



May 7, 2021

Marc C. Conner, President
Skidmore College
Office of the President
via email: presoff@skidmore.edu

Re: Students' First Amendment Rights at Skidmore College

Dear President Conner,

We represent Hannah Davis and Young Americans for Liberty, a student organization that seeks official recognition from your College. Young Americans for Liberty is a political advocacy organization and has over 500 student-led chapters across the country. Your College promises every student robust freedom of speech and freedom to associate and form organizations on campus. But you have denied Ms. Davis the ability to form a YAL chapter because the student government labels YAL as a hate group. This is false and is quintessential viewpoint discrimination that violates Skidmore's promises to its students. We urge you to rectify this decision immediately to avoid unnecessary litigation.

By way of introduction, Alliance Defending Freedom's Center for Academic Freedom is a legal team dedicated to ensuring that all students may speak and associate freely. The Center for Academic Freedom has claimed over 400 victories at campuses across the country and achieved victory in nearly 90 percent of our cases. We prefer to avoid litigation where possible, however. We prefer to work together with Colleges to address illegal actions that target student speech up front and avoid prolonged litigation.

I. The College's Policies promise to protect students' First Amendment freedoms.

Skidmore College maintains a Student Bill of Rights that promises "inalienable"¹ rights for all Skidmore College students and enables any student whose rights have been violated to "pursue appropriate recourse ... utilizing the appropriate judicial body or officer."² As "citizens" of the College, "students enjoy freedom of speech, peaceful assembly, the press, and religion, and the right to

¹ Skidmore Student Bill of Rights, Preamble.

² *Id.* Sec. III.

petition, limited only by protection of property, safety, and mutual respect.”³ This expressly includes being “free to organize and join association to promote their common interests,” and the promise that “[t]he institutional control of campus facilities cannot be used as a device for censorship.”⁴

The SGA Constitution reiterates these promises: “Students enjoy freedom of speech, peaceful assembly, the press, and religion, and the right to petition, limited only by protection of property, safety, and mutual respect.”⁵

The College also states in its Policy on Political Advocacy that it “invites, encourages and welcomes all political parties, campaigns and advocacy organizations working with student groups on campus subject to the rules related to the use of facilities and public safety.”⁶ The College “encourages robust discourse reflecting a broad range of ideas, perspectives and opinions”⁷ and holds itself out as “a neutral and fair forum for all candidates.”⁸

II. The College denied Ms. Davis the ability to form a Young Americans for Liberty chapter because of YAL’s viewpoint while allowing numerous other clubs to operate.

Ms. Davis greatly values political discussion and considers herself, like millions of other Americans, a libertarian. She desires to share her views on a number of topics, from minimum wage laws to immigration, through educational events, lectures, and civil discussions with others who may or may not share her views. Ms. Davis also desires to associate with Young Americans for Liberty, which has hundreds of chapters nationwide and provides immense funding, networking, and other support to student leaders like her.

This spring, Ms. Davis decided to form a Young Americans for Liberty chapter at Skidmore College. Her initial outreach garnered a great deal of interest. She received dozens of emails from students and faculty stating an interest in the club and had over two dozen students interested in joining a YAL chapter on campus. But when she sought official recognition from the Student Government Association, they denied even a trial period because, in their words, Ms. Davis’ group would promote “hate speech” on campus. Accordingly, the SGA determined that it was “beyond a reasonable doubt, that the club would be unsuccessful.”⁹ Not only did the

³ *Id.* Sec. I

⁴ *Id.* Sec. III.

⁵ Skidmore College Student Body Constitution, Art. I Sec. 1.

⁶ Skidmore College Policy on Political Activity, Preface.

⁷ *Id.*

⁸ *Id.*, Part One.

⁹ Skidmore College Student Government Association Bylaws § 707.C.b.

SGA student members ignore the interest that Ms. Davis garnered, they also were openly hostile to her.

On March 8, the College also sent an email to all students and defended the SGA's decision. In that email, the College stated that it did not want to interfere with the SGA's ability to govern independently. It also reiterated its promise to protect speech, with a curious disclaimer for hate speech:

As an institution, Skidmore has been abundantly clear about our absolute and unswerving commitment to freedom of speech and freedom of association and assembly. These fundamental rights apply to all, regardless of political persuasion or other differences, including views and beliefs. The rare exception would be hate speech, in which violence is clearly the goal, which would not be tolerated in our community.

