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Dear President Ginsberg,

We write on behalf of five students who received unwarranted disciplinary punishments for violations of the Towson University (“TU”) policies governing expressive activities on campus and the TU Code of Student Accountability, for their alleged roles in a small “die-in” protest that occurred on November 15, 2023. The discipline imposed on these students violated TU’s own policies, and violated the First Amendment. TU should expunge their disciplinary records, and must commit to refrain from future violations of the First Amendment, especially as we approach the beginning of a new school year.

The November 15 demonstration sought to protest and bring awareness to Israel’s violence and destruction in Gaza. At the beginning of the protest, shortly after noon, less than ten Towson University students gathered on Tiger Plaza—the large 21,000 square foot lawn in front of Burdick Hall—and laid in the grass, surrounded by baby dolls wrapped in white shrouds that symbolized the rising death toll of children in Gaza. The protest was organized by TU students involved with Towson Colonized People’s Revolution (“Towson CPR”).¹ One of the student protesters held a megaphone, recited a poem, and read the names of people killed in Gaza. The five students disciplined [REDACTED]

[REDACTED]—were charged and found guilty for violations of Towson policy and the student code of conduct even though two of the five students disciplined did not even participate in the die-in. As a result, all of these students received deferred suspensions that remain on their academic records for seven years.

Towson University’s effort to silence these students violates their free speech rights guaranteed to them by the First Amendment to the U.S. Constitution, and has chilled the students’ ability to hold other demonstrations out of fear of retaliation from the University. As we approach the beginning of a new semester,

¹ Towson Colonized People’s Revolution is an unregistered student group on campus, comprised of individual Towson University students. The group has a social media presence with about 260 followers on Instagram.

Towson University's actions must be reversed immediately. TU must also recommit to principles of free speech so that TU students may exercise their constitutional rights without fear of reprisal.

The "Die-in" on November 15, 2023

A few days before the die-in, a group of students engaged in a protest inside some campus buildings,² and were told by TU administrators that although they could not hold the protest indoors, they could continue if they moved outside. The organizers of the die-in were aware of this instruction, and relied on that information to hold their November 15 event outdoors, on Tiger Plaza.

The die-in was scheduled to start at noon. At the beginning of the protest, fewer than ten people were participating, and police and administrators were already present. Most of the participants were laying in the grass, and at approximately 12:30pm, one student began speaking with a megaphone. Students at the protest saw that administrators were checking the sound level, but were not told that the megaphone they were using exceeded the 95 decibel limit required under the University's time, place, and manner policies. Policy 06-04.11.V.B.3. Additional protesters joined the protest on the lawn, while others left, but review of more than 133 pictures taken throughout the duration of the event indicates that no more than 16 participants were present at any one point during the demonstration.³ This includes the people who were lying down, sitting down, handing out flyers, and protesters at the megaphone.

Photographs also show that there were at least seven uniformed police present. Police and other administrators instructed some of the student protesters to leave and protest at the free speech zones on the outskirts of campus, and even threatened arrest if they did not leave. After about an hour and a half, the students began cleaning up Tiger Plaza and dispersed.

Ensuing Disciplinary Hearings and Punishment

In the weeks following the November 15 die-in, [REDACTED] were cited for three alleged violations of the Code of Student Accountability: Sections VI.2.a (disruption of University operations); VI.3.a. (failure to comply with reasonable instructions of University officials); and VI.6.e (violation of other TU policies, apparently referring to the students' alleged violation of TU Policy 06-04.11 Policy on Time, Place, and Manner for Expressive Activities).

² Gabriel Donahue, *Towson students again show up for Palestine in unsanctioned demonstration*, TOWERLIGHT, available at <https://thetowerlight.com/towson-students-again-show-up-for-palestine-in-unsanctioned-demonstration/>.

³ See attachment A for photographs showing the extent of the protest.

Of the five students, [REDACTED] and [REDACTED] were disciplined even though they did not participate in the die-in. [REDACTED] helped clean up and carried signs to her car in a parking garage, and [REDACTED] was there taking photographs. [REDACTED] was identified, according to testimony from the University during her disciplinary hearing, through CCTV tracking her back to her car, and the University scanned her license plate to identify her.

