



January 18, 2022

Ms. Jadyn Taylor
President, Student Bar Association
Emory University School of Law
1301 Clifton Road, N.E.
Atlanta, GA 30322

Sent via email

Re: Denial of Charter to Emory Free Speech Forum

Dear Ms. Taylor:

The Foundation Against Intolerance & Racism is a nonpartisan, nonprofit organization dedicated to advancing civil rights and liberties and promoting a common culture based on fairness, understanding, and humanity. We have more than one hundred chapters and tens of thousands of members nationwide, including in Georgia. Our website, fairforall.org, can give you a fuller sense of our identity and activities.

We write regarding the Student Bar Association's denial of the charter application of the Emory Free Speech Forum. The EFSF applied for recognition as a chartered student organization at Emory Law, which would enable it to use school space to host events and to receive student activity funds, among other benefits. The EFSF describes itself as:

a nonpartisan organization devoted to fostering critical discourse and open dialogue surrounding important issues in law and society. With the belief that the best answers are found through unfettered debate, the Emory Free Speech Forum seeks to create a space for intellectual conversations to occur.

The SBA board held a hearing on the EFSF's application in October 2021. It denied the application on the following grounds:

- “The purpose and goals of your organization overlap considerably with the purpose and goals of several other existing organizations on campus”;
- “Because of [the] well-established promotion of free speech values across Emory school, we fail to see a need for this particular club to be chartered and subsequently funded by SBA”; and
- “[W]e are concerned with the lack of mechanisms in place to ensure respectful discourse and engagement. Without safeguards in place, such as a moderator or mediator, these discussions will likely give rise to a precarious environment – one where the conversation might very easily devolve. In particular, it is disingenuous to suggest that certain topics of discussion you considered, such as race and gender, can

be pondered and debated in a relaxed atmosphere when these issues directly affect and harm your peers' lives in demonstrable and quantitative ways.”

After receiving objections from the Foundation for Individual Rights in Education, the SBA board invited the EFSF to a second hearing in November 2021. Thereafter, the board once again voted down the application but issued no new written explanation. We therefore must assume its originally stated reasons for the denial stand.

We have several concerns with the board's decision. First, it appears the EFSF is being held to more stringent standards than other student organizations. Multiple other chartered groups at Emory Law focus on topics that produce heated and lively discussions, including each of the school's numerous political organizations. Yet to our knowledge, none of those groups is required to have a moderator or mediator. The board's notion that open discussion requires a moderator because it "harms" people infantilizes the Emory community and in any event is arbitrarily applied. The victim of a violent crime may be upset by a presentation advocating for restorative justice – yet the Criminal Law Society is allowed to operate without a moderator. A student who endured hunger and untreated illness because of extreme poverty may feel offended by a debate on whether the rich should pay less in taxes – but the board requires no moderator for the Federalist Society. An individual psychologically damaged from being raised in an oppressively religious household may be angered at a discussion extolling Scripture – and yet the Christian Legal Society has no mandatory monitor. That is how it should be. Apparently, in the cases of those organizations, the SBA correctly recognized that the Emory community of adults has both the maturity to hear ideas that may offend them and the wisdom to skip discussions they cannot tolerate. The same considerations should apply to the EFSF's application.

The board has also treated the EFSF less favorably than other groups on the issue of overlap. A great many of Emory Law's existing chartered organizations share concerns and subject matters. For example, the American Constitution Society, National Lawyers Guild, and Law School Democrats all specifically advocate for progressive legal principles. Numerous organizations focus on international matters, including the International Law Society, the International Refugee Assistance Project, the Emory International Arbitration Society, and the Association of International Law Students. The Emory Entertainment Alliance could be subsumed within the Sports and Entertainment Law Society, or vice versa. Yet each of those organizations exists independently despite their overlap.¹

In any event, the EFSF is unique. A review of the law school website shows that virtually every chartered organization with a political or philosophical purpose is a collection of like-minded people. For example, the Federalist Society consists of libertarians and conservatives; If/When/How is for those who support abortion rights; the Christian Legal Society is for those who believe in Christian religions; the Law School Democrats and National Lawyers Guild are committed to progressive causes; and so on. The EFSF offers what none of them does: a discussion space for people with *dissimilar* belief systems and opinions who are united only by their commitment to open and civil dialogue. Given the increasing

¹ We are puzzled by the board's claim that the EFSF overlaps with the Federalist Society, a conservative group, and not any of the law school's progressive or non-political organizations. Free expression, including the right to dissent and protest, is a nonpartisan value and right.

problem of Americans isolating within their “echo chambers,” the EFSF would be a valuable contribution not only to the law school but also to broader discourse in higher education.

