

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN**

**WAYNE STATE UNIVERSITY STUDENTS FOR LIFE**, an unincorporated Student Organization on behalf of itself and its individual members, and **JULIEGHA NORUS** and **MARK ROBERTSON**,

Plaintiffs,

v.

The Members of the Board of Governors of Wayne State University—**EUGENE DRIKER, RICHARD BERNSTEIN, TINA ABBOTT, DEBBIE DINGELL, DIANE L. DUNASKISS, PAUL E. MASSARON, ANNETTA MILLER, and JACQUELIN E. WASHINGTON**—all in their individual and official capacities; **IRVIN D. REID**, individually and in his official capacity as President of Wayne State University; **DR. NANCY S. BARRETT**, in her official capacity as Provost and Senior Vice President for Academic Affairs; **DR. DAVID J. STRAUSS**, in his official capacity as Dean of Students; **RICK EARNEST**, in his official capacity as Associate Dean of Students; **LAURA PECHTA**, individually and in her official capacity as Campus Life Advisor and Student Council Advisor; **MICHAEL BOWEN**, in his official capacity as Interim Director of Reservation Services; **CHRIS BASSO**, individually and in her official capacity as Assistant Director of Reservation Services; **THE STUDENT COUNCIL OF WAYNE STATE UNIVERSITY**; the **PRESIDENT, VICE PRESIDENT, PARLIAMENTARIAN, TREASURER, SECRETARY, GOVERNMENTAL AFFAIRS CHAIR, COMMUNITY AFFAIRS CHAIR, PROGRAM BOARD CHAIR**, and all other **MEMBERS OF THE STUDENT COUNCIL OF WAYNE STATE UNIVERSITY**, all in their official capacities.

Defendants.

CASE NO. \_\_\_\_\_

**VERIFIED COMPLAINT**

Plaintiffs, Wayne State University Students for Life, Juliegha Norus, and Mark Robertson, by and through their counsel, and for their Complaint against Defendants Eugene Driker, Richard Bernstein, Tina Abbott, Debbie Dingell, Diane L. Dunaskiss, Paul E. Massaron, Annetta Miller, Jacquelin E. Washington, Irvin D. Reid, Nancy Barrett, David J. Strauss, Rick Earnest, Laura Pechta, Michael Bowen, Chris Basso, the Student Council of Wayne State University, and all the officers and members of the Student Council of Wayne State University hereby state as follows:

### **INTRODUCTION**

1. Wayne State University enforces a mandatory student fee system that expressly excludes from eligibility any student organizations wishing to seek funding for religious and/or political messages. This same fee system lacks safeguards to ensure that student organization requests for funding will be considered on a viewpoint-neutral basis.

2. The University also enforces a facilities use policy that grants officials unbridled discretion to deny student organizations access to campus facilities based on the organization's particular viewpoint.

3. WSU officials have applied these policies to deny Plaintiff, Wayne State Students for Life, access to student funding and campus facilities based on the content and viewpoint of the group's message. Through these policies and practices, Defendants violate the First and Fourteenth Amendment rights of the Plaintiffs, as well as those of every student on campus.

### **JURISDICTION AND VENUE**

4. This action raises federal questions under the First and Fourteenth Amendments to the United States Constitution and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

5. This Court has original jurisdiction over these federal claims pursuant to 28

U.S.C. §§ 1331 and 1343.

6. This Court has authority to award the requested declaratory relief under 28 U.S.C. § 2201; the requested injunctive relief under 28 U.S.C. § 1343(3); the requested damages under 28 U.S.C. § 1343(3); and attorneys' fees under 42 U.S.C. § 1988.

7. Venue is proper under 28 U.S.C. § 1391 in the Eastern District of Michigan because a substantial part of the actions or omissions giving rise to this case occurred within this District and at least one Defendant resides in this District.

#### **PLAINTIFFS**

8. Plaintiff, Wayne State Students for Life (SFL) is an unincorporated, expressive, recognized student organization at Wayne State University (WSU or University) in Detroit, Michigan.

9. Juliegha Norus is a junior at Wayne State University and is an active member of SFL. Plaintiff Norus is responsible to pay tuition and fees in order to attend the University.

10. Mark Robertson is a senior at Wayne State University and is the former secretary of SFL. Plaintiff Robertson is responsible to pay tuition and fees to attend the University.

#### **DEFENDANTS**

11. Defendant Eugene Driker is the Chair of the Board of Governors of Wayne State University, a public university organized and existing under the laws of the State of Michigan, and is responsible with other Board members and officials for overseeing the Wayne State University administration and policy-making, including the policies and procedures contained herein. He is sued in both his individual and official capacities.

12. Defendant Richard Bernstein is the Vice Chair of the Board of Governors of Wayne State University, a public university organized and existing under the laws of the State of

Michigan, and is responsible with other Board members and officials for overseeing the Wayne State University administration and policy-making, including the policies and procedures contained herein. He is sued in both his individual and official capacities.

13. Defendant Tina Abbott is a member of the Board of Governors of Wayne State University, a public university organized and existing under the laws of the State of Michigan, and is responsible with other Board members and officials for overseeing the Wayne State University administration and policy-making, including the policies and procedures contained herein. She is sued in both her individual and official capacities.

14. Defendant Debbie Dingell is a member of the Board of Governors of Wayne State University, a public university organized and existing under the laws of the State of Michigan, and is responsible with other Board members and officials for overseeing the Wayne State University administration and policy-making, including the policies and procedures contained herein. She is sued in both her individual and official capacities.

15. Defendant Diane L. Dunaskiss is a member of the Board of Governors of Wayne State University, a public university organized and existing under the laws of the State of Michigan, and is responsible with other Board members and officials for overseeing the Wayne State University administration and policy-making, including the policies and procedures contained herein. She is sued in both her individual and official capacities.

16. Defendant Paul E. Massaron is a member of the Board of Governors of Wayne State University, a public university organized and existing under the laws of the State of Michigan, and is responsible with other Board members and officials for overseeing the Wayne State University administration and policy-making, including the policies and procedures contained

herein. He is sued in both his individual and official capacities.