To be clear, neither Ms. Davis nor YAL has ever advocated for or supported violence. Nor has any SGA member or the University ever alleged any specific incidents alleging that Ms. Davis or YAL advocated or supported violence. On the contrary, Ms. Davis had to file a bias incident report with the College because a student threatened violence against her for her views.

Since the College refused to protect Ms. Davis's free speech and free association rights, Ms. Davis appealed the SGA's decision. On March 23, she had a hearing before them where, for two-and-a-half hours, SGA leaders were openly hostile toward Ms. Davis about her and YAL's views and repeatedly characterized her and YAL as hateful and bigoted. Ms. Davis subsequently met twice with you, Mr. Conner, but you refused to defend Ms. Davis or YAL from these baseless accusations or to recognize the YAL chapter.

On the other hand, the College allows over 100 other student organizations to enjoy the full funding, advertising, and hosting privileges the College—funded by the students' tuition money—has to offer. These groups reflect a wide variety of interests and include many partisan political groups like "Voices for Planned Parenthood," "Environmental Action Coalition," and "Skidmore Democrats" and "Skidmore Republicans."

III. The College has breached its contract with Ms. Davis by refusing to recognize the Young Americans for Liberty chapter.

The College collects millions of dollars of donations and over \$55,000 per student in tuition each year based on a number of promises, both academic and non-academic. One of those promises is that Skidmore College will ardently protect every student's freedom to speak and associate on campus just as if they were at a public university subject to the First Amendment. But the College's brazen viewpoint discrimination against Ms. Davis and Young Americans for Liberty violates these binding contractual promises.

A. The College’s Bill of Rights and the promises in the SGA Constitution, Bylaws, and Policy on Political Advocacy are binding contractual promises.

Courts recognize that the relationship between a student and her college “is contractual in nature.” *Andre v. Pace University*, 655 N.Y.S.2d 777, 779 (N.Y. Sup. Ct. 1996). “The rights and obligations of the parties, as contained in the university’s bulletins and catalogs, became a part of the parties’ contract.” *Id.* And while New York courts give some deference to universities on “educational malpractice” claims that go to academic matters, *id.*, the courts are the best institutions to protect contractual and constitutional rights.

B. Failing to recognize YAL because of Ms. Davis’ political views is quintessential viewpoint discrimination that violates Skidmore’s promises to its students.

Since Skidmore has bound itself to First Amendment law, then First Amendment law governs its contract claim. And here, it is beyond dispute that the sort of viewpoint discrimination directed at Ms. Davis and YAL violates the First Amendment.

The “college classroom with its surrounding environs” is the quintessential “marketplace of ideas,” where students can freely talk about any number of social, political, and philosophical issues both in and outside the classroom. *Healy v. James*, 408 U.S. 169, 180 (1972). To that end, “the campus of a public university, at least for its students, possesses many of the characteristics of a public forum.” *Widmar v. Vincent*, 454 U.S. 263, 267 n.5 (1981). So when a university opens up its funds, facilities, and space to a variety of student organizations, any restrictions on student organizations must be both “reasonable in light of the purpose served by the forum” and viewpoint neutral. *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 829 (1995).

Here, failing to recognize the YAL chapter is neither. The SGA targeted YAL specifically for its political views and labeled it a purveyor of “hate speech.” The College even defended the SGA’s characterization of YAL when it stated that it protected all speech for students *except* for hate speech. The only reasonable inference from this is that Ms. Davis and YAL were actually promoting “hate speech.” Again, neither Ms. Davis nor YAL have promoted anything other than mainstream libertarian views. And neither the SGA nor the College administration have pointed to any specific statements advocating violence. At bottom, the College is banning Ms. Davis’ club because other students disagree with her views. This turns the First Amendment on its head.

The First Amendment affords less protection to “[a] few limited categories of speech, such as obscenity, defamation, and fighting words,” *R.A.V. v. City of St.*

Paul, 505 U.S. 377, 377 (1992), and does not protect “harassment that is so severe, pervasive, and objectively offensive that it effectively bars the victim’s access to an educational opportunity or benefit.” *Davis Next Friend LaShonda D. v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 633 (1999). But “[i]f there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” *Texas v. Johnson*, 491 U.S. 397, 414 (1989). In fact, the First Amendment exists *precisely* to stop this kind of censorship: “the purpose behind the Bill of Rights, and of the First Amendment in particular [is] to protect unpopular individuals from retaliation—and their ideas from suppression—at the hand of an intolerant society.” *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 357 (1995).

