

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

TURNING POINT USA (TPUSA) at Macomb Community College, an unincorporated expressive association, and a recognized student organization at Macomb Community College;
JULIA KOVACOVA; HANNAH OSANTOWSKA; AND JACLYN BROHL,

Plaintiffs,

v.

MACOMB COMMUNITY COLLEGE; JENNIFER HAASE, FRANK CUSUMANO, KATHERINE LORENZO, ROSEANNE DIMARIA, KRISTI DEAN, JOSEPH DE SANTIS, and VINCENT VIVIANO, all individually and all in their official capacities as members of the Board of Trustees of Macomb Community College; **JAMES SAWYER,** in his official capacity as President of Macomb Community College; **JILL THOMAS-LITTLE,** individually and in her official capacity as Vice President of Student Services; **GEARY MAIURI,** individually and in his official capacity as Dean of Student & Community Services at Macomb Community College; **HUNTER WENDT,** individually and in his official capacity as Director of the Macomb College Police Department,

Defendants.

Case No. 2:17-cv-12179-BAF-DRG

SETTLEMENT AGREEMENT & RELEASE

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This Settlement Agreement & Release (the "Agreement") is made and entered into by and between **TURNING POINT USA (TPUSA)** at Macomb Community College, an unincorporated expressive association, and a recognized student organization at Macomb Community College; **JULIA KOVACOVA; HANNAH OSANTOWSKA; AND JACLYN BROHL,** ("Plaintiffs"), and **MACOMB COMMUNITY COLLEGE; JENNIFER HAASE, FRANK CUSUMANO, KATHERINE LORENZO, ROSEANNE DIMARIA, KRISTI DEAN, JOSEPH DE SANTIS, and VINCENT VIVIANO,** all individually and all in their official capacities as members of the Board of Trustees of Macomb Community College; **JAMES SAWYER,** in his

official capacity as President of Macomb Community College; **JILL THOMAS-LITTLE**, individually and in her official capacity as Vice President of Student Services; **GEARY MAIURI**, individually and in his official capacity as Dean of Student & Community Services at Macomb Community College; **HUNTER WENDT**, individually and in his official capacity as Director of the Macomb College Police Department (“Defendants”) to resolve the above-captioned lawsuit.

AGREEMENT

Plaintiffs and Defendants agree as follows:

1. *Settlement.* In consideration for Plaintiffs’ release of claims as described herein and for their dismissal of this action, Defendants have agreed to the following:
 - a. Effective upon execution of this agreement, Defendants will not enforce the portions of the Student Rights and Responsibilities Handbook that require advance permission for students to engage in expressive activities on campus, including the provisions in Section III (Disturbance in Public Place), Section XVI (Selling, Soliciting and Advertising) and the “Policy on Expressive Activity” that require advance permission for non-commercial expression. Students must still comply with the time, place, and manner requirements listed in the Policy on Expressive Activity Section III. B-N, but shall not be required to obtain any advance permission or give advance notice to engage in expressive activity as currently required in the Policy on Expressive Activity Section III.A.
 - b. No later than November 6, 2016, Defendant Wendt will propose the following to the Board of Trustee Defendants for consideration at the first regular meeting under the rules governing the Board:
 - 1) revising the College Rules and Regulations as follows:
 - i. Section III (Disturbance in Public Place), striking the last sentence of subsection C which currently reads “Permission for such activities must be obtained from the Vice President of Student Services or his/her designee.”
 - ii. Section XVI (Selling, Soliciting and Advertising), revising to read:

Section A Selling, soliciting and advertising for commercial purposes is prohibited unless properly authorized by the Office of the Dean, Student & Community Services and/or the director of the specific facility.

Section B All commercial advertisements or products to be posted or distributed or sold on College property must be approved by the Office of the Dean, Student & Community Services and/or the director of the specific facility.

Section C Distribution of handbills on vehicles on College property is prohibited.
 - 2) Striking the current Policy on Expressive Activity and replacing it with Exhibit 1.
 - c. No later than January 8, 2018, Defendants will pay a sum of \$100 to Plaintiff, Turning

Point USA at Macomb Community College as satisfaction in full of any damages claimed by all Plaintiffs.

