



“Penn State Fraternity Houses Should ‘at the very least’ Continue to be Used by Students”

That’s a quote from Daniel Lee, the vice president for communications of the Penn State Interfraternity Council. His opinion comes in light of the growing number of empty fraternity houses in State College, a result of multiple fraternities losing recognition status with Penn State University. They remain empty as a result of the State College Borough’s unwillingness to allow students to use the property, and the fraternity’s resistance to the Borough.

The Borough of State College’s current zoning ordinance allows fraternity houses that cannot be used by unrecognized fraternities to convert their use. Unsurprisingly, the uses chosen by the Borough are wholly unrelated to fraternity use or even university student housing. Instead the current zoning ordinance only allows fraternity houses to convert to community centers, day cares, homes for the elderly, nursing homes, offices and private schools. Of the seven currently suspended fraternities who can convert their unoccupied houses, only one has done so: Beta Theta Pi, which is permanently suspended by Penn State following the tragic death of Timothy Piazza, and is currently facing a civil lawsuit from Donald G. Abbey. He is suing the fraternity for the \$10 million he allegedly loaned the fraternity to renovate the property that may never be used by the group again.

The property owners’ resistance to change has now convinced the Borough to go back to the drawing board. This fall, the Borough has begun a comprehensive rewrite of its zoning ordinance, including its definition of “Fraternity House.” While it has not been released, the Borough is still determined to forbid the conversion back to a fraternity house. This is something that Daniel Lee says the Penn State Interfraternity Council “cannot agree with, for many reasons.”

One of the considerations is that there are currently 42 fraternity houses in State College. That means there could potentially be 42 vacant properties in the Borough if Penn State prohibits the Greek life on campus. Potential challenges for the Borough include unregulated Greek activity and potential lawsuits against the Borough for unconstitutional takings. The Borough is already facing one lawsuit against the property association that owns the Alpha Chi Rho fraternity house.

The property association that owns the Alpha Chi Rho fraternity house filed a land use appeal against the State College Borough after the Borough claimed the

formerly suspended fraternity was in violation of the Borough zoning ordinance. In that case, the property association appealed the administrative decision of the Zoning Hearing Board of State College Borough. The Property Association argued that the Borough engaged in unlawful delegation of legislative authority to Penn State University by adopting a zoning ordinance that allows the university to choose the Borough’s definition of a “fraternity house” based on whatever current method of obtaining recognition status the university has adopted. The Zoning Hearing Board compared fraternity houses to all other student housing and stated that:

“regulation of a fraternity house use is rationally related to a legitimate government interest, that being the regulation of fraternities, particularly when located in the low density residential areas of the Borough. The regulation of that use is legitimate because without controls on the use, the behavior of the students living within the fraternity house would be uncontrolled, leading to behavior, often associated with the use and misuse of alcohol, which would not be suitable in an area populated by families with small children.”

The Board concluded that a fraternity was a “special type” of student housing and given that its special treatment is derived from “the historic association of a fraternity to the Greek system of the University.” According to the Board, the need to regulate student housing is to protect the surrounding single families with small children and the ordinance reflects a legitimate exercise of the police power.

Aside from citing the traditional association of Greek life organizations and universities, and the coupled fear of the Borough’s non-student residents, the Board’s decision provides a very brief justification for its broad delegation of legislative authority to Penn State.

Now, the Centre County Common Pleas Court will have to decide whether to affirm the State College Borough Board’s decision. If the court does affirm the Board’s decision, the Property Association for Alpha Chi

Rho will be unable to use the premises for a fraternity house and would have to either sell or convert its house to one of the permitted uses under the current zoning ordinance. That means their only options for the large multi-bedroom fraternity house would be a community center, day care, home for the elderly, nursing home, office or private school. The Court may also wait to see the outcome of the Borough's comprehensive rewrite prior to ruling on the constitutionality of the Borough's zoning ordinance.

