



National
Coalition
Against
Censorship

January 25, 2017

Rev. Joseph M. McShane, S.J.
Office of the President
Fordham University
441 East Fordham Road
Bronx, New York 10458

Sent via U.S. Mail and Electronic Mail (president@fordham.edu)

Dear Rev. McShane:

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.

The National Coalition Against Censorship (NCAC), founded in 1974, is an alliance of over 50 national nonprofit organizations, including literary, artistic, religious, educational, professional, labor and civil liberties groups dedicated to promoting the right to free speech.

FIRE and NCAC are concerned about the state of freedom of speech and freedom of association at Fordham University following Dean of Students Keith Eldredge's rejection of prospective student group Students for Justice in Palestine's (SJP's) application for recognition based on the group's political stances. This viewpoint-based rejection of SJP violates the free speech promises Fordham makes to its students and must be overturned.

I. Facts

The following is our understanding of the facts, based in significant part on a January 17 letter sent to you by Palestine Legal. Please inform us if you believe we are in error.

Over the 2015–16 academic year, four Fordham students, including now-graduated student Ahmad Awad, expressed interest in starting an SJP chapter and submitted an application for recognition. In September 2016, the prospective SJP members emailed Kayla Wolf, Vice President of Operations for the Fordham United Student Government

(USG), regarding SJP's status, and Wolf informed them that she was in the process of reviewing the group's paperwork.

On September 20, Director of the Office of Student Leadership and Community Development Dorothy Wenzel contacted Awad, explaining that Wolf would be the prospective group's contact person, and that Eldredge wanted to know more about SJP's constitution and intended programming. Awad and other prospective SJP members met with Wolf, Eldredge, and Wenzel on October 5, at which time Eldredge and Wenzel raised concerns about the group's name, its support for the "Boycott, Divestment and Sanctions" (BDS) movement, and SJP's potential to "stir up controversy" on campus.

On October 27, Amad met with Wolf and the USG Operating Committee for a review of SJP's constitution, and Wolf informed the students that the USG would vote on SJP's application in November. When one of the prospective SJP members noted that Fordham was departing from its normal club approval process by sending SJP's constitution to the USG Senate before Wenzel and Eldredge, Wolf explained that Wenzel gave her permission to do so as long as SJP still had final say over its constitution. Wolf also explained that Wenzel wanted Fordham's Jewish Student Organization (JSO) to have an opportunity to offer input at the vote. Wolf further expressed concerns that SJP may not be permitted recognition because of an executive order issued by New York Governor Andrew Cuomo prohibiting the disbursement of public funds to groups supporting or engaging in BDS campaigns.¹

After the October 27 meeting, Amad and another prospective SJP member emailed Wolf to voice their concerns that the decision to allow JSO input at SJP's hearing was unfair. Amad's November 16 email to Wolf stated:

We are still confused as to why JSO is being asked to speak to the Senate, especially since USG has already spoken with JSO. We thought we came to the understanding that SJP and JSO are two totally different clubs, and we do not see why their perspective is needed in making a decision on our club (and the same line of reasoning applies to not needing the approval from MSA or any other religious or cultural club). We feel it is unfair that another club at Fordham has been asked to come speak on our behalf in order to impact the vote.

Can you please let us know the purpose of having JSO speak? Specifically, are there any concerns other than what we have already addressed? Since USG did not raise any concerns after our last meeting, we assumed there were no

¹ N.Y. Exec. Order 157 (2016), *available at* https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_157_new.pdf

more. Yet, by having JSO come to speak again in front of the Senate, it seems as though there are concerns we have not been told of.

USG President Leighton Magoon replied that JSO had asked to meet with USG's Executive Board and that the USG Senate requested JSO's input.

On November 17, after asking SJP if it advocated the "dismantling of the Israeli state," or if the group would partner with JSO for events, the USG Senate and Executive Board recognized SJP as an official Fordham student group. In a November 17 letter to the group, the Board wrote:

United Student Government invited representatives from both Students for Justice in Palestine and the Jewish Student Organization to hear their perspectives and ask questions to both groups.

After careful deliberation, United Student Government has faith that this chapter of Students for Justice in Palestine at Fordham and its members will positively contribute to the Fordham community in such a way that is sensitive to all students on campus. United Student Government is dedicated to the safety of all students and has faith that Students for Justice in Palestine can function on campus respectfully. This chapter of Students for Justice in Palestine at Fordham fulfills a need for open discussion and demonstrates that Fordham is a place that exemplifies diversity of thought. Their presence will help to create a space for academic discussion and promote intellectual rigor on campus. We do not believe that the presence of Students for Justice in Palestine will take away from efforts to promote a safe environment on our campus.

