

1 J. Caleb Dalton\*, D.C. Bar No. 1033291  
2 ALLIANCE DEFENDING FREEDOM  
3 440 1st St NW, Suite 600  
4 Washington, DC 20001  
5 Phone: (202) 393-8690  
6 Fax: (202) 347-3622  
7 CDalton@ADFLegal.org  
8 DCortman@ADFLegal.org

9 Michael L. Renberg CA Bar No. 136217  
10 PARICHAN, RENBERG & CROSSMAN  
11 1300 E. Shaw Ave., #126  
12 Fresno, CA 93710  
13 Phone: (559) 431-6300  
14 Fax: (559) 432-1018  
15 MRenberg@prcelaw.com  
16 (designated local co-counsel)

17 *Attorneys for Plaintiffs*  
18 (additional counsel listed in signature block)

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

29 **Young Americans for Liberty at**  
30 **University of California, Berkeley** an  
31 unincorporated association on behalf of itself  
32 and its members; and Khader Kakish,

33 Plaintiffs,

34 v.

35 **Janet Napolitano**, in her official capacity as  
36 President of the University of California and  
37 in her individual capacity;  
38 **Carol Christ**, in her official capacity as  
39 Chancellor of the University of California,  
40 Berkeley, and in her individual capacity;  
41 **Stephen Sutton**, in his official capacity as  
42 Interim Vice Chancellor of Student Affairs of  
43 the University of California, Berkeley, and in  
44 his individual capacity; and  
45 **Anthony Garrison**, in his official capacity  
46 as LEAD Center Director at University of  
47 California, Berkeley,

48 Defendants.

CASE NO. 3:17-cv-06899-JD

**FIRST AMENDED VERIFIED  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF AND  
DAMAGES**

**DEMAND FOR JURY TRIAL**

\* Appearing *pro hac vice*.

1 Plaintiffs, Young Americans for Liberty at University of California, Berkeley, an  
2 unincorporated association, on behalf of itself and its members, and Khader Kakish, by and  
3 through counsel, and for their Complaint against Defendants aver the following:

4 **I.**

5 **INTRODUCTION**

6 1. Public universities are supposed to be a “marketplace of ideas,” where the young  
7 adults that are tomorrow’s leaders are exposed to differing opinions and learn how the  
8 Constitution protects both their own rights and those of their classmates with whom they  
9 disagree. University of California, Berkeley is teaching its students that the First Amendment  
10 does not apply to some government actors, granting them unbridled discretion to discriminate  
11 against student speech because of its viewpoint, selectively excluding student organizations  
12 whose views it deems to be too “similar” to other existing organizations, and depriving its  
13 students of the opportunity to be exposed to a robust exchange of differing ideas.

14 2. Young Americans for Liberty is a group of students at Berkeley who share a  
15 mutual love for freedom and the natural rights of life, liberty, and property. Young Americans  
16 for Liberty is not political, or partisan, and its members span the spectrum of political identities.  
17 They are bound together, however, by their desire to share the principles of liberty with others.  
18 However, unlike other groups of students at Berkeley, the students of Young Americans for  
19 Liberty was denied the ability to reserve space, invite speakers, or access the pool of funds that  
20 they paid into that is reserved for student organizations and speakers and events they sponsor  
21 because Berkeley excluded Young Americans for Liberty from Registered Student Organization  
22 (RSO) status and all the benefits that accompany this status. Young Americans for Liberty’s  
23 voice was thus excluded from the marketplace of ideas.

24 3. Berkeley maintains a policy that excludes student organizations from RSO status  
25 if the University deems the organization to be “too similar” to a previously registered  
26 organization. This discretion to discriminate is anathema to the First Amendment, and the  
27 marginalization of Young Americans for Liberty’s minority viewpoint not only offends the  
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1 Constitution, it undermines the core of the University’s role in promoting the free exchange of  
2 ideas in the search for truth.

3 4. This is a civil action seeking injunctive and declaratory relief, to vindicate and  
4 safeguard Plaintiffs’ fundamental rights as secured by the First and Fourteenth Amendments to  
5 the United States Constitution.

6 **II.**

7 **JURISDICTION AND VENUE**

8 5. This action arises under the First and Fourteenth Amendments of the United  
9 States Constitution, and the Civil Rights Act of 1871, 42 U.S.C. §§ 1983 and 1988.

10 6. This Court has original jurisdiction over these federal claims by operation of 28  
11 U.S.C. §§ 1331 and 1343.

12 7. This Court has authority to issue the requested declaratory relief under 28 U.S.C.  
13 § 2201-02.

14 8. This Court has authority to issue the requested injunctive relief under 28 U.S.C. §  
15 1343(a)(3).

16 9. This Court has authority to issue the requested damages under 28 U.S.C. §  
17 1343(a)(4).

18 10. This Court is authorized to award attorneys’ fees under 42 U.S.C. § 1988.

19 11. Venue is proper under 28 U.S.C. § 1391 in the Northern District of California  
20 because the events giving rise to the claims occurred in this District.

