



March 23, 2023

Dr. Nasser Paydar
Assistant Secretary for Postsecondary Education
Office of Postsecondary Education
LBJ Building
400 Maryland Avenue, SW
Washington, DC 20202-1100

Sent via email (Nasser.Paydr@ed.gov)

RE: Unconstitutional Denial of Free Exercise Coalition Student Group

To Assistant Secretary Paydar:

First Liberty Institute is the nation's largest law firm dedicated exclusively to defending and restoring religious liberty for all Americans. We represent the Free Exercise Coalition ("FEC"), a religious student group at the University of New Hampshire Franklin Pierce School of Law ("UNH Law"). We submit this complaint to the U.S. Department of Education ("the Department") under 34 CFR § 75.500(d) and the First Amendment to the U.S. Constitution. The University of New Hampshire is a recipient of direct grants from the Department.

Since November 2022, the FEC has struggled against hostility and opposition from UNH Law. The school begrudgingly granted the FEC official recognition after the group retained legal counsel, and it altered its flag policy to ensure that the FEC could not display the Christian flag as other student groups had done. At public meetings, UNH Law students maligned FEC's beliefs, with some referring to the Coalition's leaders as "hateful bigots," "oppressors," and "a problem for the law school," and reportedly calling their flag "a symbol of hate." The Free Exercise Coalition merely wishes to live out its mission to serve God and equip religious students in their free exercise of religion both on and off campus. The group seeks the same rights, benefits, and privileges that UNH Law already affords other student groups, in accordance with 34 CFR § 75.500(d) and the First Amendment.

Background

The Free Exercise Coalition is a religious student group at UNH Law. Students formed the group to serve God and equip religious students in their free exercise of religion, both on and off campus. The organization is an open member coalition of religious students and their allies, all with a passion to exercise their religion and see America's foundational religious freedoms restored and respected. Through scholarship, service, and education, coalition members will have the opportunity to exercise their religion and support religious liberty causes on their campus and in their communities.

Rarely, if ever, has a student organization been more aptly named or, as the actions of UNH students and faculty make clear, needed at UNH Law. Despite the FEC

meeting all requirements for recognition as an official student organization and completing its application, UNH Law's Student Bar Association ("SBA") refused to grant formal recognition to the group during its first meeting on November 29, 2022. At that meeting, students called the FEC's leaders "hateful bigots," "oppressors," and "a problem for the law school." In response to the hostility and vitriol the school displayed towards the FEC, the FEC's faculty advisor withdrew as advisor following the meeting. As of the date of this letter, the Coalition is still seeking a faculty advisor.

Nonreligious student groups that met the same eligibility requirements and received official recognition by UNH Law includes more than twenty organizations, including, the Civil Engagement Society, the Diversity Coalition, Secular Students Alliance, Outdoors Club, and UNH Law Pond Hockey. None of those groups received the opprobrium of the UNH leadership or community upon their application.

At the next SBA meeting, on January 24, 2023, and despite the SBA's own chartered procedure, the SBA refused to hold a vote on whether to give the student group official recognition. The UNH administration, however, after receiving First Liberty's December 12, 2022 letter, stepped in at that meeting and granted the Free Exercise Coalition recognition as a UNH Law student organization.

Although the Free Exercise Coalition was finally able to obtain recognition, the Coalition was unable to operate like other student groups until just recently, on March 22, 2023, when UNH Law altered its flag policy. On or about March 25, 2022, the LAMBDA club displayed the Pride flag, and on or about February 9, 2023, the Black Law Student Association displayed its flag. On February 15, 2023, the Coalition sought permission to display the Christian flag like other student groups do with their own flags. The Christian Legal Society had similarly requested permission to display the Christian flag three months earlier, on November 18, 2022, but UNH Law never responded to the Christian Legal Society's request. In response to the FEC's request, UNH Law said that the FEC's request provided the school with an opportunity to review its flag policy. Then, on March 6, 2023, while the FEC still awaited the school's decision, UNH Law displayed another student group's flag and endorsed it as its own speech to ensure that it would continue to fly. On March 22, 2023, associate dean Shane Cooper informed the FEC that, rather than permitting the FEC to fly its flag, the school had created a separate "display board" for all groups including the FEC to use. UNH Law continues to fly the other student group's flag in the law school cafeteria, after designating the flag as its own speech. Recently, FEC leadership has heard from students and others who have observed numerous instances of religious hostility at the law school. Many of these observers wish to remain anonymous for fear of reprisals from the law school and its students.

