



February 22, 2019

Kent Syverud  
Office of the President  
Syracuse University  
Crouse-Hinds Hall, Suite 600  
900 South Crouse Avenue  
Syracuse, New York 13244

*Sent via Electronic Mail (chancellor@syr.edu)*

Dear Chancellor and President Syverud:

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's concern for the state of student expressive rights at Syracuse University is renewed by the decision to deny recognition to a chapter of Young Americans for Freedom (YAF) in a manner that is explicitly viewpoint-discriminatory. This decision cannot be reconciled with the public commitments Syracuse has made purporting to protect the rights of students to engage in free association and free speech.

**I. Syracuse University's Rejection of the Proposed Young Americans for Freedom Chapter**

The following is our understanding of the pertinent facts. We appreciate that you and your staff may have additional information to offer, and we invite you to share it with us. However, if the facts here are substantially accurate, Syracuse must direct the Office of Student Activities to make student group recognition decisions in a viewpoint-neutral manner.

Young Americans for Freedom (YAF) is a project of the Young America's Foundation; the Foundation describes itself as "the principal outreach organization of the Conservative Movement."<sup>1</sup> Students start local YAF chapters to advocate for conservative ideas on campus. In the first week of February, a group of Syracuse students submitted a New Registered

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<sup>1</sup> *Our Mission*, YOUNG AMERICA'S FOUNDATION, <https://www.yaf.org/about> (last visited Feb. 21, 2019).

Student Organization Packet (RSO Packet) to the Office of Student Activities in order to start a YAF chapter at Syracuse.

On February 12, the YAF chapter organizers received an email from the New RSO Review Board (“the Board”) noting that their application was denied.<sup>2</sup> The Board’s stated reasons for the denial included:

1. The absence of a signed adviser contract;
2. Missing sections from the organization’s constitution, including an impeachment process and inconsistent officer selection information;
3. That officers were authorized to act without an Executive Board meeting, which the Board found “does not promote student engagement”;
4. Provisions on reimbursement and handling of funds inconsistent with University policy;
5. Meeting times were not identified;
6. The absence of a plan to identify leaders during summer semesters;
7. The requirement that prospective members support the “Sharon statement,” an articulation of conservative principles; and
8. That the group would be affiliated with Young America’s Foundation, which “[t]he Board recognizes... has demonstrated a past practice of supporting discourse via printed materials and/or other means that are deemed inflammatory.”<sup>3</sup>

The YAF organizers were given until 5 PM on Friday, February 15, to appeal the decision. An appeal was filed several hours after that deadline; accordingly, the Board sent an email the following Monday informing the organizers that the appeal would not be considered.<sup>4</sup>

## **II. The Viewpoint-Discriminatory Reasons for Rejecting the YAF Chapter Cannot Be Reconciled with Syracuse’s Purported Commitment to Freedom of Expression**

### **A. Syracuse promises students freedom of expression**

While Syracuse University is a private institution and thus not legally bound by the First Amendment, it is both morally and contractually bound to honor the promises of freedom of expression and association it makes to its students.

For example, Syracuse University’s Campus Disruption Policy properly asserts that the university “is committed to the principle that freedom of discussion is essential to the search for truth.”<sup>5</sup> Syracuse’s declaration of “Student Rights and Responsibilities” similarly notes:

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<sup>2</sup> E-mail from Taylor Sanders on behalf of The New RSO Review Board, Syracuse University, to Justine B. Murray, YAF Syracuse organizer (Feb. 12, 2019 11:58 AM ET) (on file with author).

<sup>3</sup> *Id.*

<sup>4</sup> E-mail from Taylor Sanders on behalf of The New RSO Review Board, Syracuse University, to Koen Wallace Weaver and Justine B. Murray, YAF Syracuse organizers (Feb. 18, 2019 5:30 PM ET) (on file with author).

<sup>5</sup> *Campus Disruption Policy*, SYRACUSE UNIV. (Aug. 20, 2010), <https://policies.syr.edu/policies/free-speech/campus-disruption-policy>.

Students have the right to express themselves freely on any subject provided they do so in a manner that does not violate the Code of Student Conduct.

[. . .]

Students have the right to exercise their religious convictions and associate with religious, political, or other organizations of their choice in University facilities, provided they do so in a manner that respects the rights of other members of the community and complies with the Code of Student Conduct. Students have the responsibility to respect the rights of other members of the University community to free exercise of their religious convictions and to free association with organizations of their choice.<sup>6</sup>

Similarly, Syracuse's Anti-Harassment Policy provides:

Syracuse University is committed to maintaining an environment that fosters tolerance, sensitivity, understanding and respect while protecting the free speech rights of the members of its community.

[. . .]

