



June 1, 2021

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

*Sent via U.S. and Electronic Mail (president@bloomu.edu)*

Dear President Hanna:

FIRE<sup>1</sup> is disappointed—and our concern for the rights of students renewed—by Bloomsburg University of Pennsylvania’s decision to derecognize *all* fraternities and sororities over unspecified allegations of misconduct. Punishing student groups not alleged to have engaged in any wrongdoing and refusing to afford due process to groups accused of misconduct violates the university’s legal obligations as a public institution bound by the United States Constitution. Penalizing over a dozen student groups solely because they have Greek letters in their name imposes guilt by association, which is itself a constitutionally infirm result. FIRE calls on the university to rescind its punishment upon these groups.

**I. Bloomsburg Eliminates Its Greek Life System**

The following is our understanding of the pertinent facts, which is based on public information. We appreciate that you may have additional information to offer and invite you to share it with us.

On May 13, Bloomsburg announced that it was, “[e]ffective immediately . . . terminating its fraternity and sorority life (FSL) program and severing ties with all national and local FSL

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<sup>1</sup> As you may recall from past correspondence, 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.

organizations currently affiliated with the University.”<sup>2</sup> A university spokesperson attributed this decision to repeated conduct violations by these groups.<sup>3</sup>

As a result, Bloomsburg has rescinded university recognition of seventeen fraternities and sororities, rendering them unable to exercise the rights and privileges of university recognition.<sup>4</sup>

At least one of these groups, the Phi Iota Chi sorority, hasn’t been found responsible for violating university policy since 2018 and was not facing any misconduct allegations when Bloomsburg revoked its recognition.

## II. Bloomsburg’s Elimination of Its Greek Life Program Violates Students’ Rights

Bloomsburg’s actions violate students’ rights in at least two ways. First, the university’s punishment of the Phi Iota Chi sorority and other organizations with no recent disciplinary history, without first providing notice and a hearing, violates these groups’ due process rights. Second, Bloomsburg’s blanket revocation of recognition of all Greek organizations appears to punish them solely because of their form and loose association with one another, in violation of their First Amendment right to be free from guilt by association.

### A. *Bloomsburg punished Phi Iota Chi without providing due process.*

Bloomsburg’s withdrawal of recognition of the Phi Iota Chi sorority without due process before imposing sanctions is inconsistent with the university’s legal obligations and policies regarding student organizations. There is, according to the United States Supreme Court, “no doubt” that the “denial of official recognition, without justification, to college organizations burdens or abridges” the associational right “implicit in the freedoms of speech, assembly, and petition.”<sup>5</sup>

As a public university bound by the United States Constitution, Bloomsburg must afford student groups fundamental due process protections before taking disciplinary action against them.<sup>6</sup> Basic due process entails “notice and . . . a fair and impartial hearing” where “the

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<sup>2</sup> Susan Snyder, *Bloomsburg University cancels Greek life program on campus, but says it’s unrelated to a student’s death*, PHILA. INQUIRER (May 13, 2021), <https://www.inquirer.com/education/bloomsburg-fraternity-sorority-terminate-death-20210513.html>.

<sup>3</sup> Peggy Lee, *Bloomsburg University terminating fraternity and sorority Greek life*, WNEP (May 13, 2021), <https://www.wnep.com/article/news/local/columbia-county/bloomsburg-university-terminating-fraternity-and-sorority-greek-life/523-f904e01e-d54f-4d62-8944-02f66b680f20>.

<sup>4</sup> See generally *Student Clubs and Organizations Handbook*, BLOOMSBURG UNIV. (2018-19), <http://cle.bloomu.edu/assets/docs/handbook-stud-org.pdf> (listing the rights and privileges of university recognition, such as on-campus tabling, posting, and fundraising).

<sup>5</sup> *Healy v. James*, 408 U.S. 169, 181 (1972).

<sup>6</sup> See, e.g., *Iota Xi Chapter v. Patterson*, 538 F. Supp. 2d 915, 924–25 (E.D. Va. 2008), *aff’d on other grounds*, 566 F.3d 138, 149 (4th Cir. 2009); *Sigma Chi Fraternity v. Regents of Univ. of Colo.*, 258 F. Supp. 515, 528 (D. Colo. 1966) (requiring university to provide fraternity with “adequate notice of opposing claims, reasonable opportunity to prepare and meet them in an orderly hearing adapted to the nature of the case and finally, a fair and impartial decision”); *Alpha Eta Chapter of Pi Kappa Alpha Fraternity v. Univ. of Fla.*, 982 So. 2d 55, 56-57

parties must be given a fair opportunity to present their positions.”<sup>7</sup> It requires that student groups “be afforded a meaningful hearing” as well as “notice and a meaningful opportunity to be heard.”<sup>8</sup>

These fundamental due process rights emanate not only from the Fourteenth Amendment, but are also guaranteed by Bloomsburg itself, as its Student Code of Conduct details specific procedural protections that must be provided to student groups before the university metes out punishment.<sup>9</sup> For example, student groups accused of misconduct “shall be notified, in writing, by an appropriate hearing officer of the alleged violation(s) of the Student Code of Conduct.”<sup>10</sup> The code also states that students groups “have the right to appear in person, to present information regarding the violations, and to call witnesses on their behalf,”<sup>11</sup> and that “[t]o be found responsible under this Code, in either a formal or informal hearing, the respondent must be found to have committed the alleged conduct by a preponderance of the evidence.”<sup>12</sup>

