



# FIRE

Foundation for Individual  
Rights and Expression

May 25, 2023

Jonathan Holloway  
Office of the President  
Rutgers, the State University of New Jersey  
Winants Hall, Suite 203  
7 College Avenue, 2nd Floor  
New Brunswick, New Jersey 08901

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

Dear President Holloway:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,<sup>1</sup> is concerned by a statement from Rutgers' administration calling for individuals to report to the university anyone who engages in strike activities. While Rutgers itself may not support faculty criticizing the university, it cannot compel others to report strike activities, as doing so would violate their First Amendment rights to freedom of conscience and to be free from compelled speech.

On April 10, unions representing Rutgers employees, including full-time and part-time faculty, graduate students, and postdoctoral associates and counselors, initiated strikes across all three Rutgers campuses.<sup>2</sup> The same week, Rebecca Givan, the President of Rutgers American Association of University Professors and American Federation of Teachers, tweeted screenshots of a statement from Rutgers—which appears to have been sent to faculty and/or student employees—directing recipients to report information relating to the strikes.<sup>3</sup> “To ensure minimal disruption to University operations from a strike activity or other job action (e.g., slowdown, sick out, etc.),” the statement reads, “it is critical that any such activities be

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<sup>1</sup> For more than 20 years, FIRE has defended freedom of expression, conscience, and religion, and other individual rights on America's college campuses. You can learn more about our recently expanded mission and activities at [thefire.org](https://thefire.org).

<sup>2</sup> Ryan Quinn, *Rutgers Walkout Means 6 Faculty Strikes*, INSIDE HIGHER ED., (Apr. 10, 2023) <https://www.insidehighered.com/news/faculty-issues/labor-unionization/2023/04/10/rutgers-walkout-means-6-faculty-strikes>. The recitation of facts here reflects 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.

<sup>3</sup> R Givan (@rkgwork), TWITTER (Apr. 14, 2023, 12:34 AM), <https://twitter.com/rkgwork/status/1646733659993518085>.

reported immediately to the Office of University Labor Relations and the Office of General Counsel . . . .”<sup>4</sup> By the end of the week, the stakeholders reached a deal, and the strikes ended.<sup>5</sup>

But while events giving rise to the directive have subsided, it remains the case that, if the mandate was indeed directed at faculty or students, it violates Rutgers’ binding First Amendment obligation<sup>6</sup> to refrain from compelling student or faculty speech.<sup>7</sup> Compelled speech is anathema to the values embodied in the First Amendment, which protects not only the right to speak, but also to refrain from speaking.<sup>8</sup> And as the Supreme Court has notably held, public institutions may not compel individuals to “declare a belief [and] . . . to utter what is not in [their] mind.”<sup>9</sup>

While Rutgers may express its *own* opinions on strike activities or *request* reporting in a manner that is clearly voluntary, it cannot demand faculty or students report other individuals for actions the university does not support.

We request a substantive response by the close of business on June 8, 2023, providing additional information about the recipients of the directive and affirming that, should a strike again occur at Rutgers, faculty and student employees will not be forced to report those engaging in the strike activities against their will.

Sincerely,



Haley Gluhanich  
Program Officer, Campus Rights Advocacy

Cc: Rutgers Board of Trustees and Board of Governors  
c/o Kimberlee Pastva, Secretary of the University

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</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>7</sup> *Dambrot v. Central Mich. Univ.*, 55 F.3d 1177 (6th Cir. 1995).

<sup>8</sup> *Wooley v. Maynard*, 430 U.S. 705, 714 (1977) (“[T]he right to freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all.”).

<sup>9</sup> *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 631, 634 (1943).