While State College already has one of the more thorough definitions of "Fraternity House" compared to other municipalities, the Penn State Interfraternity Council still strongly holds the view that the Borough's prohibition against the conversion back to a fraternity house is unconscionable. Regardless of the outcome of this legal battle and the Borough zoning ordinance rewrite, it appears the empty fraternity houses in State College won't be filled by students any time soon.

- Tim Lynch

1. Rafacz, Sarah. State College considers the future of fraternity houses. *The Centre Daily Times*. <https://www.centredaily.com/news/local/community/state-college/article214956875.html>
2. Borough of State College Zoning Ordinance, §19-201.
3. *Donald G. Abbey v. The Alpha Upsilon Chapter of the Fraternity of Beta Theta Pi, Inc.*, Case No. 2017-0838 (C.P. Centre County, PA).
4. Rafacz, Sarah. State College considers the future of fraternity houses. *The Centre Daily Times*. <https://www.centredaily.com/news/local/community/state-college/article214956875.html>
5. *425 Property Association of Alpha Chi Rho, Inc. v. State College Borough Zoning Hearing Bd., et al.*, No. 2018-0285 (C.P. Centre County, PA).
6. *In the matter of 425 Property Association of Alpha Chi Rho Fraternity, Inc.* Finding of Facts, Conclusions of Law, and Decision of the Zoning Hearing Board, page 13.
7. *Id.*
8. *Id.*
9. *Id.*
10. See *Fraternal Law*, Number 154, March 2018 Edition "Losing University Recognition Could Mean Losing Your House"
11. Rafacz, Sarah. State College considers the future of fraternity houses. *The Centre Daily Times*. <https://www.centredaily.com/news/local/>

Proactive Bystanders Needed: How Greek Organizations Can Help Prevent Campus Assaults and Death

The very nature of Greek life implies that students join fraternities and sororities to form tight bonds. Bonding is why students join, why they stay and what these organizations sell to potential new members. And yet, while the Association of American Universities found in 2016 that 48% of Greek students have witnessed a drunk person heading for a sexual encounter, the same study showed that 77% of those students did nothing. There could be many reason for a students inaction. Some students might fear ruining a friendship or a relationship with another organization on campus. Others might not know what to do, or just want to avoid getting involved.

That's why more Greek organizations are calling upon members to become "proactive bystanders," by taking personal responsibility for a situation and intervening to ensure the well-being and safety of others. It's a concept that could have prevented recent high-profile incidents impacting fraternities and sororities. Year after year, chapters are being closed for violating university policies. Last year's hazing death of Timothy Piazza, a pledge at the Beta Theta Pi fraternity at Penn State University, resulted in the indictment of four members. One was sentenced earlier this month to house arrest, probation, fines and community service after pleading guilty and a permanent ban was placed on the fraternity on campus. Piazza's death could have been prevented by a proactive bystander.

So how can fraternity and sorority members play the role of proactive bystander?

- Say something when a brother or sister is stumbling upstairs with a girl or guy
- Tell chapter leadership when an assault happens

- Support those in the community speaking up
- Help brothers and sisters find safety
- Call the police/campus security if someone is in danger
- Intervene
- Change the subject if the conversation turns sexist, homophobic or rape-supportive
- Leave with the brothers and sisters you arrived with, or make sure they have a safe way home

Proactive bystander intervention challenges the norms on campuses by encouraging students to speak out and act in situations that can lead to a sexual assault, violence and even death. By "doing," the culture shifts and campus communities become allies. It should be no surprise that campuses with higher levels of bystander intervention also have a lower level of sexual assaults, physical violence and verbal abuse.

Doing and being a proactive bystander doesn't make students "uncool" or "a snitch", it shows how much students care. They may be angry at the moment of intervention, however, they might later be grateful. Greek men and women are powerful enough to change their campus cultures and reduce incidents of sexual assault, verbal abuse, physical violence and relationship abuse when they act as proactive bystanders. Greek students have a responsibility to look out for their brothers and sisters by being aware and preventing potentially harmful situations. The university community is part of the solution, but it starts with Greek life.

