



June 17, 2020

Dr. Suzanne Shipley
Office of the President
Midwestern State University
3410 Taft Boulevard
Wichita Falls, Texas 76308

Sent via Electronic Mail (suzanne.shipley@msutexas.edu)

Dear President Shipley:

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 by your recent assertion that Prof. Nathan Jun's use of a personal social media account is contrary to Midwestern State University (MSU) policy. Jun's personal political expression is plainly protected by the First Amendment, and MSU's interpretation of its policies impermissibly burdens his exercise of the constitutional right to freedom of speech.

I. MSU Asserts Jun's Facebook Posts Violate Policy on Academic Responsibility

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. Please find enclosed an executed waiver authorizing you to share information with FIRE.

Nathan Jun has been a member of the MSU faculty since 2008, teaching courses on philosophy. In his twelve years at the university, he has been granted tenure and promoted twice; he has never been the subject of a complaint alleging misconduct. Jun maintains a personal Facebook page where he shares, among other things, his personal views. At all times relevant here, his page has maintained some declaration that the "views and opinions expressed on this platform are solely [his] own and do not represent [his] employer."

Jun's posts, save for one,¹ are private and may only be seen by his friends. Jun does not accept friend requests from (or send such requests to) current students. Jun's profile picture depicts him holding a black and red, diagonally-bisected flag first used by anarchist groups in Spain in the 1930s.²

In the wake of the homicide of George Floyd and the political turmoil that followed, an elected county commissioner, Mark A. Beauchamp, and other local conservative activists began circulating screenshots of private posts from Jun's personal Facebook page. Beauchamp wrote:

There is a Facebook profile of someone who claims to be a professor at MSU that has a black Antifa flag as his profile banner. The black banner is symbolic of anarchy. If this is accurate, Antifa already has a stronghold in our community. I'm sickened by this if true.³

In the comments to Beauchamp's Facebook post, readers shared that they had contacted a member of the Texas House of Representatives and the university to register their complaints, sharing the contact information of the university's Board of Regents. One complained that "[a]narchists will act on their beliefs . . . [l]ike serial killers," and another queried "what he'd look like with a broken face?" Another claimed that "Antifa" is "considered a terrorist organization now," apparently referring to President Trump's May 31 claim that the United States would designate "ANTIFA as a Terrorist Organization."⁴

Another commenter warned about "Antifa influence" in "our hometown," sharing multiple screenshots. One screenshot, which the commenter said was from a tweet by "the organization," declaring that it would "move into the residential areas . . . the white hoods" that night.⁵ According to Twitter, that tweet was sent by a white supremacist organization.⁶

The second screenshot contained a comment posted by Jun:

Comrades: Police can and will initiate violence without provocation. That's part and parcel of policing as an institution. Organizing a demonstration around trying to accommodate and pacify cops is an exercise in futility, at best. The mere fact that we're protesting—to say

¹ That post is a photo of two cats, one asking the other, "what are you thinking about, comrade?" and the answer: "destroying all fascists."

² INFOSHOP, AN ANARCHIST FAQ – THE SYMBOLS OF ANARCHY (Jan 1. 2018), <http://www.infoshop.org/an-anarchist-faq-the-symbols-of-anarchy> (last visited June 15, 2020).

³ Mark Beauchamp, FACEBOOK (screenshot on file with author).

⁴ Maggie Haberman & Charlie Savage, *Trump, Lacking Clear Authority, Says U.S. Will Declare Antifa a Terrorist Group*, N.Y. TIMES, May 31, 2020, <https://www.nytimes.com/2020/05/31/us/politics/trump-antifa-terrorist-group.html>.

⁵ Seana Bachman, FACEBOOK (screenshot on file with author).

