



May 12, 2016

President Drew Gilpin Faust  
Harvard University  
Office of the President  
Massachusetts Hall  
Cambridge, Massachusetts 02138

**URGENT**

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

Dear President Faust:

The Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, freedom of speech, and freedom of conscience on America's college campuses. Our website, [thefire.org](http://thefire.org), will give you a greater sense of our identity and activities.

FIRE is gravely concerned by the threat to freedom of association presented by Harvard University's recently-announced decision to bar members of unrecognized single-sex social organizations from holding leadership positions in recognized student organizations and on athletic teams. Under Harvard's plan, members of such organizations will further be ineligible to receive Dean's endorsement letters for post-graduate scholarships and fellowships, including the Rhodes and Marshall scholarships. This sweeping action significantly compromises the freedom of association of all Harvard students. We urge Harvard to reverse this illiberal and chilling new policy.

The policy affects the freedom of association rights of all Harvard student organizations, and by implication all Harvard students. By prohibiting members of disfavored groups from holding leadership positions in other student organizations, Harvard intrudes on its student organizations' autonomy, removing their ability to elect and appoint leaders at their discretion and substituting its own judgment that certain students are categorically unfit to hold leadership positions. This result flatly contradicts the liberal

values Harvard espouses. As the Harvard Undergraduate Council aptly remarked in its statement on the new policy:

As leaders of an entirely elected council of representatives, our first and foremost priority is ensuring that student voice, no matter the opinion, is heard and respected. Vetting of elected members of student government based on affiliation in certain groups is detrimental, and fundamentally opposed, to the vivacity of the democratic process.<sup>1</sup>

While the targets of Harvard's new policies are ostensibly unrecognized single-sex organizations operating independently of the university, all student organizations—from political and religious organizations to advocacy groups to publications such as *The Harvard Crimson*—now face having their leadership decisions dictated to them by the Harvard administration.

As stated in your May 6 letter to Harvard College Dean Rakesh Khurana accepting this policy proposal, Harvard justifies this new policy in part by arguing that “leaders of organizations funded, sponsored, or recognized by Harvard College in a very real sense represent the College.” This is not true, however—not at Harvard, and not generally. Student organizations, and their leaders, are commonly understood to be speaking only for themselves, or for their organizations, and not for the institution as a whole. Harvard itself has made this clear numerous times when the activities of its student organizations attracted controversy, explaining to the public that it did not endorse the organizations' views or activities, but recognized and supported their right to free expression.<sup>2</sup> Harvard's aggressive assertion that student organization leaders effectively serve as agents of the institution carries the implication that they may only take positions and actions that the college itself endorses. This result cannot be reconciled with Harvard's promises of freedom of expression and its own past statements on its students' basic rights.

FIRE is further alarmed by the troubling lack of concern for freedom of association evidenced in Harvard's willingness to abridge that fundamental right for members of officially disfavored organizations. Underrepresented and historically marginalized groups have long relied on the protections of freedom of association in forging their identities and agendas for the advancement of their causes.<sup>3</sup> The ability and right of

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<sup>1</sup> See <https://www.facebook.com/harvarduc/posts/10154313840203968>.

<sup>2</sup> See, e.g., Adam Steinbaugh, *Harvard's Double Standard on the Role of Student Organizations*, THE TORCH, May 9, 2016, available at <https://www.thefire.org/harvards-double-standard-on-the-role-of-student-organizations/> (documenting Harvard University's public statements regarding controversial organizations, events, and statements, including a Satanic black mass, the student-operated *H-Bomb* magazine, and the Harvard College Munch, a student organization formed to discuss issues relating to human sexuality).

<sup>3</sup> As the Supreme Court has observed, “[a]ccording protection to collective effort on behalf of shared goals is especially important in preserving political and cultural diversity and in shielding dissident expression from suppression by the majority.” *Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984).

individuals to form associations based on gender, ethnicity, religion, sexual orientation, political viewpoint, or numerous other factors can provide other invaluable social benefits. This has not been lost on the numerous female Harvard students who have in recent days protested the new policy, both on campus and via the #HearHerHarvard social media campaign. As *The Washington Post* reported concerning these protests on May 9:

“The most important message that we do want to share is the value that we put on women’s spaces,” Rebecca Ramos, a member of Harvard’s class of 2017 from Seattle, told *The Washington Post* in a telephone interview. “We’re looking to improve the environment on campus for women, and we feel it’s important that we have space for women on campus.”<sup>4</sup>

The implications of Harvard’s demonstrated willingness to resort to the measures it has, however, spread far beyond the experiences of any one group. Harvard cannot credibly claim to value freedom of association while denying benefits to certain students based on their voluntary private associations and forbidding student organizations from choosing them for leadership positions based on those associations. It cannot weaken this right for some without weakening it for all.

Finally, FIRE is profoundly concerned by the prospect of this policy’s enforcement. No mechanism for enforcing the policy currently exists beyond Dean Khurana’s recommendation that such procedures “be developed by an advisory group comprised of faculty, students, and administrators at the College.” It is difficult, however, to fathom how the university will implement this policy without deeply intruding upon the freedoms of association, expression, and conscience of its students. Will students, for instance, be forced to disclose their memberships in these organizations, under possible pain of discipline? Will student organizations be forced to furnish their membership lists to the university? Will a panel of elected or selected Harvard officials question students suspected of being part of these disfavored organizations? Harvard so far appears to be unwilling to confront these uncomfortable yet obvious questions about how it will administer this new policy, perhaps because doing so raises the specter of McCarthyism—a deeply lamentable period in American history in which individuals, including many members of academic communities, faced persecution and blacklisting for having the “wrong” affiliations. Harvard should not revive that period’s tactics and methods.

In purporting to act in the service of its liberal principles, Harvard has resorted to deeply illiberal measures. In the name of “achieving a campus where all members fully belong and thrive,” as you wrote in your letter to Dean Khurana, Harvard plans to single out students who maintain voluntary private associations of which the university

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<sup>4</sup> Justin Wm. Moyer, *Harvard women protest sanctions on single-gender clubs*, THE WASHINGTON POST, May 9, 2016, available at <https://www.washingtonpost.com/news/grade-point/wp/2016/05/09/harvard-women-protest-sanctions-on-single-gender-clubs>.

disapproves, and then deny them benefits and opportunities based not on their individual actions or achievements, but on the presumption of guilt by association. We call on Harvard University to recognize these actions as incompatible with its mission and principles, reverse this illiberal and ill-considered policy, and ensure the protection of the freedom of association of its students.

We request a response to this letter by May 26, 2016.

Sincerely,



Peter Bonilla

Director, Individual Rights Defense Program

cc:

Rakesh Khurana, Danoff Dean of Harvard College

Alan M. Garber, Provost

Tom Dingnam, Interim Dean of Student Life and Dean of Freshmen