



March 17, 2021

Marc C. Conner, Ph.D.
Office of the President
Skidmore College
815 North Broadway
Saratoga Springs, New York 12866

URGENT

Sent via Electronic Mail (mconner@skidmore.edu)

Dear President Conner:

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 by the state of freedom of expression and freedom of association at Skidmore College ("Skidmore") following the student government's denial of recognition of the prospective student group Progressive Zionists for Peace ("PZP"). This viewpoint-based rejection is a form of censorship that violates Skidmore's commitments to its students' freedom of expression and association. We call on Skidmore's student government to rectify its violation of its constituents' rights when it considers PZP's appeal on Friday, March 19. Failing that, we call on Skidmore's administration to ensure that PZP is granted all of the rights and privileges attendant with formal recognition.

I. Skidmore's Student Government Refused PZP Recognition for Conveying "One Perspective"

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. Please find enclosed an executed waiver authorizing Skidmore to discuss this matter with FIRE.

Skidmore recognizes nearly 130 student organizations.¹ Recognized organizations may access university funding, a club-specific email address and website, on-campus space for meetings, participate in the college club fair, and speak in the student government senate.²

All organizations must undergo an eight-week trial period before attaining recognition.³

As president of PZP, Nessa Goldhrisch Brown petitioned for recognition, by submitting the Intent to Organize Form, presenting to the student government, and providing a proposed mission statement to the student government's Club Affairs Committee:⁴

We intend to create a space for pro-Israel, pro-peace students to organize to act together on behalf of a two-state solution and a more peaceful, secure, and democratic future for both Israelis and Palestinians. We also want to serve as a supportive environment for students to learn and educate themselves and others about peaceful Zionism, combat antisemitism and misunderstandings about Zionism, and celebrate the Jewish connection to Israel. Ultimately, we hope to create an environment that facilitates mutual understanding between Skidmore students with regards to the Israeli/Palestinian conflict and all its nuances.

On March 12, 2021, Skidmore's student government refused PZP a trial period to become a student organization.⁵ Sarah Baker, a senator in Skidmore's student government, notified Goldhrisch Brown and her co-founder via email on March 13 that PZP's application was denied because "some members expressed concern that a dialogue focused club with one perspective being conveyed could be troublesome."⁶ Baker also said the group may be recognized if it "gain[s] more diverse perspectives before becoming a club focused on dialogue or reframe[s] the mission to be more advocate focused with a specific stance." Baker did not identify any other basis for the denial.

On March 8, you addressed another organization's viewpoint-based denial of recognition, asserting that the "decision of whether to approve a proposed club is an issue of student governance," and adding that "Skidmore has been abundantly clear about our absolute and unswerving commitment to freedom of speech and freedom of association and assembly."⁷

¹ Student Clubs, Student Government Association, SKIDMORE COLL. (last visited Mar. 16, 2021), <https://www.skidmore.edu/sga/clubs/index.php>.

² Title VII: Club Policies and Procedures, SKIDMORE COLL. STUDENT GOV'T ASSOC. BYLAWS 1, April 24, 2018 (on file with author).

³ *Supra* note 2 at 6.

⁴ Mission Statement, Progressive Zionists for Peace (on file with author).

⁵ Email from Sarah Baker, Senior Senator, Skidmore Student Gov't Ass'n, to Nessa Goldhirsch Brown, President, Progressive Zionists for Peace, et. al. (Mar. 13, 2021, 7:33 PM) (on file with author).

⁶ *Supra* note 3.

⁷ Email from Marc C. Conner, President, Skidmore Coll., to Skidmore Coll. (Mar. 8, 2021) (on file with author).

II. Skidmore’s Denial of Recognition to PZP Violates its Students’ Expressive Rights

Denying recognition to a student organization because its “dialogue” and “perspective . . . being conveyed could be troublesome” impermissibly burdens students’ ability to organize and express themselves—the very rights Skidmore College expressly guarantees to its students.

A. *Skidmore Promises Its Students Rights of Association and Expression*

As a private university, Skidmore is not obligated by the First Amendment to grant expressive rights to its students. However, it has made explicit, repeated, and unequivocal promises to recognize and protect its students’ freedom of expression. Skidmore is morally and legally bound to adhere to the promises it has made.

