



FIRE

Foundation for Individual
Rights and Expression

March 7, 2024

Jay Rosselló
Office of the General Counsel
University of Maryland
4716 Pontiac Street
Suite 2117 Seneca Building
College Park, Maryland 20742-5025

URGENT

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

Dear Vice President Rosselló:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned by the University of Maryland's prior restraint and blanket suspension of new member activities for all Interfraternity Council (IFC) and Panhellenic Association (PHA) Member Organizations. Although we appreciate that UMD is one of the few institutions in the country whose student speech-related policies earn FIRE's "green light" rating,² the university must reverse course because punishing dozens of student groups through guilt-by-association violates their First Amendment rights.

Our concerns arise from UMD's March 1 suspension of all IFC and PHA chapters' new member activities on grounds of asserted "reason to believe that multiple chapters ... have been conducting activities that have threatened the safety and well-being of members of the University community."³ UMD has not, however, disclosed the alleged misconduct, or which groups were allegedly involved. But pending its disciplinary investigation, it directed each chapter to "have absolutely NO CONTACT with any new member or prospective new member ... via in-person, telephone, postal mail, any electronic means (including social media), or third-

¹ 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.

² *University of Maryland Earns FIRE's Highest Rating for Free Speech*, FIRE (Feb. 12, 2016), <https://www.thefire.org/news/university-maryland-earns-fires-highest-rating-free-speech>.

³ Disciplinary Letter from James McShay, Interim Director of Fraternity and Sorority Life, and James Bond, Director of Student Conduct, to Interfraternity and Panhellenic Association Member Organizations, (Mar. 4, 2024), *available at* <https://today.umd.edu/briefs/umd-suspends-new-member-social-events-at-37-fraternities-and-sororities> [<https://perma.cc/VW6R-GWJX>].

party communication” and further warned any “attempts to coordinate responses” will result in disciplinary action.⁴

Yet a directive that all IFC and PHA member organizations refrain from contacting any new members is an unconstitutional prior restraint on student speech, “the most serious and the least tolerable infringement on” freedom of expression.⁵ Preventing speech before it can occur is constitutional in only the most severe circumstances, requiring UMD to show that such a measure is narrowly tailored to further a compelling institutional interest.⁶ And prior restraints are improper “where a state could achieve its purported goal of protecting its citizens from wrongful conduct by punishing only actual wrongdoers, rather than” imposing measures restricting free speech.⁷

Worse still, UMD has imposed a prior restraint and suspended new member activities through guilt by association, penalizing *all* IFC and PHA chapters—comprising dozens of groups and hundreds of students—based on alleged misconduct by only a select number of groups.⁸ As a threshold matter, the First Amendment does not tolerate blanket punishments imposed on groups for tenuous affiliations with delinquent parties.⁹ Even discipline that rests on formal association with organizations that have engaged in violence, courts have held made clear that association alone is insufficient to establish guilt.¹⁰ UMD must make individualized disciplinary determinations on only those groups accused of misconduct.¹¹

But UMD has failed to describe what specific misconduct prompted the punishment, which particular groups and students were allegedly involved, and how banning new member activities and communication with new members protects student safety or well-being.¹² And

⁴ *Id.* UMD clarified in a March 6 letter to these groups that this “no contact order is limited to communications regarding Greek-letter organization-related activities.” Letter from McShay and Bond to IFC and PHA (Mar. 6, 2024) (on file with author). Note that our factual recitation in the text reflects our understanding of the pertinent facts and that we appreciate you may have additional information. If that is the case, we invite you to share it with us.

⁵ *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976).

⁶ *See Capital Cities Media v. Toole*, 463 U.S. 1303, 1305 (1983).

⁷ *See, e.g., Berger v. City of Seattle*, 569 F.3d 1029, 1044 (9th Cir. 2009); *see also Riley v. Nat’l Fed’n of the Blind of N.C.*, 487 U.S. 781, 795 (1988) (invalidating restraint on charitable solicitation that purported to protect citizens from fraud given the availability of extant anti-fraud laws and “reaffirm[ing] simply and emphatically” that, even if they are “not the most efficient means of preventing fraud,” the “First Amendment does not permit the State to sacrifice speech for efficiency”).

