UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNIVERSITY AT BUFFALO YOUNG AMERICANS FOR FREEDOM, et al., *Plaintiffs*, v. **UNIVERSITY AT BUFFALO STUDENT ASSOCIATION INC.,** et al., *Defendants*.	**CASE NO.: 1:23-cv-00480** **Honorable John L. Sinatra, Jr.** **ORAL ARGUMENT REQUESTED**

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

Defendants' policies exclude Young Americans for Freedom students from the same access to resources as other clubs at the University at Buffalo only because the students affiliate with a national organization—Young America's Foundation. But the First Amendment protects the right to associate with other individuals or organizations without facing governmental restrictions. Indeed, in 1967 the Supreme Court struck down a New York law prohibiting state employees (specifically teachers) from associating as members of the Communist Party. *Keyishian v. Bd. of Regents of Univ. of State of N. Y.*, 385 U.S. 589, 606 (1967). Just a few years later it struck down another public university's refusal to grant recognized status to a student organization because it was affiliated with a national socialist organization. *Healy v. James*, 408 U.S. 169, 194 (1972). Over fifty years later, a New York University has reverted to the discriminatory ways of the past—just with a new ideological target. University at Buffalo is denying recognition to the students who are part of Young Americans for Freedom (YAF) simply because it is a chapter of Young America's Foundation—an organization dedicated to the principles of Reagan-conservativism: the opposite of communism.

But it shouldn't matter whether one espouses conservative or communist ideals. As Justice Black stated so clearly, "'I do not believe that it can be too often repeated that the freedoms of speech, press, petition, and assembly guaranteed by the First Amendment must be accorded to the ideas we hate or sooner or later they will be denied to the ideas we cherish.'" *Healy*, 408 U.S. at 188 (quoting with approval, *Communist Party of United States v. Subversive Activities Control Bd.*, 367 U.S. 1, 137 (1961) (Black, J., dissenting)).

Although they ban YAF and a few other clubs from being chapters of national organizations, Defendants continue to allow other groups that address

similar topics to YAF to affiliate with national organizations and maintain their official recognition and benefits. Further, the University Defendants grant the Student Association unbridled discretion to infringe on First Amendment rights in student organization recognition, and the Student Association has used its discretion to do just that. Plaintiffs are thus likely to prevail on the merits and the other factors favor enjoining Defendants' policies.

FACTUAL BACKGROUND

Young Americans for Freedom is a student organization that has been recognized at UB since Spring, 2017. Compl. ¶ 13. Young Americans for Freedom is a trademark of Young America's Foundation—an organization with an over 60-year history of providing a forum for American high school and college students to come together to cultivate and grow their shared ideas and commitment to individual freedom, limited government, a strong national defense, free enterprise, and traditional values. Compl. ¶¶ 38, 73. Young Americans for Freedom has built a reputation as "the premier primary [conservative] organization inspiring young people across this country." Mike Pence, *Former VP Pence at Young America's Foundation*, CSPAN (July 26, 2022, 1:02 PM) https://archive.org/details/CSPAN2_20220726_165500_Former_VP_Pence_at_Young_Americas_Foundation/start/240/end/300. But at UB, that reputation is a liability because, despite the reputation and advantages of being a chapter of YAF, it includes a now-banned association with a national organization.

I. Young Americans for Freedom adds to the plurality of voices on campus through expressive events.

With over 100 members, Young Americans for Freedom meets weekly to discuss current political, social, and economic issues as well as plan its events. Compl. ¶¶ 12-16. Larger events include hosting speakers such as Lt. Col. (Ret.)

Allen West to discuss whether America is systemically racist, and popular cultural commentator Michael Knowles to discuss cultural responses to gender ideology. Compl. ¶ 42. Smaller events include hosting the "9/11 Never Forget Project" on campus, collecting school supply donations for those in need, and hosting information tables on campus. Compl. ¶¶ 43-45.

II. Official recognition is necessary for successful events.

Official recognition by the Student Association grants access to resources essential to the success of these activities, including: funding from the Mandatory Student Activity Fee; use of the University's Student Organization web service; the ability to reserve space on campus for events and meetings; access to lobby tables in the Student Union; access to temporary office space in the Student Union; ability to fundraise on campus; access to the UB Foundation account; eligibility to participate in member recruitment events, and additional benefits. Compl. ¶ 50-51.

