

No. 26-11625-G

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

TAMPA BAY STUDENTS FOR A DEMOCRATIC SOCIETY, VICTORIA HINCKLEY,
SABA INDAWALA, VICKY TONG, and YUNQING ZHENG,

Plaintiffs-Appellants,

v.

RHEA LAW, MELISSA GRAHAM, and DANIELLE McDONALD,

Defendants-Appellees.

On Appeal from the United States District Court
for the Middle District of Florida
No. 8:25-cv-02752-SDM-AAS

**BRIEF OF *AMICUS CURIAE*
FOUNDATION FOR INDIVIDUAL RIGHTS AND EXPRESSION
IN SUPPORT OF APPELLANTS AND REVERSAL**

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**CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT**

Pursuant to Eleventh Circuit Rules 26.1-1 through 26.1-5 and 29-2, the undersigned counsel for *amicus curiae* certifies that in addition to those previously listed by the parties, the following listed persons and entities have an interest in the outcome of this case:

1. Foundation for Individual Rights and Expression
2. London, Ronald G.

Pursuant to Federal Rule of Appellate Procedure 26.1, counsel for *amicus* certifies that (1) *amicus* does not have any parent corporations, and (2) no publicly held companies hold 10% or more of the stock or ownership interest in *amicus*.

Dated: September 22, 2026

/s/ Ronald G. London

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TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT.....	C-1
TABLE OF AUTHORITIES.....	ii
INTEREST OF <i>AMICUS CURIAE</i>	1
STATEMENT OF THE ISSUES	3
INTRODUCTION AND SUMMARY OF THE ARGUMENT	3
ARGUMENT.....	5
I. USF Policy 6-017.VI.C.2 Violates Students’ First Amendment Rights by Imposing Guilt by Association.....	8
II. Universities Inflict Guilt by Association on Students Nationwide.	10
CONCLUSION	14
CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT	16
CERTIFICATE OF SERVICE	17

TABLE OF AUTHORITIES

Cases

<i>*Evans v. Newton</i> , 382 U.S. 296 (1966)	5
<i>Fellowship of Christian Univ. Students at the Univ. of Tex. at Dall. v. Eltife</i> , 806 F. Supp. 3d 662 (W.D. Tex. 2025), appeal docketed, No. 25- 50914 (5th Cir. Nov. 5, 2025)	1
<i>*Healy v. James</i> , 408 U.S. 169 (1972)	6
<i>*NAACP v. Claiborne Hardware Co.</i> , 458 U.S. 886 (1982)	6–7
<i>*Noto v. United States</i> , 367 U.S. 290 (1961)	7
<i>Pernell v. Fla. Bd. of Governors of State Univ.</i> , 181 F.4th 1135 (11th Cir. 2026)	1
<i>Reges v. Cauce</i> , 162 F.4th 979 (9th Cir. 2025)	1
<i>*Roberts v. U.S. Jaycees</i> , 468 U.S. 609 (1984)	5
<i>*Scales v. United States</i> , 367 U.S. 203 (1961)	7
<i>Stanford Daily Publ’g Corp. v. Rubio</i> , No. 25-cv-06618-NW, 2026 WL 2549090 (N.D. Cal. Aug. 28, 2026).....	1
<i>Tampa Bay Students for a Democratic Soc’y v. Law</i> , 832 F. Supp. 3d 1182 (M.D. Fla. 2026).....	9

<i>*United States v. Robel</i> , 389 U.S. 258 (1967)	5–6
---	-----

Statutes

Fla. Stat. § 1004.097 (2026)	7–8
CS/SB 4, ch. 2018-4, § 6, Laws of Fla.	7
CS/CS/HB 233, ch. 2021-159, § 3, Laws of Fla.	8

Rules

11th Cir. R. 28-5	3
Univ. of S. Fla., Policy 6-017.VI.C.2, Student Organizations (Mar. 26, 2008).....	3, 9

