



August 18, 2016

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Sent via U.S. Mail and Electronic Mail (carmen.taylor@csulb.edu)

Dear Vice President Taylor:

The Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

FIRE is concerned by the threat to the freedoms of speech and association presented by California State University, Long Beach's (CSULB's) apparent moratorium on the official recognition of new student organizations, which prevents students from forming new organizations and being eligible for disbursement of student fees collected by CSULB. FIRE is also concerned by CSULB's "Campus Publicity and Posting" policy, which may require unrecognized student groups to obtain permission from administrators before distributing literature on campus.

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

CSULB limits particular resources and rights to those student organizations recognized by the CSULB Office of Student Life and Development. These rights and privileges include:

- the ability to "use campus services, facilities and grounds";¹
- the ability to apply for funding allocated by the Associated Students, Inc.;²

¹ *Regulations for Campus Activities, Student Organizations, and the University Community (2015–16)* ("Regulations"), CAL. STATE UNIV., LONG BEACH, DIV. OF STUDENT AFFAIRS at § I(E)(1)(c), available at http://web.csulb.edu/divisions/students/studentdean/campus_regulations/documents/REGS_BOOK_2015-2016_Online.pdf.

- the ability to use the CSULB name;³ and
- the ability to “publicize” on campus.⁴

As described in greater detail below, the latter policy—the ability to “publicize” on campus—is the result of ambiguous drafting of the “Campus Publicity and Posting” policy, which could be read to require *unrecognized* groups to get an administrator’s permission before communicating with other students. Under this policy, students wishing to organize and communicate with their fellow students have two options: They can undergo a possibly lengthy (and currently unavailable) bureaucratic process to gain official recognition, or they can seek an administrator’s permission each time they wish to engage in any “publicity.” In either case, an administrator’s clearance is required before students, acting as an organization, can engage in protected speech.

A student organization’s ability to meaningfully access campus resources, or to communicate with fellow students, is thus dependent on official recognition by the Office of Student Life and Development. Without it, two or more students desiring to organize and communicate any message, or engage in any activity, cannot ask their student government for any portion of the student fees they pay each semester, cannot pass out literature promoting their organization on campus without first asking for an administrator’s permission, and cannot meet in classrooms or use other campus facilities.

CSULB’s Unexplained Refusal to Recognize New Student Organizations

Starting as early as September 12, 2015, the CSULB Student Life and Development website’s “Starting a New Organization” section included this message:

“At this time, we are not accepting applications for new student organizations. Please check with the Student Life and Development Office for more information.”⁵

On March 18, 2016, after learning of a student’s inability to gain recognition of a prospective student organization, FIRE issued a request for public records pursuant to the California Public Records Act (Gov. Code § 6250 *et seq.*) CSULB produced records responsive to the request on June 15, 2016, long after the timeline permitted by the Public Records Act, and only

² *Id.* at § I(E)(1)(d). CSULB collects a \$60 fee from each enrolled student on behalf of Associated Students, Inc. *Fees and Finances — Basics*, CAL. STATE UNIV., LONG BEACH, http://web.csulb.edu/depts/enrollment/registration/fees_basics.html (last visited Aug. 11, 2016.)

³ *Regulations*, *supra* note 1, at § I(E)(1)(b).

⁴ *Id.* at § VI(A)(1) (“Organizations currently registered with the Office of Student Life and Development . . . are allowed to publicize campus events....”); § VI(A)(3) (“Off-campus individuals or groups may not publicize on campus without prior approval.”).

⁵ *Starting a New Organization*, CAL. STATE UNIV., LONG BEACH (Sept. 12, 2015), http://web.archive.org/web/20150912053110/https://web.csulb.edu/divisions/students/sld/student_organizations/starting/index.html.

after FIRE reminded CSULB of its obligation to produce responsive records.⁶

According to documents produced by CSULB, students contacting the CSULB Student Life and Development Office are referred to Matthew Cabrera, the Coordinator of the Office of Student Life and Development, who is identified as being responsible for “New Student Organization In-Take.” In response to students’ emailed inquiries seeking recognition of new student organizations, Mr. Cabrera informs the students that there is a “temporary hold on the process” and that he has “not received word as to when this hold will be lifted.” CSULB’s production of documents in response to FIRE’s public records request included a list of student organizations awaiting recognition while the hold remains in place.

