



May 23, 2014

Rev. John I. Jenkins, C.S.C.
University of Notre Dame
Office of the President
400 Main Building
Notre Dame, Indiana 46556

Sent via U.S. Mail and Facsimile (574-631-7428)

Dear Father Jenkins:

The Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, freedom of speech, and freedom of conscience on America's college campuses. Our website, thefire.org, will give you a greater sense of our identity and activities.

FIRE is concerned by the threats to freedom of expression and association resulting from the University of Notre Dame's denial of recognition to the organization Students for Child-Oriented Policy (SCOP). Notre Dame's Club Coordination Council claims that it rejected SCOP's bid for recognition because it believes the group's mission and activities are too similar to those of other existing groups. A closer examination of the group's identity and proposed activities calls this contention into serious question. Further, in FIRE's experience, this rationale is often cited pretextually to prevent a politically unpopular group from gaining recognition. The fact that SCOP's activities to date have garnered substantial criticism from the Notre Dame student body—including a petition opposing SCOP's right to official recognition—bolsters FIRE's concern that this may be the situation at Notre Dame.

The following is our understanding of the facts; please inform us if you believe we are in error.

SCOP, first formed as a prospective recognized student organization in January 2014, is focused on marriage-related policies in the state of Indiana. It aims to motivate other students to take an interest in this issue at the state level as well. SCOP's Facebook page describes its mission in the following way:

SCOP's overarching concern is that policymakers are failing to approach their task with a view to how those policies will affect children. They seem to conceive of policy only as it will affect the stable, independent adult with resources.

[...]

SCOP is a practical, action-oriented organization. We aim to build up a network of students across Indiana that will unite in favor of child-oriented policies--especially regarding marriage, at the current moment. We reject the view that the young have agreed to redefine marriage. Rather, we think that they have not explored the meaning and importance of marriage.

SCOP garnered attention at Notre Dame in March 2014 after circulating a petition declaring, "We understand marriage to be that natural institution that unites one man and one woman in a comprehensive sharing of life 'ordered toward the good of the spouses and the procreation of offspring'" [citation omitted] and calling on Notre Dame to "make a clear stand in support of the true definition of marriage and to take serious and sustained action to improve the public understanding of this natural institution."

The prominence of this petition prompted other students to release their own petition opposing SCOP's right to official recognition at Notre Dame and claiming that allowing SCOP to be recognized at Notre Dame would signal that the university "tolerates discrimination based on sexual orientation" and "sends the message that as a University we agree and uphold the assertions of the club." This petition, titled "Students Against SCOP," garnered more than 600 signatures.

In a letter dated April 30, 2014, SCOP was notified by Director of Student Activities for Programming Margaret S. Hnatusko that its bid for recognition and funding eligibility for the 2014–2015 academic year had been denied at the recommendation of Notre Dame's Club Coordination Council (CCC), a subdivision of Notre Dame's Student Government. Hnatusko's letter stated:

The Club Coordination Council indicated that the mission of your club closely mirrored that of other undergraduate student clubs on campus which served the intended interests of this club.

The letter did not indicate the organizations that SCOP "closely mirrored," nor did Hnatusko provide further explanation about why this perceived resemblance should disqualify SCOP from recognition. When interviewed by the *National Catholic Register*, CCC president Jimmy McEntee specified that CCC considered the Orestes Brownson Council on Catholicism and American Politics (OBC) and the Children's Defense Fund

(CDF) to be similar to SCOP in nature.¹ OBC's constitution describes the organization's mission in part:

To research and study and to inform and educate ourselves and our fellow students on issues pertaining to Catholicism, American politics, and the intersection of the two.

OBC's constitution further describes the areas of interest to the organization as

the role of religion in American politics, the proper role of government within the confines of constitutional boundaries; the doctrines of natural right and natural law; education and educational choice; family issues such as divorce, abortion, adoption, and child care; economic issues such as budget and tax policy, economic growth, free enterprise; as well as national defense, foreign policy, international trade, promotion of social welfare, and related topics.

CDF, meanwhile, is a campus branch of a Washington, D.C.-based organization whose mission is

to Leave No Child Behind, and to ensure every child a Healthy Start, A Head Start, a Fair Start, a Safe Start, and a Moral Start in life and a successful passage to adulthood with the help of caring families and communities.

The Notre Dame chapter's website states:

Our purpose is to inform, educate, and motivate the ND community about the issues of child poverty both here in South Bend and around the country.

CDF's website, however, has not been updated since January 26, 2007, according to its front page (the link to which is provided by the Student Activities Office's listing of student organizations), and the last listed events the group held are from the 2004–2005 academic year. It is not clear what role, if any, CDF currently plays in student life at Notre Dame.²

FIRE is therefore troubled by CCC's conclusion, endorsed by Notre Dame, that SCOP's mission is redundant in light of other existing organizations on campus. Considering the multiplicity of student groups present at Notre Dame, this finding is deeply misguided at best and, at worst, is a pretext for engaging in viewpoint-based discrimination against SCOP for espousing a politically unpopular message. We call on Notre Dame to reverse this decision.

