



November 22, 2019

Kent Syverud  
Office of the Chancellor  
Syracuse University  
Crouse-Hinds Hall, Suite 600  
900 South Crouse Avenue  
Syracuse, New York 13244-2130

*Sent via U.S. Mail and Electronic Mail (chancellor@syr.edu)*

Dear Chancellor and President Syverud:

The Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

FIRE's concern for the state of students' rights at Syracuse University is renewed by its suspension of all social activities of its fraternities over the alleged use of a racial slur by a member (or members) of one fraternity. This action cannot be reconciled with the public commitments Syracuse has made purporting to protect the rights of students to engage in free association.

**I. Syracuse University Suspends Social Activities of All Fraternities**

The following is our understanding of the pertinent facts, which is based on public reports. We appreciate that you may have additional information to offer and invite you to share it with us.

On November 17, you sent out a campus-wide email announcing that the Syracuse Office of Fraternity and Sorority Affairs has suspended all social activities of Syracuse fraternities for the remainder of the fall 2019 semester.<sup>1</sup>

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<sup>1</sup> Message from Syracuse University Chancellor Kent Syverud to Syracuse University students, faculty and staff (Nov. 17, 2019), [https://chancellor.syr.edu/wp-content/uploads/2019/11/Message-from-Chancellor\\_11-17-19-1.docx](https://chancellor.syr.edu/wp-content/uploads/2019/11/Message-from-Chancellor_11-17-19-1.docx).

You stated that this suspension was the result of a November 16 incident where “one of our African American students reported being subjected to a verbal racial epithet from a group of students and visitors to our campus.”<sup>2</sup> You added that “[s]ome of the individuals involved are members and guests of a Syracuse University fraternity,” and “that the safety and well-being of students on our campus requires stronger steps.”<sup>3</sup>

According to news reports, the Syracuse Department of Public Safety claims “an African American female reported being verbally harassed Saturday by a large group of individuals who reportedly were yelling the ‘N-word’ as she walked by,” and that “[t]here was no physical altercation.”<sup>4</sup>

According to Onondaga County District Attorney William Fitzpatrick, there is no corroborating evidence that any Syracuse student directed a racial slur at another student during the incident.<sup>5</sup> Several eyewitnesses, including members of the alleged victim’s family, deny that a racial slur was uttered, according to Fitzpatrick.<sup>6</sup> The student accused of using the slur, who is enrolled at Rutgers University, denies the accusation, as do the members of Syracuse’s Alpha Chi Rho fraternity chapter who were present during the incident.<sup>7</sup> Outside of an isolated, uncorroborated accusation against Alpha Chi Rho members, there is no evidence that any Syracuse fraternity committed misconduct.

In announcing the suspension of the Alpha Chi Rho chapter and the ban on fraternity social activities on November 17, you said:

While only one fraternity may have been involved in this particular incident, given recent history, all fraternities must come together with the University community to reflect upon how to prevent recurrence of such seriously troubling behavior.<sup>8</sup>

Among the fraternities punished by Syracuse are numerous chapters of the Syracuse Interfraternity Council, National Association of Latino Fraternal Organizations, National

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<sup>2</sup> *Id.*

<sup>3</sup> News Staff, *Statement from Chancellor Kent Syverud*, SYRACUSE UNIV. NEWS (Nov. 17, 2019), <https://news.syr.edu/blog/2019/11/17/statement-from-chancellor-kent-syverud>.

<sup>4</sup> John Bacon, *Racist, anti-Semitic incidents prompt Syracuse to halt fraternity activities; Alpha Chi Rho suspended*, USA TODAY (Nov. 17, 2019 10:05 AM), <https://www.usatoday.com/story/news/nation/2019/11/17/syracuse-fraternity-school-suspends-activities-after-racist-incidents/4222028002>.

<sup>5</sup> *DA Bill Fitzpatrick on Racism at Syracuse University, Onondaga County Legislator Julie Abbott-Kenan*, at 5:00-7:45, THE BOB LONSBERRY SHOW ON 570 WSYR (Nov. 19, 2019), <https://www.iheart.com/podcast/139-the-bob-lonsberry-show-on-28344638/episode/5pm-da-bill-fitzpatrick-on-racism-52877889>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

Pan-Hellenic Council, and Multicultural Greek Council, which include several African American, Latino, Asian American, and Jewish fraternal organizations, among others.<sup>9</sup>

As of the date of this letter, all Syracuse fraternities remain subject to the ban on social activities.

