



**SPECIAL REPORT:**  
Sex Week at the  
University of Tennessee  
– Knoxville

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**EXECUTIVE SUMMARY**

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## Executive Summary

In April 2018, legislative leadership requested that the Comptroller’s Office research Sex Week at the University of Tennessee-Knoxville (UTK), and determine whether state resources, direct or indirect, are used in the production of the event. The full report includes an overview of the event at UTK, actions taken by various stakeholders relevant to Sex Week, information on sex-related programming and the structure and allocations of student activity fees at all public universities in Tennessee, and policy considerations.

Sex Week, a week-long event that includes a variety of sex-related programs that are often promoted using provocative titles, has been hosted on the campus of UTK each spring semester since 2013 by Sexual Empowerment and Awareness at Tennessee (SEAT), a registered student organization (RSO). From 2013 through the present day, some legislators have expressed their concerns and disapproval of the event to the administrators of the University of Tennessee, using words such as “outrageous behavior,” “disgusting,” and “a national embarrassment” to describe it.

As a direct result of Sex Week, legislation has been passed, university policy has been changed, legislative hearings focused on the event have been held, and some gubernatorial appointees to the university’s Board of Trustees failed to receive the necessary votes from state legislators for confirmation. Amid the ongoing controversy, SEAT has continued to host the event annually, operating within the policies and criteria set by the university for RSOs. The student group, which has an average membership representing less than one-tenth of 1 percent of the total enrollment at UTK, has been unwilling to compromise with university administrators who have asked it annually to “tone it down” and to consider the impact of its language choices.

**“Human sexuality is a legitimate academic field of inquiry and should be approached in a scholarly manner. It is not a circus by which the dignity of the human person is denigrated and besmirched.”**

Chairman Dolores Gresham  
Senate Education Committee  
April 11, 2018

In written correspondence and during interviews conducted by the Comptroller’s Office, top university administrators repeatedly stated that the university has done all that can be done – and all that the legislature has asked them to do – without violating free speech protections guaranteed by the First Amendment. Top university administrators indicated that if the legislature wants to ban the event then lawmakers should pass a law explicitly stating that Sex Week shall no longer occur at UTK, but officials also warn that a First Amendment lawsuit will surely follow.

In 2016, the General Assembly passed a law, Public Chapter (PC) 1066, that does not ban the event but does prohibit the expenditure of “state funds” to “fund or support Sex Week.” University officials say that PC 1066 does not define terms such as “state funds,” “fund,” or “support” and that the law is vaguely worded. Therefore, the university says it cannot knowingly take action (i.e., to prohibit the occurrence of Sex Week on campus) that it says will result in a

lawsuit. UTK sought guidance from the Attorney General’s office on how to interpret the 2016 law. (The guidance is protected by attorney-client privilege and is not public.)

On April 17, 2018, Senator Richard Briggs sent a letter to the Attorney General requesting an opinion on the constitutionality of PC 1066, outlining nine scenarios that may qualify as examples of the university indirectly funding or supporting Sex Week, and the legal responsibility of university employees to enforce the statute. The Attorney General’s office declined to provide an opinion for several reasons, including that its advice would be more effective if provided directly to the university and the possibility that the Attorney General would be required to defend the constitutionality of the statute should it become the subject of litigation.

During interviews in fall 2018, the Comptroller’s Office asked five top University of Tennessee (UT) officials and a former Board of Trustee member if the university has been “tone deaf” (i.e., insensitive) in its response to legislators’ concerns about Sex Week. All five officials and the former trustee responded that the university has not been tone deaf, each giving examples of what the university has done in response to Sex Week (namely, creating the opt-in/-out process for student activity fees) and reiterating that the university has done all that it can legally do. Former UT System<sup>A</sup> President Joe DiPietro added, “Maybe it’s best for us to get into a legal suit, to show people that we aren’t being tone deaf.”

In fall 2018, the Comptroller’s Office interviewed five top UT officials and a former board of trustee member and asked each of them if the university has been tone deaf in its response to legislator concerns about Sex Week.

**All five officials and the former trustee responded that the university has not been tone deaf concerning its response to Sex Week.**

Through interviews and a review of policies and practices at other public universities in Tennessee, the Comptroller’s Office has concluded that the University of Tennessee has not exhausted every option and has identified other courses of action the university may pursue to address the controversy. See pages 13 through 17 for policy considerations.

Since the first event in April 2013, Sex Week has been organized by the registered student organization, SEAT, using the following resources: student activity fees, private donations (through sponsorships and crowdsource funding campaigns), indirect benefits (through use of university facilities), and gift funds (i.e., philanthropic donations made to the university).

As a registered student organization, SEAT is eligible for certain privileges, including the ability to request student activity fee funding and the use of most campus facilities at no cost. For each of the past seven years, SEAT has received an average annual allocation of about \$15,000 in student activity fee funds for Sex Week. (Amounts range from \$6,175 in 2014-15 to \$22,700 in 2016-17.) SEAT has also requested and been allocated student activity fee funds for events outside of Sex Week in the 2014-15 through 2017-18 academic years. In total, SEAT’s annual average allocation of student activity fee funding is about \$18,400 (including funds for both Sex Week and non-Sex Week events). In the current school year, 2018-19, SEAT requested and

<sup>A</sup> In the University of Tennessee System, the President presides over the entire system and each university is overseen by a Chancellor.

was allocated about \$12,000 for Sex Week, which represents over a 50 percent reduction in the organization’s requests and allocations from previous years.

In 2013, the first year of the event, university departments and programs committed \$11,145 in nonstudent activity fee funds for Sex Week, some of which were derived from state tax and tuition dollars. Ultimately, SEAT did not receive those funds as they were withdrawn by former UTK Chancellor Jimmy Cheek prior to the event. The university then conducted an internal review on the process of student organizations requesting and receiving funds from nonstudent activity fee sources, concluded that RSOs should not receive funding derived from state appropriations, and identified the need for more oversight of gift funding allocations. For Sex Week 2013, SEAT received \$6,700 in student activity funds, and launched an online crowdsource funding campaign, raising at least \$4,000 in private donations. SEAT has used online crowdsource fundraising efforts for Sex Week at least two other times, though neither the organization nor the university track private donations, so exact figures are unavailable.

