



April 4, 2022

President Darryll J. Pines
Office of the President
University of Maryland, College Park
1101 Main Administration Bldg.
7901 Regents Drive
College Park, Maryland 20742-5025

Sent via U.S. and Electronic Mail (president@umd.edu)

Dear President Pines:

The Foundation for Individual Rights in Education (FIRE), a nonpartisan nonprofit dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality and freedom of conscience on America's college campuses, is concerned by the University of Maryland's (UMD) deferred recruitment policy preventing first-semester students from joining Greek organizations.¹ This policy improperly restricts students' First Amendment right to freedom of association and fails to meaningfully advance UMD's asserted interest in student well-being. FIRE calls on UMD to afford all students, on equal terms, the right to associate with the full array of campus groups by rescinding this policy.

I. UMD Bans First-Semester Students from Joining Greek Organizations

The following is our understanding of the pertinent facts, though we appreciate that you may have additional information to offer and invite you to share it with us.

As a condition for university recognition, UMD requires fraternities and sororities to forestall accepting students as members until they have attained 12 credit hours and a grade point average of at least 2.5.² This deferred recruitment policy prevents first-semester students

¹ FIRE appreciates that UMD is one of the few institutions in the country whose policies regulating student expression earn a "green light" rating from FIRE. Please note that this letter concerns students' associational freedoms, a type of speech-related policy that is not included in FIRE's Spotlight database. See FIRE, *Using FIRE's Spotlight Database* (last visited Mar. 21, 2022), <https://www.thefire.org/resources/spotlight/using-the-spotlight-database>.

² UMD, POLICY ON RECOGNITION OF SORORITIES AND FRATERNITIES, § III(g)(4) (updated Aug. 2016), <https://greek.umd.edu/documents/general-policies/Recognition-Policy-Final-Draft-DRAFT12.pdf>.

from joining Greek organizations and prevents these groups from recruiting this class of student.³

UMD imposes no similar restrictions on first-semester students who elect to join university athletic teams,⁴ seek employment at the university or elsewhere,⁵ or associate with any other type of student group.⁶

II. UMD's Deferred Recruitment Policy Restricts Students' Freedom of Association

The First Amendment guarantees freedom of association, which “has, for centuries, been at the heart of the American system of government and individual rights,”⁷ and protects the “right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.”⁸ The freedom of association extends to students enrolled in public universities, protecting their right to join student groups, such as Greek and other social organizations.⁹

Accordingly, when a public university burdens a student’s right to join Greek organizations, those restrictions must withstand First Amendment scrutiny.¹⁰ This analysis applies regardless of the source of the restriction, whether it be a university policy,¹¹ a university president’s decision to refuse recognition to a student group,¹² a university’s directive

³ The average first-semester student at UMD takes 12-16 credit hours and UMD defines students who’ve earned 0-29 credit hours as first-year students. UMD, *Academic Policies and Procedures* (2021-22), <https://academiccatalog.umd.edu/undergraduate/registration-academic-requirements-regulations/registration> [<https://perma.cc/T5V4-49T2>].

⁴ UMD, *STUDENT-ATHLETE HANDBOOK*, at 9-10 (2021-22), https://umterps.com/documents/2019/9/30/SAH_2019_20_FINAL.pdf [<https://perma.cc/BYW6-4962>] (listing no GPA or credit hour requirement for first-semester student-athletes).

⁵ *Division of Student Affairs, Student Employment*, UMD, <https://careers.umd.edu/find-jobs-internships/student-employment> [<https://perma.cc/DN8H-PABG>] (last visited Mar. 15, 2022) (listing no GPA or credit hour requirement for university employment or outside employment).

⁶ *TerpLink*, UMD, <https://terplink.umd.edu> [<https://perma.cc/C7L3-BWF9>] (last visited Mar. 15, 2022) (listing no GPA or credit hour requirements imposed by the university on joining non-Greek student groups).

⁷ *6th Cong. Dist. Republican Comm. v. Alcorn*, 913 F.3d 393, 401 (4th Cir. 2019).

⁸ *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984); *see also, e.g., NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 888 (1982) (“[T]he First Amendment restricts the ability of the State to impose liability on an individual solely because of his association with another.”).