**II. Syracuse’s Suspension of All Fraternity Social Activities Cannot Be Reconciled with its Purported Commitment to Uphold Freedom of Association**

While Syracuse may impose restrictions on student groups accused of violating campus policies, such rules must be consistent with the First Amendment standards the university promises to uphold. The restrictions imposed here represent a substantial overstep of Syracuse’s authority, and must be rescinded.

***A. Syracuse promises students freedom of expression.***

While Syracuse University is a private institution and thus not legally bound by the First Amendment, it nevertheless promises its students and faculty members that they enjoy broad rights to freedom of expression and association.

For example, Syracuse University’s Campus Disruption Policy properly asserts that the university “is committed to the principle that freedom of discussion is essential to the search for truth.”<sup>10</sup> Syracuse’s declaration of “Student Rights and Responsibilities” similarly notes:

Students have the right to express themselves freely on any subject provided they do so in a manner that does not violate the Code of Student Conduct.

[. . .]

Students have the right to exercise their religious convictions and associate with religious, political, or other organizations of their choice in University facilities, provided they do so in a manner that respects the rights of other members of the community and complies with the Code of Student Conduct. Students have the responsibility to respect the rights of other members of the University community to free exercise of their religious

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<sup>9</sup> *Councils & Chapters*, SYRACUSE UNIV., OFFICE OF FRATERNITY AND SORORITY AFFAIRS (2019), <http://fasa.syr.edu/councils-chapters/index.html>

<sup>10</sup> *Campus Disruption Policy*, SYRACUSE UNIV. (Aug. 20, 2010), <https://policies.syr.edu/policies/free-speech/campus-disruption-policy>.

convictions and to free association with organizations of their choice.<sup>11</sup>

Similarly, Syracuse’s Anti-Harassment Policy provides:

Syracuse University is committed to maintaining an environment that fosters tolerance, sensitivity, understanding and respect while protecting the free speech rights of the members of its community.

[. . .]

The University is also committed to protecting academic freedom and the freedom of speech by members of its community. This policy is not intended, and may not be applied, to abridge the free speech or other civil rights of any individual or group on campus. However, harassing speech or conduct that effectively prevents equal access to University programs or otherwise violates federal or state law, or University policy, is prohibited.<sup>12</sup>

***B. Syracuse is legally obligated to adhere to its commitment to students’ rights.***

These foundational commitments are not only a moral and contractual obligation to the students of Syracuse, but are also important to the university’s accreditation. Syracuse is accredited by the Middle States Commission on Higher Education, which requires that each institution, as a pre-condition for accreditation, “possesses and demonstrates [...] a commitment to academic freedom, intellectual freedom, freedom of expression.”<sup>13</sup> This is a laudable commitment to defend, rather than abrogate, the freedom of expression of members of the student body, even when it is difficult or unpopular to do so.

Students reasonably rely on these commitments when they enroll at Syracuse, and the university has not only a moral, but also a contractual obligation to uphold these commitments. Private colleges are legally bound to uphold promises concerning freedom of expression and inquiry. For example, a New York court recently ruled against a private university that refused to recognize a chapter of Students for Justice in Palestine, which the administration feared would be “polarizing.” *Awad v. Fordham Univ.*, 2019 NY Slip Op 32353(U), ¶ 16 (Sup. Ct.). The court held that the possibility that advocacy “might be controversial or unpopular with a segment of the university community” is not a valid basis to

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<sup>11</sup> *Statement of Student Rights and Responsibilities*, SYRACUSE UNIV. (Oct. 2005), <https://policies.syr.edu/policies/academic-rules-student-responsibilities-and-services/statement-of-student-rights-and-responsibilities>.

<sup>12</sup> *Anti-Harassment Policy*, SYRACUSE UNIV. (Dec. 13, 2016), <https://policies.syr.edu/policies/free-speech/anti-harassment-policy>.

