

“WE DIDN’T THINK IT WOULD BE WELL RECEIVED”: THE GAY ALLIANCE OF STUDENTS’ LEGAL VICTORY OVER VIRGINIA COMMONWEALTH UNIVERSITY, 1974-1976*


«No pensábamos que fuera a tener buena acogida»: la victoria legal de la Alianza Gay de Estudiantes sobre la Virginia Commonwealth University, 1974-1976


Michael S. Hevel^a and Timothy Reese Cain[‡]

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Abstract. In 1974, a group of college students attempted to undertake the simple act of registering an official student organization at Virginia Commonwealth University (VCU). In contrast to every other student group that had sought such status, the group, the Gay Alliance of Students (GAS), was denied registration. They were denied because the group was composed of LGBTQI+ students who wanted to promote the well-being and understanding of themselves and other LGBTQI+ individuals on campus. This article examines the founding, experience, and legal battles of GAS, an important organization in both the history of LGBTQI+ students and the history of LGBTQI+ rights more broadly. In response to its denial, GAS sued VCU in US federal district court, claiming violations of its fundamental rights under the US Constitution. After a split decision in its initial case, GAS appealed and won a resounding victory over VCU administrators and their attempts to deny LGBTQI+ students their rights. That victory was one of the first ever for an LGBTQI+ student organization at the federal appellate level and set a precedent for other LGBTQI+ students in five states. This article uses historical methods to situate these efforts in their institutional and local context, contribute to

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^a Department of Counseling, Leadership, and Research Methods, 106 Graduate Education Building, University of Arkansas, Fayetteville, Arkansas 72701. USA hevel@uark.edu  <https://orcid.org/0000-0002-9006-3851>

[‡] Louise McBee Institute of Higher Education, 008 Meigs Hall, University of Georgia, Athens, Georgia, 30602. USA tcain@uga.edu  <https://orcid.org/0000-0001-5805-6558>

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the nascent literature on LGBTQI+ student legal cases, and consider this key case that had implications beyond VCU and, indeed, beyond higher education.

Keywords: LGBTQI+; College Students; Activism; Law; Higher Education.

Resumen. *En 1974, un grupo de estudiantes universitarios intentó llevar a cabo el sencillo acto de registrar una organización estudiantil oficial en la Virginia Commonwealth University (VCU). A diferencia de todos los demás grupos de estudiantes que habían solicitado dicho estatus, al grupo, la Alianza Gay de Estudiantes (GAS), se le denegó el registro. Se le denegó porque el grupo estaba compuesto por estudiantes LGTBQI+ que querían promover el bienestar y la comprensión de sí mismos y de otras personas LGTBQI+ en el campus. Este artículo examina la fundación, la experiencia y las batallas legales de GAS, una organización importante tanto en la historia de los estudiantes LGTBQI+ como en la historia de los derechos LGTBQI+ en general. En respuesta a su denegación, GAS demandó a VCU ante un tribunal federal de distrito de EE.UU., alegando violaciones de sus derechos fundamentales en virtud de la Constitución de EE.UU.. Tras una decisión dividida en su caso inicial, GAS apeló y obtuvo una rotunda victoria sobre los administradores de VCU y sus intentos de negar a los estudiantes LGTBQI+ sus derechos. Esa victoria fue una de las primeras de una organización estudiantil LGBTQI+ a nivel de apelación federal y sentó un precedente para otros estudiantes LGTBQI+ en cinco estados. Este artículo utiliza métodos históricos para situar estos esfuerzos en su contexto institucional y local, contribuir a la incipiente literatura sobre casos legales de estudiantes LGTBQI+ y considerar este caso clave que tuvo implicaciones más allá de VCU y, de hecho, más allá de la educación superior.*

Palabras clave: *LGTBQI+; Estudiantes universitarios; Activismo; Derecho; Educación superior.*

In September 1974, Brenda Kriegel and other members of the newly founded Gay Alliance of Students (GAS) applied for registration from Virginia Commonwealth University (VCU). One hundred and forty-four times in the five-year history of the institution, other students had undertaken the simple process of filing paperwork with the Office of the Dean of Student Life. In each instance, their groups had been registered as a VCU student organization. Once registered, student organizations could reserve space on campus, apply for student activity funds, and access a variety of other services. But when GAS applied for registration, student affairs officials first asked for clarifications and then deviated

from both policy and precedent by sending the application to the institution's Board of Visitors. The board rejected the application and set off a two-year legal battle that ultimately established an important precedent for LGBTQI+ college student organizations.¹

This article examines the founding, lived experience of members, and legal battles of this groundbreaking LGBTQI+ college student organization. In doing so, it contributes to the small but growing literature on the historical importance and contributions of LGBTQI+ student organizations in the United States. In particular, this article advances the even smaller literature about the lawsuits that some LGBTQI+ groups had to pursue to secure rights that university leaders attempted to withhold. From the 1970 lawsuit filed against Sacramento State College through the currently pending case involving the recognition of a student organization at Yeshiva University, LGBTQI+ students have been forced into courtrooms to claim rights readily available to other students.² The GAS case was one of the first to reach the appellate level of the federal judiciary and set precedent in five states under the jurisdiction of the US Court of Appeals for the Fourth Circuit. This article situates this landmark case in its institutional and urban contexts and demonstrates the influence of the larger political environment on institutional decision making.

Studies of LGBTQI+ college student organizations are important as they help to document and explain key shifts in how sexually minoritized

¹ We use LGBTQI+ when speaking generally or about modern situations but rely on the terms used by the participants when discussing specific events or sources in the time period under consideration. Most often, the word gay or lesbian was used.

² David A. Reichard, "We can't hide and they are wrong': the Society for Homosexual Freedom and the struggle for recognition at Sacramento State College, 1969-1970", *Law and History Review* 28, no. 3 (2010): 629-674; Elizabeth Redden, "Students sue over denial of LGBTQ+ club recognition", *Inside Higher Ed*, 28 April 2021. <https://www.insidehighered.com/news/2021/04/28/yeshiva-students-sue-seeking-recognition-lgbtq-student-club>. (consulted on 12-7-2022). Other students, especially members of racially marginalized communities, also had to sue for access and equal treatment over the course of U.S. history. The higher education lawsuits that preceded *Brown v. Board*, the *Dixon v. Alabama* ruling that signalled the beginning of the end of *in loco parentis*, and the *Healy v. James* decision discussed below all point to the legal challenges that students launched against their institutions. On broader higher education legal challenges see, for example, Amy Gajda, *The trials of academe: the new era of campus litigation* (Cambridge: Harvard University Press, 2010); Michael A. Olivas, *Suing alma mater: higher education and the courts* (Baltimore: Johns Hopkins University Press, 2013); Scott M. Gelber, *Courtrooms and classrooms: a legal history of college access, 1860-1960* (Baltimore: Johns Hopkins University, 2016).

students experienced higher education in the United States. For most of the twentieth century many colleges and universities enacted overt and institutionalized efforts to oppress LGBTQI+ individuals. As Patrick Dilley argued in 2002, the “systemic removal of postsecondary students found or believed to engage in homosexual behavior was widespread across the United States from the 1940s through the 1960s”.³ Later scholars would demonstrate that such “purges” reached back to at least the 1920s.⁴ Often institutional leaders expelled alleged LGBTQI+ students with little evidence and no due process. At times they notified police of students’ alleged criminal behavior; in other instances they punished LGBTQI+ students more harshly than did the legal system.⁵

Scholars have identified the formative years of US-based campus LGBTQI+ student organizations as a period of intense activism that resulted in positive social changes in many nations, as the intergrationist approach of the homophile movement was eclipsed by the bolder aims of a transnational gay liberation movement. While these studies largely overlook the role of college students, the rise of campus-based LGBTQI+ organizations was a key turning point in both student experiences and the broader LGBTQI+ rights movement in the US. In studying the first LGBTQI+ student organizations founded at Columbia and Cornell Universities directly before the Stonewall riots, Beemyn noted:

While Stonewall served as a main catalyst for the rise of a new era in the struggle for lesbian, gay, bisexual, and transgender (LGBT) rights, the preceding gay activism at Columbia, Cornell, and a handful of other universities played a critical role in laying the groundwork that would enable a militant movement to emerge following the riots. Not only did the student groups take the lead in asserting a sense of pride in being gay, but, through speaking unabashedly to others about their personal experiences [...] and developing alliances with those engaged in other struggles,

³ Patrick Dilley, “20th century postsecondary practices and policies to control gay students”, *Review of Higher Education* 25, no. 4 (2002): 417.

⁴ William Wright, *Harvard’s secret court: the savage 1920 purge of campus homosexuals* (New York: St. Martin’s Press, 2005); Nicholas L. Syrett, “The boys of Beaver Meadow: a homosexual community at 1920s Dartmouth College”, *American Studies* 48 (2007): 9-18.

⁵ Margaret A. Nash and Jennifer A. R. Silverman, “An indelible mark’: gay purges in higher education in the 1940s”, *History of Education Quarterly* 55, no. 4 (2015): 441-459.