Without recognition, YAF cannot reserve the space for their meetings or events like other organizations, and without Student Association recognition, it cannot access funding from the Student Activity Fee which its members pay into and other organizations have access to. Compl. ¶¶ 26, 50-51, 55. This is no small thing. Without meeting space, event space, and equal access to funding, YAF would essentially cease to exist as it does today and even if it did exist in some small way, it could not effectively compete in the marketplace of ideas on campus without access to the benefits of university recognition and affiliation with Young America's Foundation. Compl. ¶¶ 79-84; 99-102.

III. Defendants' Policies exclude Young Americans for Freedom from official Student Association recognition.

At a high level, student organization recognition is governed by the "Student Club and Organization University-Wide Recognition Policy" (the

Recognition Policy) which is implemented under the auspices of the Office of Student Life and the University Defendants. Compl. ¶¶ 46-49. But the Recognition Policy lacks clear guidelines for recognizing student organizations. Compl. ¶¶ 52-57. Instead, it delegates that authority to "recognizing agents" such as the Student Association and allows those agents to develop their own recognition policies. *Id.*

The Student Association has recognized Young Americans for Freedom since 2017 and assigned it to the Student Association's Special Interest Council. Compl. ¶ 119. The Student Association Vice President assigns clubs to different "councils." Compl. ¶ 91. Until recently, the assignment to a particular council did not adversely affect or benefit a club. But, a few weeks after Young Americans for Freedom hosted Michael Knowles on campus, that all changed. Compl. ¶¶ 61-68.

After the event garnered extensive attention and protests on campus, the Student Association executive board members introduced a resolution to derecognize some (but not all) student organizations that are affiliated with a national organization. Compl. ¶¶ 61-68, Ex. 2 (the SA Recognition Policy). The Student Body President told the Student Association Senate "we all know why we're doing this." *Id.* Afterwards, the resolution (2022-2023 – 28) to derecognize Young Americans for Freedom and other clubs assigned to the "Special Interest Council" that affiliated with national organizations (but not ones that are assigned to the Academic, Engineering, or Sports Councils) passed by a vote of seven in favor, one against, and five abstentions. *Id.*[1]

[1] The relevant text reads, "Except for clubs in the Academic, Engineering, or Sports Councils, and clubs whose sole purpose is to engage in inter-collegiate competition, no SA club may be a chapter of or otherwise part of any outside organization." Compl. ¶ 62, Ex. 2.

The policy went into effect on June 1, 2023, automatically derecognizing Young Americans for Freedom only because it is a chapter of Young America's Foundation. Compl. ¶¶ 75-78.

Other groups, however, are allowed to be a chapter of national organizations so long as the Student Association VP assigns them to the "Academic, Engineering, or Sports Councils" or if the Student Association determines that the club's "sole purpose is to engage in inter-collegiate competition." Compl. ¶ 88. For example, the Economics Club, the Environmental Network Club, the Philosophy, Politics, and Economics Club, and the Political Science Undergraduate Student Association may affiliate with a national organization if they so wish. Compl. ¶ 89. Each of these clubs addresses economic, philosophical, or political content—like Young Americans for Freedom. Compl. ¶¶ 14, 16, 90.

Affiliating with Young America's Foundation enhances the effectiveness of Young Americans for Freedom's speech by, among other things, providing name recognition associated with a national organization and by providing access to the resources, network, and support offered by Young America's Foundation. Compl. ¶98. Without the funding and support offered by Young America's Foundation, Young Americans for Freedom's ability to effectively speak and assemble will be greatly diminished. Compl. ¶ 99.

Because Young Americans for Freedom is a trademark of Young America's Foundation, and because the Student Plaintiffs and Young Americans for Freedom wish to associate with Young America's Foundation, they have been removed and banned from the forum created for student organization expression through Student Association recognition. Compl. ¶ 100.

