



## Foundation for Individual Rights in Education

601 Walnut Street, Suite 510 • Philadelphia, Pennsylvania 19106  
T 215-717-3473 • F 215-717-3440 • fire@thefire.org • www.thefire.org

Greg Lukianoff  
PRESIDENT

Robert L. Shibley  
SENIOR VICE PRESIDENT

William Creeley  
DIRECTOR OF LEGAL AND  
PUBLIC ADVOCACY

Sean M. Clark  
VICE PRESIDENT OF  
OPERATIONS

Alisha C. Glennon  
DIRECTOR OF  
DEVELOPMENT

Alan Charles Kors  
CO-FOUNDER AND  
CHAIRMAN EMERITUS

### BOARD OF DIRECTORS

Harvey A. Silverglate  
CO-FOUNDER AND  
CHAIRMAN

Barbara Bishop  
Rebecca Dunn  
Richard Losick  
Joseph M. Maline  
Marlene Mieske  
Daphne Patai  
Virginia Postrel  
Daniel Shuchman

### BOARD OF ADVISORS

Lloyd Buchanan  
T. Kenneth Cribb, Jr.  
Candace de Russy  
William A. Dunn  
Benjamin F. Hammond  
Nat Hentoff  
Roy Innis  
Wendy Kaminer  
Woody Kaplan  
Leonard Liggio  
Herbert London  
Peter L. Malkin  
Muriel Morisey  
Steven Pinker  
Milton Rosenberg  
John R. Searle  
Christina Hoff Sommers  
Lawrence H. Summers

December 18, 2013

D. Michael Carter  
Assistant Attorney General  
Administration Building, Third Floor  
351 West Chester  
Cedar City, Utah 84720

*Sent via U.S. Mail and Facsimile (435-586-5475)*

Dear Mr. Carter:

Thank you for your response to FIRE's letter of October 2, 2013. Unfortunately, your letter failed to adequately respond to our concerns. I write again to reiterate that Dixie State University's ban on the use of Greek letters in student organization names violates the First Amendment. FIRE therefore asks once again that Dixie State rescind this ban and allow the Phi Beta Pi Society to become an officially recognized student group.

In November 2012, Dixie State senior Indigo Klabanoff decided to establish a student group on campus—Phi Beta Pi—that would aim to promote philanthropy and leadership among its members. In July 2013, Director of Student Involvement & Leadership Jordon Sharp told Klabanoff that the group would not be recognized because its name included Greek letters, and Dixie State wanted to avoid conveying the image of a “party school.” Dixie State's then retroactively amended its Inter Club Council (ICC) bylaws in order to prohibit clubs from using Greek letters in their names.

The Phi Beta Pi Society chose its name to convey its goals and ideals. A student group's name is an integral part of that group's expression and allows the group to attract like-minded students. To deny a group recognition solely because of its name infringes on students' constitutionally protected rights of free expression and association.

We appreciate the importance of ensuring student safety and maintaining campus order. However, generalized concerns about student safety are an insufficient justification for restricting students' First Amendment rights. FIRE reminds you that Dixie State may employ a wide range of restrictions on student *behavior*—as opposed to student *expression*—to address the issues you cite in your letter, such as binge drinking and hazing.

Actions that are illegal or that harm students can and should be prohibited. In contrast, *speech* may be restricted only when it falls into one of the few and narrowly-defined categories of speech unprotected by the First Amendment, such as incitement to imminent lawless action or true threats. As should be obvious, the name “Phi Beta Pi” falls far outside those boundaries, and is fully protected by the First Amendment. The fact that Dixie State’s policy prohibiting the use of Greek letters in student group names was only added to Inter Club Council bylaws in response to Phi Beta Pi’s request for recognition makes plain that the policy was not instituted for safety reasons.

You argue in your letter that Dixie State’s reason for enacting the ban—avoiding a “party school” image—is “accurate [but] may be too simplistic.” Additionally, you write:

What [the ban] does, in the context of “time, place and, (in this particular instance) manner” is recognize that Greek-related organizations have a reputation for alcohol abuse, a high incidence of sex-based, alcohol-related, and hazing crimes, and various campus policy violations.