[...] they made gay liberation an important concern for many nongay people.⁶

By 1971, more than 175 such groups existed on US college campuses, providing members with emotional support and social outlets, offering speakers bureaus and educational activities, and pushing for institutional and societal change. Over the next several decades, the numbers of LGBTQI+ student organizations exponentially increased. These groups improved the campus climate for LGBTQI+ students, increased the visibility of LGBTQI+ people among both straight and sexually minoritized people, and advanced the LGBTQI+ rights movement.⁷

While the existing literature about LGBTQI+ student organizations often acknowledges the intense homophobia their members confronted, the intransigence of institutional leaders has been largely overlooked. Yet some students were forced to sue their institutions to claim their rights to form an organization. Studies of the lawsuits that GAS and other LGBTQI+ student organizations undertook document student actions against institutionalized power; integrate LGBTQI+ college students' efforts into the broader literature on LGBTQI+ rights, and refine nuanced understandings of student activism. While the outcomes of these lawsuits have been referenced in legal scholarship – work that demonstrates how courts developed a test from the US Supreme Court's decision in *Healy v. James* to determine whether a public institution had to recognize a student organization – the historical scholarship on them

⁶ Laura A. Belmonte, *The international LGBT rights movement* (London: Bloomsbury, 2021), 109-144; Brett Beemyn, "The silence is broken: a history of the first lesbian, gay, and bisexual student groups", *Journal of the History of Sexuality* 12, no. 2 (2003): 205.

⁷ On the important contributions of LGBTQI+ student organizations, see, for example, Jessica Clawson, "Coming out of the campus closet: the emerging visibility of queer students at the University of Florida, 1970-1982", *Educational Studies* 50, no. 3 (2014): 209-230; Patrick Dille, *Gay liberation to campus assimilation: early non-heterosexual student organizing at midwestern universities* (New York: Palgrave Macmillan, 2019); T. Evan Faulkenbury and Aaron Hayworth, "The Carolina Gay Association, oral history, and coming out at the University of North Carolina", *Oral History Review* 43, no. 1 (2016): 115-137; David Nichols and Morris J. Kafka-Hozschlag, "The Rutgers University Lesbian/Gay Alliance, 1969-1989: the first twenty years", *Journal of the Rutgers University Libraries* 51, no. 2 (1989): 55-95. For an important recent discussion of the historical literature on LGBTQI+ experiences in higher education, see, Karen L. Graves, "The history of lesbian, gay, bisexual, transgender, queer issues in higher education", in *Higher education: handbook of theory and research*, vol. 33, ed. Michael Paulsen (Cham: Springer: 2018), 127-173.

remains sparse.⁸ Beth Bailey and David Reichard, respectively, provide histories of early lawsuits in the 1970s at the University of Kansas and Sacramento State College, while Dilley argues that requiring students to bring these lawsuits represented a troubling form of administrative persecution of LGBTQI+ students in the late-twentieth century.⁹ Reichard asserts these lawsuits provide a critical window on the struggles gay, lesbian, and bisexual students faced, the tactics they employed, and the impact of the experience as they attempted to gain their first public footing on college campuses”.¹⁰

Surprisingly, little historical research has focused on the reported cases of LGBTQI+ student organizations lawsuits. This is unfortunate as these lawsuits, which LGBTQI+ students overwhelmingly won, represent important, underappreciated legal victories in the LGBTQI+ rights movement.¹¹ Our recent article examined the Committee on Gay Education’s two lawsuits against the University of Georgia, the latter of which resulted in the first published judicial opinion. There has been some scholarly attention to the protracted legal battle between Gay Student Services and Texas A&M University between 1977 and 1985.¹² Only Stein, in a recent article examining the broader legal strategies employed to decouple criminalized sexual activities from LGBTQI+ student organizations, has emphasized the importance of the VCU case. Here, though, we step back and consider the founding of GAS in its institutional and

⁸ *Healy v. James*, 408 US 169 (1972); Annette Gibbs, “Gay student organizations on campus: the controversy continues”, *Journal of College Student Personnel* 20, no. 6 (1989): 485-489; Loren J. Rullman, “A legal history: university recognition of homosexual organizations”, *ACU-I Bulletin* 59, no. 2 (1991): 4-9.

⁹ Beth Bailey, *Sex in the heartland* (Cambridge: Harvard University Press, 1999), 175-190; Reichard, “We can’t hide”, 632-633; Patrick Dilley, *Queer man on campus: a history of non-heterosexual college men, 1945-2000* (New York: RoutledgeFalmer, 2002), 169-173.

¹⁰ Reichard, “We can’t hide”, 632.

¹¹ Reported cases are lawsuits that have published judicial opinions. See, for example, Patricia A. Cain, *Rainbow rights: the role of lawyers and courts in the lesbian and gay civil rights movement* (Boulder, CO: Westview Press, 2000).

¹² Timothy Reese Cain and Michael S. Hevel, “Gay people pay activity fees too’: the Committee on Gay Education’s pioneering legal victories at the University of Georgia”, *Review of Higher Education* 45, no. 1 (2021): 61-91; Andrew Vaserfirer, “(In)visibility in lesbian and gay student organizing: the case of Gay Student Services”, *Journal of Homosexuality* 59, no. 4 (2012): 610-627; Michael S. Hevel and Charles J. Thompson, “Aggies are not queers’: a history of *Gay Student Services v. Texas A&M University*”, in *Resist, organize, build: feminist and queer activism in Britain and the United States in the long 1980s*, ed. Sarah Crook and Charlie Jeffries (Albany: SUNY Press, 2022), 31-52.

urban contexts – the latter of which was especially important for an institution with a “non-traditional” population in an urban setting – describe the organization’s purposes and the homophobia it faced, and detail its landmark legal battle.¹³

INSTITUTIONAL AND URBAN CONTEXT

While most studies of LGBTQI+ student organizations consider students at established institutions disrupting longstanding institutional values and practices, the situation at VCU was different. Founded on July 1, 1968, through the Virginia legislature’s merger of two dissimilar institutions, the Medical College of Virginia (MCV) and the Richmond Professional Institute (RPI), VCU was paradoxically a new institution with a long history. MCV traced its origins to 1838 but had recently modernized, building new facilities and receiving full accreditation from the American Medical Association’s Council on Education. In addition to medical degrees and doctorates in the health sciences, MCV offered undergraduate degrees in fields such as nursing and pharmacy. By the time of the merger, MCV faculty were pursuing funded research and medical innovation. RPI began in 1917 as the Richmond School of Social Work and Public Health. In 1924, it affiliated with the College of William and Mary, and soon added art instruction, occupational programs, and, eventually, a business school. It lacked, though, a significant core of liberal arts and sciences. By the early 1960s, when it separated from William and Mary, most of its campus consisted of formerly stately houses that had been repurposed into academic buildings in a “declining” neighborhood.¹⁴

Though there was an effort to relocate the merged institutions to the edge of the city, the head of the commission appointed to oversee the merger conceived of VCU as an urban institution aimed at addressing

¹³ Marc Stein, “Students, sodomy, and the state: LGBT campus struggles in the 1970s”, *Law and Social Inquiry* 49, no 2 (2022), 531-560. On the problematic nature of the term “non-traditional”, see Regina Deil-Amen, “The traditional college student: a smaller and smaller minority and its implications for diversity and access institutions”, in *Remaking college: the changing ecology of higher education*, ed. Michael W. Kirst and Mitchell L. Stevens (Palo Alto: Stanford University Press, 2015), 134-165.

¹⁴ John T. Kneebone and Eugene P. Trani, *Fulfilling the promise: Virginia Commonwealth University and the City of Richmond* (Charlottesville: University of Virginia Press, 2020), 9-16.

the needs of an urban center.¹⁵ Edward A. Wayne, leader of the eponymous Wayne Commission, looked to Philadelphia's Temple University as a model and promoted the "urban university concept – an institution that is a living part of the city".¹⁶ He argued, "there is a great opportunity for an urban university to serve the burgeoning urban growth of Virginia".¹⁷ VCU ultimately assumed the former institutions' two campuses, roughly a mile and a half apart in downtown Richmond, guided by this urban mission. Amid the broader massification of higher education in the country, the institution quickly grew to accommodate more members of the state's growing college student population. As it did, it faced numerous tensions, including that members of MCV looked down upon RPI, believing that that the merger dealt a blow to MCV's prestige.¹⁸

The founding emphasis initially provided a focus and the promise of a unique mission in the state. Faculty, for example, were engaged with urban issues such as busing, school desegregation, and access to health care. Yet, by the mid-1970s, being tagged an "urban university" was seen as problematic by many in the US. It was, according to Steven J. Diner, "a low-status label, which many universities in cities now avoided".¹⁹ Encountering racially charged negative perceptions of "urban", as well as concerns about safety in an area that had been hit hard by suburbanization and White flight, VCU leaders sought a new identity.²⁰ For example, in 1977, President T. Edward Temple told the student newspaper, the *Commonwealth Times*, that while many people saw the institution as located in and focused on an urban core, "I like to think of us now being a comprehensive university with an urban thrust. There is a difference... It gives us a wider definition".²¹

¹⁵ Kneebone and Trani, *Fulfilling the promise*, 22-25.

