



## Foundation for Individual Rights in Education

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August 16, 2004

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Dear Chancellor Moeser,

FIRE has received your letter of August 12, 2004, regarding the University of North Carolina at Chapel Hill's refusal to extend recognition to the campus chapter of the Alpha Iota Omega (AIO) Christian fraternity. We appreciate your taking the time to respond to our concerns. Unfortunately, however, your letter did not adequately or correctly address several of the pivotal issues in the case, and your conclusion that UNC "acted based on [its] obligations under applicable federal and state law" is simply unsustainable.

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First, we disagree that UNC's actions prior to your response could be characterized as "fair and reasonable" as you describe them in your letter. AIO has informed FIRE that it first discovered it had been derecognized when its web access was cut off without warning shortly before the 2003-2004 winter break. Then, that spring, AIO went to the student accounting office and found that even access to its own money had been cut off (the account contained privately-raised funds, not student fee funds). Especially in light of UNC's battle with InterVarsity Christian Fellowship in 2002, these actions were neither fair nor reasonable.

Second, your letter contains a number of details that indicate a distressing disregard for minority rights and a fundamental misunderstanding of liberty. The very first line of your letter, for example, points out that the AIO fraternity currently has seven members, contrasting the small size of AIO with the 42 religious groups containing 4,811 members that have apparently signed UNC's unconstitutional nondiscrimination policy. Aside from the fact that it is unlikely that all of these religious groups truly are admitting members regardless of their religious views, UNC's emphasis on numbers here shows a disturbing lack of

appreciation for the reason that American liberties are placed beyond the reach of legislators (or state university officials) to curtail.

In a democratic system, it is the rights of those in the minority, not those in the majority or of those in power, that need to be protected. Those who share the opinions of the majority are protected by the power of their popularity in a democracy, and seldom need to fear that their opinions will be silenced. It is those in the minority who most often feel the brunt of discrimination and censorship. Indeed, this principle is exactly the reason for the passage of the Fourteenth Amendment—an amendment you later cite as a reason to abridge the rights of this particular minority group. One of the enduring lessons of the civil rights movement in this country is that this universal principle must apply even when the minority is small and powerless—even as small as seven students among five thousand.

Strangely, your response to FIRE also fails to reflect the actual written policies that are advertised as being in effect at the university, either on the recognition form itself or on the Carolina Union website's sections concerning group recognition. Indeed, the very clause that AIO objected to in the 2003-2004 Official University Recognition Agreement for UNC-CH Student Co-Curricular Organizations is as follows:

The organization must comply with University policies, including University policies on non-discrimination.... In keeping with applicable law and University policy, membership and participation in your organization must be open without regard to age, race, color, national origin, religion, disability, veteran status, or sexual orientation. Membership and participation in your organization must also be open without regard to gender, unless exempt under Title IX.

This policy is reiterated in the Official Recognition section of the 2003-2004 Student Organization Manual on the Carolina Union website (found at [http://carolinaunion.unc.edu/activities\\_orgs/handbook/official\\_recognition.html](http://carolinaunion.unc.edu/activities_orgs/handbook/official_recognition.html)). The first paragraph in this section states:

Student organizations wanting to use University facilities must obtain official recognition through the Carolina Union. There are two reasons for this requirement. First, the University wishes to make clearly known the premise that *all student organizations using University facilities are to be open for full membership and participation by any student without regard to race, color, religion, national origin, disability, age, veteran status, sexual orientation, and gender unless exempt under Title IX....* [Emphasis in original.]

This statement makes it clear that UNC's *very first priority* in the process of official recognition is to ensure that student groups are adhering to the exact text of the "nondiscrimination" clause. The exact wording of that clause and the fact that "membership and participation" in student groups is required to be open under that policy is repeated several more times throughout UNC's materials on official recognition. No hint of any exception to this policy (except for the Title IX exception) is to be found on the recognition form or on the Carolina Union website. In fact, the "Statement of Purpose" subsection of the official recognition policy page states that all groups should include the nondiscrimination clause in its governing documents, therefore forcing every officially recognized organization to adopt UNC's nondiscrimination policy as its own. UNC

could not have made it clearer that all groups must abide by every aspect of the university's nondiscrimination clause.