⁶ Graham Kates, *Twitter says fake "Antifa" account was run by white supremacists*, CBS NEWS, June 2, 2020, <https://www.cbsnews.com/news/twitter-fake-antifa-account-white-supremacists-removal>.

nothing of the underlying message—will almost certainly piss them off. So yeah, we should certainly respect existing law, but don't assume that it's a protester's fault if shit goes south, and don't sacrifice your rights to prevent it from doing so. The cops are going to do what they're going to do no matter what; that's on them.

Trust me—I've been doing this shit for 25 years . . .

Other users circulated a comment in which Jun remarked that “[w]hite people care more about protecting consumer baubles than standing up against the extrajudicial slaughter of their fellow citizens,” concluding that “[t]his town is a moral cesspool.” A user responding to Jun highlighted his “ABOLISH THE POLICE” image from Jun’s Facebook page, complaining that she felt “sorry for [Jun’s] students.”

On June 1, 2020, Jun emailed Provost and Vice President for Academic Affairs James Johnston to alert him to the “intense harassment,” including “dozens of menacing phone calls, instant messages, and emails, several of which have contain antisemitic slurs and/or threaten lethal violence[.]”⁷ Jun attached the controversial screenshots and added:

While I understand that many people in this area vehemently disagree with my political views and may even find them dangerous, I want to make it absolutely clear that I have NOT made any statement (publicly or otherwise) on any online platform that advocates violence, whether explicitly or implicitly. Even if I had made philosophical or abstract claims about the justifiability of politically-motivated violence (which, again, I did not) such claims would be the protected speech of a private individual who speaks only for himself. Having unpopular opinions and sharing them publicly is obviously consistent with my duties and responsibilities as an MSU employee and as a citizen.

While I sincerely believe this will blow over quickly and avoid causing problems for the university, I wanted to let MSU know what’s going on so it will not be blindsided.⁸

On June 2, Johnston responded, informing Jun that the university had “received numerous calls, emails, and social media responses” to Jun’s views, and that MSU had “responded with [its] position on the national situation in general” and had “conveyed that [Jun has] the right to express [his] views as a citizen[.]”⁹

⁷ Email from Jun to James Johnston, Provost & Vice President for Academic Affairs, Midwestern State Univ. (June 1, 2020, 9:05 PM) (on file with author).

⁸ *Id.*

⁹ Email from Johnston to Jun (June 2, 2020, 3:45 PM) (on file with author).

However, on June 10, you sent Jun an email quoting Section D2 of MSU’s policy on Academic Freedom and Academic Responsibility and stating, in pertinent part:

I am writing to address the parameters of academic freedom and responsibility addressed in your email below to Provost Johnston, in particular your assertion that “Having unpopular opinions and sharing them publicly is obviously consistent with my duties and responsibilities as an MSU employee and as a citizen.” The limits to that role that you agreed to in accepting employment at MSU as a faculty member who is guided by the policies in the faculty handbook are quoted below. . . .

In my opinion, the Facebook posts illustrated in the attachments to this email do not meet the requirements of this policy. I trust that you will subsequently, as required by policy [sic] “make every effort to indicate that you are not a spokesperson for MSU,” “exercise appropriate restraint” and “show respect for the opinions of other.” [sic]¹⁰

Jun has heard nothing further from MSU about this matter.

II. The First Amendment Bars MSU from Restricting Jun’s Protected Speech

Jun’s expression, made as a private citizen on matters of public concern, falls well within the protection of the First Amendment. To the extent that MSU interprets its policy to prohibit that expression, that policy is in conflict with—and subordinate to—the First Amendment.

A. *The First Amendment Applies to MSU as a Public University*

It has long been settled law that the First Amendment is binding on public colleges like MSU.¹¹ Accordingly, the decisions and actions of a public university—including the pursuit of disciplinary sanctions,¹² recognition and funding of student organizations,¹³ interactions with student journalists,¹⁴ conduct of police officers,¹⁵ and maintenance of policies implicating student and faculty expression¹⁶—must be consistent with the First Amendment.