Other Authorities

<i>Bye-Bye Blacklist: Harvard Ends Attack on Single-Sex Groups</i> , FIRE (June 30, 2020)	13
<i>California State University, Chico: University Bans Spring Greek Life Recruitment</i> , FIRE	12
<i>Campus Life</i> , Univ. of S. Fla.	8
<i>Columbia University: Administration Uses Guilt by Association to Cancel Palestine Olive Harvest Festival</i> , FIRE.....	13
<i>GREEK RUINS: FIRE Calls on Bloomsburg to Restore 17 Greek Chapters Disbanded Without Due Process</i> , FIRE (June 1, 2021)	11
<i>Harvard University: Blacklisting of Final Club, Fraternity, and Sorority Students</i> , FIRE.....	13
<i>Indiana University: Suspension of All Interfraternity Council Fraternities for Unspecified Hazing Allegations</i> , FIRE.....	11
<i>Ohio University: Ban on Student Group Gatherings and Social Media Communications</i> , FIRE	10

Robert Shibley, <i>Faculty, Students Take on Harvard Admins over Final Club/Greek Org Blacklist</i> , FIRE (Nov. 4, 2016)	13
University of Maryland: <i>Guilt by Association Imposed on Fraternities and Sororities</i> , FIRE.....	11
University of Tennessee at Chattanooga: <i>Suspension of All Fraternity and Sorority Activities After Misconduct Reports</i> , FIRE (Aug. 26, 2025).....	12
Zach Greenberg, <i>Bloomsburg University Resorts to Guilt by Association to Address Fraternity and Sorority Misconduct</i> , FIRE (Mar. 29, 2021)	10
Zach Greenberg, <i>Ohio University Orders Student Groups to Stop Meeting and Talking over Social Media; Promises Arbitrary Enforcement of Ban</i> , FIRE (Nov. 13, 2019)	10
Zach Greenberg, <i>University of Maryland Quickly Lifts Blanket Suspension of Fraternities and Sororities After Litigation, Public Pressure</i> , FIRE (Mar. 21, 2024)	11
Zach Greenburg, <i>Letter from FIRE to M. Duane Nellis, President, Ohio University</i> (Nov. 12, 2019).....	10

INTEREST OF *AMICUS CURIAE*¹

The Foundation for Individual Rights and Expression (FIRE) is a nonpartisan nonprofit that defends the individual rights of all Americans to free speech and free thought—the essential qualities of liberty. Since 1999, FIRE has successfully defended First Amendment rights nationwide without regard to speakers’ views through public advocacy, targeted litigation, and *amicus curiae* filings, including in cases involving expressive rights at institutions of higher education. *See, e.g., Pernell v. Fla. Bd. of Governors of State Univ.*, 181 F.4th 1135 (11th Cir. 2026) (counsel); *Stanford Daily Publ’g Corp. v. Rubio*, No. 25-cv-06618-NW, 2026 WL 2549090 (N.D. Cal. Aug. 28, 2026) (counsel); *Fellowship of Christian Univ. Students at the Univ. of Tex. at Dall. v. Eltife*, 806 F. Supp. 3d 662 (W.D. Tex. 2025), *appeal docketed*, No. 25-50914 (5th Cir. Nov. 5, 2025) (counsel); *Reges v. Cauce*, 162 F.4th 979 (9th Cir. 2025) (counsel). In that capacity, FIRE has advocated for students and student

¹ No counsel for a party authored this brief in whole or part. Further, no person, other than amicus, its members, or its counsel contributed money intended to fund preparing or submitting this brief. Not all parties have consented to filing of this brief, and a motion for leave to file will be submitted concurrently with this brief.

groups unfairly punished merely for associating with disfavored individuals, organizations, or ideas. FIRE believes that if our nation's universities are to effectively prepare students for success in our democracy, the law must remain firmly for freedom of association and against collective punishment.