In addition to requesting student activity fee funds, RSOs can solicit gift funds from various university departments that may be interested in the organization’s initiatives (e.g., the psychology department may allocate gift funds for a relationship workshop). Gift funds are allocated by the senior leader of each department and are not considered to be state tax or tuition dollars. SEAT has received unrestricted gift funds (i.e., donations made to the university without a specific purpose indicated by the donor) for Sex Week events in 2014 and 2015 and for one non-Sex Week event in the 2017-18 academic year.

Exhibit 1 shows the funding received by SEAT annually for Sex Week and non-Sex Week events.

**Exhibit 1: Funding received by SEAT for Sex Week and non-Sex Week events at UTK**

Academic year	Student activity fee funds received for Sex Week	Gift funds received for Sex Week	Private donations received for Sex Week	Sex Week funds	Student activity fee funds received for non-Sex Week events	Gift funds received for non-Sex Week events	Non-Sex Week funds
2012-13	\$6,700	\$0	At least \$4,140	\$10,840	\$0	\$0	\$0
2013-14	\$20,000	\$2,603	Unknown	\$22,603	\$0	\$0	\$0
2014-15	\$6,175	\$5,700	Unknown	\$11,875	\$2,500 (1 event)	\$0	\$2,500
2015-16	\$16,525	\$0	Unknown	\$16,525	\$6,850 (5 events)	\$0	\$6,850
2016-17	\$22,700	\$0	At least \$1,225	\$23,925	\$7,100 (3 events)	\$0	\$7,100
2017-18	\$21,700	\$0	At least \$120	\$21,820	\$6,690 (4 events)	\$700	\$7,390
2018-19	\$12,090	--	Unknown	--	\$0	--	--

Notes: Private donations are not tracked by UTK or SEAT; these figures were determined by reviewing crowdsource funding pages. It is unknown if SEAT has received private donations for non-Sex Week events in any year. SEAT’s 2018-19 funding has been intentionally left blank for certain categories; final numbers are not available until the end of the academic year.

Sources: The Comptroller’s Office analysis of data provided by UTK Division of Student Life. Indiegogo.

Since 2014-15, RSOs at UTK, including SEAT, have received student activity fee funds that students have chosen to allocate to student-organized programming, also known as opt-in funds.<sup>B</sup> Opt-in funds are allocated to RSOs by the Student Programming Allocation Committee (SPAC), a 17-member, majority-faculty and staff committee; the SPAC uses a set of criteria, outlined in board policy, to make allocation decisions. The creation of the opt-in/-out process and the SPAC resulted from university negotiations with some legislators who wanted more transparency in the allocation of student activity funds, and to give students the option whether to allocate a portion of their mandatory student activity fee to student-organized programming that may be controversial in nature, such as Sex Week. The Senate adopted Senate Joint Resolution (SJR) 626 in March 2014, directing changes to the student activity fee allocation process in the UT System, and the university’s Board of Trustees adopted the new policy the following June.

In 2017-18, there were nearly 600 RSOs at UTK. On average, about 10 percent of the RSOs request funding from student activity fees annually, and about 7.5 percent receive an allocation. Considering the last five years (2013-14 through 2017-18), an average of five registered student organizations (including SEAT) received about 50 percent of the total funding allocated to RSOs, while the remaining 50 percent of funding was allocated among 30 organizations. Over the same time frame (2013-14 through 2017-18), SEAT has been among the small number of registered student organizations that request and receive the most student activity fee funding annually. SEAT requested the most student activity fee funding in 2017-18 and received the highest allocation of student activity fee funding in four of the last five years, with total allocations ranging from \$8,675 to \$29,800. Exhibit 2 includes SEAT’s student activity fee funding requests and allocations compared to the average for other RSOs.

**Exhibit 2: SEAT’s student activity fee funding requests and allocations compared to other registered student organizations (RSOs)**

Academic year	Total number of RSOs	Number of RSOs requesting funds	Average request amount	Amount requested by SEAT	SEAT’s rank by funds requested	Number of RSOs receiving funds	Average allocation amount	Amount allocated to SEAT	SEAT’s rank by funds received
2013-14	438	25	\$7,824	\$24,325	2	21	\$5,579	\$20,000	1
2014-15	452	45	\$4,532	\$17,070	4	31	\$3,325	\$8,675	5
2015-16	471	56	\$5,077	\$25,595	2	43	\$3,539	\$23,375	1
2016-17	537	59	\$5,752	\$29,676	3	48	\$4,508	\$29,800	1
2017-18	591	57	\$6,074	\$28,331	1	44	\$5,486	\$28,390	1

Notes: RSO = registered student organization. The opt-in/-out process and the SPAC were implemented as of the 2014-15 academic year. SEAT received student activity funds for non-Sex Week events in 2014-15 through 2017-18.

Source: The Comptroller’s Office analysis of data provided by the UTK Division of Student Life.

Like all other events hosted by RSOs, Sex Week events are open to all UTK students (though students who “opt out” concerning the allocation of their student activity fee may have to pay an admission fee if one is charged to members of the public) and according to SEAT, all Sex Week events are also open to the general public.

<sup>B</sup> Opt-in funds are derived from the “student-organized programming” portion of the Student Programs and Services Fee (SPSF). In this report, the “student-organized programming” portion of the SPSF is frequently referred to as the student activity portion of the fee.

## Sex Week Funding and Benefits Received

**1. Student activity fees** are derived from the Student Programs and Services Fee (SPSF), a mandatory fee paid by students each semester to fund nonacademic programs, services, and facilities. After a change to board policy in 2014, students have been able to choose if the student activity fee portion of their SPSF goes to student-organized programming (such as Sex Week) or to nonstudent-organized programming (i.e., another area supported by the SPSF). This is known as the opt-in or opt-out policy. Student activity fees are allocated to registered student organizations by the Student Programming Allocation Committee (SPAC; a 17-member, majority-faculty and staff panel) and are not considered to be state tax or tuition dollars. SEAT has received student activity fees for Sex Week annually beginning with the first event in April 2013.

