



August 21, 2026

Richard McCullough
Office of the President
Florida State University
211 Westcott Building
Tallahassee, Florida 32306

Sent via U.S. Mail and Electronic Mail (president@fsu.edu)

Dear President McCullough:

FIRE, a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned by Florida State University's investigation of Tallahassee Students for a Democratic Society, along with two students, Kaiden Rosa and Jadyn Glueck, for distributing flyers accusing a student of sexual assault and criticizing FSU's handling of the student's case.² We write to remind FSU of the strict First Amendment standards that limit the proscription of student expression at public institutions like FSU.

FIRE appreciates that FSU is one of the few institutions in the country whose policies earn a "green light" rating from FIRE. We are, however, concerned by FSU's apparently overbroad policies governing the use of others' personal information and the university's violation of due process principles in its investigation of these students. Accordingly, we ask that FSU reform its policies to comply with First Amendment standards, and, insofar as the charges against Rosa, Glueck, and SDS are based on protected speech, that the university drop those charges. If the university continues its investigation, it must provide the students with the potentially exculpatory evidence they have requested—namely, video footage of the fair SDS students were asked to leave. FIRE has also attached a Sunshine Law request for this information.

On June 26, members of Tallahassee Students for a Democratic Society, a group led by FSU students, brought flyers, which accused a student of sexual assault and criticized FSU's handling of an investigation into that member's conduct, to a university-sponsored involvement fair.³ The flyers were part of the organization's broader campaign opposing

¹ For more than 25 years, FIRE has defended freedom of expression and other individual rights on America's university campuses. You can learn more about our mission and activities at fire.org.

² The recitation of facts here reflects our understanding of the pertinent information. We appreciate that you may have additional information to offer and invite you to share it with us. To these ends, please find enclosed an executed privacy waiver authorizing you to share information about this matter.

³ Tallahassee SDS (@tallysds), INSTAGRAM (July 22, 2026), https://www.instagram.com/p/DbGCi1OFtYR/?img_index=4.

what it feels is “rape culture” at FSU.⁴ Though SDS members had brought flyers on other issues to the involvement fair event in years past, an administrator asked members to leave this year, which the group believes was a response to the flyers’ content.⁵

On July 21, Florida State University charged Tally SDS with: “Conduct ... that places a person in reasonable fear of harm to their person or damage to their property, infringes upon rights of personal privacy or property, has the effect of substantially interfering with a reasonable person’s academic performance or ability to participate in opportunities or benefits provided by the University, or has the effect of substantially interfering with the orderly operation of the University;” “[u]nauthorized appropriation and/or use of someone’s identifying or personal data or documents;” and non-compliance with an administrator’s lawful order.⁶ On July 22, the university charged Rosa and Glueck individually with violating the equivalent provisions of FSU’s Student Conduct Code for their role in the flyering.⁷

On July 23, SDS leadership attempted to attend an informational session to learn more about the charges against the organization. Only Glueck was allowed to attend the meeting as the organization’s registered contact.⁸ At that meeting, Glueck asked for video footage of the ballrooms where the involvement fair took place.⁹ Title IX Conduct Coordinator Tameika Wright allegedly confirmed the university had the footage Glueck requested but refused to provide it.

On July 28, Rosa met with Rachel Blakesley, Assistant Dean, Student Conduct and Community Standards, who explained FSU’s position that the “[u]nauthorized appropriation” of personal data charge is based on the university’s obligations under the Family Educational Rights and Privacy Act (FERPA).¹⁰

As you know, the First Amendment binds public universities like FSU,¹¹ such that its actions and decisions—including the pursuit of disciplinary sanctions¹²—must comport with the

⁴ See, e.g., Tallahassee SDS (@tallysds), INSTAGRAM (July 21, 2026), <https://www.instagram.com/p/DbECe85qYkl/>.

⁵ Tallahassee SDS, *supra* note 3.

⁶ Letter from Tameika Wright, Title IX Conduct Coordinator, to Tally Sds (July 21, 2026) (on file with author). Tally SDS disputes the allegation that its members did not comply with an administrator’s order to leave the event.

⁷ Letter from Rachel Blakesley, Assistant Dean, Student Conduct and Community Standards, to Kaiden Rosa, student (July 22, 2026) (on file with author); *Student Code of Conduct*, FLA. STATE UNIV. (amended Sept. 4, 2025) <https://sccs.fsu.edu/sites/default/files/Codes/Student%20Conduct%20Code%20Fall%202025%20FINAL%20ADA%20UPDATES.pdf> [<https://perma.cc/FF4G-KAA5>]. Rosa disputes being present at the event.