¹⁰ Email from Suzanne Shipley, President, Midwestern State Univ., to Jun (June 10, 2020, 2:59 PM) (on file with author).

¹¹ *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).

¹² *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 667–68 (1973).

¹³ *Bd. of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 221 (2000).

¹⁴ *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).

¹⁵ *Glik v. Cunniffe*, 655 F.3d 78, 79 (1st Cir. 2011).

¹⁶ *Dambrot v. Central Mich. Univ.*, 55 F.3d 1177 (6th Cir. 1995).

B. Jun’s Speech Is Protected by the First Amendment

As a general matter, Jun’s expression is protected by the First Amendment.

i. Association with antifascist or anarchist groups is protected by the First Amendment.

Jun’s critics apparently believe that his display of an anarchist flag represents an affiliation with “Antifa” as it gains a “stronghold in our community.” That association would be protected by the First Amendment.

First, the display of a flag is an expressive act. Indeed, nearly ninety years ago, the Supreme Court found that the First Amendment protects the display of red flags in support of communism.¹⁷

Second, even accepting as true the belief that Jun’s antifascist commentary or imagery associates him with a discrete and identifiable “antifa” organization, the First Amendment bars the denial of “rights and privileges solely because of a citizen’s association with an unpopular organization.”¹⁸ Nor can a group with “both legal and illegal aims” be declared unlawful, as there would be a “real danger that legitimate political expression or association would be impaired.”¹⁹ Accordingly, association with an organization with both lawful and unlawful aims cannot be penalized absent a showing both that “the group itself possessed unlawful goals and that the individual had a specific intent to further those illegal aims.”²⁰ While some who affiliate with antifa have engaged in unlawful violence, the political objectives of “antifa” supporters include lawful activity, including political organizing and public demonstrations.²¹

Indeed, the screenshots here document Jun *encouraging* compliance with the law. Further, while the First Amendment does not protect “true threats” or “incitement,” expression which amounts to no more than rhetorical hyperbole, the endorsement of violence,²² or the assertion of the “moral propriety or even moral necessity for a resort to force or violence”²³

¹⁷ *Stromberg v. California*, 283 U.S. 359, 369 (1931).

¹⁸ *Healy v. James*, 408 U.S. 169, 185–86 (1972).

¹⁹ *Scales v. United States*, 367 U.S. 203, 229 (1961).

²⁰ *NAACP v. Claiborne Hardware*, 458 U.S. at 920.

²¹ One prominent antifascist author has argued that “violence represents a small though vital sliver of anti-fascist activity.” Mark Bray, *ANTIFA: THE ANTIFASCIST HANDBOOK* 168 (2017). Likewise, one U.S. Attorney’s Office has explained that “antifa” is “short for ‘anti-fascists,’ a movement of people who generally oppose the white supremacist and ‘Alt-Right’ movements, sometimes by *protesting events* or engaging in property damage or violence.” Press Release, U.S. Attorney’s Office, District of Mass. (June 8, 2018) (emphasis added), *available at* <https://www.justice.gov/usao-ma/pr/indianapolis-man-arrested-threatening-boston-free-speech-rally-attendees-2017>.

²² *Watts v. U.S.*, 394 U.S. 705, 708 (1969) (man’s statement, after being drafted to serve in the Vietnam War, that “[i]f they ever make me carry a rifle the first man I want to get in my sights is L. B. J.,” was rhetorical hyperbole protected by the First Amendment, not a true threat to kill the president).

²³ *Noto v. United States*, 367 U.S. 290, 297–98 (1961).

remains protected speech. Even assuming Jun’s posts could be construed as arguing that violence could be morally justified, it falls well short of the First Amendment’s exception for incitement, which applies only to speech “directed to inciting or producing imminent lawless action and . . . likely to incite or produce such action.”²⁴ Jun’s posts do not encourage unlawful activity, much less *imminent* unlawful activity.