17. Defendant Annetta Miller is a member of the Board of Governors of Wayne State University, a public university organized and existing under the laws of the State of Michigan, and is responsible with other Board members and officials for overseeing the Wayne State University administration and policy-making, including the policies and procedures contained herein. She is sued in both her individual and official capacities.

18. Defendant Jacquelin E. Washington is a member of the Board of Governors of Wayne State University, a public university organized and existing under the laws of the State of Michigan, and is responsible with other Board members and officials for overseeing the Wayne State University administration and policy-making, including the policies and procedures contained herein. She is sued in both her individual and official capacities.

19. Defendant Irvin D. Reid is the President of Wayne State University, a public university organized and existing under the laws of the State of Michigan. Defendant Reid is the Chief Executive Officer of the University and is responsible for carrying out the policies established by the Board of Governors and for establishing policies for all recognized student organizations. Defendant Reid is also responsible for the administration and organization of the University. He is sued in both his individual and official capacities.

20. Defendant Dr. Nancy S. Barrett is the Provost and Senior Vice President of Wayne State University, a public university organized and existing under the laws of the State of Michigan, and is responsible for academic, faculty, and student affairs, including the administration and enforcement of the policies and procedures contained herein. She is sued in her official capacity.

21. Defendant Dr. David J. Strauss is the Dean of Students of Wayne State University, a

public university organized and existing under the laws of the State of Michigan. Defendant Strauss is the chief officer of the Dean of Students Office and is charged with administering the policies and procedures governing the operation of student organizations including reservation of campus facilities and approval of student organization funding requests. He is sued in his official capacity.

22. Defendant Rick Earnest is the Associate Dean of Students of Wayne State University, a public university organized and existing under the laws of the State of Michigan. Defendant Earnest is charged with administering the policies and procedures governing the operation of student organizations including reservation of campus facilities and approval of student organization funding requests. Defendant Earnest is further responsible for initiating requests for allocations of student activity monies to student organizations. He is sued in his official capacity.

23. Defendant Laura Pechta is the Campus Life Advisor and Student Council Advisor in the Dean of Students Office of Wayne State University, a public university organized and existing under the laws of the State of Michigan. She is one of the officials in the Dean of Students Office who is responsible for administering the policies and procedures governing the operation of student organizations including reservation of campus facilities and approval of student organization funding requests. She is sued in both her individual and official capacities.

24. Defendant Michael Bowen is the Interim Director of the Student Center at Wayne State University, a public university organized and existing under the laws of the State of Michigan. The Student Center is the official reservation agent for all student organizations wishing to reserve space within the Student Center. He is sued in his official capacity.

25. Defendant Chris Basso, is the Assistant Director of the Student Center at Wayne State University, a public university organized and existing under the laws of the State of Michi-

gan. Defendant Basso is one of the agents responsible for approving reservations for all student organizations wishing to reserve space within the Student Center. She is sued in both her individual and official capacities.

26. The Student Council of Wayne State University is the recognized student government at Wayne State University, a public university organized and existing under the laws of the State of Michigan. The Student Council develops and recommends policies and procedures for all student organizations to the President of the University. Furthermore, the Student Council must approve all monies that are allocated to student organizations. The Student Council is sued directly.

27. The President, Vice President, Parliamentarian, Treasurer, Secretary, Governmental Affairs Chair, Community Affairs Chair, Program Board Chair, and all other members of Student Council serve as the recognized student government at Wayne State University, a public university organized and existing under the laws of the State of Michigan. The Student Council develops and recommends policies and procedures for all student organizations to the President of the University. Furthermore, the Student Council must approve all monies that are allocated to student organizations. The Officers and members of the Student Council are all sued in their official capacities.<sup>1</sup>

### **FACTUAL BACKGROUND**

#### **A. WAYNE STATE STUDENTS FOR LIFE HISTORY AND MISSION**

28. SFL is a recognized student organization at WSU and has been since the fall semester of 2004. SFL is an unincorporated, expressive organization that advocates, advances, and defends the pro-life perspective. SFL and its members believe that ending abortion is *the* great moral challenge of our time.

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<sup>1</sup> The Student Council of Wayne State University as well as the officers and members of the Student Council are collectively referred to as the “Student Council” throughout the Complaint.

29. According to its application for recognition, SFL officially exists “for the purpose of fostering respect for life among the students of Wayne State University.” A copy of SFL’s New Student Organization Application for Recognition, submitted October 1, 2004, is attached as Exhibit 1 to this Complaint.

30. In advancing this general purpose, SFL seeks to “to promote respect for life at Wayne State University and in the surrounding community, to educate on life issues, to help those in need so that life is a promising choice, to work with others who share [SFL’s] goals, and to save lives threatened by abortion.” A copy of SFL’s e-mail of February 27, 2008 outlining its budget request, which summarizes SFL’s purpose, is attached as Exhibit 2 to this Complaint.

31. “The primary goal of Students for Life is to defend human lives threatened by induced abortion from fertilization until birth. Secondary goals of the group are to defend human lives threatened by euthanasia and embryonic stem cell research.” (*See* Compl. Ex. 2 at 5.)

32. SFL seeks to carry out its purposes through “education and outreach” to WSU students and faculty, as well as to the local community. (*See* Compl. Ex. 1 at 2.)

33. Recent SFL education and outreach efforts have included the following:

- Hosting “Child of Rape” speaker Rebecca Kiesling;
- Organizing Pro-Life Week 2007;
- Attending Students for Life of Michigan Conference;
- Participating in both Student Organization day and Winterfest;
- Attending Students for Life of America Conference in Washington, D.C. in January 2008;
- Participating in March for Life in Washington D.C. in January 2008;
- Volunteering regularly at Imago Dei Crisis Pregnancy Center in Detroit;

- Providing several educational literature tables on campus;
- Maintaining informational showcases in the Student Center and State Hall;
- Holding regular weekly meetings open to the WSU community.

(See Compl. Ex. 2 at 2.)

34. To convey its pro-life message to the WSU community, SFL, like many ideological student organizations, seeks access to student activity funds and campus facilities. As discussed at length below, WSU officials denied SFL access to both funding and facilities in 2008 based on the content and viewpoint of SFL's speech.