⁹ *See, e.g., Healy v. James*, 408 U.S. 169, 183 (1972) (establishing that students and student groups at public universities possess associational freedoms); *Evans v. Newton*, 382 U.S. 296, 298 (1966) (discussing “the right of the individual to pick his own associates so as to express his preferences and dislikes, and to fashion his private life by joining such clubs and groups as he chooses”); *Iota Xi Chapter v. Patterson*, 566 F.3d 138, 146 (4th Cir. 2009) (analyzing state college fraternity’s freedom of association claims); *Chi Iota Colony of Alpha Epsilon Pi Fraternity v. City Univ. of N. Y.*, 502 F.3d 136, 143 (2d Cir. 2007) (same).

¹⁰ *See Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 451 (2008) (government restrictions on freedom of association “are subject to strict scrutiny” and are only upheld “if they are narrowly tailored to serve a compelling state interest”) (internal quotations omitted).

¹¹ *Chi Iota Colony*, 502 F.3d at 139–140.

¹² *Healy*, 408 U.S. at 174.

banning student group social functions,¹³ or a university’s discipline for student group misconduct.¹⁴

Burdens on campus groups recruiting student members, and on students joining campus groups, implicate the freedom of association. In *Gay Alliance of Students v. Matthews*, the United States Court of Appeals for the Fourth Circuit—the federal circuit in which UMD sits—found that a university’s recruitment restriction imposed on a single student group is “a denial of first amendment rights” absent justification.¹⁵ The court rejected the university’s argument that a ban on recruitment, resulting from a denial of university recognition, would not burden students’ First Amendment rights, explaining how “[t]he very essence of the first amendment is that each individual makes his own decision as to whether joining an organization would be harmful to him, and whether any countervailing benefits outweigh the potential harm.”¹⁶ Citing the United States Supreme Court’s seminal case establishing student associational freedoms on college campuses, *Healy v. James*, the court added: “[T]he state and its agents are forbidden from usurping the students’ right to choose. In this respect, the governing bodies of schools have no greater authority than do other state officials.”¹⁷

Therefore, a restriction on associational freedoms “cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests.”¹⁸ Even then, where limits on First Amendment activity are enacted to further an important government interest, “they must be pursued by means that are neither seriously underinclusive nor seriously overinclusive.”¹⁹ “In considering whether a government regulation is narrowly tailored, it is not enough that the regulation achieves its ostensible purpose, it must do so without unnecessarily infringing upon constitutionally protected rights.”²⁰

¹³ *Gay Students Org. of Univ. of N.H. v. Bonner*, 509 F.2d 652, 654 (1st Cir. 1974).

¹⁴ *Iota Xi Chapter*, 566 F.3d 138 at 141.

¹⁵ 544 F.2d 162, 165 (4th Cir. 1976).

¹⁶ *Id.* at 165-66.

¹⁷ *Id.* at 166 (citing *Healy*, 408 U.S. at 193-94).

¹⁸ *Chi Iota Colony*, 502 F.3d at 143 (citing *Zablocki v. Redhail*, 434 U.S. 374, 388 (1978)) (internal quotations omitted).

¹⁹ *Greater Balt. Ctr. for Pregnancy Concerns, Inc. v. Mayor & City Council of Balt.*, 879 F.3d 101, 112 (4th Cir. 2018) (quoting *Brown v. Entm’t Merchants Ass’n*, 564 U.S. 786, 805 (2011)) (cleaned up); see also *Am. Ass’n of Political Consultants, Inc. v. FCC*, 923 F.3d 159, 167 (4th Cir. 2019) (explaining how, in the First Amendment free speech context, “an ‘underinclusive’ restriction is one that covers too little speech, thereby leaving appreciable damage to the government’s interest unprohibited.”) (cleaned up), *aff’d sub nom.*, *Barr v. Am. Ass’n of Political Consultants*, 591 U.S. ___, 140 S. Ct. 2335 (2020), and *Cahaly v. Larosa*, 796 F.3d 399, 405 (4th Cir. 2015) (“Moreover, the restriction cannot be overinclusive by unnecessarily circumscribing protected expression.”) (cleaned up); cf. *Johnson v. City of Cincinnati*, 310 F.3d 484, 504 (6th Cir. 2002) (citing First Amendment free speech cases in applying narrow tailoring analysis to burden on associational freedoms).

²⁰ *Johnson*, 310 F.3d at 504 (law excluding drug felons from “drug-exclusion zones” was not narrowly tailored to the city’s interest in reducing crime because it burdened far greater associational freedoms than necessary and failed to consider lesser restrictions on travel).

UMD does not publicly state its rationale for uniquely requiring recognized Greek organizations to maintain deferred recruitment.²¹ It is unclear whether this policy serves any university interest, let alone a sufficiently compelling one justifying intrusions on students' First Amendment rights. Then, even if UMD were to argue the policy furthers its interest in allowing first-semester students an opportunity to, for example, adjust to the academic demands of the university before joining a sorority or fraternity, and even if such a rationale were deemed compelling, UMD's policy would still not be narrowly tailored to furthering this interest.

