



March 9, 2022

Lyle Roelofs  
President's Office  
Berea College  
101 Chestnut Street  
Berea, Kentucky 40404

*Sent via U.S. Mail and Electronic Mail (roelofsl@berea.edu)*

Dear President Roelofs:

The Foundation for Individual Rights in Education (FIRE)<sup>1</sup> is concerned by actions Berea College has taken against independent student newspaper *The Berea Torch*. Berea's threats of punishment against editor Ülvi Gitaliyev and other students involved with *The Berea Torch* offend any reasonable notion of freedom of the press, and betray the college's clear commitment to free expression.

**I. Berea Improperly Cites Independent Student Publication for Solicitation, Using Campus Resources, and Creating a Threatening Environment**

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. To these ends, please find enclosed an executed privacy waiver authorizing you to share information about this matter.

*The Berea Torch* is an independent, student-run publication that serves the Berea College community. *The Berea Torch*, which was founded in February of this year, is not officially affiliated with or sanctioned by Berea College. However, *The Berea Torch* is run by four Berea students, all of whom live on campus.

Since conception of *The Berea Torch*, the involved students have raised awareness of their publication by distributing stickers and hanging posters around campus. These stickers and posters were printed on campus with printing service paid independently by Gitaliyev and other involved students.

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<sup>1</sup> FIRE is a nonpartisan nonprofit dedicated to defending freedom of speech, freedom of the press, and other essential liberties on America's college campuses.

On February 14, Gus Gerassimides, Berea Associate Vice President for Student Life, wrote to Gitaliyev, accusing *The Berea Torch* of “soliciting on campus as an unofficial organization, using campus resources to produce an unofficial publication, and creating a threatening environment for students.”<sup>2</sup>

On February 22, Gitaliyev and other students involved in *The Berea Torch* met with Berea officials, including Rachel Burnside, Area Coordinator for Danforth and Bingham Residence Halls; Charles Saunders, Area Coordinator for Blue Ridge Residence Hall; and a member of Public Safety. During this meeting, Berea officials expressed concerns about *The Berea Torch*’s posters, which use post-Soviet imagery to recruit staff and raise awareness of the newspaper. Berea officials said this post-Soviet imagery may be triggering to some students from Eastern Europe. When *The Berea Torch* representatives inquired whether changing the imagery would solve the problem, they were told *The Berea Torch* would continue to run into problems distributing posters and stickers on campus unless it became an officially sanctioned student organization.

Around the same time that *The Berea Torch* distributed stickers and hung posters on campus, *Queer Creek Zine*, a student-produced zine centered around LGBTQ+ issues that similarly does not appear to have an official relationship with Berea, also distributed materials on campus, and apparently has not been cited for any alleged code of conduct violations.

Gitaliyev followed up with Gerassimides on February 28, and asked for a meeting to further discuss how *The Berea Torch* could continue distributing materials on campus without sacrificing its independence by becoming a student organization.<sup>3</sup> This email has gone unanswered.

Instead of responding to Gitaliyev’s request for a meeting, Gerassimides sent an email to all students, staff, and faculty at Berea encouraging the campus to not engage with *The Berea Torch*, including by “giving interviews . . . or otherwise supporting group operations.”<sup>4</sup>

While *The Berea Torch* could become a registered student organization, the publication chooses to remain independent in order to maintain editorial distance from the college and safeguard against inappropriate influence by college officials.

## **II. Berea’s Actions Against *The Berea Torch* Offend Its Commitment to Free Expression**

Because Berea is a private institution, the First Amendment does not compel it to grant its students freedom of expression. Nevertheless, Berea has made clear commitments promising students expressive freedoms, stating in its student handbook that “Freedom of Expression and an open environment in which to . . . share information are encouraged, supported and protected at Berea College.”<sup>5</sup> Berea’s policy on Freedom of Expression further states that

<sup>2</sup> Email from Gerassimides to Gitaliyev (Feb. 14, 2022, 8:23 am) (on file with author).