**B. WAYNE STATE UNIVERSITY'S VIEWPOINT DISCRIMINATORY STUDENT FEE SYSTEM**

35. Wayne State University (WSU or University) is a public university organized and existing under the laws of the State of Michigan, and receives funding from the State of Michigan in order to operate. Upon information and belief, the funds distributed to WSU by the State of Michigan are raised, in part, by taxing state residents, tuition and fees paid by students, general operating receipts, gifts, trusts, and federal funds.

36. Michigan law gives the power of university governance to the Board of Governors of Wayne State University (Board) and further authorizes the Board to "control and direct[] all [WSU's] funds," and to "fix tuition and other fees. . . ." See MICH. CONST. art. 8, § 5; MICH. COMP. LAWS § 390.645.

37. Per the Board's delegation of some of its governing authority, the President of WSU serves as the University's Chief Executive Officer and designates various Executive Officers of the University, including the Provost and Senior Vice President for Academic Affairs and the Dean of Students. A copy of the Board of Governors Bylaws is attached as Exhibit 3 to this

Complaint, a copy of the WSU Statutes is attached as Exhibit 4 to this Complaint, and a copy of the WSU Organization Charts is attached as Exhibit 5 to this Complaint. Each of these three documents verifies the Board of Governor's delegation to the President and other Executive Officers of the University. (*See* Compl. Ex. 3 at 11; Compl. Ex. 4 at 21; Compl. Ex. 5 at 31.)

38. Additionally, the Board has delegated some of its governing and policymaking powers to the Student Council. A copy of the WSU Student Council Bylaws, which verifies this delegation, is attached as Exhibit 6 to this Complaint.

39. Defendant Board members have established a mandatory, non-refundable, Omnibus Fee that the University charges to all WSU students. A summary of WSU tuition and fee charges is attached as Exhibit 7 to this Complaint, a copy of WSU's Fiscal Year 2008 Current Funds Budget is attached as Exhibit 8 to this Complaint, and a copy of WSU's Statement of Tuition and Fee Regulations is attached as Exhibit 9 to this Complaint. Each of these documents sets forth the mandatory fee described above. (*See* Compl. Ex. 7 at 57; Compl. Ex. 8 at 64; - Compl. Ex. 9 at 75.)

40. Per WSU policy, Plaintiffs Juliegha Norus and Mark Robertson, as well as all other WSU students, are required to pay the Omnibus Fee. (*See* Compl. Ex. 7 at 57; Compl. Ex. 8 at 64; Compl. Ex. 9 at 75.)

41. On information and belief, Defendants Reid and Barrett assess and collect the Omnibus Fee from Plaintiffs Norus, Robertson, and all other WSU students.

42. The Omnibus Fee is used primarily to "maintain, upgrade, and replace student computing and technology resources on campus." However, a portion of the fee "is also used to fund student activities on campus, and to enhance programs directed towards improving on-campus

activities, including athletics.” (See Compl. Ex. 7 at 57.) A copy of WSU’s article entitled “Why am I charged an Omnibus Fee?,” which outlines the same purpose for this fee, is attached as Exhibit 10.

43. For the Winter Semester 2008, WSU students were assessed as follows: Undergraduate students were assessed a \$17.90 fee per credit hour per term; graduate and professional Law and Pharmacy students were assessed a \$26.90 fee per credit per term; first professional medical students were assessed a flat \$642.50 fee per year. (Compl. Ex. 9 at 75.) A copy of WSU’s Winter 2008 Schedule of Tuition and Fees, which verifies these charges, is attached as Exhibit 11.

44. For the 2007–08 academic year, Plaintiff Norus was required to pay \$519.10 for the Omnibus Fee.

45. For the 2007–08 academic year, Plaintiff Robertson was required to pay \$626.60 for the Omnibus Fee.

46. In Fiscal Year 2008, the Omnibus Fee revenues totaled \$13.2 million dollars. (Compl. Ex. 8 at 65.) “After a recurring set aside of \$2.0 million for financial aid and other purposes, omnibus fee revenues are earmarked for the following purposes—student computing and technology; athletics enhancements; *student activities* and campus safety.” (*Id.* at 66 (emphasis added).) A base allocation of \$450,000 of Omnibus Fee revenues is made to student activities, while \$858,100 is unallocated so as to be distributed on a discretionary basis to “meet student needs.” (*Id.*)

47. The policies and procedures regarding the Omnibus Fees are primarily set out in three primary documents: (1) The Student Council Budget Committee Budget Handbook (Budget Handbook), which is attached as Exhibit 12 to this Complaint; (2) The Financial Manual for Student Organizations (Financial Manual), which is attached as Exhibit 13 to this Complaint; and (3) The Student Organizations Information Manual (Information Manual), which is attached

as Exhibit 14 to this Complaint.

48. The student activities allocation and the unallocated portion of the Omnibus Fee revenues are not state funds. “The source of these funds are monies generated by the Omnibus Fee[—which is paid by WSU students—]and placed in the University General Fund.” (Compl. Ex. 13 at 103.)

49. The student activities allocation, (hereinafter, “Student Activity Funds”) and, on information and belief, the discretionary allocation of Omnibus Fee revenues are assigned to the Student Council “for recommended allocation to eligible student organizations to augment the programs offered by the University.” (Compl. Ex.13 at 103.) A copy of a section of WSU’s web site entitled “Campus Life,” which describes the role of the Student Council in allocating parts of the Omnibus Fee, is attached as Exhibit 15 to this Complaint. (*See* Compl. Ex. 15 at 168 (“The Student Council allocates the student life portion of the Omnibus Fee.”).)

50. Student organizations recognized by the Dean of Students Office are eligible to request such funds from the Student Council for various campus programs. (Compl. Ex. 13 at 103.)

51. According to the Information Manual, the Student Council is the “primary financial resource for student organization programs.” (Compl. Ex. 14 at 127.)

52. In this role, the Student Council—according to the Budget Handbook—“must approve all monies allocated to student organizations.” (Compl. Ex. 12 at 84.)

53. On information and belief, the Board of Governors Defendants, Defendant Reid, Defendant Barnett, the Dean of Students Office Defendants, the Student Council, or their predecessors in office drafted, adopted, approved, or supervised the creation of the policies and procedures governing the use of Student Activity Funds by student organizations. (*See* Compl.