As with all United Student Government decisions, we welcome all students to voice their concerns and participate in the open dialogue which USG promotes.

After the USG approved SJP's application, Eldredge informed SJP members that he wanted to have an opportunity to review SJP's status before it could be finalized. Under normal club registration procedures, the Dean of Students would weigh in on a prospective group's application before USG's vote on it, and USG's vote would be the final step in a group's registration.² At a December 2 meeting with Eldredge, SJP faculty advisor Professor Glenn Hendler explained that he felt there were no reasons why the group should not be recognized. Two prospective SJP members then met with Eldredge on December 12, and Eldredge reportedly asked them to answer the following questions:

² Fordham USG Club Registration Packet, *available at* <http://www.usgrh.info/committees/operations> (last viewed Jan. 24, 2017).

What does BDS mean to you?

Does BDS mean the dissolution of the state of Israel?

Why use the term apartheid?

Does SJP support or work with Jewish Voice for Peace, J Street, and Seeds for Peace?

On December 22, Eldredge emailed Amad and three other prospective SJP members to inform them that he would not permit SJP to be officially recognized:

After consultation with numerous faculty, staff and students and my own deliberation, I have decided to deny the request to form a club known as Students for Justice in Palestine at Fordham University. While students are encouraged to promote diverse political points of view, and we encourage conversation and debate on all topics, I cannot support an organization whose sole purpose is advocating political goals of a specific group, and against a specific country, when these goals clearly conflict with and run contrary to the mission and values of the University.

There is perhaps no more complex topic than the Israeli-Palestinian conflict, and it is a topic that often leads to polarization rather than dialogue. The purpose of the organization as stated in the proposed club constitution points toward that polarization. Specifically, the call for Boycott, Divestment and Sanctions of Israel presents a barrier to open dialogue and mutual learning and understanding.

In a statement announcing their vote to approve the club, United Student Government at Lincoln Center acknowledged the need for open, academic discussion and the promotion of intellectual rigor on campus; however, I disagree that the proposal to form a club affiliated with the national Students for Justice in Palestine organization is the best way to provide this. I welcome continued conversation about alternative ways to promote awareness of this important conflict and the issues that surround it from multiple perspectives.

In response to the students' complaints about SJP's rejection, Eldredge replied in a January 6, 2017 email that the students could not appeal his decision.

Palestine Legal and the Center for Constitutional Rights wrote to you on January 17 to ask Fordham to immediately approve the group's application and apologize to SJP members.

In response to media coverage about Palestine Legal and the Center for Constitutional Rights' letter, Fordham offered this official statement:³

Fordham has no registered student clubs the sole focus of which is the political agenda of one nation, against another nation. For the University's purposes, the country of origin of the student organizers is irrelevant, as is their particular political stance. The narrowness of Students for Justice in Palestine's political focus makes it more akin to a lobbying group than a student club. Regardless of the club's status, students, faculty, and staff are of course free to voice their opinions on Palestine, or any other issue.

II. Analysis

While Fordham is a private university and thus not legally bound by the First Amendment, it is both morally and contractually bound to honor the explicit, repeated, and unequivocal promises of freedom of expression it has made to its students. For example, Fordham's "Mission Statement" provides:⁴

Fordham strives for excellence in research and teaching, and guarantees the freedom of inquiry required by rigorous thinking and the quest for truth.

Fordham's "Demonstration Policy" also stresses the university's commitment to protecting dissenting viewpoints:⁵

By its very nature, the University is a place where ideas and opinions are formulated and exchanged. Each member of the University has a right to freely express his or her positions and to work for their acceptance whether he/she assents to or dissents from existing situations in the University or society.

Fordham's policy on "Bias-Related Incidents and/or Hate Crimes" again stresses Fordham's recognition of the value of free and open debate on campus (emphasis added):⁶

³ Elizabeth Landry and Stephan Kozub, *Fordham Vetoes Students for Justice in Palestine*, FORDHAM OBSERVER, (Jan. 20, 2017), <http://www.fordhamobserver.com/fordham-vetoes-students-for-justice-in-palestine>.

