



February 3, 2021

President Amy Gutmann
University of Pennsylvania
Office of the President
1 College Hall, Room 100
Philadelphia, Pennsylvania 19104

Sent via Electronic Mail (presweb@pobox.upenn.edu)

Dear President Gutmann:

FIRE¹ is concerned about the state of free speech and freedom of association at the University of Pennsylvania in light of its ongoing refusal to register the Hunting, Archery, and Shooting Club student group because of complications arising out of the COVID-19 pandemic. Penn's actions unduly burden the expressive and associational rights of this student group, contravening Penn's institutional commitment to uphold students' rights.

I. Penn Refuses to Register the Hunting, Archery, and Shooting Club

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

The first student group dedicated to competitive shooting at Penn dates back to the 1880s.² Student riflery teams operated continuously on campus through the 1950s, and Penn officially recognized the Penn Shooting Club as a student group in 2009,³ which continued to operate until 2017 when it lost recognition due to inactivity.⁴

¹ As you will recall from prior correspondence, 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.

² Seth Zweifler, *Despite political climate, Penn Shooting Club thrives*, THE DAILY PENNSYLVANIAN (Jan. 14, 2013), <https://www.thedp.com/article/2013/01/penn-shooting-club-thrives-despite-political-climate>.

³ *Id.*

⁴ Email from Dongwook Choe to Katie Hanlon Bonner, Office of Student Affairs Executive (Jan. 30, 2020, 12:11 PM) (on file with author) (referencing university recognition of the Penn Shooting Club in 2017).

On March 3, 2020, a group of Penn students formally applied to register the Hunting, Archery, and Shooting Club, with a mission to “promote sustainable conservation, marksmanship, and ethical hunting practices through education and training.” The group has fulfilled all the procedural requirements and criteria for registration by providing Penn with its mission statement, executive board members, and proposed criteria for membership, among other materials and information.⁵

On April 27, the group asked the Penn administration about the status of its application for registration. Associate Director of the Office of Student Affairs Rodney V. Robinson informed the group that:

Given the nature of the group’s mission and potential group activities, a decision on its existence on campus will have to be put on hold until the university can return to a non-remote operation. Currently, the Office of Risk Management and Public Safety Division, which must provide the necessary approvals, are understandably focused on the immediate and on-going critical needs of the university community during this pandemic.

The few groups that have been recently approved for registration did not require additional layers of approval based on their primary mission.

My sincere apologies for any inconvenience. When I have more definitive information to share with you, I will be in touch.⁶

The group did not hear back from Penn until August 17, when Robinson confirmed that “no decision on the status of the organization will be made until the University returns to normal in-person operations,” and that Penn “will remain completely remote through the Fall semester.”⁷

On January 7, 2021, Robinson informed the group that:

Due to the severe disruption in university operations caused by the global pandemic, a decision on whether or not your organization can be an active, registered group on campus will have to be delayed until we return to normal in-person operation. The

⁵ *Procedures for Starting a Club*, UNIV. OF PA. OFFICE OF STUDENT AFFAIRS (last visited Jan. 22, 2021), <https://osa.vpul.upenn.edu/startclub> (listing requirements for recognition).

⁶ Email from Rodney V. Robinson, Associate Director Office of Student Affairs, to Dongwook Choe (Apr. 28, 2020, 9:42 AM) (on file with author).

⁷ Email from Rodney V. Robinson, Associate Director Office of Student Affairs, to Dongwook Choe (Aug. 17, 2020, 11:34 AM) (on file with author).

highest priority, in particular, that my colleagues in Public Safety and the Office of Risk Management are (and remain) focused on is the health and safety of our entire community through this crisis.

[...]

Again I do apologize that a decision regarding your group remains unanswered. Once things return to normal, I will work with my colleagues to resolve this matter.

According to Penn, “[r]egistration is a requirement for every group that uses University space and resources,” and “[r]egistration identifies the organization as active and permits them access to University resources with the ability to reserve space, use of electronic resources, use of the Penn name, access to potential funding sources, and permission to advertise themselves as a student-run organization at the University of Pennsylvania.”⁸ These resources and opportunities include virtual student activities fairs at the onset of each semester, Zoom accounts for individual group use, licenses for Zoom Webinar for large virtual events, and access to the Penn Clubs student engagement platform where students can find groups online.⁹

As of the date of this letter, Penn has not granted registration to the group and has not identified when it will return to normal, in-person operations.