Ex. 13 at 103.) The Board of Governors Defendants, Defendant Reid, Defendant Barnett, the Dean of Students Office Defendants, and the Student Council have enforced the policies and procedures governing the use of Student Activity Funds against the Plaintiffs and other students and student organizations.

54. The Budget Committee of the Student Council has determined that Student Activity Funds are best spent “when [they] provide[] activities and events that benefit the entire WSU student body.” The Student Council, therefore, allocates Student Activity Funds consistent with the following priorities:

1. On campus programs
2. Operational expenses of an organization
3. Organizational travel

(*See* Compl. Ex. 12 at 85.)

55. The Budget Handbook provides a brief discussion as to what type of events would be considered beneficial to the WSU student body, and would thus be eligible for funding.

There are no hard and fast rules as to how a student group can provide activities and events that benefit the WSU student body, since each group has its own unique contributions to add to the student community. Cultural groups might sponsor events to showcase their culture, through musical groups, informative movies, or speakers. Academic organizations might sponsor lectures by guest speakers, hold seminars, or create a series of tutoring sessions. All groups should use their budget money to contribute to WSU campus life. For further ideas see a Campus Activities Professional in the Dean of Students Office (DOSO).

(Compl. Ex. 12 at 85.)

56. The Budget Handbook also provides a list of prohibited uses of Student Activity Funds. (*See* Compl. Ex. 12 at 85.)

Because the funds being allocated for student organization use are public funds, they may only be used for public purposes. This means that the proposed activity/conference/operation should be equally open to all and its purpose should be to

serve all. Therefore, funds may not be used for 1) *political advocacy*, 2) *to advance religion*, or 3) for operational or event funds for activities in which members are selected (i.e. fraternity or sorority recruitment/intake).

(*Id.* at 94 (emphasis added).)

57. Recognized student organizations wishing to apply for Student Activity Funds must first attend a Budget Workshop presented by the Dean of Students Office. Following the workshop, the student organization must complete an online Budget Request Packet (BRP) and submit the BRP to the Student Council Budget Committee for review.

58. The Student Council Budget Committee may require the student organization to attend a hearing during a Budget Committee meeting to answer questions about the BRP.

59. The Budget Handbook specifies the next step in the process:

Based on the results of the [Budget Committee] meeting and the amount of total [Student Activity Funds] requested by a student organization, the following process will determine recommendation for approval of a budget request:

- **Up to \$500**—[Budget Committee] has final recommendation authority of budget with sign-off approval of the President and Treasurer of [Student Council].
- **\$501–\$1000**—[Budget Committee] makes recommendation of budget amount to the [Student Council] Executive Board, who has final recommendation authority at their regularly scheduled meeting.
- **\$1001 and up (including all SEF requests)**—[Budget Committee] makes recommendation to the [Student Council] for final recommendation to [Dean Of Students Office] at their regularly scheduled meeting (first and third Thursdays of every month).

(Compl. Ex. 12 at 87.)

60. If the Student Council recommends approval of the budget allocations requested, the BRP is submitted to the Dean of Students Office so that it can ensure that the allocations Student Activity Funds comply with University policies. Once the Dean of Students Office has approved the allocation, it will notify the student organization of the actual amount allocated, and will then

complete the paperwork to transfer the funds into the organization's account. (*See* Compl. Ex. 12 at 87.) "All expenditures must be completed on University financial forms and be approved and processed by the Dean of Students Office prior to the event." (Compl. Ex. 14 at 134.)

61. If the Student Council denies the BRP, or the student organization is otherwise dissatisfied with the amount of funding allocated, the student organization may appeal the decision in writing to the Budget Committee. If the Budget Committee denies the appeal, "the organization may request an appeal to the full Student Council, which will discuss the appeal at their next scheduled meeting. . . . [*T*he Student Council decision will be considered final." (Compl. Ex. 12 at 88 (emphasis added).)

62. Therefore, a BRP must be approved by the Student Council and by the Dean of Students Office Defendants for the student organization to receive any Omnibus Fee funds. A general flow chart showing the entire process for requesting Omnibus Fee funds is attached as Exhibit 16 to this Complaint.

**C. DEFENDANTS' DISCRIMINATORY APPLICATION OF THE STUDENT FEE SYSTEM AGAINST PLAINTIFF WAYNE STATE STUDENTS FOR LIFE**

63. As a recognized student organization, SFL is eligible to request Student Activity Funds to supplement programs and events sponsored by the organization.

64. Since 2004, SFL has held an annual "Pro-Life Week" at WSU. Pro-Life Week is designed to promote respect for life and to educate the WSU community on life issues.

65. On February 27, 2008, Ms. Andrea Bezaire, President of SFL, submitted an On-line Budget Request Packet to the Budget Committee seeking funds for Pro-Life Week 2008.

66. In the cover letter to the Budget Request, Ms. Bezaire reiterated the purposes for SFL's existence:

Wayne State University Students for Life was created in the fall semester of 2004 to organize and activate pro-life students on campus. Students for Life's members seek to promote respect for life at Wayne State University and in the surrounding community, to educate on life issues, to help those in need so that life is a promising choice, to work with others who share our goals, and to save lives threatened by abortion. The primary goal of Students for Life is to defend human lives threatened by induced abortion from fertilization until birth. Secondary goals of the group are to defend human lives threatened by euthanasia and embryonic stem cell research.

(Compl. Ex. 2 at 5.)

67. Ms. Bezaire further explained that Pro-Life Week 2008 would consist of five separate events—one for each day of the week—that are designed to accomplish the goals of SFL on campus. (*See* Compl. Ex. 2 at 5.)

68. Specifically, the Pro-Life Week 2008 events would include the “Cemetery of the Innocent,” “Spiritual Adoption,” “Photo with a Fetus,” “Pro-Life Trivia,” and a presentation by a post abortive group named, “Silent No More.” (*See* Compl. Ex. 2 at 5–6.)

69. For Monday's proposed event, the “Cemetery of the Innocent,” SFL students would post rows of flags in Gullen Mall to represent the number of abortions that take place in America each year.

