



April 12, 2019

Kristina Miele
President
Student Government Association
Trinity College
300 Summit Street
Hartford, Connecticut 06106

Sent via Electronic Mail (sgapresident@trincoll.edu)

Dear Ms. Miele:

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 writing to Trinity College's Student Government Association (SGA) to remind it that it may not deny the Churchill Club recognition on the basis of the group's views, or on the basis of opposition to the group by members of the campus community.

I. Statement of Facts

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.

A group of students led by Daniel Nesbitt, Andre Curtis, and Nicholas Engstrom sought recognition for the "Churchill Club,"¹ a student organization dedicated to the study of Western civilization. Formal recognition may allow the Churchill Club to seek funding from the Student Activities Fund and would allow them to reserve college space for events and meetings. The club's application appears to have met all formal requirements for recognition, including having a constitution and gathering twenty-five signatures of interested students.

¹ The club is named after the Churchill Institute for the Study and Extension of Western Civilization, an organization led by Trinity College Professor Gregory B. Smith.

The leadership of the Churchill Club appeared before the SGA on March 3, 2019, to answer questions from the SGA as the final step of the approval process. The student newspaper reported that dozens of students showed up to this meeting for the apparent purpose of protesting the Churchill Club.² Members of the SGA questioned the Churchill Club's leadership for approximately 90 minutes about the viewpoint of the group. At no point was it contested that the group had failed to meet the SGA's written requirements for recognition.

Following the protests, the SGA delayed the vote on the group's recognition until the next meeting on March 10. On that date, the vote was again delayed, and SGA announced a public forum to discuss the Churchill Club.³ At the March 31 SGA meeting, SGA announced two "drop-in student town halls" for April 10 and April 11 to discuss the Churchill Club's application for recognition and for students to be able to air their concerns about the group in advance of the final vote to be taken on the Churchill Club at the SGA meeting on April 14. These town halls are not a part of Trinity's recognition process for student groups, or outlined in any policy of Trinity or SGA.⁴

On April 10, in advance of the first town hall, flyers appeared around campus criticizing the group. In one, Engstrom is pictured along with the words "the new racism is every bit as ugly as the old." Another flier purports to be a reproduction of an email from Engstrom, but the contents are doctored to make statements that do not appear in the original.⁵

II. Analysis

Trinity College's policies and commitment to free expression preclude the SGA from taking into consideration a group's beliefs or viewpoint in deciding whether a proposed organization has met the requirements to be recognized or funded.

² Gillian Reinhard, *In Response to the Churchill Club*, TRINITY TRIPOD, Mar. 6, 2019, <https://commons.trincoll.edu/tripod/2019/03/06/in-response-to-the-churchill-club>.

³ Gillian Reinhard, *SGA Plans Forum to Address Churchill Club*, TRINITY TRIPOD, Mar. 13, 2019, <https://commons.trincoll.edu/tripod/2019/03/13/sga-plans-forum-to-address-churchill-club>.

⁴ Trinity Coll., *Starting an Organization*, available at <https://www.trincoll.edu/StudentLife/clubs/involvement/Pages/starting.aspx> (last visited, Apr. 11, 2019)

⁵ The original email, on file with the author, was a response to claims that the Churchill Club wanted to defund multicultural houses on campus. The flier has completely different body text, and unlike the original, the font of the body does not match the salutation. It appears to have been fabricated to create ill-will against the Churchill Club and pressure for the SGA to vote against their recognition.

A. *SGA cannot deny recognition to a group because of their viewpoint, beliefs, or values*

Trinity College is a private institution and therefore not legally required by the First Amendment to recognize student or faculty expressive rights. However, it voluntarily makes promises to do so and is morally and contractually bound to adhere to those commitments.

