



June 27, 2019

Jeanne Rosenberger  
Student Life, Vice Provost  
Santa Clara University  
500 El Camino Real  
Santa Clara, CA 95053

*Sent via Electronic Mail (jrosenberger@scu.edu)*

Dear Vice Provost Rosenberger:

FIRE is in receipt of your June 13, 2019, letter on behalf of Santa Clara University (SCU), denying a request from the proposed SCU Young Americans for Freedom (YAF) chapter that the administration overturn the May 23 decision by the SCU Associated Student Government (ASG) to deny recognition to the group.

We are disappointed and puzzled by SCU's ratification of the ASG's viewpoint discrimination. Your letter avers that the record does not "establish that the denial of recognition was based on YAF's political opinion."<sup>1</sup> Yet the ASG's own minutes are saturated with criticisms of the perceived views and positions of YAF's national organization, other chapters, and the students involved in the proposed chapter.

Specifically, members of the ASG:<sup>2</sup>

1. Said YAF has "a history of physical harm towards the LGBTQ+ community" and read a statement from a student criticizing a YAF chapter's protest against LGBTQ+ legislation, then questioned YAF's "stance on safety and traditional values";
2. Criticized the students' perceived failure to engage with criticism of the "toxic masculinity and conservative ideologies that steam [*sic*] from your YAF presentation";

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<sup>1</sup> Letter from Jeanne Rosenberger, Vice Provost for Student Life, Santa Clara Univ., to Quinn Eibert & Lauren Levinson, SCU YAF Chapter Leadership (June 13, 2019) (on file with author).

<sup>2</sup> ASSOC'D STUDENT GOV'T SANTA CLARA UNIV., Senate Minutes 5.23.19, June 1, 2019, <https://www.asgscu.com/single-post/2019/06/01/Senate-Meeting-Minutes-52319-Week-8>. The names of the ASG members are redacted and their statements are printed as is.

3. Said they (the ASG members) were “ideologically, definitely different,” and that YAF should “look at the impacts from other viewpoints,” and that YAF’s views on legal immigration did “not meet the Jesuit values of community and inclusivity” because they do “not celebrate undocumented immigrants. They also criticized the response of the Reagan administration (as YAF might visit the Reagan ranch) to HIV/AIDS, and wanted to know how YAF was going to “mitigate these harms that are going to happen”;
4. Questioned what the group’s “response” would be, “if you are going to be a conservative club,” if someone who did not share their “traditional values” approached them;
5. Asserted Ben Shapiro, a conservative speaker the YAF students expressed an interest in inviting, was “Islamophobic” and that they “can’t tolerate” that “emotional harm”;
6. Shared a statement from a student, “which is kind of based what I am voting on,” which asserted that YAF should be rejected because its “anti-socialist” views might be similar to those of Turning Point USA, specifically citing YAF’s views on illegal immigration and the possibility that they would “further marginalize minority students”;
7. Discouraged the group from putting on “events like ‘March Liberal Madness’” because that would be “targeting . . . ideology on campus directly”;
8. Argued that the Leonard Law does not bar recognition of a group because its members were not being disciplined, and students shouldn’t “have to take time out of [their] day to go to their events” to counter YAF’s views, as that would be “a burden”;
9. Criticized Ben Shapiro as an “extremist” who people are “threatened by”;
10. Said it was “important” to highlight the “polarization” which “grows over time” from inviting speakers like Shapiro.

That amounts to 10 of the 28 ASG members present expressly criticizing the group’s political, social, or religious views. Still three more members asked questions about the group’s views, such as (1) asking how the YAF students define “traditional family values”; (2) asking how the group would advance “ideological membership” among its own members; and (3) asking the students to explain their “No More Che Day.”

The remaining two ASG members that spoke raised questions about the similarity of the group’s views to Turning Point USA. This rationale, however, had already been rejected by the ASG’s student court due to the differences in the groups’ views. Moreover, it is mere pretext to viewpoint-discrimination: one of the advocates of this rationale expressly cited their personal view that the group advances “Anti-muslim rhetoric” and that the group is contrary to “SCU values.”

The remaining members did not provide any indication as to how they voted. Accordingly, at least 14—half—of the members present raised the organization’s views before voting to deny recognition. It is difficult to imagine stronger evidence of viewpoint-discriminatory animus.

The verbose minutes taken by the ASG do not reveal any other rationale offered to justify denying recognition. SCU’s administration asserts that the ASG’s decision was *not* driven by opposition to YAF’s views, and was instead premised on some other, viewpoint-neutral basis. If SCU’s administration is to ratify the ASG’s decision to deprive SCU students of the

expressive rights purportedly guaranteed by the university, it has the burden of answering a simple question: what is the viewpoint-neutral basis justifying a limitation on its students' expressive and associational rights? In answering, the university should remain mindful that a California Court of Appeal recently held—in an opinion we attach for your convenience—that freedom of association falls within the rights protected by California's Leonard Law.<sup>3</sup>

Just two years ago, you wisely exercised your authority to reverse the ASG's rejection of a Turning Point USA chapter on viewpoint-discriminatory grounds.<sup>4</sup> SCU Provost Dennis Jacobs commented to SCU faculty that, "Santa Clara University would be less of a university if we became intellectually intolerant and systematically excluded persons who fundamentally disagreed with the majority."<sup>5</sup> We once again call upon SCU to uphold its laudable commitment to freedom of expression, and reverse the ASG's denial of YAF's application for recognition.

We request receipt of a response to this letter no later than close of business on July 11.

Respectfully,



Zach Greenberg  
Program Officer, Individual Rights Defense Program

cc:

Michael E. Engh, President  
Dennis C. Jacobs, Provost and Vice President for Academic Affairs  
Bridget K. Colbert, Interim General Counsel

Encl.

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<sup>3</sup> *Omicron Chapter of Kappa Alpha Theta Sorority v. Univ. of S. Cal.*, 2019 Cal. App. Unpub. LEXIS 3089 (2nd App. Dist. Div. 5, May 1, 2019).

<sup>4</sup> Eric Kurhi, *Santa Clara University reverses student vote, OKs conservative group*, MERCURY NEWS, Mar. 5, 2017, <https://www.mercurynews.com/2017/03/05/santa-clara-university-reverses-student-vote-oks-conservative-group>; see also Press Release, *Santa Clara University protects student free speech with one hand, censors with the other*, FIRE, Mar. 7, 2017, <https://www.thefire.org/santa-clara-university-protects-student-free-speech-with-one-hand-censors-with-the-other>.

<sup>5</sup> Kurhi, *supra* note 4.