Under this rationale, the policy is both over and underinclusive.

First, it's overinclusive because it burdens far more associational activity than necessary to advance the university's interest in protecting first-semester students.²² The policy restricts students from joining groups based solely on their GPA and credit hours, regardless of the student's age, maturity level, course load, employment status, relevant experience associating with similar organizations, or all other factors affecting the student's capacity to balance the time commitment of joining Greek life with succeeding academically. Additionally, this blanket ban prevents first-semester students from joining *all* Greek organizations, regardless of the varying time commitments exacted from each different fraternity or sorority and the extent of the student's association with that group. As such, the policy disregards alternative measures that are less restrictive of students' First Amendment right to associate with campus groups, such as providing university education or counseling for potentially overburdened first-semester students.

Second, the policy is underinclusive because it ignores the host of permissible activities that are available to first-semester students that are far more time-consuming than joining Greek life. While barred from Greek life, new students may maintain rigorous schedules as Division I student-athletes, part-time or full-time employees for UMD or outside entities, or leaders of the more than 800 other social, political, and academic groups at UMD—regardless of the required time commitment.²³ UMD affords first-semester students the First Amendment freedom to associate with these various groups, yet bans them from making the oftentimes smaller commitment of joining a Greek organization. This arbitrary distinction “leav[es] appreciable damage to the government's interest unprohibited,”²⁴ rendering the policy not

²¹ UMD asserts that it grants recognition to Greek organizations “upon demonstrating that the sorority or fraternity is responsibly managed, fiscally reliable, a responsible steward of University property, a constructive member of the campus community and its members willing to observe the rules and laws of the community.” However, this rationale fails to explain why exactly recognition is contingent on groups maintaining a deferred recruitment policy. POLICY ON RECOGNITION OF SORORITIES AND FRATERNITIES, *supra* note 2, at § III.

²² *Cahaly*, 796 F.3d at 406 (ban on automatic phone calls “of a political nature” was overinclusive because it fails to consider less restrictive alternatives such as limits on robocall timing or caller identity); *Johnson*, 310 F.3d at 503 (law excluding drug felons from “drug-exclusion zones” was overinclusive because it banned individuals “from engaging in an array of not only wholly innocent conduct, but socially beneficial action like caring for her grandchildren and walking them to school.”).

²³ See *supra* notes 4-6.

²⁴ *Cahaly*, 796 F.3d at 405 (4th Cir. 2015).

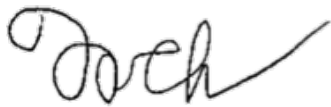
narrowly tailored to advancing any asserted university interest in safeguarding the well-being of first-semester students.

III. UMD Must Rescind Its Deferred Recruitment Policy

Far from burdening student’s academic performance, associating with Greek groups has been shown to increase academic engagement, campus involvement, and satisfaction with university life.²⁵ These benefits are particularly important for first-semester students as they acclimate to campus life and seek to build connections within the university community. FIRE calls on UMD to allow all students to associate with the full array of campus groups—and afford them the full extent of their First Amendment rights—by rescinding its ban on first-semester students joining Greek organizations.

We request receipt of a response to this letter no later than the close of business on April 18, 2022.

Sincerely,



Zachary Greenberg
Senior Program Officer, Individual Rights Defense Program

Cc: Matt Supple, Director of the Department of Fraternity and Sorority Life
Patricia A. Perillo, Vice President for Student Affairs

²⁵ See Gary R. Pike, *The Greek Experience Revisited: The Relationships between Fraternity/Sorority Membership and Student Engagement, Learning Outcomes, Grades, and Satisfaction with College*, N. AM. INTERFRATERNITY CONF. (Mar. 2020), <https://www.phigam.org/file/communications/Dr.-Pike-Report---The-Greek-Experience-Revisited.pdf> (survey demonstrating the positive effects on Greek group membership on learning outcomes, campus engagement, and satisfaction with college); Paul Kittle, *A Review of Deferred Recruitment*, AUBURN UNIV. DIV. OF STUDENT AFFS. (Jan. 28, 2011), http://greeklife.auburn.edu/wp-content/uploads/2018/07/Deferred_Recruitment_Report_II.pdf (recommendation against Auburn University adopting a deferred recruitment policy because it would fail to address the underlying issues affecting Greek life).