

**BOSE  
McKINNEY  
& EVANS LLP**

ATTORNEYS AT LAW

**John A. Millspaugh**

Direct Dial: (317) 684-5114

Fax: (317) 223-0114

E-Mail: [JMillspaugh@boselaw.com](mailto:JMillspaugh@boselaw.com)

June 2, 2021

VIA EMAIL & U.S. MAIL

Natalie Jackson  
Office of General Counsel  
Bowling Green State University  
308 McFall Center  
Bowling Green, OH 43403  
[njackson@bgsu.edu](mailto:njackson@bgsu.edu)

Re: Bowling Green State University's Actions against Fraternities in Spring 2021 Semester

Dear Ms. Jackson:

My firm represents the Alpha Sigma Phi, Alpha Tau Omega, and Theta Chi fraternities, all members of the Fraternity Forward Coalition, with respect to their chapters at Bowling Green State University ("BGSU"). Please direct all future correspondence concerning this matter to my attention.

I write to express our clients' concerns about recent actions taken by the BGSU administration in response to the tragic death of BGSU student Stone Foltz in early March 2021. As you know, BGSU charged the Pi Kappa Alpha fraternity with multiple violations of university policy and subsequently permanently expelled Pi Kappa Alpha from BGSU. On April 9, 2021, President Rogers explained the basis for the university's decision in a video statement, as well as the university's position against hazing and the steps it will take to further anti-hazing education. Specifically, President Rogers stated that all students are "deserving of a safe community" and that BGSU would step up to "shape this culture and be a leader on anti-hazing efforts." Our clients strongly support efforts to ensure that BGSU is and remains a safe community for all of its students, and are committed to eliminating hazing, educating their members, and improving the campus culture.

But while our clients are ready, willing, and able to support the University's anti-hazing goals, they also believe that the administration's recent actions unfairly target and punish fraternities and sororities.

On March 7, 2021, the administration unilaterally suspended all new-member activities and all on- and off-campus social events of fraternity and sorority chapters on an interim basis. The administration's actions targeted all fraternities and sororities without regard to whether they had any involvement whatsoever with the death of Stone Foltz. Indeed, all fraternities and sororities

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effectively faced the same punishment as Pi Kappa Alpha, even when the others did nothing wrong. Aside from infringing upon the constitutional and due process rights of students, the administration's overreach cannot be justified. Collective punishment is not only unjust, it is distinctly un-American and ultimately self-defeating. If the innocent and the guilty are punished equally, student cooperation with, and trust in, the administration will be significantly diminished. And when the administration has lost student cooperation and trust, it has defeated its stated goal of fostering a safe community for all students.

Following its interim decision, the administration unilaterally imposed upon fraternities and sororities an arbitrary and burdensome "recommitment" process under the guise of promoting "health and safety." No other student organizations were similarly encumbered. Until a fraternity or sorority could satisfy the administration's nebulous and capricious standards for such a "recommitment," however, they could not engage in any events at all, even virtual events with existing members, such as a Bible study - a gross violation of students' First Amendment rights to the free exercise of religion. Then, faced with intense and coordinated pressure from the administration, on March 31, 2021, the BGSU Interfraternity Council (IFC) Executive Board acquiesced to the administration's demand that the members of the IFC cease all new member processes for the duration of the spring 2021 semester. The administration claimed that the IFC Executive Board "decided" this matter on behalf of their members, but that is not what happened. At that meeting, the administration made clear that it had already decided that all new member processes for spring 2021 would be stopped, and that the decision would be imposed upon fraternities and sororities with or without their approval. Given the significant disparity in power and knowledge, it's no surprise that the IFC Executive Board acquiesced. But, as you know, under the BGSU IFC Constitution, the IFC Executive Board does not have the authority to make such decisions on behalf of its members. That the administration felt the need to misrepresent publicly what happened at that meeting confirms my prior points about the wisdom and legality of the administration's actions this spring.

