



Foundation for Individual Rights in Education

210 West Washington Square, Suite 303 · Philadelphia, PA 19106

Tel: 215-717-3473 · Fax: 215-717-3440 · fire@thefire.org · www.thefire.org

Alan Charles Kors
CHAIRMAN

Harvey A. Silverglate
VICE CHAIRMAN

Erich Wasserman
EXECUTIVE DIRECTOR

Greg Lukianoff
DIRECTOR OF LEGAL AND
PUBLIC ADVOCACY

BOARD OF DIRECTORS

William J. Hume
Alan Charles Kors
Joseph M. Maline
Michael Meyers
Marlene Mieske
Daphne Patai
Virginia Postrel
Harvey A. Silverglate
Ed Snider
James E. Wiggins
Kenny J. Williams (d. 2003)

BOARD OF ADVISORS

David Brudnoy
Lloyd Buchanan
T. Kenneth Cribb, Jr.
Candace de Russy
William A. Dunn
Benjamin F. Hammond
Robert E. Hanrahan, Jr.
Nat Hentoff
Roy Innis
Wendy Kaminer
Woody Kaplan
Leonard Liggio
Herbert London
Peter L. Malkin
Milton Rosenberg
John R. Searle
Ricky Silberman
Christina Hoff Sommers

July 23, 2004

Chancellor James Moeser
University of North Carolina at Chapel Hill
103 South Building
Campus Box 9100
Chapel Hill, North Carolina 27599-9100

Sent by U.S. Mail and Facsimile (919-962-1647)

Dear Chancellor Moeser,

For the second time in two years, FIRE finds itself in the position of writing to the University of North Carolina at Chapel Hill on behalf of a religious student group that is suffering from discrimination at the hands of your administration. In December 2002, as you will no doubt recall, UNC attempted to force the InterVarsity Christian Fellowship, a campus student group, to remove a provision of its constitution that required that the officers of that Christian group be Christian. After FIRE publicly exposed UNC's unconstitutional and illiberal actions, UNC quickly relented. When FIRE announced this reversal on its website in January 2003, we wrote that your decision had restored the rights of religious liberty, free expression, and free association at UNC "for now." Less than two years later, the actions taken by UNC against the Alpha Iota Omega Christian fraternity make that "for now" unfortunately prescient.

This is our understanding of the facts, gathered from student accounts and additional documents. Please correct any factual misunderstandings, if any exist. On September 31, 2003, Segun Olagunju, who was then president of the Alpha Iota Omega Christian fraternity (AIO), met with Jonathan Curtis, UNC's assistant director for student activities and organizations, to discuss his concerns about the group's application for recognition. Specifically, Olagunju and AIO objected to Part C of the "What You Need to Know" section of the application, which reads, "The organization must comply with University policies, including university policies on non-discrimination...[M]embership and participation in your

organization must be open without regard to age, race, color, national origin, religion, disability, veteran status, or sexual orientation.”

The members of AIO justifiably felt that the section of this clause preventing the fraternity from choosing its members on the basis of religion would hinder its ability to maintain its character as a group of believing and practicing Christian students. According to sources at AIO, Olagunju offered to submit the fraternity’s application along with an addendum objecting to the provision in the application that prohibits the use of religious affiliation as a criterion for membership. Curtis refused, informing Olagunju that the addendum would be unacceptable and that AIO was required to agree to the clause or face refusal of recognition. (Please note that Jonathan Curtis is the very same administrator who, in 2002, informed the InterVarsity Christian Fellowship that its leadership requirement violated the university’s policy on religious discrimination—a decision that you later reversed.) AIO refused to submit the application containing the nondiscrimination clause. The University subsequently withdrew the group’s recognition and froze its university account and web access.

As FIRE made clear during the InterVarsity case in 2002, forbidding a religious group the right to limit its membership to those who share its religious identity denies its members the rights of freedom of association, freedom of expression, and the free exercise of religion—all of which are constitutional rights that UNC, as a state institution, is legally obligated to uphold. Furthermore, to insist that a religious student organization not discriminate on issues of faith imposes upon them an ideology alien to their conscience, in violation of their moral, constitutional and, indeed, human rights.

UNC simply may not use its nondiscrimination policy to dictate how religious student organizations must deal with matters of faith. If UNC allows expressive organizations to exist at all on its campus, then it must allow religious organizations to exist, to select their own members, and to establish policies and practices in pursuit of their goals. No group can control the content of its message if it is unable to choose its messengers. The U.S. Supreme Court reaffirmed its commitment to this principle in *Boy Scouts of America v. Dale* (2000). In this decision, the U.S. Supreme Court pointed out that “implicit in the right to engage in activities protected by the First Amendment is a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.” This right, the Court proclaimed, is “crucial in preventing the majority from imposing its views on groups that would rather express other, perhaps unpopular, ideas.” Consequently, the Court held that **“forced inclusion of an unwanted person infringes the group’s freedom of expressive association if the presence of that person affects in a significant way the group’s ability to advocate public or private viewpoints.”** (Emphasis ours.)

Forced inclusion of non-Christians into a Christian organization seriously compromises the organization's ability to advocate its viewpoints. AIO defines its mission as, "to train Christian leaders...by upholding the Bible's true standard of righteousness." This mission would necessarily be compromised were the organization forced to admit non-Christians or those actively hostile to Christianity as members. FIRE would likewise oppose attempts to make the college ecology club admit members who despise environmentalism, or the College Democrats open the membership of their group to staunch Republicans. Surely UNC understands that the primary reason that people join groups at all is to unite with individuals who share a common cause and purpose. Forcing groups to include those who do not share that cause and purpose is not only immoral, but absurd, and ignores the fundamental reason people join groups in the first place.

