



November 17, 2021

Devan Desai  
President Pro Tempore  
Duke Student Government  
Middle Level, Bryan Center  
Duke University  
Durham, North Carolina 27708

**URGENT**

*Sent via Electronic Mail (devan.desai@duke.edu)*

Dear President Pro Tempore Desai:

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 appreciates that Duke University is one of the few institutions in the country whose policies earn a "green light" rating from FIRE for the university's speech-protective policies.<sup>1</sup> We write today to express our concern for President Christina Wang's veto of the recognition of a student group, Students Supporting Israel ("SSI"). That denial of recognition, based on disagreement with one of the group's social media posts, contravenes Duke's firm commitment to freedom of expression. Accordingly, we call on the Duke Student Government ("DSG") to grant SSI recognition.

**I. SSI's Recognition Bid Vetoed Based on Social Media Post**

We understand that on November 10, the DSG Senate granted SSI recognition<sup>2</sup> after a hearing in which senators raised questions "about how SSI would communicate civilly with opposing

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<sup>1</sup> Duke University has been given the speech code rating Green. Green light institutions are those colleges and universities whose policies nominally protect free speech.

<sup>2</sup> All student organizations—Duke recognizes more than 400 such groups—must be approved by the DSG to be granted recognition at Duke University. Student Groups, DUKE UNIV. (last visited Nov. 16, 2021), <https://bit.ly/3qK2dDN>.

organizations and how they would play a role in educating the student population.”<sup>3</sup> SSI seeks to “be a clear and confident pro-Israel voice” and support students’ pro-Israel advocacy.<sup>4</sup>

On November 13, a student shared an article about SSI’s recognition, complaining that Duke “promotes settler colonialism.”<sup>5</sup> SSI posted a screenshot of the tweet on Instagram, adding:<sup>6</sup>

To Yana and others like her, please allow us to educate you on what “settler colonialism” actually is and why Israel does not fall under this category whatsoever. These types of narratives are what we strive to combat and condemn, which is why Duke’s chapter of Students Supporting Israel has been officially established & is here to stay!! Looking forward to SSI 101 this Wednesday night... if you haven’t already, please RSVP using the link in our bio

On November 14, DSG president Wang vetoed SSI’s recognition on the basis that the group “singled out an individual student on their organization’s social media account in a way that was unacceptable for any student group and appeared antithetical to the group’s stated mission to be welcoming and inclusive to all Duke students[.]”<sup>7</sup> She added that the recognition of “any group exhibiting similar conduct” or “potentially hostile or harmful” behavior may be denied, reviewed, or suspended at any time.<sup>8</sup>

## **II. Denial of Recognition of SSI Violates Duke Students’ Expressive Rights**

Denying recognition to a student organization because of the content of a social media post impermissibly burdens students’ ability to organize and express themselves—the very rights Duke guarantees to its students.

### ***A. Duke Promises its Students Rights of Association and Expression***

As a private university, Duke is not obligated by the First Amendment to grant expressive rights to its students. However, because Duke has made clear promises to recognize and protect its students’ freedom of expression, neither the university nor its governing bodies may deprive students of the rights it has promised.

Duke’s Pickets, Protests, and Demonstrations policy, for example, states that Duke “respects the right of all members of the academic community to explore and to discuss questions

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<sup>3</sup> Leah Boyd, *DSG President Christina Wang vetoes recognition of Students Supporting Israel, citing inappropriate social media conduct*, CHRONICLE (Nov. 15, 2021), <https://www.dukechronicle.com/article/2021/11/duke-university-students-supporting-israel-ssi-veto-student-government-dsg>.

<sup>4</sup> Audrey Wang, *DSG charts pro-Israel group, updates House Rules procedures at Wednesday meeting*, CHRONICLE (Nov. 11, 2021), <https://www.dukechronicle.com/article/2021/11/students-supporting-israel-duke-student-government-house-rules-sofc-funding>.

<sup>5</sup> la luna enamorada (@yana\_riddick), TWITTER (Nov 13, 2021, 10:46 AM), [https://twitter.com/yana\\_riddick/status/1459548220434960390](https://twitter.com/yana_riddick/status/1459548220434960390).

