



May 11, 2022

Earl F. Martin  
Office of the President  
Drake University  
2507 University Ave.  
Des Moines, Iowa 50311

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

Dear President Martin:

The Foundation for Individual Rights in Education (FIRE), a nonpartisan nonprofit dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses, is concerned about the Drake University Student Senate's viewpoint-based refusal to recognize a proposed chapter of Turning Point USA (TPUSA). Given the university's laudable promises of free expression, Drake must reverse the Student Senate's decision and recognize TPUSA as a registered student organization.

**I. Drake Student Senate Denies TPUSA Recognition**

The following reflects our understanding of the pertinent facts, though we appreciate you may have additional information and invite you to share it with us. However, if the facts here are substantially accurate, the Student Senate's denial of recognition to TPUSA amounts to a viewpoint-based infringement of students' expressive and associational rights as guaranteed by Drake.

Drake recognizes more than 100 student organizations on campus.<sup>1</sup> Students at Drake have applied to start a chapter of TPUSA on campus at least three times but have been relegated to a temporary student organization for about five years, as the Student Senate has continuously refused to grant the group full recognition based on perceptions of its viewpoint.

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<sup>1</sup> *Student Organizations and Opportunities*, DRAKE UNIV. (2022), [https://www.drake.edu/media/departments/offices/studentinvolvementandleadership/22\\_0010%20Student%20Organizations%20Sheet\\_PRINT-update.pdf](https://www.drake.edu/media/departments/offices/studentinvolvementandleadership/22_0010%20Student%20Organizations%20Sheet_PRINT-update.pdf) [<https://perma.cc/8MEP-TY9L>].

On March 10, 2022, the Organizational Council, part of Drake’s student government, approved Drake’s prospective TPUSA chapter for recognition consideration by the Student Senate.<sup>2</sup> This means the group must have satisfied all procedural requirements for recognition, as that is the prerequisite for Organizational Council approval.

On March 24, leadership of the prospective Drake TPUSA chapter made a presentation to the Student Senate as part of the process to become a registered student organization. Student senators asked the TPUSA student leadership questions about their views, expressed disagreement with the actions and views of the national TPUSA organization, and mentioned viewpoints of and statements by TPUSA members with which student senators disagree.<sup>3</sup>

One student senator said the national TPUSA chapter “misgender[s]” and “disrespect[s]” the “identity of trans people” and asked how the Drake chapter would ensure it doesn’t pose a threat to transgender people’s “sense of belonging.”<sup>4</sup> Another asked for an explanation concerning one of the prospective group members’ statements that gay people should “get over it.”<sup>5</sup> Additionally, multiple students said TPUSA members’ views, especially those of its president, reflect on the prospective student chapter.<sup>6</sup>

At that meeting, student senators voted 17-2 not to recognize TPUSA as an official registered student organization. The group officially learned of the denial by email on March 28.<sup>7</sup>

## **II. The Student Senate’s Viewpoint-Based Denial of TPUSA Violates Drake’s Free Speech Promises**

Denying recognition to a student organization based on perceptions of its viewpoints burdens students’ ability to organize and express themselves—the very rights Drake guarantees. As a private university, Drake is not directly bound by the First Amendment, but because it has made clear promises to recognize and protect its students’ freedom of expression commensurate with the First Amendment, it is morally and contractually bound to honor these commitments, and its governing bodies may not deprive students of the rights promised.<sup>8</sup> Drake’s policy on Community, Diversity, and Freedom of Expression clearly states that the university “carefully refrains from restricting the exchange of ideas or regulating the

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<sup>2</sup> Email from Joseph Owens, Vice President of Student Organizations, Drake Univ., to Drake TPUSA (Mar. 10, 2022, 6:03:47 PM) (on file with author).

<sup>3</sup> Drake Broadcasting System, FACEBOOK (Mar. 24, 2022), <https://www.facebook.com/DrakeBroadcastingSystem/videos/394199172707360> [<https://perma.cc/3JVU-FGP2>].