C. As a State Actor, MSU Cannot Condition Faculty Members’ Employment on a Relinquishment of First Amendment Rights

Employees of government institutions like MSU do not “relinquish First Amendment rights to comment on matters of public interest by virtue of government employment.”²⁵ A government employer cannot penalize an employee for speaking as a private citizen on a matter of public concern unless it demonstrates that the expression hindered “the effective and efficient fulfillment of its responsibilities to the public.”²⁶

i. Jun’s comments addressing matters of public concern are in his capacity as a private citizen.

There is no reasonable dispute that Jun’s remarks were made in his capacity as a private citizen, not as an employee. The “critical question” in determining whether the speech was that of an employee or private citizen is “whether the speech at issue is itself ordinarily within the scope of an employee’s duties, not whether it merely concerns those duties.”²⁷ Colleges ordinarily do not employ their faculty to post on their personal Facebook pages.²⁸ Even if others were or became aware that Jun was employed by MSU, the mere knowledge of a speaker’s employment does not render their speech pursuant to their official duties.²⁹

Jun’s comments also address matters of profound public concern. “Speech deals with matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community[.]”³⁰ Here, Jun’s comments address the response of police officers to protests critical of police, as well as the response of white communities to the Black Lives Matter movement. These are, of course, issues that have captured national attention. While others may find Jun’s remarks on these issues abrasive or offensive, the First

²⁴ *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).

²⁵ *Connick v. Myers*, 461 U.S. 138, 140 (1983).

²⁶ *Id.* at 150.

²⁷ *Lane v. Franks*, 573 U.S. 228, 240 (2014).

²⁸ See, e.g., *Higbee v. Eastern Michigan University*, No. 18-13761, 2019 U.S. Dist. LEXIS 109394, at *14 (E.D. Mich. July 1, 2019) (commenting on Facebook about the university’s response to racial incidents “would not appear to be within a history professor’s official duties”).

²⁹ See, e.g., *Pickering v. Bd. of Educ.*, 391 U.S. 563, 576–78 (1968) (appendix reproducing teacher’s letter to a local newspaper criticizing his employer, explaining that he teaches at the high school).

³⁰ *Snyder v. Phelps*, 562 U.S. 443, 453 (2011) (picketers’ signs outside of a fallen soldier’s funeral, including “Thank God for dead soldiers,” related to matters of public concern).

Amendment protects subjectively offensive expression.³¹ Moreover, as the Supreme Court explained in construing a police department employee’s remark that she hoped that President Reagan would be assassinated, the fact that others find the statements to be of an “inappropriate or controversial character . . . is irrelevant to the question of whether it deals with a matter of public concern.”³²

ii. MSU’s interest in civil discourse is insufficient to override faculty members’ First Amendment rights.

While MSU, as an institution of higher education, presumptively seeks to facilitate and encourage civil and reasoned discourse, those aspirational goals do not and cannot justify the regulation of faculty members’ extramural political expression. “[S]peech on matters of public concern,” like Jun’s Facebook posts here, “may be restricted only if the interest of the state, as an employer, in promoting the efficiency of the public services it performs through its employees outweighs the interests of the employee, as a citizen, in commenting upon matters of public concern.”³³ Whatever interests the university has in regulating the speech of students and faculty members in the classroom or during meetings,³⁴ those interests are not applicable outside of those contexts.

Courts have repeatedly rejected the notion that the right to freedom of expression is limited to civil, sober discourse. This is particularly true where, as here, the citizen’s expressive rights involve political speech, where the First Amendment’s protection is “at its zenith,”³⁵ as the “language of the political arena . . . is often vituperative, abusive, and inexact.”³⁶ The freedom of expression necessarily protects “not only informed and responsible criticism but the freedom to speak foolishly and without moderation.”³⁷

This principle does not lose its salience at a public university. To the contrary, “conflict is not unknown in the university setting given the inherent autonomy of tenured professors and the academic freedom they enjoy.”³⁸ The “wide latitude accorded by” the First Amendment “is not without its costs in terms of the risks to the maintenance of civility and an ordered society,” and those risks have often been borne “on the campus and elsewhere.”³⁹ However, the “desire

³¹ *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (burning the American flag was protected by the “bedrock principle underlying” the First Amendment: that government actors “may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable”).

