

March 7, 2025

Douglas A. Hicks
Office of the President
Davidson College
209 Ridge Road
Box 5000
Davidson, North Carolina 28035

URGENT

Sent via Next-Day Delivery and Electronic Mail (president@davidson.edu)

Dear President Hicks:

FIRE, a nonpartisan nonprofit that defends free speech,¹ is concerned by Davidson College's pursuit of disciplinary sanctions against the Young Americans for Freedom student group for its distribution of political pamphlets on campus and its social media commentary. By charging YAF with violating Davidson's harassment policy based on protected expression, Davidson violates its own laudable commitment to expressive freedom. We urge Davidson to immediately drop the charges.

On February 28, Director of Student Rights and Responsibilities Mak Tompkins notified YAF of student complaints about the group's distribution last October of a pamphlet, "The Five Myths About Israel Perpetrated by the Pro-Hamas Left," that allegedly contained "misinformation that promotes islamophobia [sic]."² The complaints also alleged YAF shared an Instagram post "speculating [about] the sex/gender identity of Imane Khelif, an Algerian boxer, which allegedly includes information that promotes transphobia."³ According to Tompkins, students reported "feeling threatened and unsafe on campus as a result of [YAF's] alleged actions," which Tompkins suggested may have violated Davidson's harassment policy.⁴ Tompkins offered YAF two options: it could either accept responsibility for the policy violation

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

² Letter from Mak Tompkins, Director of Student Rights & Responsibilities, to Cynthia Huang, YAF president (Feb. 28, 2025), https://yaf.org/wp-content/uploads/2025/03/2024054402COR_ReferralMeetingNotification.pdf [<https://perma.cc/6KQR-CY2P>]. The recitation here reflects our understanding of the pertinent facts based on public information. We appreciate that you may have additional information and invite you to share it with us.

³ *Id.*

⁴ *Student Handbook 2024–25*, Code of Responsibility, DAVIDSON COLL., 16 (Aug. 1, 2024) (on file with author). The policy is also excerpted in the letter from Tompkins, *supra* note 2.

and agree to unspecified sanctions (a so-called “Accountability Plan”) set by the Accountability Officer or proceed to a disciplinary hearing before the Code of Responsibility Council.⁵

Davidson’s pursuit of disciplinary sanctions against YAF’s protected speech violates its “Commitment to Freedom of Expression,” enacted just two years ago after former President Quillen empaneled a working group in 2021 to formulate such a statement.⁶ The Commitment contains robust protection for free expression on campus:

Davidson College guarantees all members of the college community the broadest possible latitude to speak, write, listen, challenge, and learn, except when that expression violates the law, falsely defames a specific individual, constitutes a genuine threat or harassment, unjustifiably invades substantial privacy or confidentiality interests or is otherwise directly incompatible with the functioning of the College.⁷

Both the pamphlet—which is freely available online⁸—and YAF’s Instagram post are core political speech wholly protected by Davidson’s “fundamental commitment ... to the principle that debate, discussion and deliberation may not be suppressed because the ideas put forth are thought by some or even most members of the college community to be offensive or unwise.”⁹ Both the Israel-Hamas war and the debates about sex/gender in athletics are politically salient topics both on and off campus. Such discussions inevitably bring forth strong feelings, which is why Davidson recognizes that “[i]t is not the proper role of the College to attempt to shield individuals from ideas and opinions they find uncomfortable, disagreeable, or offensive.” Yet that is precisely the role assumed by the Director of Student Rights & Responsibilities in effort to punish YAF.

Davidson administrators may not use a harassment rationale to punish speech its policies protect. Expression labeled “misinformation that promotes [I]slamophobia ... [or] transphobia”¹⁰ does not constitute harassment unless it meets the exacting standard

⁵ Letter from Tompkins, *supra* note 2.

⁶ Jenna A. Robinson, *Davidson College Affirms Free Speech*, THE JAMES G. MARTIN CTR. FOR ACADEMIC RENEWAL (Mar. 16, 2023), <https://jamesgmartin.center/2023/03/davidson-college-affirms-free-speech/>.

⁷ *Commitment to Free Expression*, DAVIDSON COLL., <https://www.davidson.edu/about/mission-and-values/commitment-freedom-expression> [<https://perma.cc/8QPL-BUVE>]. Davidson’s mission, articulated in the preamble to its constitution, reads: “Davidson dedicates itself to the quest for truth and encourages teachers and students to explore the whole of reality, whether physical or spiritual, with unlimited employment of their intellectual powers... Davidson... intends to teach all students to think clearly, to make relevant judgments, to discriminate among values, and to communicate freely with others in the realm of ideas.” *Id.*

⁸ Robert Spencer, *The Five Myths About Israel Perpetrated by the Pro-Hamas Left*, YOUNG AMERICA’S FOUNDATION, <https://yaf.org/wp-content/uploads/2024/04/IsraeliPalestinian-Pamphlet-single-pages-1.pdf> [<https://perma.cc/6GLS-PW7H>].

⁹ *Commitment to Free Expression*, *supra* note 7. As a private university, Davidson is not directly bound by the First Amendment, but it is legally and morally bound by its own policy commitment to free expression, which students would reasonably understand to provide them expressive rights commensurate with those guaranteed by the First Amendment.