Trinity College voluntarily commits itself, in various official pronouncements, to extending freedom of expression to its students and faculty. Trinity's Statement of Rights and Responsibilities, for example, notes that "[f]ree inquiry and free expression are essential" to the attainment of Trinity's goals.⁶ This promise is echoed in Trinity's harassment policy, which states, in relevant part:⁷

[W]hile some actions, speech, and forms of expression run contrary to individual beliefs and even our community values, we recognize that many of them are protected by law and are permissible under the principles of academic freedom. We fully expect that those who introduce protected but controversial, provocative, or divisive elements, and those who disagree with them, will make themselves available to civil debate and discussion. The College provides space for provocative and unpopular speech and expression so long as those actions do not violate the law and/or are found to be targeted and intentional actions that violate our harassment policy.

In its policy governing posters and banners,⁸ Trinity reproduces in full a paragraph from the American Association of University Professors' Joint Statement on Rights and Freedoms of Students:

Students and student organizations should be free to examine and discuss all questions of interest to them and to express opinions publicly and privately. They should always be free to support

⁶ Student Handbook 2018-2019, TRINITY COLL. (Aug. 30, 2018), Article I. p. 10, <https://www.trincoll.edu/SiteCollectionDocuments/StudentHandbook.pdf>.

⁷ *Id.* at p. 68.

⁸ *Id.* at p. 112. *See also* AAUP, JOINT STATEMENT ON RIGHTS AND FREEDOMS OF STUDENTS, *available at* <https://www.aaup.org/report/joint-statement-rights-and-freedoms-students> (last visited Apr. 10, 2019).

causes by orderly means that do not disrupt the regular and essential operations of the institution. At the same time, it should be made clear to the academic and larger community that in their public expressions or demonstrations students or student organizations speak only for themselves.

These commitments are not important just because they are made to students and faculty. These commitments to freedom of expression are also a condition of Trinity College's accreditation by the Commission on Institutions of Higher Education of the New England Association of Schools and Colleges, which requires accredited institutions be "committed to the free pursuit and dissemination of" knowledge, and that an institution's policies be consistent with its mission.⁹

The scope and import of these promises must be evaluated in the context of "free inquiry and free expression" as understood in the United States in general. In the public university context, the Supreme Court of the United States has repeatedly and explicitly made clear that disparate treatment of a student organization based on its political, religious, or other expression violates the First Amendment. In *Healy v. James*, 408 U.S. 169 (1972), for example, Central Connecticut State College denied recognition to a proposed chapter of Students for a Democratic Society based, in part, on the college president's view that the group's "philosophies . . . were counter to the official policy of the college." *Id.* at 187 (internal quotation marks omitted). Holding that the college's denial of recognition to the student organization was unconstitutional, the Court stated:

The mere disagreement of the President with the group's philosophy affords no reason to deny it recognition. As repugnant as these views may have been, especially to one with President James' responsibility, the mere expression of them would not justify the denial of First Amendment rights. . . . The College, acting here as the instrumentality of the State, may not restrict speech or association simply because it finds the views expressed by any group to be abhorrent.

Id. at 187–88. See also *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819, 829–31, 836 (1995) (holding that denial of financial support for student religious group violated the First Amendment and observing that "[f]or the University, by regulation, to cast

⁹ COMM'N ON INST. OF HIGH EDUC.: NEW ENGLAND ASS'N OF SCHS. AND COLLS., STANDARDS FOR ACCREDITATION 26 (2016), https://cihe.neasc.org/sites/cihe.neasc.org/files/downloads/Standards/CIHEofNEASC_Standards_July_1_2016.pdf.

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.”).

Disagreement with a student organization’s expression is not a legitimate basis for denying it recognition. To the contrary, viewpoint discrimination is flatly incompatible with any form of freedom of expression. *See, e.g., Matal v. Tam*, 137 S. Ct. 1744, 1749 (2017) (even where some forms of content- or speaker-based restrictions are permissible, “viewpoint discrimination is forbidden.”). If Trinity’s promises of free expression to its students are to have meaning, the college—including the student government, which is empowered by the college to adjudicate the recognition process—must not engage in viewpoint discrimination that would be unacceptable on a public campus. To do so is inherently inconsistent with the college’s promise to its students that they may enjoy the right to free expression.

