

May 17, 2017

**Via facsimile and email**

Richard T. Sniscak, Superintendent  
Parkland School District  
1210 Springhouse Rd.  
Allentown, PA 18104  
Facsimile: 610-351-5509  
Email: sniscakr@ParklandSD.org

James E. Moniz II, Principal  
Jude Sandt, Asst. Principal  
Parkland High School  
2700 N. Cedar Crest Blvd.  
Allentown, PA 18104  
Facsimile: 610-351-5656  
Email: monizj@ParklandSD.org  
sandtj@ParklandSD.org

**Re: Violation of Students' Right to Establish Pro-Life Club at Parkland High School**

Dear Messrs. Sniscak, Moniz, and Sandt:

We represent Elizabeth Castro, a senior at Parkland High School and co-founder of the proposed student group Trojans for Life; Grace Schairer, a junior at Parkland High School and co-founder of Trojans for Life; and Students for Life of America (“SFLA”), a national 501(c)(3) not-for-profit organization based in Spotsylvania, Virginia. SFLA is one of the nation’s most active pro-life organizations and the largest youth pro-life organization in the country. It is the only national pro-life organization dedicated to training and equipping high school, college, medical, and law school students to defend the preborn and raise awareness on school campuses.

Elizabeth and Grace have informed us that Assistant Principal Sandt has denied their club the right to become an official student club at Parkland High School because the pro-life message is too “political” and “controversial”.

**Parkland High School’s refusal to permit Elizabeth and Grace to create a pro-life club constitutes a violation of their rights under both the First Amendment to the United States Constitution and the federal Equal Access Act (“EAA”). Additionally, this denial violates Parkland School District’s own policies regarding student organizations.**

***Factual Background***

In early September 2016, Elizabeth and Grace asked Mr. Sandt, the student activities vice principal, how to form a new student club. Mr. Sandt told them that they must find an advisor before a club could be considered. Elizabeth and Grace found a teacher to be their advisor and informed Mr. Sandt. They then met with him in November, where he told them that their advisor had withdrawn after talking with him and that they also needed to submit a proposal for the club.

Elizabeth and Grace found a new teacher advisor and submitted their club proposal to Mr. Sandt on March 17, 2017. On March 29, in a meeting to discuss the proposal, Mr. Sandt denied the club proposal with the justification that the club would be too “political” and “controversial”. On April 6,

2017, the students emailed Mr. Sandt to ask how they could fix their proposal to get it approved, but never received a response.

Parkland High School offers, among others, the following clubs: Chess Club, Conservation Club, Fashion Club, GSA (Gay Straight Alliance), G.E.O. Club, Investing Club, Multi-Cultural Leadership Club, and Political Science Club.

### *Legal Analysis*

The refusal to approve Trojans for Life as an extracurricular club because of the club's message constitutes a violation of Elizabeth and Grace's rights under both the First Amendment to the United States Constitution and the Federal EAA.

Students do not shed their First Amendment rights at the school house gate. *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 509 (1969). Accordingly, a school may not permit some students to organize and express themselves on particular topics while forbidding others the same right—this creates an atmosphere where only “approved” speech is permitted and violates the First Amendment as a content-based restriction.

Furthermore, an “undifferentiated fear or apprehension of disturbance”—in other words, merely labeling a topic “controversial”—is not a ground for censoring student speech. *Id.* at 508. Rather, school authorities may not silence student expression unless they reasonably forecast, based on actual evidence, that the student expression would lead to either a *substantial* disruption of the school environment or an invasion of the rights of others. *Id.* at 512. Discussion of controversial topics and distribution of material relating to political issues in public high schools are not prohibited. Instead, under clear Supreme Court precedent, students have the “undoubted freedom to advocate unpopular and controversial views in schools and classrooms,” balanced only against society's countervailing interest in teaching students the boundaries of socially appropriate behavior. *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 681 (1986).

Congress has also expressly protected students' rights to create clubs with the Equal Access Act. 20 U.S.C. § 4071, *et seq.* Under the EAA, it is “unlawful for any public secondary school which receives Federal financial assistance . . . to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting . . . on the basis of the religious, political, philosophical, or other content of the speech at such meetings.” *Id.* at § 4071.

Simply put, once the limited open forum is open to one non-curricular club, then *all* non-curricular clubs must be treated equally, even if the clubs they wish to form are religious, political, or “controversial” in their content.

