



October 29, 2026

Nelly R. Herrera
Vice Chancellor and General Counsel
Texas State University System
601 Colorado Street, Austin, Texas 78701-2904

Sent Via Email: nelly.herrera@tsus.edu

Re: *Removal of Paid Advertising from The University Star's Newsracks*

Dear Vice Chancellor Herrera:

Greetings from the Student Press Law Center. We write in support of Andrew Bencivengo, editor in chief of *The University Star*, and the paper's student staff. Since October 23, Texas State has obscured and then removed the *Star's* paid advertising from newsracks across campus. The students did not learn of the directive from the university. They learned of it from building staff who were uneasy about handling the racks and called to ask. Andrew then did what we would hope any student editor would do. He put the *Star's* position in writing, asked the university to identify the rule it relied on, and offered a good-faith accommodation near a campus polling location.

On October 28, Executive Vice President Eric Algoe responded. His email states that "the university recognizes and supports the editorial independence of student media." It also confirms that the university "has taken steps to enforce its policies by removing the advertisements from display racks located on the campus." It names no policy. The students have earned a clear answer, and with the election on November 3, they need it now.

Founded in 1974, the Student Press Law Center is a nonprofit legal-aid organization serving America's student media community nationwide with training, legal research and dispute resolution assistance. Our mission is to defend and advance the First Amendment and free speech rights of student journalists and their advisers. We do not represent Andrew or *The University Star* as legal counsel, but this communication is a letter of support for them. We understand the Foundation for Individual Rights and Expression has written separately on the constitutional questions. We write to focus on Texas State's own policies and practices, which resolve this matter without the need to go further.



The university's stated rationale has changed in a way that matters. The October 23 directive to building contacts said that the Office of General Counsel "has advised that political signage is not permitted inside university buildings," and it targeted "a political advertisement." The only written rule cited at that point was UPPS 06.02.10, *Elections, Voting, and Civic Engagement On-Campus*. Section 07.03(e) of that policy provides that "Candidates may not" post signs or electioneers inside university buildings. Section 07.03 frames its guidelines around "signs and electioneering near designated polling places during early voting periods and on election day." *The University Star* is not a candidate, and nothing in the policy mentions student publications. Mr. Algoe's email no longer relies on that policy. It refers instead to unnamed rules on "the use of university facilities for certain advertising and solicitation purposes." A rationale that begins as a rule against political signage and becomes, after the students object, a general rule about facilities deserves close scrutiny.

The policies the university appears to have in mind do not support what it has done. UPPS 07.04.03, *Solicitation on University Property*, defines solicitation as "the sale or offer for sale of any property, goods, products or services" or a request for a gift or contribution. It exists so the university can protect its vendor contracts. Its commercial speech provision allows the university to "limit and/or prohibit vendors from advertising or promoting products and services" in non-public forums. A paid advertisement for a candidate for governor offers no product or service for sale. *The University Star* is not an outside vendor. It is the university's own recognized student newspaper. UPPS 07.04.01, the *Expressive Activities Policy*, describes the inside of buildings as non-public forums that "may not be used for expressive activity." Read literally, that language would bar the newspapers in these racks as well. Yet the university has allowed the *Star* to distribute its newspaper from these racks inside these buildings, and the racks have carried numerous paid posters over the years.

The policy that does speak directly to this situation points the other way. UPPS 02.04.01, *The University Star and KTSW Policies and Procedures*, provides that "*The University Star* is a designated public forum, and its student staff members decide and are responsible for news, advertising, and editorial content." It promises that "student staff members and advisers will enjoy freedom of press and speech without prior restraint as guaranteed by the First Amendment." The same policy reserves greater university control over KTSW, the campus radio station, and reserves no comparable control over the *Star's* advertising. Where the university has adopted a specific policy for its student newspaper, that policy should govern over general rules written for vendors and outside groups. Mr. Algoe's statement that the university supports the editorial independence of student media is a welcome commitment. Removing the paper's advertising content does not honor it.

