



June 2, 2020

President Michael V. Drake
Office of the President
The Ohio State University
205 Bricker Hall
190 North Oval Mall
Columbus, Ohio 43210

URGENT

Sent via Electronic Mail (drake.379@osu.edu)

Dear President Drake:

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

Founded in 1974, the Student Press Law Center (SPLC) is the nation's only legal assistance agency devoted exclusively to supporting, defending, and educating high school and college journalists about the rights and responsibilities embodied in the First Amendment and supporting the student news media in covering important issues free from censorship. The SPLC is a nonpartisan, nonprofit organization.

College Media Association (CMA) is the leading organization of professionals who advise college newspapers, broadcast outlets, websites, magazines, yearbooks and other forms of student media. With more than 700 members, CMA sees it as its duty to uphold the free press rights of student journalists.

FIRE, SPLC, and CMA are deeply concerned about the preservation of a free student press at The Ohio State University (Ohio State) in light of Columbus police officers' use of pepper spray and physical force to disperse student journalists covering protests adjacent to Ohio State's campus. These actions are antithetical to the First Amendment, and we call upon Ohio State to take affirmative steps to defend its students' rights in the wake of this incident.

I. Columbus Police Officers Pepper Spray Student Journalists Covering Protests.

The following is our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us. However, if the facts are substantially accurate, the actions taken by the Columbus Police against student journalists cannot stand in the face of the First Amendment.

Protests following the homicide of George Floyd began in downtown Columbus on May 28.¹ In response, Mayor Andrew Ginther imposed a 10:00 p.m. curfew beginning May 31.² However, the executive order instating the curfew specifically exempts “members of the news media,”³ an exemption also highlights in the City of Columbus’ corresponding news release.⁴

On June 1, three student journalists from *The Lantern*, the student newspaper at Ohio State, went downtown to cover the protests.⁵ At roughly 10:25 p.m., 25 minutes after the curfew began, police began using pepper spray to disperse protestors.⁶ Police then approached *Lantern* reporters, who “were not immediately near the protestors” and told the student journalists to “go home” and “get inside.”⁷

The student journalists identified themselves as members of the news media, both verbally and by holding up their press passes, and reminded the officers that reporters are exempted from the curfew.⁸ Police officers continued to tell the reporters to leave and threatened them with arrest.⁹ At least one reporter was “forcefully pushed” by officers, and multiple officers began pepper spraying the three student journalists.¹⁰ These actions are clearly documented on recordings captured by a *Lantern* journalist.¹¹

II. Actions Taken to Silence the Press, Including the Student Press, Run Afoul of the First Amendment.

The actions of *The Lantern* reporters, including covering the protest and filming the police, are unambiguously protected by the First Amendment and clearly permitted by the letter and spirit of the executive order imposing the curfew. The officers’ use of excessive force is

¹ State of Emergency: Order Declaring a Curfew in the City of Columbus, Ohio, Executive Order 2020-04 (May 30, 2020), <https://www.columbus.gov/WorkArea/DownloadAsset.aspx?id=2147515538>.

² *Id.*

³ *Id.*

⁴ *Mayor Andrew Ginther Implements Curfew for City to Prevent Violence*, City of Columbus (May 31, 2020), <https://www.columbus.gov/Templates/Detail.aspx?id=2147515539>.

⁵ Max Garrison, *Lantern journalists pepper sprayed by police*, THE LANTERN (June 2, 2020), <https://www.thelantern.com/2020/06/lantern-journalists-targeted-by-police-pepper-sprayed>.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ The Lantern (@TheLantern), TWITTER (June 1, 2020, 10:29 PM), <https://twitter.com/TheLantern/status/1267644471317090305>.

unlawful and represents a serious and knowing abridgment of the rights of Ohio State student journalists.

A. *The First Amendment protects the right to film the police.*

Under the First Amendment, the right of the press to gather information has been long-established. *See Branzburg v. Hayes*, 408 U.S. 665, 681 (1972). The press, including the student press, serves as an important conduit in preserving the public’s right to know. Courts recognize that the press act as “surrogates for the public” in keeping a watchful eye on their communities, and especially on the actions of government agents, such as police. *Richmond Newspapers v. Virginia*, 448 U.S. 555, 573 (1980).