21 **III.**

22 **INTRADISTRICT ASSIGNMENT**

23 12. Pursuant to Civil L.R. 3-2(c)-(d) & 3-5, this case is a civil rights case, in a non-  
24 excepted category, suitable for assignment to the San Francisco or Oakland divisions because the  
25 civil action arose in Alameda County.  
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1 **IV.**

2 **IDENTIFICATION OF PLAINTIFF**

3 13. Plaintiff Young Americans for Liberty at Berkeley (YAL) is a student-led, non-  
4 partisan, unincorporated expressive student organization comprised of University of California  
5 Berkeley students. It brings this action on behalf of itself and its individual student members.

6 14. Plaintiff YAL’s mission is to identify, educate, train, and mobilize students to  
7 promote the principles of the natural rights of life, liberty, and property.

8 15. Plaintiff YAL seeks to raise awareness about principles of liberty on campus and  
9 how some government actions are threatening those liberties.

10 16. Plaintiff YAL’s members identify as classical liberal, conservative, and neither,  
11 but are united in their belief in, and advocacy for, principles of liberty.

12 17. Plaintiff YAL seeks to remain a registered student organization (“RSO”) at  
13 Berkeley.

14 18. Plaintiff YAL seeks to avail itself of the meeting space, speech forums, and other  
15 benefits and privileges that are available to RSOs at Berkeley.

16 19. Plaintiff YAL was denied RSO status for the Fall 2017 semester at Berkeley by  
17 Defendants, and under policies created and enforced by Defendants.

18 20. Plaintiff YAL and its members are entitled to content and/or viewpoint neutral  
19 access to all forums available to RSO’s, including access to student organization funding.

20 21. Plaintiff YAL’s members are entitled to content and/or viewpoint neutral  
21 distribution of funds they pay that are distributed to RSOs.

22 22. Part of Plaintiff YAL’s mission and purpose is to be an expressive student  
23 organization at the College and to protect its members’ constitutional rights, including their  
24 rights to free speech and association, against compelled speech, and to viewpoint-neutral access  
25 to student organization funding.

26 23. If Plaintiff YAL succeeds in this lawsuit, it will be able to obtain viewpoint  
27 neutral access to RSO status and to all benefits and privileges available to such groups, including  
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1 meeting space, access to channels of communication and viewpoint neutral access to student fee  
2 funding.

3 24. Part of Plaintiff YAL's mission and purpose is opposed to political philosophies  
4 such as socialism, communism, and government control over many areas of individual liberties  
5 and commercial activities.

6 25. Plaintiff YAL members' student fees that are allocated to other RSOs, are used to  
7 fund RSOs that advocate against YAL's purpose and its members' beliefs.

8 26. In addition to being denied access to the physical forums only open to RSOs,  
9 Plaintiff YAL and YAL members were denied access to RSO funds that are allocated from the  
10 fees YAL members pay because Defendants have denied them RSO status. YAL members are  
11 compelled to support, through the RSO Funding Policy, ideas and philosophies that they oppose,  
12 and were denied access to the funds they pay to support RSOs.

13 27. If Plaintiffs succeed in this lawsuit, the fees YAL members are required to pay  
14 that are distributed to RSOs that advocate for positions opposed to YAL's, will be required to be  
15 distributed to in a viewpoint neutral manner.

16 28. Plaintiff, Khader Kakish, is an individual student at University of California,  
17 Berkeley and is a member and officer of YAL.

18 **V.**

19 **IDENTIFICATION OF DEFENDANTS**

20 29. Defendant Janet Napolitano is, and was at all times relevant to this complaint, the  
21 president of the University of California.

22 30. By delegated authority from the University of California Board of Regents, the  
23 laws of California, and the University of California Bylaws, Defendant Napolitano is responsible  
24 for the operation of the Universities of California, including Berkeley, including for the  
25 enactment, enforcement, administration and policymaking relating to students and student  
26 organizations, including the RSO Recognition Policy and the RSO Funding Policy and practices  
27 implementing those policies.

1           31. Defendant Napolitano has responsibility and authority over the Berkeley budget  
2 and allocation of monies within Berkeley, including the assessment of mandatory student fees  
3 and the allocation of Berkeley Campus Fee revenues to student organizations.

4           32. Defendant Napolitano possesses the authority to change and is responsible for  
5 enforcement of the RSO Recognition Policy and the RSO Funding Policy.

6           33. Defendant Napolitano enforces the RSO Recognition Policy in an  
7 unconstitutional manner because she permits University officials to exercise unbridled discretion  
8 in implementing the RSO Recognition Policy, has permitted YAL to be denied recognition under  
9 this policy, and is allowing denials of RSO status that are arbitrary and without justification and  
10 that result in and from content and/or viewpoint discrimination.

11           34. Defendant Napolitano enforces the RSO Funding Policy that requires members of  
12 YAL to pay mandatory student fees and allows Defendants to exercise unbridled discretion in  
13 allocating student activity fees through denial of RSO status, permitting discrimination against  
14 student groups on the basis of the content and/or viewpoint of their speech.

15           35. Defendant Napolitano is sued in her official capacity as President of the  
16 University of California, and in her individual capacity.