³² *Rankin v. McPherson*, 483 U.S. 378, 387 (1987) (expression of hope that President Ronald Reagan might be assassinated was protected against retaliation).

³³ *Harris v. Quinn*, 573 U.S. 616, 653 (2014) (cleaned up).

³⁴ To be sure, the authority of the university to regulate expression in the classroom or in meetings is also circumscribed by the First Amendment right to academic freedom.

³⁵ *Buckley v. American Constitutional Law Found.*, 525 U.S. 182, 186–87 (1999) (quoting *Meyer v. Grant*, 486 U.S. 414, 425 (1988)).

³⁶ *Watts v. United States*, 394 U.S. 705, 708 (1969).

³⁷ *Baumgartner v. United States*, 322 U.S. 665, 673–74 (1944).

³⁸ *Hulen v. Yates*, 322 F.3d 1229, 1239 (10th Cir. 2003).

³⁹ *Healy v. James*, 408 U.S. 169, 194 (1972).

to maintain a sedate academic environment does not justify limitations on a teacher's freedom to express himself on political issues in vigorous, argumentative, unmeasured, and even distinctly unpleasant terms."⁴⁰

A contrary result would imperil a broad range of protected expression. Words exchanged during lively debate often may later be isolated, stripped of their context, and recast as incivility. Even if the rhetoric is intentionally and decidedly uncivil, that choice is itself protected by the First Amendment. This is because speech serves not only to convey "ideas capable of relatively precise, detached explication," but also serves a second, "communicative function" in the "emotive . . . force" conveying "otherwise inexpressible emotions."⁴¹ Thus, while an anti-war protester could, in theory, give a stemwinder of a speech about his opposition to the draft, the First Amendment also protects his right to say, more directly, "fuck the draft."⁴² Determining whether a political issue, idea, or speaker deserves to be confronted with sober rhetoric or condemnation is a choice left to the individual, not the government.

The United States District Court for the Northern District of California reached precisely this conclusion in enjoining San Francisco State University from enforcing a civility requirement:

[A] regulation that mandates civility easily could be understood as permitting only those forms of interaction that produce as little friction as possible, forms that are thoroughly lubricated by restraint, moderation, respect, social convention, and reason. The First Amendment difficulty with this kind of mandate should be obvious: the requirement "to be civil to one another" and the directive to eschew behaviors that are not consistent with "good citizenship" reasonably can be understood as prohibiting the kind of communication that it is necessary to use to convey the full emotional power with which a speaker embraces her ideas or the intensity and richness of the feelings that attach her to her cause. Similarly, mandating civility could deprive speakers of the tools they most need to connect emotionally with their audience, to move their audience to share their passion.⁴³

Certainly, a university may call upon its constituents, faculty and students alike, to conduct themselves in a professional and courteous manner when they debate and argue over their political views. However, penalizing students or faculty for falling short of this goal grants administrators unfettered discretion to censor speech that offends others, or offends administrators, legislators, or distant internet commentators. The First Amendment does not permit such a result.

⁴⁰ *Rodriguez v. Maricopa Cnty. Comm. Coll. Dist.*, 605 F.3d 703, 708–09 (9th Cir. 2009).

⁴¹ *Cohen v. California*, 403 U.S. 15, 26 (1971).

⁴² *Id.* at 16.

⁴³ *Coll. Republicans at San Francisco State Univ. v. Reed*, 523 F. Supp. 2d 1005, 1019 (N.D. Cal. 2007).