- Susan Stone, Kristina Supler and Dayna Hloska of Korman Jackson and Krantz

International Fraternity Pi Kappa Alpha Faces Lawsuit Against University of Houston Student

A lawsuit has been filed against the Pi Kappa Alpha International Fraternity, Inc. for events surrounding its Epsilon Eta Chapter at the University of Houston. On September 18, 2018, Jared Anthony Munoz brought claims of civil conspiracy against the fraternity and claims of hazing and personal injury against its members for the way he was treated while undergoing the pledge process. The hazing allegations are truly disturbing.

Munoz was 20-years-old when he pledged Pi Kappa Alpha (“PIKE”) in November 2016. He alleges that during the pledge process, he was forced to take part in a three-day ritual called “Ingress.” On the first day of Ingress, PIKE pledges were taken to an abandoned and dilapidated house not far from the University. Inside this house were floors covered in vomit, spit, and feces. Munoz and other pledges were forced to roll around in the human waste as part of the Ingress ritual. Throughout the next three days, the pledges were deprived of food, drink and sleep. They were forced to do two-hour intervals of calisthenics to the point of exhaustion. They were made to parade around and chant “ingress is fun, haze us.”

At one point, an active fraternity member asked if the pledges were hungry and told them they would be fed “cookies.” The pledges were then forced to line up in file to eat the “cookies”, cans of beer heated up on a stove to pressurize them to explode when opened. Each pledge was forced to drink at least two of these heated beers. Munoz recounted that the beer cans were so hot that the pledges had to use their shirt sleeves as heat insulators to hold the cans. Their mouths were scalded.

Next, the pledges were forced to play the “glow stick game” where they were tackled in the dark by active members of the fraternity. Munoz received a surprise tackle during the glow stick game which lacerated his spleen. Munoz did not realize he was bleeding internally. He complained to fraternity actives about his pain, but was ignored and forced to continue participating in Ingress. When Ingress finally ended, Munoz landed in the hospital and remained in the intensive care unit for five days.

Although Munoz’s physical victimization stopped, the active members of Pi Kappa Alpha continued to harass him in other ways. After Munoz reporting the incident to University police, he became a target of retaliation by the fraternity. The fraternity pretended to be Munoz and responded to Craigslist personal ads soliciting homosexuals, who then contacted him with sexually explicit responses. The fraternity falsely stated on the global chat thread “GroupMe” that Munoz was a dishonorably discharged military veteran, invoking emotions that Munoz was a traitor. A third instance included a Snapchat video of a fraternity member setting fire to

Munoz’s hat with the caption: “Sacrifices must be made.” One fraternity member even published a comment on Munoz’s Venmo account that read: “How’s the spleen?”

In his 32-page complaint, Munoz details a history of news headlines describing incidents of various PIKE chapters. Starting at 1986, the chronology depicts a cornucopia of alcohol-abuse, drug-abuse, hazing, hospitalizations, rapes, assaults, and even deaths. Munoz dismisses the traditional notion that the few do not represent the majority, calling this an “arrogant posture given the fraternity’s history”, a history Munoz claims is marred in the conspiracy of promising brotherhood and a higher social status to those who pay to belong to the fraternity. He alleges that Pi Kappa Alpha gave false, misleading, and deceptive realities about what the fraternity offered him. Munoz states that on a corporate level:

[Pi Kappa Alpha fraternity] preys on adolescence and it quietly lures youth into danger with the promise that as alumni they will be part of an elite society. This promise of grandeur has been successful on susceptible minds second only to the threat of blackmail that follows after fraternity pledges commit shameful acts during ingress.