¹⁶ Robert Holland, "Early university start hoped", *Richmond Times Dispatch*, 22 January 1967. Reprinted in *Scarab*, February 1967, 17.

¹⁷ Holland, "Early university", 7.

¹⁸ Kneebone and Trani, *Fulfilling the promise*, 32-33, 46-50.

¹⁹ Steven J. Diner, *Universities and their cities: urban higher education in America* (Baltimore: Johns Hopkins University Press, 2017), 91.

²⁰ Kneebone and Trani, *Fulfilling the promise*, 9-28, 72-76, 81-82.

²¹ Jim Jennings, Mike Welton, and Brett Averill, "The selling of the university 1977: An interview with the President", *Commonwealth Times*, 17-23 January 1977.

While the centrality of an urban identity would become contested, the institution's location affected the experience and perception of students in multiple ways. In the mid-1970s, roughly 40% of the student population attended part-time, and the vast majority lived off campus.²² Just a few months before GAS was formed, the school's yearbook editor, Marjorie Bendl, told the *Commonwealth Times*: "As an urban university, there is something unique about VCU". She continued, "VCU's students face the realities of living in the city like battling traffic, finding places to park, dealing with crime. We think the most important part of your education goes on outside the classroom".²³ In short, students engaged in the city as much or more than on-campus activities, contributing to what would be perceived as apathy to the features of student life common at more residential colleges and universities.

RPI's location in a neighborhood that had been home to beatniks in the 1950s and hippies in the 1960s further affected perceptions of that institution and then of VCU; to many, there was little separating the students from the other residents of the neighborhood.²⁴ In 1970, while opposing the expansion of the university's campus, Richmond mayor Philip J. Bagley noted that a subset of the student population had given the institution "an unwholesome image". He continued, "This element, by their obnoxious behavior and idiotic behavior, have changed Franklin Street into Freak Avenue and Grace Street into Skid Row".²⁵ It was not just those outside the institution who were concerned. The MCV reaction to the merger was based, in part, on the reputation of RPI students. Moreover, in reporting on the aforementioned interview with Temple, student reporters noted, "Perhaps the major part of the image problem of the university has been the makeup of the student body. For years, the university has had a reputation for 'freak' students, 'hippies' and 'artists' accompanied by a feeling that it is the most liberal college in the state".

²² Mike Grubbs, "Enrollment: administrators ask... will a better image pull up the figures", *Commonwealth Times*, 17-23 January 1977.

²³ "VCU's urban nature explored", *Commonwealth Times*, 4 April 1974.

²⁴ Ann Laurens Williams, "In search of a home: an historical analysis of the major factors concerning the location of Virginia Commonwealth University" (Doctoral thesis, College of William and Mary, 1985), 38; Kneebone and Trani, *Fulfilling the promise*, 32-33.

²⁵ Mike Boykin, "Bagley's stop sign", *Commonwealth Times*, 13 November 1970.

Temple indicated that the image was being “overcome” and replaced with one “of quality education, of certain schools with prestige”.²⁶

VCU’s reputation as a liberal college was an exaggeration. While in the late 1960s and early 1970s VCU student activists sought improved conditions for Black students, protested against the Vietnam War, rallied in support of Black assistant dean Vincent Wright after his surprise dismissal, and pursued other progressive causes, their efforts were limited in comparison to student activism on many campuses. Anti-war sentiment was relatively restrained, and a 1968 poll of VCU students found most respondents favored Richard Nixon for president followed by Barry Goldwater. In the aftermath of the Ohio National Guard killing four young people at Kent State University in May 1970, other institutions in Virginia and across the nation erupted in protest. The response at VCU was more muted, as students largely accepted the administration’s refusal to pause classes.²⁷ One *Commonwealth Times* columnist pointed to the incongruity of the state’s supposedly “most liberal” student population responding in a restrained way by asking if the institution’s reputation would change to reflect reality.²⁸ Another explained the campus’s calm reaction by noting “what else would one expect when the overwhelming majority of students are so politically nonexistent that even the term apathetical does not even come close to being an appropriate adjective”.²⁹ In 1971, the student government voted itself out of existence; an effort to replace it with a new representative body failed in 1973 when only 8.5% of the students voted on the referendum. Student apathy, frequently lamented, was seen as the cause.³⁰

Richmond remained a conservative Southern city – and that ethos impinged on VCU. Formerly the capital of the Confederacy, Richmond served as the capital of a state that pursued “massive resistance” to school desegregation and racial justice.³¹ White flight from Richmond

²⁶ Jennings, Welton, and Averill, “The selling of the university”.

²⁷ Kneebone and Trani, *Fulfilling the promise*, 32-33, 54-56.

²⁸ Mike Boykin, “Will VCU’s image change?”, *Commonwealth Times*, 15 May 1970.

²⁹ Bill Eby, “New coalition faces VCU apathy”, *Commonwealth Times*, 20 May 1970.

³⁰ Gail Barnes, “Referendum vote falls short”, *Commonwealth Times*, 8 November 1973.

³¹ Lewis A. Randolph and Gayle T. Tate, *Rights for a season: the politics of race, class, and gender in Richmond* (Knoxville: University of Tennessee Press, 2003).

and efforts to combat student busing were widespread. In 1970, the city annexed much of a neighboring county in an explicit attempt to capture White voters to offset a growing Black electorate.³² Housing discrimination likewise posed a significant problem for Black campus and community members. As former VCU professor Edward H. Peeples noted in his memoir, “the first challenging test given to new Black VCU students was not administered by a professor. It was the test of fortitude needed to obtain a place to live”.³³ More recently, GAS founder Dottie Cirelli recalled, “This was Richmond, Virginia, so you can imagine it was homophobic and it was racist”.³⁴

Concerns about the conservative Richmond context swayed VCU administrators’ actions on progressive issues. While significant advances toward attracting and serving a diverse student population were made in the institution’s opening years, the upper administration felt beholden to larger public sentiment in a segregated state. When Vincent Wright was passed over for a promotion in 1971, for example, he was reportedly told by Vice President for Student Affairs Richard Wilson that “Richmond, Virginia, is not ready for a Black dean”.³⁵ When students returned the next fall to find that Wright, who had actively recruited Black students and was viewed as widely supportive of all students, had been dismissed, they rallied to his defense and protested the institution’s racism. According to Peeples, who had recruited Wright to VCU and was a close friend, Wilson admitted that Wright’s transgression was violating Southern racial norms by dating a White woman. Peeples argued that Wilson and other leaders operated not out of racial animus but that they worried about “perilous blowback from white Virginians who feared blacks were ‘taking over’ a ‘white institution’”.³⁶ Fear of external political pressures – and institutional unwillingness to bear them – would again be implicated when GAS sought registration.

³² John V. Moeser and Rutledge M. Dennis, *The politics of annexation: oligarchic power in a southern city* (Cambridge: Schenkman Books Inc., 1982).

³³ Edward H. Peeples, *Scalawag: a white southerner's journey through segregation to human rights activism* (Charlottesville: University of Virginia Press, 2014), 148.

³⁴ Dottie Cirelli, interviewed by Michael S. Hevel, 22 December 2021.

³⁵ Peeples, *Scalawag*, 161.

³⁶ Peeples believed that administrators were too timid and misjudged the potential reception of a changing Richmond Peeples, *Scalawag*, 163.

In short, the students who founded GAS attended a university with a bifurcated legacy. From RPI, VCU inherited a progressive and liberal culture, associated in part with its education in social services and in part with its neighborhood. From MCV, it inherited a more conservative and professional culture, striving for heightened prestige. VCU leaders felt both internal and external pressures to shed its liberal reputation. Such a reputation was undeserved anyway, as there was little activism on campus, many students supported conservative politicians, and racism remained unchecked on campus. VCU leaders also contemplated their relationship with greater Richmond, a city with its own complex legacy toward LGBTQI+ people.

LGBTQI+ RICHMOND

Compared to most “college towns” – typically much smaller than a large city in the US – Richmond had a long history of LGBTQI+ communities. Yet in the decade before the founding of GAS, opportunities constricted for these communities to exist. By the early 1970s, a growing number of LGBTQI+ individuals recognized that community and campus organization could be effective conduits to advance their rights. Yet in places most hostile to social change, such groups faced intense resistance to their mere existence.

While evidence of gay sex stretches back to the start of western colonization of Virginia, the earliest evidence of an LGBTQI+ community in Richmond dates to a “private, home-centered gay social scene” in the 1920s and 1930s. Concentrated among the avant-garde White literati, this community provided a “fairly comfortable gay social life at a time when the vast majority of gays and lesbians lived deeply-closeted lives”.³⁷ The disruption of World War II, which included the relocation of millions of people from their homes and communities – especially from rural areas to cities and other areas concentrated with young people

³⁷ Bob Swisher, “Letters, diaries provide view of the 1920’s and 1930’s”, *Our Own Community Press*, September 1988. On a similar lengthy history of LGBTQI+ people and communities in Roanoke, Virginia, see Gregory Samantha Rosenthal, *Living queer history: remembrance and belonging in a southern city* (Chicago, University of Chicago Press), 18-58.

