



## Foundation for Individual Rights in Education

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December 1, 2004

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*Sent by e-mail, U.S. Mail, and Facsimile (225-578-9441)*

Dear Dean Price:

Thank you for your thoughtful response to our November 11, 2004, letter regarding the Muslim Students Association (MSA) at Louisiana State University. We deeply appreciate your genuine effort to address the issues raised in our letter. I am hopeful that we can resolve this matter in a way that is appropriately respectful of both the university's professed desire for "equal opportunity" and the MSA's constitutional freedoms.

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This letter has two parts. In the first, FIRE more completely outlines the MSA's concerns and highlights the differences between the MSA's position and the university's position as outlined in your November 22, 2004, letter. The second part of the letter will propose a range of solutions, including those that have been adopted in the face of similar controversies at other major state universities. Again, please do not hesitate to inform us of factual errors, if any exist.

### **The Muslim Students Association's Concerns**

***The MSA has not been allowed to reserve spaces on campus.***

First, you state in your letter that a registered group "may also use facilities under the same guidelines as a group that is not registered with the University might." According to MSA leaders, the MSA successfully registered to use the LSU Union for its weekly "Dawah Tables" in the fall of 2004; however, once administrators realized that the group was not officially recognized, the university revoked its permission. The MSA also reports that since the fall of 2003, it has not been able to reserve space for its bi-annual Eid festivals, one of which occurs

at the end of the month of Ramadan and the other at the end of the annual Hajj, or pilgrimage, season. The MSA was able to reserve these spaces prior to losing its recognition in fall of 2003.

***The fact that other groups have adopted LSU's policy is irrelevant to its constitutionality.***

You also mention that “several other religious organizations have complied with the University’s nondiscrimination policy.” The fact that these organizations have chosen to do so is irrelevant to the policy’s constitutionality. Religious organizations are free to define themselves as they choose, and, as you know, religious students are diverse in their beliefs about various issues, including sexual preference. Other student organizations’ decisions to adopt the nondiscrimination clause are part of their expressive right and represent their judgment that the nondiscrimination policy is compatible with their religious identity. The MSA’s case should be considered without regard to the theology and practice of other religious organizations.

***The MSA should not be forced to emphasize its beliefs regarding sexual orientation and practice.***

You mention in your letter that you suggested that the MSA revise its constitution to include the university’s nondiscrimination clause, and then add an additional statement regarding Islamic practices and beliefs about sexual orientation. In particular, you stated that you told MSA leaders that “MSA was free to state in its constitution the belief that homosexual conduct was counter to the teachings of Islam, and to even state its belief that such conduct was morally wrong.”

By including the university’s nondiscrimination clause in its constitution, the MSA would implicitly be forced to adopt a particular ideological understanding of “diversity” and “sexual preference” that the university has imposed on students. In adopting such a clause, the MSA would be transforming its constitution into a form of expression that does not reflect its intended message. Even the use of the term “sexual orientation” implies a point of view about sexuality with which the MSA may or may not agree. If the MSA wished to address the issue of sexual orientation as part of its mission, surely it would already have done so. Including a statement about sexual preference is not consistent with the MSA’s desire to convey the particular message of Islam that they have conveyed for the past 30 years as a recognized group on campus.

The university’s proposal therefore forces the MSA to express not just one, but two statements that would otherwise never have been included in its constitution. Simply put, the MSA has a right to silence on this issue, as well as a right to frame the relevant issues within the totality of the Islamic faith and not merely as a response to a line-item in a university nondiscrimination policy.

***The MSA already has a “nondiscrimination” policy.***

Part of the current mission of the MSA is to “present Islam to people on LSU campus as a complete way of life” and to “promote friendly interactions between Muslims and non-Muslims.” This mission includes ways of addressing questions of religious diversity and sexuality, among other issues. The MSA should be free to approach these according to the

teachings of their faith instead of being forced to address them by a clause in a university policy. Likewise, the MSA should not have to fear that it may be violating an unlawful university policy when addressing matters related to faith.

The current constitution of the MSA also already states that it does not deny membership “on the basis of race, color, sex, national origin, disability, marital status, or veteran’s status.” There is no legitimate state interest in forcing a religious group to violate its principles and explicitly add the two additional factors of “religion” and “sexual preference” to its constitution’s nondiscrimination statement.

*The FIRE cases you highlight are different from this one.*

We appreciate your efforts to compare this case with other, similar, cases at major state universities. However, it is important to note that in each case, the universities ultimately agreed to *explicitly* guarantee the right of religious organizations to choose their leaders and/or members according to the tenets of their faith. LSU’s policy does not explicitly grant religious organizations this basic right.