¹⁰ Letter from Tompkins, *supra* note 2.

articulated in *Davis v. Monroe County Board of Education*.¹¹ To qualify as discriminatory harassment, expression must be unwelcome, discriminatory on the basis of a protected status, and “so severe, pervasive, and objectively offensive that it can be said to deprive the victim[] of access to the educational opportunities or benefits provided by the school.”¹²

The allegations against YAF fall well short of this high bar, constitute fully protected expression under free speech principles, and thus cannot justify Davidson’s speech-chilling pursuit of disciplinary sanctions for harassment. A pamphlet and social media post commenting on two major political issues, neither of which targets any student at Davidson, cannot possibly qualify as so severe, pervasive, and objectively offensive as to deprive anyone of the educational opportunities or benefits Davidson provides.¹³

Davidson is obliged to prevent discriminatory harassment, but in doing so it must not sacrifice its duty to protect free speech. Even an investigation into obviously protected expression is likely to chill student speech—including when the process ultimately concludes in favor of the speaker—because such a process implicitly threatens punishment for that speech.¹⁴ The question is not whether the institution actually imposes formal sanctions, but whether its actions would “chill or silence a person of ordinary firmness from future First Amendment activities.”¹⁵ Davidson’s pursuit of disciplinary sanctions in this case most certainly qualifies.

Instead, where—as here—a complaint appears to allege no more than protected speech, the correct approach is to have administrators conduct a cursory, private review. If the review confirms the speech in question is protected, Davidson can close the matter without ever notifying the speaker, thereby avoiding a chilling effect while offering support to the complainant(s).¹⁶

¹¹ 526 U.S. 629 (1999). Student speech may also be unprotected if it falls into any of the “historic and traditional categories” of unprotected speech, such as obscenity, defamation, incitement, or fighting words. *United States v. Stevens*, 559 U.S. 460, 468–69 (2010). YAF’s pamphlets and Instagram post do not meet the criteria for any of these categories.

¹² *Davis*, 526 U.S. at 650.

¹³ To deprive a student of educational opportunities or benefits, the speech needs to create a concrete, negative effect, such as a change of study habits, school transfer, a drop in grades, or being diagnosed with a behavioral or anxiety disorder. *See Davis*, 526 U.S. at 654; *Nungesser v. Columbia Univ.*, 169 F.Supp.3d 353, 368 (S.D.N.Y. 2016) (“Examples of such negative effects include a drop in grades, missing school, being forced to transfer schools, or mental health issues requiring therapy or medicine.”); *Mandel v. Bd. of Trustees of Cal. State Univ.*, No. 17-cv-03511, 2018 WL 1242067, at *20 (N.D. Cal. Mar. 9, 2018).

¹⁴ *See, e.g., Levin v. Harleston*, 966 F.2d 85, 89 (2d Cir. 1992) (threat of discipline implicit in college president’s creation of ad hoc committee to study whether professor’s outside speech could be considered misconduct “was sufficient to create a judicially cognizable chilling effect on [the professor’s] First Amendment rights”); *White v. Lee*, 227 F.3d 1214, 1228 (9th Cir. 2000).

¹⁵ *Mendocino Env’tl. Ctr. v. Mendocino Cty.*, 192 F.3d 1283, 1300 (9th Cir. 1999) (institutional response short of formal punishment can be unconstitutional if it “would chill or silence a person of ordinary firmness from future First Amendment activities”).

¹⁶ *See* Graham Piro & Alex Morey, *Report: Stanford student may need to ‘take accountability,’ ‘acknowledge harm’ for reading Hitler’s ‘Mein Kampf’*, FIRE (Jan. 25, 2023), <https://www.thefire.org/news/report-stanford-student-may-need-take-accountability-acknowledge-harm-reading-hitlers-mein>; Haley Gluhanich, *VICTORY: Stanford adopts FIRE recommendation, will no longer notify students accused of engaging in protected speech*, FIRE (Apr. 18, 2023), <https://www.thefire.org/news/victory-stanford-adopts-fire-recommendation-will-no-longer-notify-students-accused-engaging>.

To the extent that Davidson's harassment policy differs from this approach, the policy contravenes Davidson's Commitment to Freedom of Expression and must be amended.¹⁷ This does not shield YAF from criticism by students, faculty, or the broader community. Criticism is a form of "more speech," the remedy to offensive expression that both the First Amendment¹⁸ and Davidson policy prefer to censorship. But YAF most certainly *is* shielded from official punishment based solely on its protected expression.

Given the urgent nature of this matter, we request a substantive response to this letter no later than March 14, confirming Davidson will drop any further pursuit of disciplinary sanctions against YAF in this matter.

Sincerely,



Jessie Appleby
Program Counsel, Campus Rights Advocacy

Cc: Stacey Riemer, Interim Vice President for Student Life and Dean of Students
Shawn McQuillan-Krepps, Associate Dean of Students and Interim Director of
Residence Life
Mak Tompkins, Director of Student Rights & Responsibilities
Sarah Phillips, Vice President and General Counsel

¹⁷ By classifying as harassment "derogatory comments, jokes, innuendos," "negative stereotyping," and sharing "unwelcome" material "that denigrates or shows hostility or an aversion" toward a group based on protected status, the harassment policy appears to sweep in a wide variety of protected expression that far outweighs its legitimate objectives of protecting students from discrimination and abuse. *See Stevens*, 559 U.S. at 473 (regulation violates the First Amendment for overbreadth if "a substantial number of its applications are unconstitutional, judged in relation to the statute's legitimate sweep") (quotations and citations omitted).

¹⁸ *Whitney v. California*, 274 U.S. 357, 377 (1927).