17           36. Defendant Carol Christ is, and was at all times relevant to this complaint, the  
18 Chancellor of the University of California, Berkeley.

19           37. Defendant Christ is responsible for the operation of the University of California,  
20 Berkeley, including for the enactment, enforcement, administration and policymaking relating to  
21 students and student organizations, including the RSO Recognition Policy and the RSO Funding  
22 Policy and practices implementing those policies.

23           38. Defendant Christ has responsibility and authority over the Berkeley budget and  
24 allocation of monies within Berkeley, including the assessment of mandatory student fees and  
25 the allocation of Berkeley Campus Fee revenues to student organizations.

26           39. Defendant Christ possesses the authority to change and is responsible for  
27 enforcement of the RSO Recognition Policy and the RSO Funding Policy.

1           40. Defendant Christ enforces the RSO Recognition Policy in an unconstitutional  
2 manner because she permits University officials to exercise unbridled discretion in implementing  
3 the RSO Recognition Policy, denied YAL recognition under this policy, and is allowing denials  
4 of RSO status that are arbitrary and without justification and that result in and from content  
5 and/or viewpoint discrimination.

6           41. Defendant Christ enforces the RSO Funding Policy that requires members of  
7 YAL to pay mandatory student fees and allows Defendants to exercise unbridled discretion in  
8 allocating student activity fees through denial of RSO status, permitting discrimination against  
9 student groups on the basis of the content and/or viewpoint and content of their speech.

10           42. Defendant Christ is sued in her official capacity as Chancellor of the University of  
11 California, Berkeley, and in her individual capacity.

12           43. Defendant Stephen Sutton, is and was at all times relevant to this complaint the  
13 Interim Vice Chancellor of Student Affairs of the University of California, Berkeley.

14           44. Defendant Sutton is responsible for the enactment, enforcement, administration  
15 and policymaking relating to students and student organizations, including the RSO Recognition  
16 Policy and the RSO Funding Policy and practices implementing those policies.

17           45. Defendant Sutton enforces the RSO Recognition Policy in an unconstitutional  
18 manner because he permits University officials under his control or supervision to exercise  
19 unbridled discretion in implementing the RSO Recognition Policy, has denied YAL recognition  
20 under this policy, and is allowing denials of RSO status that are arbitrary and without  
21 justification and that result in and from content and/or viewpoint discrimination.

22           46. Defendant Sutton is sued in his official capacity as Vice Chancellor of Student  
23 Affairs of the University of California, Berkeley, and in his individual capacity.

24           47. Anthony Garrison, is sued in his official capacity as LEAD Center Director, at  
25 Berkeley.

26           48. As LEAD Center Director, Defendant Garrison is responsible for the enactment,  
27 enforcement, administration and policymaking relating to student organizations, including the  
28 RSO Recognition Policy.

1 49. Defendant Garrison has supervisory authority over LEAD Center staff who  
2 denied YAL RSO recognition status.

3 50. Defendant Garrison has supervisory authority over LEAD Center staff who  
4 review annual re-authorization applications for RSO status.

5 51. All of the acts of Defendants, their officers, agents, employees, and servants, were  
6 executed and are continuing to be executed by the Defendants under the color and pretense of the  
7 policies, statutes, ordinances, regulations, customs, and usages of the State of California.

8 **VI.**

9 **STATEMENT OF FACTS**

10 **Defendants' Registered Student Organization Recognition Policy**

11 52. Berkeley operates a forum for registered student organizations because it  
12 recognizes that organized student groups are a valuable part of the student educational  
13 environment, and because, while they do not speak for the University and the University is not  
14 responsible for the speech of student groups, they further the University's educational mission by  
15 fostering an environment of the open exchange of ideas on campus.

16 53. Over one thousand student organizations are currently granted RSO status and  
17 participate in this forum at Berkeley, including fraternities and sororities, sports teams, and  
18 student groups representing a number of political, religious, and other causes and views.

19 54. Defendants maintain a website, lead.berkeley.edu, where they publish RSO  
20 policies including policies on how to obtain recognition as an RSO.

21 55. Defendants' policies also include their unwritten practices and procedures.

22 56. Defendants' policies and practices, written and unwritten regarding recognition of  
23 RSOs are referred to herein as "RSO Recognition Policies," or "RSO Policy."

24 57. Defendants' RSO Recognition Policies do not include a list of objective, content  
25 and/or viewpoint neutral criteria by which to determine whether to approve or deny an  
26 application for RSO status.

27 58. Defendants' RSO Policy requires that in order to become an RSO, a group of  
28 students must first submit a "New RSO Interest Form."



1 59. This form requires a “Statement of Uniqueness.”

2 60. The “Statement of Uniqueness” is separate from the mission statement, and is  
3 used by Defendants in their decision to approve or deny an application in order to “clarify how  
4 your proposed organization is different from other existing student organizations at UC Berkeley  
5 and how your group will have a positive impact on the university community.”

6 61. Defendants and/or state actors under Defendants’ authority and control, determine  
7 whether a proposed RSO is “too similar” to an already recognized RSO.

