

August 16, 2004

Chancellor James Moeser  
University of North Carolina at Chapel Hill  
103 South Building  
Campus Box 9100  
Chapel Hill, North Carolina 27599-9100

*Sent by U.S. Mail and Facsimile (919-962-1647)*

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.

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



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.