Skidmore’s Student Bill of Rights, promulgated under the “Student Government Association & Leadership Activities” section of its Student Handbook, provides one such full-throated promise. It reads, in pertinent part:

[Skidmore] students enjoy freedom of speech, peaceful assembly, the press, and religion, and the right to petition, limited only by protection of property, safety, and mutual respect.⁸

These commitments extend not only to speech, but to association. In addition to the protection of the right to “assembly,” the Bill of Rights also guarantees that students “are free to **organize** and join associations to promote their common interests.”⁹ Skidmore’s Student Body Constitution is in accord, asserting that students, “independently and **collectively**, are free to examine and discuss all questions of interest” and “to support all causes through peaceful means and to debate opinions both publicly and privately.”¹⁰

These promises are not only important to its students, but to the college’s accreditation. The college is accredited by the Middle States Commission on Higher Education, which requires that each institution, as a precondition for accreditation, “possess[] *and* demonstrate[] . . . a commitment to academic freedom, intellectual freedom, [and] freedom of expression.”¹¹ This is a laudable commitment to defend the expressive rights of students and faculty.¹²

⁸ Skidmore Student Bill of Rights, SKIDMORE COLL. STUDENT HANDBOOK (last visited Mar. 16, 2021), https://www.skidmore.edu/student_handbook/sga-leadership-activities/student-rights.php.

⁹ *Id.* (emphasis added).

¹⁰ Skidmore Coll. Student Body Constitution, SKIDMORE COLL., Mar. 5, 2015, <https://www.skidmore.edu/sga/senate/SGACConstitution.pdf> (emphasis added).

¹¹ MIDDLE STATES COMM’N ON HIGHER EDUC., STANDARDS FOR ACCREDITATION AND REQUIREMENTS OF AFFILIATION, <https://www.msche.org/standards> (emphasis added).

¹² See, e.g., Adam Steinbaugh, *Mount St. Mary’s University President Simon Newman Resigns After Accreditor Questions Commitment to Freedom of Expression*, FIRE, Mar. 1, 2016, <https://www.thefire.org/mount-st-marys-university-president-simon-newman-resigns-after-accreditor-questions-commitment-to-freedom-of-expression>.

B. Unjustified Denial of Recognition of Student Organizations Violates Freedom of Expressive Association

Expressive rights carry “a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends”—a right “crucial in preventing the majority from imposing its views on groups that would rather express other, perhaps unpopular, ideas.”¹³

This right extends to student organizations, fostering students’ ability to organize around causes or views in order to influence their institutions, communities, and country. In the “context of student clubs on college campuses, denying them official recognition without justification burdens the student club’s associational rights.”¹⁴ In the landmark United States Supreme Court case *Healy v. James*, for example, the Supreme Court held that a college’s refusal to grant recognition to a chapter of Students for a Democratic Society—due to its “published aims . . . which include disruption and violence”—violated the student members’ expressive rights.¹⁵ “[D]enial of official recognition, without justification, to college organizations burdens or abridges” the “associational right” protected by the guarantee of freedom of expression.¹⁶

C. Skidmore’s Denial of Recognition to PZP, Due to Undifferentiated Fear of “Troublesome” Expression, is Unjustified

Skidmore’s refusal to recognize PZP—thereby burdening its prospective members’ rights to expression and association—is premised on the possibility that its members’ deliberations and expression may lead to “troublesome” expression. The possibility that students might disagree with one another, even vehemently so, is precisely the risk that Skidmore undertakes to bear when it promises its students freedom of expression. Accordingly, Skidmore’s denial of recognition is not only without justification, but irrational in light of its commitments to students’ rights.

Baker’s rejection email says that PZP was denied recognition because it’s a “dialogue focused club” with “one perspective being conveyed.”¹⁷ However, it is irrelevant whether PZP models itself as an advocacy group, an organization devoted to debate and dialogue, or something in between, as all of those missions are equally protected by principles of free expression and association.

The infirmity of the student government’s explanation is particularly clear in light of the roster of currently-recognized organizations, which is populated by a number of organizations

¹³ *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 648, 120 S. Ct. 2446, 2451 (2000) (quoting, in part, *Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984)).

¹⁴ *Truth v. Kent Sch. Dist., No. C03-785P*, 2004 U.S. Dist. LEXIS 33465, at *32 (W.D. Wash. Sep. 23, 2004).

¹⁵ *Healy v. James*, 408 U.S. 169, 174–75, fn. 4, 187–88 (1972).

¹⁶ *Id.* at 181.

¹⁷ *Supra* note 3.

that expressly advocate for particular viewpoints and almost certainly engage in dialogue surrounding that position. For example, Skidmore recognizes both the College Democrats and the College Republicans as student organizations.¹⁸ During the recent election for the presidency, 323 individuals filed with the FCC to run as Democrats and 164 filed as Republicans, not to mention the 725 who filed as third-party candidates.¹⁹ Given the sheer number of candidates who ran for the presidency, Skidmore’s political organizations were no doubt internally divided as they debated who should lead their respective parties. Internal deliberation is a feature, not a flaw, of coming together to work towards a broader goal or message. This right—“to debate opinions both publicly and privately”—is expressly guaranteed by Skidmore.²⁰

The circumstances of PZP’s non-recognition also suggest that its rejection was motivated by opposition to its viewpoint. Skidmore recently approved the student group Students for Justice in Palestine (SJP) for a trial period.²¹ It is doubtful that all members of SJP uniformly agree on every aspect of Palestinian policies and every decision by Palestinian political actors. Yet this risk of dissent or disagreement did not—and unequivocally should not—impede recognition of SJP.