II. Penn’s Refusal to Register the Hunting, Archery, and Shooting Club Violates Its Institutional Commitment to Students’ Rights

Penn’s refusal to register the Hunting, Archery, and Shooting Club until the resumption of normal, in-person campus operations imposes substantial burdens on the student organization’s ability to access resources provided to other similarly-situated groups. These burdens are not justifiable under the circumstances.

A. Penn promises students freedom of expression and association.

Although private institutions like Penn are not required by the First Amendment to do so, Penn has made clear, affirmative commitments to recognize the freedoms of expression and association of its students.

For example, the Penn Code of Student Conduct provides:

⁸ *Frequently Asked Questions*, UNIV. OF PA. OFFICE OF STUDENT AFFAIRS (last visited Jan. 20, 2021), <https://osa.vpul.upenn.edu/faq/#difference>.

⁹ *Covid-19 Impact & FAQ*, UNIV. OF PA. OFFICE OF STUDENT AFFAIRS (last visited Jan. 20, 2021), <https://osa.vpul.upenn.edu/covid19faq/>; *Penn Clubs*, UNIV. OF PENNSYLVANIA (last visited Jan. 20, 2021), <https://pennclubs.com>.

Membership in the University of Pennsylvania community affords every student certain rights that are essential to the University's educational mission and its character as a community: [. . .] The right to freedom of thought and expression.¹⁰

Additionally, Penn's "Guidelines on Open Expression" state:

The University of Pennsylvania, as a community of scholars, affirms, supports and cherishes the concepts of freedom of thought, inquiry, speech, and lawful assembly. The freedom to experiment, to present and examine alternative data and theories; the freedom to hear, express, and debate various views; and the freedom to voice criticism of existing practices and values are fundamental rights that must be upheld and practiced by the University in a free society.

Recognizing that the educational processes can include meetings, demonstrations, and other forms of collective expression, the University affirms the right of members of the University community to assemble and demonstrate peaceably in University locations within the limits of these Guidelines and undertakes to ensure that such rights shall not be infringed. In keeping with the rights outlined in I.A. above, the University affirms that the substance or the nature of the views expressed is not an appropriate basis for any restriction upon or encouragement of an assembly or a demonstration.¹¹

This foundational commitment is not only enshrined in Penn's policies, but is also a component of the university's accreditation. Penn is accredited by the Middle States Commission on Higher Education, which requires that each institution, as a precondition for accreditation, "possess[] and demonstrate[] [. . .] a commitment to academic freedom, intellectual freedom, [and] freedom of expression."¹²

Having made these commitments, Penn is legally and morally bound to adhere to them. For almost a century, Pennsylvania has recognized that "the relation between the student

¹⁰ UNIV. OF PA., *Code of Student Conduct* (Nov. 9, 2020), <https://catalog.upenn.edu/pennbook/code-of-student-conduct/code-of-student-conduct.pdf>.

¹¹ UNIV. OF PA., *Guidelines on Open Expression* 1 (Nov. 27, 2019), <https://catalog.upenn.edu/pennbook/open-expression>.

¹² MIDDLE STATES COMM'N ON HIGHER EDUC., *STANDARDS FOR ACCREDITATION AND REQUIREMENTS OF AFFILIATION* 5 (13th ed. 2015), <http://www.msche.org/wp-content/uploads/2018/06/RevisedStandardsFINAL.pdf>.

and the [private] college is solely contractual in character.”¹³ Penn must respect and honor the clear commitment it has made to its students regarding their expressive and associational rights.

B. Refusing to register the Hunting, Archery, and Shooting Club impermissibly burdens students’ expressive and associational rights.

While, again, Penn is a private institution, interpretations of the First Amendment’s guarantees of freedom of speech and freedom of association provide a clear baseline to evaluate what students would reasonably expect from an institution like Penn that promises these freedoms to its students.

These freedoms extend to students the right not only to speak or publish, but also to organize around shared interests or views. Freedom of association protects the “right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.”¹⁴ The ability to organize around shared interests or beliefs is a foundational element of the right to freedom of expression.

In the university context, these principles protect the rights of students to form student organizations, whether those organizations are expressive or social in nature.¹⁵ Accordingly, actions and regulations that burden these rights are permissible only in narrow circumstances.