– brought Americans new opportunities to explore their sexuality.³⁸ In Richmond, this occurred downtown in an area that would later become known as “the Block”. Just off RPI’s campus, the Block was home to the United Service Organizations (USO), as well as the bus and railroad stations. It had a constant flow of people exploring new freedoms. During the war and for close to a decade after, gay bars operated discretely but mostly without police raids; hotels, alleys, and basements were others spaces in the Block that facilitated same-sex encounters and relationships. In the segregated South, the bars and broader LGBTQI+ communities were likewise segregated, with the Block being a primarily White space.³⁹

The relative – though far from absolute – openness of the 1940s and early 1950s soon ended amid increased anti-LGBTQI+ sentiment and policing in Richmond. In the 1960s, Eton Inn, founded in 1962 after the forced closure of another gay bar and commonly called Eton’s, became a popular hangout for LGBTQI+ people. Like other such establishments, the bar was under scrutiny from the Alcohol Beverage Control (ABC), which enforced a law that forbid serving alcohol to gays or lesbians. Located only a block from RPI, Eton’s drew the ire of the institution’s administrators. They barred RPI students from patronizing it and called on the ABC to investigate. These actions quickly led to the closing of Eton’s and the arrest of its owner. When, in early 1969, a successor bar had its alcohol license revoked for violating the same code, the city’s first public protests against anti-LGBTQI+ laws and policing occurred.⁴⁰ A few months later, the Stonewall uprising in New York helped bring LGBTQI+ rights to the national stage.

In the months that followed, a small Gay Liberation Front (GLF) “emerged from the anti-war, anti-Establishment, hippie counter-culture

³⁸ John D’Emilio, *Sexual politics, sexual communities: the making of a homosexual minority in the United States, 1940–1970* (Chicago: University of Chicago Press, 1983), 24.

³⁹ Bob Swisher, “‘While straights slept, gays played.’ part 1, 1944–1952”, *Our Own Community Press*, April 1988; Beth Marschak and Alex Lorch, *Lesbian and gay Richmond* (Mount Pleasant: Arcadia Publishing, 2008), 26.

⁴⁰ D’Emilio, *Sexual politics, sexual communities*, 201; Marshack and Lorch, *Lesbian and gay Richmond*, 32–33. On the importance of gay bars as meeting places for LGBTQI+ students, see Beemyn, “The silence is broken”, 215, 220–221.

[...] around VCU”.⁴¹ A nascent movement rather than a formal organization, GLF consisted of a handful of VCU students and area residents who would meet near campus at the apartment of VCU graduate student Kenneth Pederson. There, they discussed LGBTQI+ issues and planned awareness-raising activities such as distributing pamphlets and engaging in conversations with straight people. Dances, at least two of which GLF sponsored in 1971, were especially important events in the battle for acceptance. GLF’s last meeting was in late summer 1971. Pederson later claimed that he continued his advocacy efforts until he was expelled from the university for speaking about gay liberation in a guest lecture in the School of Social Work.⁴² In 1974, months before he became a leader and spokesperson of GAS, Walter Foery penned an anonymous piece for the student yearbook noting that GLF “never really caught on. Maybe because VCU’s campus-less student body is too diverse for any political or social idea to catch on. Maybe because there’s simply no need”.⁴³ Still, the prospect of a LGBTQI+ student organization caught institutional leaders’ attention and portended a future clash while also showing the weakness of the institution’s ultimate position. In December 1972, the president reported to the Board of Visitors, “Student organizations are being registered on campus. We have no basis to deny a gay liberation group should such a group request registration”.⁴⁴

Other avenues for LGBTQI+ individuals to meet in Richmond persisted, including what a lesbian activist called “nip joints or shot houses – illegal operations where they sold drinks by the glass, cooked nice meals, and if you got too drunk to drive you could always crash there”.⁴⁵

⁴¹ Bob Swisher, “Shameless in public: gay lib 1969–1972”, *Our Own Community Press*, May 1988.

⁴² Swisher, “Shameless in public”; Gary Thompson and Mike Whitlow, “Out of the closets, into the streets... the gay revolution is here to stay”, *Commonwealth Times*, 12 March 1971; Marshack and Lorch, *Lesbian and gay Richmond*, 37. On the importance of dances for LGBTQI+ college students, see Dilley, *Gay liberation*, 17-21, 43-64; Cain and Hevel, “Gay people pay”, 72-78.

⁴³ Paul Atreides [Walter Foery], “One foot in the closet, one foot out”, *Cobblestone* (Richmond, VA: 1974), 75-76, 76. On Foery’s authorship, Walter Foery, interviewed by Michael S. Hevel, 9 December 2017.

⁴⁴ “Report of the President to the Board of Visitors”, in Minutes of a Regular Meeting of the Board of Visitors of the Virginia Commonwealth University, 21 December 1972, p. 4. <https://digital.library.vcu.edu/islandora/object/vcu%3Abov>

⁴⁵ James T. Sears, *Rebels, rubyfruit, and rhinestones: queering space in the Stonewall South* (New Brunswick: Rutgers University Press, 2001), 134.

Such places were at the center of the city's Black lesbian and gay community. The Richmond Women's Center, housed for a time in the YWCA, included many lesbians and helped coalesce a lesbian rights movement in the early 1970s. But the primary successor to Richmond's GLF as an explicitly LGBTQI+ organization was the Gay Awareness in Perspective (GAP), founded in the aftermath of an April 1974 talk by feminist lesbian author Rita Mae Brown, who had been invited to campus by three students, Kriegel, Cirelli, and Frances Stewart.⁴⁶ After Brown gave what Cirelli later called "a great motivational speech about being gay and the need to come out and fight for our rights", Cirelli circulated a sheet of paper for people to sign up as founding members of the new organization. For the next four years, GAP served to build community, sponsor discussions, and share information through its newsletter *GAP Rap*, though it was less politically active than some desired. While GAP was founded by VCU students and was led in part by VCU Assistant Dean of Student Life Stephen Lenton, who gradually became an openly gay at work, GAP was not a formal campus organization and drew membership from across the city.⁴⁷

"YOU CANNOT BE GAY ALLIANCE OF STUDENTS"⁴⁸

GAP was a city-based organization, but some students – including those who had invited Brown to VCU – sought a campus-specific analogue. As Kriegel later remembered, a group of gay and lesbian students sought a place to gather other than bars and looked to GAP for inspiration: "there were some students – like Dottie Cirelli and myself – who thought, "Why can't we have something like this on campus for just students?". She continued, "We didn't think it would be well-received, but we wanted to have a place to meet to deal with both internal and external

⁴⁶ Sears, *Rebels, rubyfruit, and rhinestones*, 135-136; Bob Swisher, "Author/wit Rita Mae Brown inspired first organization", *Our Own Community Press*, June 1988.

⁴⁷ Brian McNeill, "Inside the fight to win VCU's recognition of the university's first LGBTQIA student organization", *VCU News*, 29 September 2016; Cirelli, interviewed by Hevel; Brenda Kriegel, interviewed by Michael S. Hevel, 21 December 2021; Sears, *Rebels, rubyfruit, and rhinestones*, 135-136; Swisher, "Author/wit Rita Mae Brown"; Michael S. Hevel and Timothy Reese Cain, "The queer student affairs career of Stephen Lenton", *Journal of Women and Gender in Higher Education* 15, no. 3 (2022): 261-278.

⁴⁸ Foery, interviewed by Hevel.

homophobia”.⁴⁹ In early fall, as the group wanted to start a counseling hotline for lesbian and gay students, they realized that they needed to be an official organization.⁵⁰ Lenton agreed to serve as the group’s advisor and, on September 5, 1974, Kriegel submitted GAS’s initial application for registration to the office in which Lenton worked. The stated purposes included creating a “supportive community”, undertaking education efforts, and pursuing “gay rights in concert with the civil liberties of all people”. The application also indicated that the group was still being formed and that it anticipated affiliating with GAP due to shared interests and overlapping membership.⁵¹ In response to the Office of Student Life’s concerns over perceived vagueness, a revised version of the form stripped mention of GAP and streamlined the group’s purpose to focus on consciousness raising, supporting the Equal Rights Amendment, and ending discrimination based on sexual orientation. The group intended to spend the fall planning educational events, gathering literature, creating a speakers bureau to address classes and other gatherings, and establishing a gay counseling service; it hoped to implement the plans in the spring term. Crossing out “Spokesmen” on the form, Kriegel identified herself as GAS’s “Spokesperson”.⁵²

Such applications were routinely submitted and approved, but GAS’s was handled differently. The Office of Student Life forwarded the application to Vice President of Student Affairs Richard Wilson, who likewise decided that the registration of an LGBTQI+ student organization was too sensitive for him to handle. On October 17, Wilson presented the

⁴⁹ McNeill, “Inside the fight”.

⁵⁰ Ray McAllister, “Pretrial talks due on Gay Alliance’s suit against VCU”, *Richmond Times Dispatch*, 22 May 1975.

