



June 2, 2020

Ms. Kelly Mangan  
President, Board of Education  
Harrison Central School District  
50 Union Ave.  
Harrison, NY 10528  
via email: boe@harrisoncsd.org

Re: *Unconstitutional Denial of Equal Access to Young Americans for Freedom*

Dear Ms. Mangan,

This letter is regarding Harrison High's denial of Young Americans for Freedom's application for equal access to resources that are available to other student clubs at Harrison High School. Denying equal access to Young Americans for Freedom violates clearly established law—including the First Amendment and the Equal Access Act. As explained below, in order to avoid legal action, you must immediately recognize Young Americans for Freedom and change your policies to ensure all clubs receive equal access to available resources.

Alliance Defending Freedom (ADF) represents Harrison Young Americans for Freedom. By way of introduction, ADF's Center for Academic Freedom is dedicated to ensuring freedom of speech and association for students and teachers so that everyone can freely participate in the marketplace of ideas without fear of government censorship.<sup>1</sup>

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<sup>1</sup> Alliance Defending Freedom has consistently achieved successful results for its clients before the United States Supreme Court, including nine victories before the highest court in the last nine years. See, e.g., *NIFLA v. Becerra*, 138 S. Ct. 2361 (2018) (upholding ADF's client's free speech rights against the State of California); *Masterpiece Cakeshop, LTD. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 1719 (2018) (upholding ADF's client's First Amendment rights); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017) (upholding ADF's client's First Amendment rights); *Zubik v. Burwell*, 136 S. Ct. 1557 (2016) (representing Geneva College and Southern Nazarene University in consolidated cases) (upholding ADF's clients' First Amendment rights); *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218 (2015) (unanimously upholding ADF's client's free-speech rights); *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014) (representing Conestoga Wood Specialties Corp. in consolidated case) (striking down federal burdens on ADF's client's free-exercise rights); *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014) (upholding a legislative prayer policy promulgated by a town represented by ADF); *Ariz. Christian Sch. Tuition Org. v. Winn*, 131 S. Ct.

Young Americans for Freedom (YAF) is non-partisan and possesses a venerable, distinguished history. From its inception in 1960, YAF has provided 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. The organization was conceived and parented by William F. Buckley, Jr., a giant of the new movement at that time dedicated to conserving the U.S. Constitution and the eternal principles of the American founding. Over the decades, YAF consistently grew in size and influence, becoming a major player on the national scene and attracting many thousands of devoted adherents and champions, including Ronald Reagan, Margaret Thatcher, Jeanne Kirkpatrick, Mike Pence, and incoming YAF President Scott Walker.

Young Americans for Freedom is a non-profit 501(c)3 and as such does not engage in political activity. It is a non-partisan educational organization committed to inspiring students with and educating them regarding the ideas of individual freedom, a strong national defense, free enterprise, and traditional values.

### **Factual Background**

In April, 2019, Luke Wong emailed Assistant Principal Griffo at Harrison High requesting recognition for a Young Americans for Freedom club. Ms. Griffo denied Mr. Wong's request, replying, "[w]e typically do not create clubs for organizations that students are involved with or could be involved with outside of school." Mr. Wong then requested an explanation for the existence of presently recognized groups such as DECA, Gay Straight Alliance, and others that have affiliation with national organizations that students "could be involved with outside of school." Ms. Griffo responded that the named groups above pre-dated her tenure.

Mr. Wong simply requested that the school treat YAF equally with other student clubs, but has been repeatedly denied. As an unrecognized club, YAF is treated as a second-class student group. It cannot fundraise on campus, reserve rooms for meetings, be listed on the school club website, or use bulletin boards to recruit members and announce events. Other student clubs have full access to these resources. Harrison High lists at least thirty-three recognized student clubs on campus including both curricular-related and extra-curricular clubs that all have access to these resources.<sup>2</sup>

YAF repeated its request for club recognition in the Fall of 2019, and again in the Spring of 2020. Each time, the request was denied with varying rationales that all establish that school administrators have complete discretion to approve or deny

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1436 (2011) (upholding a state's tuition tax credit program defended by a faith-based tuition organization represented by ADF).

<sup>2</sup> Harrison High School, *Student Activities/Extracurriculars*, <https://hhs.harrisoncsd.org/about/new-page> (last visited May 14, 2020).

club applications based on the club's content and viewpoint. Mr. Wong was initially only told that some clubs are approved and some aren't—and yours isn't approved. After Mr. Wong and his parents requested more specifics, Mr. Wong was told that clubs are specifically vetted on whether administrators believe they are “duplicative of other opportunities students have” or whether they “complement the instructional program.” Ms. Griffo recommended that Mr. Wong join Model Congress, even though Mr. Wong clearly explained how YAF is unique compared to any other clubs or viewpoints that are presented at Harrison High and that he desired to start a YAF club to present YAF's viewpoints on campus.