TU held a series of hearings, including an evidentiary hearing where they presented evidence against the students for their participation in the die-in and summarily found the students in violation of the student code of conduct. We note that no evidence of disruption was presented or alleged other than the alleged violation of the time, place, and manner policy, nor was there any evidence of failure to comply with instructions other than those instructions related to the location of the demonstration premised on the time, place, and manner policy. All five students received a deferred suspension through December 15, 2024 that required them to abide by the code of conduct and complete an educational task (a research paper about how to form a student organization) or face immediate suspension. All of the students appealed, but the University's appellate board upheld the discipline for all students except for [REDACTED], whose punishment was reduced from deferred suspension to probation. Regardless, the charges and discipline will remain on their academic records for seven years. TU CSA § XIII ("If a Student is found responsible for a Code violation, SARP retains information associated with the investigation, Accountability Resolution Meeting, Hearing, and/or Appeal for seven (7) years.").

The discipline and reaction from Towson University left Towson CPR disempowered, chilling their speech and demoralized the group to the point of no longer feeling comfortable to protest for the causes they believe in. Towson CPR did not engage in any more protests for the rest of the school year.

The Constitutionality of Towson University's Demonstration Policies

TU is a public university, so the rules governing expressive activities on its property are subject to constitutional constraints, with speakers' rights determined based on the type of forum at issue. *See generally, Pleasant Grove City, Utah v. Sumnum*, 555 U.S. 460, 469–70 (2009) (outlining the forum doctrine, and noting "the government does not have a free hand to regulate private speech on government property."); *Warren v. Fairfax Co.*, 196 F.3d 186, 190 (4th Cir. 1999) (*en banc*) ("The Supreme Court recently confirmed that courts should evaluate First Amendment rights on government-owned property under a public forum analysis."). And while TU's open public spaces may not be a traditional public forum, *ACLU v. Mote*, 423 F.3d 438, 443–44 (4th Cir. 2005), like all other public universities, TU's public spaces were created for speech by university affiliates, namely its students, faculty, and staff. *E.g. Widmar v. Vincent*, 454 U.S. 263, 267 n.5 (1981) ("This Court has recognized that the campus of a public university, at least for its students, possesses many of the characteristics of a public forum.")

(citing cases); *Healy v. James*, 408 U.S. 169, 184 (1972) (denial of recognition to a student group, with effect of denying that group the right to use campus facilities for expressive purposes, was a prior restraint that must satisfy strict scrutiny). TU’s expressive activities policy appears to recognize this, stating that TU “supports the rights of University students, faculty and staff and groups recognized by the Student Government Association (SGA) and/or any University department (“University Community”) to engage in protected speech and assembly, including demonstrations, marches, picketing, leafleting and protesting. “‘Expressive Activity’ in On-Campus Community Accessible Areas.” Policy 06-04.11.I. We note that the policy explicitly states, as it should, that *all* students have the right to use the “On-Campus Community Accessible areas” (which we refer to here as the open public spaces), not just recognized student groups (who are mentioned separately from “University students” generally). The policy further provides that “on-campus community accessible areas will be available for Expressive Activity by *University Affiliates* on a first come basis.” Policy 06-04.11.V.A.1 (emphasis added).

Because these open public spaces on campus exist for the use of all students, including for expressive purposes, they are treated as a traditional public forum for their intended users. *E.g. Arkansas Educ. Television Comm’n v. Forbes*, 523 U.S. 666, 677 (1998) (“If the government excludes a speaker who falls within the class to which a designated public forum is made generally available, its action is subject to strict scrutiny.”); *Warren*, at 193 (“as regards the class for which the forum has been designated, a limited public forum is treated as a traditional public forum.”); *accord Goulart v. Meadows*, 345 F.3d 239, 250 (4th Cir. 2003); *ACLU v. Mote*, 423 F.3d at 444.