That list of 24 proposed organizations is attached and includes:

- Define American, a student organization devoted to “using the power of stories to transcend politics and shift the conversation around immigrants, identity and citizenship in a changing America”;
- Students for Life, a chapter of a national organization formed to “organize and activate pro-life students on campus”;
- Sikh Student Association, an organization promoting education about “the rich history of Sikhism and its beliefs”;
- Heretics Union, “an atheist organization, made to create a community of and for atheists, agnostics, nonbelievers, and the curious”;
- Students for Second Amendment Rights, an organization that would “[t]each gun safety and basic knowledge of firearms” and fundraise for “Military and Veteran Philanthropy”;
- Wishmakers on Campus (Make-a-Wish), a chapter of the national organization intended to fundraise “to help Make-a-Wish grant wishes for children with terminal illnesses”; and
- Erase the Conventional Grades, Just Give Us The Number, an organization apparently intended to promote a change in the way CSULB grades its students.

FIRE’s request sought certain categories of documents, including “documents (including emails) relating to, consisting of, or describing the decision by CSULB and/or the Student Life and Development Office to cease accepting applications for new student organizations.” However, the documents provided by CSULB do not include any document setting forth a determination to impose a moratorium on recognizing new student organizations, nor do the documents include any analysis, evaluation, memoranda, or other basis for coming to such a conclusion.

⁶ FIRE is not alone in experiencing CSULB’s resistance to the transparency required by law. The *Daily 49er*, CSULB’s student newspaper, has also found it difficult to get any response, let alone responsive records, to requests pursuant to the Public Records Act. *Editorial: CSULB administration’s lack of transparency continues*, DAILY 49ER (Apr. 17, 2016), <http://www.daily49er.com/showcase/2016/04/17/for-the-people-from-the-people>.

The Moratorium Hinders Students' Ability to Organize

The ability of students to organize and advocate is critical to both students' hands-on learning and their campus' ability to be a place of diverse viewpoints. CSULB's decision to cease recognizing new student organizations raises considerable concerns for the state of students' freedoms of association and speech at CSULB. Students' expressive activity and their ability to effectively organize are particularly crucial as the 2016 presidential campaign enters its final months.

It has long been settled law that the First Amendment is binding on public universities such as CSULB. *See 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).

Students' First Amendment rights include the right not only to speak, but also to organize. In *Healy*, the Supreme Court observed that “[a]mong the rights protected by the First Amendment is the right of individuals to associate to further their personal beliefs.” *Id.* at 181. “There can be no doubt that denial of official recognition, without justification, to college organizations burdens or abridges that associational right.” *Id.*

That associational right is unacceptably circumscribed here. Students enrolled at a university join a community, and their ability to create and sustain organizations pertinent to that community is uniquely dependent upon the classifications of organizations set forth by the university. Here, organizations *recognized* by the university are (1) given access to student fees held by the university for the purpose of nurturing student organizations; (2) permitted to use campus facilities for meetings or events; and (3) permitted to communicate with other students without seeking an administrator's permission. Organizations that are *not* recognized by the university have no access to the fees their members pay, must meet outside of their community, and must seek permission to speak to students. As discussed in further detail below, these restrictions go beyond what the First Amendment permits, even if a moratorium on recognizing new organizations were justified, as a public university cannot require student organizations (recognized or not) to ask for an administrator's permission to communicate with fellow students.

If CSULB's indefinite and sustained refusal to recognize *any* new student organization is justified, university administrators have not been forthcoming with a justification. Students likewise have been unsuccessful in receiving any explanation, and documents provided in response to specific records requests do not demonstrate that CSULB's administration undertook this moratorium based on reasoned analysis of the university's resources. If CSULB faces some exigent need to refrain from providing students (and their organizations) with access to folding tables, classrooms, or the student fees held for them by the university, the university must be transparent about those needs, set forth the conditions upon which it

will resume recognizing student organizations, and provide a timeline to accomplishing as much. Put simply, an across-the-board refusal to recognize *any* new student organization represents a threat to the associational rights of any student who seeks to, but cannot, form a new organization. Put simply, CSULB bears the burden to explain to students *why* it will not recognize new organizations.

CSULB's "Campus Publicity and Posting" Policy Requires a 'Permission Slip' for Speech

CSULB's "Campus Publicity and Posting" policy infringes on students' First Amendment rights by imposing a prior restraint on speech by unrecognized organizations. This compounds the chilling effect of CSULB's refusal to recognize new student organizations.

This policy sets forth rights to distribute "publicity" based on the individual or organization's status. While registered organizations and "individual students" may freely post "publicity," so long as it is otherwise compliant with campus regulations, any "off-campus" organization may "publicize" on campus only *after* getting prior approval from a CSULB administrator.⁷ The policy does not delineate the difference between unrecognized student organizations and "off-campus organizations." The policy, in other words, is unclear as to whether a non-recognized student group would be considered an "off-campus" organization, and this ambiguity could lead to student groups' messages being wrongly restricted.