The University is also committed to protecting academic freedom and the freedom of speech by members of its community. This policy is not intended, and may not be applied, to abridge the free speech or other civil rights of any individual or group on campus. However, harassing speech or conduct that effectively prevents equal access to University programs or otherwise violates federal or state law, or University policy, is prohibited.<sup>7</sup>

These foundational commitments are not only made to the students of Syracuse, but are also important to the university's accreditation. Syracuse is accredited by the Middle States Commission on Higher Education, which requires that each institution, as a precondition for accreditation, "possesses and demonstrates [...] a commitment to academic freedom, intellectual freedom, freedom of expression."<sup>8</sup> This is a laudable commitment to defend,

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<sup>6</sup> *Statement of Student Rights and Responsibilities*, SYRACUSE UNIV. (OCT. 2005), <https://policies.syr.edu/policies/academic-rules-student-responsibilities-and-services/statement-of-student-rights-and-responsibilities>.

<sup>7</sup> *Anti-Harassment Policy*, SYRACUSE UNIV. (Dec. 13, 2016), <https://policies.syr.edu/policies/free-speech/anti-harassment-policy>.

<sup>8</sup> MIDDLE STATES COMM'N ON HIGHER EDUC., STANDARDS FOR ACCREDITATION AND REQUIREMENTS OF AFFILIATION 5 (13th ed. 2015), available at <http://msche.org/publications/RevisedStandardsFINAL.pdf>.

rather than abrogate, the freedom of expression of members of the student body or faculty, even when it is difficult or unpopular to do so.

**B. Syracuse cannot refuse to recognize a group because it organizes around a shared belief system**

Syracuse’s promise to respect students’ freedom of association cannot be reconciled with its refusal to recognize a YAF chapter, in part, because it is made up of students who want to associate with those who hold conservative views.

Asking prospective members of a conservative advocacy group to express a commitment to conservative advocacy is no more exclusionary than asking prospective members of a chess club to be interested in chess or asking members of a French club to possess some curiosity about France. The bar the Syracuse YAF organizers have set for membership is not high and does not exclude any protected class. Yet, the Board characterized this policy in its February 12 email as “unreasonable and not inclusive.”<sup>9</sup>

The Board’s rationale presupposes that there are students who want to participate in the activity of converting others to adopt conservative views, but who are unwilling to express the very conservative views they hope others will adopt. If, hypothetically, such a student existed, it is significant that they would not be considered a protected class under Syracuse’s Anti-Harassment Policy.<sup>10</sup>

The legal defect in this reasoning pales in comparison to the rhetorical defect. The concept of a student group must, by its nature, include some members of the student body and exclude others.

To be sure, some of the reasons stated in the February 12 email are a legitimate basis for temporarily denying recognition of a student group, as they do not require the group to alter its views. For example, there is little burden on requiring particular procedural provisions within a group’s constitution, or requiring the group’s advisor to acknowledge their role in writing. However, other reasons for the denial amount to impermissible viewpoint-based discrimination, and there is little reason to follow through on compliance with bureaucratic regulations when the university has expressly committed to rejecting the group based on its views.

**C. Syracuse cannot engage in viewpoint discrimination on the basis that the viewpoint is “deemed inflammatory”**

Under any cognizable view of freedom of expression, which Syracuse promises to protect, viewpoint-based discrimination violates that promise. When authorities “target[] not subject matter but particular views taken by speakers on a subject,” it is a “blatant” violation of the

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<sup>9</sup> See *supra* n. 2.

<sup>10</sup> See *supra* n. 7.

speaker's freedom of expression and "an egregious form of content discrimination."  
*Rosenberger v. Rector and Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995)

That Young Americans for Freedom's parent foundation has engaged in speech the Board "deem[s] inflammatory" is irrelevant to its obligation to respect freedom of expression. Freedom of expression includes the freedom to express unpopular viewpoints. *See Rosenberger*, 515 U.S. at 836 ("For 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."); *Board of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 233 (2000) ("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.").

The Young America's Foundation advocates for a particular viewpoint. The Supreme Court has recognized that, in the course of advocacy, it is sometimes useful to be "provocative and challenging," or "strike at prejudices and preconceptions and have profound unsettling effects" in pressing "for acceptance of an idea." *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949). Syracuse's commitment to free expression must recognize and respect the useful function of "inflammation" in both the advocacy of a particular viewpoint and the search for truth.

### **III. Conclusion**

It is impossible to tell how much of the Board's denial was based on the viewpoint of the group, but undeniable that the Board's articulation indicates that its viewpoint-based objection to this chapter would prevent its recognition even in the absence of compliance with content-neutral rules. Absent a public commitment from Syracuse that it will not continue to engage in viewpoint discrimination, the Board's pronouncement will deter not only this group, but also set a chilling and troubling precedent for other students who may consider forming student organizations.

FIRE calls on Syracuse to publicly reaffirm its commitment to those principles, and clarify that if the YAF chapter re-submits its application with the viewpoint-neutral defects corrected (specifically, those enumerated as 1 through 6 on page two of this letter), it will be given full and fair consideration independent of the organization's ideology and affiliation.

We request receipt of a response no later than March 8, 2019.

Sincerely,



Adam Goldstein  
Program Officer, Individual Rights Defense Program