



FIRE

Foundation for Individual
Rights and Expression

April 28, 2023

Becky Paul-Odionhin
Executive Board
State University of New York at Buffalo Student Association
Suite 350 Student Union
Buffalo, New York 14260

Sent via U.S. Mail and Electronic Mail (ubsa@buffalo.edu)

Dear President Paul-Odionhin:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned by the State University of New York at Buffalo Student Association's recent adoption of a New Club Recognition Policy that sets the following criteria for SA student group recognition: "Except for clubs in the Academic, Engineering, or Sports Councils, and clubs whose sole purpose is to engage in inter-collegiate competition, no SA club may be a chapter of or otherwise part of any outside organization."² This provision violates students' expressive and associational rights under the First Amendment and must be rescinded.

It has long been settled law that the decisions and actions of a public university student government—including recognizing student organizations—must comply with the First Amendment.³ At UB, recognition allows groups to fully express themselves on campus by

¹ For more than 20 years, FIRE has defended freedom of expression, conscience, and religion, and other individual rights on America's college campuses. You can learn more about our recently expanded mission and activities at thefire.org.

² *New Club Recognition Policy*, STUDENT ASS'N (Mar. 27, 2023), https://www.sa.buffalo.edu/images/Policy_Library/Club_Policies/New_Club_Recognition_Policy_March_2023.pdf. [<https://perma.cc/67RH-Q76W>].

³ *Bd. of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 221 (2000); *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 student government is a state actor bound by the First Amendment).

affording them the benefits of campus facilities and services, student activity fee funding, and campus recruitment opportunities, among other privileges.⁴

The SA’s policy violates the First Amendment in two ways. First, denying recognition to groups that are “a chapter of or otherwise part of any outside organization” burdens groups solely for associating with others. The Supreme Court has “consistently disapproved” of “denying rights or privileges solely because of” association with other organizations, including public universities denying recognition to student groups.⁵ Associational freedom fosters students’ ability to organize around causes, views, or ideas to influence their institutions, communities, and country,⁶ and the SA stifles this expression by withholding recognition from groups with outside affiliations. Moreover, even if universities or students view an outside organization as unsavory or controversial, courts have long condemned “guilt by association” as “an impermissible basis upon which to deny First Amendment rights.”⁷

Second, the SA engages in impermissible content and viewpoint discrimination by exempting from its policy “clubs in the Academic, Engineering, or Sports Councils, and clubs whose sole purpose is to engage in inter-collegiate competition.” The First Amendment requires the SA to employ only content- and viewpoint-neutral criteria in the recognition of student organizations.⁸ By allowing nationally affiliated groups with an academic, engineering, or sports purpose to attain recognition while denying recognition to nationally affiliated groups with other purposes, the SA unlawfully burdens groups based on their ideology, mission, and/or expression. Although the SA may prefer academic, engineering, and sports groups over, for example, political or religious organizations, the First Amendment bars it from discriminating against disfavored clubs by imposing a greater burden for recognition.

The prohibition against viewpoint discrimination protects groups across the political spectrum when they hold dissenting or unpopular views, including, historically, groups with views now widely held today. For example, it protected chapters of LGBTQ organizations in Arkansas and New Hampshire in the 1970s and ’80s when student senates and university trustees, urged by state lawmakers, refused to “support a homosexual group” or their expression, which was, at the time, considered “shocking and offensive” by many.⁹ Federal appellate courts held these denials violated the First Amendment, with one court explaining

⁴ *Student Club and Organization University-Wide Recognition Policy*, UNIV. OF BUFFALO (updated Dec. 12, 2020), <https://www.buffalo.edu/studentlife/who-we-are/policies/student-club-and-organization-university-wide-recognition-policy.html> [<https://perma.cc/W9K8-EYF4>].

⁵ *Healy v. James*, 408 U.S. 169, 186 (1972).

⁶ *E.g., Healy*, 408 U.S. at 181 (1972) (“Among the rights protected by the First Amendment is the right of individuals to associate to further their personal beliefs.”).