⁸ Tallahassee SDS (@tallysds), INSTAGRAM (July 27, 2026), <https://www.instagram.com/p/DbECe85qYkl/>.

⁹ *Id.*

¹⁰ Pub. L. No. 93-380, 88 Stat. 571.

¹¹ *Healy v. James*, 408 U.S. 169, 180 (1972) (“[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, ‘the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.’”) (internal citation omitted).

¹² *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 667–68 (1973).

Constitution's strictures. FSU may regulate only speech that falls into one of the few narrowly defined categories of unprotected speech or risk raising First Amendment concerns. FSU's charges against SDS and its members appear to allege that the flyers constituted true threats, discriminatory harassment, defamation, or an invasion of privacy. The flyers do not fit into any of these categories.

First, Tally SDS's posters cannot be said to constitute actionable discriminatory harassment under federal law.¹³ In *Davis v. Monroe County Board of Education*, the Supreme Court set forth a strict definition of discriminatory harassment in the educational context.¹⁴ For conduct (which may include expression) to constitute actionable harassment, it must be (1) unwelcome, (2) discriminatory on the basis of gender or another protected status, *and* (3) "so severe, pervasive, and objectively offensive that it can be said to deprive the victim[] of access to the educational opportunities or benefits provided by the school."¹⁵ The flyer-case complainant's role as a respondent in a rape investigation is not a protected status. Even if it were, a few fliers targeting the general student body do not rise to the needed level of severity or pervasiveness. In *Davis* itself, the offending conduct was a student's continued sexual contact with and comments targeting a specific student in a course of conduct that caused that student to fear attending classes. Tally SDS's expression, while presumably unwelcome to the accused party, did not deprive that person of access to FSU's educational resources. FSU therefore cannot punish the flyer distribution as discriminatory harassment.

Nor do the posters amount to unprotected true threats. A "true threat" is a statement through which "the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals[.]"¹⁶ and requires that the speaker consciously disregard a substantial risk that their speech would place another in fear of serious *physical* harm.¹⁷ Here, the speech does not on its face or in context indicate that the speaker intends to engage in any form of violence. That the complainant felt threatened is insufficient. The use of offensive expression *without more* remains protected speech.¹⁸

FSU is also bound by the First Amendment when investigating "unauthorized appropriation" of another's likeness. Florida law is clear: the right of publicity does not outweigh the value of free expression.¹⁹ Indeed, Florida courts have made clear that the state's statutory prohibition on infringing another's right of publicity targets only speech which uses another's likeness in commercial expression or which violates the Family Educational Rights and Privacy Act.²⁰ Tally SDS's use of the complainant's personal information on the flyers constituted neither, and thus retains First Amendment

¹³ See *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 651 (1999).

¹⁴ *Id.*

¹⁵ *Id.* at 650.

¹⁶ *Virginia v. Black*, 538 U.S. 343, 359 (2003).

¹⁷ See *Counterman v. Colorado*, 600 U.S. 66, 79 (2023).

¹⁸ *Black*, 538 U.S. at 347–48.

¹⁹ *Tyne v. Time Warner Ent. Co., L.P.*, 901 So. 2d 802, 809 (Fla. 2005).

²⁰ 20 U.S.C. § 1232(g).

protection. Courts have protected blockbuster films²¹ and even parody baseball cards from right-of-publicity claims.²² If courts treat these explicitly profit-seeking ventures as unpunishable expression, surely Tally SDS's postings are covered by the First Amendment. FSU therefore may not punish the organization on the basis of its unauthorized use of the complainant's likeness.

Furthermore, despite administrators' averments to the contrary, students are not bound by FERPA, which only obligates the university itself. The university may not restrict students from sharing information that FERPA protects from release by the university. FERPA is structured as a contract restriction, barring institutions that receive federal funds from systematically releasing student records without their (or their parents') consent.²³ While it does create an affirmative obligation on *institutions* to comply with the law's provisions,²⁴ the law does not apply to non-systemic actions of individual students or student groups. Tally SDS does not receive federal funding. It is not an agent of FSU or any other FERPA-bound educational institution. It therefore cannot violate FERPA.²⁵ Any actions it takes cannot reasonably be considered a part of the university's policies or practices respecting student records. Thus, the university cannot punish Tally SDS or its students for violating FERPA.

Finally, if FSU is to continue its investigation, it must respect basic principles of due process. In a decision binding on FSU, an appellate court held that students subject to disciplinary sanctions at institutions of higher education must be afforded basic due process rights, including access to the evidence against them.²⁶ But such a decision should not even have been necessary, as it is unconscionable to deny accused students access to evidence that may clear their names regardless of the state of the law. In refusing to provide Glueck, Rosa, and Tally SDS with evidence depicting the events at issue, FSU has denied them the most basic due process protections. If its disciplinary decisions are to be taken seriously, the university must provide the requested video and any other exculpatory evidence to ensure Tally SDS and its members are able to prepare for future disciplinary proceedings.

