



July 6, 2021

**BY EMAIL**

Kristina Reese  
President, Governing Board  
Higley Unified School District  
2935 S. Recker Road  
Gilbert, AZ 85295  
kristina.reese@husd.org

Re: *Unconstitutional Denial of Equal Access to Turning Point USA*

Dear Ms. Reese,

Alliance Defending Freedom (ADF) represents Turning Point USA at Williams Field High School and Williams Field student Erin Remfrey. ADF's Center for Academic Freedom is dedicated to ensuring freedom of speech and association for students and teachers so that everyone can freely participate in the marketplace of ideas without fear of government censorship.<sup>1</sup>

This letter regards Williams Field's denial of Turning Point USA's access to the same rights, benefits, and privileges that it provides to other student groups and the school's censorship of Turning Point USA's speech. Williams Field's denial of

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<sup>1</sup> Alliance Defending Freedom has consistently achieved successful results for its clients before the United States Supreme Court, including thirteen victories before the highest court since 2011. *See Americans for Prosperity Found. v. Bonta*, --- S. Ct. ---, 2021 WL 2690268 (Jul. 1, 2021) (representing Thomas More Law Center in consolidated case; striking down state law requiring charities to disclose identities of donors to government authorities); *Uzuegbunam v. Preczewski*, 141 S. Ct. 792 (2021) (student free speech); *March for Life Educ. & Def. Fund v. California*, 141 S. Ct. 192 (2020); *Thompson v. Hebdon*, 140 S. Ct. 348 (2019) (overturning ruling upholding a law limiting political contributions); *Nat'l Inst. of Fam. & Life Advocates v. Becerra*, 138 S. Ct. 2361 (2018) (upholding ADF client's free speech rights against the State of California); *Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rights Comm'n*, 138 S. Ct. 1719 (2018) (upholding ADF client's First Amendment rights); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017) (upholding ADF client's First Amendment rights); *Zubik v. Burwell*, 136 S. Ct. 1557 (2016) (representing Geneva College and Southern Nazarene University in two consolidated cases; upholding ADF clients' First Amendment rights); *Reed v. Town of Gilbert*, 576 U.S. 155 (2015) (unanimously upholding ADF client's free-speech rights); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014) (representing Conestoga Wood Specialties Corp. in consolidated case; striking down federal burdens on ADF client's free-exercise rights); *Town of Greece v. Galloway*, 572 U.S. 565 (2014) (upholding a legislative prayer policy promulgated by a town represented by ADF); *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125 (2011) (upholding a state's tuition tax credit program defended by a faith-based tuition organization represented by ADF).

equal access and its censorship of speech violate clearly established law, including the Equal Access Act and the First Amendment.

To avoid legal action, Higley Unified School District and Williams Field High School must immediately provide equal access to Turning Point USA and implement policies to ensure all clubs receive equal access and treatment.

### **Factual Background**

In March 2021, after opposition from other students and the school administration, Ms. Remfrey successfully started a chapter of Turning Point USA at Williams Field. Turning Point USA is a nonprofit organization that seeks to identify, educate, train, and organize students to promote the principles of freedom, free markets, and limited government.

During the group's formation, some students expressed hostility to the viewpoint of groups like Turning Point USA. Ms. Remfrey received similar hostility from teachers and school administrators. One teacher told her that the teacher would do whatever it took to prevent the group from becoming recognized on campus. And school administrators, because of their disagreement with the views of Turning Point USA, successfully pressured the group's initial faculty sponsors to withdraw their support. Even so, Ms. Remfrey persisted. She found two other faculty sponsors, and the school eventually recognized the group. Yet opposition to the group's views has continued. The faculty sponsors have received hostile comments from other faculty about the group's political views. And a social media post from another campus student group even likened Turning Point's views to "hate crime[s]."

Despite recognizing Turning Point USA as a non-curricular school club, the Williams Field administration has subjected the group to ongoing censorship. The administration requires:

1. The group to disable the comment function on its social media posts;
2. The group to submit an agenda for each of its meetings for advance approval by school officials; and
3. A faculty sponsor to monitor the group's social media posts.

The administration does not require other student groups to abide by these requirements. For example, the Fellowship of Christian Athletes and Black Student Union both have the comment function available on their social media posts. And the administration does not require those groups to have agendas for their meetings, let alone obtain advance approval of meeting agendas. Nor does the administration require a faculty sponsor to monitor those groups' social media posts. Additionally, groups such as the Black Student Union speak on political or social issues, sometimes

taking the opposite viewpoint of Turning Point USA. Yet the administration does not subject such groups to the same restrictions that it applies to Turning Point USA.

### Analysis

Williams Field's failure to treat Turning Point USA equally to other campus groups and its speech restrictions are illegal under the Equal Access Act and First Amendment, both of which guarantee Turning Point USA's right to equal footing with other student clubs and freedom of speech.

