



May 9, 2022

M. Katherine Banks
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College Station, Texas 77843-1246

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

Dear President Banks:

FIRE¹ writes to you again today concerned over reports that Texas A&M University (TAMU) is attempting to exert control over the student organization Fish Camp—including reports that these planned takeover efforts extend as far as changing the organization’s stated values. These reports are particularly disappointing given that TAMU is one of the few institutions in the country whose policies earn an overall “green light” rating from FIRE. In attempting to take control of a student group, TAMU has exceeded the lawful scope of its authority under the First Amendment, which bars the university from infringing students’ expressive and associational rights.

I. TAMU Administrators Planning Take-Over of Fish Camp

The following reflects our understanding of the pertinent facts based on public information, though we appreciate you may have additional information and invite you to share it with us. Fish Camp is an orientation program for incoming freshmen at TAMU, designed to familiarize new students with university traditions and campus life.² It is organized and run by members of the registered student organization Fish Camp, with the support of two faculty advisers.³ Fish Camp’s website labels the camp “An Aggie’s first tradition,” in that attending or serving as a counselor or crew member is largely celebrated as an important experience for many

¹ As you may recall from our recent correspondence concerning the decision to decline Draggieland 2022 MSC Town Hall sponsorship, the Foundation for Individual Rights in Education (FIRE) is a nonpartisan nonprofit dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America’s college campuses.

² *Fish Camp*, TEXAS A&M UNIV., <https://fishcamp.tamu.edu/> [<https://perma.cc/D3RS-KTXY>] (last visited Apr. 27, 2022).

³ *Id.*

TAMU students.⁴ The group has not been immune to criticism, however, with concerns of an alleged culture of sexual misconduct arising in the 2021 spring semester.⁵

In fall of 2021, Fish Camp’s faculty advisers notified the group’s student leaders of changes to the organization’s operations mandated by TAMU administrators.⁶ Changes included delaying the timeline for appointing student staff, requiring administrative approval of selections for staff roles, and changing Fish Camp’s stated values from “Development, Integrity, Compassion, Unity, Continuity, Outreach, and Diversity” to “Respect, Excellence, Leadership, Loyalty, Integrity, and Selfless Service.”⁷

These changes appear unrelated to sexual misconduct concerns, and instead seem to arise from a TAMU-commissioned report from MGT Consulting and Martin+Crumpton Group, which reviewed the university’s programs, including student-run programming like Fish Camp.⁸ The October 19 report cited a “lack of oversight of student organizations” and “a lack of control over the content of [Fish Camp],” and described the importance of “balanc[ing] student autonomy with institutional oversight, such that TAMU’s values and traditions remain central, when helping to shape programmatic elements.”⁹

The changes to Fish Camp also follow criticism of the organization from the student and alumni groups the Rudder Association and the Sul Ross Group. Both groups have expressed concerns with Fish Camp’s programming, criticizing the lack of administrative control over the organization.¹⁰ Members of both also have met with high-level TAMU personnel—including vice president of student affairs Joe Ramirez, who oversees Fish Camp and other student organizations—to discuss Fish Camp and provide feedback on its programming.¹¹ Ramirez made, and has since apologized for making, changes to Fish Camp and other student organizations without first consulting the organizations’ student leaders.¹²

Despite Ramirez’s apology, students remain concerned that administrators will continue to threaten Fish Camp’s autonomy and that of other student groups. As recently as April 2022, the description of Fish Camp on TAMU’s website changed from “Fish Camp is a student

⁴ *Id.*

⁵ Myranda Campanella, *Fish Camp perpetuates culture of sexual violence*, BATTALION (Feb. 3, 2021) https://www.thebatt.com/news/fish-camp-perpetuates-culture-of-sexual-violence/article_c3823eb0-66a4-11eb-9689-bbe3fec563f0.html.

⁶ *Fish Camp Report*, STUDENT GOV’T ASS’N, TEXAS A&M UNIV. at 7 (Apr. 2022) <https://bloximages.newyork1.vip.townnews.com/thebatt.com/content/tncms/assets/v3/editorial/1/04/10426802-bb67-11ec-9f23-f32970010653/625730cd9b44d.pdf.pdf> [<https://perma.cc/D3MA-6PB5>].

⁷ *Id.*

⁸ *Comprehensive Review Final Report Texas A&M University*, MGT CONSULTING AND MARTIN+CRUMPTON GRP. (Oct. 19, 2021) [hereinafter *Comprehensive Review*] https://cache.cloud.tamu.edu/feedback/TAMU_Comprehensive_Review_10192021.pdf?_gl=1*ufzo8n*_ga*MTg0MTY5MjYwMy4xNjE4OTQzMzIy*_ga_SJ5GMN0ZQL*MTYzNTE4NzQzOC4xNS4wLjE2MzUxODc0MzguNjA.&_ga=2.215601943.1439113064.1635106960-1841692603.1618943322 [<https://perma.cc/EC7P-6M3Y>].