- d. No later than January 8, 2018, Defendants will pay a sum of \$10,000 to Alliance Defending Freedom (payable to "Alliance Defending Freedom IOLTA") for Plaintiffs' attorneys' fees and costs in this matter.
2. *Dismissal.* The parties agree that pursuant to this Agreement, if Defendants adopt the policies as described in Paragraph 1 and Exhibit 1, and comply with all other provisions of paragraph 1 by the dates listed, Plaintiffs will voluntarily dismiss with prejudice the complaint in this action within ten (10) days of receiving all of the following: copies of the posted revised Student Rights and Responsibilities Handbook, confirmation of payment of damages to TPUSA listed in agreement paragraph 1(b), and payment of attorneys' fees and costs referenced in agreement paragraph 1(c).
3. *Release, Discharge, and Covenant Not to Sue.* For and in consideration of the Settlement, the covenants and agreements set forth herein, including completion of the actions listed in paragraph one (1) and adoption of the policies as set forth in paragraph 1 and Exhibit 1 by January 8, 2018, and other good and valuable consideration, the sufficiency of which are hereby acknowledged, Plaintiffs agree to release, waive, acquit, and forever discharge Defendants from any and all claims and causes of action raised or that could have been raised in this action relating to the facts included in the Complaint.
4. *No Admissions.* By entering into this Agreement, Defendants are not admitting liability or recognizing the validity of any of Plaintiffs' claims. Likewise, by entering into this Agreement, Plaintiffs are neither recognizing the validity of any defense Defendants may have asserted nor providing any assurance or certification that all aspects of Defendants' revised policies fully comply with the United States Constitution. Rather, Plaintiffs and Defendants are entering into this Agreement solely to avoid the expense and inconvenience of further dispute and litigation.
5. *Advice of Counsel.* Plaintiffs represent that they have been fully advised by counsel with respect to the terms of this Agreement and execute it with full knowledge of the terms and conditions hereof.
6. *Governing Law.* This Agreement shall be deemed to have been made under the laws of the State of Michigan and shall be construed and enforced in accordance with and governed by the laws of the State of Michigan.
7. *Severability.* The unenforceability or invalidity of any provision or provisions of this Agreement shall not render unenforceable or invalid any other provision or provisions hereof.
8. *Execution in Counterparts and/or Transmitted by Electronic Means.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. The execution of this Agreement by signature transmitted by facsimile or other electronic means shall be as fully enforceable as an original signature.
9. *Stay of Proceedings.* In consideration of Defendants' good faith efforts to perform their obligations under paragraph 1, and to permit time for the performance of this agreement, the

parties agree to file a joint motion for stay of proceedings in this case, including a stay of Defendants' obligation to file responsive pleadings, until January 14, 2018.

10. *Time of Performance*: If Defendants have not completed performance of their obligations under this agreement and adopted the policies as set forth in paragraph 1 and Exhibit 1 by January 8, 2018, this contract shall be considered null and void and Plaintiffs may pursue the remedies sought in the complaint.
11. *Entire Agreement*. All agreements, covenants, representations, and warranties, express or implied, oral and written, of the Parties to this Agreement concerning the subject matter of this Agreement are contained herein. No other agreements, covenants, representations, or warranties, express or implied, oral or written, have been made by any Party to any other Party concerning this Agreement, and no Party has any entered into this Agreement in reliance upon an agreement, covenant, representation, or warranty, express or implied, oral or written, that is not expressly stated in this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants, and warranties concerning the subject matter of this Agreement are merged herein. This is an integrated Agreement. This Agreement can only be amended in writing signed by all of the Parties.