**2. Gift funds** are derived from philanthropic donations made to the university. There are two types of gift funds: restricted, with donations given for a specific purpose as defined by the donor, and unrestricted, with donations given without a specific purpose. Registered student organizations (such as SEAT) may solicit gift funds from various university departments that may be interested in the organization's initiatives (i.e., the psychology department may allocate gift funds for a relationship workshop). Gift funds are allocated by the senior leader of each department and are not considered to be state tax or tuition dollars. SEAT received unrestricted gift funds for Sex Week events in 2014 and 2015.

**3. Private donations** are derived from registered student organization fundraising efforts, including those from individual contributions and sponsorships. SEAT has used an online crowdsource funding campaign for Sex Week in at least three years. Because private donations have not been tracked by either the university or SEAT in previous years, it is not possible to determine exact amounts or sources of private donations for Sex Week.

**4. Indirect benefits** include privileges conferred to all registered student organizations (RSOs) by the university. At UTK, all RSOs (including SEAT) can apply for student activity fee funding, reserve campus facilities at no cost, include information about their organization and events on a university website that features all registered student organizations, use the university's name following the organization and/or event name, and request a student organization email account.

In 2016, the Tennessee General Assembly passed Public Chapter (PC) 1066, prohibiting the use of state funds to fund or support Sex Week, and there are conflicting opinions concerning whether the indirect benefits SEAT receives as an RSO are considered "state funds." A letter signed by 33 legislators was sent to the university in April 2018 questioning SEAT's continued use of campus facilities for Sex Week, following the passage of PC 1066. In the same month, Senator Richard Briggs asked the Attorney General to issue an opinion on the 2016 law; the Attorney General declined for several reasons. The University of Tennessee-Knoxville sought legal advice from the Attorney General on how to interpret the 2016 law. (The legal advice received by UTK is protected under attorney-client privilege and is not publicly available.) As a registered student organization, SEAT continues to use indirect benefits, including the use of campus facilities, for Sex Week.

*For events occurring outside of Sex Week, SEAT has received student activity fees each year from 2014-15 through 2017-18 and unrestricted gift funds in 2017-18. Because neither the university nor the organization tracks private donations, it is unclear if SEAT has received private donations for non-Sex Week events in any year. As a registered student organization, SEAT has received indirect benefits each year since 2012-13.*



Attendance at Sex Week events is self-reported by SEAT and the collection process has not been comprehensive, but based on the available data, Sex Week is not widely attended considering the university's overall enrollment. Since 2013, Sex Week has included from 26 to 35 individual events, with an average overall attendance of 2,800. (Attendance data is largely missing for 2015 and 2016, and unique attendees, as well as student and general public attendees, were not tracked until 2018.) SEAT reported the lowest overall attendance for Sex Week 2018, with 1,649 attendees, of which there were 694 unique attendees (i.e., attendees who go to more than one event). As reported by SEAT, the majority of the 694 attendees at Sex Week 2018 were students.

**Exhibit 3: Sex Week attendance**

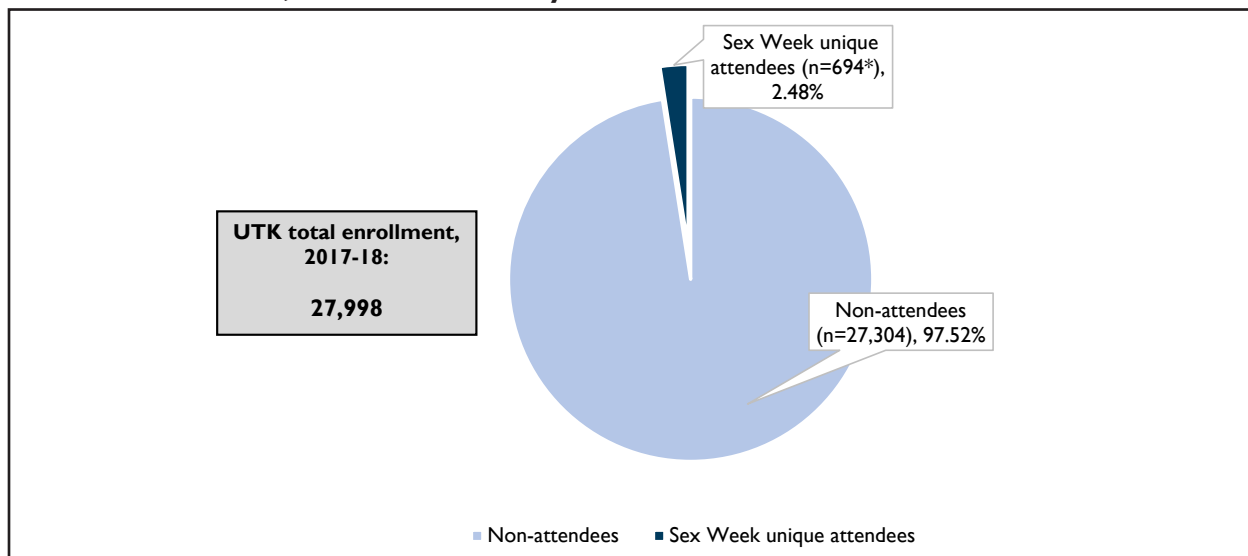
Sex Week dates	Number of events	Overall attendance	Unique attendees	Students	General public
April 7-12, 2013	27	2,979	**	**	**
March 2-7, 2014	35	3,522	**	**	**
April 4-10, 2015	34	*	**	**	**
April 4-8, 2016	26	*	**	**	**
April 2-7, 2017	35	3,038	**	**	**
April 6-12, 2018	28	1,649	694	1,326	180

Notes: \*No reliable attendance data is available for 2015 or 2016. \*\*2018 was the first year that attendance was tracked by unique attendee as well as type of attendee (i.e., student, general public).

