



# FIRE

Foundation for Individual  
Rights and Expression

October 2, 2023

Claire Ting  
Executive Vice President  
Cornell University Student Assembly  
Office of the Assemblies  
109 Day Hall  
Ithaca, New York 14853

*Sent via U.S. mail and Electronic Mail (ct499@cornell.edu)*

Dear Ms. Ting:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,<sup>1</sup> is pleased the Cornell Student Assembly exempted the LGBTQ+ student organization HAVEN from the SA's requirement that organizations supply the SA with all member names to gain funding eligibility.<sup>2</sup> We appreciate the SA recognized that the rule violates HAVEN's expressive and associational rights. Now, to ensure the equal protection of all student groups' rights, FIRE calls on the SA to abandon its reporting requirement altogether.

Our request has its genesis in the SA's unanimous adoption of Resolution 16 on September 7,<sup>3</sup> which exempted HAVEN from SA's requirement barring student organizations from receiving funds from student activity fees unless they first provide a list of an organization's members.<sup>4</sup> The SA recognized that mandatory disclosure of HAVEN members threatens to "compromis[e] sensitive information regarding students' identities," making them vulnerable to privacy violations, "identity-based discrimination, and unintended outing."<sup>5</sup> Resolution 16 protects

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<sup>1</sup> 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](https://thefire.org).

<sup>2</sup> Matthew Kiviat, *Student Assembly Passes Resolution Exempting LGBTQ Student Union From Disclosing Members' Names for Funding*, THE CORNELL DAILY SUN, Sept. 10, 2023, <https://cornellsun.com/2023/09/10/student-assembly-passes-resolution-exempting-lgbtq-student-union-from-disclosing-members-names-for-funding/> [<https://perma.cc/U85M-7FXT>].

<sup>3</sup> Res. 16: Allyship to the Cornell LGBTQ+ Community, CORNELL STUDENT ASSEMBLY (2023) <https://drive.google.com/file/d/1BtkuHiMACWpEzNdkeRlzO0Oh2w9Oa0az/view> [<https://perma.cc/2V94-M7A8>].

<sup>4</sup> Kiviat, *supra* note 2.

<sup>5</sup> Res. 16, *supra* note 3.

against these negative outcomes by exempting HAVEN from the identity-reporting requirement.<sup>6</sup>

The SA requests member lists to assess the validity of campus organizations.<sup>7</sup> However, the SA determined it can assess HAVEN’s “impact, utility, and student engagement” on campus without its member list, given that HAVEN must provide the number of current members and attendance data to meet funding eligibility.<sup>8</sup>

SA’s concerns about compelling an organization espousing controversial viewpoints to disclose its full membership list are commendable because expressive freedom and privacy of associations are intertwined.<sup>9</sup> Cornell promises students’ expressive freedom in line with the rights the First Amendment guarantees,<sup>10</sup> and the SA should work to uphold the university’s expressive promises by safeguarding students’ right to speak anonymously.

The Supreme Court has upheld the rights to speak and associate anonymously because they protect expression that may result in retaliation from the state or societal forces.<sup>11</sup> Protection for anonymous speech extends to group settings where people may participate under the condition of privacy. Mandatory disclosure of group affiliation is a restraint on associational freedom because disclosure impacts an individual’s ability to speak freely, particularly when enforced against organizations advocating for culturally or politically unpopular viewpoints.<sup>12</sup>

SA recognizes the value of privacy in its bylaws.<sup>13</sup> Securing the right of *all* students to free expression requires the ability to associate with others who share common beliefs, values, goals, and aims. As minority movements of any political, educational, religious, or cultural persuasion are often controversial, members of numerous groups may be uncomfortable with publicly identifying themselves with a specific organization. Thus, a general rule requiring public disclosure of organizational membership harms dissident movements by stifling the ability of individuals to freely associate.<sup>14</sup>

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<sup>6</sup> *Id.* (“HAVEN is a unique circumstance in which the basis for student membership is rooted in an identity that is not, and could not be known, without the student sharing as such, should exempt HAVEN from having to share that information on their behalf.”).

<sup>7</sup> *Id.* (Haven “recognizes that without an active roster that could be assessed at any point, it is difficult to verify the validity of membership rosters.”).

<sup>8</sup> *Id.* (“[I]n lieu of detailing member names, HAVEN: The LGBTQ+ Student Union provides data on the quantity of current members in the organization, as well as the number of student attendees at HAVEN-hosted events to demonstrate its impact, utility, and student engagement at Cornell.”).

<sup>9</sup> *National Ass’n for Advancement of Colored People v. State of Ala. ex rel. Patterson*, 357 U.S. 449, 462 (1958) (“This Court has recognized the vital relationship between freedom to associate and privacy in one’s associations.”).

<sup>10</sup> Cornell University Core Values, CORNELL UNIVERSITY: OFFICE OF THE PRESIDENT (2019). <https://president.cornell.edu/initiatives/university-core-values/> [<https://perma.cc/LQ7T-V2X3>].

<sup>11</sup> *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 341-42 (1995).

<sup>12</sup> *NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449, 462 (1958).

<sup>13</sup> *See, e.g.*, Section 2: Confidentiality, Bylaws: Cornell University Student Assembly, CORNELL STUDENT ASSEMBLY (April, 2023). [https://assembly.cornell.edu/sites/default/files/sa\\_bylaws\\_04.27.23.pdf](https://assembly.cornell.edu/sites/default/files/sa_bylaws_04.27.23.pdf) [<https://perma.cc/S39H-GKT5>].

<sup>14</sup> *NAACP v. Ala. ex rel. Patterson*, *supra* Note 10.

To protect all students' expressive and associational rights, the SA should eliminate the membership disclosure requirement for funding eligibility for all organizations on Cornell's campus because this rule may restrain myriad forms of student expression. Students engaging in political, religious, or other controversial expression should receive the same protection as classmates participating in HAVEN. The SA had compelling arguments in Resolution 16 for how compliance with current funding rules places HAVEN – and by extension its members – in a difficult position. The SA should extend these compelling arguments to protect all members of its student body.

FIRE thus calls on the SA to exempt all student groups from any mandatory membership disclosure requirement as a condition of funding and would be happy to assist in drafting any necessary resolution to protect student rights to freedom of expression and association. We request a response to this letter no later than October 16, 2023.

Sincerely,

A handwritten signature in cursive script that reads "Leslie Corbly".

Leslie Corbly  
Program Officer, Campus Rights Advocacy