Yet your response to FIRE states that its policy is that “[a]n organization whose activities center around a core of beliefs may require that its officers subscribe to the tenets of the organization.” Neither AIO nor FIRE were able to locate such a statement in UNC's recognition agreement. In any case, this statement is in direct conflict with the plain meaning of UNC's nondiscrimination policy, which, again, states that “student organizations using University facilities are to be open for full membership and participation by any student without regard to...religion...” While it is the rare religion that does not consist, at least in part, of a deeply held “core of beliefs,” UNC's policy makes it clear that religion is not one of the “cores of belief” that groups can use to select their leaders. “[F]ull membership and participation” *by definition* includes the opportunity to take a leadership role in the group—otherwise it would and could not be “full participation.”

Your letter also erroneously conflates a person's “status” with his or her beliefs and expression. In its letter to FIRE, UNC explains:

While an organization—religious or otherwise—cannot require members to have a “status” [e.g. “be a Presbyterian,”], it can require members to have an interest in the subject matter of the organization and to support its work [e.g. “I affirm that I am joining the College Republicans because I have an interest in learning more about the organization and because I support its objectives.”].

Such a distinction in this case is meaningless. AIO is not interested in the religion of its members insofar as Christianity is a “status” (like being “Asian” or “male”). What is important to AIO is that its members subscribe to a certain core set of beliefs that in and of themselves constitute Christianity. There is no difference between asking that a member be “Christian” and asking that a member subscribe to the certain “core of beliefs” that make up Christianity. UNC's attempt to make a distinction between the two is confusing and ultimately serves no purpose other than to cloud the issue by equating the “status” of being a Christian to “status” of sharing immutable characteristics such as skin color, sex, or national origin. In fact, among the categories listed in UNC's nondiscrimination clause, only religion can inarguably be described as a set of beliefs rather than an unchangeable characteristic. Discrimination on these largely unchanging characteristics is therefore arbitrary in a way that asking a member of a fraternity to be Christian is not. For example, a UNC “Free Tibet” organization should not be allowed to exclude another student because of his status of being Chinese, because his nationality is rightfully presumed not to come with a certain point of view. The group would, however, be perfectly justified in excluding a student who did not believe that Tibet should be freed. If this had been UNC's principle from the start, and if it was equally applied to religious as well as political belief, this incident would never have happened.

As you know, one of AIO's primary goals is to educate its members as Christian leaders so that they can spread the Christian message. Members who did not and would never share these beliefs would *unavoidably* detract from the purpose of the fraternity. Simply put, an individual who does not have faith in Christian beliefs can never be an effective Christian witness. Such a

person could not honestly state that the Christian message was truthful and thus, obviously, would be a poor evangelist.

Yet the moment that AIO begins to take such members, it can no longer honestly say that its goal is to train leaders who will help spread the word of Christ. Even if non-believing students were active in the fraternity, they could not *by definition* help AIO to advance its goal. The same goes for many of the principles that AIO brothers swear to follow, which include “Discipleship, Unity, Prayer, Bible Study, Reputation of Integrity, Church, Faithfulness, Service, Zeal, and Encouragement.” How, for instance, could a non-Christian make a Christian “disciple” of another person? This is precisely why the Supreme Court, in the case of *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000), stated that “forced inclusion of an unwanted person infringes the group’s freedom of expressive association if the presence of that person affects in a significant way the group’s ability to advocate public or private viewpoints.” In that case, the court determined that the Boy Scouts of America did not have to permit a gay Eagle Scout to become a Scout leader because such a person could not, *by definition*, communicate the Scouts’ moral message in opposition to the practice of homosexuality. AIO’s concern is the very same as that of the Boy Scouts.

To see the inherent fallacy in UNC’s position, one need only apply it to other student organizations. Is it UNC’s policy that a group organized to advance the civil rights of African-American students should grant full “membership” and “participation rights” to a member of the Ku Klux Klan? Should a gay rights organization grant full participation to students who believe that homosexuality is sinful? Before UNC answers this question too quickly, you should be aware that the university allows the Gay, Lesbian, Bisexual, Transgender-Straight Alliance, a recognized student group, to sponsor an annual “Unity Conference” that is open to “progressive lesbian, gay, bisexual, transgender, and queer identified people *and their allies*.” (Emphasis added.) UNC evidently understands the importance of shared beliefs for some groups, but not for others.

