



Foundation for Individual Rights in Education

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April 1, 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:

FIRE is in receipt of Bill Shiba's March 29 response to our March 15 letter to you. Unfortunately, Shiba's response fails to answer our grave concerns about the University of Arizona's (UA's) recent denial of recognition to a belief-based student group that seeks to limit official membership to those students who share the group's beliefs.

Instead of acknowledging UA's obligation under the First Amendment to guarantee its students full rights to expressive association and accepting student Jeremiah Lange's application for his proposed group named Students for Life (SFL), Shiba avoids the issue by simply stating that Lange should reapply. Shiba writes:

At the outset, let me address your client's recent inability to access ASUA's Student Organization Handbook either on-line or at ASUA's office. Your letter correctly notes that the Handbook was temporarily taken down from ASUA's website while it was undergoing revisions, including changes to the section entitled "Student Organization Categories." Due to the number of revisions being made to the website, it will not be available until Monday, April 5, 2010.

In light of this revision in particular, I urge your client to resubmit its recognition application after April 5, 2010 using an organized category [sic] that it believes is most applicable. Upon receipt, ASUA will process SFL's application in an expedited manner and will revisit its recognition decision if appropriate.

Shiba's response is wholly inadequate. It is unclear what impact ASUA's revisions to its Student Organization Handbook could possibly have on its

decision to deny recognition to Students for Life. Nor does Shiba explain why these revisions require reapplication. Worse still, Shiba fails to rectify or even acknowledge the Associated Students of the University of Arizona's (ASUA's) violation of SFL's First Amendment right to expressive association, a violation we outlined at length in our initial letter. As we wrote:

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.

[...]

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.

Again, FIRE asks that Students for Life be afforded the First Amendment right to freedom of expressive association that UA, as a public institution, is legally obligated to provide its students.

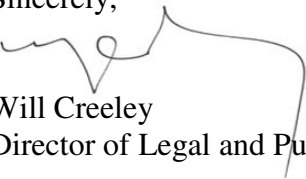
Lange has communicated to FIRE his intention to submit another application to ASUA on or shortly following Monday, April 5, per Shiba's request. We ask that you personally ensure that ASUA respects the constitutional right of UA students to assemble with others around shared beliefs, and that SFL's recognition is not further delayed.

As a final note of clarification, neither Lange nor SFL are FIRE's "clients." While I am an attorney and FIRE does on occasion coordinate litigation in conjunction with our Legal Network—a collection of attorneys dedicated to protecting core constitutional liberties on campus—FIRE itself does not directly litigate. However, in situations like the present instance where student rights are being violated, FIRE remains committed to using all of the resources at our disposal to secure a just outcome for students like Jeremiah Lange.

To reiterate: it is FIRE's hope that this matter be resolved quickly and amicably, with fairness, common sense, and respect for the principle of free association. Again, because of the urgency of this situation and the continuing violation of Students for Life's constitutional rights, we request a response by April 15, 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:

Bill Shiba, Executive Director, Arizona Student Unions
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
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