In *Healy v. James*, the United States Supreme Court observed that “[t]here can be no doubt that denial of official recognition, without justification, to college organizations burdens or abridges that associational right.”¹⁶ In discussing how the denial of university recognition harms students’ expressive rights, the Court explained:

The primary impediment to free association flowing from nonrecognition is the denial of use of campus facilities for meetings and other appropriate purposes. . . . Petitioners’

¹³ *Barker v. Bryn Mawr Coll.*, 122 A. 220, 221 (Pa. 1923); see also *Swartley v. Hoffner*, 734 A.2d 915, 919 (Pa. Super. Ct. 1999) (“The contract between a private institution and a student is comprised of the written guidelines, policies, and procedures as contained in the written materials distributed to the student over the course of their enrollment in the institution.”).

¹⁴ *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984); see also, e.g., *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 888 (1982) (“[T]he First Amendment restricts the ability of the State to impose liability on an individual solely because of his association with another.”).

¹⁵ See, e.g., *Healy v. James*, 408 U.S. 169, 183 (1972) (establishing that student groups at public universities possess associational freedoms); *Evans v. Newton*, 382 U.S. 296, 298 (1966) (discussing “the right of the individual to pick his own associates so as to express his preferences and dislikes, and to fashion his private life by joining such clubs and groups as he chooses”); *Iota Xi Chapter v. Patterson*, 566 F.3d 138, 146 (4th Cir. 2009) (analyzing state college fraternity’s freedom of association claims); *Chi Iota Colony of Alpha Epsilon Pi Fraternity v. City Univ. of N.Y.*, 502 F.3d 136, 143 (2d Cir. 2007) (same).

¹⁶ 408 U.S. at 181.

associational interests also were circumscribed by the denial of the use of campus bulletin boards and the school newspaper. If an organization is to remain a viable entity in a campus community in which new students enter on a regular basis, it must possess the means of communicating with these students.¹⁷

Penn’s refusal to register the Hunting, Archery, and Shooting Club until the indefinite return of normal campus operations—and the absence of any interim process facilitating access to institutional resources currently available notwithstanding the moratorium—unduly burdens students’ rights. By refusing access to the virtual resources attendant with university registration—resources that are essential to student engagement while in-person activities remain suspended—Penn renders the Hunting, Archery, and Shooting Club unable to meaningfully engage with Penn’s community. In other words, even if Penn could reasonably restrict the group from participating in particular events or activities pending evaluation by Risk Management administrators, that safety interest does not support a burden on *all* access to institutional resources.

We recognize that educational institutions face ongoing disruptions due to the COVID-19 pandemic and that ensuring student health and safety remains a top priority of university liability officers. However, a university that promises its students fundamental rights must allocate resources to facilitating the exercise of these rights. Penn’s indefinite refusal takes the opposite approach, burdening the exercise of fundamental rights because of an institutional preference to devote resources to other needs or interests.

Further, the potential liability issues attendant with registering this club, if any, are not an insurmountable barrier to registration, given that Penn previously recognized competitive shooting clubs as recently as 2017 and has long hosted regular student firearms activities on campus. The prevalence of shooting, archery, and hunting clubs recognized by universities nationwide demonstrates that any liability and safety issues associated with registration have been resolved by university liability officers in favor of students’ expressive and associational rights¹⁸—a result that we urge Penn to achieve as well.

III. Penn Must Commit to Processing the Hunting, Archery, and Shooting Club’s Application for Registration in Good Faith and Without Further Delay

¹⁷ *Id.*

¹⁸ *See, e.g.*, Ryan Chelius, and Jack Tien-Dana, *21 of the Best Colleges for Hunters and Anglers*, FIELD & STREAM (July 10, 2019), <https://www.fieldandstream.com/21-more-best-colleges-for-hunters-and-anglers>; *Collegiate Shooting Sports Directory*, NRA COMPETITIVE SHOOTING DIVISION (last visited Jan. 20, 2021), <https://competitions.nra.org/competitions/nra-national-matches/collegiate-championships/collegiate-shooting-sports-directory>.

A club devoted to “promote sustainable conservation, marksmanship, and ethical hunting practices through education and training” seeks to engage in precisely the kind of virtual programming encouraged by Penn during this period of remote educational activities. FIRE calls on Penn to afford its students the opportunity to meaningfully engage with this club by processing its application for registration.

We request receipt of a response to this letter no later than the close of business on February 17, 2021.

Sincerely,

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

Zachary Greenberg
Senior Program Officer, Individual Rights Defense Program

Cc: Katie Hanlon Bonner, Office of Student Affairs Executive Director
Rodney V. Robinson, Office of Student Affairs Associate Director
Anita Mastroieni, Associate Vice Provost for Graduate Education
Michele Manzoni, Office of Risk Management & Insurance Associate Director