<sup>13</sup> MIDDLE STATES COMM’N ON HIGHER EDUC., STANDARDS FOR ACCREDITATION AND REQUIREMENTS OF AFFILIATION 5 (13th ed. 2015), available at <http://msche.org/publications/RevisedStandardsFINAL.pdf>.

restrict students' rights to expressive association, as such a restriction is inconsistent with the university's mission statement guaranteeing freedom of inquiry. *Id.*

***C. Syracuse's commitment to freedom of association forecloses its ability to ban all social activities of its fraternities for the alleged conduct of one.***

The First Amendment standards Syracuse promises to uphold guarantee students the freedom of association, which protects the "right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984).<sup>14</sup>

The right to association extends to college students, protecting their right to form student groups, such as Greek letter organizations and other social organizations. Accordingly, when a university committed to upholding First Amendment standards burdens the ability of a student organization to engage in this kind of collective activity, the burden must withstand First Amendment scrutiny. *Healy v. James*, 408 U.S. 169, 181 (1972); *see also, e.g., Iota Xi Chapter v. Patterson*, 566 F.3d 138, 146 (4th Cir. 2009) (analyzing state college fraternity's freedom of association claims). Government rules that restrict this right "are subject to strict scrutiny" and are only upheld "if they are narrowly tailored to serve a compelling state interest." *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 451 (2008) (internal quotations omitted).

In *Chi Iota Colony of Alpha Epsilon Pi Fraternity v. City Univ. of N.Y.*, 502 F.3d 136 (2d Cir. 2007), the United States Court of Appeals for the Second Circuit put forth the prevailing standard when analyzing the associational freedoms of student social groups:

To determine whether a governmental rule unconstitutionally infringes on an associational freedom, courts balance the strength of the associational interest in resisting governmental interference with the state's justification for the interference. This will require an assessment of: (1) the strength of the associational interests asserted and their importance to the plaintiff; (2) the degree to which the rule interferes with those interests; (3) the public interests or policies served by the rule imposed; and (4) the tailoring of the rule to effectuate those interests or policies. The more important the associational interest asserted, and the more the challenged governmental rule burdens the associational freedom, the more persuasive must be the state's reasons for the intrusion, and the more precisely tailored the state's policy must

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<sup>14</sup> While, again, Syracuse is not obligated by the First Amendment to grant its students freedom of expression, the Supreme Court's interpretation of the First Amendment's guarantee of "freedom of speech" provides a useful baseline for understanding what students would reasonably expect from an institution that, like Syracuse, promises that freedom to its students.

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502 F.3d at 143.

Applying this assessment to Syracuse's ban on social functions, it is clear that the university's ban is incompatible with the expressive rights it promises to its students.

**i. Syracuse's ban substantially interferes with the fraternities' associational interests.**

The burden on the fraternities' associational freedoms is substantial. By prohibiting all social functions, Syracuse effectively bans the vast majority of chapter functions and thereby threatens their existence as viable student organizations, which courts have classified as major burdens on student group associational freedoms. *Healy*, 408 U.S. at 183 ("Likewise, in this case, the group's possible ability to exist outside the campus community does not ameliorate significantly the disabilities imposed by the President's action [of denying the group official recognition]. We are not free to disregard the practical realities."); *Gay Students*, 509 F.2d at 659–60 ("Considering the important role that social events can play in individuals' efforts to associate to further their common beliefs, the prohibition of all social events must be taken to be a substantial abridgment of associational rights, even if assumed to be an indirect one.").

Indeed, the severity and breadth of the university's ban here is far more drastic than what courts traditionally have found impermissibly onerous to freedom of association. *See, e.g., NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449, 462–63 (1958) (finding compelling disclosure of membership lists to be "a substantial restraint upon the exercise by petitioner's members of their right to freedom of association"). Thus, these sanctions can only be considered a serious and substantial form of interference with the fraternities' associational freedoms.

**ii. Syracuse's ban is not narrowly tailored to further its stated interests.**

Syracuse unquestionably has a strong interest in establishing and maintaining a safe learning and living environment free from substantial disruption, lawless action, and unlawful harassment. That interest, however, cannot justify an expansive revocation of students' expressive rights. To the extent the university may limit expressive rights in service of compelling safety interests, those limitations must be narrowly tailored to advance the interests they purport to serve.

