

FIRE

Foundation for Individual
Rights and Expression

February 21, 2024

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 on UC Santa Barbara's proposed review of its Fraternity & Sorority Life policy, specifically its ban on these groups "engaging in organizational events (formal or informal, regardless of location)" with organizations unrecognized by the university.²

We first wrote in March 2023 about the policy's undue restrictions on students' First Amendment freedom of association,³ and you promised in May to take our concerns into account during the university's next review of the policy.⁴ You also helpfully clarified it should apply only to that subset of Greek organizations that UCSB has derecognized for misconduct, and only to formal organizational co-sponsorship and organizational support (through group attendance) of such delinquent groups' activities.⁵ This narrowed interpretation would resolve our First Amendment concerns, but we have yet to see the university make good on these important changes.

FIRE respectfully requests that UCSB promptly update the policy in accord with its binding constitutional obligation to respect students' expressive and associational rights. We would be

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

² *Student Engagement and Leadership*, Fraternity & Sorority Life, Chapter Status Reports, Closed & Not Recognized, 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).

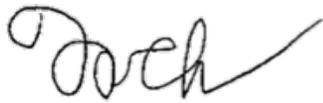
³ FIRE Letter to Univ. of Cal., Santa Barbara (Mar. 21, 2023) (enclosed).

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

⁵ *Id.*

pleased to assist in making this revision, and we request a substantive response to this letter no later than close of business March 6, 2024.

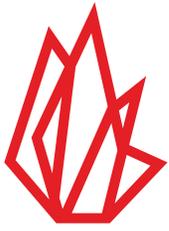
Sincerely,

A handwritten signature in black ink, appearing to read "Zach", with a long, sweeping flourish extending to the right.

Zachary Greenberg
Senior Program Officer, Student Organizations, Campus Rights Advocacy

Cc: Henry T. Yang, Chancellor
Margaret Klawunn, Vice Chancellor for Student Affairs
Chris Pizzinat, Executive Director of Development

Encl.



FIRE

Foundation for Individual
Rights and Expression

March 21, 2023

Henry T. Yang
Office of the Chancellor
University of California, Santa Barbara
5221 Cheadle Hall
Santa Barbara, California 93106

Sent via U.S. Mail and Electronic Mail (henry.yang@ucsb.edu)

Dear Chancellor Yang:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned by UC Santa Barbara's ban on recognized fraternities and sororities affiliating with unrecognized organizations. This policy violates students' First Amendment right to association and must be revised.

UC Santa Barbara maintains a Fraternity & Sorority Life policy stating that "[r]ecognized fraternities and sororities are prohibited from engaging in organizational events (formal or informal, regardless of location) with closed/unrecognized organizations."² The ban extends to groups on "suspension status" and "interim suspension status."³ The university lists several banned Greek organizations and adds that "[t]hese organizations are in no way affiliated with the campus and do not enjoy any of the privileges associated with organization registration/recognition."⁴

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."⁵ This freedom extends to public university students, protecting

¹ For more than 20 years, FIRE has defended freedom of expression, conscience, and religion, and other individual rights on America's college campuses. You can learn more about our recently expanded mission and activities at thefire.org.

² *Student Engagement and Leadership, Fraternity & Sorority Life*, 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).

³ *Id.*

⁴ *Id.*

⁵ *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.").

their right to associate not only with recognized students groups, but also social groups on and off campus.⁶ Accordingly, when a public university burdens the ability of a student organization to engage in associational activities, those restrictions must withstand First Amendment scrutiny.⁷

UC Santa Barbara's authority to regulate student organizations is limited by its affiliation with these groups.⁸ When these recognized groups violate institutional rules, the university may punish them by revoking these privileges.⁹ However, unrecognized student groups stand on equal footing with any other organization in the broader university-area community. A university can no more prohibit students from associating with a formerly recognized group than it can bar membership in the local rotary club or theater ensemble.¹⁰ UC Santa Barbara must allow its students to exercise their First Amendment right to host events with local social groups, including unrecognized Greek organizations, just as it must allow students to associate with any other organization unaffiliated with the university.