8 62. On information and belief, Defendants do not maintain a list of objective, content  
9 and/or viewpoint neutral criteria by which to determine when an organization is “too similar” to  
10 an already registered RSO.

11 63. If Defendants, and/or state actors under Defendants’ authority and control,  
12 determine that an applicant is “too similar” to another RSO the RSO policy requires that they  
13 deny the application.

14 64. Defendants and/or state actors under Defendants’ authority and control, determine  
15 whether a proposed RSO “will have a positive impact on the university community.”

16 65. On information and belief, Defendants do not maintain a list of objective, content  
17 and/or viewpoint neutral criteria by which to determine when an organization is “will have a  
18 positive impact on the university community.”

19 66. Many of the approved RSOs have overlapping missions and goals; some appear  
20 almost identical such as the “Cal Berkeley Democrats” and “Students for Hillary at Berkeley,” or  
21 “Progressive Student Association” and “Socialist Alternative at Berkeley”, or “Queer Alliance &  
22 Resource Center,” the “Queer Student Union,” and the “UNITY Resource Center.”

23 67. On information and belief, Defendants’ RSO Policy does not provide that any  
24 recording be made or provided of the deliberations on whether to grant or deny RSO status.

25 68. The RSO Policy states that “[i]n the event that you are not approved to create a  
26 new organization you may be redirected to a similar student organization or be given alternative  
27 steps in order to achieving your desired outcome.” (Exhibit 1).

28 69. The RSO Policy requires re-registration each year for every RSO.

1 70. On information and belief, Defendants do not maintain a list of objective, content  
2 and/or viewpoint neutral criteria by which to determine whether to approve or deny an RSOs re-  
3 registration application.

4 71. The RSO Policy permits Defendants, without limit, to deny an RSO recognition  
5 or re-recognition based on the RSO's viewpoint, including whether it is deemed to be "too  
6 similar" to another organization, or whether it is determined to have a "positive impact" on the  
7 Berkeley community.

8 **Defendants' Registered Student Organization Funding Policy**

9 72. Defendants create a forum for students' expression by collecting student fees  
10 designated for re-distribution to RSOs.

11 73. Every student member of Plaintiff YAL pays mandatory student fees at Berkeley.

12 74. Plaintiff Kakish, a member of YAL, pays mandatory student fees at Berkeley.

13 75. Approximately \$27.50 per semester of the approximately \$694 per-semester  
14 "Berkeley Campus Fee" paid by undergraduate students at Berkeley is allocated for distribution  
15 and funding to RSOs (hereinafter "RSO Funding Policy").

16 76. These fees are pooled into a fund for distribution to RSOs.

17 77. Every member of Plaintiff YAL pays into this pool of funds.

18 78. RSOs use these funds to engage in expressive activities and further their missions.

19 79. Only RSOs are eligible to receive distributions from the pool of funds designated  
20 for RSOs.

21 80. If an association of students is denied RSO status, they are denied access to  
22 distribution of the student fees that are designated for RSO expression.

23 81. Defendants do not maintain an exhaustive list of objective, content and/or  
24 viewpoint neutral criteria by which to determine when an organization is eligible to become or  
25 remain an RSO.

26 82. Thus, because RSO status serves as a gateway barrier to access to the forum  
27 created by the RSO fund, the Defendants have unbridled discretion to exclude groups from  
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1 receiving RSO funding by denying them RSO status initially or through the re-recognition  
2 process.

3 **Defendants' Denial of Recognized Status to YAL**

4 83. On September 26, 2017, the President of YAL submitted to the Berkeley LEAD  
5 Center a properly completed statement of interest to start the process of becoming a registered  
6 student organization at Berkeley. This statement of interest is attached as Exhibit 1.

7 84. On September 27, 2017, a representative from the Berkeley LEAD Center,  
8 identified as "Daisy, Peer Leadership Consultant (PLC)," responded via email denying YAL's  
9 application for RSO status. This email is attached as Exhibit 2.

10 85. Defendants stated that YAL "does not meet the qualifications for creating a new  
11 organization" because it is "too similar to Cal Libertarians."

12 86. Defendants ordered YAL to "work with" Cal Libertarians, and that if that failed  
13 they could set up "an appointment for [YAL's] statement of uniqueness" with a LEAD Center  
14 Advisor at which they would be required to show what efforts they made to work with Cal  
15 Libertarians, but were not guaranteed recognized status despite meeting all other listed  
16 qualifications.

17 87. The deadline for applications for RSO status was on September 27, 2017.

18 88. Defendants' denial of YAL's application resulted in YAL not being recognized as  
19 an RSO for the Fall 2017 semester.

20 89. YAL seeks to utilize funds for the purpose of printing promotional and  
21 educational materials, among other things, but was excluded from applying for RSO funding for  
22 the Fall 2017 semester on an equal basis as other RSOs.

23 90. Because Defendants denied YAL's application, YAL was unable to reserve  
24 meeting space to hold organization meetings on the same basis as RSOs.

25 91. Because Defendants denied YAL's application, YAL was unable to apply to  
26 access the Berkeley Campus Fees (to which their members have contributed) that are set aside  
27 for RSOs and their events.

