

April 4, 2013

Via E-Mail

Ronald J. Daniels
Office of the President
242 Garland Hall
The Johns Hopkins University
3400 N. Charles St.
Baltimore, MD 21218
(president@jhu.edu)

Schaefer Whiteaker
Chief Justice, SGA Judiciary
(swhitea1@jhu.edu)

Cara Kaplan
Justice, SGA Judiciary
(ckaplan5@jhu.edu)

Susan Boswell
Dean of Student Life
The Johns Hopkins University
3400 N. Charles Street
Mattin Center, Office Bldg., Suite 210
Baltimore, MD 21218
(sboswell@jhu.edu)

Nayan Agarwal
Justice, SGA Judiciary (nagarw10@jhu.edu)

Anup Regunathan
Justice, SGA Judiciary (aregunal@jhu.edu)

Jonathan Ung
Justice, SGA Judiciary
(jung1@jhu.edu)

Robert Turning
Director of Student Activities
Mattin Center Ross Jones Bldg.
3400 N. Charles Street
Baltimore, MD 21218
(rturning@jhu.edu)

Re: Voice for Life Student Group Application

Dear President Daniels, Dean Boswell, Mr. Turning, and Members of the SGA Judiciary:

By way of introduction, the Thomas More Law Center (“TMLC”) is a national non-profit public interest law firm based in Ann Arbor, Michigan, whose mission includes defending the constitutional rights of pro-life groups and individuals. TMLC has been retained by Voice for Life (“VFL”), an officially recognized student organization at Johns Hopkins from 1995 until 2010. We write in support of VFL’s application seeking re-recognition by the University.

As you are aware, on March 12, 2013 and March 26, 2013, the Student Government Association (“SGA”) Senate and Executive Board rejected VFL’s application for re-recognition, despite having been recommended for approval by the SGA Appointments and Evaluations Committee.

The SGA based its rejection of VFL’s application on two grounds: (1) the SGA unilaterally determined, apparently without seeking the opinion of the University or its General Counsel, that

one of VFL's proposed activities, legally permissible sidewalk counseling at a location that is not on the campus or property owned by the University, allegedly conflicts with the University's policies on "harassment"; and (2) the SGA asserted its belief that a link on VFL's website to an outside organization -- that is clearly not affiliated with VFL -- was "offensive" because of the content it contained concerning the issue of abortion.

VFL has appealed its case to the SGA Judiciary Committee, which has scheduled a hearing to be conducted on April 9, 2013. We respectfully request that the SGA Judiciary Committee reverse the decision of the SGA Senate and Executive Board, and approve the application of VFL for re-recognition by the University.

I. Engaging in Legally Permissible Sidewalk Counseling at an Off-Campus Location Does Not Conflict With the University's Policies on Harassment, But Is Consistent With the Freedoms of Thought, Speech, and Association Espoused by the University and Protected by its Policies

Johns Hopkins University is one of our country's elite private universities. Like most universities of its stature and role in our society, Johns Hopkins is built on a bedrock principle of intellectual freedom that fosters and encourages the free exchange of ideas. By eschewing the "thought police" and suppression of speech that has marked other nations and societies throughout history, universities such as Johns Hopkins have played a vital role in our nation's scientific and cultural advances.

The policies promulgated by Johns Hopkins affirm the University's commitment to fostering these fundamental freedoms of thought, speech, and association. The University's Undergraduate Student Conduct Code, for example, highlights the obligation of Johns Hopkins students "to protect the university as a forum for the free expression of ideas." The University's Policy Against Sexual Harassment further emphasizes, "[f]undamental to the University's purpose is the free and open exchange of ideas. It is not, therefore, the University's purpose, in promulgating this policy, to inhibit free speech or the free communication of ideas by members of the academic community." The SGA's own Constitution states that "[s]tudents have a right to free speech in all matters relating to the SGA. The spirit of this sentiment shall be extended to all student activities on the Homewood campus."

On April 1, 2013, the University issued a statement confirming that:

"The Johns Hopkins University is strongly committed to open debate and to the values of free speech and academic freedom. These defining values of American higher education drive us to afford individuals and groups on campus the freedom to advocate for their views. The university's obligation is to create a community where freedom of inquiry and expression thrive. The decision made by the Student Government Association not to recognize Voice for Life as an official student group is being reviewed by a student appeal committee. It is important that the student leadership be afforded the opportunity to review the earlier

decision under its own policies and in light of the university's commitment to broad debate and freedom of expression. It is our understanding that this review will take place shortly."

The reasons proffered by the SGA for its decision -- that VFL's intention to peacefully engage in sidewalk counseling off campus at a Baltimore abortion facility violates the University's Harassment and Code of Conduct policies, and that VFL's website includes a link to the Center for Bio-Ethical Reform's website, which features images of aborted preborn babies considered by members of the SGA to be "offensive" -- are based on a fundamental misconception of what constitutes unprotected harassment as opposed to free speech protected by the University's policies.

The opinion letter from Vice Provost Caroline Laguerre-Brown of the University's Office of Institutional Equity, dated April 3, 2013, to Andrew Guernsey, VFL's President, is dispositive of the issue whether VFL's intended conduct violates the University's Anti-Harassment Policy and the Undergraduate Student Conduct Code. Ms Laguerre-Brown states:

"My view is that the proposed 'sidewalk counseling' activities, as described in your email, would not violate these university policies. A student group's distribution of literature and advocacy of its viewpoint, in the manner set out in your email, would not constitute harassment within the meaning of these policies. In fact, such conduct is fully in accord with the university's robust commitment to the values of free expression and open debate that is articulated in these policies."

