



March 23, 2021

President Bashar W. Hanna
Bloomsburg University of Pennsylvania
Carver Hall
400 E. Second St.
Bloomsburg, Pennsylvania 17815-1301

Sent via Electronic Mail (president@bloomu.edu)

Dear President Hanna:

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.

FIRE is concerned for the state of students' First Amendment rights at Bloomsburg University of Pennsylvania in light of its threat to sanction all Greek organizations for the misconduct of a single group, as well as its ban on students' affiliation with groups no longer recognized by the university. These directives violate Bloomsburg students' rights to freedom of expression and freedom of association.

I. **Bloomsburg Threatens "Cancellation" of All Greek Organizations and Bans Affiliation with "Derecognized" Groups**

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.

In a January 28, 2021 letter to members of the Bloomsburg fraternity and sorority community, you wrote:

Student organizations receiving this letter have recently operated in a manner that has not violated the University's December 2, 2019, directive, and thus remain as a University recognized organization. However, the zero-tolerance policy articulated in December 2019 will be extended through Spring semester 2022.

In addition, any future significant violation of Greek specific rules or Code of Conduct violations will result in the cancelation of the entire FSL [Fraternity and Sorority Life] community at Bloomsburg University.

[...]

Finally, I am prohibiting students from affiliating with derecognized groups. I strongly advise you to implement some measure of self-governance in assisting the University in this endeavor.¹

The letter also details the “[s]pecific violations that will trigger the termination of the program.”²

II. Bloomsburg’s Threat of Cancelation and its Affiliation Policy Violate Students’ First Amendment Rights

We understand that Bloomsburg has important interests in ensuring that its student organizations adhere to its regulations. However, the manner in which the university advances those interests must comport with its legal obligations under the First Amendment. Bloomsburg’s pledge to punish groups for the misconduct of others and its prohibition on “affiliating” with “derecognized” groups contravene these binding obligations.

A. *Bloomsburg is a state actor bound by the First Amendment.*

It has long been settled law that the First Amendment is binding on public colleges like Bloomsburg.³ Accordingly, the decisions and actions of a public university—including the pursuit of disciplinary sanctions,⁴ recognition and funding of student organizations,⁵ interactions with student journalists,⁶ conduct of police officers,⁷ and maintenance of policies implicating student and faculty expression⁸—must be consistent with the First Amendment.

¹ Letter from Bashar W. Hanna, Bloomsburg University President, to Members of the Fraternity and Sorority Life Community (Jan. 28, 2021) (on file with author).

² *Id.*

³ *Healy v. James*, 408 U.S. 169, 180 (1972) (“[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, ‘the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.’”) (internal citation omitted).

⁴ *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 667–68 (1973).

⁵ *Bd. of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 221 (2000).

⁶ *Stanley v. Magrath*, 719 F.2d 279, 282 (8th Cir. 1983); *see also Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829–30 (1995).

⁷ *Glik v. Cunniffe*, 655 F.3d 78, 79 (1st Cir. 2011).

⁸ *Dambrot v. Central Mich. Univ.*, 55 F.3d 1177 (6th Cir. 1995).

B. Bloomsburg’s First Amendment obligations foreclose its ability to sanction all Greek organizations for the actions of others.

Bloomsburg’s pledge that any “future significant violation” of institutional regulations will result in the “cancelation of the entire” fraternity and sorority life community amounts to guilt by association, imposing penalties on students not suspected or found to have engaged in wrongdoing.

Bloomsburg’s threat, if carried through, would result in the punishment of student groups not alleged to have committed any misconduct, solely because of the misconduct of individuals or groups over whom they have no control. By threatening to dismantle the entire Greek life system in this manner, Bloomsburg has made clear that some groups will be penalized only because of their form: Because they are similar to or loosely affiliated with another group by virtue of social connections or similarity in purpose, they can be subject to university punishment.

Fundamental rights to freedom of association cannot be burdened in this fashion. In *Healy v. James*, the United States Supreme Court noted that it has “consistently disapproved” action “denying rights or privileges solely because of” association with unpopular organizations.⁹ “[G]uilt by association alone, without [establishing] that an individual’s association poses the threat feared by” authorities “is an impermissible basis upon which to deny” expressive or associational rights.¹⁰

In *Healy*, a university president’s unilateral decision to deny recognition to a chapter of Students for a Democratic Society, on the basis that it was affiliated with groups that engaged in violence during “widespread civil disobedience on some campuses, accompanied by the seizure of buildings, vandalism, and arson,” abridged associational rights.¹¹ If a formal association with organizations that engaged in violence was insufficient to deny associational rights in *Healy*, the informal and attenuated relationship between the Greek organizations at Bloomsburg cannot serve as a justification to broadly burden students’ ability to associate with one another.

Bloomsburg’s plan to punish *all* Greek organizations in the event that *some* group members commit misconduct is guilt by association, “a philosophy alien to the traditions of a free society”¹² and antithetical to Bloomsburg’s First Amendment obligations.

⁹ *Healy*, 408 U.S. at 186.

¹⁰ *Id.* (quoting, in part, *U.S. v. Robel*, 389 U.S. 258, 265 (1967)).

¹¹ *Id.* at 171, 181.

¹² *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 932 (1982).

C. The First Amendment protects students' right to associate with organizations unaffiliated with their university.

By banning students from associating with derecognized groups, Bloomsburg restricts its students' freedom of association in violation of its First Amendment obligations.

