



# FIRE

Foundation for Individual  
Rights and Expression

October 25, 2023

Kenneth A. Jessel  
Office of the President  
Florida International University  
11200 SW 8th Street, PC 528E  
Miami, Florida 33199

*Sent via Electronic Mail and U.S. Mail (kenneth.jessel@fiu.edu)*

Dear President Jessel:

FIRE<sup>1</sup> is deeply concerned by reports<sup>2</sup> that Florida's public universities, including Florida International University, have been ordered by State University System of Florida Chancellor Ray Rodrigues, at the behest of Florida Governor Ron DeSantis, to derecognize campus chapters of Students for Justice in Palestine due to their affiliation with National Students for Justice in Palestine, which distributed a guide to protests to its student chapters.<sup>3</sup> By insupportably alleging that communications about campus protests from the national organization to its campus chapters constitutes material support for Hamas' terrorist activity overseas, this order unlawfully threatens students' clear expressive and associational rights under the First Amendment.<sup>4</sup> To avoid violating clearly established law, FIU must not comply with the order.

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<sup>1</sup> As you know, 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](https://thefire.org).

<sup>2</sup> See, e.g., Andrew Hay, *Florida's DeSantis bans pro-Palestinian group from state campuses*, REUTERS (Oct. 25, 2023), <https://www.reuters.com/world/us/floridas-desantis-bans-pro-palestinian-student-group-2023-10-25>. The recitation of facts here reflects our understanding of the pertinent facts based on public reporting. We appreciate that you may have additional information to offer and invite you to share it with us.

<sup>3</sup> The guide called for "a national day of resistance from the student movement for Palestine liberation on college campuses" on October 12 and provided an RSVP link for a meeting on "how to organize a protest," including roles, security, media training, and more," as well providing additional ways to engage in the movement should protest not be possible, including teach-ins and writing local statement of solidarity. It also includes information about the organization's messaging and framing, hashtags for social media use, and graphic templates. *Day of Resistance Toolkit*, NAT'L STUDENTS FOR JUSTICE IN PALESTINE, <https://dw-wp-production.imgix.net/2023/10/DAY-OF-RESISTANCE-TOOLKIT.pdf> [<https://perma.cc/R53F-UVXF>].

<sup>4</sup> *Healy v. James*, 408 U.S. 169, 180 (1972) (holding the First Amendment applies on public college campuses and protects expressive and associational rights of public college students and their organizations).

In a letter to all State University System of Florida presidents on Monday, Rodrigues said that “based on National SJP’s support of terrorism, in consultation with Governor DeSantis, the student [SJP] chapters must be deactivated. These . . . student chapters may form another organization that complies with Florida state statutes and university policies.”<sup>5</sup>

As you must know, the First Amendment bars public universities from denying student groups recognition or funding due to the “ideology or the opinion or perspective of the speaker[.]”<sup>6</sup> Likewise, the First Amendment provides “a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends”—a fundamental right “crucial in preventing the majority from imposing its views on groups that would rather express other, perhaps unpopular, ideas.”<sup>7</sup>

Denial of group recognition based on viewpoint, speech, or fear of disruption violates the First Amendment—particularly with regard to campus chapter groups’ ties to a national organization. This is well-settled law. More than fifty years ago, in *Healy v. James*, the Supreme Court held that the president of a public college violated the First Amendment when he refused to grant recognition to a chapter of Students for a Democratic Society (SDS).<sup>8</sup> Following a “climate of unrest” on college campuses, replete with “widespread civil disobedience . . . accompanied by the seizure of buildings, vandalism, and arson,” causing some “colleges [to] shut down altogether,” students sought to form a new chapter of SDS at the college.<sup>9</sup> The college president refused to grant the group recognition, citing its philosophy and ties to the national SDS organization, which had “published aims . . . which include disruption and violence.”<sup>10</sup> The Court held that “denial of official recognition, without justification, to college organizations burdens or abridges” their First Amendment rights.<sup>11</sup>

While the State of Florida may object to the views of Students for Justice in Palestine’s national organization, its communications with campus chapters cannot serve as a basis to override those chapters’ First Amendment rights. Derecognizing those groups would thus represent unconstitutional viewpoint discrimination, which is “censorship in its purest form.”<sup>12</sup>

The assertions in Chancellor Rodrigues’ letter do not provide a sufficient basis to depart from these clearly established First Amendment rights. Governments may prohibit non-expressive *conduct* intended to provide “material support” to terrorist organizations, and the Florida statute cited by Chancellor Rodrigues is limited to providing “property” or “service[s] . . . to a

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<sup>5</sup> Memorandum from Ray Rodrigues, Chancellor, State Univ. Sys. of Fla., to SUS Presidents (Oct. 24, 2023), in re: Deactivation of National Students for Justice in Palestine, *available at* <https://bit.ly/3s8Ekcg>.

<sup>6</sup> *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995); *see also Bd. of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 221 (2000).

<sup>7</sup> *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 648 (2000).

<sup>8</sup> 408 U.S. at 187–88.

<sup>9</sup> *Id.* at 171–72.

<sup>10</sup> *Id.* at 174–75, n. 4.

<sup>11</sup> *Id.* at 181. At many public universities, denial of recognition carries significant consequences including students’ inability to use campus facilities or reserve meeting rooms, post or send announcements on university bulletin boards or via listservs, and access other resources.

<sup>12</sup> *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 62 (1983) (Brennan, J., dissenting).

designated foreign terrorist organization[.]”<sup>13</sup> That remains true even if the net effect of the advocacy is that it sways public opinion. Similarly, the guide’s rhetoric that students are “PART of this movement” is rhetorical hyperbole, not an announcement that the guide is issued at the direction, coordination, or control of a terrorist organization. Advocacy by a national organization does not subject individual students or their organizations to erosion of their First Amendment rights, let alone criminal liability.

At times of great political and social unrest, illiberal calls to silence unpopular views inevitably rise. In this difficult moment, we urge you to honor your unique commitment as the leader of a public university whose mission depends on the vast expressive freedoms afforded to all on our nation’s public campuses. We urge you in the strongest possible terms to rise to this moment, stand by the university’s preeminent constitutional obligation to honor students’ core expressive freedoms, and refuse the State of Florida’s order to violate their rights.

Given the urgent nature of this matter, we request a substantive response to our letter no later than close of business this Friday, October 27, 2023.

Sincerely,



Alex Morey  
Director, Campus Rights Advocacy

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<sup>13</sup> § 775.33(1)(c), (3), Fla. Stat. (2019) (emphasis added); *see also Holder v. Humanitarian Law Project*, 561 U.S. 1, 8–9 (2010) (providing a guide to protests and messaging to a student chapter is not material support “to” a foreign terrorist organization).