ARGUMENT

Young Americans for Freedom and its members seek a preliminary injunction to stop the ongoing violation of their First Amendment rights. For this relief, they must show (1) irreparable harm, (2) either (a) likelihood of success on the merits or (b) sufficiently serious questions on the merits, (3) public interest weighing in the injunction's favor, and (4) equities tipping in their favor. *Yang v. Kosinski*, 960 F.3d 119, 127 (2d Cir. 2020); *see also Fair Hous. in Huntington Comm., Inc. v. Town of Huntington,* 316 F.3d 357, 365 (2d Cir. 2003). Because even temporary "loss of First Amendment freedoms . . . unquestionably constitutes irreparable injury," *Elrod v. Burns*, 427 U.S. 347, 373 (1976), most "courts hold that no further showing of irreparable injury is necessary," *Mitchell v. Cuomo*, 748 F.2d 804, 806 (2d Cir. 1984). So courts focus on likelihood of success—"the dominant, if not the dispositive, factor"—when evaluating a preliminary injunction motion "in the First Amendment context . . . ." *N.Y. Progress and Prot. PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013).

I. Young Americans for Freedom is likely to prevail on the merits because Defendants implemented a prior restraint on the right to expressive association restricting YAF and its members from associating with their parent organization because of the viewpoint of their speech.

For almost half a century, the Supreme Court has affirmed that "[a]mong the rights protected by the First Amendment is the right of individuals to associate to further their personal beliefs" and that "denial of official recognition, without justification, to college organizations burdens or abridges that associational right." *Healy*, 408 U.S. at 181. And associating together to engage in expression is fundamental to the rights of free speech and assembly protected by the First Amendment. After all, "[i]f the government were free to restrict individuals' ability to join together and speak, it could essentially silence views

that the First Amendment is intended to protect." *Rumsfeld v. F.for Acad. & Inst. Rts. Inc.*, 547 U.S. 47, 68 (2006). "[I]mplicit in the right to engage in activities protected by the First Amendment is a corresponding right *to associate with others* in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends. This right is crucial in preventing the majority from imposing its views on groups that would rather express other, perhaps unpopular, ideas." *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 647–48 (2000) (emphasis added) (*quoting Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984) (cleaned up)). Further, "protection of the right to expressive association is especially important in preserving political and cultural diversity and in shielding dissident expression from suppression by the majority." *Id.* at 648 (cleaned up).

Young Americans for Freedom is likely to succeed on the merits because Defendants' derecognition unjustifiably burdens the right of expressive association and discriminates based on viewpoint in violation of the First Amendment.

A. The Recognition Policy violates the First Amendment right to expressive association by derecognizing Young Americans for Freedom because of its association with Young America's Foundation.

Young Americans for Freedom and its members have associated together and with Young America's Foundation for the last six years to engage in expression on many issues addressing political, social, economic, educational, religious, and cultural topics. Compl. ¶¶ 72. They wish to continue to exist as a recognized student group as Young Americans for Freedom, a chapter of Young America's Foundation. Compl. ¶¶ 85-86. Yet Defendants now condition their access to the benefits of Student Association recognition on their willingness to give up their association with Young America's Foundation and their very identity as a group. Compl. ¶¶ 72-80 (noting that Young Americans for Freedom is a trademark reserved only for Young America's Foundation affiliated chapters and

losing chapter status means losing access to the group's very name, not to mention its national reputation). Young Americans for Freedom and its members' speech is severely curtailed by this restriction. Compl. ¶¶ 79-84. *See also*, *Nat'l Ass'n for Advancement of Colored People v. State of Ala. ex rel. Patterson*, 357 U.S. 449, 460 (1958) ("Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly.").

But conditioning a benefit such as access to a speech forum like "recognized status" on giving up a right (like expressive association) is unconstitutional. *Perry v. Sindermann*, 408 U.S. 593, 597 (1972) ("if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited. This would allow the government to 'produce a result which (it) could not command directly.' Such interference with constitutional rights is impermissible.").

At a minimum, the state actor that imposes such a burden on expressive association must show that the regulation was "adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms." *Boy Scouts of Am.*, 530 U.S. at 648 (citation omitted).[2]

[2] Denying recognition to a student organization is also a "prior restraint" on First Amendment rights to speech and expressive association which places a "heavy burden" on Defendants to justify its affiliation-ban. *Healy*, 408 U.S. at 184. Prior restraints "are the most serious and the least tolerable infringement on First Amendment rights." *Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976). "Indeed, the Supreme Court has described the elimination of prior restraints as the 'chief purpose' of the First Amendment." *United States v. Quattrone*, 402 F.3d 304, 309–10 (2d Cir. 2005). "Any imposition of a prior restraint, therefore, bears 'a heavy presumption against its constitutional validity.'" *Id.* at 310 (quoting, *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963).