FSU must take care to ensure that its disciplinary processes comply with the university's constitutional obligations. Accordingly, we request a substantive response by the close of business on September 4, 2026, confirming FSU will abide by the Constitution in its investigation, protect students' due process rights, and respond to FIRE's attached Sunshine Law request.

²¹ *Id.*

²² *Cardtoons L.C. v. Major League Baseball Players Ass'n*, 95 F.3d 959 (10th Cir. 1996); see *Tyne*, 901 So. 2d at 809 (citing *Cardtoons* as instructive when evaluating similar cases in Florida).

²³ 20 U.S.C. § 1232(g).

²⁴ *United States v. Miami Univ.*, 294 F.3d 797, 808–09 (6th Cir. 2002).

²⁵ *Cf. Mesa v. BMW of N. Am.*, 904 So. 2d 450 (Ct. App. Fla., 3d Dist. 2005) (establishing that privity is necessary between parties in a similar contract case).

²⁶ See *Dixon v. Ala. State Bd. of Educ.*, 294 F.2d 150 (5th Cir. 1961) (holding that students subject to disciplinary sanctions at public institutions of higher education must be afforded basic due process rights, including access to the evidence against them).

Sincerely,

A handwritten signature in black ink, appearing to read "Dominic Coletti", with a stylized flourish at the end.

Dominic Coletti
Program Officer, Campus Rights Advocacy.

Encl.

Cc: Kyle Griffis, Associate General Counsel

Sunshine Law Request

To whom it may concern:

This is a request for the following records pursuant to the Florida Public Records Law, Fla. Stat. §§ 119.01 to 119.15

Records Requested:

- Video footage depicting the events giving rise to the charges against Tallahassee Students for a Democratic Society, Jadyn Glueck, and Kaiden Rosa;
- Any statements from administrators used to substantiate the charges against Tallahassee Students for a Democratic Society, Jadyn Glueck and Kaiden Rosa; and
- Any other evidence FSU has used or plans to use in its pursuit of disciplinary charges against Tallahassee Students for a Democratic Society and Kaiden Rosa.

Fee waiver request: This request is made on behalf of the Foundation for Individual Rights and Expression, a nonprofit and nonpartisan organization that aims to defend and sustain the individual rights of all Americans to free speech and free thought. We request a waiver of any fees or costs associated with this request.

This request concerns a matter of public interest, specifically its interest in understanding FSU's constitutionally concerning investigation into students with Tally SDS. The records are not sought for a commercial or personal interest, but rather for the purpose of providing the public with information concerning civil liberties in higher education.

If you elect to charge a fee, please provide a cost estimate for each category of documents requested. Please also provide me with a W-9 form.

Request for expedited processing: The records pertain to a matter of public importance and current debate. Providing expedited production of the records will facilitate the public understanding of these matters before they are fully resolved. Any undue delay in production will undermine the purpose of the public records laws, which serve to allow public input and oversight of government affairs.

In any event, Florida law requires expeditious production of responsive records. The only delay permitted in the release of requested records is limited to a reasonable time to allow the custodian of the records to retrieve the records and delete those portions exempt from disclosure. *Tribune Co. v. Cannella*, 458 So. 2d 1075 (Fla. 1984).

Additionally, if any specific categories of requested records will require a significantly longer production time than those in other categories, please provide records for each category on a piecemeal basis, as they become available.

Request for Privilege Log: If any otherwise responsive documents are withheld on the basis that they are privileged or fall within a statutory exemption, please provide a privilege log setting forth (1) the subject matter of the document; (2) the person(s) who sent and received the document; (3) the date the document was created or sent; and (4) the basis on which the document is withheld.

Please note that this request does not seek a search of faculty or student email accounts or records. These requests should in no way be construed to include a review or search of email accounts, websites, or other forms of data or document retention which are controlled by students, alumni, or faculty members, nor by governmental or advisory bodies controlled by the same, except insofar as any such individuals also serve in an administrative capacity and the records were created or are held by the individual in that capacity. Any search should be limited to documents held by the administration and/or its staff members, including records created or maintained by persons acting in the capacity of administrators or staff members.

If I can be of assistance in interpreting or narrowing this request, please don't hesitate to ask.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dominic Coletti', with a stylized flourish at the end.

Dominic Coletti
Student Press Program Officer, Campus Rights Advocacy