Dixie State’s objection to Greek letters based on its concern that Greek organizations would give the school a “party school” image is a clear exercise of prohibited viewpoint discrimination and an insult to Dixie State’s students. Indeed, both Director Sharp and Dean of Students Del Beatty have stated that the club would be recognized if it simply were to change its name. Yet would Dixie State bar a prospective group from being called the Dixie State Queer Alliance because the school does not approve of the reputation or activities of other groups that identify as queer? Would it bar the formation of a Dixie State Tea Party or Occupy Dixie State group because of what people identifying with those groups in other states have said or done? What about a Zionist or Palestinian group? Does Dixie State truly embrace the presumption of guilt by association?

FIRE certainly hopes not, especially since the argument that a group can be denied recognition on campus because groups with the same name have been known to violate campus policies and other laws has been refuted by our nation’s highest court. In *Healy v. James*, 408 U.S. 169 (1972), the Supreme Court rejected Central Connecticut State University’s (CCSU’s) denial of recognition to the student group Students for a Democratic Society (SDS) as unconstitutional, and rejected its argument that SDS could be prevented from organizing at CCSU because of the actions of other campus chapters. The Court unanimously stated that “‘guilt by association alone, without [establishing] that an individual’s association poses the threat feared by the Government,’ is an impermissible basis upon which to deny First Amendment rights.” *Healy*, 408 U.S. at 186 (quoting *United States v. Robel*, 389 U.S. 258, 265 (1967)). In other words, Dixie State may not infringe on Phi Beta Pi’s rights of freedom of speech and association because other organizations with Greek letters in their names engage in unwanted behavior.

Dixie State’s attempt to clothe its unlawful viewpoint discrimination in the garb of a “time, place, and manner” restriction also falls far short. As we wrote in our October 2 letter, “time, place, and manner” restrictions must be justified without reference to the message of the speech being restricted. Although you suggest by your use of the phrase “time, place, and manner” that the ban is a regulation of that type, you continue in the same sentence to justify the ban *based on the message* that Greek letters might convey. You indicate in particular that the ban is a

regulation on the “manner” with which Phi Beta Pi expresses itself. However, “manner” in the context of “time, place, and manner” restrictions refers to the medium, such as chalking on a sidewalk or yelling through a megaphone. It does not refer to the linguistic choices that a group makes, which are protected as an integral part of the group’s expression.

You also argue that to officially recognize Phi Beta Pi or other groups with Greek letters in their names would “convey a mistaken perception that such are among approved and sanctioned campus organizations, when they are not.” This fundamentally misstates Dixie State’s obligations to uphold student groups’ First Amendment rights and misunderstands the relationship of student groups to their universities. An approved student group’s expressive activity does not bear the imprimatur of the school, and a public school bound by the First Amendment is at little risk of being perceived as supporting the causes of all of its student organizations. In *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819, 834 (1995), the Court distinguished circumstances in which the university speaks for itself from situations in which the university has chosen to subsidize a wide range of private speakers, noting that “[a] holding that the University may not discriminate based on the viewpoint of private persons whose speech it facilitates does not restrict the University’s own speech, which is controlled by different principles.” In *Board of Regents of the University of Wisconsin System v. Southworth*, 529 U.S. 217 (2000), the Court noted that when the speech at issue is “financed by tuition dollars,” with “the University and its officials ... responsible for its content,” then it “might be evaluated on the premise that the government itself is the speaker,” but not when the expressive activity springs instead from student groups funded by a student activity fee intended for “the sole purpose of facilitating the free and open exchange of ideas by, and among, its students.” *Id.* at 229. Indeed, it would make little sense to impute to the school official sanction of a particular group’s message when the school is legally obligated to provide equal funding opportunities to groups with diverse and often conflicting viewpoints.

Additionally, the Supreme Court definitively stated in *Southworth* that “[w]hen a university requires its students to pay fees to support the extracurricular speech of other students, all in the interest of open discussion, it may not prefer some viewpoints to others.” Dixie State, like most colleges, has chosen to make student fees and other resources available to a wide variety of student organizations and therefore must do so on a content- and viewpoint-neutral basis.

In light of such unambiguous Supreme Court precedent, Dixie State may not use its stated interest in controlling the school’s image to block the use of Greek letters in club names. Dixie State may choose not to provide *additional* resources in support of a full Greek system, but it may not refuse to provide Phi Beta Pi with the same resources and opportunities as other recognized groups on campus because of the group’s self-identification and other expression.

