



April 2, 2021

Kristin DiBiase  
Office of Student Affairs  
Seattle University School of Law  
901 12th Avenue  
Seattle, Washington 98122

*Sent via Electronic Mail (kdibiase@seattleu.edu)*

Dear Dean DiBiase:

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.

We write today to share our concerns with the scope of authority extended by Seattle University School of Law ("SU Law") to its Student Bar Association ("SBA") with respect to the recognition of student organizations. While we appreciate and share SU Law's interest in involving students in the shared governance of the institutions they attend, SU Law must not allow its governing bodies—including the SBA—to take actions that contravene the university's commitments to its students' expressive rights.

Our concerns are pronounced in light of recent calls to revoke the recognition of the SU Law chapter of the Federalist Society ("SU FedSoc") because it refused to make public statements concerning public policy or the events of January 6 at the United States Capitol. If the SBA adopts a proposal compelling such statements as a precondition for recognition by SU Law—as your statement suggests it has the authority to do—that requirement will violate the university's commitment to its students' expressive rights.

We understand and appreciate that you are reviewing the matter internally following a discussion with SU FedSoc's president, Afton Gregson, but this matter must be resolved in accord with the promises that SU Law makes to its students. Accordingly, we call on you to reassure student organizations at SU Law, including SU FedSoc, that the university will not compel them to adopt any particular statement or viewpoint as a condition of recognition.

## I. Students Complain After SU FedSoc Refuses to Denounce Senator Josh Hawley

The following is our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us.

SU FedSoc is a registered student organization on SU Law’s campus.<sup>1</sup> Student organizations that are registered at SU Law are entitled to receive funding through the Student Bar Association and publish videos on the SU Law website.<sup>2</sup> SU FedSoc is a student chapter of the national Federalist Society.<sup>3</sup>

After the protests and riots of January 6 at the United States Capitol, Senators Josh Hawley and Ted Cruz faced criticism for their objections to the Electoral College’s certification of Joe Biden’s election.<sup>4</sup> Cruz and Hawley were active members of the Federalist Society in law school and remain frequent speakers at Federalist Society events.<sup>5</sup>

After January 6, students at SU Law demanded that SU FedSoc denounce Cruz and Hawley’s votes against certification of the 2020 Presidential Election. SU FedSoc refused, citing the national organization’s policy to not “take positions on legal or political issues or engage in other forms in political advocacy[.]”<sup>6</sup>

On January 25, Sam Sueoka, a SU Law student, emailed you “to start a conversation about the harm that the Federalist Society causes to our legal community.”<sup>7</sup> Sueoka cited events sponsored by SU FedSoc, including the “Feminist Case for Abortion” and “Why Judge Kavanaugh Will Be Good for Environmental Law,” arguing that these programs send a “contradictory message to SU’s focus on social justice and race equity.”<sup>8</sup> Sueoka also said the “presence of the Fed Soc is painful and triggering” and that SU cannot “in good conscious

<sup>1</sup> Federalist Society, SEATTLE UNIV. SCH. OF LAW, <https://law.seattleu.edu/student-life/student-organizations/federalist-society> (last visited Mar. 2, 2021).

<sup>2</sup> Student Organizations, SEATTLE UNIV. SCH. OF LAW, <https://law.seattleu.edu/student-life/student-organizations> (last visited Mar. 11, 2021).

<sup>3</sup> Seattle Student Chapter, FEDERALIST SOC’Y, <https://fedsoc.org/chapters/WA/seattle-student-chapter> (last visited Mar. 3, 2021).

<sup>4</sup> Marianne Levine, et. al, *Election gambit blows up on Hawley and Cruz*, POLITICO, Jan. 9, 2021, <https://www.politico.com/news/2021/01/09/hawley-cruz-2024-capitol-riots-456671>.