Harassment in the educational setting is defined as targeted, discriminatory conduct "so severe, pervasive, and objectively offensive that it effectively bars the victim's access to an educational opportunity or benefit." *Davis v. Monroe County Board of Education*, 526 U.S. 629, 633 (1999). VFL does, and proposes to do, nothing of the sort. VFL's website includes links to over a hundred external, non-affiliated websites. There can be no legitimate argument that this innocuous form of speech -- merely providing links to other websites -- constitutes harassment or offensive conduct. Moreover, the legally permissible sidewalk counseling engaged in by VFL members consists of standing on the public sidewalk outside an abortion clinic in Baltimore (not on the University campus or property owned by the University), speaking to visitors of the clinic in a peaceful, non-aggressive manner, and providing literature and information about life issues and alternatives to abortion. While not all members of the University community may agree on issues regarding termination of pregnancy, there can be no reasonable dispute that such free speech does not rise to the level of harassment prohibited by any University policy.

Revealingly, in a pre-trial proceeding before the SGA Judiciary on April 1, 2013, the SGA abandoned its argument that sidewalk counseling, or the website links, violate University policy, but rather argued that the SGA has the right to reject minority groups like VFL for any reason or no reason at all, essentially arguing that the SGA Senate and/or Executive Board has unlimited

power to censor student groups with which the majority disagrees, without any check upon that power. In other words, the SGA asserts a claim to unilateral authority to arbitrarily deny a student group access to facilities and funding -- the source of which is the mandatory fees and/or tuition paid by all students -- when the group holds a position contrary to the beliefs of a majority of the SGA Senate. This view would lead to the absurd, and unconscionable, result of allowing the SGA to refuse to recognize, for example, the College Democrats (and deny that group access to funds and facilities) whenever the SGA Senate held a Republican majority. We are not aware of any University policy that grants the SGA such unbridled authority to trump the University's stated policies guaranteeing the protection of free speech.

VFL's mission and proposed activities may not be shared or embraced by a majority of Johns Hopkins students. But a minority group should not be excluded from the generally available rights and privileges of a student organization because its mission, speech, or conduct is not shared by a majority of members of the SGA Senate. The University's commitment "to protect the university as a forum for the free expression of ideas" should not be allowed to be violated by the unfettered whims of a majority of the SGA Senate.

II. The Denial of VFL's Application for Re-recognition as a Student Group, If Not Reversed, Violates the University's Policies and Principles, and Constitutes a Breach of the University's Promises and Contract with its Students

Although Johns Hopkins, as a private university, is not prevented from adopting speech-restrictive policies that a court would hold unconstitutional if adopted by a public university, it has nevertheless promoted itself as an institution of free expression and thought. In other words, Johns Hopkins has advertised and explicitly promised its students through its publications and policies, the ideal educational institution guaranteeing students the right of free speech and thought.

Accordingly, free speech cases decided by the U.S. Supreme Court under the *First Amendment* should play a crucial role in defining the contours of the University's free speech guarantees, as well as, the Judiciary Committee's decision on whether to re-recognize VFL.

In *Texas v. Johnson*, 491 U.S. 397, 414 (1989) the U.S. Supreme Court dealt with a political demonstration during the 1984 Republican National Convention. One of the protesters doused an American flag with kerosene and set it on fire. While the flag burned, protesters chanted, "America, the red, white and blue, we spit on you." The protester who burned the flag was convicted of violating a state statute that prohibited the desecration of our national flag. On appeal to the U.S. Supreme Court, Justice Brennan writing for the majority held the state statute as applied to the protester unconstitutional, proclaiming: "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."

In *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 836 (1995), the U.S. Supreme Court reviewed a ruling by a committee of the university's student council and the

student activities committee refusal to fund printing of a newspaper on the grounds it was religious activity. The denial of funding was in accordance with University guidelines which prohibited financial support for religious activity. On appeal, Supreme Court Justice Kennedy writing for the majority held the guidelines used to deny financial support to the Christian organization was a violation of their free speech. Justice Kennedy stated: "For the University, by regulation, 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."

"The relationship between a student and a private university is largely contractual in nature. . . . The terms of the contract are contained in the brochures, course offering bulletins, and other official statements, policies and publications of a university, and the university is required to conduct its hearings and enforce its policies consistent with the terms." *Harwood v. Johns Hopkins*, 747 A.2d 205 (Md. Ct. Spec. App. 2000) (internal quotation marks and citations omitted).

In adopting and promulgating the above referenced free speech policies and guarantees, Johns Hopkins University has voluntarily agreed, and promised to its students, to protect "the free expression of ideas." If the University allows the SGA to continue to deny VFL's application for re-recognition, the University will be in breach of its agreements with its students.

III. Conclusion

We are optimistic "cooler heads will prevail" and that, upon reasoned reflection of the foregoing considerations, the University and the SGA Judiciary Committee will approve the re-recognition of VFL as a student organization at Johns Hopkins. We are available to discuss this matter further with the University or its General Counsel, at your convenience. Thank you very much for your consideration.

Very truly yours,

THOMAS MORE LAW CENTER



Richard Thompson
President and Chief Counsel

cc: Andrew Guernsey, President, Voice for Life (via e-mail)