D. MSU's Interpretation of the 1940 Statement of Principles on Academic Freedom is Erroneous

The university's interpretation of its academic freedom policy, which you observe is "identical" to the 1940 Statement of Principles on Academic Freedom formulated by the American Association of University Professors (AAUP), hinges on its guidance that faculty members "make every effort to indicate that you are not a spokesperson for" the university, "exercise appropriate restraint," and "show respect for the opinions of others."

As the AAUP has explained, these aims are aspirational, not "binding obligations" attaching to a faculty member's extramural comments.⁴⁴ A recent decision from the Wisconsin Supreme Court illustrates MSU's misapplication of these principles.⁴⁵ Marquette University, a private Catholic university, had adopted the 1940 Statement of Principles on Academic Freedom—the same statement adopted by MSU.⁴⁶ A member of the university's faculty, aggrieved by a graduate student instructor's exchange with a student about whether LGBTQ rights were an "appropriate" topic of class discussion, criticized the instructor on his personal blog, providing a link to the instructor's contact information and assailing her attitude as "totalitarian."⁴⁷ The university punished the professor, citing the blog post as falling short of the university's "standards of personal and professional excellence"⁴⁸

Wisconsin's Supreme Court overturned the private university's imposition of discipline, holding that its commitment to academic freedom rendered the blog post "a contractually-disqualified basis for discipline."⁴⁹ The court, citing the AAUP's *amicus curiae* brief, explained that "the doctrine of academic freedom comprises three elements: teaching; research; and extramural comments."⁵⁰ The blog post, an "expression made in [the professor's] personal, not professorial, capacity," fell into the "extramural" category.⁵¹ Such remarks are protected under a commitment to academic freedom unless the remark "clearly demonstrates the faculty member's unfitness for his or her position" in light of their "entire record as a teacher and scholar."⁵² This "stringent standard" is "[s]o strict, in fact, that extramural utterances rarely bear upon the faculty member's fitness for the position."⁵³

The AAUP's interpretations of its standards likewise reflect the First Amendment considerations discussed above. For example, in addressing administrators' calls for civility,

⁴⁴ Brief for AAUP as Amicus Curiae Supporting Plaintiff–Appellant, *McAdams v. Marquette University*, 914 N.W.2d 708, available at https://www.aaup.org/sites/default/files/McAdams_Marquette_Feb2018.pdf.

⁴⁵ *McAdams v. Marquette University*, 914 N.W.2d 708, 731 (Wis. 2018).

⁴⁶ *Id.* at 730.

⁴⁷ *Id.* at 713–14.

⁴⁸ *Id.* at 714.

⁴⁹ *Id.* at 737.

⁵⁰ *Id.* at 730.

⁵¹ *Id.*

⁵² *Id.* at 731–32, citing AAUP, POLICY DOCUMENTS AND REPORTS, COMMITTEE A STATEMENT ON EXTRAMURAL UTTERANCES 31 (11th ed. 2014)).

⁵³ *Id.* at 732 (cleaned up).

which “raised concerns over their potential to restrict extramural speech of faculty members,” the AAUP has explained:

Some may seek to defend a distinction between the regulation of the content of speech and the regulation of the manner (or style) of speech. We find this distinction untenable in practice because offensive style or opprobrious phrases may in fact have been chosen precisely for their expressive power.⁵⁴

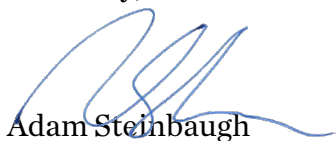
Jun’s expression falls well within the rights to extramural expression as protected by the very policies adopted by MSU. No reasonable person sincerely attributes the extramural expression of a faculty member to be an expression on behalf of the institution; if the university were to treat such an assertion as credible, it would endanger *all* extramural speech. This is particularly so when the faculty member had already taken the additional, however unnecessary, step of adding a boilerplate disclaimer to his social media profile reiterating that his views are his own. Nor may the university supplant its view of “appropriate restraint” for a faculty member’s view on what the “appropriate” response is to political views he or she finds deeply offensive.

