



December 22, 2021

Gregory L. Fenves
Office of the President
Emory University
505 Kilgo Circle
Atlanta, Georgia 30322

Sent via Electronic Mail (president@emory.edu)

Dear President Fenves:

FIRE¹ appreciates that Emory University is one of the few institutions in the country whose policies earn a “green light” rating from our organization. We are, however, concerned by Emory’s maintenance of a policy requiring that “exterior holiday decorations” on certain residences be installed or removed only by maintenance staff. While we appreciate that the university’s policy may address important safety or property concerns, it is inconsistent with Emory’s laudable commitment to safeguarding student free speech rights because it applies *only* to “holiday” decorations and restricts displays that do not implicate the university’s concerns.

According to a media report,² Emory reported the Alpha Tau Omega fraternity chapter to the Office of Student Conduct because the group’s holiday decorations, consisting of a wreath on the front door and garlands on the railings, violate Emory Housing Policy 1.21.1. This policy authorizes students to “decorate for the holidays,” but requires “[s]orority lodges and fraternity / themed houses” to “request installation of exterior holiday decorations” before November 1, and prohibits students from installing or removing any such “decorations” themselves.³ This policy applies only to displays that have “holiday” themes.

¹ As you will recall from past correspondence, 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.

² Robert Schmad, *Frat house cannot hang its own Christmas wreath, university insists*, CAMPUS REFORM (Dec. 16, 2021), <https://www.campusreform.org/article?id=18602>. This letter sets forth our understanding of the pertinent facts, which is based on public information. We appreciate that you may have additional information to offer and invite you to share it with us.

³ EMORY UNIV., Housing Policies (rev. Dec. 8, 2021), <https://housing.emory.edu/policies/housing-policies/index.html>.

While Emory is a private institution not bound by the First Amendment, it makes affirmative commitments to its students' expressive freedom, including the right to engage in expressive displays.⁴ Emory's "holiday decorations" policy is inconsistent with that commitment.

First, Emory's "holiday decorations" policy is not a content-neutral time, place, or manner restriction. Instead, it is a content-based burden on expressive conduct. A "regulation of speech is content based if [it] applies to particular speech because of the topic discussed or the idea or message expressed."⁵ If the rule defines "regulated speech by particular subject matter" or "by its function or purpose," it is content-based.⁶ Courts have regularly found that regulations targeting "holiday or other seasonal signs" are content-based regulations.⁷

Emory's housing policy explicitly singles out holiday decorations, but not any other decorations, for regulation. This renders the policy a content-based regulation on speech, as administrators must examine the "subject matter" and "function or purpose" of the decorations at issue to determine whether the policy applies. If the display pertains to Christmas, Hanukkah, Kwanzaa, or Festivus, the display must be installed by the university. But if the same type of display does not pertain to a holiday—for example, exterior lights spelling out "happy birthday" to a fraternity member—then the policy does not apply, and students may install it themselves.

Second, even if the policy *were* content-neutral, it is not "narrowly tailored" to serve the university interests."⁸ Concerns about student safety and property damage may justify a narrower restriction on exterior decorations in general, such as decorations involving electricity or heat that may pose fire hazards, or building attachments that cannot be installed or removed without harming the structure's exterior. But a blanket ban on students installing

⁴ For example, Emory promises students "an environment where the open expression of ideas and open, vigorous debate and speech are valued, promoted, and encouraged." EMORY UNIV., Policy 8.14, Respect for Open Expression Policy (rev. Sept. 21, 2018), *available at* <https://bit.ly/3FmqOmx>. Emory's policy specifically commits the university to avoiding policy restrictions due to the "content of the . . . display" or imposing "unreasonable" limits on the "time frame" or "requirements" on a group in order to engage in displays. *Id.* at 8.14.5.8.

⁵ *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015) (striking down ordinance regulating signs based on whether they were "political" or "ideological" as an unconstitutional content-based restriction under the First Amendment). While, again, Emory is not bound by the First Amendment, interpretations of the First Amendment's guarantee of "the freedom of speech" provide guidance as to what Emory's institutional promise of that freedom means to the students to whom it is promised.

⁶ *Reed*, 576 U.S. at 163. (holding that a rule is content-based regardless of the "benign motive, content-neutral justification, or lack of animus toward the ideas contained in the regulated speech") (internal quotations omitted).

⁷ *Int'l Outdoor, Inc. v. City of Troy*, 974 F.3d 690, 707 (6th Cir. 2020) (finding that sign ordinance imposed a content-based restriction by exempting real-estate signs, garage, estate or yard sale signs, non-commercial signs, political signs, and holiday or other seasonal signs from regulation); *see, e.g., Sweet Sage Café v. Town of N. Redington Beach*, 2017 WL 385756, at *3 (M.D. Fla. Jan. 27, 2017) (striking down law regulating "Holiday, seasonal, commemorative or special event decorations or signs" differently from other signs and decorations); *Marin v. Town of Se.*, 136 F. Supp. 3d 548, 567 (S.D.N.Y. 2015) (invalidating law exempting "holidays decorations" from regulation).

⁸ Because it is content-based, the policy would have to serve "compelling" interests. *Reed*, 576 U.S. at 163. But the policy would not survive even the less-rigorous time, place, and manner analysis, which considers whether there is a "significant" interest, because it is not "narrowly tailored" to that interest. *Ward v. Rock Against Racism*, 491 U.S. 781, 791, 109 S. Ct. 2746, 2753 (1989).

any holiday decorations is not narrowly tailored to those interests because it reaches minor displays that don't implicate the university's interests.⁹ Here, for example, students could put a wreath on a door, which can be safely accomplished without damaging property,¹⁰ without requiring the involvement of the university's maintenance staff.

We appreciate that the university's policy is intended to facilitate student expression while addressing important safety or property interests, and the university does not intend to punish the fraternity. But the policy is imperfectly drafted and should not be an obstacle to the student expression that Emory's policies foster. We encourage Emory to revise its housing policy to better reflect its commitment to its students' expressive rights. To that end, FIRE would be happy to provide assistance in fashioning a clearer policy—as always, as our gift to you, free of charge.

We request receipt of a response to this letter by the close of business on January 5, 2022.

Sincerely,

A handwritten signature in black ink, appearing to read "Zach", with a long, sweeping flourish extending to the right.

Zachary Greenberg
Senior Program Officer, Individual Rights Defense Program

Cc: Stephen D. Sencer, Senior Vice President and General Counsel
Scott Rausch, Senior Director of Sorority and Fraternity Life
Elaine Turner, Senior Director of Housing Operations

⁹ *Reed*, 576 U.S. at 157 (sign ordinance was not narrowly tailored because the “Town cannot claim that placing strict limits on” different content-based categories of signs “is necessary to beautify the Town when other types of signs create the same problem”).

¹⁰ See, e.g., Samantha Hunter, *How to Hang a Wreath Without Making Holes in the Door*, MARTHA STEWART (Oct. 31, 2018), <https://www.marthastewart.com/1533064/hang-wreath-without-making-hole-door>.