Despite the policy statements explicitly granting all university affiliates the right to use the open public spaces on campus for expressive purposes, the policy also confusingly appears to relegate demonstrations by non-recognized student organizations to the same two spaces available to non-University affiliates. Policy 06-04.11.V.A.2. Given the clear caselaw discussed above that establishes that the open public spaces on campus are treated as a traditional public forum for students, this limitation is unconstitutional. However, even more confusingly, the policy also requires anyone wishing to use the open public spaces on campus for a demonstration (other than small groups, spontaneous demonstrations, or persons distributing printed material) to provide three days advance notice to the Office of Campus Life, a requirement that expressly applies to *all* “students”, separately and in addition to “recognized student groups.” *Id.* at §§ V.B.2, V.B.2.a, V.B.2.b, V.C.6. Yet, when students seek to reserve space, in actual practice the Student Guide to Planning Events⁴ states that “student organizations must be registered through Involved@TU and in good standing to request and reserve space on campus” in contravention of the actual policy. And, indeed, according to the students in Towson CPR, the online space reservation system provides no means

⁴ <https://www.towson.edu/campus/planningevents/reservations/documents/tu-student-guide-to-planning-events-8-2017.pdf>.

for non-registered student organizations to reserve the open public spaces on campus for expressive purposes.

Given the principles noted above, the discipline imposed on the five TU students violates the First Amendment for multiple reasons. Preliminarily, it is clear that all five students are currently enrolled at TU, and are therefore “university affiliates.” It is equally clear that Towson CPR, which is composed entirely of TU students is also a “university affiliate.” There is also no doubt that the demonstration itself is core political speech, whose protection is at the heart of the First Amendment.

To the extent the discipline is premised on the fact that the demonstration took place in the wrong location (i.e. on Tiger Plaza, and not in the two locations where non-University affiliates may hold demonstrations on campus), it violates the First Amendment. A rule restricting students who are not members of registered student organizations from using the open public spaces of the university for expressive purposes is not reasonably related to the purpose of the forum. The forum (the university’s open public spaces) exists for the use of the *entire* university community, as TU’s policy statement recognizes. And a group of students who are not part of a registered student organization are no more likely to disrupt TU operations, violate the speech rights of others, endanger others, or risk destruction of TU property than is a group of students who are part of a registered student organization. Students who are not part of a registered student organization are just as much members of the TU community as other students. As the Court put it almost 60 years ago:

Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom. “The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.” *Shelton v. Tucker* [citation omitted]. The classroom is peculiarly the “marketplace of ideas.” The Nation’s future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth “out of a multitude of tongues, [rather] than through any kind of authoritative selection.” *United States v. Associated Press*, 52 F. Supp. 362, 372. In *Sweezy v. New Hampshire*, 354 U.S. 234, 250 , we said:

“The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. No

field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. Particularly is that true in the social sciences, where few, if any, principles are accepted as absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.”

Keyishian v. Bd. of Regents, 385 U.S. 589, 603 (1967). The particular importance of First Amendment freedoms on university campuses remains true today, and applies with equal force to all students, not just those who are members of registered student organizations.⁵

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To the extent the discipline is premised on the idea that the Towson CPR needed to provide advance notice prior to the demonstration, it also violates the First Amendment, and is factually incorrect (because of the small group exception, discussed below). The TU policy requiring three day advance notice of demonstrations on campus by university affiliates is a prior restraint on speech and holds a “heavy presumption of invalidity, and the government “carries a heavy burden of showing justification for the imposition of such a restraint.”. *Watchtower Bible and Tract Soc. of NY, Inc. v. Vill. of Straton*, 536 U.S. 150 (2002) (“It is offensive not only to the values protected by the First Amendment, but to the very notion of a free society – that in the context of everyday public discourse a citizen must first inform the government of her desire to speak to her neighbors and then obtain a permit to do so.”); *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963) (“Any system of prior restraints of expression comes to the Court bearing a heavy presumption against its constitutional validity.”); *New York Times Co. v. United States*, 403 U.S. 713, 714 (1971) (same); *NAACP v. City of Richmond*, 743 F.2d 1346, 1355 (9th Cir. 1984) (“The simple knowledge that one must inform the government of his desire to speak and must fill out appropriate forms and comply with applicable regulations discourages citizens from speaking freely.”).

