



March 16, 2017

William T. Abare, Jr.
Office of the President
Flagler College
74 King Street
St. Augustine, Florida 32084

Sent via U.S. Mail and Electronic Mail (abare@flagler.edu)

Dear President Abare:

The Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

FIRE is concerned about the state of freedom of speech and freedom of association at Flagler College following the Student Government Association's (SGA's) rejection of prospective student group Young Americans for Liberty (YAL) on the basis of the group's "political agenda." This viewpoint-based rejection of YAL cannot stand at a college that seeks to allow its students to engage in the marketplace of ideas.

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

During September and October 2016, Flagler student Kelli Huck met with Director of Student Activities Timothy Mellon approximately 10 times to discuss forming a YAL chapter on Flagler's campus. Huck sent Mellon all of the materials that Flagler requires from prospective student groups, including a constitution, a list of over 20 students interested in joining YAL, the name of a faculty advisor, a mission statement, and more. According to Huck, Mellon assured her that he expected YAL to gain approval.

On October 27, Huck, along with fellow students Paris Huckaba and Kayla Stephens, gave a presentation before the SGA about YAL as an effort to gain recognition for the group, which requires approval from two-thirds of SGA members. Two days later, SGA President Caitlin Croley emailed Huck to notify her YAL did not gain SGA's approval:

Unfortunately, the Young Americans for Liberty did not pass for approval through the Student Government Association. Our voting membership felt as if the presentation was lacking in certain information, such as a list of interested parties, community service events, budget, and a greater focus on your mission statement. There was a lot of confusion surrounding the purpose of the club and how the club planned to enact said purpose and goals. Furthermore, there was an issue regarding the club's connection to the national organization. There were discrepancies between your responses and the information found on the organization's website. Lastly, some comments were made about organization of the presentation and certain levels of preparedness. So, I encourage you to resubmit your application for next semester and to take these comments to learn from. If you have any questions regarding the process or further information on the comments, please let me know.

Over the following months, Huck prepared to present in front of the SGA again to gain recognition for YAL and adjusted YAL's presentation in light of the criticisms aired by the SGA. On February 7, Huck again went before the SGA with a new presentation. According to Huck, SGA members questioned her about whether her support for Ron Paul's campaign would influence the group and voiced concerns that the prospective YAL chapter seemed to be a Republican group.

On February 10, Croley emailed Huck to again explain that YAL did not gain the SGA's approval:

Unfortunately, the Young Americans for Liberty did not pass for approval through the Student Government Association. Although YAL did receive more than 50% of the votes, a club must be approved by 2/3 vote. Our voting membership felt as if the club was still trending towards one certain political agenda and that there was a resistance to work with other on-campus organizations. Additionally, there was a lack of clarity based on what kind of issues and activism were going to be pursued by the group, causing a certain fear regarding the group's direction. I apologize for this result.

Croley then encouraged Huck to "learn from" YAL's rejection and again resubmit the group's application the following semester.

While Flagler College is a private university and thus not legally bound by the First Amendment, it is both morally and contractually bound to honor the promises it has made to its students. For example, your message in Flagler's Student Handbook states:¹

The primary aim of our college is to provide for the intellectual and personal development of our students. To this end, we believe there is no substitute for the interaction between students and faculty to facilitate the learning process and assist students in the pursuit of their educational goals.

¹ 2016 - 2017 *STUDENT HANDBOOK*, FLAGLER COLLEGE, http://www.flagler.edu/_documents/student-life/student-services/Student_Handbook_20162017_with_bookmarks.pdf (last visited March 15, 2017).

We recognize, however, that learning is not confined to the classroom. Learning on a college campus occurs through a wide variety of experiences, ranging from involvement in the residence life program to participation in student clubs and organizations. These experiences are intended to foster students' personal growth and development and to enhance their education. Research has shown that students who involve themselves in campus life and activities derive significant educational benefits from these experiences.

SGA's viewpoint-based rejection of YAL's application for recognition is at odds with Flagler College's stated commitment to fostering intellectual development by exposing students to "a wide variety of experiences," including participation in student life. In order to uphold the principles to which the university commits itself, Flagler must reconsider the SGA's decision.

It is unclear what Croley meant when she wrote that some SGA members felt "a certain fear regarding the group's direction." To the extent that SGA members were reluctant to grant YAL recognition on the grounds that they disapproved of the group's views, such a justification is unacceptable.

In discussing matters of societal and political importance, one would be hard-pressed to find an opinion that is not opposed by *someone*. Indeed, the principle of freedom of speech does not exist to protect only non-controversial expression; it exists precisely to protect speech that some members of a community may find controversial or offensive. The Supreme Court of the United States stated in *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949), that speech "may indeed best serve its high purpose when it induces a condition of unrest . . . or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea." The Court has explicitly held, in rulings spanning decades, that speech cannot be restricted simply because it may be controversial. See *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667, 670 (1973) ("[T]he mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of 'conventions of decency.'") Again, although Flagler is a private institution and not bound by the First Amendment, it makes promises to allow students to participate in student groups and, in doing so, gain more from their education—and it must honor those promises.

FIRE's concern that the SGA's decision was motivated by disagreement with the group's views is reinforced by the apparent double standard at play. If the SGA truly objected to recognizing student groups on the basis that they are "trending towards one certain political agenda," then several of Flagler's recognized student organizations would not be able to exist. Flagler's College Republicans, College Democrats, Green Team, and Gender Equality Monthly Symposium, to name just a few, clearly or arguably exist to further political goals. The SGA's justification for rejecting YAL because of a "political agenda" is spurious at best, and pretext at worst.

This apparent viewpoint-based rejection of YAL in this case contradicts the principles established by the Supreme Court when it held that public universities are required to grant expressive student organizations recognition and access to the funding of student activities on a viewpoint-neutral basis. See *Board of Regents of the University of Wisconsin System v.*

Southworth, 529 U.S. 217, 233 (2000) (“When a university requires its students to pay fees to support the extracurricular speech of other students, all in the interest of open discussion, it may not prefer some viewpoints to others.”). The same must hold true at a private institution that, like Flagler College, is committed to free speech. Although the SGA is not legally bound by the First Amendment, it fundamentally abandons Flagler’s institutional commitments and undermines First Amendment principles when it acts to stifle speech that it does not like.

By refusing to grant YAL recognition because some members of the SGA are opposed to the group’s perceived “direction,” the SGA is hindering free and open dialogue on campus, to the great detriment of Flagler students’ education. Allowing open debate is not always an easy endeavor, but without it, students would not be able to encounter the “wide variety of experiences” Flagler believes is crucial to education. Put simply, it is not the place of the SGA to determine that students should not be able to fully engage in campus life simply because some of SGA’s members oppose what their group *may* do in the future. Croley’s suggestion that Huck resubmit YAL’s application for a *third* time is absurd—it seems likely that YAL would only be approved if it were a completely different group.

If YAL’s rejection is allowed to stand, Flagler’s promise to encourage student involvement in campus life will be tarnished. To honor the commitments it has made to fostering intellectual growth on campus, Flagler must intervene and review YAL’s application for recognition in a viewpoint-neutral manner, which SGA has failed to do.

FIRE is 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 March 30, 2017.

Sincerely,



Sarah McLaughlin
Program Officer, Individual Rights Defense Program

cc:

Caitlin Croley, President, Student Government Association
Timothy Mellon, Director of Student Activities