FIRE has a significant interest in this case because the district court's decision, if allowed to stand, will permit universities to punish innocent students and groups based on guilt by association. The University of South Florida (USF) did exactly that by, after expelling student organization Students for a Democratic Society (SDS), barring even former SDS members never found responsible for any misconduct from associating and advocating together on campus—including by rejecting a successor organization because of its “similar members and purpose” to SDS. Despite decades of precedent establishing that collective punishment is antithetical to the First Amendment and a free society, FIRE's experience demonstrates students and groups are often disciplined solely for their association with those accused of or responsible for misconduct. FIRE submits this brief to urge the Court to make clear that guilt by association has no place in higher education.

STATEMENT OF THE ISSUES

Whether the First Amendment permits a public university to prohibit students who have not been found responsible for misconduct from engaging in otherwise protected speech and association because they are members of and share purposes with a sanctioned student organization.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The First Amendment’s protections for free speech and association do not permit public universities to punish students based on guilt by association. Yet USF Policy 6-017.VI.C.2 bans students from engaging in expressive activities conducted with “similar members and purpose” as “[m]embers of student organizations that are suspended or expelled”—in other words, prohibiting otherwise-protected expression based solely on its similarity to others’ speech.^{2,3} The policy thus extends punishment

² UNIV. OF S. FLA., Policy 6-017.VI.C.2, Student Organizations 9 (Mar. 26, 2008) Dkt. No. 18-8 at 9 (“Members of student organizations that are suspended or expelled may not ... attempt to continue to function at the university under a new name but with similar members and purpose.”).

³ Citations to record page numbers refer to the page number that appears in the header generated by the district court’s electronic filing system. 11th Cir. R. 28-5.

beyond those responsible for misconduct to students whose protected speech and association simply *resemble* those of a sanctioned organization, contrary to the constitutional requirement of individualized culpability.

USF demonstrated that failing in this case. After expelling SDS, it barred even students never found responsible for misconduct from continuing to associate and advocate together, told SDS members they could not assemble as individuals, and rejected a proposed organization because it had “similar members and purpose” to SDS. This result is both unconstitutional and flatly at odds with Florida’s Campus Free Expression Act, which protects peaceful protest and assembly at the State’s public universities.

As FIRE’s decades of experience with similar instances of collective punishment at universities nationwide demonstrate, allowing such restrictions threatens associational rights far beyond this case. This Court should reaffirm that universities may punish unlawful conduct, but guilt by association cannot justify restricting protected speech and association. The Court must invalidate Policy 6-017 as a facially content-based and unconstitutional restraint on students’ expressive activity.

ARGUMENT

Guilt by association is fundamentally incompatible with the First Amendment because it permits the government to burden a person's speech and association based not on that person's own unlawful conduct, but on the conduct, identity, or objectives of others with whom the person associates. *See United States v. Robel*, 389 U.S. 258, 266 (1967) (invalidating law banning members of communist organizations from working at defense facilities that covered even members "unaware of the organization's unlawful" activities or who "disagree with those unlawful aims").⁴ The First Amendment's requirement that the government make individualized determinations of responsibility protects freedom of association: If the state could punish innocent people whenever their associates engage in misconduct, individuals would be forced to abandon

⁴ Freedom of expressive association is a necessary component of free speech, as it protects the "right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984). *See also Evans v. Newton*, 382 U.S. 296, 298 (1966) (discussing "the right of the individual to pick his own associates so as to express his preferences and dislikes, and to fashion his private life by joining such clubs and groups as he chooses").

lawful groups, causes, and relationships merely to avoid responsibility for the acts of others.

The Supreme Court has thus repeatedly required individualized culpability before the government may impose consequences based on association. In *Healy v. James*—itself involving a public university and a student organization—the Court held that “guilt by association alone” is “an impermissible basis” for denying First Amendment rights and that the government instead bears the burden of establishing both “knowing affiliation with an organization possessing unlawful aims and goals” and a “specific intent to further those illegal aims.” 408 U.S. 169, 185–86 (1972) (quoting *Robel*, 389 U.S. at 265).

