



April 8, 2022

Lyle Roelofs
Office of the President
Berea College
101 Chestnut Street
Berea, Kentucky 40404

URGENT

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

Dear President Roelofs:

The Foundation for Individual Rights in Education¹ is concerned by the state of freedom of speech at Berea College in light of its viewpoint-based cancellation of a screening of the documentary *Ukraine on Fire* organized by the student chapter of Building Revolution, Anti-Imperialism, and Dissent (BRAID). While some may have objected to the documentary's screening and/or the student group's opinions, because Berea promises students free expression, it may not cancel student-organized events based on the opinions of the organizing students, or the perception of those opinions.

I. Berea Cancels BRAID Documentary Screening

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.

BRAID is a registered student organization at Berea that, on March 1, 2022, was set to host a screening of *Ukraine on Fire*, a documentary about the 2014 Maidan Revolution in Kyiv and the overthrow of Ukrainian leader Viktor Yanukovich. BRAID planned to host the event after Berea's student government screened the documentary *Winter on Fire: Ukraine's Fight for Freedom*, which showed the positives of Ukraine's civil rights movement and fight for independence.² BRAID president Tyrell Banks advertised the *Ukraine on Fire* screening to

¹ FIRE is a nonpartisan nonprofit dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

² Berea Coll. Student Gov't Ass'n, Stand With Ukraine, FACEBOOK, <https://bit.ly/3r4W7x9> (last visited Apr. 5, 2022).

faculty, staff, and students at Berea through an email announcement from the club's former advisor.³

According to Banks, the public safety office then communicated with BRAID's former advisor, pressuring the group to cancel the event based on criticism of the documentary and a perception that the club supports Russian president Vladimir Putin. When Banks asked the club's former advisor if the university could shut down the event without the students' approval, the advisor responded, "Yes."

Without approval from the BRAID students, the group's former advisor then emailed the Berea community, "Given the concerns voiced about this event, BRAID is canceling this event."⁴ The students who run BRAID were not provided the opportunity to explore options to ensure the event could continue but were instead forced to cancel the event. Afterward, Berea demanded a statement from BRAID—which the group's former advisor sent to public safety—explaining that BRAID does not support Russian President Vladimir Putin.

II. Berea's Cancellation of BRAID's Screening Violates Its Free Expression Promises

Berea's selective censorship of disfavored views about Ukraine is incompatible with the college's guarantee of free expression to its students.

Berea has made clear commitments promising expressive freedoms to its students, 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."⁵ Berea's policy on Freedom of Expression further states that "[c]ensorship is not compatible with the goals of the College."⁶

While Berea is a private institution and the First Amendment does not compel it to grant students expressive freedoms, given the college's promises, students may reasonably expect to be afforded the same free speech rights as students at public institutions. These promises represent both a moral and legally binding obligation on Berea to respect the expressive freedoms of its students.⁷ However, Berea has betrayed its obligations by cancelling BRAID's event because of objections to the documentary's and to BRAID's perceived viewpoints.

Colleges committed to upholding students' free speech must ensure student groups can exercise expressive rights by holding events where they share their views or the perspectives

³ Email from BRAID former advisor to Berea Community (Feb. 28, 2022, 1:21 PM) (on file with author).

⁴ Email from BRAID former advisor to Berea Community (Feb. 28, 2022, 3:52 PM) (on file with author).

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

⁶ *Id.*

⁷ 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").

of others. Although some at the college may oppose the content of *Ukraine on Fire*, Berea's expressive freedom commitments strip it of the authority to censor or unilaterally cancel the event based simply on viewpoint or because it may offend some students or lead to protests.

The Supreme Court has repeatedly, consistently, and clearly held that expression may not be restricted on the basis that others find it offensive.⁸ This core First Amendment principle is why the authorities cannot outlaw burning the American flag,⁹ punish the wearing of a jacket emblazoned with the words "Fuck the Draft,"¹⁰ penalize cartoons depicting a pastor losing his virginity to his mother in an outhouse,¹¹ or disperse civil rights marchers out of fear that "muttering" and "grumbling" white onlookers might resort to violence.¹² In ruling that the First Amendment protects protesters holding insulting signs outside soldiers' funerals, the Court reiterated this fundamental principle, remarking that "[a]s a Nation we have chosen . . . to protect even hurtful speech on public issues to ensure that we do not stifle public debate."¹³