⁵¹ “Application for registration of a student organization”, 5 September 1974, Folder 1, Box 1, VCU Gay Alliance of Students Collection (hereafter cited “GAS Collection”), Special Collections and Archives, James Branch Cabell Library, Virginia Commonwealth University, Richmond, VA (hereafter cited as “VCU Libraries”).

⁵² “Application for registration of a student organization”, 2 October 1974, Folder 1, Box 1, GAS Collection, VCU Libraries. For the administrator’s concerns, see William H. DuVall to Brenda C. Kriegel, September 16, 1974. Gay Alliance of Students (Richmond, Va.) Records, 1974-1976. Mss3 G2543 a (hereafter cited as “GAS Records”), Virginia Museum of History and Culture, Richmond, VA (hereafter cited as “VMCH”). Throughout its existence, GAS eschewed a formal organization structure, relying on consensus building instead. The only officers were “spokespeople” who were sometimes called colloquially called “president” but did not act in such a capacity. Walter A. Foery, who was not an original member but would soon join Kriegel as a spokesperson, noted that it was important to the organization to have both a lesbian and gay male spokesperson. Foery, interviewed by Hevel.

application to the institution's governing board. He said that his office intended to approve it, but he also suggested that the board could instead assert its control and reject the application. Wilson was joined by James L. Mathis, the head of the psychiatry department, who presented on current understandings of homosexuality in society, which the American Psychological Association had de-pathologized the previous year. A "long and often anguished" discussion ensued, with the board ultimately voting 7-2 against registration. Its formal statement read: "Resolved, having deep human regard for the severe human problem involved, the Board expresses its sense that the Gay Alliance of Students not be registered".⁵³ In essence, as Foery later commented, the decision amounted to the board declaring, "You cannot be the Gay Alliance of Students".⁵⁴

The board's resolution was vague but problematic, which *GAP Rap* highlighted by pointing out that "the source of the 'severe human problem involved' is the greater public's biased attitude toward the gay minority".⁵⁵ The board's leader, Wyndham Blanton, stated that registering GAS "was not in the best interest of the institution in terms of the total job of the institution". The dean of students, Alfred T. Matthews, similarly wrote that the board had decided that registering GAS "would not serve the broader interests of the university or be consistent with the objectives for the registration of student organizations".⁵⁶ Vice President Wilson contended that the board was simply trying to represent the will of the people of the state, while a person in the meeting believed that the board wanted the courts to "force" them to act.⁵⁷ Many believed the board acted based on its fear that registering GAS would damage VCU's already questionable reputation and threaten both state funding and private donations. The institution formally denied that finances were a factor, but people close to the board indicated that they were a concern, at least to some degree. One stated, "That distinctly was a factor... I think there were concerns about a bad reaction from the General

⁵³ McAllister, "Pretrial talks due".

⁵⁴ Foery, interviewed by Hevel.

⁵⁵ "G.A.S. case progresses", *GAP Rap*, 20 March 1975, Folder 34, Series 2 Stephen Michael Lenton Papers (hereafter cited as "Lenton Papers"), VMHC.

⁵⁶ Paul Woody, "Gay awareness club rejected", *Commonwealth Times*, November 1, 1974; Alfred T. Matthews to Brenda Kriegel, October 23, 1974, GAS Records, VMHC.

⁵⁷ Woody, "Gay awareness club rejected"; McAllister, "Pretrial talks due".

Assembly, to be sure. And there were concerns about a bad reaction from the people of Virginia, particularly the people of Richmond”.⁵⁸

GAS members were offended by the board’s decision, and the *Commonwealth Times* editorialized against it on multiple occasions.⁵⁹ Calling it “A Step Backward” in early November, the latter noted, “It is loudly proclaimed that VCU is a modern, innovative university which readies its students for life in the outside world. The decision by the Board of Visitors to deny registration to the Gay Awareness organization contradicts this proclamation and destroys the basic idea that all men are created equal”. The student editors argued that the board had “allowed the school to be subjected to the whims of backward and neanderthalic thinking”.⁶⁰ Later that month, managing editor Jim Baynton presciently looked to the US Supreme Court’s ruling in *Healy v. James* to argue that the board was on the wrong side of the law.⁶¹ Six weeks after the board’s decision, the *Commonwealth Times* criticized not only the Office of Student Life and the board, but the student population: “it is difficult to understand [...] how allegedly aware, liberal, open minded, modern, urban, and understanding students could have so little to say when a group of their fellow students have their rights trampled upon”.⁶²

As this critique suggests, beyond the strong support from the student press, the reaction on campus was mixed and somewhat muted. A few progressive student organizations supported GAS. The VCU Young Democrats Club questioned the decision and the campus chapter of the American Civil Liberties Union (ACLU) responded by barring discrimination based on sexual orientation within its organization and calling on others to do the same.⁶³ Sharon Talarico, a student leader who served on the Council for University Student Affairs – an umbrella group that supported student organizations – helped lead a small group rallying

⁵⁸ McAllister, “Pretrial talks due”.

⁵⁹ Foery, interviewed by Hevel; “The fight for equality: remembering students’ civil rights fight 40 years later”, *Commonwealth Times*, 11 October 2016.

⁶⁰ “A step backward”, editorial, *Commonwealth Times*, 1 November 1974.

⁶¹ Jim Baynton, “BOV usurped constitution”, editorial, *Commonwealth Times*, 22 November 1974.

⁶² “It’s over”, editorial, *Commonwealth Times*, 6 December 1974.

⁶³ “Democrats question actions of Board of Visitors”, *Commonwealth Times*, 8 November 1974; Stanley G. Carp, Jr., letter to the editor, *Commonwealth Times*, 14 February 1975.

support for GAS from other registered student organizations. Yet she remembered being met with resistance and assumptions about her sexuality. A member of a religious organization informed her that “our faith does not support what you and your group are, your lifestyles”. At the time, Talarico exclusively dated men.⁶⁴

Some, though, countered the decision was made for more base reasons. For example, the petition that Talarico and others circulated to try to rally support from other organizations explicitly challenged the notion that state funds were involved:

Can this argument by the Board of Visitors, that VCU might lose state money, be true? Can it be true that the Board of Visitors thinks that money is more important than human rights?

We think not. We believe that the Board’s action was discriminatory, pure and simple.⁶⁵

Convinced that they were experiencing overt discrimination, GAS members were increasingly determined to fight for registration.

SUING VCU

In December, Wilson reported to the board that the students trying to register GAS were “very calm and reasoned, yet determined” and warned that a legal challenge could be forthcoming.⁶⁶ As a handful of LGBTQI+ student organizations had done to that point, and others have done since, GAS soon took that step, suing for rights that other student groups were routinely afforded. GAS sought support from the ACLU of Virginia, which agreed to help but then struggled to find an attorney to take the case. Lawyers feared damaging their reputations and practices if they

⁶⁴ McNeill, “Inside the fight”; Sharon Talarico, interviewed by Michael S. Hevel, 16 February 2018.

⁶⁵ Sharon Talarico, Deborah Whitham, Robert Callahan, and Walter Gilliam, untitled letter, 20 January 1975, GAS Records, VMHC. The piece also appeared in the *Commonwealth Times*, 24 January 1975.

⁶⁶ “Report of the University Interim Administrative Committee”, in Minutes of a Regular Meeting of the Board of Visitors of the Virginia Commonwealth University, 19 December 1974, p. 4. <https://digital.library.vcu.edu/islandora/object/vcu%3Abov>

represented GAS.⁶⁷ Ultimately, local attorney John M. McCarthy accepted the case and, on April 9, 1975, filed a lawsuit on GAS's behalf in US district court. The suit, *Gay Alliance of Students v. Alfred T. Matthews et. al.*, alleged that senior student affairs officers and members of the Board of Visitors violated the students' First and Fourteenth Amendment rights by refusing to register the organization. In response, the assistant attorney general of Virginia, representing VCU and those individuals named as defendants, offered four reasons that they believed justified their actions: GAS would increase opportunities for homosexual contact; the existence of GAS as a registered organization would encourage some students to join the organization who otherwise might not join; being involved in GAS could be socially and psychologically harmful to individuals; and GAS would tend to attract more homosexuals to VCU.⁶⁸ Though these reasons would largely be accepted by District Judge D. Dortch Warriner, one observer noted that "they rather resemble the vapid words and desperate phrases uttered by racist Whites in denying civil rights to Blacks".⁶⁹

On November 7, 1975, Warriner issued a summary judgement noting that the facts of the case were not in dispute. After briefly summarizing the case Warriner let known where his sympathies lay. He wrote that board members "were attempting to further the best interests of VCU when they refused to recognize GAS. Their decision reflected society's centuries old abhorrence of homosexual conduct. This ancient fear and loathing still finds considerable expression in contemporary laws". He noted that the board "indicated their disapproval of homosexuality" by denying GAS registration, and described their reasoning as "rational" and reflecting "the overwhelming sentiment of" Virginians "who by their taxes have created and maintained Virginia Commonwealth University".⁷⁰ Warriner worried that support for educational institutions could dissipate if institutional leaders could not consider the perspectives of

⁶⁷ "Gays getting bad reception from law", *Commonwealth Times*, 7 February 1975; McCallister, "Pre-trial talks due".

