



January 10, 2025

Nancy Hamill
Office of Campus Counsel
University of California, Santa Barbara
5128 Cheadle Hall
Santa Barbara, California 93106-2030

Sent via U.S. Mail and Electronic Mail (Nancy.Hamill@ucop.edu)

Dear Ms. Hamill:

FIRE¹ writes to follow up regarding UCSB's ban on individual students, as well as recognized fraternities and sororities, associating with unrecognized groups. These restrictions violate UCSB's current Greek Life affiliations policy and your promise to limit this policy to only those groups terminated for serious misconduct. To further UCSB's interests in preserving student safety, providing clarity to students, groups, and Greek Life administrations, and upholding students' First Amendment rights, FIRE calls on the university to rescind its affiliation ban and instead educate students about any potential safety concerns that may arise in associating with unrecognized groups.

Our concerns arise from Associate Director of Fraternity & Sorority Life Jonathan Ng's decision to ban students from even seeking to join unrecognized groups, such as the UCSB Phi Kappa Psi fraternity chapter.² Ng also stated that it "is a violation of university policy for recognized Greek-lettered organizations to participate in activities with organizations that are on probation, unrecognized, and/or terminated by" UCSB.³

UCSB currently bans recognized fraternities and sororities from "engaging in organizational events (formal or informal, regardless of location) with organizations on suspension status ...

¹ As you may recall from prior correspondence, FIRE is a nonpartisan nonprofit dedicated to defending freedom of expression, conscience, and other individual rights on America's university campuses.

² According to Phi Kappa Psi representatives, during a fall rush event, Ng warned students seeking to join Greek groups that they would face university discipline for joining unrecognized groups such as Phi Kappa Psi. The discussion here reflects our understanding of the relevant facts, though we appreciate you may have additional information and invite you to share it with us.

³ Email from Jonathan Ng, Associate Director of Fraternity & Sorority Life, to Dan Oh, Phi Kappa Psi Fraternity advisor (Nov. 8, 2024, 11:48 AM) (on file with author).

[or] closed/unrecognized due to misconduct.”⁴ You explained to FIRE that the policy “does not preclude individual friendships, just formal organizational co-sponsorship and organizational support (through group attendance) of the activities of these types of unrecognized groups.”⁵ You further stated that these restrictions further UCSB’s goal to “promote and enhance the health and safety of our campus community,” explaining there “must be accountability” for groups that commit “serious misconduct” because allowing students to affiliate with these “fallen groups” would “compromise[e] the safety and well-being of our campus.”⁶

FIRE respects UCSB’s important interest in upholding student safety by holding groups accountable for violating university rules. However, the First Amendment protects UCSB students’ rights as individuals to associate with organizations of their choosing, including potentially dangerous groups.⁷ UCSB’s interest in protecting students does not justify restricting the associational rights they otherwise enjoy as adults of society at large.⁸ Even at the grade school level, the Supreme Court has rejected limits on off-campus expressive activity, where educational institutions “will rarely stand *in loco parentis*.”⁹ UCSB’s safety interest in policing this activity is much further diminished than that of grammar schools because the *in loco parentis* doctrine “does not apply in the university setting for independent, young adults”¹⁰ where “a college is not an insurer of the safety of its students”¹¹ and has “no general duty to supervise or control their students’ conduct so as to prevent them from harming others.”¹²

Additionally, restrictions on the fundamental right to freedom of expression, especially content-based rules that turn on the types of groups being regulated,¹³ must be narrowly

⁴ *Chapter Status Reports*, Student Engagement and Leadership, UNIV. OF CAL. SANTA BARBARA, <https://seal.sa.ucsb.edu/fraternity-sorority-life/general-info/chapter-status-reports> [<https://perma.cc/W4NK-Q3YG>] (emphasis removed).

⁵ Email from Nancy Hamill, Chief Campus Counsel, to Zach Greenberg, FIRE Student Association Counsel (May 4, 2023, 7:50 PM) (on file with author).

⁶ *Id.*

⁷ *Evans v. Newton*, 382 U.S. 296, 298 (1966) (“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”); *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.”).

⁸ *E.g., McCauley v. Univ. of the Virgin Islands*, 618 F.3d 232, 245 (3d Cir. 2010) (“The idea that public universities exercise strict control over students via an *in loco parentis* relationship has decayed to the point of irrelevance.”).

⁹ *Mahanoy Area Sch. Dist. v. B.L.*, 594 U.S. 180, 189 (2021).

¹⁰ *R.W. v. Columbia Basin Coll.*, 572 F. Supp. 3d 1010, 1026 (E.D. Wash. 2021), *aff’d in part, appeal dismissed in part*, 77 F.4th 1214 (9th Cir. 2023).

¹¹ *Freeman v. Busch*, 349 F.3d 582, 587 (8th Cir. 2003).

¹² *Guest v. Hansen*, 603 F.3d 15, 19 (2d Cir. 2010) (internal quotations and citation omitted).

¹³ UCSB’s affiliation ban is content-based because it targets only Greek organizations and students seeking to associate with unrecognized Greek groups, not any other type of student group, such as political, religious, social, or athletic organizations. *See Reed v. Town of Gilbert*, 576 U.S. 155, 163–64 (2015) (content-based rules are those that differentiate between “particular subject matter,” “function or purpose,” or the “topic discussed or the idea or message expressed.”).

tailored to compelling university interests.¹⁴ That is, those regulations must be the least restrictive means of furthering the interest.¹⁵ UCSB’s blanket ban on students’ affiliating with all derecognized groups fails this test, as it does not take into account the severity of the misconduct, the duration of the sanctions, or the present danger posed to students.

