



Foundation for Individual Rights in Education

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March 15, 2010

President Robert N. Shelton
University of Arizona
Administration Building, Room 712
1401 East University Boulevard
P.O. Box 210066
Tucson, Arizona 85721-0066

Sent via U.S. Mail and Facsimile (520-621-9323)

Dear President Shelton:

As you know, the Foundation for Individual Rights in Education (FIRE) is a national nonpartisan, nonprofit educational and civil liberties organization working to defend and promote individual rights at our nation's colleges and universities. FIRE last wrote you on June 10, 2009, to voice our concern with an unconstitutional security fee levied against a student group for bringing a controversial speaker to campus. Following our letter, we were pleased to learn that the fee had been rescinded. Thank you for your recognition of the essential value of free expression on campus and the university's prompt action in that instance.

However, I must write you today because FIRE is deeply concerned about the threat to freedom of expressive association posed by the University of Arizona's (UA's) denial of recognition to an ideology-based student group that seeks to limit official membership to students with shared beliefs.

This is our understanding of the facts. Please inform us if you believe we are in error.

The University of Arizona recognizes a wide variety of student organizations under the auspices of the Associated Students of the University of Arizona (ASUA), the university's student government. Official ASUA recognition confers significant benefits to student organizations, including but not limited to access to university facilities. (For example, the ASUA "New Club Recognition Instructions" state: "[B]eing an officially recognized group on campus gives you access to free rooms in the union, free classrooms on campus, club funding, printing discounts, and much more!") Perhaps most importantly, recognition is required for an organization to be eligible to receive funding from the ASUA's Appropriations Board, which disburses more than \$150,000 annually to

recognized organizations. Recently, UA student Jeremiah Lange submitted an application to start a Students for Life club. ASUA's initial requirements for recognition include submission of a group constitution and contact information for officers, and specification of the prospective club's "category." (Choices include "Political," "Sports Club," "Cultural," "Special Interest," "Religious," "Academic," "Social Greek," "Professional," "Service," "Leadership," "Departmental," and "Honorary.")

Lange's application satisfied ASUA's requirements. However, a February 25 e-mail from ASUA Club and Organization Standards Board Director Jarrett Benkendorfer informed Lange that Students for Life's application had been denied. Benkendorfer wrote:

The Standards Board is unable to accept your application for recognition at this time for the following reason:

While you have included a statement of nondiscrimination, Article III, Section 3, of your Constitution presents a statement that violates club recognition guidelines. Because clubs must be open to the general student body, organizations cannot require participants to fulfill or abide by specific principles. We understand that students holding shared views with your club will be attracted to your organization, and feel that this section of your Constitution is unnecessary. If you decide to leave out this section, we ask that you resubmit your Constitution to the Orgsync website, so that we may grant you official recognition.

Article III, Section 3 of Lange's proposed Students for Life Constitution specified:

A member must agree to stand by the principals [sic] that life is sacred and that the intentional killing of human beings through abortion, euthanasia, and murder, and that all forms of eugenics are morally reprehensible.

Students for Life's Constitution further provided that while "meetings and events will be open to all University of Arizona students, faculty and staff," only "official, active" club members would be permitted to vote in the club's leadership elections or be nominated for leadership positions. Official, active membership is open to all UA students who request membership and agree with the principles specified above.

Despite Benkendorfer's reference to "club recognition guidelines," neither the "New Club Recognition Instructions" nor the student organization constitution template provided by ASUA includes any mention of a requirement that "organizations cannot require participants to fulfill or abide by specific principles." As of this writing, Lange has been unable to obtain a copy of the club handbook, which has been removed from the ASUA website; after requesting a copy from ASUA, Lange was informed that the handbook was being revised.

To be clear: By denying Students for Life official recognition and the benefits of recognition simply because the group seeks to require that members "stand by" the group's core tenet and organizing principle, the Standards Board has violated the First Amendment.

Freedom of expressive association is guaranteed by the First Amendment as a natural complement to freedom of expression because, as the U.S. Supreme Court has observed, “the right to speak is often exercised most effectively by combining one’s voice with the voices of others.” *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, 547 U.S. 47, 68 (2006). The Court has recognized that choosing the terms of one’s associations free from undue government interference is a “crucial” component of freedom of association because it protects against state coercion of “groups that would rather express other, perhaps unpopular, ideas.” *Boy Scouts of America v. Dale*, 530 U.S. 640, 647–48 (2000). Correspondingly, “freedom of association plainly presupposes a freedom not to associate.” *Roberts v. United States Jaycees*, 468 U.S. 609, 623 (1984). Freedom of association therefore grants an organization the right to make belief-based membership choices, including the choice to exclude from the organization people who do not share its core beliefs.

As a public institution of higher learning, UA has a moral and legal obligation to uphold its students’ First Amendment rights. That the First Amendment’s protections fully extend to public universities like UA is settled law. See, e.g., *Keyishian v. Board of Regents*, 385 U.S. 589, 605–06 (1967) (“[W]e have recognized that the university is a traditional sphere of free expression so fundamental to the functioning of our society that the Government’s ability to control speech within that sphere by means of conditions attached to the expenditure of Government funds is restricted by the vagueness and overbreadth doctrines of the First Amendment”); *Healy v. James*, 408 U.S. 169, 180 (1972) (“[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, ‘the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools’”) (internal citation omitted); *Widmar v. Vincent*, 454 U.S. 263, 268–69 (1981) (“With respect to persons entitled to be there, our cases leave no doubt that the First Amendment rights of speech and association extend to the campuses of state universities”). As such, denying a belief-based student group like Students for Life the right to associate with other students who share the group’s beliefs blatantly disregards the First Amendment right to freedom of expressive association to which all UA students are entitled by law.

