



August 23, 2024

Amy Meyers Hass  
Office of the General Counsel  
123 Tigert Hall  
P.O. Box 113125  
Gainesville, Florida 32611

*Sent via U.S. Mail and Electronic Mail (amhass@ufl.edu)*

Dear Ms. Hass:

FIRE, a nonpartisan nonprofit dedicated to defending freedom of speech,<sup>1</sup> is concerned that your office ordered the UF chapter of the Association for Latino Professionals for America, an independent student group to remove content from its Instagram page in response to a demand letter from a venture capital firm alleging the group misrepresented the title of a former employee. This order violates the First Amendment.

FIRE appreciates that UF is one of the few institutions in the country whose policies earn a “green light” rating from FIRE.<sup>2</sup> We are, however, concerned that UF has allowed itself to be deputized by a private organization to censor a student group’s social media content. We urge the university to reaffirm that ALPFA’s Instagram page is independent of the university, commit to respecting student groups’ associational rights, and refrain from making censorious demands in the future.

In March 2023, ALPFA promoted on their Instagram page an event featuring James Fishback, referring to him as the “Head of Global Macroeconomic Investing at Greenlight Capital.”<sup>3</sup> In August, Fishback left the firm, and his former title became a point of contention between him and Greenlight.<sup>4</sup> On May 1, 2024, 14 months after ALPFA promoted the event on Instagram, Greenlight attorney Stephen Baldini wrote UF demanding the university remove several references to Fishback as Greenlight’s “Head of Macro” by May 11, alleging the title was a

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<sup>1</sup> For more than 20 years, FIRE has defended freedom of expression, conscience, and religion, and other individual rights on America’s university campuses. You can learn more about our expanded mission and activities at [thefire.org](https://thefire.org).

<sup>2</sup> *University of Florida*, FIRE, <https://www.thefire.org/colleges/university-florida/> (last visited Aug. 22, 2024).

<sup>3</sup> Text message from Kat M, student, to Alexander Munguia, student (Mar. 16, 2024, 1:47 PM) (on file with author). We appreciate that you may have additional information to offer and invite you to share it with us. To these ends, please find enclosed executed privacy waivers authorizing you to share information about this matter.

<sup>4</sup> Chris Dolmetsch, *Einhorn’s Greenlight Slams ‘Head of Macro’ in Fresh Lawsuit*, BLOOMBERG NEWS (June 25, 2024, 5:30 PM), <https://www.bloomberg.com/news/articles/2024-06-25/einhorn-s-greenlight-slams-head-of-macro-in-fresh-lawsuit?embedded-checkout=true>.

“misrepresentation.”<sup>5</sup> The references at issue included ALPFA’s Instagram post and a Career and Peer Mentors-produced podcast.<sup>6</sup>

On May 6, Deputy General Counsel Ryan Fuller asked Senior Associate Dean Gary McGill to identify staff within the dean’s office who could address the offending posts.<sup>7</sup> McGill forwarded this email to Arlette Perez, ALPFA’s advisor, and Debra Marcum, director of the Business Career Services department, asking them to remove references to Fishback’s position from ALPFA’s Instagram page, as well as sites controlled by Business and Career Services.<sup>8</sup> Perez did not respond by the following morning, so McGill followed up with a second email.<sup>9</sup> Marcum also contacted ALPFA’s group email and the group’s president, instructing ALPFA to remove the post.<sup>10</sup> In response, an unknown individual with access to the group’s Instagram account removed the post referencing Fishback’s position.

The First Amendment circumscribes the ways in which UF can respond to Greenlight’s demand. It has long been settled law that the First Amendment binds public universities like UF,<sup>11</sup> such that its actions and decisions—including oversight of student groups<sup>12</sup>—must be consistent with the First Amendment. As helpfully explained by the United States Court of Appeals for the Fifth Circuit in *Bazaar v. Fortune*, “once a University recognizes a student activity which has elements of free expression, it can censor that expression only if it acts consistent with First Amendment constitutional guarantees.”<sup>13</sup> A university accordingly may regulate its student organizations’ expressive activity, like Instagram posts, only if the expression would lead to significant “violent disruption” of the educational environment.<sup>14</sup> The threat of legal action, especially one as nonspecific as Greenlight’s, is not nearly enough to regulate student speech. Even if Greenlight could state a claim against ALPFA, UF would not be liable for the expression of an independent student group. Indeed, courts have held refraining from exercising purported control over student organizations’ content can likewise help to minimize universities’ legal exposure.<sup>15</sup>

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<sup>5</sup> Letter from Stephen M. Baldini, Partner, Akin Gump Strauss Hauer & Feld, to Amy Meyers Hass, General Counsel (May 1, 2024) (on file with author).

<sup>6</sup> *Id.*

<sup>7</sup> Email from Ryan Fuller, Deputy General Counsel to Gary McGill, Senior Associate Dean (May 6, 2024, 1:25 PM) (on file with author).

<sup>8</sup> Email from McGill to Arlette Perez, Undergraduate Career Coach (May 6, 2024, 2:56 PM) (on file with author); email from McGill to Debra Marcum, Director of Undergraduate Business Career Services (May 6, 2024, 2:57 PM) (on file with author). UF is free to remove its own social media content but cannot demand the removal of content hosted by students operating independently.

<sup>9</sup> Email from McGill to Allison Alsup, Assistant Director of Communications, et. al (May 7, 2024, 9:18 AM) (on file with author). This email included a link to an ALPFA Instagram post that was subsequently removed but which we believe was the March 16, 2023 post.

<sup>10</sup> Email from Marcum to Claudia-Elena Johnson-Cuellar, student (May 6, 2024, 3:52 PM) (on file with author); email from Marcum to ALPFA Group Email (May 7, 2024, 9:41 AM) (on file with author).

<sup>11</sup> *Healy v. James*, 408 U.S. 169, 180 (1972) (“[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, ‘the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.’”) (internal citation omitted).

<sup>12</sup> *Id.* at 183.

<sup>13</sup> 476 F.2d 570, 574 (5th Cir. 1973). The U.S. Court of Appeals for the Eleventh Circuit, the decisions of which bind UF, has adopted as precedential all the opinions of the Fifth Circuit issued prior to October 1, 1981.

<sup>14</sup> *Id.* at 580.

<sup>15</sup> See *Lewis v. St. Cloud State Univ.*, 693 N.W.2d. 466, 472–73 (Minn. Ct. App. 2005) (a policy establishing a student newspaper’s editorial independence insulated the university from vicarious liability for defamation); *Milliner v. Turner*, 436 So.2d. 1300 (La. App. 1983); see also *Miss. Gay All. v. Gudelock*, 536 F.2d 1073, 1074–75 (5th Cir. 1976) (where state institutions do not regulate student newspapers, those publications do not act on behalf of the university).

ALPFA's post, created and published by group members without administrative oversight, is expression clearly protected by the First Amendment. UF therefore cannot constitutionally acquiesce to demands that would require them to assert control over such expression.

We request a substantive response to this letter no later than the close of business on September 6, 2024, confirming UF will refrain from future infringements on student organizations' expressive rights.

Sincerely,



Dominic Coletti  
Program Officer, Campus Rights Advocacy

Cc: Gary McGill, Senior Associate Dean  
Debra A. Marcum, Director of Undergraduate Business Career Services  
Arlette Perez, Undergraduate Career Coach

Encl.