Source: The Comptroller's Office analysis of data provided by SEAT and event schedules.

Considering the total enrollment at UTK in the 2017-18 academic year and the unique number of attendees of Sex Week 2018, no more than 2.5 percent of students at UTK attended Sex Week in 2018.

**Exhibit 4: Attendance at Sex Week compared to total enrollment at the University of Tennessee-Knoxville, 2017-18 academic year**



Note: \*Some unique attendees are members of the general public. Based on the available data, it is not possible to determine the exact number of unique student attendees.

Source: The Comptroller's Office analysis of data provided by SEAT and THEC.

The membership of SEAT represents less than one-tenth of 1 percent of the overall enrollment at UTK. The organization's membership is open to students, faculty, and staff, though a representative from the university's Center for Student Engagement believes that SEAT's roster, averaging 21 members, includes only students. Based on SEAT's average annual membership of 21 students and the university's average annual enrollment of 27,429, about one out of every 1,300 UTK students is a member of SEAT.<sup>c</sup>

Despite the small size of the organization and the small percentage of students who attend Sex Week events in comparison to the overall enrollment at UTK, the university and legislature have spent countless hours debating and negotiating over Sex Week.

## Key Conclusions

**SEAT has received direct funding from student activity fees, gift funds, and private donations for Sex Week.** For the first Sex Week in 2013, SEAT requested funding from student activity fees and from university programs and departments. Prior to the event, the university funding (some of which was derived from state tax and tuition dollars) was rescinded, though SEAT retained its allocation of student activity fees. For Sex Week events in 2014 and 2015, SEAT received gift funds (i.e., philanthropic donations made to the university) and student activity fees. In the fall 2014 semester, a new board policy went into effect, allowing students to allocate a portion of their mandatory student activity fee either to student-organized programming (opt in) or to nonstudent-organized programming (opt out). As of the 2014-15 academic year, student-organized programming, including Sex Week, has been funded with student activity fees from opt-in funds. Additionally, registered student organizations can solicit private donations; SEAT has received private donations in at least three years.

**Since 2013, SEAT has received an average annual allocation of about \$15,000 from student activity fees for Sex Week.** Additionally, SEAT has requested and received student activity fee funds for events occurring outside of Sex Week each year from 2014-15 through 2017-18. In total, SEAT's annual average allocation of student activity fee funding is about \$18,400. In the current school year, 2018-19, SEAT requested and was allocated about \$12,000, which represents over a 50 percent reduction in the organization's requests and allocations from previous years. Since 2013-14, SEAT has received about \$9,000 in gift funds, most of which was allocated for Sex Week events.

**SEAT receives indirect benefits from the university for which all registered student organizations at UTK are eligible.** Registered student organizations at UTK are eligible to apply for student activity fee funding from the SPAC, reserve most campus facilities at no cost, include information about their organization and events on a university website that features all registered student organizations, use the university's name following the organization and/or event name, and request a student organization email account. In 2016, the legislature passed PC 1066, prohibiting the use of state funds to fund or support Sex Week. Following the law's passage, a letter signed by 33 legislators was sent to the university, questioning whether UTK

<sup>c</sup> Student organizations were not required to report their rosters until the 2014-15 academic year. SEAT's average roster of 21 members includes membership numbers from 2014-15 through 2018-19. UTK's average enrollment was calculated for the 2014-15 through 2017-18 academic years using the most recent available data provided by THEC.



is in violation of the law since SEAT continues to receive indirect benefits (including the use of facilities) for Sex Week. The university sought guidance from the Attorney General's office in its interpretation of the law and whether these indirect benefits meet the definition of the law's key terms ("state funds," "fund," or "support"). The Comptroller's Office has quantified the use of campus facilities for Sex Week events in the two years since PC 1066 became law, estimating that SEAT's use of facilities for Sex Week was about \$4,500 annually in 2017 and 2018.

**The university has taken some actions to address the controversy surrounding Sex Week, but the most significant policy change, making it optional for students to allocate their mandatory activity fee to student-organized programming (such as Sex Week), was made reluctantly.** Prior to the first Sex Week, former Chancellor Jimmy Cheek pulled academic department funding that had been committed for the event. Following the first Sex Week in 2013, the university conducted internal reviews regarding student organizations requesting and receiving funds from student activity fees and other sources, determined that RSOs should not receive funding derived from state appropriations, identified the need for more oversight of gift funding allocations, and concluded that any major change to current policy should be initiated by the university and studied thoroughly by students, faculty, and staff in the UT System.

In at least one year, the university proactively emailed all legislators ahead of the event to reiterate the position that the student organizers are within their constitutionally protected right of free speech. Each year, administrators have met with SEAT and asked them to "tone it down." In 2018, Chancellor Davenport specifically asked the students to consider the impact of their language choices.

The only board policy change made in direct response to Sex Week occurred in 2014 after the Senate directed changes to the collection and allocation of student activity fee funding with the adoption of SJR 626. Dr. DiPietro said that the university made the changes in "record setting time," and it did so to show the legislature that UT is "responsive." Through a review of written correspondence, reports, and board meeting minutes during the time leading up to the board policy adoption, it is apparent that the university adopted and implemented the changes reluctantly.

In February 2014, after several pieces of legislation had been filed that would restrict the use of student activity fees, Dr. DiPietro issued a press release about the proposed legislation, stating, "I have confidence that our campus leadership and our students, faculty, and staff will . . . suggest to our elected officials that it is the role of our Board of Trustees to address and monitor these issues with us on behalf of the University."

In March 2014, the Senate adopted SJR 626, directing the UT Board of Trustees to develop a policy allowing students to opt in, allocating a portion of their mandatory student activity fee to student-organized programming (such as Sex Week), along with other provisions intended to provide more transparency surrounding the allocation of student activity fees.

