



July 22, 2009

Via U.S. Mail & facsimile

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Re: Recognition of Freshman Leaders in Christ

Dear President Loftin, Vice President Parrott, Director Stackman, and Program Coordinator Boyle:

The Alliance Defense Fund's Center for Academic Freedom is sending this letter on behalf of the Christian student group, Freshman Leaders in Christ ("FLiC") regarding a potential violation of their First Amendment rights to free speech, free association, and free exercise of religion. The Alliance Defense Fund ("ADF") is a legal alliance that defends America's first liberty, religious liberty. ADF's Center for Academic Freedom is dedicated to ensuring that religious students enjoy rights to speak, associate, and learn on an equal basis as students of different faiths or no faith at all.

Factual Background

On May 27, 2009, Ms. Jennifer Boyle sent a letter to FLiC co-director Lauren Shook informing the group that its constitution met all the required components for recognition except for the membership provision, which restricts membership to "all freshman at Texas A&M University who declare themselves as Christian, are following Christ in their Christian walks, and whose desire is to serve others as a way of following Christ's example of leadership." Ms. Boyle's email informed FLiC that this provision violates Student Rule 41.1.7, which states that "Student organizations must be open in their membership unless otherwise permitted under applicable federal law." According to Ms. Boyle, Texas A&M University ("TAMU") General

Counsel had determined that FLiC's membership criteria did not "meet the standards of applicable federal law."

On June 5, 2009, Ms. Shook asked if TAMU would accept the following membership provision: "Membership shall be open to all freshmen at Texas A&M University whose desire is to serve others as a way of following Christ's example of leadership." On June 10, Ms. Boyle responded that this language was still too "restrictive" and proposed that FLiC adopt the following language: "Membership shall be open to all freshmen at Texas A&M University whose desire is to serve others. FLiC believes that service to others is a way of following Christ's example." Ms. Boyle apparently believed this would be an acceptable requirement because it would separate the "belief of the organization" from the "action of the individual."

On July 14, 2009, Ms. Shook sent a lengthy email to Ms. Boyle explaining in detail that the purpose and mission of FLiC is not merely to teach service or leadership, but to "teach Christ and life submitted to Him." For such teaching—or discipleship—to take place, it is a self-evident prerequisite that all FLiC members be persons who have already accepted Jesus Christ into their hearts by faith, and are desiring to live lives submitted to Him. Accordingly, Ms. Shook explained that separating FLiC's beliefs from the actions of the individual members—as Ms. Boyle suggested—would "fundamentally alter[]" FLiC's mission and purpose.

On July 15, 2009, Ms. Boyle replied that because federal law forbids discrimination based on, among other things, "religion," FLiC's membership criteria violated Student Rule 41.1.7. She promised to raise the issue again with the TAMU General Counsel, but emphasized that it was unlikely TAMU would change its position since there are "federal cases" stating that "only leadership and voting membership can be limited to Christians." Ms. Boyle closed her email by encouraging FLiC to consider "other ways" to be open in its membership.

FLiC's recognition status is currently classified as "in transition." Presumably, if FLiC does not change its membership criteria, the group will be "restricted," then "suspended," and ultimately, will be stripped of its recognized status per University policy.

As stated above, FLiC limits its membership to Christians in order to maintain and preserve its religious mission and expression on campus. The forced abandonment of FLiC's restrictive membership policy would change the message it seeks to convey internally to the organization's members and externally to the university community and would thereby eviscerate the very purpose for the group's existence. In short, FLiC cannot continue to exist as a Christian organization, to serve its unique religious purposes, and to express its unique Christian perspective, unless it limits its membership to those who have accepted Jesus Christ as their personal Savior, who are living according to Christian principles, and who desire to follow Christ's example of leadership through service.

Currently, FLiC is threatened with the loss of recognized status if it refuses to abandon its faith-based membership restrictions. As you know, loss of recognized status imposes a severe harm on student groups. Recognition brings with it access to innumerable avenues of communication that allow student organizations to get their message out and recruit new members. The University's Student Organization Manual states "[t]here are a number of

benefits that come from being a student organization at Texas A&M . . . [that] are not afforded to non-recognized organizations or individual students,” including the following:

- Association with Texas A&M University, including the ability to incorporate the name of the university into the name of the organization and the ability to use university logos and trademarks for organizational needs or products (please see the Office of Collegiate Licensing for more information).
- A free web site with 200 MB of memory and a free e-mail address for the organization, as well as the support of IT specialists who work within the Department of Student Activities.
- Access to permits for sandwich boards on campus.
- Access to concessions permits to sell or distribute items on campus.
- Access to free banking services at the Student Organization Finance Center (SOFC).
- Eligibility to apply for office, cubicle, or storage space for the organization.
- Use of university facilities and priority use of campus space.
- Eligibility to apply for special funding for student organization events and risk initiatives.
- Resources and support from staff members in the Department of Student Activities.