⁹ *Id.*

¹⁰ *Fish Camp Report*, *supra* note 6, at 13–15.

¹¹ *Id.*

¹² Myranda Campanella, *VPSA Ramirez apologizes for leaving student leaders out of communications, pledges to do better*, BATTALION (Feb. 21, 2022) https://www.thebatt.com/news/vpsa-ramirez-apologizes-for-leaving-student-leaders-out-of-communications-pledges-to-do-better/article_5aa9c052-9349-11ec-95a0-3b5a55699032.html.

organization” to “Fish Camp is a university extended orientation program supported by the student organization, Fish Camp,” a revision that appears intended to minimize the student organization’s involvement in the event.¹³ This, combined with the previous changes, has left students concerned that TAMU administrators will continue to exert control over Fish Camp, despite its status as a student-run organization.

II. The First Amendment Prohibits TAMU from Seizing Control of a Student Group

As a public university bound by both the First Amendment and its own speech-protective institutional policies to recognize the expressive and associational rights of its student groups,¹⁴ any burdens imposed on student groups must honor TAMU’s legal obligations.

The First Amendment guarantees freedom of association, which protects the “right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.”¹⁵ This right extends to students enrolled in public universities, protecting their freedom to form student groups. Courts have thus questioned restrictions on student groups’ associational rights regardless of the restriction’s origin, whether it be a university policy,¹⁶ a university president’s decision to refuse recognition to a student group,¹⁷ a university’s directive banning student group social functions,¹⁸ or university discipline for student group misconduct.¹⁹

Accordingly, when a public university burdens a student organization’s ability to engage in expressive associational activity, the university’s action must withstand First Amendment scrutiny.²⁰ Under First Amendment strict scrutiny, the university may not restrict its students’ expressive associational freedom in the absence of a compelling state interest and may only do so where the regulation is narrowly tailored to effectuate that interest.²¹

In this instance, TAMU has no compelling interest in taking over the Fish Camp event from the Fish Camp student organization, requiring administrative approval of Fish Camp staff, or redefining the event’s values. Nor can such restrictions on the expressive associational rights of Fish Camp satisfy the narrow tailoring requirement. TAMU is not curtailing only the amount of speech necessary to meet a compelling end, but rather, is restricting the student group’s very ability to define its values for itself.

¹³ Fish Camp Report, *supra* note 6, at 7.

¹⁴ *First Amendment at Texas A&M*, TEXAS A&M UNIV., <https://bit.ly/3F3AxPh> [<https://perma.cc/BDG9-WPRQ>]. As TAMU aligns itself with the First Amendment this way, principles germane to applying the First Amendment would apply equally to TAMU’s policies.

¹⁵ *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984); *see also, e.g., NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 888 (1982) (“[T]he First Amendment restricts the ability of the State to impose liability on an individual solely because of his association with another.”).

¹⁶ *Chi Iota Colony of Alpha Epsilon Pi Fraternity v. City Univ. of N.Y.*, 502 F.3d 139–140 (2d Cir. 2007).

¹⁷ *Healy v. James*, 408 U.S. 169, 174 (1972).

¹⁸ *Gay Students Org. of Univ. of N.H. v. Bonner*, 509 F.2d 652, 654 (1st Cir. 1974).

¹⁹ *Iota Xi Chapter v. Patterson*, 566 F.3d 138, 141 (4th Cir. 2009).

²⁰ *Healy*, 408 U.S. at 181; *see also, e.g., Iota Xi Chapter*, 566 at 146 (analyzing state college fraternity’s freedom of association claims).

²¹ *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 451 (2008).

Even assuming in the alternative that strict scrutiny does not apply, insofar as some out-of-circuit courts have applied a multi-factor balancing test to burdens on intimate rather than expressive associational rights of student groups,²² TAMU's takeover of Fish Camp cannot stand. As one federal appellate court explained it, the prevailing standard when analyzing the intimate associational freedoms of student social groups at state universities is as follows:²³

To determine whether a governmental rule unconstitutionally infringes on an associational freedom, courts balance the strength of the associational interest in resisting governmental interference with the state's justification for the interference. This will require an assessment of: (1) the strength of the associational interests asserted and their importance to the plaintiff; (2) the degree to which the rule interferes with those interests; (3) the public interests or policies served by the rule imposed; and (4) the tailoring of the rule to effectuate those interests or policies. The more important the associational interest asserted, and the more the challenged governmental rule burdens the associational freedom, the more persuasive must be the state's reasons for the intrusion, and the more precisely tailored the state's policy must be.

TAMU administrators' changes to Fish Camp cannot satisfy even this lesser-protective test.

A. Fish Camp has a strong interest in its associational freedoms.

Fish Camp's interest in its expressive associational freedom as a student organization is evident given the group's commitment to its particular values, mission, and organizational structure. Courts have examined the associational rights of both purely social groups and cause-oriented groups on university campuses,²⁴ and have recognized that cause-oriented groups have stronger associational rights.²⁵ Fish Camp falls into the latter category: its purpose extends beyond social events to advance a particular expressive goal—sharing Aggie values, as defined by the student organization—and thus enjoys associational rights stronger than those of purely social groups.