ASUA, which is responsible for distributing a significant portion of the mandatory student activity fee collected by UA from every student, acts in this role as an authorized agent of the university and is equally bound by the First Amendment. Just as UA itself cannot prevent student organizations from exercising their First Amendment right to expressive association, neither can its agent, ASUA. As a state institution, UA must understand that it has a non-delegable duty to ensure that the First Amendment rights of its students are protected, and that the university and its administrators will be legally liable if these rights are not respected.

If UA is to allow expressive organizations to exist on its campus at all, it must allow belief-based organizations to exist, to define their missions, and to select their own voting members and leadership. No group can control its message and the delivery of that message if it is unable to determine without interference or coercion its own expressive purpose, membership, and activities. An expressive organization, whether it is religious, political, or something else, must be allowed to limit its leadership to people who share the group’s beliefs. The Young Democrats, for ready example, must not be forced to maintain a leader who no longer is a Democrat or

rejects various Democratic political beliefs, nor may ASUA force Students Organized for Animal Rights to accept as voting members those students who do not believe in animal rights.

FIRE strongly doubts that members of already-recognized ideological student groups including the College Republicans, Students for Justice in Palestine, Students Organized for Animal Rights, Voices of Opposition, Liberty in North Korea, Young Democrats, and Movimiento Estudiantil Chicano de Aztlán, among many others, are aware that under UA policy, they must either accept those students who explicitly and avowedly disagree with their central organizing purposes or else face derecognition. As should be readily apparent, such a result is absurd. Yet this is the logical consequence of ignoring the time-honored protection of the right to freedom of expressive association.

Moreover, because UA policy apparently denies certain belief-based student groups the power to make belief-based membership decisions, those student groups holding unpopular viewpoints will be vulnerable to takeover and even dissolution by those students who fundamentally disagree with the group's views. This concern is not simply hypothetical. At Central Michigan University (CMU), for example, Young Americans for Freedom (YAF), a conservative political student group, was told by the university's administration that because of the university's nondiscrimination policy, it could not exclude from membership students who were explicitly seeking to dissolve the group. In February 2007, CMU students, emboldened by the administration's position, started a group on the social networking site Facebook.com entitled "People Who Believe the Young Americans for Freedom is a Hate Group," where students posted messages suggesting ways to destroy YAF. One post suggested that members of the Facebook group "go to their meetings and ... *vote eachother [sic] onto the board and dissolve the group.*" The post further suggested that if YAF attempted to exclude these individuals from their meetings, they would likely "*slip up and break a [CMU] discrimination policy.*" (Emphases added.)

When the president of CMU's YAF chapter learned of this plan, he contacted the Associate Director of Student Life to ask if his group could prevent students who disagreed with the group's purpose from joining simply in order to take over the group. The Associate Director of Student Life responded that "*you may not require members to be 'like-minded'* as that opens yourself up to discrimination based on political persuasion." (Emphasis added.) By this administrator's understanding of CMU's nondiscrimination policy, YAF was powerless to control its own message. Such a result illustrates the absurdity of prohibiting student groups from requiring that those who would lead the group actually agree with the group's purposes. Indeed, UA's policy effectively grants to the UA student body a majoritarian veto over the beliefs that are acceptable on campus. It is hard to imagine a greater threat to the rights of ideological minorities at the University of Arizona.

The University of Arizona should be aware that FIRE has successfully concluded freedom of association cases at both public and private universities facing situations similar to this one. For example, after FIRE intervened on behalf of a broad interfaith coalition of Muslim and Christian student organizations, The Ohio State University agreed to change a "nondiscrimination" policy that prohibited religious student organizations from making critical decisions based on religious criteria. Similarly, Tufts University derecognized a Christian student group for wanting to

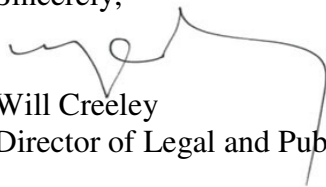
selectively admit leaders based on religious beliefs regarding homosexuality, but after FIRE interceded, Tufts eventually decided to respect its students' legal and moral rights to religious liberty and freedom of association. You may wish to read more about FIRE's efforts to defend freedom of association on these and other campuses across the nation online at <http://www.thefire.org/cases/freespeech>.

FIRE urges the University of Arizona to act immediately to correct this ongoing injustice by allowing Students for Life—and all registered student organizations at UA—to choose leaders and voting members on the basis of their political and other viewpoints. FIRE further requests that UA establish a clear policy stating that any group with an expressive purpose—be it secular, religious, political, social, or otherwise—may determine its membership and leadership on the basis of an individual's support for its mission.

FIRE hopes that this matter can be resolved amicably and swiftly, with fairness, common sense, and respect for the principle of free association. We are, however, committed to using all of our resources to see this matter through to a just and moral conclusion. Because of the urgency of this situation and the continuing violation of Students for Life's constitutional rights, we request a response by March 29, 2010.

Thank you for your prompt attention to this matter. I look forward to hearing from you.

Sincerely,



Will Creeley
Director of Legal and Public Advocacy

cc:

Melissa Vito, Vice President for Student Affairs
Carol Thompson, Assistant Vice President for Student Affairs & Dean of Students
Jarrett Benkendorfer, ASUA Club and Organization Standards Board Director
Chris Nagata, ASUA President
Emily Fritze, ASUA Executive Vice-President
Gabby Ziccarelli, ASUA Administrative Vice-President