¹ Brian Fraga, *Pro-Marriage Club Denied Official Status at Notre Dame*, NATIONAL CATHOLIC REGISTER, May 19, 2014, <http://www.ncregister.com/daily-news/pro-marriage-club-denied-official-status-at-notre-dame/>.

² Children's Defense Fund, <http://www.nd.edu/~cdf/> (accessed May 23, 2014).

First, CCC's apparent conclusion that the Orestes Brownson Council and Children's Defense Fund in particular negate the need to recognize SCOP on campus is shown to be deficient after even briefly examining the groups' missions and work. OBC's mission and interests are wide-ranging, focusing on everything from economic policy to education to foreign policy to a wide range of issues affecting the family. In sharp contrast, SCOP's focus is far narrower, primarily emphasizing public policy matters relating to marriage. If anything, SCOP's founding seems to have been motivated by the view that other student organizations were not placing enough of an emphasis on marriage policy in particular. What's more, while SCOP hopes to inspire students to favor specific public policy solutions and organize for political action, OBC is more focused on civic education broadly, and in fact makes clear in Section 6 of its constitution that it "shall not endorse, support, or oppose any candidate or proposed legislation, or expend funds to intervene in any political campaign on behalf of any candidate or proposed legislation."³

The CDF, on the other hand, is effectively a wholly different organization, given its particular focus on poverty and the national organization's focus on education and healthcare, among other issues. How CCC determined that CDF—to whatever extent the group even remains active—was close enough in its identity and purpose to render SCOP's presence on campus unnecessary is baffling.

We further note that while CCC claims that SCOP "closely mirrors" the work of other organizations, it recognizes numerous other organizations about which one could easily make similar arguments. For example, Notre Dame lists as recognized organizations two environmental groups: Students for Environmental Action and GreeND. It also recognizes the Latino Student Alliance (La Alianza) and MEChA (Movimiento Estudiantil Chicano de Aztlan). It also, unsurprisingly, has several organizations devoted to exploring the Roman Catholic faith and lifestyle, including the Campus Fellowship of the Holy Spirit, Communion and Liberation of Notre Dame, Iron Sharpens Iron, Filii Marie, and Militia Immaculata. That Notre Dame has rejected SCOP's recognition by citing the existence of two disparate student organizations while recognizing the multiplicity of organizations described above without apparent issue suggests a double standard working against SCOP. It would be all too easy for the reasons given for SCOP's denial to be used as a pretext to deny the group recognition on the basis of viewpoint—an illiberal determination at odds with the very idea of pluralism and free speech on campus.

In FIRE's experience, universities rejecting prospective student organizations' bids for recognition for the reasons stated here have been forced to backtrack after their justifications failed to hold up under scrutiny. The Catholic University of America, for example, belatedly recognized a campus chapter of the National Association for the Advancement of Colored People (NAACP) after initially rejecting it with the justification that prospective NAACP members' needs were already served by the existence of other

³ The OBC constitution may be found at <https://sites.google.com/a/nd.edu/ndobc/constitution>.

African-American and minority student groups on campus.⁴ (Notre Dame recognizes its own NAACP chapter in addition to the Black Student Association, Black Graduate Student Association, and Black Cultural Arts Council, among other organizations.) Similarly, the University of Miami reversed its initial denial of the recognition of the conservative organization the Advocates for Conservative Thought after claiming its needs were already filled by the university's College Republicans chapter.⁵ And the University of South Florida reversed its rejection of the conservative Young Americans for Freedom after initially claiming it was substantially the same organization as the libertarian Young Americans for Liberty.⁶

Notre Dame's mission statement admirably proclaims the university's goal of "provid[ing] a forum where through free inquiry and open discussion the various lines of Catholic thought may intersect with all the forms of knowledge found in the arts, sciences, professions, and every other area of human scholarship and creativity." Concurrent with this goal, it laudably promises that "students and student organizations are free to examine and to discuss all questions of interest to them and to express opinions publicly and privately." In keeping with these praiseworthy commitments, FIRE calls on the University of Notre Dame to promptly reverse its denial of SCOP's recognition. We hope to see Notre Dame promptly rectify this concern and to soon commend Notre Dame for reaffirming its commitments to plurality and freedom of expression.

We thank you for your prompt attention to this matter, and we request a response by June 6, 2014.

Sincerely,



Peter Bonilla

Director, Individual Rights Defense Program

cc:

Erin Hoffman Harding, Vice President for Student Affairs

Margaret S. Hnatusko, Director of Student Activities for Programming

Jimmy McEntee, President, Club Coordination Council

⁴ Documents related to this case can be found at <http://www.thefire.org/cases/catholic-university-of-america-rejection-of-campus-naacp-chapter/>.

⁵ Documents related to this case can be found at <http://www.thefire.org/cases/university-of-miami-refusal-to-approve-conservative-student-group/>.

⁶ Documents related to this case can be found at <http://www.thefire.org/cases/university-of-south-florida-administrator-confuses-conservatives-and-libertarians-to-deny-groups-recognition/>.