The practical reality for a student group that does not have access to these many avenues of communication is that it ceases to exist in any meaningful way on campus. The group can no longer participate in the marketplace of ideas that is (supposed) to be *the* defining characteristic of a public university campus. Thus, the University has presented FLiC with an unconstitutional Hobson’s choice: accept members into your group who will change your mission and message on campus, or reject such members but suffer the consequence of ceasing to be a meaningful part of the campus community. We believe, however, that Student Rule 41.1.7 offers a way out for both sides, as the policy expressly provides an exception where allowed by “applicable federal law.” Indeed, governing Supreme Court precedent permits TAMU to enforce its policy, as long as it allows FLiC—and any other organization whose message would be altered by the inclusion of non-adherents to the group’s views—to secure an exemption from such policy.

Legal Analysis

If TAMU refuses to grant such an exemption to FLiC, it will violate the group’s constitutional rights to free speech, expressive association, and free exercise of religion.

The Supreme Court has long recognized that “implicit in the right to engage in activities protected by the First Amendment” is “a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, *religious*, and cultural ends.”¹ The freedom of association—which presumes a right not to associate—is critical in preventing the majority from imposing its views on groups with unpopular or controversial viewpoints.² When

¹ *Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984) (emphasis added).

² *Boy Scouts of America v. Dale*, 530 U.S. 640, 647-48 (2000).

the government trespasses upon associational freedoms, its action will only stand if it satisfies strict scrutiny.³ And the government infringes upon this right when it “withhold[s] benefits from individuals because of their membership in a disfavored group,”⁴ or “interfere[s] with the internal organization or affairs of the group.”⁵ TAMU has violated FLiC’s freedom of association in both ways.

In *Healy v. James*,⁶ the Supreme Court recognized that the First Amendment protects the “right of individuals to associate to further their personal beliefs” and that a college may not require student organizations to conform to the university’s values, mission, or message as a condition of recognition. *Healy* recognized that the “denial of official recognition, without justification, to college organizations burdens or abridges [the groups’] associational right.”⁷ When a university refuses to officially recognize a student organization, its actions result in the organization’s inability to use campus facilities for meetings, engage in vital communication with the student body, or seek student activity funds. The Supreme Court has found those restrictions to be impermissible impediments to free association.⁸ By effectively forcing FLiC to conform to the University’s value of “open membership” as a precondition of recognition, TAMU has also transgressed this constitutional mandate.

Additionally, TAMU has severely intruded into FLiC’s internal affairs by forcing it to accept members that would fundamentally alter the group’s message and purpose.⁹ TAMU’s General Counsel has erred by taking the position that associational rights are not implicated as long as the group is free to choose its leaders and voting members. The coerced acceptance of *any* “unwanted person in a group infringes the group’s freedom of expressive association if the presence of that person *affects in a significant way the group’s ability to advocate public or private viewpoints.*”¹⁰

As stated above, FLiC is more than just a service organization. FLiC seeks to develop and train *Christian* leaders who will in turn serve their community as Jesus Christ served His followers and the world. To fulfill its mission, FLiC needs freshman who have accepted Jesus Christ as their Savior, have submitted their lives to Christ’s teaching, and have demonstrated a willingness to live in service to others. It is self-evident that FLiC’s purpose would be severely compromised if it was forced to accept non-Christians. Indeed, such coerced inclusion would compel FLiC to change its *private* message from training disciples of Christ to evangelizing unbelieving members, and would risk that its *public* message would point to “service” in general, rather than *the* ultimate Servant, Jesus Christ. The Supreme Court has uniformly struck down

³ *Dale*, 530 U.S. at 648.

⁴ *Roberts*, 468 U.S. at 622; *see also Healy v. James*, 408 U.S. 169, 180-84 (1972).

⁵ *Roberts*, 468 U.S. at 623.

⁶ 408 U.S. 169 (1972).

⁷ *Id.* at 181.

⁸ *Id.* at 181-82.

⁹ *Roberts*, 468 U.S. at 623 (“There can be no clearer example of an intrusion into the internal structure or affairs of an association than a regulation that forces the group to accept members it does not desire. Such a regulation may impair the ability of the original members to express only those views that brought them together.”)