You also mischaracterize the issue of student fees in your letter. The university emphasizes that it “charges and collects the student fee from every student as part of its tuition and fees...,” implying that since every student pays mandatory student fees, any group receiving such monies should have to allow every student to join. However, Tremayne Manson, AIO’s national president, has informed us that the AIO chapter at UNC has never received any student fee funding and has no plans to seek it in the future. Indeed, Manson tells FIRE that he knows of no fraternity that receives student fee funds from UNC. This is not unusual, as most universities’ fraternities and sororities receive no student fee funds except for specific, usually charitable activities that benefit the whole campus, relying instead on members’ dues to support the majority of the fraternal organization’s costs. Therefore, UNC’s insistence that AIO not be able to receive mandatory student fee funds is a red herring.

Rather, the issue is primarily one of equal access to facilities, which UNC specifically denies to unrecognized groups (recognized groups have, as your letter stated, “priority access,” but the Student Organization Manual indicates that only recognized student groups have *any* real right of access). Since the Supreme Court decided *Widmar v. Vincent*, 454 U.S. 263 (1981), it has been clear that public universities cannot deny the use of campus facilities to religious organizations

simply because they are religious. In *Widmar*, a public university made its facilities available to a broad spectrum of student groups, but denied access to specific religious organizations. The Supreme Court struck down this prohibition, holding that the university’s policy violated the campus group’s rights of “speech and association.” UNC’s denial of access to this religious organization, merely because it requires its members to adhere to a certain set of beliefs, looks very much like *Widmar*.

Finally, it is critically important to note that UNC has no legal obligation to prohibit a private, religious organization from “discriminating” on the basis of religion. Title VI prohibits universities from discriminating on the basis of race, and Title IX prohibits universities from discriminating on the basis of gender. **Neither statute addresses the conduct of a private, religious organization.** Moreover, the Equal Protection Clause of the Fourteenth Amendment only requires the government to provide its citizens with equal protection of the law; it does not apply to private, religious organizations like AIO. **To be clear, UNC does not have a legal obligation to prevent a private, religious organization from selecting its members on the basis of religious conviction.** It has made an *ideological choice* to limit AIO’s First Amendment rights; it does not do so due to any legal mandate.

The actual law, on the other hand, demonstrates the breadth of AIO’s fundamental First Amendment freedoms. Not only is UNC required to grant religious organizations equal access to campus facilities (*see Widmar*, above), it is also required to grant religious organizations equal access—on a viewpoint neutral basis—to student fee funding. *See Rosenberger v. University of Virginia*, 515 U.S. 819 (1995) and *Board of Regents v. Southworth*, 529 U.S. 217 (2000). Moreover, UNC cannot compel AIO to include individuals either as “participants” or leaders who will impair the organization’s ability to share its chosen message. *See Hurley v. Irish-American Gay, Lesbian and Bisexual Group*, 515 U.S. 557 (1995) and *Boy Scouts of America v. Dale*, above. Simply put, UNC cannot require private student groups to conform to UNC’s “message” or “mission” as a precondition for receiving recognition, benefits or facilities access. *See Healy v. James*, 408 U.S. 169 (1972).

The above case citations represent Supreme Court statements of constitutional law. No federal, state, local, or university statute, policy, or regulation can trump the exercise of First Amendment rights guaranteed by the United States Constitution. This is a basic statement of constitutional law, but universities have confused their obligations under Title IX and Title VI to such an extent that the U.S. Department of Education’s Office of Civil Rights last year was forced to issue a letter that clearly and unequivocally stated that these statutes cannot be read to require universities to enact policies that violate the First Amendment. To sum up the law with regards to this case, there is no regulation that mandates that UNC derecognize a Christian group like AIO, and there is compelling case law that indicates the Constitution, in fact, forbids UNC’s actions.

In conclusion, your letter to FIRE does not address our concerns—indeed, it raises more problems than it solves. Your explanation of UNC’s policies conflicts with the plain language of its regulations on recognition, and its attempt to distinguish the “status” of being a Christian from the holding of Christian beliefs in general is unsupportable. Further, the university’s fundamentally mistaken legal statements do not inspire confidence that UNC is determined to

protect the constitutional rights of its students in this case. UNC's ideological objections to Christian organizations choosing Christian members cannot withstand the First Amendment. FIRE continues to request that UNC not require the Alpha Iota Omega Christian fraternity to alter the constitutionally permissible nature of its organization in return for official recognition.

Sincerely,

Handwritten signature in blue ink, appearing to read 'D French'.

David French  
President

cc:

Robert Shelton, Executive Vice Chancellor and Provost, UNC-Chapel Hill

Melissa Exum, Dean of Students, UNC-Chapel Hill

Jonathan Curtis, Assistant Director for Student Activities and Organizations, UNC-Chapel Hill

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