The First Amendment guarantees freedom of association, which protects the “right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.”¹³ The right to associate extends to students enrolled in public universities, protecting their right to join social organizations, including student groups unrecognized by their university.¹⁴

Bloomsburg's authority to regulate student organizations is limited by the university's affiliation with these groups. As your letter to the Greek community explains, student groups at Bloomsburg voluntarily agree to comply with university policies in exchange for the benefits of affiliating with the university, such as access to campus resources and university funds.¹⁵ When these university-affiliated groups violate university rules, the university may punish them by revoking these privileges, including the right to recruit new student members on campus.

However, when a once-recognized organization is no longer affiliated with the university but is otherwise lawfully organized, that group stands on equal footing with any other group in the broader Bloomsburg-area community. A university can no more prohibit association with a formerly-recognized fraternity than it can bar membership in the local rotary club or theatre ensemble. Bloomsburg must allow its students to exercise their First Amendment right to affiliate with local social groups, just as it would allow them to join any other organization unrecognized by and unaffiliated with the university.

D. Bloomsburg's ban on affiliating with unrecognized groups is unconstitutionally vague.

In addition to the impermissible burden on associational freedom, Bloomsburg's ban on affiliating with unrecognized groups is also an unconstitutionally vague restriction, failing to adequately warn students about what activities are prohibited.

Regulations must “give a person of ordinary intelligence a reasonable opportunity to know

¹³ *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984).

¹⁴ See *NAACP*, 458 U.S. at 888 (“[T]he First Amendment restricts the ability of the State to impose liability on an individual solely because of his association with another.”); *Evans v. Newton*, 382 U.S. 296, 298 (1966) (discussing “the right of the individual to pick his own associates so as to express his preferences and dislikes, and to fashion his private life by joining such clubs and groups as he chooses”); *Griswold v. Connecticut*, 381 U.S. 479, 483 (1965) (“[W]e have protected forms of ‘association’ that are not political in the customary sense but pertain to the social, legal, and economic benefit of the members.”).

¹⁵ Letter from Bashar W. Hanna, *supra* note 1.

what is prohibited, so that he may act accordingly,” or else they are unconstitutionally vague.¹⁶ “These concerns apply with particular force where the challenged statute affects First Amendment rights.”¹⁷ State university rules that do not give “adequate warning of the conduct which is to be prohibited” fail to comport with due process.¹⁸

Bloomsburg fails to define “affiliate” in its Student Code of Conduct or any other official policy, leaving students with no guidance as to what activities are prohibited. This issue is compounded by the private, social nature of many Greek organizations’ rituals and customs. These organizations are often defined by their members’ social relationships, but the line between formal and informal relationship is not always clear, and Bloomsburg’s ban does not endeavor to distinguish between formal affiliation and common social interactions. This ambiguity will leave a reasonable person confused as to what activities fall under this directive.

The ambiguities inherent in these restrictions are manifold. Does this restriction encompass mundane organizational activities such as group meals, library hours, or walking to class together? Or is it limited to official group events such as leadership meetings and new member initiation? Will Bloomsburg ban students from adopting the letters, mottos, slogans, color schemes, and sigils of every Greek organization derecognized by the university?¹⁹

The vagueness of these restrictions will cast an impermissible chilling effect on a range of activities embraced by the First Amendment. Students may justifiably self-censor rather than show support for delinquent groups on social media, in *The Voice*, or through their student government, in order to avoid possible suspension or expulsion.²⁰ Likewise, students may rationally refrain from collaborating with group members for virtual student group events, campus volunteer and leadership opportunities, Learning Community activities, and countless other social activities and events because of the possibility that Bloomsburg might deem these activities to amount to “affiliating” with members of a prohibited group.²¹ This result is untenable at a public university bound by the First Amendment.

Even if these vagueness concerns were addressed by narrowing and clarifying the scope of prohibited affiliations with unrecognized groups, the ban would still impose a severe burden

¹⁶ *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972).

¹⁷ *UWM Post, Inc. v. Bd. of Regents of the Univ. of Wis. Sys.*, 774 F. Supp. 1163, 1178 (E.D. Wis. 1991).

¹⁸ *Id.*; see also *Dambrot v. Central Mich. Univ.*, 55 F.3d 1177, 1184 (6th Cir. 1995) (finding university racial harassment policy prohibiting “negative” and “offensive” speech unconstitutionally vague and overbroad).

¹⁹ If so, such restrictions would be content-based and presumptively unconstitutional. See, e.g., *Cohen v. California*, 403 U.S. 15, 25 (1971) (punishment for wearing a jacket bearing the slogan “Fuck the Draft” was an unconstitutional content-based determination).

²⁰ *The Voice* is Bloomsburg University’s student newspaper. *The Voice, About*, <https://buvoice.com/about> last visited Mar. 3, 2021).

²¹ See *Student Life*, BLOOMSBURG UNIV., https://www.bloomu.edu/student_life (last visited Feb. 23, 2021) (describing and listing student activities); *Learning Communities*, BLOOMSBURG UNIV., <http://lc.bloomu.edu/> (last visited Feb. 23, 2021) (describing Bloomsburg’s Learning Communities program).

students' associational rights and exceed the university's authority under the First Amendment.

III. Bloomsburg Must Rescind Its Restrictions on Students' First Amendment Rights

Bloomsburg is free to discourage students from associating with disfavored groups and to punish individual students or groups found to have violated rules that constitutionally address the university's interests in protecting student safety. However, the university's drive to improve its Greek life system may not leverage a threat to violate its students' fundamental rights or the university's First Amendment obligations. FIRE calls on Bloomsburg to rescind the policies announced in your January 28 email.

We request receipt of a response to this letter no later than the close of business on April 7, 2021.

Sincerely,



Zachary Greenberg
Senior Program Officer, Individual Rights Defense Program

Cc: Andy Lehman, Chief Legal Counsel
Nicole Cronenwett, Director of Fraternity and Sorority Life