During the Board of Trustees meeting on June 18, 2014, when the board policy was discussed and approved, several comments were made indicating the university and board's reluctance to adopt the policy. A few trustees praised Dr. DiPietro for his work to maneuver around the many

conflicts that arose during the legislative session. One trustee stated his objection to the policy, adding that “when funding is conditioned on a behavior, it is the beginning of censorship,” and that adopting the policy “doesn’t mean that we are endorsing this in any other way than it is the least objectionable of the options that have been given.” In responding to the trustee’s comments, Dr. DiPietro said, “The alternatives to this policy were horrific in comparison.” The policy was adopted unanimously, though no board member went on the record in support of the policy, as reflected in the meeting minutes.

**UTK has not adopted all recommendations from its own internal reviews of student activity funding.** Following the first Sex Week in 2013, the university commissioned an internal review of policies surrounding nonstudent activity fee funding for registered student organizations and identified the need for more oversight of gift funding allocations. UTK adopted most of the report’s recommendations, though the university continues to allow registered student organizations to mix gift funds with student activity fee funding, a practice the report recommended against. SEAT has funded events in at least three years with both gift funds and student activity fee funds.

Following the adoption of SJR 626, UTK appointed an internal task force to assist in implementing changes to the student activity fee allocation process that were directed by the resolution. Some, but not all, of the task force’s recommendations were incorporated into the resulting board policy and/or campus processes. For example, the task force recommended that UTK publicly provide information about student activity fee funding requests, allocations, and denials. Currently, the university publishes only a list of programs funded with student activity fees annually; details about funding amounts, denied requests, or the organizations requesting funds, are not included.

**In four of the past five years, SEAT received the highest allocation of student activity fee funds, including about \$29,000 in both 2016-17 and 2017-18; SEAT requested the most funding in one of the last five years.** SEAT is one of about 600 registered student organizations at the University of Tennessee-Knoxville and all registered student organizations can request student activity fee funding. On average, about 10 percent of registered student organizations at UTK request funding from student activity fees annually, and about 7.5 percent receive an allocation. On average, fewer than 10 registered student organizations request and receive an annual allocation of student activity fee funds that is greater than \$10,000. In the past five years, SEAT has been among the top five registered student organizations that request and receive the most funds.

After the first Sex Week in 2013, UTK studied the allocation of student activity fee funding at the request of the Senate Higher Education Subcommittee. The subcommittee expressed concerns about how student activity fee funding allocation decisions are made, noting a perceived lack of diversity in approved programming and potential bias in funding decisions. The subcommittee also recommended that the university explore policy changes to ensure a fair assessment of funding requests and look into funding models that consider student participation and membership. The internal study found “no evidence of potential bias” but recommended that UTK should take steps to ensure that all students know how to apply for funding. As part of UTK’s registration process for student organizations, RSOs are required to attend an

information session, during which they are informed of funding opportunities. Additionally, all RSOs are notified when the funding application process is open.

In 2013-14 (the academic year following the internal study), about 5.7 percent of RSOs at UTK applied for funding; for each of the next four years, about 10 percent of RSOs at UTK applied for funding. From 2013-14 through 2017-18, nine registered student organizations, including SEAT, requested funds in each of the five years, while 67 registered student organizations requested funds in just one of the last five years.

**Efforts have been made to increase the transparency of student activity fee allocations, but the information, as currently reported, is not detailed.** In 2013, the legislature passed PC 429, requiring the Tennessee Higher Education Commission (THEC) to compile an annual report of student activity fee collection and use at each of the public universities, community colleges, and technical colleges in the state. This report has been produced annually since 2014, though the information included in the report is not detailed, and the Comptroller's Office has identified misreported information by at least one university. Additionally, the Senate adopted SJR 626 in 2014, which dictated several changes to UT's board policy on student activity fees, and specifically directed the trustees to increase transparency and accountability of student activity fee allocations. In response to the directive, the university began posting a list of activities funded with opt-in student activity fees, though the listing does not indicate the amount of funding allocated per event, the organizing group for each event (i.e., a registered student organization or the Campus Events Board), or any denied funding requests.

Upon request, UTK provided the Comptroller's Office with a list of student activity funding requests made by registered student organizations from 2012-13 through 2017-18, including the amount allocated and reasons that some requests were denied or reduced. Due to the limited details provided in the data, it was not possible to draw conclusions regarding the reasons for denied or approved funding in all cases, though some funding decisions may serve to increase the perception of bias. For example, in 2016-17, the registered student organization, Volunteers for Christ, requested a total of \$5,515 for 10 different events. The SPAC did not allocate any funds to the organization, stating that each of the 10 proposed events were public relations events and that the SPAC does not fund organization expenses. It should be noted that the SPAC's formal allocation criteria, as outlined in board policy, does not include this specific criterion.<sup>d</sup> In the same year, SEAT received all the funds it requested, totaling \$29,800 for 17 individual events. The lack of details prevented the Comptroller's Office from making any further determinations.

**SEAT has been unwilling to compromise with university administrators who have asked it annually to “tone it down” and consider the impact of its language choices.** In recounting a specific example from 2014, university administrators said that after asking SEAT to “tone it down,” the student organization leased a billboard on Interstate 40 in Knoxville to advertise Sex Week. SEAT has also been critical of the university administration and legislature on social media and crowdsource funding websites, posting statements such as,

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<sup>d</sup> After reviewing a preliminary draft of this report, administrators at UTK told the Comptroller's Office that RSOs are informed of this criterion when applying for funding and during the mandatory information sessions.

“UT Administration refused to stand up for sexual education for students . . .” and “Tennessee State Legislature . . . [please] stop trying to censor student run and student funded programming.”

Through a review of other public universities where a student-organized Sex Week has occurred, the Comptroller’s Office learned that students at other universities have shown a willingness to compromise with campus administration. For example, a registered student organization at the University of North Carolina-Charlotte altered event names for its February 2018 Sex Week after the university received complaints from constituents. Additionally, a registered student organization at East Tennessee State University (ETSU) changed the name of its event from Sex Week in 2015 to Sexual Health Week in 2017 to better reflect the purpose of the event.