FOR PLAINTIFFS:

Hannah Paige Chao 10.30.17

HANNAH OSANTOWSKE

Date

On Behalf of herself and as the authorized representative of Turning Point USA Chapter at Macomb Community College

JULIA KOVACOVA

Date

JACLYN BROHL

Date

AGREED TO AS TO FORM AND CONTENT

J. Caleb Dalton

Date

ALLIANCE DEFENDING FREEDOM
440 First Street, NW, Suite 600
Washington, DC 20001
(202) 393-8690 (phone)
(202) 347-3622 (fax)
cdalton@ADFlegal.org

Attorney for Plaintiffs

FOR PLAINTIFFS:

HANNAH OSANTOWSKE
On Behalf of herself and as the authorized
representative of Turning Point USA Chapter at
Macomb Community College

Date

julia Kovacova

JULIA KOVACOVA

October 28, 2017

Date

JACLYN BROHL

Date

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Date

Attorney for Plaintiffs

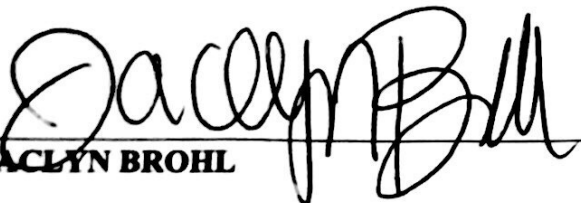
FOR PLAINTIFFS:

HANNAH OSANTOWSKE
On Behalf of herself and as the authorized
representative of Turning Point USA Chapter at
Macomb Community College

Date

JULIA KOVACOVA

Date



JACLYN BROHL

10.31.17
Date

AGREED TO AS TO FORM AND CONTENT

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cdalton@ADFlegal.org

Date

Attorney for Plaintiffs

FOR PLAINTIFFS:

HANNAH OSANTOWSKE

On Behalf of herself and as the authorized representative of Turning Point USA Chapter at Macomb Community College

Date

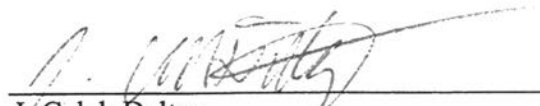
JULIA KOVACOVA

Date

JACLYN BROHL

Date

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Date

11/7/17

Attorney for Plaintiffs

FOR DEFENDANTS:

James Sawyer (HLW) 10/30/2017
JAMES SAWYER,
 President, Macomb Community College
 On behalf of himself individually and in his
 capacity as President of Macomb Community
 College

Jennifer Haase (HLW) 10/30/2017
JENNIFER HAASE, individually and in her
 official capacity as a member of the Board of
 Trustees of Macomb Community College

Frank Cusumano (HLW) 10/30/2017
FRANK CUSUMANO, individually and in his
 official capacity as a member of the Board of
 Trustees of Macomb Community College

Katherine Lorenzo (HLW) 10/30/2017
KATHERINE LORENZO, individually and
 in her official capacity as a member of the Board
 of Trustees of Macomb Community College

Roseanne Dimaria (HLW) 10/30/2017
ROSEANNE DIMARIA, individually and in
 her official capacity as a member of the Board
 of Trustees of Macomb Community College

Kristi Dean (HLW) 10/30/2017
KRISTI DEAN, individually and in her official
 capacity as a member of the Board of Trustees
 of Macomb Community College

Joseph De Santis (HW)

11-6-2017

JOSEPH DE SANTIS, individually and in his official capacity as a member of the Board of Trustees of Macomb Community College

Date

Vincent Viviano (HW)

10/30/2017

VINCENT VIVIANO, individually and in his official capacity as a member of the Board of Trustees of Macomb Community College

Date

Jill Thomas-Little (HW)

10/30/2017

JILL THOMAS-LITTLE, individually and in her official capacity as Vice President of Student Services;

Date

Geary Maiuri (HW)

10/30/2017

GEARY MAIURI, individually and in his official capacity as Dean of Student & Community Services at Macomb Community College;

Date

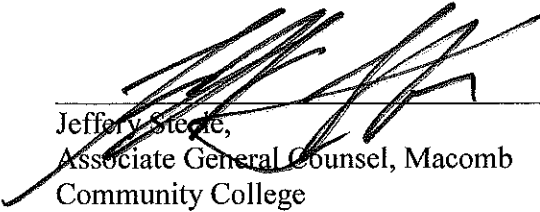
Hunter Wendt

10/30/2017

HUNTER WENDT, individually and in his official capacity as Director of the Macomb College Police Department

Date

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Jeffrey Steple,
Associate General Counsel, Macomb
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Center Campus, S-204
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Clinton Township, MI 48038
Attorney for Defendants

Date 11/7/17