



Foundation for Individual Rights in Education

601 Walnut Street, Suite 510 • Philadelphia, Pennsylvania 19106
T 215-717-3473 • F 215-717-3440 • fire@thefire.org • www.thefire.org

Greg Lukianoff
PRESIDENT

Robert L. Shibley
SENIOR VICE PRESIDENT

William Creeley
DIRECTOR OF LEGAL AND
PUBLIC ADVOCACY

Sean M. Clark
VICE PRESIDENT OF
OPERATIONS

Alisha C. Glennon
DIRECTOR OF
DEVELOPMENT

Alan Charles Kors
CO-FOUNDER AND
CHAIRMAN EMERITUS

BOARD OF DIRECTORS

Harvey A. Silverglate
CO-FOUNDER AND
CHAIRMAN

Barbara Bishop
Rebecca Dunn
Richard Losick
Joseph M. Maline
Marlene Mieske
Daphne Patai
Virginia Postrel
Daniel Shuchman

BOARD OF ADVISORS

Lloyd Buchanan
T. Kenneth Cribb, Jr.
Candace de Russy
William A. Dunn
Benjamin F. Hammond
Nat Hentoff
Roy Innis
Wendy Kaminer
Woody Kaplan
Leonard Liggio
Herbert London
Peter L. Malkin
Muriel Morisey
Steven Pinker
Milton Rosenberg
John R. Searle
Christina Hoff Sommers
Lawrence H. Summers

September 13, 2012

President James D. Spaniolo
University of Texas at Arlington
Office of the President
321 Davis Hall
Arlington, Texas 76019

Sent via U.S. Mail and Facsimile (817-272-5656)

Dear President Spaniolo:

As you can see from the list of our Directors and Board of Advisors, the Foundation for Individual Rights in Education (FIRE) unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, due process, legal equality, freedom of association, religious liberty, and freedom of speech on America's college campuses. Our website, thefire.org, will give you a greater sense of our identity and activities.

FIRE is concerned about the threat to freedom of speech and freedom of association posed by the University of Texas at Arlington's (UTA's) restriction on the wearing of Greek letters and on group gatherings by members of a fraternity under investigation for "hazing." Such restrictions violate the First Amendment, which UTA is both legally and morally bound to uphold.

This is our understanding of the facts. Please inform us if you believe we are in error.

Following an off-campus party held February 4, 2012, which resulted in allegations of "hazing," UTA's Sigma Phi Epsilon ("SigEp") chapter was notified in a February 10 letter from SigEp national Chapter Services Director Josh Hodnichak that it was to "immediately cease any and all chapter activities." These activities included "new member activities, Inter-Fraternity Council events, intramural games, social events, chapter meetings, and all other chapter activities." SigEp complied with these orders. SigEp President Troy Maikowski received a similar letter, also dated February 10, from Heather L. Snow, then-director of UTA's Office of Student Conduct, ordering the fraternity to "cease and desist all activity" while under investigation. Snow's letter, however, went so far as to ban "wearing of letters on campus." Snow's letter also made clear that the order covered "both on and off campus activities and include[d] formal and

informal group gatherings,” and warned that “[a]ny further activity that represents the Texas Chapter of Sigma Phi Epsilon either on or off campus during the suspension period may result in additional disciplinary action being taken.”

UTA subsequently determined that no hazing activity had occurred, and on February 29 Maikowski was informed in a letter from Snow that the Office of Student Conduct was “issuing a limited lift of the cease and desist,” restoring SigEp’s ability to have certain meetings and events. The letter made no specific mention of the right of SigEp members to wear Greek letters. (SigEp is currently on social suspension through the end of 2012 for other conduct violations, upon which FIRE does not take a position or address here.)

Even if UTA’s ban on SigEp members wearing their letters and engaging in “formal and informal group gatherings” both on and off campus has now been lifted—which is unclear—UTA’s imposition of these penalties for any amount of time violates the First Amendment rights of SigEp members to speak their minds and to assemble together.