PIKE has approximately 16,000 undergraduate members and over 290,000 life-time members. Munoz’s complaint alleges that each pledge must pay the fraternity \$750.00 in initial dues and \$600.00 per semester thereafter. That amounts to an estimated annual income of \$19.2 million for the fraternity – including \$18,750.00 from the 3-day ingress event alone. Munoz describes the services sold by Pi Kappa Alpha to be “akin to a social dating service,” offering private club membership and new lasting friendships that will lead to future preferential treatment in life. Munoz further critiques PIKE’s status as a non-profit organization and argues that PIKE:

compels its members to pay money to the fraternity as a condition of acceptance within the fraternity. These membership dues are not considered charitable donations. Pi Kappa Alpha also compels its pledges to acquire girls, alcohol, drugs, and stolen property for the self-gratification of the fraternity.

Munoz claims he fell prey to Pi Kappa Alpha’s misleading promises of reaching a better social status in exchange for buying into the fraternity’s membership. He bought-in hoping to reap the touted benefits from the private group but was instead victimized by the corrupt culture of Pi Kappa Alpha.

The International Pi Kappa Alpha Fraternity has already suspended its Epsilon Eta Chapter, as has the University in light of this incident. On September 20, 2018 the International Fraternity posted a response to

the Munoz's complaint on their webpage sympathizing with Munoz and stating that PIKE

does not tolerate hazing, maltreatment of members, or any activities that do not treat individuals with dignity and respect. . . . [Pi Kappa Alpha] is supportive of any action which holds the responsible individuals accountable for the reprehensible and illegal acts alleged.

The International Fraternity continued to respond to Munoz's complaint saying it contains "numerous misrepresentations and factual inaccuracies regarding PIKE's organizational status, financial models, and relationship with the Epsilon Eta Chapter."

The Pi Kappa Alpha International Fraternity, Inc. was previously indicted for organizational hazing by the 183rd Grand Jury for Harris County Texas on December 14, 2017. Both the criminal matter and this civil litigation are a developing matter. Fraternal Law will continue to monitor this case and the particularly interesting claims of the fraternity's conspiracy and deceptive trade practices.

- Tim Lynch

1. Nick Natario, Former UH student suing frat says he nearly died from hazing, ABC13 (Sept. 19, 2018), <https://abc13.com/society/former-uh-student-suing-frat-says-he-nearly-died-from-hazing/4289287/>.

2. See Jared Anthony Munoz v. The Pi Kappa Alpha International Fraternity, Inc., et al., Case No. 2018-65584, Dist. Ct. of Harris County, TX.

3. Munoz, Complaint, pg. 26.

4. Fraternity Responds to Civil Suit In Houston, PIKES.org (Sept. 20, 2018) <https://www.pikes.org/about-pike/news-and-media/recent-news/fraternity-responds-to-civil-litigation-in-houston>

5. Id.

6. Organization hazing is a violation of the Texas Education Code, § 37.153.

Failure to Provide Cross-Examination Overturns Dismissal of University of Michigan In Due Process Case

On September 7th of this year, the United States Court of Appeals for the Sixth Circuit issued a decision overturning the dismissal of the University of Michigan in a case filed by John Doe. Doe withdrew from the University only 13.5 credits short of graduating when it appeared he was about to be expelled for violating the University's sexual assault policy. The charges against Doe grew out of an encounter he had with Jane Roe, another student at Michigan University. The court described that encounter this way: "Halfway through Roe's freshman and Doe's junior year, the two crossed paths at a 'Risky Business' themed fraternity party. While there, they had a drink, danced, and eventually had sex. Two days later, Roe filed a sexual misconduct claim with the University claiming she was too drunk to consent, and that having sex with an incapacitated person (unsurprisingly) violates University policy. The University immediately launched an investigation." The two parties' views of the facts and whether or not there was consent, or could have been consent given the allegation that Roe was incapacitated by alcohol, starkly contrasted. According to the court, "if Doe's and Roe's stories seemed at odds, the twenty-three other witnesses did not offer much clarification. Almost all of the male witnesses corroborated Doe's story, and all the female witnesses corroborated Roe's." The University-assigned investigator conducted a three-month long fact-finding investigation, but in the end was unable to determine whether or not "Roe had exhibited outward signs of incapacitation that Doe would have noticed before initiating sexual activity." The investigators'

recommendation was that the Administration should rule in Doe's favor and close the case.

