988).

of the *majority* of the student body. Nor should SGA be permitted to deny recognition of an organization because it deems the organization partisan¹⁵ or because SGA perceives a risk that speech from the organization may offend other students. That is because SGA is tasked with protecting the values of all students.

When members of SGA or other students in positions of authority abuse their discretion or fail to uphold their duty to zealously represent all members of the student body, colleges must have appeals processes in place to correct the students' wrongdoing. Through such channels, and depending on circumstances, administrators can unilaterally overturn SGA decisions, remand SGA decisions for a re-vote, or provide a hearing for students to present their case in an impartial forum. These processes provide an important check to ensure that all students' views and backgrounds are respected—not just those whose views are the most trendy or popular.

Here, as reflected by its October 17, 2023, press release and in its February 20, 2024, meeting minutes, SGA expressed hostility toward the viewpoints expressed by TPUSA. Furthermore, in discussing the denial of recognition, an SGA member's closing remark discussed how the situation surrounding TPUSA was "stressful for minorities and people of color" and how she appreciated their "presence" in the conversation. Where considerations of this type drive the denial of a benefit, SGA violates the First Amendment because it places the viewpoints of one group over the viewpoints of another group, thus restricting the free speech and free association rights of students aligned with TPUSA's values based on impermissible factors.

II. SGA's rhetoric and denial of recognition for TPUSA has created an unconstitutional chilling effect on student speech at Westfield State.

The United States Supreme Court has long embraced our Founding Fathers' hatred of censorship. As the Court has acknowledged, "[t]he freedom of speech and of the press guaranteed by the Constitution embraces at least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment."¹⁶ Speech is "chilled" when a speaker objectively fears that speaking will result in discipline, and as a result censors his speech altogether. Further, "the government may chill speech by . . . withholding a . . . right[] or benefit."¹⁷ The Supreme Court has repeatedly written that the danger of chilling speech "is especially real in the University setting, where the State acts against a background and tradition of thought and experiment that is at the center of our intellectual and philosophic tradition."¹⁸ Any action taken by university authorities, including individuals who appear to have authority, that objectively chills speech of students is unconstitutional.¹⁹

¹⁵ While partisan viewpoints are just as protected as any other, TPUSA is a nonpartisan organization. See Nonpartisan, Merriam-Webster Online Dictionary (2024) (defining nonpartisan as "free from party affiliation, bias, or designation"). And the beach ball event hosted by the students was clearly a nonpartisan event, as participants could write any message on the beach ball.

¹⁶ *Meyer v. Grant*, 486 U.S. 414, 421 (1988) (quoting *Thornhill v. Alabama*, 310 U.S. 88, 101–02 (1940)).

¹⁷ *Ariz. Students Ass'n v. Ariz. Bd. Of Regents*, 824 F.3d 858, 868 (9th Cir. 2016) (citing *Baird*, 401 U.S. at 7).

¹⁸ *Rosenberger*, 515 U.S. at 835 (citing *Healy*, 408 U.S. at 180–81; *Keyishian*, 385 U.S. at 603; *Sweezy v. N.H.*, 354 U.S. 234, 250 (1957)).

¹⁹ See *id.*; see also *Speech First, Inc. v. Schlissel*, 939 F.3d 756, 764 (6th Cir. 2019) (citing *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 68 (1963)).

Here, SGA “condemn[ed]” the speech and actions of TPUSA when releasing its statement following the beach ball event and then denied TPUSA’s effort to be recognized as a student organization. This latter action demonstrates SGA’s actual authority over students and its ability to withhold benefits from student organizations that engage in speech with which SGA disagrees. This objectively chills not only the speech of the students who sought to gain official recognition for TPUSA but also the speech of other Westfield State students who seek to host or promote similar speaking events and activities in the future. Furthermore, SGA’s strong implication that the beach ball event warranted the filing of a bias report chills speech by indicating students might be subject to investigation and face disciplinary action for publicly sharing their views or for even generally promoting free speech activities on campus.

Request

Open discourse is critical to both a functioning democracy and a well-rounded college experience. College students are in the unique position of being surrounded by true diversity: diversity of thought, background, religion, and culture. For many, this is the first—and perhaps only—time they will be exposed to a “marketplace of ideas” different from their own. The college experience can have a significant impact on the leaders of tomorrow, and for this reason, universities must provide students with access to share their ideas and hear ideas from other students. Westfield State must do its part to ensure this.

SLF urges Westfield State to (1) direct SGA to work with the students seeking to form a TPUSA chapter and to recognize their student organization; (2) develop an appeals process for when SGA denies recognition of a student club or organization; (3) implement additional administrative oversight over SGA; and (4) train members of SGA on the First Amendment free speech and freedom of association rights of fellow students.

Yours in Freedom,



CC: Maggie Balch (deanofstudents@westfield.ma.edu)