⁷ *Id.*

⁸ *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.”); *Widmar v. Vincent*, 454 U.S. 263, 277 (holding that after university had “created a forum generally open to student groups,” the “content-based exclusion of religious speech . . . violates the fundamental principle that a state regulation of speech should be content-neutral”).

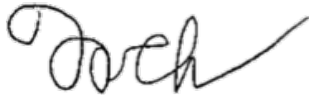
⁹ *Gay Students Org. of Univ. of N.H. v. Bonner*, 509 F.2d 652, 661–62 (1st Cir. 1974); *Gay & Lesbian Students Ass’n v. Gohn*, 850 F.2d 361, 362–363 (8th Cir. 1988).

that recognition cannot be curtailed on the basis that some find the group’s views “abhorrent or offensive.”¹⁰ FIRE has also come to the defense of organizations who faced loss of recognition or funding due to their protected speech, including groups on the left and on the right,¹¹ pro-choice and pro-life organizations,¹² animal rights and hunting clubs,¹³ and pro-Israel and pro-Palestinian groups,¹⁴ to name just a few. If student governments could deny recognition because of a group’s views or associations, it would imperil the rights of *all* of these groups.

Student government recognition of a student organization is not an endorsement of that group, its speakers, events, or ideology. No reasonable person would impose such a standard on the SA considering the more than 170 diverse groups it recognizes, many with mission statements in conflict with other groups.¹⁵ Rather, the numerous student groups recognized by the SA testify to the diversity of UB’s student body. While SA members may not agree with the viewpoints or expressive activities of all these groups, their existence is possible thanks to decades of capable student government leaders recognizing the value of fostering a diverse and vibrant collection of student clubs.

FIRE writes privately to urge your administration to rescind this undue violation of students’ fundamental First Amendment rights. We would be happy to work with you toward this end, and request we request a substantive response to this letter no later than the close of business on May 12, 2023.

Sincerely,



Zachary Greenberg
Senior Program Officer, Student Organizations, Campus Rights Advocacy

Cc: Satish K. Tripathi, President
Eileen Holloway, Senior Campus Counsel

¹⁰ *Bonner*, 509 F.2d at 662.

¹¹ Press Release, *One day after FIRE files lawsuit, med school approves student’s long-denied club application*, FIRE (Aug. 19, 2021), <https://bit.ly/3DKg7ZT>; Sabrina Conza, *Eckerd College student government says College Republicans must stop expressing ‘problem’ views on social media if they want recognition*, FIRE (May 12, 2022), <https://bit.ly/3RBvuud>.

¹² Mary Zoeller, *Georgetown fails to live up to free speech promises by not recognizing pro-choice student group*, FIRE (Mar. 29, 2018), <https://bit.ly/3ve0cQk>; Katlyn Patton, *University of Northern Iowa administration must correct its student government’s refusal to recognize ‘hate group’ Students for Life*, FIRE (Oct. 16, 2020), <https://bit.ly/3ARjCMo>.

¹³ Press Release, *Public university rejects animal rights club, citing ‘emotional risk’ to students*, FIRE (Dec. 10, 2019), <https://bit.ly/3p7bdIG>; Press Release, *BULLSEYE: University of Pennsylvania’s Hunting, Archery, and Shooting Club finally approved after FIRE’s intervention*, FIRE (Apr. 29, 2021), <https://bit.ly/2YTlm5n>.

¹⁴ Sabrina Conza, *Duke student senate upholds veto of Students Supporting Israel chapter over ‘uninclusive’ tweet*, FIRE (Nov. 18, 2021), <https://bit.ly/3fEVJ5C>; Press Release, *FIRE, NCAC Call on Fordham to Recognize Students for Justice in Palestine*, FIRE (Jan. 25, 2017), <https://bit.ly/3aHuuBI>.

¹⁵ *Our Clubs*, STUDENT ASS’N, <https://www.sa.buffalo.edu/clubs> [<https://perma.cc/XYD7-5V3N>].