70. Ms. Bezaire described the “Spiritual Adoption” event, which was proposed for Tuesday, as follows:

This is an event to help our population feel a bit closer to the unborn children of the world. Through this event, participants will be given the opportunity to ‘adopt’ an unborn baby. They are asked to think (*or if they feel comfortable to pray*) about their adopted child, with the hopes that after nine months the child's mother will have chosen to bring her baby into the world through a live birth.

(Compl. Ex. 2 at 5 (emphasis added).)

71. For Wednesday, SFL planned a “Photo with a Fetus” event in which WSU stu-

dents would have the opportunity to have their picture taken with a model of a fetus at different stages of development.

72. SFL requested that Thursday's proposed event, the "Pro-Life Trivia" game, be held on the stage at the Student Center North Commons. SFL would cycle through one hundred (100) questions in the course of three hours on topics ranging from abortion, euthanasia, infanticide, prenatal testing, safe haven laws, and stem cell research. Prizes would be given for participation and correct answers.

73. For Pro-Life Week 2008's final day, SFL proposed bringing a group of speakers to WSU called, "Silent No More." These speakers would share their personal stories regarding the destructive emotional, spiritual, and physical consequences of abortion.

74. SFL strategically focused the majority of its Budget Request on publicity and promotion in order to ensure the success of the events and in order to comply with Student Council policy. Indeed, the Budget Committee Handbook states the following in relevant part:

All organizations should realize that WSU is mainly a commuter campus and that advertising is essential for [Student Council] sponsored activities. Letting the student body know about your activities and programs will enrich both their college experience and your organization's reputation. Utilize such resources as *The South End*, flyers, banners, and showcases to get the word out about your organization. **Failure to adequately advertise to the general WSU campus could result in the loss of future funding for your organization.**

(See Compl. Ex. 12 at 86 (emphasis original).)

75. In total, SFL requested \$4,010.30 in Student Activity Funds for Pro-Life Week 2008, which included the following subtotals: (a) \$371.00 for flyers for the "Cemetery of the Innocent" display; (b) \$100.00 for flyers for the "Spiritual Adoption" event; (c) \$572.40 for flyers for the "Photo with a Fetus" event; (d) \$800.65 for T-shirts and candy for the "Pro-Life

Trivia” game; (e) \$116.25 for snacks to be served at the “Silent No More” speaking event; and (f) \$2,050.00 for publicity and promotion costs for the entire weeks’ events. A copy of SFL’s 2007–08 Online Budget Packet is attached as Exhibit 17 to this Complaint.

76. On or about March 20, 2008, the Student Council voted to deny SFL’s entire Budget Request for funding for Pro-Life Week 2008.

77. On or about March 21, 2008, Defendant Pechta emailed Ms. Bezaire to notify her that the Student Council had denied SFL’s entire budget request “because of the spiritual and religious programming references in the cover letter.” In the email, Defendant Pechta encouraged SFL to appeal the decision to the Student Council. A copy of Defendant Pechta’s e-mail to Ms. Bezaire on March 21, 2008 is attached as Exhibit 18 to this Complaint.

78. On that same day, Ms. Bezaire sent an email to the Student Council and Defendant Pechta appealing the funding denial. On or about March 28, 2008, Defendant Pechta sent an email reply confirming that the Student Council had received the appeal request, and would be considering the appeal at the next Student Council meeting. A copy of the e-mails between Ms. Bezaire and Defendant Pechta on March 28, 2008 is attached as Exhibit 19 to this Complaint.

79. On or about April 3, 2008, Defendant Pechta emailed a revised form of SFL’s Budget Request that would be considered by the Student Council on appeal. The primary revision consisted of an approximately \$1000 cut from SFL’s original publicity and promotion budget. A copy of Defendant Pechta’s e-mail from approximately April 3, 2008 is attached as Exhibit 20 to this Complaint.

80. On or about April 3, 2008, the Student Council held a hearing to discuss SFL’s appeal of its Budget Request. Defendant Strauss attended the hearing.

81. At the hearing, the SFL members were allowed to make a statement as to why the Budget Request should be approved. The SFL members present stated that the group had removed all religious references per the Student Council's original denial. Specifically, SFL changed the "Spiritual Adoption" event to simply an "Adoption" event, wherein general information about adoption would be provided to the campus. The SFL members also explained that SFL does not have a particular religious or political affiliation.

82. The Student Council then engaged in an extended debate as to whether or not to deny, partially deny, or fully grant SFL's Budget Request. During the course of the debate, several Student Council members stated that the subject matter of SFL's Pro-Life Week events was inappropriate. One council member in particular stated that SFL's material could greatly offend women who have had an abortion. However, one council member stated that SFL had a First Amendment right to say what they wanted to say.

83. One council member moved to revise SFL's budget by only approving funding for two events, namely, the "Cemetery of the Innocent" and the "Silent No More" events. The motion was defeated by one vote.

84. The Student Council then considered whether or not to grant SFL's full Budget Request. After extended discussion, a council member moved to re-vote on the previous revision motion, but the President denied the request.

85. Finally, after further discussion, one council member stated that this was not a First Amendment issue because the University does not have to fund all speech in a given forum. Therefore, the council member urged the Student Council to just vote based on their own personal views.

86. On information and belief, the Student Council then voted to deny SFL's entire

Budget Request by secret ballot. The Student Council failed to provide SFL with any written documentation concerning the decision.

87. On information and belief, the Student Council has funded student organizations presenting a pro-abortion perspective multiple times during the 2007–08 academic school year.

88. Because the Student Council denied SFL’s funding request, Pro-Life Week 2008 was not well-publicized, and consequently, the event was not as well attended as in previous years.

**D. STUDENT CENTER RESERVATION POLICY**

89. Recognized Student Organizations are eligible not only to apply for funding, but also to reserve campus facilities for various programs.

90. On information and belief, the Board of Governors Defendants, Defendant Reid, Defendant Barnett, the Dean of Students Office Defendants, the Reservation Services Defendants, or their predecessors in office drafted, adopted, approved, or supervised the creation of the policies and procedures governing the use of campus facilities by student organizations. The Board of Governors Defendants, Defendant Reid, Defendant Barnett, the Dean of Students Office Defendants, the Reservation Services Defendants, or their predecessors in office have enforced the policies and procedures governing the use of campus facilities against Plaintiff SFL and other student organizations.