⁸ Disciplinary Letter, *supra* note 3.

⁹ *See Healy v. James*, 408 U.S. 169, 186 (1972) (“guilt by association alone, without [establishing] that an individual’s association poses the threat feared by” authorities “is an impermissible basis upon which to deny” expressive or associational rights).

¹⁰ *Id.* at 171, 181.

¹¹ *See United States v. Robel*, 389 U.S. 258, 265 (1967) (“The statute quite literally establishes guilt by association alone, without any need to establish that an individual’s association poses the threat feared by the Government in proscribing it. The inhibiting effect on the exercise of First Amendment rights is clear.”) (footnote omitted).

¹² Note that public university restrictions on social events, such as new member activities, burden students’ freedom of association and must pass First Amendment scrutiny. *E.g., Gay Students Org. of Univ. of N.H. v.*


it imposed a blanket punishment despite possessing full power to individually punish groups or students who commit misconduct without restricting the expressive rights of hundreds of students.¹³ Considering that all current and even prospective UMD student are potential “prospective new members,”¹⁴ the sheer breadth of the university’s prior restraint renders it untethered to any legitimate university interest.

UMD also failed to provide the suspended groups and students due process prior to imposing sanctions, which creates a wholly independent constitutional violation.¹⁵ Before imposing an interim suspension, institutions must inform students what they are “accused of doing and what the basis of the accusation is,” then provide the accused “an opportunity to explain [their] version of the facts.”¹⁶ Even if there is “continuing danger to persons or property” rendering notice and a hearing impracticable, the institution must provide the “necessary notice and rudimentary hearing ... as soon as practicable.”¹⁷

UMD imposed this punishment “effective immediately” upon learning of allegations of misconduct, without providing any prior opportunity for students to contest it.¹⁸ And threatening additional discipline for any “attempts to coordinate responses” to the sanctions seriously undercuts students’ ability to meaningfully defend themselves—suggesting UMD will inflict further punishment still upon students for invoking rights guaranteed them by the university’s Code of Student Conduct.¹⁹

Given UMD’s ongoing violation of students’ rights, we request a substantive response to this letter no later than close of business March 14, 2024, confirming UMD will rescind all discipline imposed on Greek organizations and their members and commit to individualized disciplinary determinations going forward.

Sincerely,



Zachary Greenberg

Senior Program Officer, Student Organizations, Campus Rights Advocacy

Bonner, 509 F.2d 652, 654 (1st Cir. 1974) (holding that a university’s ban on a single student group’s social events was “a substantial abridgment of associational rights” because of “the important role that social events can play in individuals’ efforts to associate to further their common beliefs.”).

¹³ See Disciplinary Letter, *supra* note 3.

¹⁴ *Id.*

¹⁵ See, e.g., *Iota Xi Chapter v. Patterson*, 538 F. Supp. 2d 915, 924-25 (E.D. Va. 2008), *aff’d on other grounds*, 566 F.3d 138, 149 (4th Cir. 2009); *Sigma Chi Fraternity v. Regents of Univ. of Colo.*, 258 F. Supp. 515, 528 (D. Colo. 1966) (requiring that university provide fraternity “adequate notice of opposing claims, reasonable opportunity to prepare and meet them in an orderly hearing adapted to the nature of the case and finally, a fair and impartial decision”).

¹⁶ *Goss v. Lopez*, 419 U.S. 565, 579 (1975).

¹⁷ *Id.* at 582–83.

¹⁸ Disciplinary Letter, *supra* note 3.

¹⁹ Code of Student Conduct, UNIV. OF MD. (revised May 25, 2023), <https://policies.umd.edu/student-affairs/university-of-maryland-code-of-student-conduct> [<https://perma.cc/PEV8-CGR5>] (affording students the right to gather witnesses, present evidence, and contact parties with relevant information).