<sup>3</sup> Email from Gitaliyev to Gerassimides (Feb. 28, 2022) (on file with author).

<sup>4</sup> Email from Gerassimides (Mar. 4, 2022, 12:49 pm) (on file with author).

<sup>5</sup> *Student Rights and Responsibilities*, Berea College, <https://berea.smartcatalogiq.com/Current/Student-Handbook/Student-Rights-and-Responsibilities> [<https://perma.cc/ND7F-VXYX>] (last visited Mar. 8, 2022).

“[c]ensorship is not compatible with the goals of the College.”<sup>6</sup> These promises represent both a moral and binding legal obligation on the part of Berea College to respect the expressive freedoms, including freedom of the press, it has promised to provide students.<sup>7</sup> However, they are betrayed by the college’s current actions to stifle the ability for students to produce and disseminate materials related to *The Berea Torch*.

**A. *Censoring the Independent Student Press Offends Any Reasonable Notion of Free Expression.***

The right to freedom of expression that Berea promises its students has historically included the right to freedom of the press. While Berea may disagree with the content of *The Berea Torch* or its materials—such as the involved students’ choice to use post-Soviet imagery for posters—these content-based objections cannot legitimately give rise to censorship at an institution that claims to respect expressive freedoms.

Independent student publications—even those with no official relationship with the relevant college or university—have long held an important role on America’s college campuses. When presented with an unofficial student-run publication that printed a front-page headline reading, “Motherfucker Acquitted” alongside a “political cartoon . . . depicting policemen raping the Statue of Liberty and Goddess of Justice,” the Supreme Court concluded that the University of Missouri could not punish the newspaper’s student editor for distributing the publication over objections to its content.<sup>8</sup> Importantly, the fact that the publication at issue in *Papish* was not officially recognized by the university was of no moment for purposes of its protection under the First Amendment.

Simply put, a college cannot seriously proclaim to protect freedom of expression while silencing independent student journalism.

**B. *Berea’s Actions are Not Content-Neutral.***

Berea cannot sincerely argue its actions against *The Berea Torch* and involved students do not rest upon its content or ancillary materials, but instead upon a content-neutral policy that allegedly prohibits unregistered student organizations from distributing materials on campus, as Berea’s uneven application of this policy betrays its content-based motivations.

Berea College officials specifically told Gitaliyev and other *Berea Torch*-affiliated students that the only reason they stood accused of violating college policies was because other students complained about the content of their materials, namely the post-Soviet theme of their posters. Berea cannot, without undermining its professed protections for expressive freedom, prohibit students involved in *The Berea Torch* from distributing literature that

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<sup>6</sup> *Id.*

<sup>7</sup> See, e.g., *Suhail v. Univ. of the Cumberland*, 107 F. Supp. 3d 748, 755 (E.D. Ky. 2015) (holding that the relationship between private institutions of higher education and students is contractual, and the nature of the contract “is determined by looking at the brochures, course offering bulletins, and other official statements, policies and publications of the institution”).

<sup>8</sup> *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 667–68 (1973).

other students may find offensive. To do so is to effectuate the heckler's veto—allowing the sensibilities of some students to silence the voices of others.

The content-based motivations behind Berea's actions against *The Berea Torch* and involved students is made clear by the fact that Berea appears to allow other unofficial student publications, such as *Queer Creek Zine*, to distribute materials on campus without incident.<sup>9</sup> Because other, similarly situated student groups may distribute materials on campus regardless of their registration status with the college, it appears clear that Berea's opposition to *The Berea Torch* rests upon the content of its reporting and materials, not its status as an unregistered student organization.