<sup>4</sup> *Id.* at 2:27.

<sup>5</sup> *Id.* at 6:00.

<sup>6</sup> *Id.* at 47:20. *See also id.* at 1:02:20.

<sup>7</sup> Email from Owens to Drake TPUSA (Mar. 28, 2022, 10:06 AM) (on file with author).

<sup>8</sup> *Harvey v. Palmer Coll. of Chiropractic*, 363 N.W.2d 443, 445–46 (Iowa Ct. App. 1984) (holding that “a student at a private school should be able to rely upon the school to follow the established procedures it voluntarily promulgated”); *see also Warren v. Drake Univ.*, 886 F.2d 200, 202 (8th Cir. 1989) (agreeing with the trial court that the Drake student handbook constituted a contract between Warren and Drake).

content of speech” and “cherish[es] and defend[s] freedom of speech to the full extent protected by the First Amendment of the U.S. Constitution.”<sup>9</sup>

**A. *Unjustified Denial of Recognition of Student Organizations Violates Freedom of Expressive Association.***

The First Amendment and decades of jurisprudence interpreting its promise of viewpoint-neutrality inform students’ reasonable expectations of their speech rights at a private institution that, like Drake, promises freedom of expression commensurate with constitutional expressive rights. These rights carry “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.”<sup>10</sup> This important principle is what protects students’ ability to organize around causes or views—including through formal student organizations—to influence their institutions, communities, and country.

The “denial of official recognition, without justification, to college organizations,” the Supreme Court has held, “burdens or abridges” their associational rights.<sup>11</sup> *Healy*, for example, held that a college’s refusal to grant recognition to a chapter of Students for a Democratic Society—due to its “published aims . . . which include disruption and violence”—violated the student members’ expressive rights.<sup>12</sup> So, too, at Drake, where denial of student group recognition has material consequences—including preventing organizations from reserving spaces, applying for funding, opening financial accounts on campus, and more.<sup>13</sup>

**B. *Drake’s Expressive Promises Preclude it from Discriminating Based on Viewpoint.***

By allowing the Student Senate to stifle speech with which it disagrees, Drake engages in viewpoint discrimination. When authorities target “not subject matter but particular views taken by speakers on a subject, the violation” of expressive rights “is all the more blatant.”<sup>14</sup> “Viewpoint discrimination is thus an egregious form” of censorship, and authorities “must

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<sup>9</sup> *Community, Diversity, and Freedom of Expression*, DRAKE UNIV., <https://www.drake.edu/hr/employmentrelatedpolicies/communitydiversityandfreedomofexpression> [<https://perma.cc/6J9Z-5QH2>] (last visited May 3, 2022). Additionally, as a precondition for accreditation, Drake is required by its accreditor, the Higher Learning Commission, to “commit[] to freedom of expression and the pursuit of truth in teaching and learning. HIGHER LEARNING COMM’N, CRITERIA FOR ACCREDITATION (Feb. 2019), <https://www.hlcommission.org/Policies/criteria-and-core-components.html>.

<sup>10</sup> *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 648 (2000) (quoting, in part, *Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984)).

<sup>11</sup> *Healy v. James*, 408 U.S. 169, 174–75, n. 4, 187–88 (1972).

<sup>12</sup> *Id.*

<sup>13</sup> *Registered Student Organization Handbook*, DRAKE UNIV. (Fall 2020), available at <https://www.drake.edu/media/departmentsoffices/studentinvolvementandleadership/studentlife/orgs/Registered%20Student%20Organization%20Handbook.pdf> [<https://perma.cc/P9BY-ZMFT>].