To be clear, the administration's collective punishments against fraternities and sororities were clear violations of students' constitutional and due process rights. Courts have long recognized a First Amendment right to associate with a wide variety of organizations, including fraternities and sororities, regardless of their recognition status. Fraternities and sororities are, in fact, "protected by the First Amendment's expressive associational right." *Iota Xi Chapter v. Patterson*, 538 F. Supp. 2d 915, 923 (E.D. Va. 2008). The Supreme Court has also held that where a student organization is denied recognition or otherwise sanctioned based on an assumed relationship with some other group and there is no support for such action, the college's decision to withhold recognition or to issue sanctions violates the First Amendment. *Healy v. James*, 408 U.S. 169 (1972). What's more, a

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university's policies and procedures that are accepted by the student body constitute a contractual agreement between the parties. *Havlik v. Johnson & Wales Univ.*, 509 F.3d 25, 34 (1st Cir. 2007); *Goodman v. Bowdoin Coll.*, 380 F.3d 33 (3d Cir. 2004); *Warren v. Drake Univ.*, 886 F.2d 200 (8th Cir. 1989). Thus, a university's failure to follow its own policies and procedures is also a breach of the contract formed between students and the university. And since the administration's actions applied only to fraternities and sororities, such actions discriminate both on the basis of the sex of the students in these particular groups and the sex of each student who associates with each such group. *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020); *Kappa Alpha Theta Fraternity, Inc. v. Harvard Univ.*, 397 F. Supp. 3d 97 (D. Mass. 2019). Against this authority, had our clients or any other chapters at BGSU pursued litigation against BGSU, they surely would have won an easy victory.

Practically speaking, though, the spring semester is over, and so we turn our attention to the fall semester. Our clients expect that the fall semester will represent a return to normal and that all of the extraordinary limitations and burdens placed on fraternities and sororities during the spring semester will cease. Our clients will conduct all of their routine activities and events - including their customary anti-hazing and alcohol safety education efforts - without any unlawful restrictions by the administration. Our clients will also be happy to discuss with the administration how their anti-hazing and alcohol safety education efforts can be made more effective. In this regard, our clients strive to defeat the stereotypes regarding fraternities and sororities that appear to form, at least in part, the basis for the administration's actions this spring. A wealth of academic research shows that, over time, the benefits of student participation in fraternity and sorority life include stronger retention and graduation rates, greater engagement in work after graduation, and a higher degree of well-being later in life (Baier & Whipple, 1990; Bureau, Ryan, Ahern, Shoup, & Torres, 2011; Debard, Lake, & Binder, 2006; Debard & Saks, 2011; Gallup, 2014; Gallup 2021; Pascarella & Terenzini, 1991; Pike & Askew, 1990; Pike, 2000; Pike, 2003; Pike, 2020; and Winston & Saunders, 1987). Given these demonstrated benefits, our clients hope that the advent of the fall semester will reveal a more cooperative and less adversarial relationship between the administration and fraternities and sororities at BGSU, which would naturally work to improve the campus culture for all BGSU students.

That can only happen, however, if the administration rescinds its current policies and permits the return to the normal we seek. If the administration attempts to continue its spring 2021 policies in the fall, our clients will have no choice but to pursue all of their available legal remedies. We hope that will not be necessary, however, and our clients look forward to continued positive and direct communications with the BGSU administration. Indeed, our clients reiterate and re-emphasize their offer to work with the administration to improve anti-hazing and alcohol awareness education efforts on campus.

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Please contact me if you wish to facilitate those discussions, and let me know if you have any questions or concerns.

Very truly yours,

  
John A. Millspaugh

cc: Brian Jones [Firm - Litigation]  
Dr. Rodney K. Rogers, President, BGSU  
Dr. Joe B. Whitehead, Jr., Provost and Senior Vice President for Academic and Student  
Affairs, BGSU  
Dr. Chris Bullins, Dean of Students, BGSU  
Ms. Stacey Allan, Assistant Dean of Students, BGSU  
Dr. Brian Heilmeier, Associate Dean of Students for Campus Activities, BGSU

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