*LSU is violating its own principle of “equal opportunity” through this policy.*

You state that you are “charged with striking proper balance between equal opportunity and the array of freedoms that we all constitutionally enjoy.” With regards to “equal opportunity,” the law clearly demonstrates the breadth of the MSA’s fundamental First Amendment freedoms. LSU is required to grant religious organizations equal access to campus facilities (*see Widmar v. Vincent*, 454 U.S. 263 (1981)), and it is also required to grant religious organizations equal access—on a viewpoint neutral basis—to student fee funding. *See Rosenberger v. University of Virginia*, 515 U.S. 819 (1995) and *Board of Regents v. Southworth*, 529 U.S. 217 (2000). Moreover, LSU cannot compel the MSA to include members who would contradict the expressive purpose of the group. *See Hurley v. Irish-American Gay, Lesbian and Bisexual Group*, 515 U.S. 557 (1995) and *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000). In summary, LSU cannot require private student groups to conform to LSU’s “message” or “mission”—embodied by the disputed parts of the non-discrimination policy—as a precondition for receiving recognition, benefits, or facilities access. *See Healy v. James*, 408 U.S. 169 (1972).

The issue in this case is not “status”—it is conduct and belief. The MSA is not discriminating on the basis of immutable characteristics like gender or race but is instead simply applying faith-based criteria to faith-critical decisions. Obviously there is nothing about being black or white, male or female that would prohibit someone from embracing Islam, but, for example, a belief that there is more than one God would. The MSA is not asking for “permission to discriminate.” It is simply protecting its right to practice its faith.

No federal, state, local, or university statute, policy, or regulation can trump the exercise of First Amendment rights guaranteed by the United States Constitution. This is a basic statement of constitutional law, but universities have confused their obligations under Title IX and Title VI to such an extent that last year the U.S. Department of Education’s Office of Civil Rights was forced to issue a letter (**attached**) that clearly and unequivocally stated that these statutes cannot

be read to require universities to enact policies that violate the First Amendment. Essentially, there is no regulation that mandates that LSU not recognize a Muslim group like the MSA for adopting policies consistent with its faith, and there is compelling case law that indicates the Constitution, in fact, forbids LSU's actions.

### **The Solution: Explicitly Permit Religious Organizations to Use Religious Criteria When Making Religious Decisions**

LSU should make explicit what you state is implicit in its regulations. That is, the right of religious organizations to make decisions based on religious criteria should be explicitly and clearly protected in your student organization policies. FIRE suggests two alternative policy formulations that would resolve this issue while preserving the university's interest in equal opportunity. Either of the suggested resolutions will guarantee the First Amendment rights of all religious groups and increase the intellectual and religious diversity of the campus community.

We first suggest that you add the following language to your student organization policy:

“The University recognizes an affirmative First Amendment obligation to provide religious student organizations with access to campus facilities and student activity fee funds on a viewpoint-neutral basis. Further, the University recognizes that religious student organizations themselves enjoy protected status under University nondiscrimination policies. It is thus a constitutional and policy imperative that the University permit religious student organizations to maintain their distinctive religious character, and any nondiscrimination policy that prevents members of religious organizations from utilizing their religious convictions in connection with the conduct and governance of a religious student organization would itself be discriminatory. Therefore, no portion of the University's nondiscrimination policy may be read to prohibit religious student organizations from utilizing religious criteria when making religious decisions – including but not limited to decisions regarding the selection and conduct of group leaders.”

This language, if adopted, would not only address the constitutional problems presented by LSU's current policies, but also serve as a model formulation of constitutional freedoms.

If this policy formulation is unsatisfactory, FIRE suggests that LSU follow the example of Ohio State University, one of America's largest public universities. In response to a lawsuit brought by the Christian Legal Society and to protests by the Ohio State chapter of the MSA as well as a broad coalition of Christian organizations, Ohio State added the following language to its nondiscrimination policy: “A student organization formed to foster or affirm the sincerely held religious beliefs of its members may adopt a nondiscrimination statement that is consistent with those beliefs.”

We hope that LSU will join universities like the Ohio State University in leading the nation towards creating a student organization system that nurtures rather than stifles the constitutional rights and academic freedom of each member of the university community.

Again, we are very pleased you have chosen to engage in dialogue about these issues and have used our website as a resource for other religious liberty cases. We hope to resolve this matter as promptly and amicably as possible.

I look forward to hearing from you soon.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. French'.

David French  
President

cc:

William L. Jenkins, Interim Chancellor, Louisiana State University

Risa Palm, Executive Vice Chancellor for Academic Affairs and Provost, Louisiana State University

F. Neil Mathews, Vice Chancellor, Louisiana State University

Kathleen C. White, Associate Dean, Louisiana State University

Katrice Albert, Director, Office of Multicultural Affairs, Louisiana State University

Mohammad Inamullah, General Secretary, Muslim Students Association at Louisiana State University