III. Conclusion

The current political turmoil has elicited a great range of charged speech from a variety of viewpoints. While the university is free to urge the members of its community to engage each other in civil discussion, it cannot rescind the fundamental First Amendment rights of its students and faculty members to confront these issues as citizens of their communities.

Accordingly, we call on MSU to withdraw its assertion that Jun’s expression violates its policies, and reaffirm its commitment to the First Amendment. We respectfully request receipt of a response to this letter no later than the close of business on June 30, 2020.

Sincerely,



Adam Steinbaugh
Director, Individual Rights Defense Program

Encl.

⁵⁴ AAUP, CIVILITY, <https://www.aaup.org/issues/civility> (last visited June 16, 2020).

-----Original Message-----

From: Johnston, James [REDACTED]
Sent: Tuesday, June 2, 2020 3:45 PM
To: Jun, Nathan [REDACTED]
Subject: RE: Safety concern

Hello Nathan,

Thank you for letting the University know what you are experiencing and your position. We do hope that you remain safe. The University has received numerous calls, emails, and social media responses to your Facebook page and posts. We have responded with MSU's position on the national situation in general and conveyed that you have the right to express your views as a citizen and we as an institution respect people's right to speak freely within the confines of the law. Many have expressed concerns regarding a safe campus and learning environment. In response we have conveyed that we do everything we can to ensure a safe campus environment for faculty, staff, and students and will continue to do so.

Should you experience any threats while on campus or as a part of our campus community please let us know.

James Johnston, Ph.D., R.T.(R)(CV), FASRT Provost and Vice President for Academic Affairs

MIDWESTERN STATE UNIVERSITY
Academic Affairs
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Office 940-397-4226
msutexas.edu

-----Original Message-----

From: Jun, Nathan [REDACTED]
Sent: Monday, June 01, 2020 9:05 PM
To: Johnston, James [REDACTED]
Subject: Safety concern

Dear Dr. Johnston:

I hope this finds you well despite the turmoil we are all confronting at the moment.

I wasn't sure whom to contact about this and would appreciate your directing me to

other parties if necessary.

In the wake of George Floyd's murder in Minneapolis, scores of local individuals have been circulating a screenshot of my Facebook page, the top of which (prior to my deactivating the account) featured an image reading "Abolish the Police." The individuals in question have been labelling me a "member of antifa" and accusing me of "inciting violence." As a result, I have been subject to intense harassment for the past 24 hours: my phone number(s) and address (as well as those of my parents and sisters) have been publicly shared; I have received dozens of menacing phone calls, instant messages, and emails, several of which have contain antisemitic slurs and/or threaten lethal violence; and scores of people are calling for MSU to terminate my employment.

I have been advised by an ACLU attorney to contact the university and let relevant personnel know that this is happening to me.

While I understand that many people in this area vehemently disagree with my political views and may even find them dangerous, I want to make it absolutely clear that I have NOT made any statement (publicly or otherwise) on any online platform that advocates violence, whether explicitly or implicitly. Even if I had made philosophical or abstract claims about the justifiability of politically-motivated violence (which, again, I did not) such claims would be the protected speech of a private individual who speaks only for himself. Having unpopular opinions and sharing them publicly is obviously consistent with my duties and responsibilities as an MSU employee and as a citizen.

While I sincerely believe this will blow over quickly and avoid causing problems for the university, I wanted to let MSU know what's going on so it will not be blindsided.

Thank you in advance for any advice or counsel you are in a position to provide.