The Court reinforced the need for individualized determination of misconduct in *Robel*. Because of the “broad range of associational activities” associated with communist party membership, the Court held, the “statute quite literally establishes guilt by association alone, without any need to establish that an individual’s association poses the threat feared by the Government in proscribing it.” *Id.* at 265–66. “This the Constitution will not tolerate.” *Id.*

In *NAACP v. Claiborne Hardware Company*, the Court applied that principle even when some members of an association actually engaged in violence, holding “[c]ivil liability may not be imposed merely because an individual belonged to a group, some members of which committed acts of violence.” 458 U.S. 886, 920 (1982). Absent proof that an individual specifically intended to further a group’s unlawful aims, the government must distinguish the wrongdoer from those engaged in protected association. *Id.* at 918–20. In so holding, the Court built on its precedent that “blanket prohibition of association with a group having both legal and illegal aims” would create “a real danger that legitimate political expression or association would be impaired.” *Scales v. United States*, 367 U.S. 203, 229 (1961). “There must be clear proof that a defendant ‘specifically intend(s) to accomplish (the aims of the organization) by resort to violence.’” *Id.* (quoting *Noto v. United States*, 367 U.S. 290, 299 (1961)).

Florida’s Campus Free Expression Act (CAFE Act) reinforces these principles by expressly protecting “all forms of peaceful assembly,

protests, and speeches.”⁵ Florida later strengthened the statute by providing that a state university may not “limit students’, faculty members’, or staff members’ access to, or observation of, ideas and opinions that they may find uncomfortable, unwelcome, disagreeable, or offensive.”⁶ The CAFE Act thus prevents state universities from punishing students and groups solely because others are offended by their choice of expression or associations. Together, these constitutional and statutory protections foreclose a university from restricting an individual’s expressive or associational rights merely because of the identity, conduct, or objectives of those with whom the individual associates; the university must instead justify any restriction based on the individual’s own conduct.

I. USF Policy 6-017.VI.C.2 Violates Students’ First Amendment Rights by Imposing Guilt by Association.

At state universities like USF, which is bound to protect the First Amendment rights of its nearly 50,000 students who participate in more

⁵ Fla. Stat. § 1004.097(1), (3) (2026); CS/SB 4, ch. 2018-4, § 6, Laws of Fla.

⁶ *See id.* § 1004.097(2)(f), (3)(f), (4)(a); CS/CS/HB 233, ch. 2021-159, § 3, Laws of Fla.

than 1,000 student groups,⁷ the principle that students may face punishment only for their own misconduct and not that of their friends and classmates is vitally important. Yet USF Policy 6-017 betrays this principle by authorizing discipline against students merely for “attempt[ing] to continue to function” as a sanctioned group “under a new name but with similar members and purpose.”⁸ Application of the Policy in this case vividly illustrates the problem.

USF expelled SDS and then barred its members—including those never found responsible for misconduct—from continuing to associate and advocate together on campus. Amended Order, Dkt. No. 55 at 8, 11 (explaining how USF banned “unaffiliated USF students, and non-students, among others” from a campus demonstration because they were affiliated with SDS members). When members asked whether they could “assemble as individuals” to pursue their advocacy, USF said they could not, and later rejected their proposed new organization because of its “similar members and purpose” to SDS. *Id.* at 1194.

⁷ *Campus Life*, Univ. of S. Fla., <https://www.usf.edu/campus-life/> (last visited Sep. 21, 2026) [<https://perma.cc/435D-XQWR>].

⁸ UNIV. OF S. FLA., Policy 6-017.VI.C.2, *supra* note 2.

The result is guilt by association in its most literal form. Students punished not for their own misconduct, but for whom they associate with and the views they pursue together. The First Amendment does not permit USF to transform discipline against an organization into a continuing restriction on the expressive and associational rights of individual students never found responsible for any misconduct.