The Free Exercise Coalition merely seeks to be treated like other student groups on campus. Instead, they are held to a different standard and, along with other people of faith in the community, are left feeling ostracized and insulted because of their religious beliefs.

Current U.S. Department of Education regulations require UNH Law to treat the Free Exercise Coalition like other student organizations

Department regulations require public institutions of higher education to afford religious student groups “any right, benefit, or privilege” that the institution affords to other student organizations. 34 CFR § 75.500(d).

UNH is a public institution of higher education¹ and according to public records, is a recipient of several direct grants from the Department.

The Department has stated that it will investigate complaints by religious student groups who are denied equal treatment by institutions of higher education as compared to other student groups. *See* “Direct Grant Programs, State-Administered Formula Grant Programs, Non Discrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, Developing Hispanic-Serving Institutions Program, Strengthening Institutions Program, Strengthening Historically Black Colleges and Universities Program, and Strengthening Historically Black Graduate Institutions Program,” 85 Fed. Reg. 59,916 (Sept. 23, 2020). In that rule, the Department explained that it would investigate the “discrete issue” as to whether other student organizations indeed received the right, benefit, or privilege that the religious student organization was denied. *Id.* at 59,945.

As detailed above, UNH Law initially denied the Free Exercise Coalition the official recognition it affords other groups, and later, it changed its flag policy to prevent the FEC from displaying its flag.

The First Amendment requires UNH Law to treat the Free Exercise Coalition like other student organizations

It is settled law that “the First Amendment rights of speech and association extend to the campuses of state universities.” *Widmar v. Vincent*, 454 U.S. 263, 268–69 (1981); *see also Healy v. James*, 408 U.S. 169, 180 (1972); *Tinker v. Des Moines Indep. Sch. Dist.*, 393 U.S. 503 (1969); *Shelton v. Tucker*, 364 U.S. 479, 487 (1960). Students at America’s universities are entitled to express their beliefs on campus, as well as by associating with students that share those beliefs. It is the responsibility of a state university to ensure that students wishing to so associate receive evenhanded treatment by university leadership.

When university officials question, criticize, or censor student expression and association, the university fails the promise of the First Amendment by promoting viewpoints it favors and regulating speech it disfavors. *See Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 394 (1993) (“The principle that has emerged from our cases ‘is that the First Amendment forbids the government to

¹ <https://www.unh.edu/main/about-unh>

regulate speech in ways that favor some viewpoints or ideas at the expense of others.” (quoting *City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 804 (1984)).

Rather than provide routine, administrative approval to the Free Exercise Coalition’s application for recognition, SBA took upon itself the role of inquisitor. It viewed with suspicion the student group’s mission, fomented public discussion that labeled the group as bigoted, subversive, oppressive, and a general “problem” for UNH. Further, this shocking, knives-out inquisition of the Free Exercise Coalition’s religious beliefs by the SBA led the Free Exercise Coalition’s faculty advisor to withdraw, which has yet to be remedied. And currently, the Free Exercise Coalition is still unable to access school facilities and display its flag like other student groups.

Conclusion

UNH’s preexisting duties to follow the First Amendment, as enforced by the courts, did not induce UNH to comply with the First Amendment when the Free Exercise Coalition first sought official recognition and equal access to UNH Law’s facilities. We thus appeal to the Department to enforce its regulations by investigating these events at UNH Law.

You may direct your response to us at krussell@firstliberty.org or cpratt@firstliberty.org. Should you have questions related to this matter, you may reach us at 972-941-4444.

Sincerely,

Keisha Russell, Senior Counsel
Christine Pratt, Counsel