As discussed *infra*, section I. D., Defendants cannot meet that burden; but here, Defendants' ban is even worse because on top of restricting expressive association on its face, it is targeted and discriminatory. It allows some organizations to affiliate but not others and is both content and viewpoint-discriminatory in violation of the First Amendment. Rather than being "unrelated to the suppression of ideas" it is directly related to the suppression of ideas.

B. The SA Recognition Policy discriminates based on viewpoint both directly and through granting unbridled discretion.

"It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys." *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995) (denying access to Student Activity Fee funding for religious student organization violated the First Amendment right to free speech). "In the realm of private speech or expression, government regulation may not favor one speaker over another. Discrimination against speech because of its message is presumed to be unconstitutional." *Id.* (citations omitted). "When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant. Viewpoint discrimination is thus an egregious form of content discrimination." *Id.* (citations omitted).

The SA Recognition Policy is viewpoint discriminatory for two reasons. First, it grants recognition to organizations assigned to the "Academic" council even if they are a chapter of a national organization, while it bans from recognition organizations that address similar topics from a different viewpoint and assigned to the Special Interest Council. Second, the SA Recognition Policy grants unbridled discretion to the SA Vice President to assign clubs to the preferred councils.

The UB Recognition Policy is viewpoint discriminatory because it grants the Student Association itself unbridled discretion to recognize or derecognize clubs based on their viewpoints.

i. The SA Recognition Policy allows groups assigned to the "Academic Council" to address similar political and social issues as Young Americans for Freedom while being a chapter of a national organization but bans viewpoints arbitrarily deemed non-academic.

Under the SA Recognition Policy, organizations assigned to the "Academic, Engineering, or Sports Councils, and clubs whose sole purpose is to engage in inter-collegiate competition" are allowed to continue to be chapters of outside organizations. Compl. ¶ 88. For example, the Economics Club, the Environmental Network Club, the Philosophy, Politics, and Economics Club, and the Political Science Undergraduate Student Association may affiliate with a national organization if they so wish. Compl. ¶ 89. Each of these clubs addresses economic, philosophical, or political topics. Compl. ¶ 90. The favored Academic Council also includes other social and professional development-oriented organizations that are affiliated with national organizations such as "The Women's Network: Buffalo."[3]

[3] The Student Association's Club website lists the Women's Network: Buffalo as assigned to the "Academic Council." The purpose statement reads, "The Women's Network: Buffalo (TWN-Buffalo) was created for ambitious women looking to grow professionally while being lifted by their community. TWN-Buffalo offers opportunities to gain exposure to the professional world, network with high-profile speakers, and meet peers around their campus and the country." Student Association, https://www.sa.buffalo.edu/clubs/academic-council#anch295 (last visited June 23, 2023). The Women's Network National Association describes itself as, "The largest collegiate women's networking organization in North America – cultivating and celebrating women's ambition by connecting our members to industry leaders, professional development resources, and career opportunities." The Women's Network, https://www.thewomens.network/ (last visited June 23, 2023).

Young Americans for Freedom also addresses economic, philosophical, and political topics, Compl. ¶¶ 14-16, 41-45, and provides professional development opportunities for its members and leaders but is derecognized because it has been deemed to address those topics from a "special interest" viewpoint rather than an "academic" viewpoint.[4] *See* Compl. ¶ 93, 119, 125, Ex. 2.

This is no different than the viewpoint discrimination prohibited by the Supreme Court in *Lamb's Chapel v. Cent. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 394 (1993) (impermissible viewpoint discrimination occurred when speech "with a subject otherwise permissible" "was denied solely because the [speech] dealt with the subject from a religious standpoint."), *Rosenberger*, 515 U.S. at 831 (impermissible viewpoint discrimination occurred when "the University [did] not exclude religion as a subject matter but select[ed] for disfavored treatment those student journalistic efforts with religious editorial viewpoints"), and *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 109 (2001) (viewpoint discrimination occurred when a club was prohibited from "address[ing] a subject otherwise permitted under the rule, the teaching of morals and character, from a religious standpoint.").