Respectfully,

Nathan

Sent from my iPhone

From: Shipley, Suzanne <suzanne.shipley@msutexas.edu>
Sent: Wednesday, June 10, 2020 2:59 PM
To: Jun, Nathan [REDACTED]
Cc: Johnston, James [REDACTED]
Subject: Policy on Academic Freedom and Responsibility

Dear Dr. Jun,

As you know from our several recent exchanges, I have held you, your teaching, and your scholarship in high regard. I will continue to do so, just as I will continue to support some of your values, particularly in regard to Anti-Semitism and our shared interest in the historical and ongoing plight of Jews across the world. Today, however, I am writing to address the parameters of academic freedom and responsibility addressed in your email below to Provost Johnston, in particular your assertion that "Having unpopular opinions and sharing them publicly is obviously consistent with my duties and responsibilities as an MSU employee and as a citizen." The limits to that role that you agreed to in accepting employment at MSU as a faculty member who is guided by the policies in the faculty handbook are quoted below. These are carefully described more fully within our entire policy on Academic Freedom and Academic Responsibility, policy 3.118. The language in the MSU policy is identical to language contained in item 3 of the Academic Freedom section of the 1940 *Statement of Principles on Academic Freedom and Tenure*. The statement was endorsed by the Association of American Colleges and Universities and by the American Association of University Professors.

I have included Section D2 is below.

"The concept of (academic) freedom is accompanied by an equally demanding concept of responsibility. Each faculty member is a citizen, a member of a learned profession, and an officer of Midwestern State University. When faculty members speak or write as citizens, they are free from institutional censorship or discipline, but their special position in the community imposes special obligations. As persons of learning and educational officers, they must remember that the public will judge their profession and MSU by their utterances. Hence, they shall at all times be accurate, shall exercise appropriate restraint, shall show respect for the opinions of others, and shall make every effort to indicate that they are not spokespersons for Midwestern State University."

In my opinion, the Facebook posts illustrated in the attachments to this email do not meet the requirements of this policy. I trust that you will subsequently, as required by policy "make every effort to indicate that you are not a spokesperson for MSU," "exercise appropriate restraint" and "show respect for the opinions of other."

Thank you for your attention to this matter and for your many contributions in teaching and research at MSU.

Sincerely,

Suzanne Shipley
President

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>>

>> -----Original Message-----

>> From: Jun, Nathan [REDACTED]

>> Sent: Monday, June 01, 2020 9:05 PM

>> To: Johnston, James [REDACTED]

>> Subject: Safety concern

>>

>>

>> Dear Dr. Johnston:

>>

>> I hope this finds you well despite the turmoil we are all confronting at the moment.

>>

>> I wasn't sure whom to contact about this and would appreciate your directing me to other parties if necessary.

>>

>> In the wake of George Floyd's murder in Minneapolis, scores of local individuals have been circulating a screenshot of my Facebook page, the top of which (prior to my deactivating the account) featured an image reading "Abolish the Police." The individuals in question have been labelling me a "member of antifa" and accusing me of "inciting violence." As a result, I have been subject to intense harassment for the past 24 hours: my phone number(s) and address (as well as those of my parents and sisters) have been publicly shared; I have received dozens of menacing phone calls, instant messages, and emails, several of which contain antisemitic slurs and/or threaten lethal violence; and scores of people are calling for MSU to terminate my employment.

>>

>> I have been advised by an ACLU attorney to contact the university and let relevant personnel know that this is happening to me.

>>

>> While I understand that many people in this area vehemently disagree with my political views and may even find them dangerous, I want to make it absolutely clear that I have NOT made any statement (publicly or otherwise) on any online platform that advocates violence, whether explicitly or implicitly. Even if I had made philosophical or abstract claims about the justifiability of politically-motivated violence (which, again, I did not) such claims would be the protected speech of a private individual who speaks only for himself. Having unpopular opinions and sharing them publicly is obviously consistent with my duties and responsibilities as an MSU employee and as a citizen.

>>

>> While I sincerely believe this will blow over quickly and avoid causing problems for the university, I wanted to let MSU know what's going on so it will not be blindsided.

>>

>> Thank you in advance for any advice or counsel you are in a position to provide.

>>

>> Respectfully,

>>

>> Nathan