This principle applies with particular strength to universities, dedicated to open debate and discussion. Take, for example, a student newspaper's front-page uses of a "political cartoon . . . depicting policemen raping the Statue of Liberty and the Goddess of Justice" and an internal vulgar headline ("Motherfucker Acquitted").¹⁴ These words and images—published at the height of the Vietnam War—were no doubt deeply offensive to many at a time of deep polarization and unrest. So, too, were "offensive and sophomoric" skits depicting women and minorities in derogatory stereotypes,¹⁵ "racially-charged emails" to a college listserv,¹⁶ and student organizations that the public viewed as "shocking and offensive."¹⁷ Yet, "the mere dissemination of ideas—no matter how offensive to good taste—on a university campus may not be shut off in the name alone of 'conventions of decency.'"¹⁸

Even if Berea public safety sought to cancel the event out of concern for the possibility of disruptive conduct by protesters, that is also not a valid basis for cancellation. When detractors target such events for disruption, colleges must respond not by canceling the event, but rather by making "bona fide efforts" to protect expressive rights "by other, less

⁸ While Berea is not directly bound by the First Amendment as noted in the text, interpretations of the First Amendment's guarantee of "the freedom of speech" provide guidance as to what Berea's institutional promise of that freedom means to its students.

⁹ *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (burning the American flag was protected by the First Amendment, the "bedrock principle underlying" the holding being that government actors "may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable").

¹⁰ *Cohen v. California*, 403 U.S. 15, 25 (1971).

¹¹ *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 50 (1988).

¹² *Cox v. Louisiana*, 379 U.S. 536, 557 (1965).

¹³ *Snyder v. Phelps*, 562 U.S. 443, 448, 461 (2011).

¹⁴ *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 667–68 (1973).

¹⁵ *Iota Xi Chapter of Sigma Chi Fraternity v. George Mason Univ.*, 993 F.2d 386, 388–392 (4th Cir. 1993).

¹⁶ *Rodriguez v. Maricopa Cnty. Cmty. Coll. Dist.*, 605 F.3d 703, 705 (9th Cir. 2009) (the First Amendment "embraces such a heated exchange of views," especially when they "concern sensitive topics like race, where the risk of conflict and insult is high.").

¹⁷ *Gay Students Org. of Univ. of N.H. v. Bonner*, 509 F.2d 652, 661 (1st Cir. 1974).

¹⁸ *Papish*, 410 U.S. at 670.

restrictive means.”¹⁹ And shutting down events is almost never the least restrictive means of addressing potential disruptions.²⁰ Restricting expressive activity in response to threatened disruption violates Berea’s promises to protect its students’ rights and incentivizes more threats to future events, putting both the expressive rights and the safety of its students in jeopardy.

III. Conclusion

While we understand discussions of Ukraine and Russia are particularly sensitive right now due to Russia’s invasion of Ukraine, Berea may not restrict speech on this topic simply because the speech may offend some listeners. Additionally, given that Berea permitted its student government association to screen a documentary about Ukrainian independence with a different perspective from BRAID’s documentary,²¹ the college’s actions against BRAID clearly constitute viewpoint discrimination.²² As a college that guarantees freedom of expression, Berea may not appoint itself the arbiter of which views students can and cannot express, particularly on a topic of substantial global and political significance.²³

BRAID aims to host a screening of *Ukraine on FIRE* on April 27. Berea must let the group do so without pressuring students or the club’s advisor to cancel the event based on the film’s content or based on potential student offense or disruption.

We request receipt of a response to this letter no later than the close of business on Friday, April 22, 2022, affirming Berea’s free expression promises and confirming that it will not cancel BRAID’s April 27 screening.

Sincerely,



Sabrina Conza
Program Officer, Individual Rights Defense Program

Cc: Channell Barbour, Vice President for Student Life

Encl.

¹⁹ *Bible Believers v. Wayne Cnty.*, 805 F.3d 228, 255 (6th Cir. 2018).

²⁰ *Id.* at 248 (“Punishing, removing, or by other means silencing a speaker due to crowd hostility will seldom, if ever, constitute the least restrictive means available to serve a legitimate government purpose.”)

²¹ Berea Coll. Student Gov’t Assoc., *supra* note 2.

²² Viewpoint discrimination is “an egregious form” of censorship and antithetical to the freedom of speech. *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995) (“The Court has held that viewpoint discrimination exists even when the government does not target a narrow view on a narrow subject and instead enacts a more general restriction—such as a ban on all ‘religious’ speech or on all ‘offensive’ speech.”).

²³ *See Falwell*, 485 U. S. at 50 (“At the heart of the First Amendment is the recognition of the fundamental importance of the free flow of ideas and opinions on matters of public interest and concern”).

Authorization and Waiver for Release of Personal Information

I, Tyrell Banks, 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:
[Redacted]
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Student's Signature

4/8/2022

Date