



# FIRE

Foundation for Individual  
Rights and Expression

August 10, 2023

Teresa Reed  
School of Music  
105 W Brandeis Ave.  
University of Louisville  
Louisville, Kentucky 40208

*Sent via U.S. Mail and Electronic Mail (Teresa.reed@louisville.edu)*

Dear Dean Reed:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,<sup>1</sup> is concerned by the University of Louisville's investigation and verbal reprimand of Professor Krzysztof Wolek for criticizing the university's music department. This infringement of Wolek's rights to free speech and academic freedom is unacceptable at a public institution bound by the First Amendment.<sup>2</sup> FIRE therefore requests that U of L rescind Wolek's verbal reprimand and clear his personnel file of any disciplinary action related to this matter.

This matter arose from Wolek's March 26 email to lecturer Barry Johnson criticizing the music department for how it handled judging the annual Grawemeyer Music Award,<sup>3</sup> in apparent contravention of your March 7 email to the school's faculty instructing them to "kindly refrain" from discussing the award's structure, rules, and procedures.<sup>4</sup> Wolek's email also informed Johnson that Wolek and other faculty members declined invitations to judge the first round of

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

<sup>2</sup> It has long been settled law that the First Amendment binds public universities like U of L. *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>3</sup> Email from Krzysztof Wolek, Professor, to Barry Johnson, Lecturer, (Mar. 26, 2023, 7:23 PM) (on file with author).

<sup>4</sup> Email from Teresa Reed, Dean of the School of Music, to School of Music Faculty (Mar. 7, 2023 11:48 AM) (on file with author). 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 that end, please find enclosed an executed privacy waiver authorizing you to share information about this matter.

the awards due to concerns regarding the process, and expressed Wolek's belief that U of L administrators had used the "politics of divide and conquer" to create division rather than unity.<sup>5</sup>

On April 5 you informed Wolek his email to Johnson may violate the Faculty Accountability Policy, and in particular that his alleged violations included:<sup>6</sup>

- Unprofessional, disrespectful, hostile, harassing, intimidating, or discriminating conduct toward students, employees, or others, including violation of the University's policies on sexual harassment, discriminatory harassment, and retaliation; and including violations of the University's Code of Conduct, which states faculty should avoid all forms of harassment, illegal discrimination, threats, or violence; and
- Conduct that severely disrupts the work environment.

On May 3, U of L reprimanded Wolek by issuing a verbal warning.<sup>7</sup> All of this raises constitutional concerns, on several levels.

As an initial matter, your email instructing faculty to refrain from discussing the Grawemeyer Music Award's rules and procedures is an unconstitutional prior restraint – the "most serious and least tolerable infringement" of free speech.<sup>8</sup> Courts have long held prior restraints are permissible only in the most severe circumstances, such as in the event of a demonstrated threat to national security.<sup>9</sup> A public university undoubtedly "has a legitimate interest in preventing disruption on campus."<sup>10</sup> However, any prior restraint comes with a "heavy presumption" against its constitutional validity.<sup>11</sup>

In this regard, the disciplinary actions against Wolek confirm that your email was intended not as a suggestion or a way to ensure appropriate handling of workplace disruptions, but rather to put faculty members on notice of a prohibition on any speech related to the Grawemeyer Music Award. By attempting to prevent faculty members from voicing opinions about the Grawemeyer Music Award, U of L failed to uphold its constitutional obligations—specifically, here, imposing without sufficient justification a prior restraint against faculty members discussing their workplace and the overall functioning of the university at which they work.

Prior restraint aside, punishing Wolek's email was independently unconstitutional. First, there is no evidence the email caused any substantial workplace disputation. And even if it had

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<sup>5</sup> Email from Wolek to Johnson, Mar. 26, 2023, *supra* note 3.

<sup>6</sup> Letter from Reed to Wolek (Apr. 5, 2023, 4:34 PM) (on file with author).

<sup>7</sup> Email from Reed to Wolek (May 8, 2023, 3:09 PM) (on file with author).

<sup>8</sup> *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976).

<sup>9</sup> *Id.*

<sup>10</sup> *Healy*, 408 U.S. at 184 (quoting *Near v Minnesota ex rel. Olson*, 283 U.S. 697 at 713–716).