II. Universities Inflict Guilt by Association on Students Nationwide.

Similar university efforts to impose guilt by association have threatened student associational rights at numerous institutions. At Ohio University in 2019, the university responded to hazing allegations involving a handful groups by issuing cease-and-desist orders to 14 social and athletic student organizations that prohibited their members from meeting “in any capacity, officially or unofficially” or communicating about organizational matters on social media.⁹ In 2021, Bloomsburg

⁹ Zach Greenburg, *Letter from FIRE to M. Duane Nellis, President, Ohio University*, FIRE 1–3 (Nov. 12, 2019), <https://www.fire.org/sites/default/files/2019/11/13145428/FIRE-Letter-to-Ohio-University-Nov.-2019.pdf> [https://perma.cc/TU8K-BFAM]; Zach Greenburg, *Ohio University Orders Student Groups to Stop Meeting and Talking over Social Media; Promises Arbitrary Enforcement of Ban*, FIRE (Nov. 13, 2019), <https://www.fire.org/news/ohio-university-orders-student-groups-stop-meeting-and-talking-over-social-media-promises>

University of Pennsylvania dismantled its entire fraternity and sorority system—17 student groups in total—after COVID-19 violations by just a few organizations.¹⁰ Groups in good standing with no misconduct violations were permanently expelled solely because they shared names based on the Greek alphabet. University of Maryland (UMD) likewise prohibited 32 fraternities and sororities from new-member activities and from communicating with prospective members due to unspecified misconduct allegations involving only some organizations.¹¹ Again, UMD

[<https://perma.cc/KXC5-RD3D>]; *Ohio University: Ban on Student Group Gatherings and Social Media Communications*, FIRE, <https://www.fire.org/cases/ohio-university-ban-student-group-gatherings-and-social-media-communications> (last visited Aug. 24, 2026) [<https://perma.cc/48R6-J3BE>].

¹⁰ Zach Greenberg, *Bloomsburg University Resorts to Guilt by Association to Address Fraternity and Sorority Misconduct*, FIRE (Mar. 29, 2021), <https://www.fire.org/news/bloomsburg-university-resorts-guilt-association-address-fraternity-and-sorority-misconduct> [<https://perma.cc/4B82-2BX2>]; *GREEK RUINS: FIRE Calls on Bloomsburg to Restore 17 Greek Chapters Disbanded Without Due Process*, FIRE (June 1, 2021), <https://www.fire.org/news/greek-ruins-fire-calls-bloomsburg-restore-17-greek-chapters-disbanded-without-due-process> [<https://perma.cc/38HB-LX5J>].

¹¹ *University of Maryland: Guilt by Association Imposed on Fraternities and Sororities*, FIRE, <https://www.fire.org/cases/university-maryland-guilt-association-imposed-fraternities-and-sororities> (last visited Aug. 24, 2026) [<https://perma.cc/45WN-8VN7>]; Zach Greenberg, *University of Maryland Quickly Lifts Blanket Suspension of Fraternities and Sororities After Litigation, Public Pressure*, FIRE (Mar. 21, 2024),

imposed these restrictions merely because the groups shared similar structures, names, and purposes, just as USF seeks to do with its policy.

Indiana University took a page out of the same playbook in 2025, indefinitely suspending all 27 Interfraternity Council fraternities in response to hazing allegations involving only a few organizations.¹² The University of Tennessee at Chattanooga followed suit with its own systemwide shutdown of student groups despite misconduct reports connected to only a few organizations.¹³ More recently, California State University, Chico suspended spring 2026 recruitment for every

<https://www.fire.org/news/university-maryland-quickly-lifts-blanket-suspension-fraternities-and-sororities-after> [https://perma.cc/Z6H8-GTES].

¹² *Indiana University: Suspension of All Interfraternity Council Fraternities for Unspecified Hazing Allegations*, FIRE, <https://www.fire.org/cases/indiana-university-suspension-all-interfraternity-council-fraternities-unspecified-hazing> (last visited Aug. 24, 2026) [https://perma.cc/Z6H8-GTES].