The rack agreement shows the university approved this program. Mr. Algoe's email states that the News Stand Rack Program Agreement with flytedesk, inc. "does not create a valid or binding contractual obligation on the university." Whatever its enforceability, the agreement is evidence of



how this program came to exist. In December 2023, Dr. John Fleming, Dean of the College of Fine Arts and Communication, signed it as Participant, naming “*University Star*” as the student media organization. The racks were acquired specifically to display paid out-of-home advertising. In the agreement, the Participant represented that it “has secured all necessary permissions from campus, building, department, or other related officials to allow participants to display the Racks.” The racks were then placed in campus buildings, where they have operated for nearly three years. The university approved paid advertising in these racks, in these buildings, long before anyone objected to one advertiser’s message.

The advertisements also comply with Texas law on political advertising. Each carries the disclosure “Pol. Adv. Paid by Gina Hinojosa Campaign.” That disclosure satisfies Texas Election Code § 255.001’s requirement that paid political advertising identify itself and its sponsor, and the Texas Ethics Commission accepts “any recognizable abbreviation.” 1 Tex. Admin. Code § 26.1. Election Code § 255.002 assumes that newspapers sell political advertising and requires them to charge no more than they charge other advertisers. The *Star* offers rack space to any candidate on the same terms, and every rack carries a notice that “Paid advertising is not an endorsement and does not reflect the views of the university or student media.”

Federal law points the same way. In the Fifth Circuit, “the right of free speech embodied in the publication of a college student newspaper cannot be controlled except under special circumstances,” and concern about appearances does not qualify. *Schiff v. Williams*, 519 F.2d 257, 260–61 (5th Cir. 1975). Even where a campus publication’s advertising space is treated as a state facility, a public body “which disseminates paid advertising of a commercial type may not reject other paid advertising on the basis that it is editorial in character.” *Lee v. Board of Regents of State Colleges*, 441 F.2d 1257, 1259 (7th Cir. 1971).

The process matters too. The directive went to building staff, not to the students whom UPPS 02.04.01 makes responsible for advertising content. It listed every rack location and attached a photograph of the advertisement. Staff in at least one building removed a poster the day the directive went out. After the students restored their advertisements, the university removed them, citing the *Star’s* “stated intention not to comply.” The *Star* has lost revenue it earned and cannot deliver what it sold. Every future advertiser and editor will now wonder whether a paid placement can be pulled at an administrator’s request.

The remedy is straightforward. Texas State can (1) restore the removed advertisements, or return them to the *Star* so its staff may restore them; (2) withdraw the October 23 directive and instruct building staff in writing to leave the *Star’s* racks and advertising alone; (3) identify by number any written policy on which the university relies; and (4) confirm that UPPS 06.02.10 and the solicitation



and expressive activity policies do not govern advertising decisions that UPPS 02.04.01 assigns to the *Star's* student staff. Andrew has asked for a written response by noon on Friday, October 30, and we respectfully join that request. With the election on November 3, a later answer would leave the students no remedy at all.

We would far prefer to see this matter resolved here, by the university, in conversation with the students it affects. We welcome Mr. Algoe's offer to meet, and we hope that conversation begins with restoring the *Star's* advertising. The students have handled this with professionalism at every step, and the record they have built will follow the matter wherever it goes. We hope it will not need to go further. A few clear sentences from your office would settle the question and show *The University Star's* editors that their university keeps its own promises.

The University Star has served Texas State for more than a century. We hope this letter is of some help. We are here for your administrators, advisers, and students, and we offer training on the law of student media to any of these groups free of charge. If you have questions, please feel free to contact us. We would welcome and value the opportunity to discuss these issues further.

With Respect,

A handwritten signature in black ink, appearing to read "Jonathan Gaston-Falk". The signature is fluid and stylized, with a large, sweeping "J" and "G".

Jonathan Gaston-Falk
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