<sup>5</sup> Irina D. Manta, *I lost a law school election to Josh Hawley. I moved on then, and he should now on Trump.*, USA TODAY, Jan. 5, 2021, <https://www.usatoday.com/story/opinion/voices/2021/01/05/trump-lost-senator-josh-hawley-accept-result-like-i-did-column/4114231001>; Tracy Jan, *Ted Cruz found kindred spirits at Harvard’s Federalist Society*, BOS. GLOBE, April 27, 2016, <https://www.bostonglobe.com/news/politics/2016/04/27/ted-cruz-may-despised-washington-but-has-network-influential-friendships-through-harvard-federalist-society/bqyatwlc39GqxVjtunfSI/story.html>; see also John O. McGinnis, *Meet the Federalist Society Caucus*, LAW & LIBERTY, Nov. 21, 2018, <https://lawliberty.org/meet-the-federalist-society-caucus>; David Lat, *The Federalist Society And The Capitol Attack: What Is To Be Done?*, ORIGINAL JURISDICTION, Jan. 19, 2021, <https://davidlat.substack.com/p/the-federalist-society-and-the-capitol>.

<sup>6</sup> Frequently Asked Questions, About Us, FEDERALIST SOC’Y, <https://fedsoc.org/about-us> (last visited Mar. 2, 2021).

<sup>7</sup> Email from Sueoka to DiBiase (Jan. 25, 2021, 12:09 PM) (on file with author).

<sup>8</sup> *Id.*

[sic]” host an event “calling for radical change within the legal system while also hosting Fed Soc events.”<sup>9</sup>

To your credit, you responded that you find “the desire to take action against a student organization in these circumstances troubling.”<sup>10</sup> You also said you “strongly support [SU FedSoc’s] right to exist as an organization” in the absence of “activity that violates student conduct regulations.”<sup>11</sup> However, you then stated that “the decision on your request is not mine to make,” that there does not seem to be a process to remove the group, and that you would leave the determination of who has the authority to decide whether to derecognize SU FedSoc to the Student Bar Association (SBA) executive board, which you copied on the email.<sup>12</sup> You also copied Afton Gregson, SU FedSoc’s president, on your email response to Sueoka. Gregson remained copied on all further correspondence on that email thread.

In response, the SBA Executive Board referred the matter to its Judicial Board, which has jurisdiction over student organizations.<sup>13</sup> SBA also provided a memo explaining that the Judicial Board’s authority over complaints about student organizations is limited to suspending funding, rescinding recognition, and making findings.<sup>14</sup>

In response, Sueoka said he would take no other action “at this time,” but he would take the opportunity to “put Afton Gregson and other Fed Soc members on notice” that “further action will be pursued next semester.”<sup>15</sup> Gregson was copied on this email.<sup>16</sup>

Sueoka’s email also said he is working with a group of students to require all student organizations to “make a formal commitment to condemning white supremacy, anti-blackness, homophobia, transphobia, xenophobia, racism, sexism, and ableism.”<sup>17</sup>

## II. SU Law’s SBA Cannot Constructively Revoke SU FedSoc’s Recognition

### A. *SU Law promises students freedom of expression*

While SU Law is a private institution and thus not bound by the First Amendment, we think you will agree that it is obligated to honor the promises of freedom of expression and association it makes to its students.

For example, Seattle University’s “On Campus Demonstrations Policy” says the university “recognizes that the right to freely express oneself and the right to have access to divergent

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<sup>9</sup> *Id.*

<sup>10</sup> *Supra* note 2.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Email from Simantov to Sueoka (Feb. 4, 2021, 2:24 PM) (on file with author).

<sup>14</sup> Memo from Samantha Mintz-Gentz, Parliamentarian, SBA (Feb. 3, 2021) (on file with author).

<sup>15</sup> *Supra* note 1.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

viewpoints are fundamental to an academic community.”<sup>18</sup> The policy also states that SU “encourages the presence of speakers on campus representing a broad range of viewpoints, including those whose views may not agree with the stated aims of the university.”<sup>19</sup>

Likewise, your email responding to Sueoka ratified the importance of freedom of expression at SU Law, explaining that the “concept of a free exchange of ideas is a bedrock principle in American jurisprudence,” particularly at “an institution of higher learning and more specifically, a law school,” and that it could not be violated “in the absence of activity that violates student conduct regulations[.]”