Additionally, UC Santa Barbara's Fraternity & Sorority Life policy bans a host of student expressive activity protected by the First Amendment. The ban extends to all "organizational events (formal or informal, regardless of location)," defined by the university as "any event/activity a reasonable observer would associate with the fraternity or sorority."¹¹ The virtually unlimited array of fraternity or sorority activities encompassed by these broad, vague

⁶ See, e.g., *Healy v. James*, 408 U.S. 169, 183 (1972) (establishing that student groups at public universities possess associational freedoms); *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"); *Iota Xi Chapter v. Patterson*, 566 F.3d 138, 146 (4th Cir. 2009) (analyzing state college fraternity's freedom of association claims); *Chi Iota Colony of Alpha Epsilon Pi Fraternity v. City Univ. of N.Y.*, 502 F.3d 136, 143 (2d Cir. 2007) (same).

⁷ See *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 451 (2008) (government restrictions on freedom of association are "are subject to strict scrutiny" and are 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).

⁸ *Statement of Relationship between the University of California, Santa Barbara and Social Fraternities & Sororities*, UNIV. OF CAL. SANTA BARBARA, (Sept. 1, 2020), <https://seal.sa.ucsb.edu/media/195> [<https://perma.cc/RRF4-BAWM>] (discussing the responsibilities and benefits of university recognition).

⁹ *Id.*

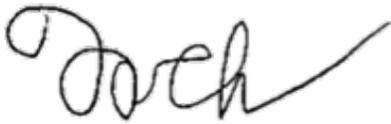
¹⁰ *Student Code of Conduct*, UNIV. OF CAL. SANTA BARBARA, at 5-6 (2020), https://www.sa.ucsb.edu/docs/default-source/default-document-library/conduct-code-fall-2020_final.pdf?sfvrsn=fada724f_0 [<https://perma.cc/J3TZ-ZM4L>] (explaining how UC Santa Barbara's jurisdiction is limited to matriculated students and university recognized groups, with narrow exceptions for off-campus conduct); see also, e.g., *Guest v. Hansen*, 603 F.3d 15, 21 (2d Cir. 2010) ("Under New York law, colleges have no legal duty to shield students or their guests from the harmful off-campus activity of other students."); *Hartman v. Bethany Coll.*, 778 F. Supp. 286, 291 (N.D. W. Va. 1991) ("It would not be consistent with the caselaw in this area to impose a duty upon colleges to supervise their students when they leave the college campus for non-curricular activities. It would also not be consistent with the settled expectations of students, parents or colleges.").

¹¹ *Statement of Relationship*, *supra* note 8.

definitions includes organizing political protests,¹² wearing Greek letters,¹³ hosting philanthropic events,¹⁴ as well as mundane student activities such as participation in library hours, group meals, and organizational rituals, regardless of any connection to the university. By banning a host of expressive activity protected by the First Amendment—divorced from university interests in student safety or pedagogy—UC Santa Barbara impermissibly restricts students’ free speech rights.

While UC is free to *discourage* students from associating with unrecognized or delinquent groups, it may not *ban* them from doing so. FIRE would be pleased to work with your administration to revise this policy to ensure compliance with the First Amendment and protection of students’ expressive rights. We request a substantive response to this letter no later than the close of business on April 4, 2023.

Sincerely,



Zachary Greenberg
Senior Program Officer, Student Organizations, Campus Rights Advocacy

Cc: Danielle Quinones-Ortega, Director, Student Engagement & Leadership
Jonathan Ng, Associate Director, Fraternity & Sorority Life
Nancy Greenan Hamill, Chief Campus Counsel

¹² See *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 186–87 (1999) (holding the First Amendment’s protection is “at its zenith” when political speech is at issue) (internal quotations and citations omitted).

¹³ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 505–06 (1969) (holding the First Amendment protects students’ expressive clothing).

¹⁴ See generally *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226 (2015) (content-based restrictions “are presumptively unconstitutional” and must satisfy strict scrutiny); *Iota Xi Chapter of Sigma Chi Fraternity v. George Mason University*, 993 F.2d 386, 389–90, 392 (4th Cir. 1993) (holding the First Amendment protects students’ distasteful and offensive expressive events).