With respect to Fish Camp's values and mission, its rights may be analogized to those analyzed in *Boy Scouts of America v. Dale*, where the Supreme Court recognized the Boy Scouts' expressive associational rights as demonstrated by its written mission of instilling particular values in its members.²⁶ Fish Camp similarly maintains a list of values and a

²² See *Roberts*, 468 U.S. at 617–18 (recognizing two lines of cases for expressive association and intimate association, which provides slightly more leeway in university-imposed burdens on intimate, rather than expressive, association).

²³ *Chi Iota Colony of Alpha Epsilon Pi Fraternity*, 502 F.3d at 143.

²⁴ See *Iota Xi Chapter*, 566 F.3d at 141 (analyzing the associational rights of a university social fraternity); *Healy*, 408 U.S. at 169 (holding that a student chapter of Students for a Democratic Society had a cognizable associational interest in furthering students' personal beliefs).

²⁵ *Gay Students Org. of Univ. of N.H.*, 509 F.2d at 659 (holding that cause-oriented groups have stronger associational rights than purely social groups).

²⁶ 530 U.S. 640, 650 (2000).

mission of spreading those values, aiming to “welcome freshmen into the Aggie Family by sharing the traditions and values of Texas A&M University”²⁷ In furtherance of its stated values, Fish Camp effectuates this mission by teaching camp members what it means to be a TAMU student as Fish Camp defines that experience for itself and its participants. This combination of the group’s values and activities reenforces that Fish Camp exercises expressive associational rights.

In addition to its values and mission, Fish Camp maintains regular programming and activities and a leadership structure, further evincing the importance of its association to its participants. The group’s annual off-campus retreats to build relationships between students are molded by the group’s values and leadership. Between its organization and activities, Fish Camp’s expressive associational interest exceeds those of purely social groups and instead is as strong as those of other cause-oriented groups.

B. TAMU’s takeover substantially interferes with Fish Camp’s associational interests, does not further a compelling university interest, and is not narrowly tailored.

By mandating administrative approval of staff selections and changing Fish Camp’s stated values, TAMU administrators significantly burdened the group’s associational freedom. As Fish Camp’s staff dictates and carries out the camp’s operations, administrative interference with staff selections disrupts its ability to freely decide with whom its members associate, and by extension how the camp will function. Overhauling Fish Camp’s stated values further disturbs its operations, forcing members to comply with administrators’ guidelines on which beliefs around which the group will center its activities and expression, and how to convey those beliefs to members. These changes cut to the core of Fish Camp’s expressive activities and thus must be considered a serious and substantial form of interference with the group’s associational freedom.

TAMU administrators have justified rewriting the Fish Camp’s values and mandating approval for its staffing decisions based on a stated interest in aligning the group’s values more closely with those of the university,²⁸ but assimilating the views of a student organization is not a compelling interest sufficient to avoid violating its expressive and associational rights. Simply put, TAMU has justified changing Fish Camp’s values by an interest in changing the group’s values, and in this regard, the interest and the violation are one and the same.²⁹ TAMU administrators thus have not proffered any compelling interests for its takeover of Fish Camp.

Even if any such interests exist (and TAMU can articulate them, as the case law requires), taking over a student group is not a properly tailored means of advancing them. Administrators may suggest safety measures, for example, but outright changing the group’s values and imposing an administrative veto on its leadership would be far from the least

²⁷ *Fish Camp Mission*, TEXAS A&M UNIV., <https://fishcamp.tamu.edu/mission> [<https://perma.cc/QH3X-SUW3>] (last visited Apr. 27, 2022).

²⁸ Comprehensive Review, *supra* note 8.

²⁹ *Boy Scouts of Am.*, 530 U.S. at 656 (holding that forcing the Boy Scouts to engage in conduct not in accordance with the group’s values violates its freedom of expressive association).

restrictive means of advancing any stated interest. The effective takeover of Fish Camp, by rewriting its values and prescribing its staff, works to impose a severe burden on the student group's expressive association and is thus not narrowly tailored to any interest that TAMU might articulate.

III. Conclusion

Any restrictions TAMU imposes on student groups' associational rights must adhere to First Amendment limits. Here, TAMU's efforts to revoke the autonomy of Fish Camp and its student leadership represent a substantial overstep of administrators' authority that the school must reverse.

We call on TAMU to cease its efforts to wrest control of Fish Camp from its students, or, at a minimum, to identify the asserted interest it claims those efforts serve, and to narrowly tailor any intervention so that it meets the university's binding legal obligations to honor students' expressive and associational rights.

Given the urgent nature of this matter, we request receipt of a response to this letter no later than the close of business on Monday, May 23, 2022.

Sincerely,



Anne Marie Tamburro
Program Officer, Individual Rights Defense Program

Cc: Ray Bonilla, General Counsel
Joe E. Ramirez, Jr., Vice President of Student Affairs