First, the Equal Access Act, 20 U.S.C. §§ 4071–74, requires Williams Field to give the Turning Point USA chapter exactly the same rights, benefits, and privileges that all other non-curricular clubs receive. Higley Unified School District, which includes Williams Field, has explicitly opened itself to student meetings as a "limited open forum" under the Equal Access Act. Higley Unified School District Policy JJAB (Aug. 21, 2001). As the United States Supreme Court held in *Board of Education v. Mergens*, "if a public secondary school allows only one 'noncurriculum related student group' to meet, the Act's obligations are triggered and the school may not deny other clubs, on the basis of the content of their speech, equal access to meet on school premises during noninstructional time." 496 U.S. 226, 236 (1990). The slightest deviation from this treatment violates the Equal Access Act. *Prince v. Jacoby*, 303 F.3d 1074, 1077 (9th Cir. 2002) ("[W]e hold that the School District violated either the [Equal Access Act] or Prince's First Amendment rights by denying her Bible club the same rights and benefits as other School District student clubs and by refusing to allow the Bible club equal access to school facilities on a religion-neutral basis.").

But here Williams Field has singled out Turning Point USA for discriminatory treatment. Other clubs, such as the Fellowship of Christian Athletes and the Black Student Union, are allowed to have comments on their social media posts, do not have to obtain pre-approval of their meeting content, and are not subject to faculty monitoring their social media posts. Thus, the school has violated, and is continuing to violate, the Equal Access Act by its dissimilar treatment of Turning Point USA.

Second, singling out Turning Point USA for discriminatory treatment compared to other non-curricular clubs is an unconstitutional form of viewpoint- and content-based discrimination under the First Amendment and violates district policy. See *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995) (with regard to student groups in limited fora, schools may not "discriminate against speech on the basis of its viewpoint."); *Widmar v. Vincent*, 454 U.S. 263, 277 (1981) (denying recognition to a group based on religious content of group's speech violated the "fundamental principle that a state regulation of speech should be content-neutral"). And district policy requires school administrators to maintain order and discipline "in a content and viewpoint neutral manner." Higley Unified School District Policy JICEC (Nov. 5, 2009).

Williams Field is satisfying neither its constitutional responsibilities nor district policy. The previous opposition to Turning Point USA shown by the school administration coupled with the hands-off treatment of groups of different political stripes shows that the school has discriminated against Turning Point *precisely because of* the content and viewpoint of its speech. The school cannot censor Turning Point USA's speech simply because some in the community may disagree with it. The First Amendment prohibits such hecklers' vetoes.

To compound the constitutional harm, the school appears to allow its administrators to approve or disapprove of speech on a whim. Apparently, there is no policy guiding the approval of meeting agendas or social media posts. Rather, administrators have total power to decide for themselves what speech to allow. Such unbridled discretion is per se viewpoint discriminatory. *See Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 133 (1992) ("The First Amendment prohibits the vesting of such unbridled discretion" to discriminate between viewpoints "in a government official."); *Amidon v. Student Ass'n of State Univ. of N.Y. at Albany*, 508 F.3d 94, 103 (2d Cir. 2007) (incorporating the rule against unbridled discretion into the prohibition on viewpoint discrimination).

Third, disabling social media comment features and requiring prior approval of meeting agendas are prior restraints that come with a "heavy presumption" of unconstitutionality. *Burch v. Barker*, 861 F.2d 1149, 1154 (9th Cir. 1988). Williams Field High School's total ban on comments and prior approval regime subject nearly all of Turning Point USA's speech to government control and shut off communication before it occurs. For that reason as well, they are invalid under the First Amendment.

### **Conclusion**

Based on the above, we request that you assure us in writing that Turning Point USA at Williams Field High School will receive the same rights, benefits, and privileges as other non-curricular student clubs at Williams Field High School, including assuring us that:

1. Turning Point USA is no longer required to disable the comment function on its social media posts;
2. Williams Field has ended its practice of requiring Turning Point USA to submit meeting agendas and obtain pre-approval of meeting agendas; and
3. Williams Field has ended the practice of faculty monitoring of Turning Point USA's social media posts.

Further, to prevent the School District from denying equal access to clubs in the future, we also request that the Governing Board adopt at its July 21, 2021 meeting policies that, in compliance with the Equal Access Act and First Amendment, prohibit the District's schools, administrators, and teachers from discriminating

against and censoring a club because of the club's religious, political, or philosophical viewpoints, or other content of its speech.

If you fail to grant these requests by July 23, 2021, we will have no option but to advise our clients of other avenues for vindicating their rights. Please immediately place a litigation hold on all email accounts, document collections, social media accounts, and all other sources of information or communications (including electronically stored information) that reference in any way Turning Point USA or Ms. Erin Remfrey.

If you are willing to comply with these requests, we are happy to discuss this matter as needed and help formulate policies that comply with the Equal Access Act and the Constitution. We also refer you to the Department of Education's *Legal Guidelines Regarding the Equal Access Act and the Recognition of Student-Led Noncurricular Groups* available at <https://bit.ly/3dsfFEL>.

Respectfully yours,



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Greggory R. Walters  
Senior Legal Counsel  
Alliance Defending Freedom

cc: Jill Wilson  
Vice President, Governing Board  
Higley Unified School District  
jill.wilson@husd.org

Michelle Anderson  
Member, Governing Board  
Higley Unified School District  
michelle.anderson@husd.org

Amy Kaylor  
Member, Governing Board  
Higley Unified School District  
amy.kaylor@husd.org

Tiffany Shultz  
Member, Governing Board  
Higley Unified School District  
tiffany.shultz@husd.org

Dr. Dawn Foley  
Acting Superintendent  
Higley Unified School District  
superintendent@husd.org

Steve Tannenbaum  
Principal  
Williams Field High School  
Higley Unified School District  
steve.tannenbaum@husd.org