



May 12, 2022

Damián J. Fernández  
Office of the President  
Eckerd College  
4200 54th Avenue South Upham  
St. Petersburg, Florida 33711

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

Dear President Fernández:

The Foundation for Individual Rights in Education, a nonpartisan nonprofit dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses, is concerned by the Eckerd College Organization of Students' (ECOS's) viewpoint-based denial of recognition to the Eckerd College Republicans. Given the university's strong promises of free expression, EC must reverse ECOS's decision and recognize the College Republicans as a registered student organization.

**I. Eckerd College Student Government Denies College Republicans Recognition**

The following reflects our understanding of the pertinent facts, though we appreciate you may have additional information and invite you to share it with us. However, if the facts here are substantially accurate, the student government's denial of recognition to the College Republicans amounts to a viewpoint-based infringement on students' expressive and associational rights as guaranteed by the college.

Tony Salvatori is a sophomore at EC and president and founder of the Eckerd College Republicans. He also runs a personal Instagram account, @econservatives, where he posts his opinions on political issues. On January 6, 2022, Salvatori posted on the @econservatives account concerning the events of that day the previous year in Washington, D.C., saying that while it "wasn't necessarily the right thing to do," he "support[s] the people going straight to the people they had an issue with instead of burning down the local Target."<sup>1</sup> On January 7, Salvatori posted that he's "Pro-Life,"<sup>2</sup> and the next day posted a graph claiming that "Covid

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<sup>1</sup> Conservatives (@econservatives), INSTAGRAM (Jan. 6, 2022), <https://www.instagram.com/p/CYaR0yusgwV/?igshid=YTM0ZjI4ZDI=>.

<sup>2</sup> Conservatives (@econservatives), INSTAGRAM (Jan. 7, 2022), <https://www.instagram.com/p/CYdNKjKM04m/?igshid=YTM0ZjI4ZDI=>.

vaccines have killed more people in one year than every other vaccine in the past 30 years COMBINED.”<sup>3</sup> Later that month, on January 21, Salvatori posted that “transgenderism is a mental illness,” calling it “Gender Dysphoria.”<sup>4</sup>

In February 2022, Salvatori applied for recognition of the Eckerd College Republicans as an official College Republicans campus chapter. On March 2, when Salvatori met with ECOS to discuss club recognition, ECOS told him there were “problems” with his social media posts on the @econservatives Instagram account.<sup>5</sup> ECOS told Salvatori to remove “ec” from the name of the @econservatives Instagram account, and also that he must step down as president for the club to be recognized. Salvatori refused to step down and did not remove “ec” from the Instagram account name.

Additionally, then-ECOS President Ava McLeod told *The Current* student newspaper that ECOS denied recognition to the College Republicans because of Salvatori’s social media posts.<sup>6</sup>

## **II. The Student Government’s Viewpoint-Based Denial of Recognition to the College Republicans Violates Eckerd College’s Free Speech Promises**

Denying recognition to a student organization based on the content of one of its members’ social media posts impermissibly burdens students’ ability to organize and express themselves—the very rights EC guarantees to its students. As a private university, EC is not directly bound by the First Amendment, but it has made clear promises to recognize and protect its students’ freedom of expression commensurate with the First Amendment. Accordingly, it is morally and contractually bound to honor these commitments, and its governing bodies may not deprive students of the rights promised.<sup>7</sup>

Specifically, EC’s Freedom of Expression policy holds that the “rights of free inquiry and free expression are co-extensive with the rights guaranteed by the First Amendment to the US Constitution.”<sup>8</sup> It also commits that “[s]tudents and student organizations are free to discuss all questions of interest to them and to express opinions publicly and privately.”<sup>9</sup> Additionally, EC promises that “[a]lthough faculty, students and staff are free to criticize, contest and condemn the views expressed on campus, they may not obstruct, disrupt, or

<sup>3</sup> Conservatives (@econservatives), INSTAGRAM (Jan. 8, 2022), <https://www.instagram.com/p/CYehO0JLSOz>.

<sup>4</sup> Conservatives (@econservatives), INSTAGRAM (Jan. 21, 2022), [https://www.instagram.com/p/CZAdO\\_KJv1w/?igshid=YTM0Zji4ZDI=](https://www.instagram.com/p/CZAdO_KJv1w/?igshid=YTM0Zji4ZDI=).

<sup>5</sup> Meeting notes from Mar. 2, 2022, meeting with ECOS and Tony Salvatori (on file with author).

<sup>6</sup> Kelli Martin, *EC Republicans denied club charter*, CURRENT (Mar. 16, 2022), [http://www.theonlinecurrent.com/news/ec-republicans-denied-club-charter/article\\_5634967a-a553-11ec-81af-83482ae983d6.html](http://www.theonlinecurrent.com/news/ec-republicans-denied-club-charter/article_5634967a-a553-11ec-81af-83482ae983d6.html).

<sup>7</sup> *Doe v. Lynn Univ., Inc.*, 235 F. Supp. 3d 1336, 1343 (S.D. Fla. 2017) (allowing a breach of contract claim to move forward because a university policy “provides a viable contractual hook.”).

<sup>8</sup> *Community Standards Policies and Procedures*, ECKERD COLL. at 13 (2021–22), available at [https://drive.google.com/file/d/1bNzN5\\_BqvIWXpogcpYT4q65F7AtXo2JN/view](https://drive.google.com/file/d/1bNzN5_BqvIWXpogcpYT4q65F7AtXo2JN/view).