That the First Amendment is fully binding on public universities like UTA is settled law. See *Widmar v. Vincent*, 454 U.S. 263, 268–69 (1981) (“With respect to persons entitled to be there, our cases leave no doubt that the First Amendment rights of speech and association extend to the campuses of state universities”); *Healy v. James*, 408 U.S. 169, 180 (1972) (“[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, ‘the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools’”) (internal citation omitted).

UTA’s policies affirm the First Amendment rights of organizations like SigEp. The UTA Fraternity and Sorority Life Standards Code states that “Greek chapters are officially regarded as recognized student organizations,” making it clear that fraternities and sororities at UTA are owed the same First Amendment rights to freedom of expression and association as any other recognized student organization. Section 4-101 of UTA’s Handbook of Operating Procedures, relating to “Freedoms of Speech, Expression and Assembly,” further states that “[t]he freedoms of speech, expression and assembly are fundamental rights of all persons and are central to the mission of the University.” The same policy provides that “[s]tudents, faculty and staff are free to express their views, individually or in organized groups, orally or in writing or by other symbols, on any topic in all parts of the campus[.]”

In light of binding legal precedent and UTA’s own policies, therefore, the university’s actions constitute violations of SigEp members’ right to freedom of expression, in particular its ban on “wearing of letters on campus.” There is simply no authority on which UTA—which, again, is bound to uphold the First Amendment rights of its students—can constitutionally prohibit all members of a fraternity, sorority, or any other student organization from broadcasting their affiliation in such a simple way, even if such groups are under investigation for conduct violations. Further, UTA’s extension of its authority over students in promulgating this ban is deeply troubling. Any reasonable reader of Snow’s February 10 letter would conclude that wearing SigEp letters during this period was prohibited not only in the conduct of group events, but *in any context, at any time, whether on or off campus*. UTA’s jurisdiction over student

groups does not extend so far as to forbid group members from wearing any piece of apparel carrying the name of the organization to which they belong at any time and anywhere in the world.

The severity of UTA's restrictions on all types of "activity" also raises basic concerns for freedom of association. Snow's February 10 letter, for instance, prohibited any and all types of "gatherings." This blanket ban prohibits *any* kind of assembly of SigEp members, even if such "gatherings" might be accidental, brief, off-campus, or even entirely unrelated to SigEp. UTA's oversight over its recognized student organizations does not permit it to dictate the private associations of its students to the point that they or their groups may find themselves in violation of UTA's conduct code for what amounts to nothing more than being in the same place at the same time. The example of non-Greek recognized student organizations is illustrative. Would UTA place the same restrictions on all "gatherings" on members of its political or cultural organizations? Would it tell members of the University Democrats that they were not allowed to gather as students and discuss Democratic Party politics—even off campus—if the group was under investigation?

It is troubling to FIRE that UTA seems unconcerned about these basic violations of SigEp members' First Amendment rights. We are concerned that UTA has partially lifted its cease and desist on SigEp's activities not because it realized that it had intruded on SigEp members' rights to free speech and freedom of association, but only because it had concluded that SigEp was not in violation of UTA's policy against hazing. This suggests to FIRE that UTA has no qualms about enforcing sweeping restrictions on First Amendment activity when it feels the circumstances warrant it. Such powers wielded by UTA administrators will almost certainly be unevenly applied and will assuredly chill student speech and even student friendships—outcomes wholly incompatible with UTA's obligations to uphold the First Amendment.

FIRE asks that the University of Texas at Arlington reject its previous restriction of the basic rights of SigEp members to wear their Greek letters and to assemble in exercise of their First Amendment right to freedom of association. Further, we ask UTA to make clear to its students that such unconstitutionally restrictive measures will never be employed against any recognized student organizations in the future. Please spare UTA the embarrassment of a fight against the Bill of Rights.

We request a response to this letter by October 4, 2012.

Sincerely,



Peter Bonilla

Associate Director, Individual Rights Defense Program

cc:

Heather L. Snow, Director, Office of Community Standards

Frank Lamas, Vice President for Student Affairs and Dean of Students

Seth Ressler, Director, Fraternity and Sorority Life