91. The Board of Governors passed a statute generally regulating the use of University facilities. A copy of the Board of Governors’ statute regarding the use of University facilities is attached as Exhibit 21 to this Complaint.

92. The Board of Governors’ statute lists the factors that are to be weighed by University officials considering requests to use WSU facilities. These factors include the following:

The needs of the instructional program of the University are given first consideration in the scheduling and assignment of university facilities. The granting of other requests for use of University facilities shall be dependent upon a variety of factors including the nature of the event and its relationship to the total programming of the University, the availability of an appropriate facility and supportive programming and other services, and the relationship of the sponsoring organization to the University.

(*See* Compl. Ex. 21.)

93. The Facilities Use statute also delegates policymaking authority to the officials overseeing specific WSU facilities: “Groups using facilities shall comply with all laws, ordinances, safety regulations and applicable rules or conditions that apply to specific facilities or areas.” (*See* Compl. Ex. 21.)

94. The Dean of Students Office publishes the Student Organizations Information Manual, which is the “governing booklet for student organizations on campus.” (*See* Compl. Ex. 12 at 98.) This Manual governs all student organization reservations generally, and mandates in relevant part, the following:

For all student organization reservations campus wide . . . an authorized student organization officer must meet with a Campus Activities Professional (CAP) in the Dean of Students Office, room 351 Student Center, to discuss the event and complete an Event Planning Form (EPF). . . . The completed EPF must be signed by both an authorized officer of the group and a CAP and presented to the Student Center Administration reservationist or other reservation agents on campus **before** any space for an event can be reserved. Campus reservation agents will not accept any programmatic reservations without an approved EPF.

(*See* Compl. Ex. 14 at 143 (emphasis in original).)

95. The Manual further governs student organization reservations for the Student Center, specifically, and states in relevant part, the following:

Student Center Administration is the official reservation agent for all student organizations wishing to reserve space within the Student Center. . . . **All** student organization room reservations for these facilities must be made through the re-

servationists in Room 573 of the Student Center. Most will require an approved Event Planning Form (EPF) from the Dean of Students Office.

(See Compl. Ex. 14 at 143 (emphasis in original).)

96. WSU policy further outlines guidelines for student organizations seeking to reserve space at the Student Center. “Room reservation requests for Student Center facilities . . . will be granted in the order received in accordance with the guidelines for the ‘Use of University Facilities’, as adopted by the Board of Governors on March 14, 1975.” (Compl. Ex. 14 at 144.)

97. Per the power delegated by the Board of Governors Facilities Use policy,

The Student Center Administration reserves the right to determine which facilities will best accommodate an event and *may deny a request for a specific facility on the basis of suitability*. The Student Center Administration also reserves the right to change the room of a confirmed reservation in the event of an emergency or other extenuating circumstances. In such cases, every effort will be made to contact the event chairperson in advance and appropriate measures will be taken to make the change as smooth as possible.

(Compl. Ex. 14 at 144 (emphasis added).)

98. WSU policies do not provide an appeal to student organizations that have had their facility request denied.

**E. DEFENDANTS’ DISCRIMINATORY APPLICATION OF THE STUDENT CENTER RESERVATION POLICY AGAINST PLAINTIFF WAYNE STATE STUDENTS FOR LIFE**

99. In anticipation of Pro-Life Week 2008, SFL also attempted to reserve University facilities for the Pro-Life Trivia game.

100. SFL intended for the Pro-Life Trivia game to attract maximum exposure and participation from students and faculty. Given the dynamics of the WSU community, SFL determined that this goal would be achieved best in a conspicuous area with a large, revolving population of students and faculty.

101. To achieve maximum exposure to the campus body, SFL planned to use WSU's LCD projector to display the pro-life questions and a microphone to interview the trivia contestants.

102. Furthermore, SFL created approximately one hundred questions relating to life issues that would be continuously recycled over the course of three hours to accommodate the busy campus community. SFL wanted the community to encounter the event in the course of their normal schedules, answer as many or as few questions as possible, and then move on.

103. SFL leaders strategically chose the North Commons stage area in the Student Center because it enjoyed high foot traffic, was a natural, open, gathering point for students and faculty, was prominent due to the elevation of the stage, and featured audio-video capabilities.

104. On or about, March 17, 2008, Ms. Bezaire submitted an Event Planning Form to the Dean of Students Office and the Student Center Administration in which SFL requested use of the North Commons room, as well as the stage, projector, microphones and speakers. A copy of the Event Planning Form that Ms. Bezaire submitted on or about March 17, 2008 is attached as Exhibit 22 to this Complaint.

105. Defendants Basso and Pechta decided to deny SFL's request and suggest alternative venues within the Student Center. In her email denying the request, Defendant Basso stated that the North Commons would not be a "*suitable location for [the] event.*" Defendant Basso further recommended that SFL hold the Trivia game in Hilberry C or Room 289. A copy of Defendant Basso's e-mail on March 18, 2008 denying SFL's request regarding the North Commons is attached as Exhibit 23 to this Complaint.

106. The Pro-Life Trivia event was designed to be a flexible and open event, rather than a formal presentation during which the same audience would be present throughout. Ac-

cordingly, neither Room 289 nor Hilbery C would be appropriate for the event because they are located on the second floor of the student center, enjoy little foot traffic, and are enclosed rooms that would require students and faculty to go out of their way to locate.

107. On or about March 18, 2008, Ms. Bezaire emailed Defendant Basso urging her to reconsider the request due to the strategic nature of the North Commons room.

We were hoping to get the stage and a projector set up for this event. We were planning on having it in North Commons so that students would see us as they were getting lunch, and they could participate for as long or short a time as they want.

(See Compl. Ex. 23.)

108. Defendant Basso reiterated that WSU “will not permit you to do this event in the North Commons.” (See Compl. Ex. 23.)

109. Ms. Bezaire replied with one last plea for the North Commons room and expressed her concern that the attendance would be extremely low if the event were held at Hilberry C. (See Compl. Ex. 23.)

110. Defendant Basso responded with the following firm denial:

I’m really sorry—I’ve discussed it with Laura Pechta in the Dean of Students Office and we just can’t permit this. We limit the programs that take place in the North Commons mostly to entertainment type events. ***Some people would no doubt likely find it difficult to eat lunch if they have strong opinions either for or against your group.*** We get complaints even when we remove furniture to set up a stage. Room 289 would work pretty well for your program format. I also recommend that you book a literature table at the same time to promote your program and direct people upstairs. Put an easel by your table with a poster. I know you’re disappointed but that venue is simply not an option.

