



December 12, 2022

Dean Shane Cooper
University of New Hampshire
Franklin Pierce School of Law
2 White Street
Concord, NH 03301

Sent via email (Shane.Cooper@law.unh.edu) and U.S. Mail

RE: Unconstitutional Denial of Free Exercise Coalition Student Group

Dean Cooper:

First Liberty Institute is the nation's largest law firm dedicated exclusively to defending and restoring religious liberty for all Americans. We represent the student leaders of the Free Exercise Coalition at the University of New Hampshire Franklin Pierce School of Law ("UNH Law"). Please direct all communications concerning this matter to my attention.

Students at UNH Law formed the Free Exercise Coalition to 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 see America's foundational religious freedoms restored and respected. Through scholarship, service, and education, coalition members will have the opportunity to 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 your students and faculty make clear, needed at UNH Law. Despite the Free Exercise Coalition meeting all the requirements for recognition as an official student organization and completing its application, UNH Law's Student Bar Association ("SBA") refuses to grant formal recognition to Free Exercise Coalition at UNH Law. Rather than faithfully serving its administrative function of approving student organizations that meet—as the Free Exercise Coalition does—the objective criteria set by UNH Law, SBA so maligned the members and beliefs of Free Exercise Coalition, leading its faculty advisor to withdraw. There can be no excuse for such open hostility to the religious beliefs of our clients.

We write to demand that UNH Law immediately recognize the Free Exercise Coalition as an official student organization with all the rights, responsibilities, and privileges appertaining thereto. Further, because this is the second time in a single semester that UNH Law's SBA has engaged in open hostility to religious students and organizations, we must ask that UNH Law (1) require SBA members to receive training in the laws protecting student expression conducted by the Foundation of Individual Rights and Expression by February 1, 2023, (2) investigate the SBA's actions to determine

whether its members have engaged in malfeasance necessitating the removal of individual members of SBA or disbanding of the whole, (3) apprise the student body of these efforts, taken by the administration and in collaboration with the Free Exercise Coalition, to ensure religious animus has no home at UNH Law, and (4) since UNH Law's hostility drove off the Free Exercise Coalition's faculty advisor, UNH Law must appoint you, Dean Cooper, to serve as its faculty advisory.

Should UNH Law fail to meet these demands in writing by January 2, 2023, we have advised our clients of their right to seek redress of these open violations of their civil and constitutional rights in federal court, which they are prepared to assert.

UNH Law's SBA is engaging in unconstitutional viewpoint discrimination.

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—as you should know as a dean of one of the nation's law schools—to ensure that students wishing to so associate receive evenhanded treatment by university leadership.

When university officials—including student leadership like SBA under your direction—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 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, 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.

It is difficult to understand why you, as a dean of the law school, did not undertake your supervisory role of SBA to immediately educate the SBA as to their open violation of the U.S. Constitution. Rather, by your inaction, you have given tacit approval to the actions of SBA. We remind you of how the U.S. Supreme Court characterized the actions of the University of Virginia:

Religion may be a vast area of inquiry, but it also provides, as it did here, a specific premise, a perspective, a standpoint from which a variety of subjects

may be discussed and considered. The prohibited perspective, not the general subject matter, resulted in the refusal to make third-party payments, for the subjects discussed were otherwise within the approved category of publications.

Rosenberger v. Rector & Visitors of Univ. of Virginia, 515 U.S. 819 (1995).

So too did UNH Law—by the actions of its SBA and your inaction—engage in viewpoint discrimination toward the student leaders of the Free Exercise Coalition. “Discrimination against speech because of its message is presumed to be unconstitutional.” *Id.* at 828. To be perfectly clear, the unmistakable holding of the Supreme Court is that UNH Law may not withhold—as it has here—recognition of a student organization “because it finds the views expressed by any group to be abhorrent.” *Healy*, 408 U.S. at 187-88.

UNH Law must correct this constitutional violation by immediately recognizing Free Exercise Coalition as one of its student groups.

UNH Law leaders are liable for SBA’s unconstitutional actions.

The actions of its SBA bear the imprimatur, and ratification, of UNH Law. Indeed, the university officials are responsible for the SBA’s decisions. *See, e.g., Bd. of Regents of Univ. of Wisconsin v. Southworth*, 529 U.S. 217, 233 (2000); *Rosenberger*, 515 U.S. at 832. University leadership cannot claim ignorance. Just this semester, the Christian Legal Society (“CLS”) sought recognition as a student group at UNH Law. The SBA also subjected the CLS student leaders to examination into their beliefs, openly criticizing those with which they disagreed. Only after attorneys representing CLS wrote to you did UNH Law formally recognize this student group. Yet, UNH Law clearly failed any effort to correct SBA’s behavior, despite the warning it received less than two months ago.

SBA fails to grasp the seriousness of its actions. More precisely, SBA fails to recognize the liability its actions personally attaches to you and your faculty and staff. Within just the past two years, two federal circuit courts of appeal and one federal district court rejected qualified immunity defenses and imposed personal liability upon university officials whose actions affirmed the same level of intolerance and hostility toward religion on display at UNH Law. *InterVarsity Christian Fellowship/USA v. University of Iowa*, 5 F.4th 855 (8th Cir. 2021); *Business Leaders in Christ (“BLinC”) v. University of Iowa*, 991 F.3d 969 (8th Cir. 2021); *InterVarsity Christian Fellowship/USA v. Bd. of Governors of Wayne State Univ.*, 534 F. Supp.3d 785 (E.D. Mich. 2021). Universities make costly errors by allowing open hostility toward religious groups on campus.

As such, should you fail to meet the demands of this letter, we will seek the full recourse of relief available to our clients, which includes seeking to hold you and your faculty personally liable for the actions of SBA.

Conclusion

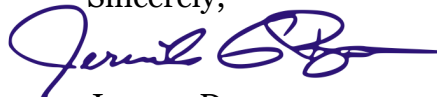
SBA's decision to subject the Free Exercise Coalition's beliefs to an inquisition and drive off their faculty advisor fails UNH Law's "duty under the First Amendment not to base [its policy decisions] on hostility to a religion or religious viewpoint." *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm'n*, 138 S. Ct. 1719, 1731 (2018). UNH Law, and its SBA, is bound by the Free Exercise Clause of the First Amendment to the U.S. Constitution which binds SBA "to religious tolerance, and upon even slight suspicion that proposals for state intervention stem from animosity to religion or distrust of its practices, all officials must pause to remember their own high duty to the Constitution and to the rights it secures." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 547 (1993).

Inasmuch as UNH Law failed its duty to the Constitution in protecting the civil rights of the Free Exercise Coalition and treated their religious beliefs with hostility, we require the following:

1. Formal recognition of the Free Exercise Coalition as a student group at UNH Law, including the attendant benefits student groups receive, no later than January 2, 2023.
2. SBA at UNH Law must receive training in the laws protecting student expression conducted by the Foundation of Individual Rights and Expression by February 1, 2023.
3. UNH Law must investigate SBA's actions concerning its treatment of religious student groups on campus to determine whether its members engaged in malfeasance necessitating the removal of individual members of SBA or disbanding of the whole.
4. UNH Law will apprise the student body of these efforts, taken by the administration and in collaboration with the Free Exercise Coalition, to ensure religious animus has no home at UNH Law
5. UNH Law must appoint Dean Cooper to serve as Free Exercise Coalition's faculty advisor.

We request your response to these demands in writing no later than December 23, 2022. You are welcome to direct your response to me at [Redacted email address]. Should you have questions related to this matter, you may reach me at [Redacted phone number].

Sincerely,



Jeremy Dys,
Senior Counsel