<sup>9</sup> *Id.* at 13.

otherwise interfere with the freedom of others to express views they reject or even loathe.”<sup>10</sup> EC cannot allow ECOS to undermine these commitments.

**A. *Unjustified Denial of Student Organization Recognition Violates Freedom of Expressive Association***

The First Amendment and decades of jurisprudence interpreting its promise of viewpoint-neutrality inform students’ reasonable expectations of their speech rights at a private institution that, like EC, promises freedom of expression commensurate with constitutional protection. 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.”<sup>11</sup>

This important principle is what protects students’ ability to organize around causes or views—including through university-recognized student organizations—in order to influence their institutions, communities, and country. As the Supreme Court of the United States declared in *Healy v. James*, “denial of official recognition, without justification, to college organizations burdens or abridges” their associational rights.<sup>12</sup> In that case, the Court held that a college’s refusal to grant recognition to a chapter of Students for a Democratic Society—due to its “published aims . . . which include disruption and violence”—violated the student members’ expressive rights.<sup>13</sup>

At EC, denial of recognition has material consequences—as only student organizations recognized by ECOS may invite speakers to campus without petitioning ECOS and the university for permission.<sup>14</sup> Improper denials based on viewpoint violate EC’s promises of free expression.

**B. *Denial of Recognition of the EC College Republicans Over Social Media Posts is Unjustified***

ECOS’s denial of recognition to the College Republicans—which burdens its members’ rights to expression and association—is premised on its president having made posts on social media which some found offensive. The “bedrock principle” underlying free speech is that it may not be limited “simply because society finds the idea itself offensive or disagreeable,”<sup>15</sup> and 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,<sup>16</sup>

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<sup>10</sup> *Id.* at 14.

<sup>11</sup> *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)).

<sup>12</sup> 408 U.S. 169, 181 (1972).

<sup>13</sup> *Id.* at 174-75, fn. 4, 187-88.

<sup>14</sup> *Community Standards Policies and Procedures*, *supra* note 7 at 13.

<sup>15</sup> *Snyder v. Phelps*, 562 U.S. 443, 458 (2011) (citing *Texas v. Johnson*, 491 U.S. 397, 414 (1989)).

<sup>16</sup> *Boos v. Barry*, 485 U.S. 312, 322 (1988) (cleaned up).

recognizing those with authority “cannot make principled distinctions” in determining what speech is sufficiently offensive to suppress.<sup>17</sup>

This principle is particularly important in higher education, where the exchange of views may sometimes be caustic, provocative, or inflammatory. Consider, for example, a student newspaper’s use of a vulgar headline (“Motherfucker Acquitted”) and a “political cartoon . . . depicting policemen raping the Statue of Liberty and the Goddess of Justice.”<sup>18</sup> These words and images—published at the height of the Vietnam War—were no doubt deeply offensive to many at a time of deep polarization and unrest. Yet, as the Supreme Court held, “the mere dissemination of ideas,” however “offensive” to others, “may not be shut off in the name alone of ‘conventions of decency.’”<sup>19</sup>

By allowing ECOS to deny recognition based on protected expression, EC violated the College Republicans’ expressive and associational rights and allowed ECOS’s members to “interfere with the freedom of others to express views they reject or even loathe,” which is prohibited by college policy.<sup>20</sup> Additionally, ECOS may not infringe on individual students’ expressive rights by requiring them to change the names of their personal Instagram accounts as a condition to associate, as ECOS did by trying to require Salvatori to remove “ec” from his Instagram handle.

The possibility that members of the College Republicans may express viewpoints with which others disagree, even vehemently so, is not a valid reason to prevent recognition; instead, it is precisely what EC contemplates when it promises students freedom of expression. As such, disagreement with a student organization’s expression or viewpoint is not a legitimate basis for denying it recognition.

### **III. Eckerd College Must Grant the College Republicans Recognition**

By permitting ECOS to deny recognition to a student group based on the views and social media posts of its members, EC has allowed ECOS to use its administratively delegated authority to recognize student organizations to infringe students’ expressive and associational rights in violation of the college’s strong affirmative commitments to free expression. EC must immediately right this wrong and grant the College Republicans recognition.

Of course, students—including those in ECOS—who object to the College Republicans’ views are not without redress, and the university should encourage them to voice their objections to those views in ways other than denying the College Republicans recognition. The answer is to use their own voices to express opposition rather than wield the college-delegated authority of ECOS to shut down controversial speech by denying recognition.

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<sup>17</sup> *Cohen v. California*, 403 U.S. 15, 25 (1971).

<sup>18</sup> *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 667–68 (1973).

<sup>19</sup> *Id.*

<sup>20</sup> *Community Standards Policies and Procedures*, *supra* note 7 at 14.

We request receipt of a response to this letter no later than the close of business on Thursday, May 26, 2022, confirming that EC will take immediate steps to recognize the College Republicans and reaffirm the college's promises of free expression.

Sincerely,

A handwritten signature in black ink, appearing to read "Sabrina Conza". The signature is fluid and cursive, with a large initial 'S' and a distinct 'C' at the end.

Sabrina Conza  
Program Officer, Individual Rights Defense Program

Cc: Christyna Reagan, President, Eckerd College Organization of Students