⁴ *Mission Statement*, FORDHAM UNIVERSITY, https://www.fordham.edu/info/20057/about/2997/mission_statement (last visited Jan. 19, 2016).

⁵ *Demonstration Policy*, FORDHAM UNIVERSITY, https://www.fordham.edu/info/21684/university_regulations/3709/demonstration_policy (last visited Jan. 19, 2016).

⁶ *Bias-Related Incidents and/or Hate Crimes*, FORDHAM UNIVERSITY, https://www.fordham.edu/info/21684/university_regulations/6566/bias-related_incidents_andor_hate_crimespolicy (last visited Jan. 19, 2016).

It should be noted, however, that the University values freedom of expression and the open exchange of ideas. The expression of controversial ideas and differing views is a vital part of University discourse. Although the expression of an idea or point of view may be offensive or inflammatory to others, it may not constitute a hate crime or bias-related incident.

Eldredge’s viewpoint-based rejection of SJP’s application for recognition is at odds with Fordham’s stated commitments to foster free speech and protect controversial ideas. In order to uphold the principles to which the university commits itself, Fordham must immediately reverse his decision.

A. Fordham May Not Deny SJP Recognition Based on Its Disagreement with SJP’s Purpose and Goals

Eldredge’s rejection letter and Fordham’s official statement both argue that the university “cannot support an organization whose sole purpose is advocating political goals of a specific group, and against a specific country, when these goals clearly conflict with and run contrary to the mission and values of the University.” The denial of recognition to SJP based on administrators’ qualms with the content of a group’s advocacy is precisely the type of viewpoint discrimination that the principles of free expression are designed to protect against.

In the public university context, the Supreme Court of the United States 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. In *Healy v. James*, 408 U.S. 169 (1972), 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.” *Id.* at 187 (internal quotation marks omitted). Holding that the college’s denial of recognition to the student organization was unconstitutional, the Court stated:

The mere disagreement of the President with the group’s philosophy affords no reason to deny it recognition. As repugnant as these views may have been, especially to one with President James’ responsibility, the mere expression of them would not justify the denial of First Amendment rights. . . . The College, acting here as the instrumentality of the State, may not restrict speech or association simply because it finds the views expressed by any group to be abhorrent.

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”).

Disagreement with a student organization's expression is not a legitimate basis for denying it recognition. If Fordham University's promises of free expression to its students are to have meaning, the university must not engage in viewpoint discrimination that would be unacceptable on a public campus. To do so is inherently inconsistent with the university's promise to its students that they have "a right to freely express his or her positions and to work for their acceptance whether he/she assents to or dissents from existing situations in the University or society."

Moreover, Fordham's claim that it "cannot support an organization whose sole purpose is advocating political goals of a specific group, and against a specific country" fails under closer scrutiny. A cursory review of currently recognized student groups at Fordham reveals a number of organizations that advocate for the "political goals of a specific group."⁷ Indeed, some organizations—the College Democrats and the College Republicans, for example—exist for the sole purpose of advancing the political goals of specific groups. Others might easily advocate "against a specific country" in the course of their activities. Would Fordham no longer recognize the university's Environmental Club if it advocated against a specific country that failed to meet certain standards for greenhouse gas emissions? Would the university derecognize the Rainbow Alliance if it boycotted countries that refused to acknowledge LGBTQ rights? If In Strength I Stand (Feminist Alliance) engaged in advocacy against Saudi Arabia for its treatment of women, would Fordham believe that the group could no longer be recognized? Advocacy against countries because of the conduct of their governments constitutes core political speech, regardless of the country in question, and regardless of which group or speaker is leading that advocacy.

Fordham's rationale that SJP is more akin to a "lobbying group" similarly fails to pass muster. Fordham has recognized several student organizations that do or might engage in cause-based advocacy. Indeed, any of the aforementioned groups could be considered to be "lobbying" for a specific cause. In Strength I Stand's official club page says it seeks "to create a safe, enthusiastic, and fun community for women and feminists,"⁸ and Rainbow Alliance's page states that its aim is "supporting students as they integrate their sexual orientation and gender identity into their personhood."⁹ Fordham clearly does not forbid students from "lobbying" for specific causes on campus—what it has forbidden is *SJP's* ability to "lobby" for *its* specific cause.

⁷ Lincoln Center Student Organizations, FORDHAM UNIVERSITY, https://www.fordham.edu/info/21466/student_organizations/3092/lincoln_center_student_organizations (last visited Jan. 22, 2016).

