



FIRE

Foundation for Individual
Rights and Expression

March 6, 2023

Nicole Hurd
Office of the President
Lafayette College
316 Markle Hall
Easton, Pennsylvania 18042

URGENT

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

Dear President Hurd:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech, freedom of association, and other individual rights,¹ is concerned by Lafayette College's viewpoint-based denial of recognition to a prospective Students for Justice in Palestine (SJP) chapter. Given Lafayette's strong promises of free expression, it must make recognition decisions based on viewpoint-neutral criteria.

The Lafayette reports that on February 10, Lafayette administrators denied SJP recognition, citing the "level of risk" of recognizing the organization.² At a meeting with students who aimed to start the chapter, Dean of Students Brian Samble expressed concern about "events SJP chapters have organized at other campuses," "the relationship SJP would have with Hillel on campus," and some ideas for the chapter that prospective members had brainstormed, including criticizing a class they called "propaganda" and organizing "walkouts from Zionist speakers that Hillel invites."³

Denying a student group recognition based on potential controversy or its members' viewpoints burdens students' ability to organize and express themselves—the very rights Lafayette guarantees students. As a private college, Lafayette is not directly bound by the First Amendment to guarantee expressive rights, but has voluntarily made commensurate promises

¹ For more than 20 years, FIRE has defended freedom of expression, conscience, and religion, and other individual rights on America's college campuses. You can learn more about our recently expanded mission and activities at thefire.org.

² Nathan Kornfeind, *College rejects formation of Students for Justice in Palestine chapter*, THE LAFAYETTE (Mar. 3, 2023), <https://lafayettestudentnews.com/144654/news/college-rejects-formation-of-students-for-justice-in-palestine-chapter>.

³ *Id.*

to recognize and protect students' freedom of expression. Accordingly, Lafayette is morally and contractually bound to honor these clear commitments.⁴

Specifically, Lafayette policy documents state that “[f]reedom of inquiry and freedom of expression are indispensable to the attainment of the goals of Lafayette College.”⁵ Additionally, its Freedom of Association, Inquiry, and Expression policy states that students are “free to organize and join associations to promote their common interests,” and that “[s]tudents and student organizations are free to examine and to discuss all questions of interest to them and to express opinions publicly and privately.”⁶

The First Amendment and decades of jurisprudence interpreting its requirement of viewpoint-neutrality inform students' reasonable expectations of their speech rights at a private institution that, like Lafayette, promises freedom of expression. These 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.”⁷

This important principle is what protects students' ability to organize around causes or views—including through college-recognized student organizations—to influence their institutions, their communities, and the country. As the Supreme Court declared in its landmark decision *Healy v. James*, “denial of official recognition, without justification, to college organizations burdens or abridges” students' associational rights.⁸ In that case, the Court held that a college's refusal to recognize a chapter of Students for a Democratic Society—due to its “published aims . . . which include disruption and violence”—violated the student members' expressive rights.⁹

At Lafayette, denying organizations recognition places them at a marked disadvantage and has material consequences, as only recognized student organizations may request funding.¹⁰ And Lafayette's denial of recognition to SJP is clearly viewpoint-based, as the college expressed concern about potential ideological conflict between it and the campus Hillel Society. Administrators also unambiguously cited controversy around the group's ideas, affiliations, and potential expressive events when denying recognition.¹¹

⁴ *Vurimindi v. Fuqua School. of Bus.*, 435 F. App'x 129 (3d Cir. 2011) (A student may sue a university for breach of contract, “but the allegations must relate to a specific and identifiable promise that the school failed to honor”).

⁵ *Statement of rights and responsibilities of students*, LAFAYETTE COLL., <https://conduct.lafayette.edu/student-handbook/statement-of-rights-and-responsibilities-of-students> [<https://perma.cc/W85V-9TDP>].

⁶ *Id.*

⁷ *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 648 (2000) (quoting, in part, *Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984)).

⁸ 408 U.S. 169, 181 (1972).

⁹ *Id.* at fn. 4.

¹⁰ *Starting a New Club*, LAFAYETTE COLL., <https://recreation.lafayette.edu/starting-a-new-club> [<https://perma.cc/TQ2K-6XNK>].

¹¹ See *Healy*, 408 U.S. at 181; *Rosenberger v. Rector and Visitors of the Univ. of Va.*, 515 U.S. 819, 829–30 (1995) (university's denial of funding to a Christian magazine due to the content of its message was unconstitutional viewpoint-based discrimination).

Lafayette cannot engage in blatant viewpoint discrimination by giving preferential treatment to some views over others. The “bedrock principle” underlying any conception of free speech is that it may not be restricted “simply because society finds the idea itself offensive or disagreeable.”¹² Likewise, a commitment to free speech presupposes that some on campus may take offense to an expressed viewpoint. It is this counter-majoritarian principle that protects “insulting, and even outrageous, speech in order to provide adequate breathing space” for public debate,¹³ recognizing those with authority “cannot make principled distinctions” in determining what speech is sufficiently offensive to suppress.¹⁴

The possibility that some may object to SJP’s recognition and advocacy, even vehemently so, is not a valid reason to prevent recognition; instead, it is precisely what Lafayette anticipates when it promises students freedom of expression and association. As such, disagreement with a student organization’s perceived viewpoint is not a legitimate basis for denying recognition, and Lafayette must grant SJP recognition.

We request receipt of a response to this letter no later than the close of business on Monday, March 20, 2023, reaffirming Lafayette’s free expression promises and confirming that it will recognize SJP and recognize all student organizations in a viewpoint-neutral manner.

Sincerely,



Sabrina Conza
Program Officer, Campus Rights Advocacy

¹² *Snyder v. Phelps*, 562 U.S. 443, 458 (2011) (citing *Texas v. Johnson*, 491 U.S. 397, 414 (1989)).

¹³ *Boos v. Barry*, 485 U.S. 312, 322 (1988) (cleaned up).

¹⁴ *Cohen v. California*, 403 U.S. 15, 25 (1971).