



February 2, 2021

Richard V. Homan, MD
Eastern Virginia Medical School
Office of the President
P.O. Box 1980
Norfolk, Virginia 23501

Sent via Electronic Mail (homanRV@evms.edu)

Dear President Homan:

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 free speech and freedom of association at Eastern Virginia Medical School (EVMS) in light of its Student Government Association's refusal to recognize a proposed student group, Students for a National Health Program (SNaHP), because of the group's political advocacy. This viewpoint-based rejection of SNaHP violates EVMS's obligations as a public school bound by the First Amendment and must be reversed.

I. EVMS Refuses to Recognize SNaHP over the Group's Political Advocacy

The following is our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us.

In December 2020, EVMS students applied to the Student Government Association for recognition of their group, Students for a National Health Program, which advocates for a universal, comprehensive, single-payer national health program.¹ The group has fulfilled all the procedural requirements and criteria for recognition by providing the Student

¹ *About Us*, STUDENTS FOR A NAT'L HEALTH PROGRAM, <https://student.pnhp.org/about> (last visited Jan. 28, 2021). There are over 80 chapters of SNaHP at medical schools in the United States, meaning there are chapters of the organization at a majority of academic institutions accredited to award a Doctor of Medicine degree. *Current Chapters*, STUDENTS FOR A NAT'L HEALTH PROGRAM, <https://student.pnhp.org/chapters/current-chapters> (last visited Jan. 28, 2021).

Government Association with its mission statement, membership list, plan for sustainability, and proposed annual events, among other materials and information.²

On January 7, the Student Government Association informed the group that it voted against recognizing SNaHP because it “does not want to create clubs based on opinions, political or otherwise, and the mission and goals of your club do not describe what we believe to be necessary or sustainable for a club.”³

Recognition from the Student Government Association affords student groups opportunities to “connect with leadership, gain professional experience, address critical health issues in the community, [and] access important student life resources”⁴ including “use of the EVMS name, access to EVMS facilities, access to EVMS-recognized banking, and use of institutional or SGA funding,” among other rights and privileges.⁵

SNaHP plans to appeal the Student Government Association’s denial of recognition.

II. EVMS’s Viewpoint-based Rejection of SNaHP Violates the First Amendment

EVMS’s obligation to respect students’ First Amendment rights cannot be reconciled with its refusal to recognize SNaHP because of the group’s political advocacy.

A. *EVMS is bound by the First Amendment.*

It has long been settled law that the First Amendment is binding on public schools like EVMS.⁶ Accordingly, the decisions and actions of a public university—including the pursuit of disciplinary sanctions,⁷ recognition and funding of student organizations,⁸ interactions with student journalists,⁹ conduct of police officers,¹⁰ and maintenance of policies implicating student and faculty expression¹¹—must be consistent with the First Amendment.

² *Criteria for Approval of a New Student Organization*, E. VIRGINIA MED. SCH. (last accessed Jan. 15, 2021), https://6cc471ca-aa3b-4292-b6c5-e8b144a1953a.filesusr.com/ugd/d39c55_e06cae9223104e7199e03bd54f4bb401.pdf (listing criteria and requirements for club recognition); Club Resources, EVMS Student Government Association (last accessed Jan. 19, 2021), <https://www.eventmedley.com/club-resources-1> (same).

³ Email from Riley Suter, Student Government Association Vice President, to SNaHP group leadership (Jan. 7, 2021) (on file with author).

⁴ *Student Leadership*, E. VIRGINIA MED. SCH., (last accessed Jan. 15, 2021), https://www.evms.edu/education/resources/student_leadership.

⁵ *Criteria for Approval of a New Student Organization*, *supra* note 2.

⁶ *Healy v. James*, 408 U.S. 169, 180 (1972).

⁷ *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 667–68 (1973).

⁸ *Bd. of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 221 (2000).

⁹ *Stanley v. Magrath*, 719 F.2d 279, 282 (8th Cir. 1983); *see also Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829–30 (1995).

¹⁰ *Glik v. Cunniffe*, 655 F.3d 78, 79 (1st Cir. 2011).

¹¹ *Dambrot v. Central Mich. Univ.*, 55 F.3d 1177 (6th Cir. 1995).

So, too, is the EVMS Student Government Association bound by the First Amendment, as the student governments of public universities are state actors.¹² Even if the Student Government Association were not a state actor in its own right, EVMS has delegated to its student government the authority to grant or deny access to institutional resources and student fee funding, and EVMS may not avoid its obligation to provide this access on a viewpoint-neutral basis by delegating that authority to a body that refuses to do so.¹³ As such, the actions of the EVMS Student Government Association, including the recognition of student organizations, must comport with the First Amendment.