1 92. Because Defendants denied YAL's application, YAL was unable to reserve  
2 facilities for events to further its mission on the same basis as RSOs.

3 93. Because Defendants denied YAL's application, YAL members were unable to  
4 freely associate together on the same basis as other students whose organizations have been  
5 granted RSO status and advocate for their ideas on campus.

6 94. Because Defendants denied YAL's application, YAL was limited in its ability to  
7 speak on campus and further its mission and goals and to recruit members.

8 95. Defendants' denial of YAL's application burdens YAL's speech.

9 96. Defendants' denial of YAL's application burdened YAL expressive association.

10 97. Defendants' denial of YAL's application burdened YAL's association.

11 98. As a result of its denial of RSO status, YAL was forced to replace any student fee  
12 funding it would have received through other sources, including its members' own personal  
13 resources. However, YAL members were compelled to continue to pay student fees that may be  
14 accessed by and used to promote the ideas of those whose RSO status has been granted –  
15 including groups advocating for views contrary to those of YAL and its members.

16 99. YAL has suffered actual damages by being denied access to RSO funding and  
17 thus expending funds in excess of \$50 that would have been covered by RSO funds.

18 100. YAL's members, including Plaintiff Kakish, have suffered actual damages by  
19 being forced to pay into a system of unconstitutionally administered student fees, including the  
20 fees payed by each member every semester the viewpoint-discriminatory RSO recognition policy  
21 remains in place.

22 101. YAL members have also expended personal funds out of pocket on behalf of  
23 YAL to further YAL's mission and assist in membership recruitment. These expenses would  
24 have been covered by RSO funds.

25 102. Due to out of pocket expenses paid by YAL members on behalf of YAL, and due  
26 to the payment of unconstitutionally administered fees by each member of YAL, Defendants'  
27 actions have caused actual damages to Plaintiffs and Plaintiff YAL's members in excess of \$100,  
28

1 and Defendants' actions continue to cause actual damage to Plaintiffs and Plaintiff YAL's  
2 members.

3 103. Were it afforded RSO status for the Fall 2017 semester, YAL would have availed  
4 itself of the benefits, privileges, and channels of communication available to RSOs, including  
5 applying for funding from the fees reserved for RSOs but was denied access to these speech  
6 forums.

7 104. In response to the original verified complaint filed in this case on December 4,  
8 2017 (Doc. 1), Defendants agreed to recognize YAL for the Spring 2018 semester despite their  
9 initial determination that YAL "does not meet the qualifications for creating a new organization"  
10 because it "is too similar to Cal Libertarians."

11 105. Defendants' viewpoint-discriminatory policies remain in place.

12 106. Plaintiffs continue to be compelled to pay mandatory fees that are distributed  
13 under a viewpoint-discriminatory policy.

14 **VII.**

15 **STATEMENTS OF LAW**

16 107. Each and all of the acts alleged herein were done by Defendants and/or their  
17 agents or persons under their control under the color and pretense of state law, statutes,  
18 ordinances, regulations, customs, usages, and policies of the State of California.

19 108. Defendants and/or their agents or persons under their control denied YAL RSO  
20 status under color of state law.

21 109. Defendants knew or should have known that by subjecting YAL to a system of  
22 unbridled discretion in order to be recognized as a student organization that they violated the  
23 Plaintiff's constitutional rights.

24 110. Defendants knew or should have known that by denying YAL RSO status without  
25 justification that it violated its constitutional rights.

26 111. Defendants knew or should have known that by excluding student organizations  
27 from receiving Berkeley Campus Fee funding through a system of unbridled discretion that they  
28 violated Plaintiff's, and its' members', constitutional rights.

1 112. Defendants knew or should have known that by requiring the members of YAL to  
2 pay student activity fees for the support of groups whose views they do not wish to support while  
3 funding groups with those funds through a content and/or viewpoint discriminatory system that  
4 affords unbridled discretion to allocate student activity fees, Defendants violated, and continue to  
5 violate, Plaintiffs' constitutional rights.

6 **VIII.**

7 **FIRST CAUSE OF ACTION –**  
8 **VIOLATION OF PLAINTIFFS' FIRST AMENDMENT RIGHT OF ASSOCIATION**

9 113. The allegations contained in paragraphs 1 to 112 are incorporated herein by  
10 reference.

11 114. The First Amendment of the United States Constitution, incorporated and made  
12 applicable to Defendants through the Fourteenth Amendment, guarantees Plaintiffs the right of  
13 association.

14 115. A University's denial of registration of a student organization without sufficient  
15 lawful justification burdens and abridges the right of association.

16 116. A University's denial of a student group's access to meeting space and other  
17 benefits and privileges of registration, including the channels of communication available to  
18 other student groups on its campus, burdens and abridges the right of association.

19 117. Once a student group files a completed application for registered status with a  
20 University, the burden is upon the University to justify rejection of the application.

21 118. The denial of registered student organization status to a student organization is a  
22 form of prior restraint, placing a heavy burden on the University to justify its denial of  
23 registration.