⁸ In Strength I Stand, FORDHAM UNIVERSITY, <http://fordhamlc.orgsync.com/org/instrengthistand36922> (last visited Jan. 22, 2016).

⁹ Rainbow Alliance, FORDHAM UNIVERSITY, <http://fordhamlc.orgsync.com/org/rainbowalliance> (last visited Jan. 22, 2016).

This viewpoint discrimination obstructs the entire purpose of granting student organizations official recognition—encouraging civic engagement and fostering a diverse set of viewpoints—and cannot stand.

B. Fordham May Not Deny SJP Recognition Because Its Expression May Be “Polarizing”

In his rejection letter to SJP, Eldredge noted that SJP’s focus was on the conflict between Israel and Palestine, which, in his words, “often leads to polarization rather than dialogue.” This, too, is an invalid justification for denying SJP recognition as a student organization.

The principle of freedom of speech does not exist to protect only non-controversial expression; it exists precisely to protect “polarizing” speech that some members of a community may find controversial or offensive. The Supreme Court stated in *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949), that speech “may indeed best serve its high purpose when it induces a condition of unrest . . . or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea.” The Supreme Court has explicitly held, in rulings spanning decades, that speech cannot be restricted simply because it may be controversial. *See Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667, 670 (1973) (“[T]he mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of ‘conventions of decency.’”). Again, Fordham is a private institution, and thus not bound by the First Amendment. But it makes extensive promises of free expression to its students—promises it must honor.

In discussing matters of societal and political importance, many of which are highly controversial, one would be hard-pressed to find an opinion or position that is not controversial to *someone*. The disagreement that accompanies a community in which a wide array of opinions and viewpoints are held is an essential component to the marketplace of ideas and our democracy as a whole. Fordham’s own policies recognize that controversial, *i.e.*, “polarizing,” expression is “a vital part of University discourse” and enjoys the same protection as mundane, uncontroversial speech. In refusing to grant SJP recognition based on the fact that the group could prove “polarizing,” it is in fact Eldredge, not SJP, that is hindering free and open dialogue on campus, to the great detriment of Fordham students’ education.

Furthermore, if Fordham truly sought to restrict students’ ability to form groups that involve “polarizing” issues, it would have far fewer recognized student organizations than it currently does. Surely Fordham understands that the university’s recognized groups may be polarizing to some members of campus. Issues of gender, sexuality, and faith rarely fail to challenge at least some who encounter them. Indeed, students are often inspired to engage in advocacy specifically because the issues they care about are contentious and in need of defense or representation. Singling out SJP because of its potential to cause

“polarization” flies in the face of Fordham’s explicit promises to its students and the ideals of higher education.

Whether SJP’s stances are controversial is irrelevant to whether the group should be recognized, and if any students feel that the group’s stances are polarizing, they are free to engage in discussion with or protest against the group. Spirited debate is, as Fordham notes, a vital part of university culture and education. Fordham’s USG recognized that as well, noting when it approved SJP’s application that “[t]his chapter of Students for Justice in Palestine at Fordham fulfills a need for open discussion and demonstrates that Fordham is a place that exemplifies diversity of thought.”

Fordham’s official statement to the press noted that “students, faculty, and staff are of course free to voice their opinions on Palestine, or any other issue.” Right now a number of them—including representatives from the Black Student Alliance, the Feminist Alliance, and Fordham Law Advocates for the Incarcerated—are doing exactly that and using their voices to implore Fordham to reverse its decision and recognize SJP.¹⁰ We recommend that you listen to them.

III. Conclusion

For the reasons discussed above, FIRE and NCAC urge Fordham University to immediately reverse Keith Eldredge’s rejection of SJP and reaffirm to students that Fordham University will not renege on its promise of free speech.

We request a response to this letter by February 7, 2017.

Sincerely,



Sarah McLaughlin
Program Officer, Individual Rights Defense Program
Foundation for Individual Rights in Education



Svetlana Mintcheva
Director of Programs
National Coalition Against Censorship

¹⁰ Fordham Clubs in Solidarity with Students for Justice in Palestine, https://docs.google.com/a/thefire.org/forms/d/e/1FAIpQLSd-uwPJmIOZeifMyChYn8iAM8IAVrIe3tkNd84M7JVg_6QbUg/viewform?c=0&w=1 (last visited Jan. 22, 2016).

cc:
Keith Eldredge, Dean of Students