**UT has maintained the position that there is nothing else it can do about Sex Week without violating the First Amendment, but former President Joe DiPietro has said that the university’s communications about the event could have been handled differently.** During a September 2018 interview with the Comptroller’s Office, Dr. DiPietro said that in hindsight, the university could have done a better job getting out in front of the issue by making a public statement that while the university does not condone the activities of Sex Week, the students have legal protection of free speech under the First Amendment. For example, he said that the university made proactive statements to this effect ahead of a white supremacist rally that was scheduled to take place on the UTK campus in February 2018. Dr. DiPietro said that this shortcoming in the university’s communications about Sex Week did not become clear to him until April 2018, when the trustees from the previous board were not confirmed to serve on the new board.

**The Comptroller’s Office has identified policies and practices at public universities in Tennessee that could be applied at UTK to help address the controversy.**

Some public universities in Tennessee, including UTK, charge registered student organizations for the use of campus facilities (under certain circumstances) and limit the amount of funding registered student organizations may request, among other practices. See related policy considerations.

**Sex Week at UTK is not the only such event that occurs on the campuses of public universities in Tennessee, though it generates the most controversy.** A review of the timeline of events (see page 57 in the full report) shows that the controversy surrounding Sex Week at UTK has been more intense in some years than others. For example, there was little attention paid to Sex Week at UTK in 2015 and 2017, and little attention paid to Sex Week events occurring on other Tennessee public university campuses in any year.

In an interview with the Comptroller’s Office in September 2018, the current student leaders of SEAT characterized the large amount of attention Sex Week has received from the legislature and media outlets as “free advertising.”

**Registered student organizations have hosted Sex Week events at other public universities in Tennessee with and without a direct allocation of student activity fee funding.** A registered student organization at ETSU has hosted a Sex Week twice: in 2015 without a direct funding allocation (organizers used private donations after their funding request was denied by the Student Government Association) and in 2017 with an allocation of

student activity fee funding. A registered student organization at the University of Tennessee-Chattanooga (UTC) hosted a Sex Week in 2017 without a direct funding allocation from the university; the event was supported by private donations. Registered student organizations at ETSU, UTC, and all other public universities in Tennessee receive indirect benefits, including the use of facilities at little to no cost and use of the university's name. Cutting funding from registered student organizations is not a guarantee of eliminating student-organized events.

**UTK provides year-round sex-related programming (e.g., consent, STI prevention, etc.) to its students, as does every public university in Tennessee, and one university hosts a Sexual Responsibility Week annually.** As stated in part of SJR 626, the university, rather than a registered student organization, is responsible for providing students with sexual health programming. According to board policy, the SPAC is required to consider if a registered student organization's proposed event duplicates, in whole or in part, a program offered by the university, when making allocation decisions. No university, including UTK, has denied funding to a registered student organization for duplicating university-provided sex-related programming.

## Policy Considerations

The Comptroller's Office presents the following policy considerations as options, ranging from minor changes to campus policy to an outright ban on the event, that different parties may consider. Some policy options may have potential legal implications, and the Comptroller's Office is not in a position to provide a legal determination on those potential implications.

**1. The Tennessee General Assembly could pass a law stating that Sex Week shall not occur at the University of Tennessee-Knoxville.** University administrators have said this is the only remaining option, they will not take this step without explicit legislation, and it will likely result in a First Amendment lawsuit. This policy consideration would only apply to UTK, though Sex Weeks have occurred at other public universities in Tennessee. Some legislators considered an outright ban of Sex Week at UTK in 2016, were advised that such action would be unconstitutional, and instead settled on the language in PC 1066 which prohibits the use of state funds to fund or support Sex Week. In April 2018, a legislator requested the Attorney General to opine on the constitutionality of PC 1066. The Attorney General's office declined to issue an opinion, stating in part that the office cannot issue opinions on matters in which it may become involved, adding that the Attorney General may be required to defend the constitutionality of the statute should it become the subject of litigation.

If this policy consideration were adopted, the resulting legislation should include language that provides explicit legal protection to university employees and trustees, should litigation ensue.

**2. The Tennessee General Assembly could direct the University of Tennessee-Knoxville to declare itself the sole provider of sex-related programming on campus.** As expressed in SJR 626, the university, rather than a registered student organization, is responsible for providing students with sexual health programming. UTK provides year-round sex-related programming (e.g., consent, STI prevention, etc.) to its students, as does every public university in Tennessee. Other universities in and outside of Tennessee host weeklong



events focused on sex education programming. UTK could conduct a similar event as part of the sex-related programming it already offers. If the legislature directed the university to declare itself the sole provider of sex-related programming, registered student organizations would not be able to plan sex-related events.

It is unclear if this consideration would be subject to a First Amendment lawsuit. If this policy consideration were adopted, the resulting legislation should include language that provides explicit legal protection to university employees and trustees, should litigation ensue.

**3. The Tennessee General Assembly may wish to require that University of Tennessee-Knoxville provide more detailed and transparent information to students, legislators, and Tennesseans about funding for registered student organizations including the amounts requested and allocated, and the reasons that some requests are denied or reduced.** If the legislature would like more detailed information about student activity fee allocations at all public institutions of higher education in Tennessee, it may wish to amend the requirements in PC 429 (2013). Currently, student activity fee expenditures are reported in general categories to the Tennessee Higher Education Commission (THEC), and it is difficult to compare expenditures from one campus to another.

**4. The Tennessee General Assembly may wish to require that the University of Tennessee review the Comptroller’s report, carefully consider all policy options, state its current position given the university’s new leadership, and report any actions taken or future actions planned to the legislature by a specific date.**

**5. The Tennessee General Assembly may choose to ignore Sex Week at the University of Tennessee-Knoxville as it has in some years and as it has with similar events at other Tennessee universities.** As the General Assembly has recognized in passing the Campus Free Speech Protection Act, the value of freedom of speech for students is one the state, as well as the university, seeks to uphold. Reducing the amount of attention given to an event involving small numbers of students (both in its planning and attendance), would arguably help lessen the controversy. In an interview with the Comptroller’s Office in September 2018, the current student leaders of SEAT characterized the large amount of attention Sex Week has received from the legislature and media outlets as “free advertising.”