<sup>6</sup> Boyd, *supra* note 3.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

which interest them, to express opinions publicly and privately, and to join together to demonstrate their concern by orderly means.”<sup>9</sup> These rights extend to Duke’s student organizations.<sup>10</sup>

### ***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.”<sup>11</sup>

This important principle is what protects students’ ability to organize around causes or views—including through formal student organizations—in order to influence their institutions, communities, and country. “[D]enial of official recognition, without justification, to college organizations,” the Court held, “burdens or abridges” their associational rights.<sup>12</sup> In *Healy*, for example, the Supreme Court of the United States 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.<sup>13</sup>

At Duke, denial of recognition has material consequences—preventing organizations from reserving spaces, applying for funding, opening financial accounts on campus, and more.<sup>14</sup>

### ***C. Denial of Recognition of SSI Over the Social Media Post is Unjustified***

Denial of recognition to SSI—which burdens its members’ rights to expression and association—is premised on its having “singled out” a critic in a manner deemed uncivil. While Duke is free to *encourage* students and student organizations to engage in civil discourse, it cannot *require* that students limit their advocacy only to polite, sober tones.

Freedom of expression necessarily shields “vehement, caustic, and sometimes unpleasantly sharp attacks,”<sup>15</sup> and protects “not only informed and responsible criticism,” but also the

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<sup>9</sup> Pickets, Protests & Demonstrations, Student Conduct & Cmty. Standards, DUKE UNIV., <https://studentaffairs.duke.edu/conduct/z-policies/pickets-protests-and-demonstrations> (last visited Nov. 16, 2021).

<sup>10</sup> The policy is also cited in the list of policies governing Duke student groups. Student Org. Policies 2021-2022, Student Affairs, DUKE UNIV., <https://studentaffairs.duke.edu/ucae/policies/student-organization-policies> (last visited Nov. 16, 2021).

<sup>11</sup> *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)).

<sup>12</sup> *Healy v. James*, 408 U.S. 169, 174–75, fn. 4, 187–88 (1972). Although Duke, as a private university, is not bound the First Amendment, longstanding judicial interpretations of the First Amendment’s guarantees of freedom of speech and freedom of association provide a useful baseline for what students would reasonably expect from an institution, like Duke, that purports to grant them such rights.

<sup>13</sup> *Id.* at 174-75, fn. 4, 187-88 (1972).

<sup>14</sup> Duke Field Guide to Student Orgs ’20-’21 Edition at p. 4, DUKE UNIV., available at <https://bit.ly/3kIRDsG>.

<sup>15</sup> *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

right to speak “foolishly and without moderation.”<sup>16</sup> That’s because no one person or authority can “make principled distinctions” between what speech is sufficiently inoffensive or civil to deserve protection.<sup>17</sup> Civility standards are inconsistent with expressive rights because they invert the counter-majoritarian purpose of protecting minority viewpoints, allowing the majority to suppress dissent by claiming that those in the minority are insufficiently deferential when enunciating dissenting viewpoints.

Disagreement over contentious issues will rarely be perceived as “welcoming” to others. The possibility that SSI may disagree with other students in the future, even vehemently so, is not a reason to prevent recognition; instead, it is precisely the risk Duke undertakes when it promises its students freedom of expression.

As Wang forewarns, such a standard will not be limited to SSI or supporters of Israel. Similarly dubious justifications, for example, have been advanced to suppress student organizations *critical* of Israel out of a desire to avoid “polarization.”<sup>18</sup> Disagreement with a student organization’s expression or viewpoint is not a legitimate basis for denying it recognition.

### **III. Conclusion**

Because the university purports to protect the expressive and associational rights of its students, we call on Duke’s student government to overturn Wang’s veto and ensure SSI is promptly granted recognition.

Sincerely,



Sabrina Conza  
Program Analyst, Individual Rights Defense Program

Cc: Vincent E. Price, President, Duke University  
Mary Pat McMahon, Vice Provost & Vice President of Student Affairs, Duke University  
Christina Wang, President, Duke Student Government  
Duke Student Government

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<sup>16</sup> *Baumgartner v. United States*, 322 U.S. 665, 674 (1944).

<sup>17</sup> *Cohen v. California*, 403 U.S. 15, 25 (1971).

<sup>18</sup> Marieke Tuthill Beck-Coon, *After two plus years in court, Students for Justice in Palestine wins recognition at Fordham*, FIRE (Aug. 7, 2019), <https://www.thefire.org/after-two-plus-years-in-court-students-for-justice-in-palestine-wins-recognition-at-fordham>.