***B. Freedom of Expression Protects Expressive Association in the Recognition of Student Organizations***

Expressive rights carry “a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends”—a right “crucial in preventing the majority from imposing its views on groups that would rather express other, perhaps unpopular, ideas.”<sup>20</sup>

This right extends to student organizations, fostering students’ ability to organize around causes or views in order to influence their institutions, communities, and country. In the “context of student clubs on college campuses, denying them official recognition without justification burdens the student club’s associational rights.”<sup>21</sup> In *Healy*, for example, the Supreme Court held that a college’s refusal to grant recognition to a chapter of Students for a Democratic Society—due to its “published aims . . . which include disruption and violence”—violated the student members’ expressive rights.<sup>22</sup> “[D]enial of official recognition, without justification, to college organizations burdens or abridges” the “associational right” protected by the First Amendment’s guarantee of freedom of expression.<sup>23</sup>

***C. The Proposal to Require Student Organizations to Affirm Certain Beliefs Compels Speech, Burdening Student Organizations’ Associational Rights***

The proposed requirement that student organizations, as a condition of recognition by the SBA—and, by extension, SU Law—condemn “white supremacy, anti-blackness, homophobia, transphobia, xenophobia, racism, sexism, and ableism”<sup>24</sup> amounts to compelled speech,

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<sup>18</sup> On Campus Demonstration Policy, OTHER UNIV. POLICIES, SEATTLE UNIV., <https://www.seattleu.edu/deanofstudents/policies/other-university-policies> (last visited Mar. 2, 2021).

<sup>19</sup> *Id.*

<sup>20</sup> *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 648, 120 S. Ct. 2446, 2451 (2000) (quoting, in part, *Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984)).

<sup>21</sup> *Truth v. Kent Sch. Dist.*, No. C03-785P, 2004 U.S. Dist. LEXIS 33465, at \*32 (W.D. Wash. Sep. 23, 2004).

<sup>22</sup> *Healy v. James*, 408 U.S. 174–75, fn. 4, 187–88 (1972).

<sup>23</sup> *Id.* at 181.

<sup>24</sup> *Supra* at 1.

burdening organizations' ability to obtain university recognition and resources. This is impermissible at an institution that purports to protect students' expressive rights.

As our Supreme Court has noted, the “freedom of speech ‘includes both the right to speak freely and the right to refrain from speaking at all.’”<sup>25</sup> These requirements are by their “very nature content based, because [they] require[] the speaker to change the content of [their] speech or even to say something where [they] would otherwise be silent.”<sup>26</sup> Expressive rights are therefore violated when an institution compels a student “to declare a belief [and] . . . to utter what is not in his mind.”<sup>27</sup> Doing so “would strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.”<sup>28</sup> Writing for the majority, Justice Jackson explained:

[F]reedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.<sup>29</sup>

This mandate, if implemented, would violate core tenets of free expression, establishing an ideological litmus test for the recognition of student organizations. Such a requirement would unjustly place certain student organizations in the unenviable position of deciding either to falsely affirm their belief in an ideological proposition with which they disagree or simply prefer to remain silent on, or to lose their recognition and all of the attendant benefits.

### **III. SU Law Must Reaffirm SU FedSoc's Expressive Rights**

SU Law's commitments to freedom of expression should be lauded for their protections against viewpoint-based discrimination. However, SU Law must stick to those commitments when they are challenged. In deferring the instant matter to the SBA, your email implies that SU Law has delegated to the SBA the authority to grant or deny an organization recognition based on the speech—or silence—of its members. That is authority that SU Law cannot delegate, having pledged to grant and protect its students' expressive rights.

In order to forestall the chilling effect that would be occasioned by such a proposal, we ask that you clarify that SBA lacks the authority to compel speech or deny recognition to student organizations due to their viewpoints.

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<sup>25</sup> *Janus v. AFSCME*, 138 S. Ct. 2448, 2463 (2018) (quoting *Wooley v. Maynard*, 430 U.S. 705, 714 (1977)).

<sup>26</sup> *Stuart v. Camnitz*, 774 F.3d 238, 246 (4th Cir. 2014).

<sup>27</sup> *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 634 (1943).

<sup>28</sup> *Id.* at 637.

<sup>29</sup> *Id.* at 642.

We request receipt of a response to this letter no later than the close of business on April 16, 2021.

Sincerely,

A handwritten signature in black ink, appearing to read "Sabrina Conza". The signature is fluid and cursive, with a long horizontal stroke at the end.

Sabrina Conza  
Program Analyst, Individual Rights Defense Program

Cc: Annette Clark, Dean, Seattle University School of Law