UNC, as a state institution of higher education, cannot and must not forbid religious student organizations from determining their membership based on issues of faith. A Muslim organization has a right to be Muslim. A Jewish organization has a right to be Jewish. A Christian organization has a right to be Christian. It is tyranny, not tolerance, to prohibit such voluntary associations. At public universities, it is also a denial of core constitutional rights. UNC may not dictate the beliefs of its students, nor may it prohibit the exercise of those beliefs. As Justice Jackson concluded more than fifty years ago in *West Virginia Board of Education v. Barnette* (1943), "if there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what will be orthodox, in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." UNC administrators, as agents of the state of North Carolina, are indeed such officials. Students at UNC are entitled to the full protections of the U.S. Constitution, including the right to exclude from religious student groups those who would hinder their ability to convey their message.

FIRE had hoped that after your 2002 decision to recognize the InterVarsity Christian Fellowship, UNC would recognize the impropriety of applying its nondiscrimination policy to groups whose expressive purpose would conflict with certain parts of that policy. Indeed, this spring FIRE successfully concluded a case at Purdue University in Indiana involving a group similar to AIO. In that case, Purdue had threatened to derecognize a women's Christian cooperative housing group, the Stewart Cooperative, because it required that its membership be Christian and adhere to certain Christian standards of morality. FIRE intervened with a letter to Purdue's president, who quickly assured us that the Stewart Cooperative and other religious groups would be exempted from this policy. As a result, faith-based groups at Purdue are now given the opportunity to request exemptions from the university's standard nondiscrimination policy. A copy of a memo from Purdue's dean of students that reflects this policy is attached to this letter.

FIRE requests that the University of North Carolina at Chapel Hill act immediately to correct this injustice by restoring the members of the Alpha Iota Omega Christian fraternity, and other

faith-based groups denied recognition under this policy, to the essential rights of freedom of religion, expression, and association guaranteed by the U.S. Constitution. We further request that UNC establish a clear policy stating that groups with an expressive purpose may choose their membership on the basis of beliefs that reflect that purpose, and that to the extent to which the discrimination policy violates this principle, expressive groups will be exempted from it. Honoring the rights of its students does not mean that the University of North Carolina at Chapel Hill endorses the particular message of any particular student group—it signifies only that the university recognizes and respects the basic liberties that are to be shared by all Americans. FIRE is hopeful that this matter will be resolved with fairness and common sense.

We look forward to hearing from you.

Sincerely,

A handwritten signature in black ink that reads "Robert L. Shibley". The signature is written in a cursive, flowing style.

Robert L. Shibley
Program Officer

cc:

Robert Shelton, Executive Vice Chancellor and Provost, UNC-Chapel Hill

Melissa Exum, Dean of Students, UNC-Chapel Hill

Jonathan Curtis, Assistant Director for Student Activities and Organizations, UNC-Chapel Hill

Leslie Chambers Strohm, General Counsel, UNC-Chapel Hill

Trevor Hamm

Segun Olagunju

Encl.

TO: Fraternity, Sorority, and Cooperative Housing Presidents and Advisors
FROM: Pablo Malavenda, Associate Dean of Students
DATE: January 20, 2004
RE: Student Organization Constitutions

To remain in good standing with the Office of the Dean of Students, you must submit an updated constitution, which complies with current *University Regulations*. Our records indicate that your constitution is outdated and not in compliance with current *University Regulations*. Your constitution must contain two specific statements, word-for-word. The statements are as follows:

1. In the definition of membership clause: *Membership and participation are free from discrimination based on race, religion, color, age, national origin or ancestry, marital status, parental status, sexual orientation, disability, or status as a disabled or Vietnam-era veteran.*
2. In the amendments clause: *All amendments to the constitution and bylaws are subject to the approval of the Office of the Dean of Students.*

Since you are a faith based student organization, we recognize that you may have issues with one or more items in the above mentioned membership statement. Please review the membership statement carefully with your entire membership. If you indeed wish to omit one or more items from the statement for inclusion in your constitution, please submit your request in writing to me with your updated constitution. I recommend you take this opportunity to review your whole constitution with your entire membership. To expedite the approval of your revised constitution, please note the following:

- Have the two required statements in your constitution (Please note: Due to the nature of your organization, you have the right to remain a single-gender organization; therefore, "sex" has already been omitted from the above Membership Clause).
- Make sure you as the president and your advisor sign and date the revised constitution after proper approval from your membership.
- If your organization grants varying levels of memberships (e.g., Active, Associate, Honorary, etc.) that are open to non-students, then there needs to be a statement conveying that only Purdue University student members can vote or hold office.
- Beware of language such as, "upon the approval of the advisor." Advisors may not have veto power (see *University Regulations*, Part 7, Section III, C). Do not have the advisor break ties. Advisors may not vote.

Failure to comply with the revised current *University Regulations* including the membership statement may result in the deactivation of your organization. The DEADLINE to submit your revised constitution is 5:00 p.m., FRIDAY APRIL 16, 2004. Please submit your revised constitution to Student Activities and Organizations, Schleman Hall, Room 250.

If you have any questions pertaining to this memo or issues with this process, please do not hesitate to contact me at 494-1232 or sao@purdue.edu.