¹³ *University of Tennessee at Chattanooga: Suspension of All Fraternity and Sorority Activities After Misconduct Reports*, FIRE (Aug. 26, 2025), <https://www.fire.org/cases/university-tennessee-chattanooga-suspension-all-fraternity-and-sorority-activities-after> [https://perma.cc/6PED-6XUD].

Interfraternity Council fraternity because of previous hazing incidents, despite no hazing allegations against several of the suspended groups.¹⁴

Punishing students based on guilt by association is not confined to public universities. Harvard University punished members of single-sex organizations in 2016 by disqualifying them from a host of benefits, including leadership positions in recognized organizations, athletic teams, and institutional endorsements for Rhodes and Marshall scholarships, simply because Harvard disfavored the structure of such groups.¹⁵ In a markedly different ideological context, Columbia University canceled the student-run Palestine Olive Harvest Festival

¹⁴ *California State University, Chico: University Bans Spring Greek Life Recruitment*, FIRE, <https://www.fire.org/cases/california-state-university-chico-university-bans-spring-greek-life-recruitment> (last visited Aug. 24, 2026) [https://perma.cc/W28M-PD93].

¹⁵ *Harvard University: Blacklisting of Final Club, Fraternity, and Sorority Students*, FIRE, <https://www.fire.org/cases/harvard-university-blacklisting-final-club-fraternity-and-sorority-students> (last visited Aug. 24, 2026) [https://perma.cc/KW8T-R4YZ]; Robert Shibley, *Faculty, Students Take on Harvard Admins over Final Club/Greek Org Blacklist*, FIRE (Nov. 4, 2016), <https://www.fire.org/news/faculty-students-take-harvard-admins-over-final-clubgreek-org-blacklist> [https://perma.cc/E7HS-RK8B]; *Bye-Bye Blacklist: Harvard Ends Attack on Single-Sex Groups*, FIRE (June 30, 2020), <https://www.fire.org/news/bye-bye-blacklist-harvard-ends-attack-single-sex-groups> [https://perma.cc/Q4AB-H23F].

based on its chief organizer's alleged association with the sanctioned group Columbia University Apartheid Divest, despite that group playing no role in organizing the event.¹⁶

Despite the First Amendment's longstanding bar against collective punishment and laws like the CAFE Act explicitly protecting peaceful assembly, universities will continue to punish innocent groups and students until courts hold them accountable for proscribing mere association. USF's restrictions are even more expansive because students face expulsion not for *actually* associating with banned groups, but because their expressive and associational activities are deemed *too similar* to those of the banned groups. That punishment, and USF's policy on which it rests, cannot stand under the First Amendment.

CONCLUSION

Membership or affiliation with groups accused of or responsible for misconduct is no substitute for individual disciplinary determinations. If

¹⁶ *Columbia University: Administration Uses Guilt by Association to Cancel Palestine Olive Harvest Festival*, FIRE, <https://www.fire.org/cases/columbia-university-administration-uses-guilt-association-cancel-palestine-olive-harvest> (last visited Aug. 24, 2026) [<https://perma.cc/4HHD-7Y6X>].

courts allow universities to ban students from associating with disfavored parties, punishment readily expands from the person who committed misconduct to that person's organization, then to organizations associated with it, and ultimately to innocent individuals whose only transgression is knowing the wrong people. The First Amendment requires a different rule: Punish actual misconduct, not association. The Court should hold that USF Policy 6-017.VI.C.2 is an unconstitutional content-based restriction on protected expressive activity that the university uses to impose guilt by association on USF students.

Dated: September 22, 2026

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

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Dated: September 22, 2026

/s/ *Ronald G. London*

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CERTIFICATE OF SERVICE

The undersigned certifies that on September 22, 2026, the foregoing Brief of *Amicus Curiae* Foundation for Individual Rights and Expression in Support of Appellants and Reversal was filed with the Clerk of Court for the United States Court of Appeals for the Eleventh Circuit using the Court's CM/ECF system. The undersigned further certifies all parties in this case are represented by counsel who are registered CM/ECF users and that service of the brief will be accomplished by the CM/ECF system.

Dated: September 22, 2026

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