⁶⁸ *Gay Alliance of Students, etc. v. Alfred T. Matthews, et al.*, Civil Action No: 75-0181-R, (E.D. Vir. 1975). Located in Folder 17, Box 1, GAS Collection, VCU Libraries.

⁶⁹ F. Keith Olsen, "The concept of freedom in the GAS decision", *Commonwealth Times*, 19 March 1976.

⁷⁰ *Gay Alliance of Students* [75-0181-R], at 2-3.

most taxpayers. The public had “expressed their condemnation of homosexual practices” through multiple legislative and judicial actions. The Supreme Court had upheld homosexuality as a rationale for deportation in 1967, the military prohibited the service of gay people, and Virginians who committed sodomy could be sentenced to 5 years in prison.⁷¹

Unfortunately for both Warriner and the Board, recent case law placed their biases on shaky legal ground. Warriner noted the “public’s right to regulate and set its norms was circumscribed” by federal court decisions in 1974 against the University of New Hampshire for not recognizing a gay student organization. Indeed, he seemed to disgruntledly acknowledge, in recent years the courts had “almost uniformly” demanded that gay student organizations and “similarly unpopular student groups [...] be accorded the same privileges as other campus organizations”.⁷²

Warriner noted that rights of individuals to join a group to advance their beliefs had long been protected by the First Amendment and that the government could not control speech based “on the content or subject matter of the message”. Moreover, a recent Supreme Court decision highlighted that college administrators had no more latitude to regulate speech on campus than did other governmental officials. “Since the reasons advanced by the Board for denying official recognition are necessarily predicated on the content of GAS’s message, those privileges of registration, the withholding of which constitutes an impermissible infringement of GAS’s associational interests, must be made available to the organization”. Warriner acknowledged that VCU administrators continued to enjoy “wide discretion” in regulating conduct on campus, but such “efforts must be undertaken in such a way as not to offend fundamental constitutional guarantees”.⁷³

Warriner interpreted the Supreme Court’s decision in *Healy v. James* and the federal case from the University of New Hampshire to require

⁷¹ *Gay Alliance of Students* [75-0181-R], at 3-5.

⁷² *Gay Alliance of Students* [75-0181-R], at 5. “Similarly unpopular student groups” likely referred to Students for a Democratic Society (SDS) and other left-wing organizations. Central Connecticut State College’s refusal to recognize a campus chapter of SDS led to *Healy v. James* in which the Supreme Court found the refusal violated the constitutional rights of SDS members.

⁷³ *Gay Alliance of Students* [75-0181-R], at 7-8.

him to consider each benefit of recognition and determine if its denial prevented GAS's ability "to communicate its message within the University environs". Warriner listed eight benefits of registration for student organizations at VCU, five of which related to the ability to meet, advertise, and recruit members. Warriner found GAS constitutionally entitled to these benefits: access to University facilities for meetings and events; free advertising in the student newspaper and on the campus radio; use of bulletin boards; being listed as an organization in the student directory; and being provided a booth during orientation.⁷⁴

Other benefits included receiving advising from university staff and the ability to apply for funds from the student government. Warriner determined that withholding advising did not violate GAS's First Amendment rights, writing that the existing law "does not [...] require that university officials must... affirmatively condone and aid groups with which they do not agree in the furtherance of their goals". The same was true, Warriner believed, in terms of the ability to apply for funding. The final benefit of registration was the somewhat esoteric benefit of registration itself. As with the advisory and funding benefits, Warriner concluded that VCU's unwillingness to register GAS did not violate its members' First Amendment rights. Once GAS had received the benefits of registration to which it was constitutionally entitled, not being registered did not "infringe the associational interests of GAS".⁷⁵

Having determined that GAS was entitled to five of the eight benefits of registration under the First Amendment, Warriner next assessed GAS's equal protections claims under the Fourteenth Amendment for the remaining three. He ultimately decided that the Supreme Court had endorsed an emerging level of "intermediate scrutiny", which permitted a government action that resulted in discrimination if the government articulated a legitimate interest and the action was rationally related to achieving that interest.⁷⁶ In applying intermediate scrutiny to GAS's claims, Warriner determined that VCU had a legitimate interest in discouraging conduct it believed detrimental to students, and he also

⁷⁴ *Gay Alliance of Students* [75-0181-R], at 9-10.

⁷⁵ *Gay Alliance of Students* [75-0181-R], at 11-13.

⁷⁶ *Gay Alliance of Students* [75-0181-R], at 13-17.

concluded the denial of GAS's registration was legitimately related to that interest. Warriner wrote:

It was reasonable for the Board to conclude that certain persons who might otherwise be inclined to exercise a measure of control over their latent proclivities, would be influenced by the existence of GAS as an official campus organization to ignore societal opprobrium and indulge their homosexual impulses. Furthermore, it follows that in a society which shuns sexual relationships between members of the same sex, the formal existence of an organization which condones, defends and extols such behavior would afford a haven for those wishing to engage in homosexual activity.⁷⁷

Therefore, Warriner found that refusing to provide advising, funding, and recognition was a rational governmental response to discouraging homosexuality. Warriner ended his opinion with a reminder of the benefits of registration that he found GAS entitled to while also justifying the refusal to extend all benefits of registered student organizations, concluding, "It is hoped that the benefits to be derived from plaintiff's exercise of its right to freedom of speech and association will outweigh the detriment to their University and to other students".⁷⁸

Despite Warriner's disdainful tone, GAS was in a stronger position at the end of the trial than at its start. The organization had achieved most of the rights that would normally accompany registration, though not registration itself as Warriner allowed VCU to treat GAS as a second-class student organization. GAS members would have to decide how to move forward. They could take these gains and make the most with them on campus. Or they could appeal and provide a higher court the opportunity to determine that they were entitled to all the benefits of registration. That court could also decide they were entitled to none at all.

"WE ARE NOT TIMID. WE ARE NOT INTIMIDATED".

In the immediate aftermath of the ruling, Foery, the 27-year-old spokesperson for GAS, and Lenton, the advisor who was instrumental in

⁷⁷ *Gay Alliance of Students* [75-0181-R], at 20.

⁷⁸ *Gay Alliance of Students* [75-0181-R], at 21.

guiding the organization as it sued his employer and bosses, issued a press release criticizing Warriner's decision. They contended that the ruling was discriminatory and would impede efforts to recruit new members. They explained that the organization was considering whether it would "focus all our energies on local organization and education, in our separate and unequal status, or, as a small group of students without money, dare to challenge the right of the government to legislate morality". The release concluded with their resolve, noting "we are aware that freedom is lost by timidity as well as by intimidation. We are not timid. We are not intimidated".⁷⁹

Within days, GAS members announced that they would appeal, seeking to go from a partial victory to achieve full standing as a registered VCU student organization.⁸⁰ They declared, "We are united in our cause and willing to pursue it to its outcome".⁸¹ At the same time, Foery urged the board to reconsider its stance and to meet in person to discuss the situation before the appeal deadline in early December. He concluded his request: "We fully expect to win the case, and your recalcitrance, forcing us into court, will result in more people than us being positively affected".⁸² The board declined in a curt note, and it soon also appealed the district court decision in hopes of undoing the gains the initial ruling had provided for GAS.⁸³

Foery would eventually prove to be correct on all counts but, at the time, significant challenges remained. In early December the entire case was almost derailed when McCarthy, under intense stress from the blowback of representing GAS, neglected to submit court fees necessary to appeal. On the last afternoon that the fees could be submitted, Foery realized the oversight and wrote a personal check to cover the costs. He would, in all, loan GAS more than \$300 to support the case (over \$1,700

⁷⁹ Walter Foery and Stephen M. Lenton, press release, n.d., Folder 21, Box 1, GAS Collection, VCU Libraries.

⁸⁰ Jim Jennings, "GAS plans to appeal court's ruling", *Commonwealth Times*, 21 November 1975.

⁸¹ "Press release", n.d., Folder 21, Box 1, GAS Collection, VCU Libraries.

⁸² Walter Foery to Wyndam Blanton, 19 November 1975, GAS Records, VMHC.

