



December 8, 2021

Vincent E. Price
Office of the President
Duke University
207 Allen Building
Box 90001
Durham, North Carolina 27708-0001

Sent via Electronic Mail (president@duke.edu)

Dear President Price:

FIRE¹ appreciates that Duke University is one of the few institutions in the country whose student speech policies earn a “green light” rating from FIRE. We write today, however, to share our concern that the recent action by the Duke student government to deny recognition of a student organization, Students Supporting Israel (“SSI”), is contrary to the important principles of freedom of expression, which Duke guarantees to its students. We shared these concerns with Duke’s student government in a November 17 letter and were disappointed that the student senate proceeded to deny recognition based on disagreement with one of SSI’s social media posts.²

We understand and appreciate that Duke’s administration has promised to provide resources to SSI notwithstanding the denial of recognition. While this is a good first step, it is not clear that this step adequately resolves the injury to SSI’s expressive rights, and we invite your clarification.

First, your statement on this matter—that “the university has identified options for SSI to secure financial and programmatic support”³—was ambiguous in that it does not identify the source of the resources to which SSI has access notwithstanding the denial of recognition. Are these “options” *also* available to other groups? If so, then while it is important that Duke is taking steps to make SSI whole, SSI continues to be denied access to the student funds its

¹ 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.

² See FIRE Letter to Devan Desai, President Pro Tempore, Duke Student Government, November 17, 2021 (enclosed).

³ Vincent E. Price and Sally Kornbluth, *Statement on DSG Action Regarding ‘Students Supporting Israel,’* Nov. 24, 2021, <https://today.duke.edu/2021/11/statement-dsg-action-regarding-students-supporting-israel>.

members contribute—as required by Duke University—to the student activity fund, which is “worth nearly \$1 million.”⁴

Duke’s assertion that the student government’s actions are “independent” of the university⁵ is not entirely true, as the university delegates to the student government its authority to recognize student groups and to distribute the university-collected student fees, which students are required by Duke to pay in addition to tuition and other expenses. The students who attempted to start the SSI chapter on campus pay these student fees. However, they have been deprived the opportunity to access these fees and associate on campus, even though Duke promises its students the right to do so.

Because it has made commitments to its students’ expressive rights, Duke University could not itself deny recognition or access to student fees due to a group’s exercise of those rights. Nor can it delegate that authority—which, again, it does not have—to the student government and permit it to condition access to student fees on the student government’s approval of a student organization’s protected speech. SSI was not denied recognition because it did not meet the requirements that the student government has put in place. On the contrary, Duke’s student senate determined that SSI *did* meet these requirements. However, based on the group’s speech, recognition—and, with it, access to student fee funding—was denied. This is impermissible at a university that promises students free expression and association.

Accordingly, we call on Duke to ensure that SSI is not deprived of access to any university resource otherwise made available to its students, including the ability to reserve spaces, apply for funding, or open financial accounts on campus.⁶ Further, it is incumbent upon the university to identify what resources SSI will be provided and how those resources compare with the resources otherwise available to Duke’s numerous recognized student organizations.

Given the urgent nature of this matter, we request receipt of a response to this letter no later than the close of business on Wednesday, December 15, 2021.

Sincerely,



Sabrina Conza
Program Analyst, Individual Rights Defense Program

Cc: Mary Pat McMahon, Vice Provost & Vice President of Student Affairs
Pamela Bernard, Vice President and General Counsel

Encl.

⁴ Connor Booher, *Reforms to SOFC organizational culture prioritize inclusivity, transparency with student groups*, CHRONICLE (Nov. 10, 2021, 2:19 AM), <https://www.dukechronicle.com/article/2021/11/duke-university-sofc-student-organization-finance-committee-student-government-dsg-application-funding>.

⁵ *Id.*

⁶ Duke Field Guide to Student Orgs ’20-’21 Edition at p. 4, DUKE UNIV., available at <https://bit.ly/3kIRDsG>.



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.¹ 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 recognition² after a hearing in which senators raised questions "about how SSI would communicate civilly with opposing

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

² 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.”³ SSI seeks to “be a clear and confident pro-Israel voice” and support students’ pro-Israel advocacy.⁴

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

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[.]”⁷ 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.⁸

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

³ 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>.

⁴ 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>.

⁵ la luna enamorada (@yana_riddick), TWITTER (Nov 13, 2021, 10:46 AM), https://twitter.com/yana_riddick/status/1459548220434960390.

⁶ Boyd, *supra* note 3.

⁷ *Id.*

⁸ *Id.*

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

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.”¹¹

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.¹² 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.¹³

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

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,”¹⁵ and protects “not only informed and responsible criticism,” but also the

⁹ 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).

¹⁰ 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).

¹¹ *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)).

¹² *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.

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

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

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

right to speak “foolishly and without moderation.”¹⁶ That’s because no one person or authority can “make principled distinctions” between what speech is sufficiently inoffensive or civil to deserve protection.¹⁷ 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.”¹⁸ 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

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

¹⁷ *Cohen v. California*, 403 U.S. 15, 25 (1971).

¹⁸ 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>.