<sup>11</sup> *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971).

contained “unprofessional” or other language the Faculty Accountability Policy purports to ban, a foundational tenet of expressive freedom is that state actors cannot limit speech based only on it being objectionable, however deeply, to others. As the Supreme Court explained: “Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea.”<sup>12</sup> While unprofessional speech or expression perceived as having an uncomfortable tone may rub some the wrong way, that is not a legitimate basis for disciplinary action.

Nor can the Policy’s references to “harassing” speech or “harassment” legitimately serve as a basis to reprimand Wolek, for the simple reason that his email did not constitute harassment under federal law.<sup>13</sup> In *Davis v. Monroe County Board of Education*, the Supreme Court set a strict definition of harassment in the educational context.<sup>14</sup> For conduct (including expression) to constitute actionable harassment, it must be (1) unwelcome, (2) discrimination based on gender or another protected status, and (3) “so severe, pervasive, and objectively offensive that it can be said to deprive the victim [] of access to the educational opportunities or benefits provided by the school.”<sup>15</sup>

Any claim that Wolek’s email to a colleague expressing discontent with university officials’ conduct can constitute “harassment” would be to misapply or misunderstand the law, as harassment includes only extreme, repetitive, and objectively offensive behavior,<sup>16</sup> and it is rather apparent Wolek did not engage in such behavior. Instead, he simply sent a routine email to a colleague, the contents of which related solely to Wolek’s professional concerns regarding the administration’s handling of the Grawemeyer Music Award. Moreover, his email bears no evidence of discriminatory conduct giving rise to any legitimate accusation of harassment.

By categorizing Wolek’s email as harassment and issuing him a verbal reprimand, U of L not only violated his constitutional rights, but also chilled speech across campus. The disciplinary action signals to all faculty that disagreement with administration officials will face with swift retaliation, notwithstanding not only U of L’s obligations under the First Amendment but its express commitment to academic freedom as well.<sup>17</sup>

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<sup>12</sup> *Terminiello v. Chicago* 337 U.S. 1, 4 (1949).

<sup>13</sup> *See Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629 (1999).

<sup>14</sup> 526 U.S. 629.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *See Organization and Operation of the University Administration*, Sec. 2.5.1 academic Policy-Statement of Academic Freedom, UNIV. OF LOUISVILLE, <https://louisville.edu/provost/redbook/contents.html/chap2.html#SEC2.5.1>. U of L recognizes the “obligation to adhere to standards of academic honesty, to respect the dignity of others, to acknowledge their right to express differing opinions, and to foster and defend intellectual honesty, freedom of inquiry and instruction, and free expression both on and off the campus.” The investigation and subsequent verbal reprimand of Wolek directly undercuts U of L’s commitment to academic freedom. Punishing faculty for sending professional communications to colleagues expressing dissatisfaction with the actions of administration officials sends the message that dissenting views come with a heavy cost.

FIRE accordingly calls on the University of Louisville to rescind the verbal warning to Wolek and clear his personnel file of any records of wrongdoing related to his March 26 email. We request a substantive response to this letter no later than the close of business on August 24, 2023.

Sincerely,

A handwritten signature in cursive script that reads "Leslie Corbly".

Leslie Corbly  
Program Officer, Campus Rights Advocacy

Cc: Kim Schatzel, President, University of Louisville

Encl.

## Authorization and Waiver for Release of Personal Information


I, Krzysztof Wolek, do hereby authorize The University of Louisville (the "Institution") to release to the Foundation for Individual Rights and Expression ("FIRE") any and all information concerning my employment, status, or relationship with the Institution. This authorization and waiver extends to the release of any personnel files, investigative records, disciplinary history, or other records that would otherwise be protected by privacy rights of any source, including those arising from contract, statute, or regulation. I also authorize the Institution to engage FIRE and its staff members in a full discussion of all information pertaining to my employment and performance, and, in so doing, to disclose to FIRE all relevant information and documentation.

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 and Expression, 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.

If the Institution is located in the State of California, I request access to and a copy of all documents defined as my "personnel records" under Cal. Ed. Code § 87031 or Cal. Lab. Code § 1198.5, including without limitation: (1) a complete copy of any files kept in my name in any and all Institution or District offices; (2) any emails, notes, memoranda, video, audio, or other material maintained by any school employee in which I am personally identifiable; and (3) any and all phone, medical or other records in which I am personally identifiable.

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 and Expression, 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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Signature

8/10/2023

Date