**6. The University of Tennessee-Knoxville should adopt a more consistent and proactive communication strategy for students, parents, and Tennessee citizens regarding controversial events.** Some legislators have frequently relayed concerns from parents and other constituents to the university about Sex Week, and in some years, the university has proactively communicated to the General Assembly ahead of the event. The university has been more proactive in communicating about other controversial events on campus to the public at large; for example, in February 2018, the university issued a press release ahead of a white supremacist rally scheduled to take place on campus.

**7. The University of Tennessee-Knoxville should take additional actions to reduce the perception of bias in the student activity fee funding allocation process.** In 2013, the Senate Higher Education Subcommittee studied the student activity fee funding allocation



process at UTK and expressed concerns to the university about a perceived lack of diversity and potential bias in funding decisions.

At the subcommittee's request, the university conducted an internal review and concluded that bias was not evident in funding decisions but suggested that it could do a better job ensuring that all registered student organizations (RSOs) know how to apply for funding. RSOs are informed about how to apply for funding as part of their registration process. Currently, about 10 percent of RSOs request funding annually, and only nine RSOs have requested funding in each of the last five years. UTK should evaluate the 90 percent of RSOs that do not request funding to determine what, if anything, could be done to increase the percentage and diversity of organizations that request funds. Additionally, in 2014, an internal UTK task force recommended that more information could be made publicly available about funding decisions, including information about denied funding requests. Currently, the university posts a list of events that were funded with student activity fees online; details about funding amounts, or denied requests, are not included.

More transparency in the student activity fee funding allocation process and increasing the number and diversity of RSOs that request funding annually could alleviate the perceptions of bias.

**A review of policies and practices at public universities in Tennessee shows that registered student organizations (RSOs) are given varying amounts of latitude to plan events, depending on the amount of funding and resources made available to student groups by the university. One university gives RSOs considerably fewer resources by not allocating funding directly to them.**

**The University of Tennessee-Knoxville could implement policies used at other public universities in Tennessee, though such policy changes would apply to all RSOs at the university. (UTK had nearly 600 RSOs in 2017-18, of which about 10 percent typically request student activity funding in any given year.)**

**8. The University of Tennessee-Knoxville could stop allocating funding directly to registered student organizations,** and retain the responsibility for organizing nonacademic student activities. Such programming could be planned by an institution-sponsored student council or by a university department or staff member with input from students. This is the current practice at the University of Tennessee-Martin (UTM), where student activity funding is allocated to the Student Activities Council (SAC), but not to registered student organizations. The SAC plans nonacademic student activities and is advised by a professional staff member. The Assistant Vice Chancellor for Student Affairs makes the final decision on nonacademic programming offered at UTM. Registered student organizations at UTM cannot request funding, though they can use private donations to plan events, and are still eligible for indirect benefits, such as the use of campus facilities at no cost and the use of a university-maintained webpage.

**9. The University of Tennessee-Knoxville could limit the amount of funding registered student organizations can request annually.** At least two public universities in Tennessee limit the amount of funding registered student organizations can request annually.

Registered student organizations can request up to \$2,000 annually at Tennessee State University. Tennessee Technological University (TTU) puts a cap on funding request amounts based on the number of organizations expected to apply and reassesses the cap each semester. In 2018-19, RSOs at TTU could request a total of \$4,500 (\$1,500 in fall 2018, \$2,500 in spring 2019, and \$500 in summer 2019).

If UTK applied this policy, it could divide the total amount of money available for registered student organizations by the number of organizations that received funding in the previous year. For example, in 2017-18, a total of \$241,370 was allocated to 44 RSOs, which equals an average allocation of about \$5,500. In that year, 12 registered student organizations received more than the average allocation of \$5,500 and 32 organizations received less than \$5,500. Adoption of this policy would ensure a more balanced distribution of funding to registered student organizations.

**10. UTK could charge registered student organizations for the use of all facilities.**

At least four public universities in Tennessee, including UTK, charge RSOs some type of fee to use campus resources and facilities. UTK charges RSOs to rent tables and chairs if the event requires over a certain amount of either; additionally, certain facilities on campus charge rental and/or other fees to RSOs. The University of Memphis (UM) charges a rental fee to RSOs if an event is income-producing. This is also the practice at ETSU where RSOs are charged if an event requires an extraordinary amount of set up, clean up, or audio/visual assistance. Middle Tennessee State University (MTSU) charges RSOs for certain items such as custodial services, building and parking attendants, audio/visual assistance, and security based on the type of event and venue.

If UTK begins charging RSOs facility rental fees, it is likely that more RSOs would request student activity fee allocations. (Currently, only about 10 percent of the nearly 600 RSOs request funding annually.) If more RSOs request funding, the previous policy option to limit the amount of funding available per organization should be considered as well. Additionally, if this policy option were adopted, SEAT (and all other RSOs at UTK) would be reimbursing the university for the use of facilities with student activity fees, which are not considered to be state tax or tuition dollars.

**The University of Tennessee-Knoxville could add to the criteria used by the Student Programming Allocation Committee (SPAC) in making funding allocations; the current allocation criteria is outlined in the board policy that was adopted in 2014. During an interview with the Comptroller's Office, the university said it has been considering making changes to the allocation criteria currently used by the SPAC to "better meet the needs of the campus community."**

**11. The SPAC could be required to consider the benefit of the student body and the entire university when making funding decisions.** This standard is included in the allocation criteria used by RSO funding boards at four public universities in Tennessee (Austin Peay State University (APSU), ETSU, MTSU, and UM). At ETSU, the Student Government Association (SGA), an all-student, 30-member committee, considered its constitutional purpose "[to] always [keep] in mind the welfare of the entire student body" in making the decision to

deny a registered student organization's funding request for a Sex Week planned for February 2015. According to an administrator at ETSU, the SGA determined that awarding funds for Sex Week would not benefit the student body given the legislative backlash UTK received for Sex Week.