(See Compl. Ex. 23 (emphasis added).)

111. On information and belief, Defendants Strauss, Earnest, and Bowen had knowledge of and/or approved of the decision of Defendants Basso and Pechta.

112. SFL ended up holding the event at a literature table down the hall from the North Commons room. However, because the hallway lacked the elevated stage and audio-visual equipment, and further, was not a natural place for students to stop and gather, the Pro-Life Trivia game did not attract or engage a substantial number of students and/or faculty.

**F. THE EFFECT OF DEFENDANTS' DISCRIMINATORY ACTIONS ON PLAINTIFFS**

113. By maintaining guidelines that facially exclude funding for religious and political expression of student organizations, Defendants have unconstitutionally compelled Plaintiffs Norus, Robertson, and all other WSU students to pay into a viewpoint discriminatory student fee system.

114. As a result of Defendants' initial refusal to fund SFL's pro-life expression with Student Activity Funds, SFL censored its own speech and removed all "religious" references in the Pro-Life Week 2008 events in order to comply with Defendants' unconstitutional policies. Accordingly, Defendants' policies governing the disbursement of Student Activity Funds have actually chilled Plaintiff's speech.

115. As a result of Defendants' refusal to fund SFL's pro-life expression on campus through the Student Activity Funds, Pro-Life Week 2008 events were not well-publicized, and consequently, SFL was not successful in communicating its message to the desired audience.

116. Additionally, Defendants discriminated against Plaintiff's speech by denying them equal access to an open campus facility—the North Commons stage area—because of the pro-life content and viewpoint of their speech. Because of this action, Plaintiffs were not able to engage many students or faculty with their pro-life message.

117. By denying SFL's request for Student Activity Funds based on SFL's religious speech and pro-life speech, and by further denying Plaintiff SFL equal access to an open forum,

Defendants violated rights guaranteed to Plaintiffs by the First and Fourteenth Amendments to the United States Constitution.

118. Defendants' policies and their intentional and knowing discriminatory actions against Plaintiff SFL's protected activities have had and continue to have a chilling effect upon Plaintiff's rights to engage freely and openly in appropriate discussions of their pro-life beliefs, theories, and ideas.

119. By engaging in these actions, the Defendants have violated rights guaranteed to Plaintiffs by the First and Fourteenth Amendments to the Constitution of the United States. These rights and laws are clearly established by governing legal authority, and Defendants' violations are knowing, intentional, and without justification.

**ALLEGATIONS OF LAW**

**FIRST CAUSE OF ACTION**

**Violation of Plaintiffs' First Amendment Right to Freedom of Speech  
Viewpoint Discrimination (42 U.S.C. § 1983)—Student Fee System**

120. Plaintiffs repeat and reallege each of the foregoing allegations in this Complaint.

121. By conditioning student organization benefits on compliance with the University's unlawful policies, by expressly refusing to fund religious and political expression of student organizations, by compelling Plaintiffs Norus and Robertson to pay into a viewpoint discriminatory system, by refusing to fund certain budget requests of pro-life student organizations that are funded for other student organizations, by requiring Plaintiff SFL to change its religiously expressive activities to subjects preferred by Wayne State University, and by singling out religious and pro-life activities for differential treatment, among other things, Defendants by policy and practice have discriminated on the basis of viewpoint and deprived Plaintiffs of their

ability to express their ideas freely on issues of religious and political concerns at WSU.

122. Defendants, acting under color of state law, and by policy and practice, have explicitly and implicitly discriminated on the basis of viewpoint and deprived Plaintiffs of their clearly established rights to freedom of expression secured by the First Amendment to the United States Constitution, entitling Plaintiffs to the relief prayed for below.

### SECOND CAUSE OF ACTION

#### **Violation of Plaintiffs' First Amendment Right to Free Speech Compelled Speech (42 U.S.C. § 1983)—Student Fee System**

123. Plaintiffs repeat and reallege each of the foregoing allegations in this Complaint.

124. By conditioning student organization benefits on compliance with the University's unlawful policies, by expressly refusing to fund religious and political expression of student organizations, by compelling Plaintiffs Norus and Robertson to pay into a viewpoint discriminatory system, by refusing to fund certain budget requests of pro-life student organizations that are funded for other student organizations, by requiring Plaintiff SFL to change its religiously expressive activities to subjects preferred by Wayne State University, and by singling out religious and pro-life activities for differential treatment, among other things, Defendants by policy and practice have compelled Plaintiffs to speak in favor of subjects with which they disagree, thereby depriving Plaintiffs of their ability to express their ideas freely on issues of religious concerns at WSU and associate with those of likeminded concern.

125. Defendants, acting under color of state law, and by policy and practice, have explicitly and implicitly discriminated on the basis of viewpoint and deprived Plaintiffs of their clearly established rights to freedom of expression secured by the First Amendment to the United States Constitution, entitling Plaintiffs to the relief prayed for below.

**THIRD CAUSE OF ACTION**

**Violation of Plaintiffs' First Amendment Right to Freedom of Expression  
Viewpoint Discrimination (42 U.S.C. § 1983)—Student Center Reservation Policy**

126. Plaintiffs repeat and reallege each of the foregoing allegations in this Complaint.

127. By enacting the WSU facilities use policies described above, Defendants have enacted an unreasonable time, place and manner restriction on Plaintiff's speech by giving University officials unbridled discretion (1) to deny student organization requests for campus facilities, and (2) to move student organization events.

128. By enforcing these regulations in denying Plaintiff's request to use the North Common stage area for the Pro-Life Trivia while approving reservation requests from other students and student organizations with a wide range of viewpoints, and by exercising unbridled discretion in the absence of criteria governing the decision to approve reservation requests, Defendants, acting under color of state law and by policy and practice have explicitly and implicitly discriminated on the basis of viewpoint and deprived Plaintiffs of their clearly established rights to freedom of speech and expression secured by the First Amendment to the Constitution of the United States.

