



March 31, 2017

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

**URGENT**

*Sent via Electronic Mail (abare@flagler.edu)*

Dear President Abare:

As you know, 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 was disappointed not to receive a response to our March 16, 2017, letter to you regarding the continued refusal of Flagler College's Student Government Association (SGA) to grant recognition to a prospective chapter of Young Americans for Liberty (YAL) due to its "political agenda."

Unfortunately, the threat to freedom of speech posed by the SGA's actions has cascaded into yet another violation of Flagler students' expressive rights, as YAL's unrecognized status has now been used as a basis to deny its members the right to engage in expressive activity in the outdoor areas of campus. The actions of both the SGA and the Flagler College administration violate the college's stated commitment to freedom of expression and must be reversed immediately.

**I. Facts**

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

As explained in our March 16 letter, Flagler student Kelli Huck has repeatedly attempted to gain recognition for a YAL chapter, only to be rejected twice by the SGA on the basis of disagreement with the prospective organization's views.

On March 30, 2017, Huck emailed her advisor and two professors to inform them that she

would be missing class due to an event she planned to host the next day on the open areas of Flagler's campus, and to ask them to tell students about the event. Huck wrote:

Hello,

I will be absent on Friday the 31st, due to an activity I am running for my organization, Young Americans for Liberty. I will be outside on campus rolling around a huge beach ball, encouraging students to exercise their first amendment rights, and to inform them of Flagler's stance on free speech. I understand this is a completely unexcused absence, and I will be responsible to find out what is going to be missed in class. If you feel so inclined, I would love if you could announce to the class about this event, as I hope to interact with as many students as possible. I will be on the grounds rolling this 7 foot tall beach ball from about 8:30 am-1 pm, I should not be hard to find.

Thanks!

She then sent the following email to a larger group of professors to inform them of the event as well (emphasis in original):

Hello,

I am holding an event this Friday on the campus grounds, on behalf of my organization: Young Americans for Liberty. I will be rolling around a giant beach ball for the majority of the day, asking students to exercise their first amendment rights and write whatever they want on the ball. I would appreciate greatly if you announced to your students that this event is going to be happening.

This event is being held one day after President Abare is required to respond to a letter of concern sent on the behalf of FIRE (Foundation for Individual Rights in Education). They have voiced a concern in regards to the SGA's repeated denial to the club Young Americans for Liberty, where SGA is claiming the group should not be allowed on campus due to having a "political direction."

***I welcome all students, staff, and faculty to participate in exercising their first amendment right, regardless of beliefs or political leaning, this Friday on Flagler's campus from roughly 8:30 am until 1pm.***

If you are interested in learning more about FIRE's letter of concern, I would be more than happy to fill you in.

Hours after Huck sent her email, Flagler College Director of Student Activities Timothy Mellon contacted her and explained to her that he had "been made aware of a planned event for tomorrow on behalf of the Young Americans for Liberty organization for [sic] which you

represent.” Mellon asked her to meet that day for a “15-20 minute conversation” regarding the “event and policies in place for reserving campus locations on behalf of organizations.”

Huck met with Mellon and Vice President of Student Services Daniel Stewart that afternoon. Mellon and Stewart refused to allow Huck to record the meeting. During the meeting, Mellon and Stewart informed Huck that only registered student groups could hold events on Flagler’s grounds. Huck was informed that because her prospective YAL chapter had been denied by the SGA multiple times, she could not hold her event. They stated that individuals could not use the campus grounds for events, and explained that it would be “unfair” to registered student groups if Huck did not go through the registration process registered groups were required to use. Huck was warned that she could *only* use the public road that went through campus, not Flagler’s grounds, for her free speech ball event.

Flagler College is a private institution and thus not legally bound by the First Amendment. Nevertheless, as FIRE explained in our previous letter, it has explicitly committed itself to the principles of free expression.

For example, your message in Flagler’s Student Handbook states:<sup>1</sup>

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.

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.

In making such commitments to its students, Flagler College has morally and contractually obligated itself to abide by them.

According to Huck, Flagler administrators informed her that only recognized student organizations may use campus grounds for expressive events. As a threshold matter, this assertion conflicts with Flagler College’s Student Handbook, which provides:

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<sup>1</sup> 2016 - 2017 STUDENT HANDBOOK, FLAGLER COLLEGE, [http://www.flagler.edu/\\_documents/student-life/student-services/Student\\_Handbook\\_20162017\\_with\\_bookmarks.pdf](http://www.flagler.edu/_documents/student-life/student-services/Student_Handbook_20162017_with_bookmarks.pdf) (last visited March 15, 2017).