"In considering whether a . . . 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." *Johnson v. City of Cincinnati*, 310 F.3d 484, 504 (6th Cir. 2002). In *Johnson*, the United States Court of Appeals for the Sixth Circuit held that a city ordinance excluding those convicted of drug offenses from "drug-exclusion zones" was not narrowly tailored to the city's interest in reducing drug abuse and crime. *Id.* The court found the ordinance burdened far greater associational freedoms than necessary to achieve the city's

interest. *Id.* at 504–05. Due to the city’s failure to consider alternatives imposing lesser restrictions on an individual’s right to freely travel on public thoroughfares, the court struck down the rule under the First Amendment. *Id.* at 505.

Here, as in *Johnson*, the restrictions burden far more constitutionally-protected conduct than necessary to achieve the university’s interest. A significant range of the restrictions imposed on the fraternities restricts peaceful, lawful acts wholly divorced from violent or unlawful misconduct, impacting a large number of students who are not accused or suspected of any misconduct.

A ban on all social events restricts associational freedoms that have little to nothing to do with Syracuse’s interest in protecting its students. It is difficult to imagine how prohibiting all social activities—regardless of how brief, innocuous, or unrelated to university affairs—is tailored to address the university’s cognizable interests. Likewise, it strains credulity to see how Syracuse’s interests justify banning attendance at events nowhere near Syracuse or even within the state of New York, hosting group dinners and library student sessions, participating in intramural sporting events, attending Syracuse football or basketball games, and countless other activities. Such wide-ranging restrictions cover a virtually unlimited array of student activity bearing no reasonable relationship to maintaining a safe educational community.

**iii. Syracuse’s sanctions burden organizations not alleged to have engaged in wrongdoing, amounting to guilt by association.**

Syracuse’s response is particularly troubling because it imposes penalties on students it does not suspect to have engaged in wrongdoing. These groups are instead penalized only because of their form: Because they are associated with another group by virtue of social connections or similarity in purpose, they are now subject to restrictions.

Expressive rights cannot be limited in this fashion. In explaining how expressive rights apply in the context of student organizations, the Supreme Court noted that it has “consistently disapproved” action “denying rights or privileges solely because of” association with unpopular organizations. *Healy v. James*, 408 U.S. 169, 186 (1972). “[G]uilt 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. *Id.* (quoting, in part, *U.S. v. Robel*, 389 U.S. 258, 265 (1967)). There, a university president’s unilateral decision to deny recognition to a chapter of Students for a Democratic Society, on the basis that it was affiliated with groups that engaged in violence during “widespread civil disobedience on some campuses, accompanied by the seizure of buildings, vandalism, and arson,” abridged associational rights. *Id.* at 171, 181.

If a formal association with organizations that engaged in violence was insufficient to deny associational rights, the informal or attenuated relationship between the impacted fraternal groups here cannot serve as a justification to erode their rights. That Syracuse would punish all fraternities, many of which are dedicated to philanthropy and the promotion of minority voices, for another’s alleged use of a racial slur does not meaningfully advance the university’s

interest in student safety.

### III. Conclusion

We appreciate that Syracuse faces trying circumstances and that the university has a strong interest in protecting student safety. In meeting those challenges, the university must not invade the rights it has promised to its students. In imposing sanctions on organizations that are not alleged to have committed any wrongdoing, Syracuse has departed from its legal and moral commitments. Eroding students' expressive rights will not enhance the safety of Syracuse's educational community.

Syracuse must lift its ban on fraternity social activities, and must make clear that it will not impose such burdensome restrictions on student groups in the future

We request receipt of a response to this letter no later than the close of business on December 6, 2019.

Sincerely,

A handwritten signature in black ink, appearing to read "Zach", with a stylized flourish extending to the right.

Zachary Greenberg  
Program Officer, Individual Rights Defense Program  
Syracuse University College of Law, Class of 2016

Cc:

Pamela Peter, Assistant Dean of the Office of Fraternity and Sorority Affairs  
Tiffany Dennett, Associate Director of the Office of Fraternity and Sorority Affairs