B. Student organizations are entities with First Amendment rights.

When a public university establishes a system of recognizing student organizations, those organizations are entitled to First Amendment protection.¹⁴

In *Healy*, for example, the Supreme Court of the United States held that the president of a public college violated the First Amendment when he refused to grant recognition to a chapter of Students for a Democratic Society (“SDS”).¹⁵ Following a “climate of unrest” replete with “widespread civil disobedience . . . accompanied by the seizure of buildings, vandalism, and arson,” causing some “colleges [to] shut down altogether,” students sought to form a new chapter of SDS at the university.¹⁶ The president of the college refused to grant recognition, citing the group’s philosophy and suspected ties to the national SDS organization, which had “published aims . . . which include disruption and violence.”¹⁷ The Court held that “denial of official recognition, without justification, to college organizations burdens or abridges” the “associational right” protected by the First Amendment.¹⁸

¹² See, e.g., *Koala v. Khosla*, 931 F.3d 887, 894 n.1 (9th Cir. 2019) (assuming action by student government regarding student newspaper funding was state action because it was an “exercise of authorities concerning student affairs by delegations” of power from the university); *Ala. Student Party v. Student Gov’t Ass’n of Univ. of Ala.*, 867 F.2d 1344, 1349 (11th Cir. 1989) (finding that the University of Alabama student government is a state actor when analyzing First Amendment challenge to student government campaign finance regulations); *Gay & Lesbian Students Ass’n v. Gohn*, 850 F.2d 361, 365–66 (8th Cir. 1988) (holding that state university student government was a state actor for purposes of allocating funding to student groups); *Denton v. Thrasher*, No. 4:20-cv-425-AW-MAF, at 9* (N. D. Fla. Oct. 8, 2020) (holding that the Florida State University student government is a state actor bound by the First Amendment).

¹³ *Southworth*, 529 U.S. at 221 (student fees); *Healy*, 408 U.S. at 171–75 (recognition).

¹⁴ See, e.g., *Christian Legal Soc’y Chapter of the Univ. of Cal. v. Martinez*, 561 U.S. 661, 679 (2010) (recognizing student group funding as a limited public forum).

¹⁵ 408 U.S. at 187–88.

¹⁶ *Id.* at 171–72.

¹⁷ *Id.* at 174–75, fn. 4.

¹⁸ *Id.* at 174–75,

The right to engage in expressive association is particularly critical in this context, where students associate with one another in order to promote political views. Expression of “core political speech” is where the First Amendment’s protection is “at its zenith.”¹⁹

C. EVMS cannot refuse to recognize a student group because it engages in political advocacy.

In keeping with its constitutional obligations, EVMS must employ only content- and viewpoint-neutral criteria when deciding whether to recognize student organizations.²⁰ In the public university context, the Supreme Court has repeatedly and explicitly made clear that disparate treatment of a student organization based on its political, religious, or other expression violates the First Amendment.²¹

The Student Government Association currently recognizes several student organizations dedicated to fostering or promoting—and shaping opinion around—issues of social and political concern. These include the Medical Students for Choice, which promotes “reproductive health practice and knowledge of pertaining current laws” and “[a]ims to educate and train future providers in this area of medicine,”²² and the Alliance Group, which “[p]rovides a forum for the LGBT individuals and LGBT supporters at EVMS to engage in, learn about, and discuss LGBT issues.”²³ Other political advocacy groups recognized by EVMS include the African American Student Association, the Christian Medical and Dental Association, and the Women’s Health Club, all of which focus on advocating for political viewpoints that align with their respective mission statements.²⁴

The recognition of these groups at EVMS, and the presence of chapters of SNaHP at a majority of medical schools in the United States, undermines EVMS’s purported justification for refusing to recognize SNaHP. There is no evidence that SNaHP failed to satisfy any of the procedural requirements for recognition, which suggests that the Student Government

¹⁹ *Buckley v. Am. Const. Law Found.*, 525 U.S. 182, 186–87 (1999) (quoting *Meyer v. Grant*, 486 U.S. 414, 425 (1988)).

²⁰ See *Southworth*, 529 U.S. at 233 (“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.”).

²¹ See, e.g., *Healy*, 408 U.S. 187–88 (finding administrator’s disagreement with “repugnant” views was not a sufficient basis to deny recognition to a student organization); see also *Rosenberger*, 515 U.S. at 829–31 (holding that denial of financial support for student religious group violated the First Amendment and observing that “[f]or the University, by regulation, to cast disapproval on particular viewpoints of its students risks the suppression of free speech and creative inquiry in one of the vital centers for the Nation’s intellectual life, its college and university campuses”).

²² *EVMS Clubs, EVMS CLUBS & DESCRIPTIONS*, E. VIRGINIA MED. SCH., (last accessed Jan. 15, 2021), https://www.evms.edu/media/evms_public/departments/student_affairs/clubs.pdf.

²³ *Id.*

²⁴ *Id.*

Association's primary rationale for rejecting recognition was its hostility to SNaHP's political viewpoint.


It is clear that the Student Government Association barred the group's recognition solely on the basis of its expression. This is an impermissible result at a public educational institution bound by the First Amendment. As a school with a legal obligation to uphold free speech and freedom of association, EVMS cannot withhold the privileges of official recognition to a prospective student group solely on the basis of the group's political ideology.

III. EVMS Must Recognize SNaHP

As an institution devoted to medical education, EVMS should encourage the creation of student clubs devoted to the advocacy and discussion of health care policy. FIRE calls on EVMS to further its educational mission—and adhere to its legal obligations—by granting recognition to SNaHP.

Be advised that FIRE is committed to using all of the resources at its disposal to see this matter through to a just conclusion. We request receipt of a response to this letter no later than the close of business on February 16, 2021.

Sincerely,



Zachary Greenberg
Senior Program Officer, Individual Rights Defense Program

Cc: Stacy R. Purcell, Vice President, General Counsel and Compliance Officer
Suhas Bharadwaj, Student Body President