



MEMORANDUM

TO: Students for Life of America
FROM: Alliance Defense Fund
DATE: March 21, 2012
RE: Student Rights to Form and Fund a Student Organization

Starting a student organization can be daunting. Besides deciding when you are going to meet and what your group is going to do, universities require students to follow all sorts of rules and procedures before a group can gain official recognition. And once your group is up and running, you will need money to plan events, host speakers, and advance your message on campus. This memorandum addresses your rights to form and fund a student group at both public and private universities, and your rights to promote your pro-life message on campus.

Public Universities

Publicly funded universities have an obligation to uphold students' First Amendment rights on campus. "[S]tate colleges and universities are not enclaves immune from the sweep of the First Amendment."¹ Due to their status as state institutions, public universities cannot abridge any student's right to free speech, free association, free exercise of religion, due process, or equal protection under the law. This includes your ability to freely form, fund, and promote a pro-life student group.

1. Do I have a right to form a pro-life student group on campus?

Yes. The First Amendment protects your ability to associate freely with like-minded students on campus.² You can associate with other pro-life students regardless of whether your university has an official mechanism to recognize student groups. But most public universities do permit students to form student organizations and gain official recognition, which usually bestows various benefits like access to meeting rooms, use of email distribution lists, and funding.

Implicit in your right to freely associate and form a pro-life student group, is the right to select the members and leaders of that group without interference from the university.³ Because the membership of a group dictates its message, you can set standards for membership and leadership that will govern your group. Many universities require student groups to affirm or sign a "non-discrimination" statement as a condition of gaining official recognition. The policies usually prohibit a student group from discriminating on the basis of "race, religion, gender, ethnicity, nationality, disability, sexual orientation, or marital status." But universities cannot use these policies to force student groups to admit members or elect leaders who do not share the

¹ *Healy v. James*, 408 U.S. 169, 180 (1972).

² *Id.* at 181.

³ *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 654, 659 (2000).



goals and mission of the organization.⁴ A university must permit student groups to follow their consciences when not interfering with the legitimate rights of others nor threatening the health or safety of others. Note, however, that a small minority of universities require all student groups to admit all students as members or leaders of all student groups. These requirements have been found permissible in some circumstances.⁵ If this is the case at your university, or if you have any other questions about a general non-discrimination policy, contact Alliance Defense Fund for more information.

2. Does my pro-life group have a right to access student activity fee funding?

Yes. Most public universities collect a mandatory student activity fee from students. Once collected, many universities make the fees available to student groups in the form of one time grants for events or yearly budgets. If your university permits student groups to apply for student activity fee funding, it cannot deny your group access to that funding on the basis of your pro-life viewpoint.⁶ Keep in mind that you must comply with all of the procedural requirements to obtain funding. For example, if your university requires funding applications to be turned in by the first day of classes each semester, then you should not wait until a week later to submit the application. Unfortunately, many universities look for reasons to deny funding for pro-life groups. Do not give them an easy reason to deny your group.

3. May I distribute flyers, hang posters, wear t-shirts, and host events on campus with a pro-life message?

Yes. The campus of “a public university, at least for its students, possesses many of the characteristics of a public forum.”⁷ Think of your university’s campus like a sidewalk, park, or town center. Just as you may handout literature, wear a t-shirt, or host an event when you are off campus, you can do the same while on campus. Universities may create reasonable rules governing the time, place, and manner of speech, but these rules must be content-neutral, narrowly tailored to a significant government interest, and leave open ample alternative channels of communication.⁸ Be sure to check your student handbook or university rules to ensure you know when, where, and how you may speak. If you have any questions about those rules or if they seem unfair, contact Alliance Defense Fund for guidance.

4. Does my pro-life group have a right to invite speakers to present at our meetings and events?

Yes. Your pro-life group is entitled to invite speakers to campus to give presentations to the same extent that other student groups are permitted to do so. As with flyers, posters, etc., universities may impose reasonable rules on inviting outside individuals to speak at campus

⁴ *Christian Legal Soc’y v. Walker*, 453 F.3d 853, 863 (7th Cir. 2006).

⁵ *Christian Legal Soc’y v. Martinez*, 130 S. Ct. 2971, 2993 (2010).

⁶ *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995).

⁷ *Widmar v. Vincent*, 454 U.S. 263, 267 n.5 (1981).

⁸ *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).



events. However, the university may not deny your speaker based upon the pro-life message or viewpoint expressed in the presentation. Familiarize yourself with the university's policies and procedures before scheduling the speaker to ensure compliance. If your university provides funding to student groups to supplement the costs of bringing speakers to campus, your group is entitled to equal access to those funds.

Private Universities

The Constitution protects your freedoms against intrusions by the government, but private universities are not government entities. Thus, the Constitution does not protect your freedom against intrusion by private universities. (In California, however, state law requires private universities to comply with the First Amendment.) In fact, private universities, like your private pro-life student group, possess First Amendment rights themselves to speak and associate freely. Regardless, you can still pursue your interest in starting and funding a pro-life student group on campus by following the recommendations below.

While you do not have a constitutional right to form or fund a pro-life student group or speak freely at a private university, many state law doctrines may protect your ability to do so. If you run into trouble starting, funding, or promoting your group, first check your university's student handbook, catalog, bylaws, or policies. Universities often make promises in these documents that they will respect student free speech and association on campus. For example, your university's student handbook may state that it pledges to protect the ability of students to speak freely on campus and form student groups of their choosing. If your university makes such a promise, but then denies your request to form a new pro-life group, meet with administrators and highlight the problem. Second, ask yourself if the university is acting in an arbitrary manner by allowing some students to form groups on campus, but not others, with no apparent reason for the discrepancy. Many states prohibit private organizations, like universities, from making "arbitrary and capricious" decisions. Overall, make sure your university is treating all students fairly and equally.

Conclusion

The First Amendment protects the ability of pro-life students at public universities to form and fund student groups on campus. While pro-life students at private universities do not enjoy these constitutional protections, they can utilize the policy promises of their universities to achieve the same results.

Keep in mind that every situation is unique and requires analysis based on the facts and laws applicable to the circumstances. For additional information about your rights on campus visit the Alliance Defense Fund's Speak Up website at <http://speakupmovement.org/LearnMore>. And if you have any questions about these principles or experience any trouble forming or funding your group, contact the Alliance Defense Fund at 1-877-TELL-ADF or www.alliancedefensefund.org for free legal advice.