That the Student Association discriminates against many viewpoints within the Special Interest and other disfavored Councils is no saving grace. "If the topic of debate is, for example, racism, then exclusion of several views on that problem is just as offensive to the First Amendment as exclusion of only one. It is as objectionable to exclude both a theistic and an atheistic perspective on the debate

[4] Young America's Foundation "accomplish[es its] mission by providing essential conferences, seminars, educational materials, internships, and speakers to young people across the country." Young America's Foundation, *Our Mission*, https://www.yaf.org/about/ (last visited June 23, 2023).

as it is to exclude one, the other, or yet another political, economic, or social viewpoint." *Rosenberger*, 515 U.S. at 831–32 (1995).

UB and the Student Association opened a forum for student organizations to engage in expression on important philosophical, cultural, and political topics of the day. And it permits student organizations that address those topics to be chapters of national organizations—but only if they address the topics from an "Academic" (i.e., school approved) viewpoint, not a disfavored "Special Interest" viewpoint such as Young Americans for Freedom.

This type of tiered classification system is one the Supreme Court has described as a "danger to liberty." *Rosenberger*, 515 U.S. at 835. This danger "lies in granting the State the power to examine publications to determine whether or not they are based on some ultimate idea and, if so, for the State to classify them." *Id.* Additionally, this type of classification brings a "corollary, danger [] to speech from the chilling of individual thought and expression. That danger is especially real in the University setting, where the State acts against a background and tradition of thought and experiment that is at the center of our intellectual and philosophic tradition." *Id.*

In sum, this type of discrimination is "presumed impermissible when [as here, it is] directed against speech otherwise within the forum's limitations." *Rosenberger*, 515 U.S. at 830.

ii. The SA Recognition Policy grants the Student Association Vice President unbridled discretion to discriminate based on viewpoint.

The First Amendment's viewpoint neutrality mandate requires that regulations on First Amendment freedoms must contain "narrow, objective, and definite standards to guide the licensing authority." *Forsyth Cnty., Ga. v. Nationalist Movement*, 505 U.S. 123, 131 (1992) (quoting *Shuttlesworth v.*

Birmingham, 394 U.S. 147, 150–51 (1969)). "The reasoning is simple: If the permit scheme involves appraisal of facts, the exercise of judgment, and the formation of an opinion, by the licensing authority, the danger of censorship and of abridgment of our precious First Amendment freedoms is too great to be permitted." *Id.* (cleaned up). The Second Circuit has joined other circuits to prohibit universities and SUNY Student Associations from permitting this "unbridled discretion" to discriminate between student organizations benefits. *Amidon v. Student Ass'n of State Univ. of N. Y. at Albany*, 508 F.3d 94, 103 (2d Cir. 2007). Non-exclusive written criteria alone "do not ensure that an official's discretion is adequately 'bridled.'" *Id.* at 104. This is especially so when the enumerated criteria "are too vague and pliable to effectively provide the constitutional protection of viewpoint neutrality required" by the First Amendment. *Id.*

Further, "'viewpoint neutrality requires not just that a government refrain from explicit viewpoint discrimination, but also that it provide adequate safeguards to *protect* against the improper exclusion of viewpoints.'" *Kaahumanu v. Hawaii*, 682 F.3d 789, 806 (9th Cir. 2012) (quoting *Child Evangelism Fellowship of Md. v. Montgomery Cnty. Pub. Schs.*, 457 F.3d 376, 384 (4th Cir. 2006)). The success of an unbridled discretion challenge "rests not on whether the administrator has exercised his discretion in a content- [or viewpoint-] based manner [though Defendants have], but whether there is anything in the [policy] preventing him from doing so." *Forsyth Cty*. 505 U.S. at 133 n.10. Thus, if just "the potential for the exercise of [discretionary] power exists," Defendants' policies are "inconsistent with the First Amendment." *Kaahumanu*, 682 F.3d at 807; *see also Amidon*, 508 F.3d at 104 (we fail to see how viewpoint-discriminatory referenda can be saved by a nonexclusive set of 'safeguards,' some of which are so indefinite as to be meaningless and thus incapable of providing guidance to student decision makers").