Despite the foregoing, we also recognize the settled law that a government may impose a narrowly tailored permit requirement to manage competing uses of a public forum. *E.g. Forsyth Co. v. Nationalist Movement*, 505 U.S. 123, 130 (1992); *Cox v. City of Charleston*, 416 F.3d 281, 284-287 (4th Cir. 2005) (city’s parade permit ordinance that lacked exception for small groups is facially unconstitutional, because not narrowly tailored). Whether the three day advance notice requirement is necessary to accomplish that goal is, at least, debatable. *Cf. Rosen v. Port of Portland*, 641 F.2d 1243 (9th Cir. 1981) (ordinance requiring one

⁵ Towson University appears to recognize this, if not for their actions to the contrary: “With a steadfast commitment to academic freedom, freedom of expression, and respect for intellectual property rights, the university continues to serve as an engine for innovation and creative work.” <https://www.towson.edu/provost/initiatives/>.

day advance notice of intent to distribute literature or picket inside airport terminal unconstitutional, at least as applied to small groups and individuals). But even if the requirement is generally permissible, not all possible expressive uses of a public forum will pose risks of competing uses such that a permit (or advance notice) may always be required. *E.g. Grossman v. City of Portland*, 33 F.3d 1200, 1204–08 (9th Cir. 1994) (rule requiring permit for any gathering in city parks is facially unconstitutional; small groups carrying signs do not pose enough of a threat to other lawful uses to justify a permit restriction). While TU’s classification of 10 people as a small group is clearly correct, that does not mean that any group larger than 10 people will always raise concerns about competing uses in every possible open public space on campus, and thus are not also a small group. And, indeed, Tiger Plaza is so large that groups far larger than 10 persons can use it without impeding other uses of the forum in any way.⁶

Apart from the general legal principles at issue here, photographs of the demonstration clearly shows that it also fell within any reasonable and lawful application of TU’s existing small group exception. Policy 06-04.11.V.B.2. b. The demonstration began with fewer than ten participants, yet according to the students, TU police were already present to disband the group. In their initial decision letters to the students, the University cites to a police report that indicates 25 people attended the demonstration, but photographic evidence of the event makes clear that this claim is incorrect.⁷

Even if there were more than ten individuals, the U.S. Court of Appeals for the Fourth Circuit, like many other courts across the country, has not created a floor below which an advance notice or permit requirement may not apply. *See Cox v. City of Charleston*, SC, 416 F.3d 281, 286 (4th Cir. 2005). In fact, the constitutionality of the floor depends highly on the particular circumstances of the demonstration and the nature of the specific forum at issue. *See Green v. City Of Raleigh*, 523 F.3d 293, 304 (4th Cir. 2008) (finding a ten person small group exception to be sufficient only because the demonstration area had a history of counter demonstrations, simultaneous uses of limited public space, and concern regarding the spilling of pedestrians into city streets and impeding traffic in a relatively confined area); *Smith v. Exec. Dir. of Indiana War Memorials Comm’n*, 742 F.3d 282, 289 (7th Cir. 2014) (“Whether a numerical limit on gathering

⁶ As an example to illustrate the size of the lawn, see <https://www.towson.edu/news/2020/towson-university-students-black-lives-matter-2020-march.html>. Other events to illustrate the size of the lawn are mentioned below as well.

⁷ Even if 25 people came and went over the course of the whole protest, the University cannot contend that the ten person small group exception includes every protestor over the course of the protest because it would render the exception meaningless. Any passersby who decide to join the protest later could then make the organizers liable of a policy violation even when the participants never grew to be more than ten. Nor can the university contend that people who stop to listen to or observe a demonstration count in the number of protestors involved, because then even a single speaker would be in violation of the policy if 10 people stopped to listen to her, a result that is clearly unconstitutional. *E.g. Berger v. City of Seattle*, 569 F.3d 1029 (9th Cir. 2009).

without a permit is constitutional depends on the specifics of the space at issue because different spaces can accommodate groups of different sizes without interfering with orderly, fair use of the space.”) (citing *Marcavage v. City of Chicago*, 659 F.3d 626, 635 & n. 9 (7th Cir. 2011)); *Douglas v. Brownell*, 88 F.3d 1511, 1524 (8th Cir. 1996) (expressing doubt that permit requirement was narrowly tailored when it applied to groups as small as ten).