For example, UCSB currently bans students from associating with SAE, even though it has been a *decade* since that organization’s most recent misconduct. Continuing to restrict the First Amendment right of students to associate with SAE members who had nothing to do with the circumstances justifying the restrictions is far from the least restrictive means of ensuring student safety. Likewise, while UCSB has the authority to punish groups for violating university rules, it may not restrict the rights of students and groups in good standing seeking to associate with these groups. Unless UCSB can demonstrate that the behavior of the members of the current SAE chapter and other banned groups presently endangers students, the continued restrictions are unjustified and cannot possibly pass constitutional muster.

Even if the First Amendment did not safeguard students’ right to associate with derecognized groups—and it does—common-sense, prudential concerns weigh in favor of allowing them to do so. In California, adult university students are free to vote, marry, make a will, serve in the armed forces, sign a lease, open a bank account, enter into legal contracts, and work as nurses, private detectives, firefighters, and ambulance drivers, among other potentially dangerous activities—none of which UCSB prohibits off-campus.¹⁶ This is perhaps why UC Davis, San Diego, Berkeley, and Merced all allow their students to affiliate with unrecognized groups, entrusting their students with helpful information about these groups so that they may make their own decisions.¹⁷

¹⁴ See *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 451 (2008) (government restrictions on freedom of association are “subject to strict scrutiny” and only upheld “if they are narrowly tailored to serve a compelling state interest”) (internal quotations omitted); *La. Debating & Literary Ass’n v. City of New Orleans*, 42 F.3d 1483, 1498 (5th Cir. 1995) (freedom of association is “a fundamental right.”) (internal citation omitted).

¹⁵ See generally *Reed*, 135 S. Ct. at 2226 (content-based restrictions “are presumptively unconstitutional” and must satisfy strict scrutiny); *Sable Commun. of Ca. v. FCC.*, 492 U.S. 115, 126 (1989) (“The Government may, however, regulate the content of constitutionally protected speech in order to promote a compelling interest if it chooses the least restrictive means to further the articulated interest.”).

¹⁶ *When You Turn 18: A Legal Survival Guide*, CAL. LAWYERS FOUND., <https://calawyers.org/wp-content/uploads/2021/07/When-You-Turn-18-A-Legal-Survival-Guide.pdf> [<https://perma.cc/TDB2-5FZR>] (detailing legal rights and freedoms of minors when they reach the age of majority in California).

¹⁷ *Organizational Conduct*, Center for Student Involvement, UNIV. OF CAL. DAVIS, <https://csi.ucdavis.edu/organizational-conduct> [<https://perma.cc/9URY-QZ3K>] (“The Center for Student Involvement recommends strongly against joining or collaborating with these groups.”); *Student Organization Case Status Summaries*, Center for Student Accountability, Growth, and Education, UNIV. OF CAL. SAN DIEGO, <https://sage.ucsd.edu/student-org/org-status.html> [<https://perma.cc/7RK8-BVWK>] (“We provide this information because we believe students and other student organizations should be able to make informed choices when pursuing ways to get involved on campus.”); *Find A Chapter*, Student Leadership and Engagement, UNIV. OF CAL., BERKELEY, <https://lead.berkeley.edu/cal-greeks/find-a-chapter> [<https://perma.cc/6R7K-VRVC>] (“Students are STRONGLY RECOMMENDED to not join these groups.”); *Fraternity & Sorority Life*, Office of Student Involvement, UNIV. OF CAL. MERCED, <https://fraternitysorority.ucmerced.edu/about> [<https://perma.cc/SNZ2-6XQ3>] (“We strongly discourage participation in unrecognized groups.”).

As one of the top universities in California, UCSB is uniquely situated to fulfill its safety goals through education instead of punishment. Using your institution's ability to arm students with information will prove a far more effective alternative than suppressing protected First Amendment activity. To this end, we recommend UCSB adopt the following changes to its policy, modeled on UC San Diego's approach, followed by a list of groups with which UCSB discourages affiliation and an explanation for this discouragement.¹⁸

Student Engagement and Leadership, Fraternity & Sorority Life, Chapter Status Reports¹⁹

The university strongly discourages students from affiliating with organizations derecognized by the university for misconduct. ~~Recognized fraternities and sororities are prohibited from engaging in organizational events (such as co-sponsorship or organization support through group attendance), regardless of location, with student organizations that are closed/unrecognized due to misconduct.~~

We provide this information because we believe students and student groups should be able to make informed choices when deciding what groups to join. Please see the following information explaining the dangers of associating with derecognized groups.

Thank you for your attention to our concerns. FIRE would be pleased to assist UCSB in revising this policy in a different way to ensure it comports with the First Amendment (free of charge, in accordance with our charitable mission), and we request a substantive response to this letter no later than close of business January 24, 2025.

Sincerely,



Zachary Greenberg
Student Association Counsel

Cc: Henry T. Yang, Chancellor
Katya Armistead, Associate Vice Chancellor, Student Life & Belonging
Margaret Klawunn, Vice Chancellor for Student Affairs
Becky Steiger, Policy Coordinator
Jonathan Ng, Associate Director of Fraternity & Sorority Life

¹⁸ *Student Organization Case Status Summaries*, supra note 17.

¹⁹ *Chapter Status Reports*, supra note 4.