Notwithstanding its constitutional obligations and its own policies, Bloomsburg imposed the harshest possible penalty on the Phi Iota Chi sorority and similarly situated groups—permanent revocation of university recognition<sup>13</sup>—without affording the group notice of any misconduct allegations, an opportunity to be heard, or any other procedural protections listed in its code. Rather, the group first learned of its punishment when Bloomsburg announced its decision to end its Greek life program to the public on May 13. The university’s numerous violations of its own disciplinary policy are not only cause for Bloomsburg’s determination to be annulled, but leave the university exposed to legal liability for its indefensible departure from its obligations to respect students’ well-established constitutional rights.<sup>14</sup>

***B. Bloomsburg’s termination of its Greek life system punishes student groups for the actions of others.***

Bloomsburg appears to have followed through on its threat to “cancel[] . . . the entire [Fraternity and Sorority Life] community at Bloomsburg University” in the event of “any future significant violation of Greek specific rules or Code of Conduct violations.”<sup>15</sup> To the

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(Fla. Dist. Ct. App. 2008) (ordering university to reinstate fraternity due to numerous due process violations during disciplinary hearing).

<sup>7</sup> *Sigma Chi Fraternity*, 258 F. Supp. at 528.

<sup>8</sup> *Iota Xi Chapter*, 538 F. Supp. 2d at 924–25 (internal citations and quotations omitted).

<sup>9</sup> *Student Code of Conduct*, BLOOMSBURG UNIV. 13-17 (2020-21), <https://intranet.bloomu.edu/documents/dean-students/CodeConduct.pdf>.

<sup>10</sup> *Id.* at 13.

<sup>11</sup> *Id.* at 14.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 19.

<sup>14</sup> See *Alpha Eta Chapter*, 982 So. 2d at 56–57. To the extent that Bloomsburg punished its other 16 fraternities and sororities without providing due process, those punishments are also constitutionally suspect and must be rescinded.

<sup>15</sup> Letter from Bashar W. Hanna, Bloomsburg Univ. President, to Members of the Fraternity and Sorority Life Community (Jan. 28, 2021) (on file with author).

extent that the university punished these groups for misconduct they did not individually commit, this action runs afoul of the First Amendment's prohibition on guilt by association.

As explained in FIRE's March 23 letter, Bloomsburg has threatened—and has now enacted—punishment on these student groups for the misconduct of individuals or groups over whom they have no control, solely because their names use the Greek alphabet.<sup>16</sup> Rather than bring disciplinary proceedings against only those individuals or groups accused of misconduct, the university instead inflicted the maximum possible sanction upon all its fraternity and sororities without regard for their obedience to university rules. Even if some or most of these groups were found to have violated university policy, the First Amendment does not tolerate punishment imposed on the innocent merely because of tenuous affiliations with disfavored or delinquent parties.<sup>17</sup> Institutions that take seriously their obligations to protect students do not intentionally punish the innocent.

### **III. Bloomsburg Must Restore Recognition to Its Greek Organizations**

Bloomsburg punished its Greek organizations for the misconduct of others without providing notice or an opportunity to be heard. This course of conduct violates its students' rights and university policy. FIRE calls on Bloomsburg to immediately restore recognition to the groups it punished without finding them responsible for misconduct or providing due process.

We request receipt of a response to this letter no later than the close of business on June 15, 2021.

Sincerely,



Zachary Greenberg  
Senior Program Officer, Individual Rights Defense Program

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

Encl.

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<sup>16</sup> Letter from FIRE to Bloomsburg Univ. (Mar. 24, 2021) (enclosed); *Healy v. James*, 408 U.S. 169, 186 (1972) (explaining that the United States Supreme Court has “consistently disapproved” action “denying rights or privileges solely because of” association with unpopular organizations).

<sup>17</sup> See *Healy*, 408 U.S. at 186 (“[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); *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 932 (1982) (Guilt by association is “a philosophy alien to the traditions of a free society.”).



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.<sup>1</sup>

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

## 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.<sup>3</sup> Accordingly, the decisions and actions of a public university—including the pursuit of disciplinary sanctions,<sup>4</sup> recognition and funding of student organizations,<sup>5</sup> interactions with student journalists,<sup>6</sup> conduct of police officers,<sup>7</sup> and maintenance of policies implicating student and faculty expression<sup>8</sup>—must be consistent with the First Amendment.

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

<sup>2</sup> *Id.*

<sup>3</sup> *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).

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

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

<sup>6</sup> *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).

<sup>7</sup> *Glik v. Cunniff*, 655 F.3d 78, 79 (1st Cir. 2011).

<sup>8</sup> *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 "cancellation 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.<sup>9</sup> "[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.<sup>10</sup>

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.<sup>11</sup> 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"<sup>12</sup> and antithetical to Bloomsburg's First Amendment obligations.

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<sup>9</sup> *Healy*, 408 U.S. at 186.

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

<sup>11</sup> *Id.* at 171, 181.

<sup>12</sup> *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.”<sup>13</sup> 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.<sup>14</sup>

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.<sup>15</sup> 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

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<sup>13</sup> *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984).

<sup>14</sup> 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.”).

<sup>15</sup> Letter from Bashar W. Hanna, *supra* note 1.



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

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?<sup>19</sup>

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.<sup>20</sup> 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.<sup>21</sup> 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

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

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

<sup>18</sup> *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).

<sup>19</sup> 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).

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

<sup>21</sup> See *Student Life*, BLOOMSBURG UNIV., [https://www.bloomu.edu/student\\_life](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