Roe appealed and a three-member board rejected the investigator's report without considering any new evidence or interviewing any students. It simply concluded that Roe's version of events was "more credible" than Doe's, and Roe's witnesses were more persuasive. The next step would have been a sanction phase, but it was at that point that Doe withdrew as a student. He subsequently brought a lawsuit claiming that the University's disciplinary procedure violated his due process rights under the Fifth Amendment to the Constitution and violated Title IX by discriminating against him on account of his gender. The University filed a motion to dismiss, which the trial court granted in its entirety.

The Sixth Circuit Court of Appeals took a different view. Doe argued he should have received a hearing and had the opportunity to cross examine Roe and other witnesses supporting Roe's position. The court majority was very clear regarding the importance of cross-examination recalling that the court had, in earlier cases, made two items clear. One, a student accused of misconduct must be given some sort of a hearing before imposing a serious sanction like expulsion or suspension. Two, when the University's decision turns on the credibility of the accuser, the accused, or other witnesses, that hearing must include an opportunity for cross examination.

As the court put it "Due process requires cross-

examination in circumstances like these because it is ‘the greatest legal engine ever invented for uncovering the truth’ (citation omitted). Not only does cross-examination allow the accused to identify inconsistencies in the other side’s story, but it also gives the fact finder an opportunity to assess a witness’ demeanor and determine who can be trusted. So if a University is faced with opposing narratives about potential misconduct, the Administration must facilitate some form of cross-examination in order to satisfy due process.”

The court offered this interesting footnote in further support of its position: “Even popular culture recognizes the importance of cross-examination. See *A Few Good Men...* (depicting one of the most memorable examples of cross-examination in American cinema) ; *My Cousin Vinny...* (demonstrating that cross-examination can both undermine and establish the credibility of witnesses).”

The court does not ultimately describe exactly how the cross-examination right must play out but notes that “the University must allow for some form of live questioning in front of the fact finder.” The court also kept open the possibility of providing some protection so that a victim is not revictimized by being subjected to live cross-examination by the accused. For instance the court noted that “this requirement can be facilitated by modern technology, for example, by allowing a witness to be questioned via Skype ‘without physical presence’.”

The court also considered Doe’s appeal based on his arguments that Title IX had been violated. Doe claimed that Title IX had been violated for three reasons. One, the University had reached an erroneous outcome in this case because of his sex. Two, the University relied on archaic assumptions about the sexes when rendering a decision. Three, the University exhibited deliberate indifference to sex discrimination during his proceeding. The court made

short work of the second and third claims noting that neither of these claims apply in the context of University disciplinary hearings. However, the court did uphold his appeal as it found that his complaint plead facts sufficient to cast some articulable doubt on the disciplinary proceedings outcome and demonstrated a “particularized...casual connection between the outcome and gender bias.”

Keep in mind the Court of Appeals was reviewing the propriety of the Trial Court’s dismissal of the case on a motion to dismiss. That happens before either side has the opportunity to conduct any discovery and even before the defendants are required to provide an answer to the complaint. It’s a very high burden because all facts must be assumed to be as stated by the Plaintiff.

By no means does the Appellate Court’s decision mean that Doe will necessarily prevail on both of his revived claims or that, should this go back to a university disciplinary hearing where he has the right to cross-examine, that the University outcome will necessarily result in a finding in his favor.

The decision by the Sixth Circuit Court of Appeals was rendered by a three-judge panel. But it was not a unanimous decision. One judge wrote a concurring opinion and the third judge wrote separately, concurring in part and dissenting in part. While the dissenting judge agreed that Doe’s due process rights were violated when he was not permitted “any form” of cross-examination, the dissenting judge did not agree with the scope of cross-examination required by the US Constitution. The dissenting judge also would not have overturned the Trial Court’s complete dismissal of Doe’s Title IX claims.