Disparate treatment of a student organization based on its political, religious, or other expression is fundamentally incompatible with any commitment to freedom of expression. In *Healy*, Central Connecticut State College denied recognition to a proposed chapter of Students for a Democratic Society based, in part, on the college president’s view that the group’s “philosophies . . . were counter to the official policy of the college.”²² The Court explained that the “mere disagreement . . . with the group’s philosophy affords no reason to deny it recognition,” and the undifferentiated fear of physical violence by the group was likewise insufficient.²³ If the fear of future violence was not enough to limit the right to expressive association, the fear that students might engage in “troublesome” expression falls far short of any justifiable limits on students’ rights.

Disagreement with a student organization’s expression or goals is not a legitimate basis for denying it recognition. If Skidmore’s promises of free expression to its students are to have meaning, the college must not allow its student government to engage in viewpoint

¹⁸ *Supra* note 1.

¹⁹ List of registered 2020 presidential candidates, BALLOTPEDIA (last visited Mar. 16, 2021), https://ballotpedia.org/List_of_registered_2020_presidential_candidates.

²⁰ *Supra* note 10.

²¹ Sharon Wrobel, *Skidmore College Students Denied Trial Period for ‘Progressive Zionists for Peace’ Club*, ALGEMEINER, Mar. 15, 2021, <https://www.algemeiner.com/2021/03/15/skidmore-college-students-denied-trial-period-for-progressive-zionists-for-peace-club>.

²² *Healy* at 169; *Healy* at 187 (internal quotation marks omitted).

²³ *Id.* at 187–88; *See also Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819, 829–31, 836 (1995) (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”).

discrimination that would be unacceptable on a public campus. To do so is flagrantly inconsistent with the college's promise to its students that they "enjoy freedom of speech, peaceful assembly, the press, and religion, and the right to petition" and are free to "join associations to promote their common interests."²⁴

D. Skidmore Cannot Authorize its Student Government to Violate Students' Expressive Rights

Having guaranteed its students the right to engage in expressive association, Skidmore College cannot establish governing bodies that violate those guarantees. We appreciate that Skidmore College empowers its student government to play a meaningful role in its shared governance. However, it cannot stand idly by and permit that government to violate the rights the college guarantees to its students.

III. Conclusion

As a college that purports to protect the expressive and associational rights of its students, Skidmore must reverse course and ensure that PZP is provided the trial period it needs in order to become a chartered student organization. Although we appreciate that the "exercise of student government is a crucial part of this mission that the College strongly supports,"²⁵ that does not rise above the commitments that Skidmore has made to its students, which it is legally and morally bound to keep.

Given the urgent nature of this matter, we request receipt of a response to this letter no later than the close of business on Friday, March 19, 2021, confirming that Skidmore will allow PZP a trial period for student government recognition.

Sincerely,



Sabrina Conza
Program Analyst, Individual Rights Defense Program

Cc: Sarah Baker, Senior Senator, Student Government Association
Haja Isatu Bah, Vice President for Club Affairs, Student Government Association
Rachael Borthwick, President, Student Government Association

²⁴ *Supra* note 8.

²⁵ *Supra* note 7.

Authorization and Waiver for Release of Personal Information

I, Nessa Goldhirsch Brown, born on ██████████, do hereby authorize Skidmore College (the "Institution") to release to the Foundation for Individual Rights in Education ("FIRE") any and all information concerning my current status, disciplinary records, or other student records maintained by the Institution, including records which are otherwise protected from disclosure under the Family Educational Rights and Privacy Act of 1974. I further authorize the Institution to engage FIRE's staff members in a full discussion of all matters pertaining to my status as a student, disciplinary records, records maintained by the Institution, or my relationship with the Institution, and, in so doing, to fully disclose all relevant information. The purpose of this waiver is to provide information concerning a dispute in which I am involved.

I have reached or passed 18 years of age or I am attending an institution of postsecondary education.

In waiving such protections, I am complying with the instructions to specify the records that may be disclosed, state the purpose of the disclosure, and identify the party or class of parties to whom disclosure may be made, as provided by 34 CFR 99.30(b)(3) under the authority of 20 U.S.C. § 1232g(b)(2)(A).

This authorization and waiver does not extend to or authorize the release of any information or records to any entity or person other than the Foundation for Individual Rights in Education, and I understand that I may withdraw this authorization in writing at any time. I further understand that my execution of this waiver and release does not, on its own or in connection with any other communications or activity, serve to establish an attorney-client relationship with FIRE.

I also hereby consent that FIRE may disclose information obtained as a result of this authorization and waiver, but only the information that I authorize.

DocuSigned by:
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68995822625C4E4...
Student's Signature

3/17/2021
Date