Again, we remind you that Dixie State is legally and morally obligated to uphold its students’ rights to free expression and association in accordance with the First Amendment. It is also obligated to uphold its own institutional commitments to freedom of expression and association. It has failed on both counts. As we wrote in our August 19 letter to DSU President Stephen Nadauld:

Not only does Dixie State's Student Rights and Responsibilities Code acknowledge students' "constitutional and statutory rights and privileges," it also explicitly endorses students' right to "free and open discussion, inquiry, expression, and lawful assembly." Further, the Code promises that "Students have a right ... to form student organizations for any lawful purpose..." giving Phi Beta Pi the clear right to exist on campus, provided it complies with Dixie State's requirements for gaining recognition. Banning the use of Greek letters in a club's name contravenes this explicit promise of free expression and assembly and significantly oversteps Dixie State's constitutional authority. Additionally, Dixie State may not ban Phi Beta Pi from distributing flyers on campus regardless of whether it gains university recognition, as the right of Dixie State students to distribute flyers among the campus community is unquestionably protected by the First Amendment.

In attempting to shield itself from being viewed as a "party school," Dixie State University has earned a worse reputation: that of a school that does not respect its students' First Amendment freedoms. As a newly declared university, Dixie State can ill afford such a reputation. Dixie State must abandon its increasingly strained efforts to justify denying Phi Beta Pi the First Amendment rights it is owed. Dixie State must also amend its Inter Club Council bylaws in accordance with the First Amendment and, if Phi Beta Pi meets all content-neutral requirements for recognition, Dixie State must recognize the organization.

Sincerely,



Robert Shibley  
Senior Vice President

cc:

Stephen D. Nadauld, President, Dixie State University  
 Del Beatty, Dean of Students, Dixie State University  
 Jordon Sharp, Director of Student Involvement and Leadership, Dixie State University  
 Steven G. Caplin, Chair, Board of Trustees, Dixie State University  
 David Clark, Vice Chair, Board of Trustees, Dixie State University  
 Julie B. Beck, Board of Trustees, Dixie State University  
 Elisabeth Rhodes Bingham, Board of Trustees, Dixie State University  
 Christina Juarez Durham, Board of Trustees, Dixie State University  
 Hal Hiatt, Board of Trustees, Dixie State University  
 Carlos Morgan, Board of Trustees, Dixie State University  
 Jon Pike, Board of Trustees, Dixie State University  
 Max Rose, Board of Trustees, Dixie State University  
 Gail Cooper Smith, Board of Trustees, Dixie State University  
 David L. Buhler, Commissioner of Higher Education, Utah System of Higher Education  
 Bonnie Jean Beesley, Chair, Board of Regents, Utah System of Higher Education  
 Daniel W. Campbell, Vice Chair, Board of Regents, Utah System of Higher Education  
 Jesselie Barlow Anderson, Board of Regents, Utah System of Higher Education

Nina Barnes, Board of Regents, Utah System of Higher Education  
Keith Buswell, Board of Regents, Utah System of Higher Education  
Leslie Castle, Board of Regents, Utah System of Higher Education  
Wilford Clyde, Board of Regents, Utah System of Higher Education  
France A. Davis, Board of Regents, Utah System of Higher Education  
James T. Evans, Board of Regents, Utah System of Higher Education  
Marlin K. Jensen, Board of Regents, Utah System of Higher Education  
Robert S. Marquardt, Board of Regents, Utah System of Higher Education  
Erik Mikkelsen, Board of Regents, Utah System of Higher Education  
Jed H. Pitcher, Board of Regents, Utah System of Higher Education  
Robert W. Prince, Board of Regents, Utah System of Higher Education  
Harris H. Simmons, Board of Regents, Utah System of Higher Education  
Mark Stoddard, Board of Regents, Utah System of Higher Education  
Teresa L. Theurer, Board of Regents, Utah System of Higher Education  
Joyce Valdez, Board of Regents, Utah System of Higher Education  
John H. Zenger, Board of Regents, Utah System of Higher Education  
Gary Herbert, Governor, State of Utah  
Kirk Torgensen, Chief Deputy Attorney General, State of Utah