If the SPAC were required to "consider the benefit of the student body and the entire university" when making allocation decisions, it could decide not to fund certain events that have the potential to not benefit the student body or university.

**12. The SPAC could be formally prohibited from allocating funds for income-producing events.** UM policy prohibits the allocation of funds to RSOs for "fundraising events" and APSU policy states that student activity fee funding will not be allocated for "profit making ventures" for student organizations. Based on a review of the UTK SPAC funding decisions, this practice appears to be applied informally and inconsistently at the university. The SPAC has denied at least three organizations' allocation requests for a fundraising event, though the criterion is not included in the committee's formal list of allocation criteria. SEAT has received a funding allocation from the SPAC for an event in each of the past four years during which the organization collected donations from attendees.<sup>E</sup>

**13. The SPAC could be formally required to consider event attendance when making funding decisions.** No public university has a formal policy explicitly requiring that attendance be considered when allocating funds, though most universities, UTK included, require that events funded by student activity fees be planned and offered so that the majority of students are able to attend. An administrator in UTK's Division of Student Life said that the university is considering making anticipated event attendance part of its formal allocation criteria; the SPAC has denied funding for at least one event because a similar event offered the previous year was poorly attended. A 2013 letter sent to Dr. DiPietro by Senator Joey Hensley, who was then serving as Chair of the Senate Higher Education Subcommittee, recommended that the university explore a funding model that would take into consideration student participation.

If UTK implemented this allocation criterion, the university would need to adopt a more thorough method of tracking attendance at events funded by student activity fees. Currently, attendance is not tracked consistently (i.e., event attendance is largely reported by RSOs and attendance data provided to the Comptroller's Office for this report is inconsistently reported across events and years).

**14. SEAT should reflect on how student organizations at other universities have offered week-long sex-related programs.** Student organizers of Sex Week events at public universities in and outside of Tennessee have shown a willingness to compromise with campus administrators regarding language used to advertise the event. The current student cochairs of SEAT told the Comptroller's Office that it is not their intention to "stir the pot," though the organization demonstrated a lack of willingness to compromise during six years of controversy. A different marketing strategy for Sex Week at UTK might generate different results.

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<sup>E</sup> After reviewing a preliminary draft of this report, administrators at UTK told the Comptroller's Office that though the criterion is not included in the board policy outlining the SPAC's allocation criteria, "the university prohibits SPAC funding to be used for charitable causes," RSOs are informed that revenues raised from admission fees must be deposited back to the SPSF, and "the university was not aware of the fundraising done by SEAT."

## THE UNIVERSITY OF TENNESSEE

OFFICE OF THE PRESIDENT

The Honorable Justin P. Wilson  
Comptroller of the Treasury  
State Capitol  
Nashville, TN 37243

Dear Comptroller Wilson:

Ensuring student success is the greatest responsibility we have at the University of Tennessee. As university leaders, we value, support, and trust our students, the majority of whom are Tennesseans. They are bright individuals who will lead Tennessee, the nation, and our world to greater heights. One core value that our students and the university share is that of learning— from each other, our successes, and our failures.

While we want to support students, we also recognize that ‘Sex Week’ has caused frustration and embarrassment for legislators, alumni, many Tennessee citizens, and for us as administrators at UT, and we and the Board are committed to rectifying this. This student-led program on the UT Knoxville campus has generated such attention due to the explicit nature of some of its events. Over the past six years, various UT administrators and trustees have taken actions to address issues related to the event; however, we recognize that their approach, while focused on handling the issues, did not fix the problem and that too many events have been more about sensationalism than education.

We are grateful for the hard work of the Comptroller’s staff in assembling this report, which is fair and accurate, including the assessment that the University has not considered all of the potential actions to remove itself from the event. We are committed to learning from the report.

Accordingly, we will implement the following actions immediately:

- We will share copies of the Comptroller’s report with the UT Board of Trustees and engage in a public discussion of the Comptroller’s policy considerations with the Board at its next meeting on March 1.
- We will work with the Board to make the policy change necessary to cease future allocations of funds directly to registered student organizations and eliminate the Student Programming Allocation Committee (SPAC) [*Comptroller Policy Consideration #8*]. We also will work with the Board to develop a process in which the administration decides what programming to fund, including sex education programming, with input from students. Making this change will address the issue of potential bias in the allocation process [*Comptroller Policy Consideration #7*].

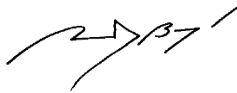
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- We will adopt a more consistent and proactive communication strategy for students, parents, and Tennessee citizens regarding Sex Week [*Comptroller Policy Consideration #6*].
- As part of our transparency initiative, we will publish detailed information on funding for registered student organizations for spring 2019 programming [*Comptroller Policy Consideration #3*].
- We will study the possibility of charging registered student organizations for the use of facilities that are not funded by the student activity fee [*Comptroller Policy Consideration #10*].

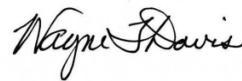
These steps likely will not prevent negative publicity and public displeasure of Sex Week 2019, a portion of which has already been funded with student activity fees under the current SPAC process. We are continuing to engage with the leaders of the student organization (SEAT) that organizes Sex Week, urging them to focus on “human sexuality as a legitimate academic field of inquiry” as noted in page 1 of the Comptroller’s report, and alter the descriptions and promotion of the programs to be more educational in nature. However, as the Comptroller’s report recognizes, previous campus discussions to that effect have not been successful.

It is our sincere hope that our actions to utilize the Comptroller’s report and policy considerations will help us address this issue more effectively and use all of our resources to achieve student success.

Sincerely,



Randy Boyd  
Interim President



Wayne T. Davis  
Interim Chancellor



**Justin P. Wilson**  
Comptroller of the Treasury

**Jason E. Mumpower**  
Deputy Comptroller

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