Here, the SA Vice President's decision about which organizations to favor with "Academic Council" status and which to relegate to "Special Interest Council" or other disfavored Council status is not governed by any exclusive list of criteria. Compl. ¶¶ 92-93. The VP is given general descriptions such as "Academic Council - A club whose activities and purpose relate to an academic field of study (excluding Engineering)," and "Special Interest Council - A club whose activities and purpose relates to a specialized interest." Compl. ¶ 93. Apart from these vague descriptions the assignment of clubs to the councils "shall be determined by the SA Vice President." Compl. ¶ 92. Thus, the SA VP is required, in contravention of *Forsyth's* warning, to engage in an "appraisal of facts, the exercise of judgment, and the formation of an opinion" to pick and choose which clubs qualify as favored or disfavored. *Cf. Forsyth*, 505 U.S. at 131. This is exactly the type of unbridled discretion the First Amendment prohibits. *Cf. Amidon*, 508 F.3d at 103.

C. The UB Recognition Policy violates the First Amendment by granting the Student Association unbridled discretion to discriminate in student organization recognition.

Access to the benefits that come with student club recognition is ultimately controlled by the University through the individual University Defendants. Compl. ¶ 46-51. But the University has delegated the authority to control recognition to the Student Association. Compl. ¶ 52-55. When the University delegated that authority to the Student Association it did so without including exclusive criteria for the Student Association to use in determining which clubs will be recognized. Compl. ¶56. Ex. 1. Thus, like the SA Vice President, the Student Association as a whole has unbridled discretion to determine which clubs will be recognized or not. It used that unbridled discretion to implement the viewpoint discriminatory policy (the SA Recognition Policy) described above that bans Young Americans for

Freedom from accessing the benefits that come with Student Association recognition.

D. Defendants cannot justify their discriminatory derecognition of Young Americans for Freedom.

"Government '[d]iscrimination against speech because of its message is presumed to be unconstitutional.'" *Wandering Dago, Inc. v. Destito*, 879 F.3d 20, 31 (2d Cir. 2018) (quoting *Rosenberger*, 515 U.S. at, 828). Defendants' policies both facially and as applied discriminate between viewpoints deemed "Academic" and those deemed "Special Interest" and grant administrators unbridled discretion to discriminate. Thus, Defendants' policies and their derecognition of Young Americans for Freedom under those policies violate the First Amendment.

Regardless of the presence of viewpoint discrimination, when a government actor targets the right of association as Defendants have done here, it must justify that burden by showing that it was "adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms." *Boy Scouts of Am.*, 530 U.S. at 648.

Given the viewpoint discrimination inherent in the policy, the restriction is not "unrelated to the suppression of ideas," but is rather directly related. In addition, there is no compelling interest in banning some groups (like YAF) from affiliating with a national organization. And permitting other groups to continue to affiliate while banning YAF cannot be the least restrictive means of achieving whatever end Defendants claim justifies their discrimination.

In sum, Young Americans for Freedom and its members are likely to prevail on the merits because Defendants' derecognition of YAF is based on and pursuant to viewpoint discriminatory policies that are presumptively unconstitutional. In addition, Defendants' policies, and implementation of those policies to derecognize

the organization only because of its affiliation with Young America's Foundation, violate the right to expressive association and Defendants cannot justify the derecognition.

II. The remaining preliminary injunction factors weigh in Plaintiffs' favor.

When plaintiffs establish a First Amendment violation, the remaining preliminary-injunction factors fall into place. "[V]iolations of First Amendment rights are presumed irreparable." *Tunick v. Safir*, 209 F.3d 67, 70 (2d Cir. 2000). And "securing First Amendment rights is in the public interest." *N.Y. Progress and Prot. PAC*, 733 F.3d at 488. Finally, Defendants suffer no harm from an injunction that requires it to apply its policies constitutionally and to, at a minimum, retain the status quo of recognition for Young Americans for Freedom that has been in place for six years. *Id*. ("securing First Amendment rights is in the public interest").

In contrast, Young Americans for Freedom and its members suffer harm every day because it has been derecognized and rendered ineligible for all the benefits that accompany recognized status. A preliminary injunction is necessary to restore the status quo and preserve Plaintiffs' rights during the pendency of this litigation.

CONCLUSION

Plaintiffs ask the court to issue a preliminary injunction prohibiting Defendants from enforcing the national-affiliation ban, restoring the status quo before its implementation, and directing Defendants to reinstate Young Americans for Freedom's recognized status.

Respectfully submitted this 26 day of June, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2023, I electronically filed the foregoing using the CM/ECF system, which automatically sends an electronic notification with this filing to the following attorneys of record:

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