As a close corollary to the right to gather information, especially information about the actions of government officials, courts have widely recognized the right to film police engaging in official activity in public places. “Every Circuit Court of Appeals to address this issue . . . has held that there is a First Amendment right to record police activity in public.” *Fields v. City of Philadelphia*, 862 F.3d 353, 355 (3d Cir. 2017).

B. *The use of pepper spray to disperse student journalists complying with the curfew abridges their First Amendment rights.*

Because the right to record the police is well established and because the students were compliant with the curfew, the police officers’ use of pepper spray to impede student journalists’ ability to cover important events on the border of Ohio State’s campus is a clear violation of those rights.

Further, that action not only violates the student journalists’ right to gather information, but also burdens the public’s right to know about the operations of police officers. As members of the campus and broader community, student journalists are an important part of the process of informing the public of undertakings of government officials, including both those at Ohio State and those in the broader community of Columbus.¹² Mayor Ginther’s curfew order recognized this essential role of the press by exempting the news media, allowing reporters to continue to keep the public informed of the goings on in Columbus, even after hours.¹³ Indeed, an exemption in a curfew order for journalists to remain present is a critical bulwark against

¹² *See generally* Student Press Law Center, *SPLC Statement on Student Media as Essential Service During COVID-19* (Mar. 24, 2020), <https://splc.org/2020/03/splc-statement-on-student-media-as-essential-service-during-covid-19> (“Student journalists, like professional journalists, play a unique and essential role in news gathering and reporting, particularly in a time of crisis.”); College Media Association, *The Essential Nature of Student Media During COVID-19*, http://www.collegemedia.org/news/article_b1d00f86-6e15-11ea-958e-7bae27a4f858.html (“Student media outlets and the journalists who report for them are critical in the reporting of information to your school’s community as well. . . . Informing the campus community about what is happening is critical.”) (last visited June 2, 2020).

¹³ *See* State of Emergency, *supra* note 1; *see also*, Elizabeth Brown (@lizforus), TWITTER (June 2, 2020, 10:53 AM), <https://twitter.com/lizforus/status/1267831789176881152/photo/1>.

police abuse, as journalists remain the only civilians able to lawfully observe and share information about the conduct of police as they respond to protests critical of the police.

Yet, the actions of police officers the evening of June 1 substantially burdened the ability of three *Lantern* journalists to gather news and engage their readers about news of the protests taking place in the community, as well as the police response to those protests.

III. Ohio State Must Support Its Student Journalists.

While, to our understanding, this incident took place off campus—though apparently close enough that it occurred at the same intersection where a campus dormitory sits—the close working relationship between the Columbus Division of Police and Ohio State¹⁴ renders it appropriate for the university to respond with strong support of its student press. Therefore, the university must work with the Columbus Division of Police to ensure that no similar actions will be taken against Ohio State student journalists in the future.

As major events continue to unfold across the country and, indeed, the world, the student press must remain free to gather, create, and disseminate the news. When this freedom is threatened by members of a university community or those closely tied to it, a university must stand up and defend its student journalists.

The university must take a stand in support of its student media by engaging with the Columbus Division of Police to ensure that student journalists will not be subject to pepper spray, forceful removal, or other adverse actions while covering community events in the future. The university's significant ties to the Columbus Division of Police should be leveraged to ensure that there are affirmative, enforceable commitments to these ends.

Given the urgent nature of this matter, we request receipt of a response to this letter no later than the close of business on June 9, 2020.

Sincerely,



Lindsay Rank
Program Officer, Individual Rights Defense Program
Foundation for Individual Rights in Education

¹⁴ See, e.g., Columbus Police Division Directive 7.07(II)(E)(2); Emily Bamforth, *Ohio State student government ask for university to cut ties to Columbus Police Department*, Cleveland.com (June 1, 2020), <https://www.cleveland.com/news/2020/06/ohio-state-student-governments-ask-for-university-to-cut-ties-to-columbus-police-department.html>.

A handwritten signature in black ink, appearing to read 'M. Hiestand'.

Mike Hiestand, Senior Legal Counsel
Student Press Law Center

A handwritten signature in black ink, appearing to read 'K. Griffin'.

Kenna Griffin, President
College Media Association

Cc:

Thomas Quinlan, Chief of Police, Columbus Division of Police (tquinlan@columbuspolice.org)