

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
HOUSTON DIVISION

TEXAS AGGIE CONSERVATIVES, a §
Recognized student organization at §
Texas A&M University, §
Plaintiff §

v. §

Civil Action No. 4:12-CV-1833

R. BOWEN LOFTIN, individually and in §
His official capacity as President of Texas §
A&M University; Lt. Gen. JOSEPH §
WEBER, individually and in his official §
Capacity as Vice President of Student §
Affairs at Texas A&M University; §
WILLIAM B. STACKMAN, individually §
and in his official capacity as Director of §
Student Activities at Texas A&M §
University; ROSEMARY SCHOENFELD, §
JOHN T. SWEENEY, CYNTHIA A. §
OLVERA, LAURA A. SIGLE, SOMBRA §
DAVIS, KATHRYN G. KING, §
TONYA DRIVER, MELISSA R. §
SHEHANE, LINDA D. LEWIS, and §
TRACIE A. LOWE, all individually §
And in their official capacities as Texas §
A&M University employees members §
Of the Student Organization Advisory §
Board; SAMANTHA L. ALVIS, §
CHAO HUANG, ROBERT C. §
SCOGGINS, STEPHEN N. BARNES, §
HOA T. NGUYEN, KELSEY HANES, §
and EMILY E. SCHARNBERG, all §
in their official capacities as Texas §
A&M University student members §
Of the Student Organization Advisory §
Board, §
Defendants. §

**SETTLEMENT AGREEMENT
AND FULL AND FINAL RELEASE OF ALL CLAIMS**

This SETTLEMENT AGREEMENT AND FULL AND FINAL RELEASE OF ALL CLAIMS ("Agreement") is entered into by and between TEXAS AGGIE CONSERVATIVES ("TAC") and TEXAS A&M UNIVERSITY, on behalf of R. BOWEN LOFTIN, individually and

in his official capacity as President of Texas A&M University; Lt. Gen. JOSEPH WEBER, individually and in his official capacity as Vice President of Student Affairs at Texas A&M University; WILLIAM B. STACKMAN, individually and in his official capacity as Director of Student Activities at Texas A&M University; ROSEMARY SCHOENFELD, JOHN T. SWEENEY, CYNTHIA A. OLVERA, LAURA A. SIGLE, SOMBRA DAVIS, KATHRYN G. KING, TONYA DRIVER, MELISSA R. SHEHANE, LINDA D. LEWIS, and TRACIE A. LOWE, all individually and in their official capacities as Texas A&M University employee members of the Student Organization Advisory Board; SAMANTHA L. ALVIS, CHAO HUANG, ROBERT C. SCOGGINS, STEPHEN N. BARNES, HOA T. NGUYEN, KELSEY HANES, and EMILY E. SCHARNBERG, all in their official capacities as Texas A&M University student members of the Student Organization Advisory Board (all referred to collectively herein as “TAMU”). Collectively, TAC and TAMU comprise “the Parties” to this Agreement.

WHEREAS, disputes and controversies exist between TAC and TAMU regarding TAC’s allegations under 42 U.S.C. § 1983, as detailed in the complaint filed in Case No. 4:12-cv-1833, *Texas Aggie Conservatives v. Loftin, et al.*, filed in U.S. District Court for the Southern District of Texas, Houston Division (“the Lawsuit”).

WHEREAS, the gravamen of TAC’s complaint is the university should utilize a viewpoint neutral criteria for funding recognized student organizations’ expressive activity.

WHEREAS, the purpose of this Agreement is to provide for the dismissal of the Parties’ claims in the Lawsuit; memorialize the Parties’ covenants not to sue and their full and final release of any and all claims they have or could possibly have against each other and any of their representatives; compensate TAC for the abandonment and release of all claims against TAMU and each of its representatives arising from the allegations made in the Lawsuit; avoid any additional litigation; and buy peace.