⁸³ Wyndham Blanton to Walter Foery, 20 November 1975, Folder 4, Box 1, GAS Collection, VCU Libraries; Foery, interviewed by Hevel; McNeill, "Inside the fight". Foery identifies the letter as relating to the initial rejection of the application in 1974 but both his appeal to the board and Blanton's response occurred just after the first court ruling.

in 2023 dollars).⁸⁴ Foery's payment highlighted another difficulty: the ACLU of Virginia did not commit to participating in the appeal. This forced Foery and Lenton to reach out to other organizations for support, including the National Gay Student Center and the Lambda Legal Defense and Education Fund.⁸⁵ Bruce Voeller, the co-founder and executive director of the National Gay Task Force (NGTF) whom Foery had met at the 1975 Gay Academic Union Conference in New York, suggested other possible routes for assistance and appealed to NGTF members for donations, ultimately raising \$115 for the cause.⁸⁶ Voeller also pressured the ACLU of Virginia to continue the case. He turned to Marilyn Haft, director of the ACLU's Sexual Privacy Project, and "very strongly urged her to raise hell". When the ACLU of Virginia told Haft that they were dropping the case, according to Voeller, "she had a real row" and urged them not to.⁸⁷ Within a few days, Voeller expressed optimism that the ACLU would soon come on board.⁸⁸ Ultimately, the ACLU of Virginia provided limited financial support for the appeal, though minimal communication between GAS's lawyer and the ACLU of Virginia impeded its input. In the end, though, its legal director, Richard E. Crouch, would play a vital, if unanticipated, role.⁸⁹

In February 1976, Lenton informed student affairs officials of recent developments regarding GAS. During a seven-hour meeting in January GAS leaders developed a robust new statement of purpose to guide the organization, including building a broad community opposed to discrimination based on gender or sexual orientation, starting a forum focused

⁸⁴ Letter from Voeller; Foery, interviewed by Hevel. In the interview, Foery expressed that McCarthy's oversight angered him at the time but that he later recognized how much McCarthy had risked to represent GAS, noting that McCarthy was "an otherwise terrific supporter of GAS".

⁸⁵ Walter Foery and Stephen M. Lenton to National Gay Student Center, 12 November 1975, GAS Records, VMHC; Walter Foery and Stephen M. Lenton to William J. Thom, 12 November 1975, GAS Records, VMHC.

⁸⁶ Bruce Voeller to John M. McCarthy and Walter Foery, 11 March 1976, Folder 10, Box 1, GAS Collection, VCU Libraries; Robert Herrick to John M. McCarthy, 1 September 1976, Folder 10, Box 1, GAS Collection, VCU Libraries; Foery, interviewed by Hevel.

⁸⁷ Bruce Voeller to Walter Foery, 12 December 1975, Folder 10, Box 1, GAS Collection, VCU Libraries.

⁸⁸ Bruce Voeller to Walter Foery, 15 December 1975, Folder 10, Box 1, GAS Collection, VCU Libraries.

⁸⁹ Richard E. Crouch, Motion for Leave to File Bill of Costs Out of Time, 23 November 1976; Case File 75-2359; Correspondence Relating to Cases; Records of the US Court of Appeals for the Fourth Circuit, Record Group 276 (hereafter cited as "Records of the Fourth Circuit"), National Archives at Kansas City (Kansas City, MO; hereafter cited as "NAKC").

on lesbian and gay issues, providing information to the campus and community, and improving student life by making it more attentive to the needs of gay students. The fifth and final purpose spoke to an issue that many believed was central to the board's handling of GAS's initial application: "To assist the university in building a more positive institutional image". At the same meeting, they had decided to host a dance to fundraise and help cover a \$400 legal debt (almost \$2,200 in 2023 dollars). Lenton referred to the debt as "our debt", demonstrating his commitment and allegiance to GAS, even as it conflicted with his employer.⁹⁰

While the new statement of purpose helped define organizational goals, the dance emphasized the centrality of the lawsuit to the GAS's existence. The organization's major event was a fundraiser to help ensure it could exist, rather than an event that advanced its larger purpose of improving the lives of LGBTQI+ students at VCU. Indeed, although Foery would be invited to talk in college classes and the group would have small informal meetings, the lawsuit dominated the organization's efforts for its first two years. Foery recalled that "our entire focus, our *raison d'être*, [was] to be recognized".⁹¹ Moreover, the legal challenge was taking a toll. Kriegel recently recalled that "the group was demoralized, so we blended more with the community group, the Richmond group".⁹²

The dance was held on February 15, 1976, at the Cha Cha Palace, an LGBTQI+-friendly disco club that had opened the year before a few blocks from campus.⁹³ Foery recalled:

That night was probably the most proud I ever was of what I was doing. Because my boyfriend at the time, Steve Pierce, and I worked our butts off. We handed flyers out, we tacked fliers, we talked nonstop. We did everything that needed to be done.

⁹⁰ Stephen M. Lenton to Student Life Staff, Tim Langston, Os Parker, and Richard Wilson, 2 February 1976, GAS Records, VMHC. See, also, "G.A.S.", *GAP Rap*, February 1976, Folder 34, Series 2, Lenton Papers, VMHC. The exact amount of the debt is hard to pin down as both contemporaneous evidence and more recent recollections offer differing amounts.

⁹¹ Foery, interviewed by Hevel.

⁹² Kriegel, interviewed by Hevel.

⁹³ "Cha-Cha [*sic*] Palace opens", *Gap Rap*, 20 March 1975, Folder 34, Series 2, Lenton Papers, VMHC.

So we got there plenty early, and we're thinking, "Oh God, what if nobody comes? What if nobody comes? What if nobody comes?" Finally, it's eight o'clock, or whenever it was supposed to start, and nobody's there, and so we're panicking. And then eventually, the place filled. It was like a Saturday night. We were ecstatic. I remember hugging and crying on the dance floor, me and Steve. All the straight friends I could count on were there. Almost every one of them came. And then tons of gay people I knew. Tons of gay people I didn't know. It was a huge success.⁹⁴

In all, more than 300 people attended the event, which had a requested donation of two dollars per person. GAS raised enough to pay off its debt to Foery and cover its other existing obligations, while also garnering substantial emotional support.⁹⁵

The success of the dance helped GAS with the appeal, but one more significant hurdle remained. Shortly before the June arguments, McCarthy, GAS's lawyer, shut down his law practice and entered a mental hospital. His secretary contacted the ACLU's Crouch informing him of the development and telling him that McCarthy wanted Crouch to continue with the case. Unable to contact McCarthy and with only skeletal files of his own, Crouch scrambled to prepare for the appeal. Months after he agreed to represent GAS, Crouch reported that he still did not have access to the full case files and what he had was "in a chaotic and uninformative state".⁹⁶

THE APPEAL

Despite being dealt an unorganized hand, Crouch represented GAS during oral arguments before a three-judge panel of the Fourth Circuit of the US Court of Appeals on June 7, 1976. VCU was again represented by an assistant attorney general of Virginia. Nearly five months passed

⁹⁴ Foery, interviewed by Hevel.

⁹⁵ "Gays thank public", Unidentified newspaper clipping, Folder 18, Box 1, GAS Collection, VCU Libraries; Untitled flyer, Folder 18, Box 1, GAS Collection, VCU Libraries. This turnout and support seemingly helped overcome a perceived sense of conflict between GAP and GAS that Foery had expressed in a letter to the editor of *GAP Rap* in the same issue that the dance was announced. Walter Foery, letter to the editor, *GAP Rap* 2, February 1976, Folder 34, Series 2, Lenton Papers, VMHC.

⁹⁶ Crouch, "Motion for Leave", Records of the Fourth Circuit; NAKC.

before the judges issued their ruling on October 28. The ruling noted that no one was claiming that GAS engaged in illegal activities. Rather, GAS was a “pro-homosexual” organization that advocated to end sodomy laws and to improve the lives “of individuals whose sexual orientation is wholly or partly homosexual”.⁹⁷ Citing the Supreme Court’s *Healy* decision, the judges quickly rejected VCU’s claim that the refusal to register GAS did not violate its members’ First Amendment rights. In fact, the judges determined that all the benefits of registration – including those withheld by Warriner’s decision – should be granted to GAS under *Healy* unless there was a constitutionally acceptable reason for denying registration.⁹⁸

The judges turned their attention to VCU’s justifications for denying GAS registration, first considering VCU’s claim that registration would denote a degree of institutional approval and therefore increase GAS’s membership. They pointed to the diverse range of student organizations at VCU and a VCU administrator’s testimony that registration did not include university endorsement of the group. Moreover, the Fourth Circuit had ruled in 1973 that providing state-supported facilities to a group did not convey state approval of the group. In terms of increased membership, the judges noted that this advanced the purpose of the First Amendment. “If it is the right of an individual to associate with others in furtherance of their mutual beliefs, that right is furthered if those who may wish to join GAS are encouraged by the fact of registration to take that step”, they wrote.⁹⁹

Likewise, the judges were “not impressed” with VCU’s reasoning that some students “would suffer detriment” if GAS became a registered organization. “The very essence of the first amendment is that each individual makes his own decision as to whether joining an organization would be harmful to him”, wrote the judges in the universal male jargon of their day, “and whether any countervailing benefits outweigh the harm”.¹⁰⁰ In terms of the claim that GAS would “increase the

⁹⁷ *Gay Alliance of Students v. Alfred T. Matthews*, 544 F.2d 162, 164 (4th Cir. 1976).

⁹⁸ *Gay Alliance of Students*, 544 F.2d at 164-165.

⁹⁹ *Gay Alliance of Students*, 544 F.2d at 165.