*C. Rights Bequeathed on Individual Students Should Not be Revoked Simply by Nature of Multiple Students Working Together.*

While Berea relies upon the fact that Gitaliyev and other students involved with *The Berea Torch* have declined to pursue registered status for their publication,<sup>10</sup> nothing in Berea's student handbook suggests individual students are banned from distributing literature on campus.<sup>11</sup> Similarly, nothing in Berea's student handbook suggests students may not print materials unrelated to their classwork or on-campus organizations.<sup>12</sup> This is precisely what Gitaliyev and his peers who work together on *The Berea Torch* are: individual Berea students. To restrict their privileges—and thus their right to freedom of expression—simply because they have worked together to create something and given that creation a name is nonsensical. This type of restriction not only infringes on the students' individual expressive rights, but also upon their right to freedom of association, which is traditionally at its foremost when the association is expressive, as it is here.

### **III. Conclusion**

Restrictions against the press are egregious violations of expressive freedoms, and even more egregious when said restrictions are content-based, as those against *The Berea Torch* appear to be. As an institution that promises its students an environment that protects free expression, Berea must refrain from continuing its censorship of the independent student press.

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<sup>9</sup> FIRE further questions whether, if, for example, a religious student opposed to LGBTQ+ issues were to complain about the distribution of *Queer Creek Zine*, Berea would similarly ban its materials on campus. To do so would also create an inappropriate content-based prohibition on student expression, as is seen here with *The Berea Torch*.

<sup>10</sup> Again, Gitaliyev and his peers have declined to seek registration because they have concerns that to do so would invite undue influence on the content of their publication by Berea officials.

<sup>11</sup> *Solicitation*, Berea College, <https://bera.smartcatalogiq.com/Current/Student-Handbook/Student-Rights-and-Responsibilities/Solicitation> [<https://perma.cc/WML9-6UE8>] (last visited Mar. 8, 2022).

<sup>12</sup> *Student Rights and Responsibilities*, *supra* note 5.

We request receipt of a response to this letter no later than the close of business on Tuesday, March 22, 2022, confirming that Berea College will not pursue sanctions against Gitaliyev and other students involved in *The Berea Torch* and will allow them to distribute their materials on campus.

Sincerely,

A handwritten signature in black ink, appearing to read "Lindsay Rank". The signature is fluid and cursive, with the first name "Lindsay" written in a larger, more prominent script than the last name "Rank".

Lindsay Rank  
Student Press Counsel, Student Press Freedom Initiative

Cc: Gus Gerassimides, Associate Vice President for Student Life

Encl.

## Authorization and Waiver for Release of Personal Information

I, Ülvi Gitaliyev, born on ██████████, do hereby authorize Berea College (the "Institution") to release to the Foundation for Individual Rights in Education ("FIRE") any and all information concerning my current status, disciplinary records, or other student records maintained by the Institution, including records which are otherwise protected from disclosure under the Family Educational Rights and Privacy Act of 1974. I further authorize the Institution to engage FIRE's staff members in a full discussion of all matters pertaining to my status as a student, disciplinary records, records maintained by the Institution, or my relationship with the Institution, and, in so doing, to fully disclose all relevant information. The purpose of this waiver is to provide information concerning a dispute in which I am involved.

I have reached or passed 18 years of age or I am attending an institution of postsecondary education.

In waiving such protections, I am complying with the instructions to specify the records that may be disclosed, state the purpose of the disclosure, and identify the party or class of parties to whom disclosure may be made, as provided by 34 CFR 99.30(b)(3) under the authority of 20 U.S.C. § 1232g(b)(2)(A).

This authorization and waiver does not extend to or authorize the release of any information or records to any entity or person other than the Foundation for Individual Rights in Education, and I understand that I may withdraw this authorization in writing at any time. I further understand that my execution of this waiver and release does not, on its own or in connection with any other communications or activity, serve to establish an attorney-client relationship with FIRE.

I also hereby consent that FIRE may disclose information obtained as a result of this authorization and waiver, but only the information that I authorize.

DocuSigned by:  
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D2C7EACE31064BA...  
Student's Signature

3/9/2022

Date