

October 2, 2007

*Via Facsimile to 714.997.6887  
and U.S. Mail*

James L. Doti, President  
Chapman University  
One University Drive  
Orange, California 92866

Re: Free Speech Rights of Sigma Alpha Mu Members

Dear President Doti:

I write because it has come to our attention that the administration of Chapman University ("Chapman") has substantially restricted the free speech and association rights of students affiliated with Sigma Alpha Mu – generally requiring them to "cease advertising and/or hosting Sigma Alpha Mu-related events on University premises – including having students meet on University premises for off-campus events" and, more specifically, prohibiting them from wearing while on campus any clothing bearing their Greek letters or advertising their group on the Facebook website. If so, this raises serious issues under both the state constitution and state law. Indeed, through the so-called Leonard Law, California has broadly protected the free-speech rights of students enrolled at private universities. Cal. Educ. § 94637.

The California Supreme Court has long recognized that free-speech rights may be enforced against private parties. In holding that the California Constitution protects free speech in a privately owned shopping center, the Court relied heavily on the functional equivalence of the shopping center to a traditional public forum – the downtown or central business district. *Robins v. Pruneyard Shopping Center*, 23 Cal.3d 899, 910 n.5, 907 (1979).

Chapman, like any university campus, possesses "many characteristics" of a traditional public forum, "at least for its students." See *Widmar v. Vincent*, 454 U.S. 263, 267 n.5 (1981); see also *Healy v. James*, 408 U.S. 169, 180 (1972) ("The college classroom with its surrounding environs is peculiarly the 'marketplace of ideas.'") (internal quotation marks omitted); *Hays County Guardian v. Supple*, 969 F.2d 111, 117 (5th Cir. 1992) ("The campus's function as the site of a community of full-time residents makes it 'a place where people may enjoy the open air or the company of friends and neighbors in a relaxed environment,' and suggests an intended role more akin to a public street or park than a non-public forum.") (citations omitted); *Roberts v. Haragan*, 346 F.Supp.2d 853, 861-62 (N.D. Tex. 2004) ("[T]o the extent the campus has park areas, sidewalks, streets, or other similar common areas, these areas are public forums, at least for the University's students, irrespective of whether the University has so designated them or not.").

Chapman, moreover, has designated portions of the campus as public forums for its students. *See Roberts*, 346 F.Supp.2d at 862 (“[T]he University, by express designation, may open up more of the residual campus as public forums for its students.”). For instance, as made plain in the code of student conduct, Chapman permits students to post flyers or posters, to distribute handbills, and to hold demonstrations. Accordingly, based on its function as a public forum and its designation of areas for expressive activities, Chapman should be deemed subject to the free-speech protections of the California Constitution, at least as far as its students are concerned.

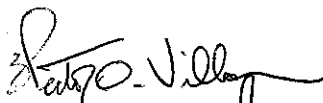
In any event, the California Legislature has acted to protect the free-speech rights of university students, both public and private. The Legislature has provided that “[n]o private postsecondary educational institution shall make or enforce any rule subjecting any student to disciplinary sanctions solely on the basis of conduct that is speech or other communication that, when engaged in outside the campus or facility of a private postsecondary institution, is protected from governmental restriction by the First Amendment to the United States Constitution or Section 2 of Article 1 of the California Constitution.” Cal. Educ. § 94637(a); *see* Cal. Educ. § 66301 (providing identical provision with respect to public colleges and universities). By enacting this section, the Legislature sought to ensure “that a student shall have the same right to exercise his or her right to free speech on campus as he or she enjoys when off campus.” 7 Witkin, Summary 10th (2005) Const Law § 501, at 830 (quoting Stats. 1992, Chap. 1363, §4(b)).

Plainly, the students affiliated with Sigma Alpha Mu retain their fundamental free-speech rights while on Chapman campus. At a minimum, Chapman therefore may not single out their speech or expressive activities for differential treatment. Yet, based on my understanding and review, this is precisely what has occurred. No other student or student group has been subjected to the severe restrictions imposed on those students affiliated with Sigma Alpha Mu. Not to suggest that Chapman can purport to regulate Facebook entries, but it is noteworthy that while these students, who seek to create and foster a uniquely Jewish fraternal experience, have been ordered to remove their entry from Facebook, other Chapman groups, such as the “Association of Intellegent [sic] Pot Smokers and “Under age Drinkers (CU Chapter),” are seemingly permitted to advertise with impunity. Indeed, I viewed their Facebook pages as recently as this past week.

Chapman, furthermore, has a policy on “free expression and dissent.” The policy generally recognizes “the crucial importance of respecting First Amendment rights.” More specifically, the policy affirms the right of students to express opinions and support causes by “orderly means which do not disrupt the regular and essential operation of the institution,” and it names the right to manifest “opposition to a position taken by the university itself.” Students now wearing the Greek letters of Sigma Alpha Mu not only express their affiliation with the group, but also their opposition to the university’s denial of official recognition. Such expressive activity plainly causes no disruption and is therefore permissible even under Chapman’s own free-speech policies.

Whatever legitimate interest Chapman may have in this matter, it can and should be addressed through means that do not unnecessarily restrict, let alone abridge, students' fundamental rights. Accordingly, I ask that you provide immediate written confirmation that the restrictions on the free-speech rights of students from Sigma Alpha Mu, as described above, have been rescinded and that the penalties for their violation, if any, have been rescinded as well.

Sincerely,



Hector O. Villagra  
Director, ACLU-SC Orange County Office