NOW THEREFORE, in consideration of these premises and the promises and agreements described and contained herein, the receipt and sufficiency of which is hereby acknowledged and confessed by the Parties, TAC and TAMU further covenant, promise, and agree as follows:

(1) Within ten (10) days upon the execution by TAC and TAMU of this Agreement, TAMU, will deliver to the Alliance Defending Freedom, the following:

- a. A payment made out to the Alliance Defending Freedom (EIN 54-1660459) in the amount of \$1,600, for which IRS Form 1099 will be provided by TAMU to Alliance Defending Freedom.
- b. A payment made out to the Texas Aggie Conservatives in the amount of \$1,000.

(2) Within ten (10) days upon the execution by TAC and TAMU of this Agreement, TAMU agrees to implement funding criteria—a draft of which is attached hereto as Exhibit A—for use by the Student Organization Advisory Board in reviewing student organization funding requests.

TAC does not forever concede the funding criteria in Exhibit A are legal or constitutional either facially or as-applied, but agrees to the language therein for the purposes of this negotiated settlement.

(3) In exchange for the consideration described in this Agreement, the Parties acting for themselves and their current and future representatives, irrevocably, knowingly, voluntarily, and mutually release, waive, and forever discharge any and all claims, demands, actions, or causes of action, of any kind whatsoever, known or unknown, accrued or unaccrued, foreseen or unforeseen, foreseeable or unforeseeable, and any consequences thereof based on the facts set forth in TAC's verified complaint, which they have or may have against each other and their agents, servants, officers, employees and attorneys (hereafter, the "Released Parties"), who may have played any role whatsoever in the events alleged in the Lawsuit, from the beginning of time until the effective date of this Agreement. The disputes released by the Parties include those known or unknown, actual or contingent, in law, in equity, or otherwise, and whether based in tort, contract, statute, or any other basis, but are limited to the facts and circumstances set forth in TAC's verified complaint. The Parties' release includes all disputes by which the Parties could seek any type of equitable relief; actual, compensatory, consequential, punitive, special, multiple or other damages; expenses (including attorneys' fees and costs); and all other reimbursements or charges of any kind that are based on the facts set forth in TAC's verified complaint. The disputes released by the Parties include, but are not limited to, claims in contract or at common law, including, but not limited to, breach of any oral, written and/or implied contract, breach of any implied covenant of good faith and fair dealing, intentional and negligent infliction of emotional distress, battery, negligence, misrepresentation or fraud of any kind, duress, unfair dealing, breach of fiduciary or other duty, invasion of privacy, defamation, abuse of process, deprivation or violation of rights to substantive or procedural due process, and interference with contract and/or prospective economic advantage based on the facts set forth in TAC's verified complaint. All of the claims outlined in this paragraph are referred to hereinafter as the "Released Claims".

(4) The Parties promise and agree not to institute or to have instituted on their behalf any lawsuit or claim against each other based upon any of the Released Claims, as defined in this Agreement, and forever waive any right they have or may have to bring any such lawsuit or claim against each other, except for any claim to enforce this Agreement. The Parties agree that, with respect to all Released Claims, they are not only waiving their right to recover money or other relief in any action that it might institute against each other, but also that they are waiving their right to recover money or other relief in any action that might be brought against each other on their behalf by any other person or entity.

(5) Within ten (10) days after execution of this Agreement and the receipt by TAC and its attorney of the sums specified in paragraph 1, above, TAC agrees to voluntarily dismiss the Lawsuit.

(6) TAC agrees that by entering into this Agreement it waives any and all administrative appeals, grievances, and procedures to which it is or may be entitled under the Released Claims, whether under the Rules and Regulations of TAMU, or any other statute, policy, rule or regulation.

(7) TAC understands and agrees that the sums delineated in this Agreement, in addition to the other good and valuable consideration identified in this Agreement, are all it is entitled to receive from TAMU and any or all of the Released Parties as settlement of its Released Claims. TAC further acknowledges that it may later discover acts or circumstances in addition to or different from those which it now knows or believes to be true with respect to the subject matter of this Agreement. TAC agrees that any such difference in the facts shall not affect this Agreement; that it assumes the risk of any such difference in the facts; and that it further agrees that this Agreement shall remain in full force and effect and not be subject to rescission by reason of any such difference in the facts.