Organizations **and/or individuals** wishing to schedule an event on or off campus during the academic year are required to complete an Event Request form at least two weeks prior to the event.<sup>2</sup>

If Flagler’s policies in fact restrict the right to hold expressive events to only registered student organizations, they must be amended. There is nothing “unfair,” as Mellon and Stewart claim, about allowing individuals to use campus grounds to host events. Rather, allowing *all* students—regardless of organizational affiliation—to use the outdoor areas of campus to communicate with their peers simply recognizes that each Flagler student has an equal right to freedom of expression, in accordance with institutional promises. The only unfairness posed by the present controversy is the contention that a student must obtain some affiliation with a recognized organization in order to participate in the marketplace of ideas that Flagler College claims to value.

Moreover, Flagler’s refusal to allow Huck to engage in her free speech ball activity highlights the damage to freedom of expression caused by the SGA’s refusal to recognize the prospective YAL student organization. Because YAL is not recognized, its members have been informed that they may not use campus grounds to engage in expression and speak with their peers. This is precisely the harm that the Supreme Court recognized when it held that a public college’s refusal to recognize a student organization on account of the message it wishes to express violates the fundamental principle of freedom of expressive association:

Among the rights protected by the First Amendment is the right of individuals to associate to further their personal beliefs. . . . There can be no doubt that denial of official recognition, without justification, to college organizations burdens or abridges that associational right. The primary impediment to free association flowing from nonrecognition is the denial of use of campus facilities for meetings and other appropriate purposes.

*Healy v. James*, 408 U.S. 169, 181 (1972).

The SGA’s viewpoint-based denial of recognition to YAL is an affront to the freedom of expression promised by Flagler College and must be reversed for the reasons stated in our March 16 letter. But if the college restricts expressive activity to recognized student organizations, the necessity of that reversal becomes all the more urgent. Flagler cannot delegate to a student government the authority to decide which students may or may not express themselves on campus, then stand idly by when that body runs roughshod over the fundamental principles of freedom of expression that Flagler has promised to protect.

Finally, Flagler’s policy, as indicated in the student handbook, requiring that Huck register her activity two weeks in advance also violates her expressive rights.

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<sup>2</sup> Flagler College Student Handbook 2016-2017 at 112, *available at* [http://www.flagler.edu/\\_documents/student-life/student-services/Student\\_Handbook\\_20162017\\_with\\_bookmarks.pdf](http://www.flagler.edu/_documents/student-life/student-services/Student_Handbook_20162017_with_bookmarks.pdf) (emphasis added).

As we noted in our previous letter, the restrictions on the regulation of expressive activity imposed by the First Amendment at public institutions are instructive for any private institution that claims, as Flagler does, to value freedom of expression. While a college may establish “reasonable time, place and manner” restrictions on expressive activity on its property, *Ward v. Rock Against Racism*, 491 U.S. 781 (1989), there is nothing “reasonable” about demanding that students obtain administrative permission simply to display—in the open, outdoor areas of campus—an inflatable beach ball on which students can write messages, or making students wait two weeks to be granted the right to speak.

Indeed, administrative procedures requiring a speaker to obtain a license, permit, or to register before engaging in expression are highly disfavored under the law and difficult to justify. *See New York Times v. United States*, 403 U.S. 713, 714 (1971) (“Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity.”) (internal quotation marks omitted); *see also Watchtower Bible and Tract Soc’y of NY, Inc. v. Vill. of Stratton*, 536 U.S. 150, 165–66 (2002) (“It is offensive—not only to the values protected by the First Amendment, but to the very notion of a free society—that in the context of everyday public discourse a citizen must first inform the government of her desire to speak to her neighbors and then obtain a permit to do so.”).

FIRE understands that large-scale events that pose a risk of disruption or require significant campus resources may sometimes properly require advance coordination. But instances of student expression that trigger such considerations are rare, and none of those factors are present with respect to Huck’s planned expression. Huck and members of her organization simply wish to engage their fellow students in dialogue and participate in the marketplace of ideas—an outcome consistent with the purpose and mission of higher education that Flagler College should welcome rather than inhibit.

The actions of the SGA and your administration have placed the expressive rights of all Flagler students at risk. Your college may not purport to encourage the learning that occurs via participation in campus life while simultaneously obstructing students from engaging in expressive activities with their peers. In order to uphold the principles to which it has committed itself, Flagler College must reverse the SGA’s denial of recognition to YAL, allow Huck to engage in her non-disruptive expressive activity without interference, and clarify to the campus community that Flagler College will respect its students’ expressive rights.

FIRE remains committed to utilizing all of the resources at our disposal to see this matter through to a just conclusion. Due to the immediate nature of Huck’s event, we request a response to this letter by 5:00 p.m. today, March 31, 2017.

Sincerely,



Ari Z. Cohn

Director, Individual Rights Defense Program

cc:

Timothy Mellon, Director of Student Activities

Daniel Stewart, Vice President of Student Services