Here the die in demonstrators were not blocking any paths, there were no security concerns regarding pedestrian traffic, Tiger Plaza was more than large enough of a space to accommodate the demonstration, and law enforcement were only concerned with disbanding the die-in, rather than with the safety of the protestors or passersby, or the ability of people to move about the campus. Moreover, according to 25live, where registered organizations can reserve space for events, there were no other events planned on Tiger Plaza at the time, nor elsewhere that day, and the die in only lasted about an hour and a half. Tiger Plaza is approximately 21,127 square feet of grassy lawn, the scale of which can accommodate hundreds of people. In fact, Tiger Plaza was the location of a march and rally in 2020, where *hundreds* of people had gathered for a protest in support of Black lives.⁸ Tiger Plaza is also the venue of many Towson University events, where hundreds of students, faculty, and staff attend, such as Tigerfest events in April 2024, Beach Day on 9/1, Block Parties on Earth Day and the Eco Fair. Even if twenty five people were in attendance at the die in, punishing the students for violating Policy 06-04.11.V.B.2 is unconstitutional as applied.

Finally, the application of the time, place, and manner policies to Towson CPR and the disciplined students is unlawful because the time lag for becoming a registered organization (and thus able to reserve space) unlawfully delays the ability to speak. The First Amendment requires accommodation of demonstrations without meaningful delay. *Sullivan v. City of Augusta*, 511 F.3d 16, 38 (1st Cir. 2007) (“Notice periods restrict spontaneous free expression and assembly rights safeguarded in the First Amendment.”); *Am.-Arab Anti-Discrimination Comm. v. City of Dearborn*, 418 F.3d 600, 605 (6th Cir. 2005) (“Any notice period is a substantial inhibition on speech.”); *Cox v. City of Charleston, SC*, 416 F.3d 281, 286 (4th Cir. 2005) (finding a city parade ordinance overbroad because it prohibits a protestor from engaging in spontaneous expression).

The process to form a new student organization can take weeks, if not months, to fulfill all of the necessary requirements. The process involves drafting a constitution for the new student group, finding a fulltime faculty or staff member to be the faculty sponsor of the student organization, setting up a meeting with the coordinator for student organizations to register the group, and posting the

⁸ A demonstration calling for Justice for Black Lives in June 2020 involved “hundreds of Towson University students, staff, and faculty” started on Tiger Plaza.
<https://www.towson.edu/news/2020/towson-university-students-black-lives-matter-2020-march.html>.

constitution and membership list on Involved@TU.⁹ Policy 05-10.00 – Student Organization Registration. Having a process that can take weeks or months to complete would make it impossible to have a spontaneous demonstration through Towson CPR. *See Sullivan v. City of Augusta*, 511 F.3d 16, 38–39 (1st Cir. 2007) (“Advance notice requirements that have been upheld by courts have most generally been of less than a week.”) (listing examples).

Moving Forward

First and foremost, the disciplinary records of these five students must be expunged. Towson University’s actions were unlawful and exceeded any reasonable response to the students’ demonstration. Second, the University must review its policies in light of the constitutional requirements outlined in this letter, and make necessary changes to ensure compliance with the requirements under the First Amendment. Third, University administrators and law enforcement officials must be counseled on the ways in which the discipline imposed in this case was improper, so similar prohibitions on lawful demonstrations, and similar improper discipline do not recur. We hope that our concerns about TU’s policies, and the discipline imposed in this case can be resolved without the need for litigation, but we are prepared to bring suit.

If you have any questions regarding the matters raised in this letter, or wish to discuss any of the points raised, you may contact me at steiner@aclu-md.org.

Sincerely,



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⁹ Speaking anonymously is also constitutionally protected under the First Amendment. *Nat'l Ass'n for Advancement of Colored People v. State of Ala. ex rel. Patterson*, 357 U.S. 449, 462 (1958) (“It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute [an] effective a restraint on freedom of association”); *Watchtower Bible & Tract Soc’y of New York, Inc. v. Vill. of Stratton*, 536 U.S. 150, 166 (2002) (“The decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one’s privacy as possible . . . the requirement that a canvasser must be identified in a permit application filed in the mayor’s office and available for public inspection necessarily results in a surrender of that anonymity.”). Requiring a student group to formally register, and in doing so disclose the identity of its leaders and members in exchange for the ability to reserve campus space for a demonstration would violate the First Amendment.

Attachment A

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Photograph of the die-in protest on Tiger Plaza.



Photograph of the die-in protest on Tiger Plaza.

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Photograph of some of the police and administrators at Tiger Plaza.