¹⁰⁰ *Gay Alliance of Students*, 544 F.2d at 165-166.

opportunity for homosexual contacts” and attract more gay students to VCU, the judges tried to parse the institution’s meaning of “homosexual contacts”. If this meant gay students meeting together, this was clearly protected under the First Amendment. If the university meant illegal sexual activity, then this could certainly be regulated. Quoting *Healy*, the judges noted that advocacy – even advocating for something illegal or to make something legal that was illegal – was protected by the Constitution. And the judges observed that there was “no evidence that GAS is an organization devoted to carrying out illegal, specifically proscribed sexual practices”. VCU could discipline students who broke laws related to gay sex or otherwise disrupted campus. But even if the existence of GAS increased the prevalence of gay sex, denying its members their First Amendment rights would be an overreach forbidden by the Constitution. The same reasoning applied to VCU’s concern that GAS would attract more gay students to campus.¹⁰¹

The judges spent little time on the equal protection claim, but they found in favor of GAS. Because all of VCU’s reasons for denying GAS registration were based on the content of the group’s message, such justifications had to survive strict scrutiny. As the judges had detailed in their First Amendment analysis, VCU had not met that standard. Not only would VCU be required to register GAS and provide the group with all the relevant benefits, the judges ruled it would also have to cover the organization’s legal costs.

AFTERMATH

When the ruling came down, GAS members were ecstatic. Foery recalled that he learned of the ruling from Pierce: “He screamed into the phone, “We won!” And I didn’t know what he was talking about because he didn’t preface it with anything and we’d been waiting for weeks or months by that time. I said, “What are you talking about?” He told me, and I was as happy as he was”.¹⁰² That joy showed through in Foery’s letter to Voeller sharing the news, which began “Oh Happy Day!”¹⁰³ The

¹⁰¹ *Gay Alliance of Students*, 544 F.2d at 166-167.

¹⁰² Foery, interviewed by Hevel.

¹⁰³ Walter Foery to Bruce Voeller, 2 November 1975, GAS Records, VMHC.

legal victory enabled the group to focus on its intended purposes of educating people about gay issues and improving the lives of LGBTQI+ people. A few weeks after the appellate decision, GAS offered a two-day workshop titled “The Gay/Lesbian Experience”.¹⁰⁴ The session was designed for gays and lesbians, though others “with an empathetic understanding” could participate. The event was designed to build community and promote discussion. Workshops continued in ensuing years, as did occasional special events such as GAS’s showings of *Word is Out: The Story of Some of Our Lives*, a groundbreaking documentary that is considered the first film about gay and lesbian people made by gay and lesbian people.¹⁰⁵

More typical, though, were small weekly GAS meetings at which members interacted in a supportive environment. As Lenton described in a 1978 guest column in the James Madison University’s student newspaper, the sessions were informal and unstructured, taking different paths depending on who showed up and what ideas were raised. They might include discussions of current events, campus issues, gay literature, or personal experiences of coming out. As Lenton explained, “GAS is still young and new and in the process of discovering community”. In spring 1979, GAS changed its name to Lambda League, looking to increase its activity while retaining the core purposes that GAS had developed in early 1976.¹⁰⁶ While GAS and Lambda League were small – typically with about 20 members into the early 1980s¹⁰⁷ – the limited documentary evidence shows an organization that continued to provide programming while trying to define its purpose, a common concern for LGBTQI+ student organizations in the period.¹⁰⁸

Even as GAS continued to make contributions to VCU, being forced to sue to register had both immediate and lasting consequences. This was especially true for those who had shepherded the lawsuit through to

¹⁰⁴ “Calendar”, *Commonwealth Times*, 12-18 November 1976.

¹⁰⁵ Brett Averill, “The word is out”, *Commonwealth Times*, 17-23 October 1978; Richard Brody, “Word is Out’: a pioneering documentary of gay voices”, *New Yorker*, 21 July 2020. <https://www.newyorker.com/culture/the-front-row/word-is-out-a-pioneering-documentary-of-gay-voices>

¹⁰⁶ Dale Davis, “Gay current events”, *Commonwealth Times*, 30 October-5 November 1979.

¹⁰⁷ Tom Phipps, “Lambda League: homosexuals get together”, *Commonwealth Times*, 23 February-1 March 1982.

¹⁰⁸ Dilley, *Gay liberation*.

its successful conclusion. As Foery later recalled, “This had consumed my life [...]. When we finally won, I was exhausted. I wanted my life back. I wanted some privacy”.¹⁰⁹ He could not remember any engagement with GAS after the victory.¹¹⁰ Moreover, the lawsuit robbed the group of its founders’ initial vision and energy. Foery remembered, “What I tell people is that when we finally won [...] it was like, ‘What do we do now?’ My memory was that we didn’t have an answer to that question”.¹¹¹ This was evident at the group’s second workshop after the lawsuit, which was designed to address “the many questions gay/lesbian people have which we are not able to answer alone”. Among them, was whether there should even be “a student organization, and, if so, for what?”.¹¹² Lenton admitted in the guest column that GAS’s future was “murky”, continuing, “If left alone, GAS will probably continue in its current course of meeting every Wednesday night for the sake of spending a few hours each week together in a supportive atmosphere. Students will probably continue to attend for a wide variety of reasons, chief of these being comradeship”.¹¹³

Lenton’s future was soon murky itself. In 1980, he left VCU when it became clear that his career was being stifled due to him being openly gay and advocating for LGBTQI+ students. He later recalled, that after having a promotion rescinded and his oversight of programs removed, “I was told, ‘You know we’ll never fire you. You can work here forever. You can do whatever you want. We are never going to ask you to do anything. Also you would never be promoted in any way or shape or form or title’”.¹¹⁴ Thus, while GAS’s opponents eventually lost the legal battle, by channeling its founders’ energy into fighting a lawsuit rather than establishing services and planning events, leaving these members exhausted and uncertain at the end of the case, and contributing to its gay advisor’s eventual resignation, they hampered the development of a

¹⁰⁹ Foery, interviewed by Hevel.

¹¹⁰ McNeill, “Inside the fight”.

¹¹¹ Foery, interviewed by Hevel.

¹¹² “The gay/lesbian experience, ’77”, Flyer, Folder 1, Series 1, Lenton Papers, VMHC.

¹¹³ Stephen M. Lenton, “Alliance offers security to gays”, *The Breeze*, 17 March 1978.

¹¹⁴ “An oral history of Stephen Micheal Lenton”, p. 43, Folder 140, Series 26, Lenton Papers, VMHC. See, also, Stephen M. Lenton, “Excellence is not enough”, *Commonwealth Times*, 22-28 April 1980; Hevel and Cain, “Queer student affairs career”.

vibrant LGBTQI+ student organization and community in ways impossible to quantify.

What GAS may have been able to contribute to VCU and its students if not for two years of administrative intransigence remains unknown, but their successful lawsuit influenced the lives of LGBTQI+ students far beyond Richmond. The appellate judges' ruling that held GAS was entitled to registration and its benefits at VCU created precedent across the Fourth Circuit. This meant that students at every public college and university in Maryland, North Carolina, South Carolina, West Virginia, and Virginia – states which represented nearly ten percent of the US population in 1976 – had the right to start an LGBTQI+ student organization without interference.

These were, it almost goes without saying, not states particularly welcoming to sexual minorities. But by 1991, a gay University of Richmond student told a reporter, "It's really uncool to be homophobic on campus. Maybe being gay isn't totally accepted, but it is tolerated". This improvement on campus was due in part to a small group of students at an urban university in the former capital of the Confederacy who resolved to start an LGBTQI+ student organization nearly two decades earlier. Faced with seemingly insurmountable hurdles as administrative and political leaders fought to stop their efforts, they persevered, often at great costs to themselves and their nascent organization. Two years after the legal victory, Lenton, the advisor who helped bring the organization into existence and mentored many of its members, lamented the fading memory of the struggle for registration. Yet Lenton pointed to the vital and significant role played by GAS on campus, even if its numbers were small: "Each time this quiet, small group of students meets, whether they feel it or not, history is in the making".¹¹⁵

Note on the authors

MICHAEL S. HEVEL is an associate professor of higher education in the Department of Counseling, Leadership, and Research Methods at the

¹¹⁵ Lisa Guernsey, "Gays find campuses more tolerant, supportive", *Richmond News Leader*, 13 August 1991; Lenton, "Alliance offers security to gays", 23.

University of Arkansas. He studies college students and student affairs administrators from both contemporary and historical perspectives. He has published articles in the *History of Education Quarterly*, *Journal of College Student Development*, *Journal of Higher Education*, and *Review of Higher Education*. His research has been supported by the Spencer Foundation and several archival fellowships. He earned degrees from the University of Kansas (B.A.), Bowling Green State University (M.A.), and University of Iowa (Ph.D).

TIMOTHY REESE CAIN is an associate professor at the University of Georgia's Louise McBee Institute of Higher Education. His work explores modern and historic issues involving college faculty, academic freedom, unionization in higher education, student activism, and related issues. He is the author of numerous journal articles and book chapters, as well as *Establishing Academic Freedom* (Palgrave, 2012), *Campus Unions: Organized Faculty and Graduate Students in US Higher Education* (ASHE Report Series; Jossey-Bass, 2017), and, with colleagues at the National Institute for Learning Outcomes Assessment, *Using Evidence of Student Learning to Improve Higher Education* (Jossey-Bass, 2015). His degrees are from Duke University (A.B.), The Ohio State University (M.A.), and the University of Michigan (Ph.D.)

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