Because "publicity" is not defined by the policy, this policy encompasses a broad range of expressive activity on campus. Applying the definitions given by Merriam Webster, examples of "publicity" include any document, sign, paper, or other form of written communication that is "designed to attract public interest" or constitutes "the dissemination of information or promotional material."⁸ CSULB's policy is similarly expansive, encompassing not only materials adhered to campus infrastructure (*e.g.*, signs and banners on walls, or signs on stakes), but also "handbills and circulars" (*i.e.*, written words on paper).⁹

In addition to groups affected by CSULB's moratorium on new student organizations, the "Campus Publicity and Posting" policy presents a risk to the First Amendment rights of students who are *not* interested in, or see no need for, official recognition. For example, if students wish to informally oppose or support the election of a candidate in this November's elections, they might band together and distribute flyers attempting to persuade their fellow students to join their cause. Under the "Campus Publicity and Posting" policy, these students, having formed an off-campus or unrecognized organization, would need an administrator's permission before distributing their leaflets.

⁷ *Regulations, supra* note 1, at § VI(A)(1) ("Organizations currently registered with the Office of Student Life and Development . . . are allowed to publicize campus events...."); § VI(A)(3) ("Off-campus individuals or groups may not publicize on campus without prior approval.").

⁸ "Publicity." MERRIAM WEBSTER'S COLLEGIATE DICTIONARY (10th ed. 1993).

⁹ *See, e.g., Regulations, supra* note 1, §§ VI(F) ("Posters on Stakes"), VI(G) ("Handbills and Circulars"), VI(J) ("Display Cases – University Student Union"), VI(K) ("Hanging Banners – University Student Union").

This policy subjects unrecognized student organizations to an unconstitutional prior restraint, as they are required to receive permission before distributing any “publicity” on campus. As the U.S. Supreme Court has stated, “prior restraints on speech and publication are the most serious and least tolerable infringement on First Amendment rights.” *Nebraska Press Association v. Stuart*, 427 U.S. 539, 559 (1976). Courts faced with prior restraints impose a “heavy presumption against [their] constitutional validity.” *New York Times Co. v. United States*, 403 U.S. 713, 714 (1971).

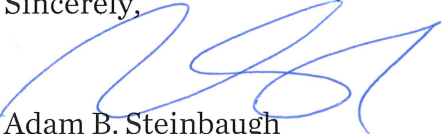
Indeed, this policy infringes on the type of expressive activity that the First Amendment was designed to protect. *See Martin v. City of Struthers*, 319 U.S. 141, 146–47 (1939) (“Freedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society that, putting aside reasonable police and health regulations . . . it must be fully preserved.”). *See also Watchtower Bible & Tract Soc’y of NY, Inc. v. Village of Stratton*, 536 U.S. 150, 165–66 (2002) (“It is offensive—not only to the values protected by the First Amendment, but to the very notion of a free society—that in the context of everyday public discourse a citizen must first inform the government of her desire to speak to her neighbors and then obtain a permit to do so.”).

CSULB’s “Campus Publicity and Posting” policy is an affront to the constitutional rights of all students, both those who seek official recognition for an organization and those who would rather not.

FIRE hopes that CSULB will rescind its refusal to recognize new student organizations and re-evaluate its “Campus Publicity and Posting” policy. If we can be of any assistance in providing guidance on how to bring CSULB’s policies, including the “Campus Publicity and Posting” policy, in line with the First Amendment, please don’t hesitate to contact us.

We respectfully request a response to this letter by September 1, 2016.

Sincerely,



Adam B. Steinbaugh
Program Officer, Individual Rights Defense Program

cc:

Brett Waterfield, Director, Student Life and Development
Matt Cabrera, Coordinator, Student Life and Development