It is unquestionable that Parkland High School has opened a forum for non-curricular student organizations. The category of club which can be considered curricular is a very narrow one—a student group is considered curricular only if it directly relates to the curriculum of the school. The Supreme Court has held that “directly related” is strictly limited to include *only* clubs meeting one of the following four criteria:

- 1) The subject matter is taught in a regularly offered course;

- 2) The subject matter concerns the body of courses as a whole;
- 3) Participation is required for a course; or
- 4) Participation results in academic credit.

*Bd. of Educ. of Westside Cmty. Schs. v. Mergens*, 496 U.S. 226, 239-40 (1990) (firmly rejecting definition of “curriculum related” to include anything “remotely related to abstract educational goals” and noting that “such a broad interpretation . . . would make the [EAA] meaningless.”).

The Court further explicitly held that clubs such as chess club, a stamp-collecting club, and a community service club did not meet any of these criteria. *Id.* at 237-38. Broad attempts to shoehorn club topics into the context of official school curriculum will not be approved—*i.e.*, merely offering P.E. classes does not make a scuba-diving club “directly relate” to the curriculum unless the P.E. classes actually teach scuba-diving itself. *Id.* at 245.

Under this standard, you have opened Parkland High School’s club forum to many non-curricular clubs, including ones that might be classified as “political” or “controversial”. Chess clubs and Gay Straight Alliances—both of which Parkland High School permits—are examples of clubs that courts have explicitly held to be non-curriculum related. Political science club is undeniably political, GSA falls under both the political and controversial categories, and even the Conservation and G.E.O. clubs could be considered political and controversial.

The school may not pick and choose among clubs based on its particular preferences for what the overall content of the group’s proposed speech should be. Your denial of Elizabeth and Grace’s request to form and operate a pro-life group on equal footing with these other non-curricular clubs constitutes a clear violation of the EAA.

The EAA’s protection of a club’s right to meet goes beyond merely a gathering of the student members of the club. The EAA explicitly defines “meeting” to include “those activities of student groups which are permitted under a school’s limited open forum and are not directly related to the school curriculum.” 20 U.S.C. § 4072(3). Thus, in addition to permitting the club to meet in school facilities, the EAA requires that the school permit Trojans for Life to put up posters, have meeting dates and information included in announcements and the school calendar, have a club picture in the yearbook, and engaged in any other activities that other clubs are permitted to do at Parkland High School.

This also prohibits the school from subjecting a pro-life club to any conditions that do not apply to all other non-curricular clubs at that school. Placing requirements on the posters, leaflets, or announcements of a pro-life group that differ from those for other groups, for example, is unlawful differential treatment.

Recognizing this pro-life club as an official school club does not mean the school is endorsing or “supporting” its message—and the students are smart enough to recognize this. In general, simply allowing the formation and operation of any club does not indicate that a school approves or endorses the group’s message, nor does it indicate that the school has “taken a stance” on the issue. Observing that “the proposition that schools do not endorse everything they fail to censor is not complicated,” the Supreme Court has held that public high school students are mature enough to understand that a school does not endorse or support speech that it merely permits on a nondiscriminatory basis. *Mergens*, 496

U.S. at 250. Congress recognized the same point when drafting the EAA, stating that “[s]tudents below the college level are capable of distinguishing between State-initiated, school sponsored, or teacher-led religious speech on one hand and student-initiated, student-led . . . speech on the other.” *Id.* at 250-51 (quoting S. Rep. No. 98-357, P. 8 (1984)).

Finally, Parkland School District’s own policies guarantee Elizabeth and Grace’s right to form a pro-life club. Policy 122, Cocurricular/Noncurricular Activities, states that the district “shall provide students the right to form organizations, with the approval of the principal. These organizations may take as their purpose **any lawful objective**, whether or not related to the school curriculum.” Parkland School District Board Policy 122, *available at*: <http://www.boarddocs.com/pa/parkland/Board.nsf/Public?open&id=policies#> (last accessed May 17, 2017) (emphasis added). There is no conceivable argument that Trojans for Life, with a mission to “establish an active pro-life culture among the youth of our community by educating our peers on life and by actively promoting the right to life for all persons,” does not have a lawful objective as its purpose.

There is no legally acceptable reason to deny Elizabeth and Grace’s request to form a pro-life club at Parkland High School. **Therefore, we request that you reverse your decision and promptly approve Elizabeth Castro and Grace Schairer’s request to establish, publicize, and actively run a pro-life student group at Parkland High School.**

We respectfully request your response by Wednesday, May 24, 2017. Any response may be directed to the Thomas More Society at the address listed above, or via email to [JDFloydJD@gmail.com](mailto:JDFloydJD@gmail.com).

Thank you for your attention to this matter.

Very truly yours,

  
Jocelyn Floyd  
Special Counsel  
Thomas More Society