24 119. The content and/or viewpoint of a student group's expression or purpose for  
25 association is an invalid basis for denying a student group registration.

26 120. Defendants denied YAL's timely and complete application (the "New  
27 Organization Interest Form") for RSO status.

1 121. Defendants' stated justification for the denial was based on YAL's viewpoints  
2 and Defendants' perception of the similarity in viewpoints between YAL and College  
3 Libertarians.

4 122. Defendants' denial of YAL's application for RSO status was viewpoint  
5 discrimination.

6 123. Because of Defendants' denial of YAL's application for RSO status, the group  
7 was ineligible to reserve meeting space for the organization and for its events and is excluded  
8 from channels of communication available to other student groups on campus.

9 124. Because of Defendants' denial of YAL's application for RSO status, the group  
10 was hindered in its ability to communicate with other students on campus and to remain a viable  
11 entity in the Berkeley community.

12 125. Defendants had no legitimate or compelling reason for denying RSO status to  
13 YAL.

14 126. Defendants had no legitimate or compelling reason for enforcing the RSO Policy  
15 which requires and permits viewpoint discrimination.

16 127. The RSO Policy affords Defendants unbridled discretion to grant or deny RSO  
17 status.

18 128. The RSO Policy makes key benefits and privileges, including the ability to  
19 reserve meeting space, invite certain speakers, access funding, and use channels of  
20 communication available only to RSOs, denying those benefits and privileges to groups that are  
21 denied RSO status.

22 129. Associating with other organizations, even ones that may hold similar but not  
23 identical beliefs, alters the message YAL's members wish to express and its purpose for  
24 association.

25 130. Accordingly, Defendants' RSO Policy, facially and as applied to YAL, violates  
26 the First Amendment right of association.

1 131. Because of Defendants' actions, Plaintiffs have suffered, and continue to suffer,  
2 economic injury and irreparable harm, and are entitled to an award of monetary damages and  
3 equitable relief.

4 132. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to a declaration  
5 that Defendants violated their First Amendment right to freedom of association and an injunction  
6 against Defendants' policy and actions. Additionally, Plaintiffs are entitled to damages in an  
7 amount to be determined by the evidence and this Court and the reasonable costs of this lawsuit,  
8 including reasonable attorneys' fees.

9 **IX.**

10 **SECOND CAUSE OF ACTION –**  
11 **VIOLATION OF PLAINTIFFS'**  
12 **FIRST AMENDMENT RIGHT TO FREEDOM OF SPEECH:**  
13 **UNBRIDLED DISCRETION, VIEWPOINT DISCRIMINATION, AND COMPELLED**  
14 **SPEECH**

15 133. The allegations contained in paragraphs 1 to 132 are incorporated herein by  
16 reference.

17 **RSO Policy**

18 134. The First Amendment's Free Speech Clause, incorporated and made applicable to  
19 the states by the Fourteenth Amendment to the United States Constitution, prohibits content  
20 and/or viewpoint discrimination by a public university in its decision to provide registered  
21 student organization status to a student group and to provide access to the benefits, privileges,  
22 and forums available to registered student organizations.

23 135. The First Amendment's Free Speech Clause, incorporated and made applicable to  
24 the states by the Fourteenth Amendment to the United States Constitution, prohibits content  
25 and/or viewpoint discrimination in a forum created for student speech.

26 136. When a public university registers student organizations and makes benefits,  
27 privileges, and access to speech forums available to those registered student organizations, it  
28 creates a public forum for student speech and expression.

137. The government's ability to restrict speech in a public forum is limited.



1 138. A public university may not apply content and/or viewpoint-based standards in  
2 registering student organizations.

3 139. The RSO Policy creates a public forum for student speech.

4 140. The RSO Policy affords Defendants and other University officials unbridled  
5 discretion to grant or deny registration to a student group, permitting discrimination against a  
6 student group because of the content and/or viewpoint of its speech.

7 141. The lack of objective criteria, factors, or standards for determining whether a  
8 group may be an RSO and participate in that forum for student speech gives government officials  
9 unbridled discretion to exclude or prohibit speech based on its content and/or viewpoint in  
10 violation of the First Amendment.

11 142. Defendants' RSO Policy confers unbridled discretion on Defendants or other  
12 officials charged with determining whether a student group will be granted RSO status to  
13 suppress and/or discriminate against disfavored speech because of its content and/or viewpoints.

14 143. Defendants' RSO Policy does not provide that any recording be made or provided  
15 of the deliberations on whether to grant or deny RSO status thus conferring unbridled discretion  
16 on officials to discriminate based on content and/or viewpoint.

17 144. Denying YAL's application because it is "too similar" to another organization,  
18 required Defendants to discriminate based on content and/or viewpoint in its determination.

19 145. Defendants' denial of YAL's application for registered student organization status  
20 was viewpoint discriminatory.

21 146. Defendants' denial of registered student organization status to YAL and its  
22 exclusion from receiving student activity funding served no sufficient and lawful purpose.

23 147. Accordingly, Defendants' RSO Policy, and their enforcement of this policy  
24 against Plaintiffs violated Plaintiffs' rights to freedom of speech guaranteed by the First  
25 Amendment.