| Waiting List due to Temporary Hold | | | |
|--|---------------------|---|---|
| Name of Organization | Type of Org. | National/Regional Org | Brief Description |
| Students for Life | Special Interest | Students for Life | Students for Life was founded to organize and activate pro-life students on campus. Members of Students for Life work to protect life from conception to natural death, particularly those lives threatened by abortion, infanticide, embryonic stem cell research and euthanasia. In furtherance of these goals, members seek to promote respect for life at and on a local, state and national level, to educate on life issues, to help those in need so that life is a promising choice and to work with others who share common goals. |
| Define American | Political | n/a | "Define American is a media and culture organization using the power of stories to transcend politics and shift the conversation around immigrants, identity, and citizenship in a changing America. |
| Erase the Conventional Grades; Just give us the number | Special Interest | n/a | |
| Students for the Exploration and Development of Space | Career | Students for the Exploration and Development of S | The purpose of our club is to encourage students to get involved in space exploration through outreach and participation in national events. |
| Wellspring @ CSULB | Community / Rel | Cornerstone Church Long Beach | |
| The Society for Collegiate Leadership and Achievement | Honors Society | The Society for Collegiate Leadership and Achievement | |
| Malaysian Student Association (MYSA) | Cultural | n/a | Bringing community support to fellow Malaysians who need resources and know-how's to get the most out of their learning experience here at CSULB while serving as a cultural bridge between the American society and Malaysians. |
| Students for Second Amendments Rights (SSAR) | Special Interest | n/a | Appreciate and have knowledge of Second Amendment; Teach gun safety and basic knowledge of firearms; Fundraiser for Military and Veteran Philanthropy |
| CSULB Moto Club | Special Interest | n/a | It would be more of a social group to connect all the students that ride motorcycles (whether for commuting or for fun.) This would be a great way for students to connect that all have a common interest/ life style. I have notice there are many motorcycles on campus and that number is only increasing. |
| Thai Culture Club | Cultural | n/a | |
| Heretics Union | Special Interest | n/a | Heretics Union is an atheist organization, made to create a community of and for atheists, agnostics, nonbelievers, and the curious. |
| Society of Manufacturing Engineering | Academic | South LA/Orange Coast Chapter 233 http://www.sme.org/california-chapters/#sthash.xpkVeRtx.dpuf | To serve the manufacturing industry as a nonprofit by promoting advanced manufacturing technology and developing a skilled workforce. Work closely with manufacturers to share knowledge and resources that generate solutions meeting industry demands. |
| Wellspring | Religious | n/a | We are a Christian organization wanting to set up a house of prayer, where people can come to pray for CSULB and the city of Long Beach. Our purpose is to unite all Christian organizations and groups as one body under Jesus Christ and prayer for our campus, the faculty, and the city. We want to see revival on our campus and city through unity within the body of Christ. |
| Leftists United (could change based on members' input) | Political | n/a | An organization dedicated to bringing left leaning students together to discuss their political ideas/ philosophies, screen films which thematize some of those ideas, and publish essays and leaflets. Given enough energy and membership this group could also serve as an organizational framework for putting on events, protests, or volunteering in the community. |
| SAMPE | Academic/Career | Society for the Advancement of Material and Proce | SAMPE is the organization that focuses on creating new kind of materials which will be used in manufacturing processes. We also participate in national contests held by SAMPE such as SAMPE student poster contest and SAMPE student bridge contest. |

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| Design Build Institute of America | Career? | Design Build Institute of America | Construction management based organization and will assist students in finding internships in the field of Construction management |
| Wishmakers on Campus (Make-a-Wish) | Service | Make-a-wish | The purpose of this club would be to fundraise to help Make-a-Wish grant wishes for children with terminal illnesses. |
| Greek Intersarsity | Religious | Greek Intersarsity | We bring the good news of Jesus to our fellow Greek students here at the Beach. There is a growing movement of revival, and we love sharing the gospel with those who have not heard |
| Zeta Theta Tau | Career | Theta Tau | Theta Tau is a co-ed professional engineering fraternity that strives to prepare students for the future, create events for the good of the entire student body, and to strengthen the bonds within our organization through Theta Tau's three pillars of professionalism, community service, and brotherhood. |
| Brazilian Student Association | Cultural | Brazilian Student Association | BRASA is an organization of students which focuses on creating an united Brazilian student community, both undergraduate and graduate, in the United States. It also fosters continuous interaction between this community and Brazil, creating ways for these high potential students to positively impact our country. We pursue these goals by organizing conferences, maintaining blogs about the college student experience in the United States, fostering mentorship programs and also by creating partnerships with companies which have the desire to hire our country's top students - highly talented men and women with a passion for changing Brazil |
| Medieval and Renaissance Students' Associate (MaRSA) | Academic | (Re-recognition) | MaRSA is a student lead organization that has in the past and will in the future, combine both extracurricular academic activities, such as translating Old English texts or traveling to museums to examine manuscript exhibits, with more casual activities such as analyzing the "medieval" elements of films or studying the Renaissance Faire. Previously, we were a group consisting of both undergraduate and graduate students, and we plan to continue that tradition |
| CSULB Saxophone Club | Academic/Special | n/a | The purpose of the club would be to meet weekly to discuss different techniques and approaches for playing the saxophone, bring in professionals to do clinics with members of the clubs, and to try to raise money to go saxophone conventions or masterclasses. |
| Good Fellowship in Campus | Religious | n/a | Our aim is to engage non-Christians members in Christian community. This involves feeding our members, sharing our lives, and praying for our members. Our primary target membership is non-Christians, not Christians. |
| Sikh Student Association | Religious | n/a | The purpose of this club would be to promote awareness of Sikhism through various events. Non-sikh students and Sikh students would be able to join the club in order to learn more about the rich history of Sikhism and its beliefs. In addition, it would be a way for students to develop an understanding about Sikh culture. Through this organization, I hope that everyone will have a better understanding of Sikhism, which is the fifth largest religion in the world, but unfortunately many people are not aware of it. |