Thus, banning speech simply because some claim it is “offensive” is the worst kind of viewpoint discrimination and is prohibited in *any* type of forum. *See Iancu v. Brunetti*, 139 S. Ct. 2294, 2302 (2019) (“Viewpoint discrimination is poison to a free society.”) (Alito, J., concurring). That is why the Supreme Court has repeatedly ruled that excluding student groups from equal access to campus facilities based on the group’s views is unconstitutional. *See, e.g., Rosenberger*, 515 U.S. at 825 (any group engaging in “religious activity”); *Widmar*, 454 U.S. at 265 & n.3 (any group conducting “religious worship or religious teaching”); *Healy*, 408 U.S. 169 (Students for a Democratic Society).

Nor is the restriction reasonable. The College opens its resources to groups of all types, including other political groups. It has made numerous promises to protect student speech and encourage “robust discourse reflecting a broad range of ideas, perspectives, and opinions.”¹⁰ But it is now censoring opinions with which it disagrees. “[O]nce it allows expressive activities of a certain genre, it may not selectively deny access for other activities of that genre.” *Travis v. Owego-Apalachin Sch. Dist.*, 927 F.2d 688, 692 (2d Cir. 1991).

The College administration has also tried to distance itself from the SGA. They state that the decision to deny the YAL chapter “is an issue of student governance” to be decided by “[t]he student leaders whom our students have elected as their representatives” But the College no doubt has authority over the SGA.

The College also states that this controversy is an important model for “public discourse, civic engagement and campus culture.” Indeed, it is. But the College seems to have forgotten that the First Amendment, and indeed the entire Bill of Rights, protects citizens from improper government actions.

¹⁰ Skidmore College Policy on Political Activity, Preface & Part One.

IV. The College is also engaging in deceptive trade practices and false advertising under New York’s Consumer Protection Act.

Since the College has falsely promised that it will protect students’ ability to speak and associate freely, it is also violating New York General Business Code Sections 349 and 350, which respectively prohibit “[d]eceptive acts or practices” and “false advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state.” Any person injured by such misrepresentations can bring a claim. To state a claim, the plaintiff must show “(1) consumer-oriented conduct that is (2) materially misleading; and that (3) resulted in injury to Plaintiffs.” *Harris v. Dutchess Cty. Bd. of Co-op Educ. Servs.*, 25 N.Y.S.3d 527, 538 (N.Y. Sup. Ct. 2015). New York Courts have also specifically held that students can sue educational institutions under these statutes. *Id.*; see also *Paladino v. Adelphi Univ.*, 454 N.Y.S.2d 868, 874 (N.Y. App. Div. 1982) (“Deception has no place in the educational process . . . misrepresentations coupled with the element of *scienter* should result in the imposition of liability.”).

And here, the College has misled its consumers, i.e. its students and donors, by misrepresenting the nature of who can form student groups and what views are allowed on campus. Those misrepresentations are material because the ability for college students to find their own voice and form relationships with others based on shared interests is a crucial component of campus life and the college experience. And it has harmed my client. Not only was her club denied, but she has been publicly shamed by the SGA and the University and been falsely accused of engaging in hateful rhetoric. The College’s misrepresentations about free speech and association are thus actionable under New York consumer protection laws.

V. The College must revise its policies to comply with governing state law.

The College has refused to enforce its own Bill of Rights and other promises to protect speech and association. It has refused to correct the SGA’s action and has even defended it. Its refusal to recognize Ms. Davis’s YAL chapter therefore violates its contract with Ms. Davis. Accordingly, we are asking you to confirm that the College will stop this viewpoint discrimination and allow Ms. Davis to form her student chapter by **May 21, 2021**.

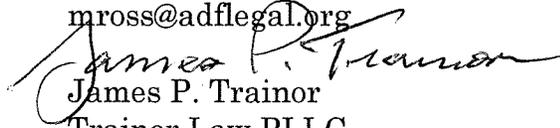
Sincerely,



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Alliance Defending Freedom

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A handwritten signature in black ink, appearing to read "James P. Trainor", is written over the printed name and partially over the email address.

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