129. Defendants, acting under color of state law, have enacted and enforced regulations that are both vague and overbroad, discriminate on the basis of viewpoint, and grant Defendants unbridled discretion in granting or denying access to public fora on the WSU campus. In so doing, they have deprived Plaintiffs of their clearly established constitutional rights to freedom of speech and freedom of expression guaranteed by the First Amendment to the Constitution of the United States, entitling Plaintiffs to the relief prayed for below

130. Defendants, acting under color of state law, and by policy and practice, have explicitly and implicitly discriminated on the basis of viewpoint and deprived Plaintiffs of their

clearly established rights to freedom of expression secured by the First Amendment to the United States Constitution.

**FOURTH CAUSE OF ACTION**

**Violation of Plaintiff's Fourteenth Amendment Right  
to Equal Protection of Law (42 U.S.C. § 1983)**

131. Plaintiffs repeat and reallege each of the foregoing allegations in this Complaint.

132. By conditioning student organization benefits on compliance with the University's unlawful policies, by refusing to fund religious and political expression of student organizations, by refusing to fund certain budget requests of pro-life student organizations that are funded for other student organizations, and by treating pro-life students and student organizations different than similarly situated students and student organizations, among other things, Defendants by policy and practice have deprived Plaintiffs of their ability to express freely their ideas on issues of religious and political concern at WSU and associate with those of likeminded concern.

133. Defendants, by policy and practice have enacted unreasonable time, place, and manner restrictions by granting University officials unbridled discretion (1) to deny student organization requests for campus facilities, (2) to move student organization events, and (3) to treat similarly situated student organizations differently. Defendants have in fact administered their regime for access to the traditional, designated and/or limited public fora on the WSU campus in an arbitrary, capricious, and viewpoint discriminatory manner to favor speech and assembly of other less controversial and more politically favored groups.

134. Defendants, acting under color of state law, have enacted and enforced the above-mentioned student fee and facilities use regulations in a manner that deprive Plaintiffs of their right to equal protection of the law and have therefore deprived Plaintiffs of rights clearly estab-

lished and secured by the Fourteenth Amendment to the Constitution of the United States, entitling Plaintiffs to the relief prayed for below.

**PRAYER FOR RELIEF**

WHEREFORE Plaintiff respectfully requests that this Court enter judgment against Defendants Driker, Bernstein, Abbott, Dingell, Dunaskiss, Massaron, Miller, Washington, Reid, Barrett, Strauss, Earnest, Pechta, Bowen, Basso, the Student Council, and all officers and members of the Student Council, and provide Plaintiff with the following relief:

- (A) A declaration stating that Defendants' student fee policies, on their face, discriminate on the basis of viewpoint and thus violate Plaintiffs' rights to freedom of speech;
- (B) A declaration stating that Defendants' application of the student fee policies to Plaintiff SFL discriminated on the basis of viewpoint and violated Plaintiffs' rights to freedom of speech and equal protection;
- (C) A preliminary and permanent injunction invalidating and restraining enforcement of the Defendants' unconstitutional student fee funding policies contained in the Student Council Budget Committee Budget Handbook, the Financial Manual for Student Organizations, and the Student Organizations Information Manual, as well as any Board of Governors or individual University policy that purports to prohibit Plaintiff SFL from applying to receive funding for religious, political, or pro-life expression;
- (D) A declaration stating that Defendants' application of the facilities use policies to Plaintiff SFL discriminated on the basis of viewpoint and violated Plaintiffs' rights to freedom of speech and equal protection;

- (E) A preliminary and permanent injunction invalidating and restraining enforcement of Defendants' unconstitutional facilities use policies, as well as any Board of Governors or individual University policy that purports to prohibit Plaintiff from having equal access to any university facility;
- (F) Damages (including nominal damages) in an amount to be determined by the Court;
- (G) Plaintiffs' reasonable attorneys' fees, costs, and other costs and disbursements in this action pursuant to 42 U.S.C. § 1988; and
- (H) All other further relief to which Plaintiffs may be entitled.

Respectfully submitted this 23<sup>rd</sup> day of July, 2008.

s/ Joel J. Kirkpatrick

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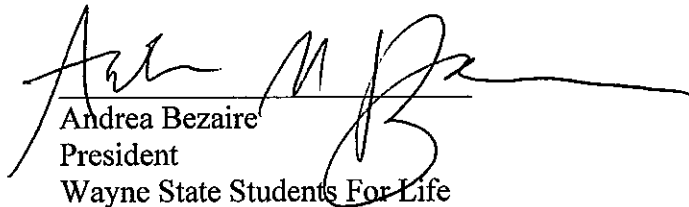
\* *Attorney Application for Admission has been requested*

**ATTORNEYS FOR PLAINTIFFS**

**VERIFICATION OF COMPLAINT**

I, Andrea Bezaire, a citizen of the United States and resident of the State of Michigan, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that I have read the foregoing Verified Complaint and the factual allegations therein, and the facts as alleged are true and correct.

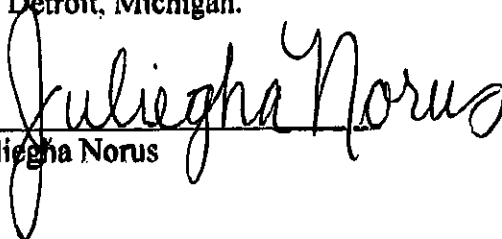
Executed this 15<sup>th</sup> day of July, 2008, at Detroit, Michigan.

  
Andrea Bezaire  
President  
Wayne State Students For Life

**VERIFICATION OF COMPLAINT**

I, Juliegha Norus, a citizen of the United States and resident of the State of Michigan, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that I have read the foregoing Verified Complaint and the factual allegations therein, and the facts as alleged are true and correct.

Executed this 21 day of July, 2008, at Detroit, Michigan.

  
\_\_\_\_\_  
Juliegha Norus

**VERIFICATION OF COMPLAINT**

I, Mark Robertson, a citizen of the United States and resident of the State of Michigan, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that I have read the foregoing Verified Complaint and the factual allegations therein, and the facts as alleged are true and correct.

Executed this 17<sup>th</sup> day of July, 2008, at Detroit, Michigan.



\_\_\_\_\_  
Mark Robertson