<sup>14</sup> *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995).

abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.”<sup>15</sup>

These principles apply in the context of student governments that exercise the university’s institutional authority to grant or deny recognition or to distribute student fees to student organizations. Courts low and high have repeatedly and consistently held that universities must grant expressive student organizations recognition and access to student fees on a viewpoint-neutral basis.<sup>16</sup>

Drake student senators’ statements in this case reflect considerable viewpoint-based animus as the reason for denying the group recognition. The senators objected to statements by the prospective TPUSA chapter’s leaders, and expressed concerns about the perceptions of the national TPUSA organization’s views. This is unacceptable at a university that promises students expressive rights.

A commitment to free speech presupposes that some on campus may take offense to an expressed viewpoint, but the “bedrock principle” underlying free speech is that it may not be limited “simply because society finds the idea itself offensive or disagreeable[.]”<sup>17</sup> It is this counter-majoritarian principle that protects “insulting, and even outrageous, speech in order to provide adequate breathing space” for public debate,<sup>18</sup> recognizing those with authority “cannot make principled distinctions” in determining what speech is sufficiently offensive to suppress.<sup>19</sup>

This principle is particularly important in higher education, where the exchange of views may sometimes be caustic, provocative, or inflammatory. Consider, for example, a student newspaper’s use of a vulgar headline (“Motherfucker Acquitted”) and a front-page “political cartoon . . . depicting policemen raping the Statue of Liberty and the Goddess of Justice.”<sup>20</sup> 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, as the Supreme Court held, “the mere dissemination of ideas,” however “offensive” to others, “may not be shut off in the name alone of ‘conventions of decency.’”<sup>21</sup>

The refusal to grant TPUSA recognition because some members of the Student Senate and campus community oppose TPUSA’s real or perceived views hinders free and open dialogue on campus—to the detriment of all Drake students. It is not the place of the Student Senate to dictate the causes for which students may advocate. If the Student Senate were to reject every application to become a registered student organization submitted by a group whose views others find offensive, Drake would certainly see the number of registered student

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<sup>15</sup> *Id.*

<sup>16</sup> *See, e.g., Bd. of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 233 (2000) (“When a university requires its students to pay fees to support the extracurricular speech of other students, all in the interest of open discussion, it may not prefer some viewpoints to others.”).

<sup>17</sup> *Snyder v. Phelps*, 562 U.S. 443, 458 (2011) (citing *Texas v. Johnson*, 491 U.S. 397, 414 (1989)).

<sup>18</sup> *Boos v. Barry*, 485 U.S. 312, 322 (1988) (cleaned up).

<sup>19</sup> *Cohen v. California*, 403 U.S. 15, 25 (1971).

<sup>20</sup> *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 667–68 (1973).

<sup>21</sup> *Id.*

organizations on campus dwindle. Other groups on campus—such as the College Democrats or College Republicans—are just as likely to express views *someone* on campus finds offensive or objectionable. Drake and Drake’s Student Senate must recognize that some amount of controversy does not lessen the value of the expression of diverse viewpoints on campus.

### **III. Drake Must Grant TPUSA Recognition**

Drake has allowed the Student Senate to continuously infringe the expressive and associational rights of those students who aim to found a TPUSA chapter for years. This is not acceptable at a university that claims to protect students’ expressive rights.

To comport with its strong and laudable commitments to students’ expressive rights, Drake must immediately recognize the prospective TPUSA chapter. Students, including student senators, who object to TPUSA’s views are not without redress on campus, and the university should encourage them to voice their objections. The answer is to use their own voices to express opposition rather than wield the authority of the Student Senate to shut down controversial speech by denying recognition.

Accordingly, Drake must step in and grant the TPUSA chapter recognition, restore the students’ rights, and end this cycle of viewpoint discrimination.

We request receipt of a response to this letter no later than the close of business on Wednesday, May 18, 2022, confirming that Drake will take immediate steps to recognize the TPUSA chapter.

Sincerely,



Sabrina Conza  
Program Officer, Individual Rights Defense Program

Cc: Drake Student Senate  
Morgan Coleman, Student Body President  
Jerry Parker, Dean of Students