26 148. Defendants' denial of YAL's application for RSO status fails to satisfy strict  
27 scrutiny because it is not narrowly tailored to promote a compelling government interest.

1 149. Defendants' RSO Policy is not content and viewpoint neutral and does not leave  
2 open ample alternative channels of communication.

3 150. Defendants' denial of YAL's application for registered student organization status  
4 was unreasonable.

### 5 **Student Fee Allocation Policy**

6 151. The First Amendment's Free Speech Clause, incorporated and made applicable to  
7 the states by the Fourteenth Amendment to the United States Constitution, prohibits a public  
8 university from permitting viewpoint discriminatory allocation of student fee funding to RSOs.

9 152. When a public university collects mandatory student fees and allows registered  
10 student organizations to apply for funding from those student fees, it creates a public forum for  
11 student speech and expression.

12 153. Mandating students pay fees for the purpose of distribution to RSOs that speak  
13 messages the students disagree with is unconstitutional compelled speech unless the funds are  
14 distributed in a content and/or viewpoint neutral manner limited by objective viewpoint neutral  
15 criteria.

16 154. A student organization's use of funding obtained through mandatory student fees  
17 to promote its own views is a form of protected speech.

18 155. A public university may not apply content and/or viewpoint-based standards in  
19 allocating student organization funding derived from mandatory student fees.

20 156. The Student Fee Policy creates a public forum for student speech.

21 157. Because the RSO Recognition Policy affords Defendants and other University  
22 officials unbridled discretion to grant or deny registration to a student group, permitting  
23 discrimination against a student group because of the content and viewpoint of its speech, and  
24 because the Student Fee Policy limits eligibility only to RSOs, the Student Fee policy affords  
25 unbridled discretion to exclude student groups from receipt of funding based on the content  
26 and/or viewpoint of their speech.

27 158. Defendants' exclusion of YAL from the opportunity to apply for student fee  
28 funding is content and/or viewpoint discriminatory.

1 159. Defendants' Student Fee Policy and the exclusion of YAL from the opportunity to  
2 apply for Student Fee funding fail to satisfy strict scrutiny because it is not narrowly tailored to  
3 promote a compelling government interest.

4 160. Defendants' Student Fee Policy and the exclusion of YAL from the opportunity to  
5 apply for Student Activity Fee funding is content and/or viewpoint discriminatory and  
6 unreasonable.

7 161. The lack of objective criteria, factors, or standards for determining whether a  
8 group may receive Student Fee funding and at what level gives government officials unbridled  
9 discretion to exclude, prohibit, or disadvantage speech based on its content and/or viewpoint in  
10 violation of the First Amendment.

11 162. Because Defendants discriminate based on content and/or viewpoint in  
12 recognizing RSOs, and the RSO Policy serves as a gateway to access the mandatory student fees  
13 paid by YAL members for distribution to RSOs, Defendants compel Plaintiff's members,  
14 including Plaintiff Kakish, to speak a message by financially supporting RSOs whose message  
15 they disagree with, since those funds are not distributed in a content and/or viewpoint neutral  
16 manner.

17 163. Because of Defendants' actions, Plaintiffs and YAL members have suffered, and  
18 continue to suffer, economic injury and irreparable harm. Plaintiffs are entitled to an award of  
19 monetary damages and equitable relief.

20 164. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to a declaration  
21 that Defendants violated their First Amendment right to freedom of speech and an injunction  
22 against Defendants' policy and actions. Additionally, Plaintiffs are entitled to damages in an  
23 amount to be determined by the evidence and this Court and the reasonable costs of this lawsuit,  
24 including its reasonable attorneys' fees.

**X.**

**THIRD CAUSE OF ACTION –  
VIOLATION OF PLAINTIFFS’  
FOURTEENTH AMENDMENT RIGHT TO EQUAL PROTECTION**

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4 165. The allegations contained in paragraphs 1 to 164 are incorporated herein by  
5 reference.

6 166. The Fourteenth Amendment to the United States Constitution guarantees  
7 Plaintiffs the equal protection of the laws, which prohibits Defendants from treating Plaintiffs  
8 differently than similarly situated speakers or associations.

9 167. The government may not treat a person or association of persons disparately as  
10 compared to similarly situated persons or associations when such disparate treatment burdens a  
11 fundamental right, targets a suspect class, or has no rational basis.

12 168. Plaintiffs were similarly situated to other RSO-applicants at the University.

13 169. Plaintiffs were situated to other associations of students who are similar but not  
14 identical to already recognized RSOs yet have been granted RSO status.

15 170. Defendants treated Plaintiff YAL and its members differently than other similarly  
16 situated speakers on campus by denying Plaintiff YAL and its members access to speech forums  
17 that similarly situated associations and students may access.

18 171. Defendants’ policies and actions disadvantaged Plaintiff YAL and its members by  
19 limiting their ability to associate on an equal basis as other similarly situated associations and  
20 students.

21 172. Defendants’ policies and actions disadvantaged Plaintiff YAL and its members by  
22 limiting their ability to speak on an equal basis as other similarly situated associations and  
23 students.