¹⁰ *Dale*, 530 U.S. at 648 (citing *N.Y. State Club Ass’n, Inc. v. City of New York*, 487 U.S. 1, 13 (1988) (emphasis added)).

government regulations that changed a private organization's purpose and message,¹¹ and conversely, has only upheld those regulations that did not significantly affect the group's expressive association in this manner.¹²

In addition to the freedom of association, TAMU's current interpretation of Student Rule 41.1.7 substantially burdens FLiC's right to free exercise of religion by forcing the group to abandon its religious purpose in order to keep its recognition status. Because the rule implicates these two constitutional freedoms together, it must withstand strict scrutiny.¹³ Without any supporting judicial precedent or federal law preventing religious discrimination by private organizations, TAMU cannot seriously assert that it has a compelling interest in forcing FLiC to abandon its religious mission.

Simply put, "applicable federal law" not only permits, but requires TAMU to exempt FLiC from its compelled, open membership requirement. Otherwise, by forcing FLiC to accept members who would impair the group's religious message and mission, TAMU would run afoul of the group's rights to free speech, free association, and free exercise of religion.

Conclusion and Demand

Public universities, as you are aware, are the cradle of free thought and inquiry in American society. As the Supreme Court has said on numerous occasions, public universities are the "marketplace of ideas,"¹⁴ and are "one of the vital centers for the Nation's intellectual life."¹⁵ A public university should invite robust debate and dialogue on every conceivable issue, be open to the widest possible array of ideas and views, and adopt policies that encourage the fullest possible exercise of First Amendment freedoms.

Nondiscrimination policies, like TAMU's, are inimical to these goals. As the Supreme Court has explained, "the right to expressive association is 'especially important in preserving political and cultural diversity and in shielding dissident expression from suppression by the

¹¹ *Dale*, 530 U.S. at 659 (invalidating application of state nondiscrimination law on the grounds that forced inclusion of assistant scoutmaster would "significantly burden the [Boy Scouts'] right to oppose or disfavor homosexual conduct"); *Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston*, 515 U.S. 557, 572-73 (1995) (striking down application of state anti-discrimination statute because forced admission of gay, lesbian and bisexual group would essentially require the parade organizers to alter the expressive content of their parade).

¹² *N.Y. State Club Ass'n*, 487 U.S. at 13 (affirming constitutionality of non-discrimination law that did not alter any club activities protected by the First Amendment or prevent the club from "exclud[ing] individuals who do not share the views that the club's members wish to promote . . ."); *Bd. of Dir. of Rotary Int'l v. Rotary Club of Duarte*, 481 U.S. 537, 548 (1987) (affirming constitutionality of state public accommodations law where there was no evidence that admission of women would "affect in any significant way the existing members' ability to carry out their various purposes"); *Roberts*, 468 U.S. at 627 (upholding state anti-discrimination law where there was no evidence that inclusion of women would impede the organization's ability to "disseminate its preferred views" and law did not require the organization to change its creed or prevent the organization from "exclud[ing] individuals with ideologies different from those of its existing members");

¹³ *Employment Div. v. Smith*, 494 U.S. 872, 881-82 (1990) (explaining that Court will apply strict scrutiny to free exercise challenges coupled with other constitutional protections such as freedom of speech and freedom of association).

¹⁴ *Healy*, 408 U.S. at 180.


¹⁵ *Rosenberger v. Rector and Visitors of University of Virginia*, 515 U.S. 819, 836 (1995)

majority.”¹⁶ When a public university imposes nondiscrimination policies on student organizations, it actually decreases the viewpoints being expressed and, worse, cuts the free speech feet out from under politically unpopular groups.¹⁷ Surely, the University does not want to be guilty of this double assault on the First Amendment rights of its students.

The best and constitutional option for the University to follow here is to allow FLiC and all other religious and ideological student groups to choose their general members—in addition to their voting members and leaders—where the views or purposes of the group would be compromised by persons who do not share the group’s beliefs.

Please respond by **July 29, 2009** indicating whether TAMU will allow FLiC to retain its faith-based membership restriction, while at the same time maintaining its recognized status on campus. If TAMU strips FLiC’s recognition status because the group will not abandon its membership restrictions, our clients will have to consider all available legal options.

Sincerely,



Joseph J. Martins
Litigation Staff Counsel
ADF CENTER FOR ACADEMIC FREEDOM

cc: Andrew L. Strong, General Counsel
Lauren Shook, FLiC Co-director
Brett Newman, FLiC Co-director

¹⁶ *Dale*, 530 U.S. at 648 (citations omitted).

¹⁷ *See Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 126 S.Ct. 1297, 1312 (2006) (“If the government were free to restrict individuals’ ability to join together and speak, it could essentially silence views that the First Amendment is intended to protect”).