(8) The Parties agree that nothing contained in this Agreement or the fact that the Parties have entered into the settlement documented by this Agreement shall constitute or be construed as an admission of any alleged liability or wrongdoing by TAMU or any of the Released Parties. TAMU denies that they engaged in any wrongdoing of any kind and all Parties to this Agreement agree that the consideration transferred pursuant to this Agreement is to compromise disputed claims, avoid litigation, and buy peace.

(9) TAC acknowledges and agrees that it is solely and exclusively responsible for the tax consequences, if any, of the payment to it of the sum specified in paragraph 1, above. TAC also agrees to indemnify and hold harmless TAMU and all other Released Parties in the event that any federal, state, or local taxing authority asserts against TAMU any claim for unpaid taxes, interest or penalties alleged to be owed by TAC or its attorneys based upon the payment by TAMU to TAC or its attorneys of the consideration set out in paragraph 1, above.

(10) The Parties acknowledge, warrant and represent to each other that (a) their agents and attorneys have had sufficient time to investigate the relevant facts and legal issues in this dispute in order to make an informed decision about the merits and weaknesses of the Parties respective positions, claims and defenses, (b) they enter into this Agreement upon the legal advice of their attorney, (c) their attorney has explained to their satisfaction the terms, effect, and legal consequences of this Agreement, (d) they fully understand and voluntarily accept the terms of this Agreement, (e) no promise or agreement—other than what is expressed in this Agreement itself—has been made to each other to sign this Agreement and release the Released Claims, (f) they have been advised in writing to consult with an attorney before executing this Agreement and have done so, and (g) in deciding to sign, accept the terms of, and be bound by this Agreement, they are not relying upon any statement or representation or promise which is not expressly set out in this Agreement made by each other or of any agent, employee, representative, officer, or attorney of the Parties. Instead, the Parties are relying on their own judgment and the advice of their attorneys.

(11) The Parties acknowledge and agree that this document contains the entire agreement between the Parties as to the subject matter hereof and that all prior agreements or understandings between them about these matters are nullified by this Agreement and that there are no others. The Parties further agree that any changes or modifications to this Agreement must be made in writing, signed by the party to be charged, and that the provisions in this sentence of this Agreement may not be waived orally or by conduct.

(12) This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. The language of this Agreement shall be construed as a whole and according to its fair meaning, and shall not be strictly construed for or against either party. To the extent any provision(s) of this Agreement may be found by a court of competent jurisdiction to be invalid or unenforceable, the Parties agree that such provision(s) will not affect the validity or enforceability of the remaining provisions of the Agreement.

(13) TAC understands that this Release and Settlement Agreement is subject to the approval of the Attorney General. TAMU's counsel will use best efforts to expeditiously secure the aforementioned approval and approval of any other party necessary to complete this Agreement

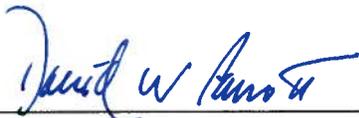
(14) The Parties acknowledge and agree that this Agreement is to be signed by all of the Parties. It is understood and agreed that this Agreement may be executed in multiple counterparts, each of which shall be deemed an original for all purposes. A faxed or photocopied signature hereon shall be as valid as an original.

For Plaintiff TAC:

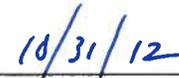
Marc Pitts, Chair, Texas Aggie Conservatives

Date

For Texas A&M University

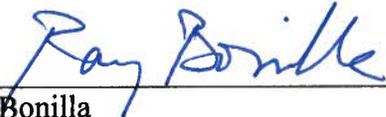


Dr. Dave Parrott
Executive Associate Vice President and Chief of Staff
Division of Student Affairs
Texas A&M University

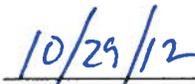


Date

Approved as to Form:



Ray Bonilla
TAMUS OGC General Counsel



Date

For Plaintiff TAC:

Marc Pitts

Marc Pitts, Chair, Texas Aggie Conservatives

11/06/12

Date

For Texas A&M University

Dr. Dave Parrott
Executive Associate Vice President and Chief of Staff
Division of Student Affairs
Texas A&M University

Date

Approved as to Form:

Ray Bonilla
TAMUS OGC General Counsel

Date