



National
Coalition
Against
Censorship

January 27, 2017

Jeffrey L. Gray
Senior Vice President for Student Affairs
Fordham University
441 East Fordham Road
Bronx, New York 10458

Sent via U.S. Mail and Electronic Mail (jgray@fordham.edu)

Dear Vice President Gray:

FIRE and NCAC are in receipt of your January 20, 2017 response to Palestine Legal (PAL) and the Center for Constitutional Rights (CCR), which you forwarded to us in response to our letter of January 25.

Unfortunately, your reply to PAL and CCR fails to adequately address our concerns. Indeed, in addition to reiterating the flawed reasoning that we addressed in our January 25 letter, your response introduced a new, equally troubling rationale for Fordham's infringement on its students' expressive rights: that members of Students for Justice in Palestine (SJP) at *other* universities have previously engaged in conduct that would violate Fordham's code of conduct.

Your letter stated, in relevant part:

The decision to deny the request to form a club known as Students for Justice in Palestine at Fordham University was based on the fact that chapters of this organization have engaged in behavior on other college campuses that would violate this University's student code of conduct. . . .

When asked to change the name of the proposed club and to distance themselves from the national organization, our students declined to do so. The University is under no obligation to grant club status to a group of students who choose to affiliate with an organization that engages in behavior that is inconsistent with the University's code of conduct. I have very serious concerns about the prospect of allowing an external

organization to encourage disruptive conduct on campus that could adversely impact our students and our campus community.

Refusing to grant SJP recognition because of the actions of unaffiliated individuals at other institutions is flatly inappropriate and violates Fordham's explicit promises of free expression.

Again, as we explained in our January 25 letter, the Supreme Court of the United States rejected exactly this argument in *Healy v. James*, 408 U.S. 169 (1972), a case precipitated by a controversy that bears striking resemblance to this matter. In *Healy*, the president of Central Connecticut State College (CCSC) refused to grant recognition to the campus chapter of Students for a Democratic Society (SDS) based in part on his apprehension regarding the chapter's affiliation with the national organization—despite the students' repeated assurances that the chapter would be independent and owed no allegiance to the national organization. *Id.* Dismissing the president's justification for denying SDS recognition, the Court wrote:

[I]t has been established that “guilt by association alone, without [establishing] that an individual's association poses the threat feared . . .” is an impermissible basis upon which to deny First Amendment rights.

[. . .]

Students for a Democratic Society, as conceded by the College and the lower courts, is loosely organized, having various factions and promoting a number of diverse social and political views, only some of which call for unlawful action. Not only did petitioners proclaim their complete independence from this organization, but they also indicated that they shared only some of the beliefs its leaders have expressed. On this record it is clear that the relationship was not an adequate ground for the denial of recognition.

Id. at 186–87 (internal citation omitted).

The founders of the prospective SJP chapter at Fordham have made similar, repeated assurances that it is independent and bears no responsibility to the national organization of Students for Justice in Palestine (NSJP). On two separate occasions, in April and September of 2016, the students confirmed to the administration that “NSJP is a separate, student-run organization which organizes annual conferences but otherwise is independent of campus SJP organizations,” and that the national organization did not require anything of a campus chapter.¹ Further, on October 14, the students themselves

¹ Letter from Maria C. LaHood, Deputy Legal Director, Center for Constitutional Rights and Radhika Sainath, Staff Attorney, Palestine Legal, to Rev. Joseph M. McShane, President, Fordham University (Jan. 17, 2017), available at <https://goo.gl/9UAYIm>.

proposed to codify this in the chapter's constitution by adding the language "NSJP requires nothing of us, and we have no responsibility to it."² In light of SJP's express disavowal of any responsibilities or allegiances to NSJP, it is difficult to conceive of any rational purpose for Fordham's insistence that SJP change its name. Fordham sets a dangerous precedent in holding student groups accountable for the actions of unrelated individuals at other institutions. Would Fordham derecognize the College Democrats or College Republicans if chapters at other universities engaged in misconduct? We suspect that you would not, and an *ad hoc* rule subjecting SJP to such liability is equally unacceptable.

Having noted that guilt by association is an illegitimate ground upon which to restrict students' expressive rights, the *Healy* Court rejected CCSC's argument that it could deny recognition to SDS based on speculative fears that it would be disruptive on campus:

The record, however, offers no substantial basis for that conclusion. The only support for the view expressed by the President, other than the reputed affiliation with National SDS, is to be found in the ambivalent responses offered by the group's representatives at the Student Affairs Committee hearing, during which they stated that they did not know whether they might respond to "issues of violence" in the same manner that other SDS chapters had on other campuses.

[. . .]

[T]here was no substantial evidence that *these particular individuals acting together* would constitute a disruptive force on campus. Therefore, insofar as nonrecognition flowed from such fears, it constituted little more than the sort of "undifferentiated fear or apprehension of disturbance [which] is not enough to overcome the right to freedom of expression."

Healy, 408 U.S. at 190–91 (emphasis added) (internal citation omitted).

Fordham's allegation that SJP would likely engage in "disruptive conduct" is similarly unfounded, if not more so. FIRE is unaware of any questions asked of the students regarding their intent to engage in *conduct* similar to that of other SJP chapters. Rather, the students were questioned on their use of the term "apartheid" and their support for the Boycott, Divestment and Sanctions (BDS) movement—*i.e.*, their *viewpoints*. Fordham's fear of disruptive conduct is rank speculation and cannot be a basis for refusing to recognize SJP.

Again, while Fordham University is not bound by the First Amendment, it *is* bound by the explicit promises of free expression that it makes to its students. Your university may not lay claim to the intellectual vitality that results from freedom of expression and the marketplace of ideas while simultaneously prohibiting students from forming a student

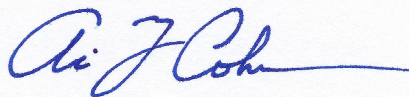
² *Id.*

organization because of administrative disagreement with their beliefs and baseless fears of disruption. If your commitment, as stated in your January 20 letter, to “protect[ing] the ability of all . . . students to voice their political views” is to mean anything, Fordham must immediately reverse course.

Accordingly, FIRE and NCAC again urge you to respect the expressive rights of Fordham students and grant Students for Justice in Palestine recognition as a student organization, in accordance with the United Student Government’s approval.

FIRE and NCAC are committed to using all of the resources at our disposal to see this matter through to a just conclusion. We request a response to this letter by February 3, 2017.

Sincerely,



Ari Z. Cohn
Director, Individual Rights Defense Program
Foundation for Individual Rights in Education



Svetlana Mintcheva
Director of Programs
National Coalition Against Censorship

cc:

Rev. Joseph M. McShane, President
Keith Eldredge, Dean of Students