- Tim Burke

USC Deferred Recruitment Case Now in Court of Appeals

The constitutionality of the ability of public universities to require deferred rush has long been discussed but not yet tested in court. That is, until now. But that test has been brought against the University of Southern California (USC), a private school, under California’s unique Leonard Law (CAL.EDUC. Code Sec. 94367 (a)). That law prohibits private Universities from “mak[ing] or enforce[ing] a rule subjecting a student to disciplinary sanctions solely on the basis of conduct that is speech or other communication that, when in engaged in outside the campus or facility of a private post-secondary institution, is protected from government restriction by the First Amendment.” Essentially, the law makes the First Amendment enforceable against private universities. This is important as the First Amendment is generally only applicable to public universities, as public universities are state actors to which the First Amendment applies through the Fourteenth Amendment.

The lawsuit brought by the USC chapters of Kappa Alpha Theta Sorority, Sigma Chi Fraternity, Beta Theta Pi Fraternity, Theta Xi Fraternity and Tau Kappa Epsilon Fraternity against the university failed to obtain the injunctive relief that they were seeking which would have prevented USC from enforcing its newly enacted deferred recruitment policy. The trial court judge appears to have missed the point, misreading the statute and instead suggesting that the plaintiffs “simply have not shown that the [deferred recruitment] policy was created as a disciplinary sanction against any sorority or fraternity for a failure to abide by university policy.” But the policy was adopted by the University and if it is violated the violators, students or fraternity chapters, could be punished by USC simply because students sought to exercise their First Amendment freedom of association rights to join fraternities or sororities during their first semester in school. The disciplinary sanctions which could be im-

posed on students range from expulsion to suspension to disciplinary probation or a-la-Harvard, “prohibition of student leadership opportunities”, according to the USC handbook.

What follows are excerpts from the 51 page¹ brief filed on behalf of the plaintiffs, now the Appellants, discussing why fraternities and sororities are legally entitled to First Amendment freedom of association protection because they engage in what courts have described as expressive association.

In evaluating a claim of expressive association under the First Amendment, the initial inquiry is whether the group engages in “expressive association.” *Boy Scouts of Am. v. Dale* (2000) 530 US 640, 648. This is a low bar. The First Amendment’s protections apply broadly and are “not reserved for advocacy groups.” *Id.* Groups “do not have to associate for the ‘purpose’ of disseminating a certain message in order to be entitled to the protections of the First Amendment.” *Id.* at 655. Indeed, the group’s expression may be wholly private, and “[t]he fact that the organization does not trumpet its views from the housetops . . . does not mean that its views receive no First Amendment protection.” *Id.* at 656. As long as the group engages “in some form of expression, whether it be public or private,” the First Amendment protects its associational rights. *Id.* at 648.

Applying that broad definition, courts have recognized a First Amendment right to associate with wide variety of organizations, including student groups, business organizations, labor unions, Christian societies, schools, civic leagues, political advocacy groups, motorcycle clubs, and event escort services. In *Dale*, for example, the US Supreme Court found it “indisputable” that the Boy Scouts of America engages in expressive activity protected by the First Amendment because the organization “seeks to transmit a system of values” to its members. *Dale*, 530 US at 650. Likewise, the Court found that membership in the Jaycees (the Junior Chamber of Commerce) was “plainly” protected by the First Amendment, as the Jaycees “engage in a variety of civic, charitable, lobbying, fundraising, and other activities worthy of constitutional protection under the First Amendment.” *Roberts*, 468 US at 626–27; see *id.* at 636 (O’Connor, J., concurring) (“Even the training of outdoor survival skills or participation in community service might become expressive when the activity is intended to develop good morals, reverence, patriotism, and a desire for self-improvement”).