24 173. Defendants’ policies and actions disadvantaged Plaintiff YAL and its members by  
25 limiting their ability to access speech forums on an equal basis as other similarly situated  
26 associations and students.

27 174. Defendants’ policies and actions have caused Plaintiff YAL and its members  
28 actual damages.

1 175. Defendants' policies and actions violate Plaintiff YAL and its members'  
2 fundamental right to association and free speech.

3 176. When government regulations, like Defendants' policies and actions, infringe on  
4 fundamental rights, discriminatory intent is presumed.

5 177. Defendants' RSO Policies are underinclusive, prohibiting some speech and  
6 association while permitting similarly situated speech and association by others students and  
7 RSOs.

8 178. Defendants lack a rational or compelling state interest for such disparate treatment  
9 of Plaintiff and its members.

10 179. Because of Defendants' actions, Plaintiff YAL and its members have suffered,  
11 and continue to suffer, economic injury and irreparable harm. Plaintiffs are entitled to an award  
12 of monetary damages and equitable relief.

13 180. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to a declaration  
14 that Defendants violated their Fourteenth Amendment right to equal protection and an injunction  
15 against Defendants' policy and actions. Additionally, Plaintiffs are entitled to damages in an  
16 amount to be determined by the evidence and this Court and the reasonable costs of this lawsuit,  
17 including its reasonable attorneys' fees.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs request the following relief:

- 20 A. A declaratory judgment that the Defendants' RSO Policy, facially and as-applied,  
21 violates Plaintiffs' rights under the First and Fourteenth Amendment;
- 22 B. A declaratory judgment that the Defendants' Student Fee Policy, facially and as-applied,  
23 violates Plaintiffs' rights under the First and Fourteenth Amendment;
- 24 C. An order enjoining the enforcement of Defendants' prohibition on recognizing  
25 organizations that Defendants consider "too similar" to other RSOs;
- 26 D. A preliminary and permanent injunction prohibiting Defendants from denying any  
27 applicant RSO status without implementing a list of exhaustive viewpoint neutral criteria  
28 for RSO recognition that adequately limits Defendants' discretion;

- 1 E. A preliminary and permanent injunction prohibiting Defendants from collecting  
2 mandatory student fees for the purpose of funding RSOs without implementing a list of  
3 exhaustive viewpoint neutral criteria for funding distribution that adequately limits  
4 Defendants' discretion;
- 5 F. Actual compensatory damages for infringing Plaintiffs' and Plaintiff YAL's members  
6 exercise of their First and Fourteenth Amendment rights;
- 7 G. Nominal damages for the violation of Plaintiffs' First and Fourteenth Amendment rights;
- 8 H. Plaintiffs' reasonable attorneys' fees, costs, and other costs and disbursements in this  
9 action pursuant to 42 U.S.C. § 1988;
- 10 I. All other further relief to which Plaintiffs may be entitled, and
- 11 J. That this Court retain jurisdiction of this matter as necessary to enforce the Court's  
12 orders.

13 Pursuant to Civil L.R. 3-6(a) Plaintiff, by and through counsel, demands a jury trial.  
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Respectfully submitted on this, the 8th day of March, 2018,

Attorneys for Plaintiffs,

By: /s/ J. Caleb Dalton

David A. Cortman, GA Bar No. 188810\*  
Travis C. Barham, GA Bar No. 753251\*  
ALLIANCE DEFENDING FREEDOM  
1000 Hurricane Shoals Road NE  
Suite D-1100  
Lawrenceville, Georgia 30043  
(770) 339-0774  
DCortman@ADFlegal.org  
TBarham@ADFlegal.org

J. Caleb Dalton\*, D.C. Bar No. 1033291  
ALLIANCE DEFENDING FREEDOM  
440 1st St NW, Suite 600  
Washington, DC 20001  
Phone: (202) 393-8690  
Fax: (202) 347-3622  
CDalton@ADFlegal.org  
DCortman@ADFlegal.org

Tyson C. Langhofer, AZ Bar No. 32589\*  
ALLIANCE DEFENDING FREEDOM  
15100 N. 90th Street  
Scottsdale, Arizona 85260  
(480) 444-0020  
(480) 444-0021 Fax  
TLanghofer@ADFlegal.org

Michael L. Renberg CA Bar No. 136217  
PARICHAN, RENBERG & CROSSMAN  
1300 E. Shaw Ave., #126  
Fresno, CA 93710  
Phone: (559) 431-6300  
Fax: (559) 432-1018  
MRenberg@prcelaw.com  
(designated local co-counsel)

Attorneys for Plaintiffs  
\*Appearing *pro hac vice*

VERIFICATION OF COMPLAINT

I, Khader Kakish, a citizen of the United States and a resident of the State of California, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that I have read the foregoing Verified Complaint and the factual allegations therein, and the facts as alleged are true and correct.

Executed this 7<sup>th</sup> day of March, 2018.



Khader Kakish, on behalf of himself and as an authorized representative of Plaintiff, Young Americans for Liberty at University of California, Berkeley