Furthermore, the board’s claim that the EFSF is unnecessary because of the school’s “well-established promotion of free speech values” is belied by the evidence. During one hearing, an SBA board member inquired how the EFSF would “prevent” one of its prospective speakers from “criticizing” or “undermining” the ideas of Critical Race Theory. Another member sought assurances that the group would not invite Heather Mac Donald because some Emory community members strongly disagree with her viewpoints. The board also claimed that allowing open discourse is an “extreme” position. Those statements, along with the school’s rejection of an organization dedicated to open dialogue, show that Emory Law does *not* have a “well-established promotion of free speech values” at present.

Rather than being credible, the asserted reasons for the denial appear to be a pretext for unlawful discrimination. As you know, Title VI of the Civil Rights Act prohibits intentional discrimination based on race, color, or national origin in any program that receives federal funding – including private universities. 42 U.S.C. §§ 2000d, 2000d-4a(2); *see Robinson v. Vollert*, 602 F.2d 87, 89 (5th Cir. 1979) (“Title VI prohibits discrimination on account of race, color, or national origin in all programs and activities receiving federal financial assistance”); *Goodman v. Bowdoin College*, 135 F. Supp. 2d 40, 52-3 (D. Me. 2001) (student stated Title VI claim against private college that received federal funding); *see also Gratz v. Bollinger*, 539 U.S. 244, 275-6 (2003) (Title VI applied to racially discriminatory admissions policy of state university that received federal funding). In view of Emory’s known acceptance of generous federal financial assistance and the SBA’s quasi-administrative functions, we have little doubt that Title VI applies to the SBA’s conduct.

We also have little doubt that intentional discrimination occurred. During one of the hearings, a board member remarked (incorrectly) that all EFSF officers are “white” and therefore have the same ideas and are incapable of hosting diverse discussions.² Another member questioned whether the EFSF should receive funding because its officers included “very few individual[s] of color.” Skin color is irrelevant to whether a charter should be granted or funded. The fact that SBA board members brought it up anyway, in the manner in which they did, shows that they considered it not only a factor in their decision, but also a detriment in this particular case. That is direct evidence of unlawful discrimination. *See Astarae v. Villanova Univ.*, 509 F. Supp. 3d 265, 270 (E.D. Pa. 2020) (comments about plaintiff’s national origin made during university’s decision-making process were direct evidence of discriminatory intent under Title VI). Furthermore, as explained above, the EFSF officers were treated differently from other charter applicants: they were rejected because of alleged overlap while other groups were not; required to have a moderator while others had none; and scrutinized and penalized for their allegedly insufficient racial diversity while others – including the numerous organizations based on common ancestry – were not. Such differential treatment violates Title VI. *See Goodman*, 135 F. Supp. 2d at 52-3 (student at private college stated Title VI discrimination claim based on factual allegations showing he was subjected to harsher treatment than a similarly-situated student).

² The EFSF officers are of diverse races, ethnicities, backgrounds, beliefs, and political affiliations. Moreover, skin color determines neither beliefs nor behavior; to claim otherwise is a form of race essentialism.

Over its history, the SBA has approved student organizations with a broad range of focuses, including aviation, LGBTQ+ issues, banking and finance, entertainment, national security, and many others. Noticeably absent is a group whose purpose is to share diverse perspectives, participate in civil dialogue despite those differences, and learn from each other. The EFSF would fill that space. Its chartering would also demonstrate Emory Law's stated commitments to free speech and non-discrimination based on skin color. We therefore urge the board to reverse its denial.

FAIR would welcome the opportunity to further discuss this matter with the SBA board or any other appropriate persons at Emory. Please let us know if we may expect a response.

Very truly yours,



Letitia Kim
Managing Director of the Legal Network
Foundation Against Intolerance & Racism

cc: Gregory L. Fenves, President, Emory University
Stephen D. Sencer, Senior Vice President and General Counsel, Emory University
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