Under those precedents, sororities and fraternities engage in expressive association. Indeed, several courts have already held or accepted that “a college fraternity is no different from the Boy Scouts” and it is therefore “protected by the First Amendment’s expressive associational right.” *Iota Xi Chapter v. Patterson* (E.D. Va. 2008) 538 F. Supp. 2d 915,923; see *Beta Upsilon Chi v. Machen* (N.D. Fla. 2008) 559 F. Supp. 2d 1274, 1278 (“[Beta Upsilon Chi] has substantially shown that it is seeking to share and transmit a system of values to its members and is therefore engaging in expressive activity that is protected by the First Amendment.”); *Alpha Delta Chi-Delta Chapter v. Reed* (9th Cir. 2011) 648 F.3d 790, 797 n.2 (“San Diego State does not dispute that Alpha Delta Chi and Alpha Gamma Omega engage in expression, so we proceed on the assumption that Plaintiffs may invoke their right to expressive association.”); *Chi Iota Colony of Alpha Epsilon Pi Fraternity v. City Univ. of NY* (E.D.N.Y. 2006) 443 F. Supp. 2d 374, 392 (“[D]efendants do not dispute that the Fraternity is an expressive association, and this classification is reasonably supported.”), vacated on other grounds, (2nd Cir. 2007) 502 F.3d 136.

Those results make perfect sense. Just like Boy Scouts, Greek-letter organizations “seek to transmit a system of values” to their members. *Dale* 530 US at 650. Each plaintiff organization is driven by a mission statement and seeks to transmit values consistent with that mission to each of its members. For example, plaintiff Kappa Alpha Theta endeavors to “instill the values of charity, philanthropy and public service” in its members, and “provides young women with a value system that helps them make ethical choices . . . over the course of their lives.” Similarly, plaintiff Theta Xi aims “to provide a college home environment for its active members in which fellowship and alumni guidance lead to wholesome mental, moral, physical, and spiritual growth.” (mission of Boy Scouts is to “install values in young people and, in other ways, to prepare them to make ethical choices over their lifetime”). The other plaintiff organizations similarly seek to transmit to their members the values necessary to make ethical choices over their lifetimes and to become engaged and productive members of society. As in *Dale*, it is “indisputable that an association that seeks to transmit such a system of values engages in expressive activity.” *Dale*, 530 US at 650.

In addition, just like the Jaycees in *Roberts*, each plaintiff organization “engage[s] in a variety of civic, charitable, lobbying, fundraising, and other activities worthy of constitutional protection under

the First Amendment.” Roberts, 468 US at 626-27. For example, plaintiff Kappa Alpha Theta engages in multiple charitable endeavors, including providing mentors for abused and neglected children, donating prom dresses to young women in need, and volunteering at local preschools. Similarly, members of plaintiff Tau Kappa Epsilon (“TKE”) have raised money for St. Jude Children’s Research Hospital by creating an investment group managed by members, and have raised \$130,000 for the Jack Jablonski BEL13VE in Miracles Foundation, which is inspired by a current USC TKE member who was paralyzed in a hockey accident. USC TKEs also conduct Regional Leadership Conferences, cultivate relationships with alumni in various policy changes. Other plaintiff organizations do the same. (Citations to the record and footnotes have been deleted.)

Kirkland and Ellis, one of the largest law firms in the world, has undertaken this case as a part of its firm wide pro-bono program. Attorneys from both the Los An-

geles and Washington DC offices prepared the appellate brief on October 18, 2018. Lead on the case for the fraternal groups is R. Alexander Pilmer of the Los Angeles offices of firm, assisted by Jeffery S. Singer also of the L.A. office, and Michael D. Lieberman of the firm’s Washington D.C. office. They have succeeded in convincing the Appellate Court to give the case expedited consideration which means it could be argued before the end of the year, though more likely shortly after the new year.

The Court of Appeals has ordered USC file its brief by November 23rd and the Appellants must file their reply brief twenty days after USC files. The Court order concludes that “this appeal will be given priority consideration for purposes of scheduling oral argument.”

• Tim Burke

1. Omicron Chapter of Kappa Alpha Theta et. Al v. University of Southern California, Court of Appeal, Second Appellate District, Division 5, No. B 292907, Appellants Opening Brief.

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