### Analysis

Harrison High's failure to recognize YAF is blatantly illegal under the Equal Access Act and First Amendment, both of which guarantee YAF's right to equal footing with the other student clubs in Harrison School District.

First, the Equal Access Act, 20 U.S.C. §§ 4071–74, requires the School to officially recognize Harrison Young Americans for Freedom and to give it the exact same rights, benefits, and privileges that all other non-curricular clubs receive. As the U.S. Supreme Court held in *Board of Education v. Mergens*, “if a public secondary school allows only one ‘noncurriculum related student group’ to meet, the Act's obligations are triggered and the school may not deny other clubs, on the basis of the content of their speech, equal access to meet on school premises during noninstructional time.” 496 U.S. 226, 236 (1990). The slightest deviation from this treatment violates the Equal Access Act. *Prince v. Jacoby*, 303 F.3d 1074, 1077 (9th Cir. 2002) (“[W]e hold that the School District violated either the [EAA] or Prince's First Amendment rights by denying her Bible club the same rights and benefits as other School District student clubs and by refusing to allow the Bible club equal access to school facilities on a religion-neutral basis.”).

But here the School has singled out Young Americans for Freedom for discriminatory treatment. At least thirty-three clubs have been approved at Harrison High School, including non-curricular social and civic clubs such as “Friends of Rachel,” “the Gay Straight Alliance,” “Relay for Life,” “Youth to Youth,” and “Youth Volunteers of Harrison.” Young Americans for Freedom is also a non-curricular civic club, but it has been denied recognition outright. Thus, the school violated the Equal Access Act.

Second, singling out Young Americans for Freedom for discriminatory treatment compared to other non-curricular clubs is an unconstitutional form of viewpoint- and content-based discrimination under the First Amendment. *See Widmar v. Vincent*, 454 U.S. 263, 277 (1981) (denying recognition to a group based on religious content of group's speech violated “fundamental principle that a state regulation of speech should be content-neutral”). This failure to approve the club without any justification is also an unconstitutional “form of prior restraint” on core

political speech. *Healy v. James*, 408 U.S. 169, 184 (1972). The school has apparently no guidelines for club approval and allows its administrators to approve or disapprove at whim. Such unbridled discretion is per se viewpoint discriminatory. See *Amidon v. Student Ass'n of State Univ. of N.Y. at Albany*, 508 F.3d 94, 103 (2d Cir. 2007) (incorporating the rule against unbridled discretion into the prohibition on viewpoint discrimination); *Forsyth Cty., Ga. v. Nationalist Movement*, 505 U.S. 123, 133 (1992) (“The First Amendment prohibits the vesting of such unbridled discretion” to discriminate between viewpoints “in a government official.”).

### Conclusion

Based on the foregoing, it is requested that, by June 16, 2020, you inform me in writing that you have granted Young Americans for Freedom official recognition for the 2020-2021 school year and that it will receive the same rights, benefits, and privileges as other non-curricular student clubs at Harrison High School.

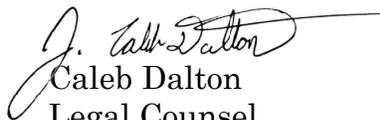
To prevent Harrison Central School District from denying full access to clubs or denying student clubs recognition in the future, we also request that by June 30, 2020, the Harrison CSD Board adopt policies that require all of its schools to timely consider all requests to start new student clubs and that, in compliance with the Equal Access Act, they will not discriminate against a club or prospective club because of the club’s religious, political, or philosophical viewpoints, or other content of its speech.

If you fail to grant these requests, we will have no option but to advise our client of other avenues for vindicating his rights. Please immediately place a litigation hold on all e-mail accounts, document collections, social media accounts, and all other sources of information or communications (including electronically stored information) that reference in any way Young Americans for Freedom or Mr. Luke Wong.

If you are willing to comply with these requests, we are happy to discuss this matter as needed and assist in formulating policies that comply with the Equal Access Act and the Constitution. As an initial matter we refer you to the Department of Education’s *Legal Guidelines Regarding the Equal Access Act and the Recognition of Student-Led Noncurricular Groups* available at <https://www2.ed.gov/policy/elsec/guid/secletter/groupsguide.doc>.

Sincerely,

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