In its role in deciding whether to recognize student groups—and therefore whether those groups receive various benefits from the college resulting from recognition—SGA and its members act as agents of the college. SGA is therefore bound by the policies and promises Trinity makes.¹⁰ SGA therefore violates Trinity’s moral and contractual obligations when it denies the Churchill Club official club recognition on the basis of their viewpoint or beliefs.

B. The Churchill Club’s viewpoints do not lose protection because some in the Trinity community find them offensive

That some or even many in the Trinity community find the expressed viewpoints of the Churchill Club offensive may not be considered as SGA decides whether or not to grant the group recognition.

As Trinity’s own policies recognize, the principle of freedom of speech does not exist to protect only non-controversial expression. Rather, it exists precisely to protect speech that some or even most members of a community may find controversial or offensive. The Supreme Court has explicitly held, in rulings spanning decades, that speech cannot be restricted simply because it offends others, on or off campus. *See, e.g., Texas v. Johnson*, 491 U.S. 397, 414 (1989) (“If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”); *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667, 670 (1973) (“[T]he mere dissemination of ideas—no matter how offensive to good

¹⁰ *See, e.g., Gay Rights Coalition of Georgetown Univ. Law Ctr. v. Georgetown Univ.*, 536 A.2d 1, 39 (Ct. App. D.C. 1987) (finding that private university could not deny access to benefits against group based on class protected by local law, but could overrule student government’s determination to grant “University Recognition” to group).

taste—on a state university campus may not be shut off in the name alone of ‘conventions of decency.’”) The freedom to offend some listeners is the same freedom to move or excite others. As the Supreme Court observed in *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949), 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.” The Court reiterated this fundamental principle in *Snyder v. Phelps*, 562 U.S. 443, 461 (2011), proclaiming that “[a]s a Nation we have chosen . . . to protect even hurtful speech on public issues to ensure that we do not stifle public debate.”

In *Cohen v. California*, the Court aptly observed that although many would see as “the immediate consequence of this freedom may often appear to be only verbal tumult, discord, and even offensive utterance,” that people will encounter offensive expression is “in truth [a] necessary side effect[] of the broader enduring values which the process of open debate permits us to achieve.” 403 U.S. 15, 24–25 (1971). “That the air may at times seem filled with verbal cacophony is, in this sense not a sign of weakness but of strength,” because “governmental officials cannot make principled distinctions” between what speech is sufficiently inoffensive, and the “state has no right to cleanse public debate to the point where it is . . . palatable to the most squeamish among us.” *Id.* at 25.

With its various delays, and *ad hoc* “town hall” meetings, SGA has already departed from its standard policies and is providing disparate treatment to the Churchill Club on the basis of the group’s views and unpopularity on campus. This response risks a strong chilling effect on other groups that may want to form who may have unpopular views. This is antithetical to the letter and spirit of Trinity’s commitment to free expression.

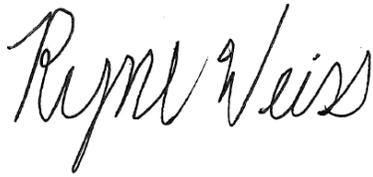
III. Conclusion

The SGA’s recognition process should not be understood to be an endorsement or vote of approval of the views expressed by any student or organization. It is only a recognition that the group has met the formal requirements to be recognized. Members of the SGA are free to criticize and reject the views of any group, but the institution’s commitment to freedom of expression forbids the SGA from denying recognition because of the group’s perceived views.

If the Churchill Club meets the formal requirements for recognition, it must be recognized without further delay.

Given the urgent nature of this matter, we request receipt of a response to this letter no later than the close of business on April 26.

Sincerely,

A handwritten signature in black ink that reads "Ryne Weiss". The signature is written in a cursive, flowing style.

Ryne Weiss
Program Associate, Individual Rights Defense Program

Cc:

Dr. Joanne Berger-Sweeney, President, Trinity College

Joseph DiChristina, Dean of Campus Life and Vice President for Student Affairs, Trinity College

Alexis Zanger, Vice President, Student Government Association