



March 30, 2026

Stephen M. Silver
Office of General Counsel
California State University, Chico
401 Golden Shore
Chico, California 90802

Sent via U.S. Mail and Electronic Mail (ssilver@calstate.edu)

Dear Mr. Silver:

FIRE appreciates California State University, Chico's March 20 response to our enclosed March 3 letter regarding the ban on fraternities' spring 2026 recruitment. However, we remain concerned about how the restriction burdens students' and fraternities' associational freedoms, and again call on Chico State to lift this ban.

In expounding on the First Amendment freedom to associate, the Supreme Court has recognized that infringement on that right "can take a number of forms."¹ One of these is guilt by association.² More than fifty years ago, in *Healy v. James*, the Supreme Court held a public college violated the First Amendment when it refused to recognize a chapter of Students for a Democratic Society due to the national organization's "published aims ... which include disruption and violence."³ The case arose at a time when a "climate of unrest prevailed on many college campuses," including "widespread civil disobedience ..., accompanied by the seizure of buildings, vandalism, and arson," and the Court recognized that SDS chapters had often served as "a catalytic force" for that unrest.⁴ But the Court also declared 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."⁵

¹ *Am. for Prosperity Found. v. Bonta*, 594 U.S. 595, 606 (2021). You contend that "university decisions are owed substantial deference as long as they are rooted in academic considerations and do not constitute viewpoint discrimination." This is not supported by First Amendment jurisprudence, as viewpoint neutrality alone does not foreclose constitutional harm. See *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 662 (1994) (content-neutral restrictions on speech are subject to intermediate scrutiny, accord *United States v. O'Brien*, 391 U.S. 367, 377 (1968)). We have not been able to find any case law on point suggesting that viewpoint-neutral restrictions enjoy a more deferential standard of review by simple virtue of having academic considerations.

² *Healy v. James*, 408 U.S. 169, 185–86 (1972).

³ *Id.* at 174–75, n.4, 181.

⁴ *Id.* at 171.

⁵ *Id.* at 186 (cleaned up).

This principle is particularly instructive here. Under Chico State’s ban, *all* IFC-affiliated fraternities—even those not accused of any crime or policy violation—are enjoined from recruiting new members for an entire semester solely because of the alleged actions of *other* fraternities and their members. As you likely would agree, there is no demonstrable danger posed by the mere fact that the fraternities are affiliated with IFC. Yet *Healy’s* precedent plainly requires that danger to exist to justify burdening their associational rights.

Chico State characterizes this as a “protective decision designed to prioritize student safety while fraternity chapters work with the University” and an “opportunity.” Even if Chico State did not subjectively intend to “punish” all IFC fraternities, the First Amendment also protects students from “protective” and non-punitive restrictions on their speech and association rights⁶ without individualized evidence of wrongdoing. And this directive is demonstrably restrictive, imposing significant practical deprivations.⁷ IFC fraternities cannot find new recruits to replace outgoing seniors. This impairs their ability to collect dues, and, for fraternities that rely on full housing occupancy, rent, which consequently threatens a fraternity’s financial sustainability. This hardly possesses the earmarks of an “opportunity.”

In your letter, you defend Chico State’s approach to collective punishment because “[t]he University’s decision impacted only the organizations affiliated with the IFC, of which there are currently only seven.” But collective punishment offends traditional notions of justice even if it affects only one innocent actor. That its scope has not metastasized to the greatest imaginable extent is no justification.

As is so often the case when fundamental principles of justice are involved, though, it is not even necessary to fully grasp the legal and logical ramifications of Chico State’s policy to understand why it represents a manifest injustice; one need go no further than considering the matter from the point of view of one student adversely affected. Knowing that he did not engage in hazing and has not even been accused of it, he nevertheless sees that those in places of respect and authority over him feel free to punish him anyway. This cannot help but make him cynical or bitter about the motives and methods of those in authority—and that is the best-case scenario.

And while you assure us, “If organizations do not wish to be affiliated with the University, or want to sever ties, they are also free to do so,” that rationale is also flawed since it is not as voluntary as you suggest. By imposing these severe restrictions, Chico State thrusts fraternities into the danger of having to choose between two evils: disband due to insufficient membership and funding, or continue to recruit and survive by disaffiliating from the university. This Hobson’s choice only reinforces the punitive effects of the recruitment ban.

⁶ See *Ariz. Students’ Assoc. v. Ariz. Bd. of Regents*, 824 F.3d 858, 868 (9th Cir. 2016) (recognizing “withholding ... a benefit” and “causing pecuniary harm” as impermissible First Amendment infringements).

⁷ Chico State’s own policies recognize forfeiture of recruitment participation as a punishment, so the non-punitive label does little to change the punitive character of the act. *Recognized Student Organization 2025-2026 Handbook*, RSO Policies, Recognition Statuses: FSL Specific Sanctions, Suspension, CAL. STATE UNIV., CHICO, 33, https://www.csuchico.edu/sll/_assets/documents/rso-handbook-2526.pdf (last updated Summer 2025) (“Chapter under suspension forfeits ... Ability to participate in official recruitment new member education/intake process.”).

FIRE appreciates Chico State's interest in eliminating hazing, but any responsive measures must not burden the associational rights of individuals and fraternities uninvolved in such conduct. We are relieved to hear that you take these concerns seriously and would be pleased to assist in any way we can to ensure Chico State's institutional interests can be met without burdening students' expressive rights.

Sincerely,



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Encl.