



FIRE

Foundation for Individual
Rights and Expression

October 24, 2023

Gregory L. Fenves
Office of the President
Emory University
505 Kilgo Circle
Atlanta, Georgia 30322

URGENT

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

Dear President Fenves:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned that Emory University School of Medicine has reportedly placed Department of Hematology and Medical Oncology assistant professor Abeer AbouYabis on administrative leave pending an investigation into her personal Facebook post praising Palestinian “resistance fighters.”² While some may have been offended by AbouYabis’s post, it is unquestionably protected by Emory’s robust free expression and academic freedom promises, and we thus urge the university to restore AbouYabis’s good standing and end any investigation into her protected expression.

On October 17, Emory announced it had placed AbouYabis on leave, “pending an internal investigation,” because of “antisemitic comments” she made on her private social media account that went viral online.³ Her post read:

I needed to say it LOUD, So I joined those brave, well organized,
passionate students from different Atlanta colleges near the

¹ 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.

² The recitation here reflects our understanding of the pertinent facts, which rests on publicly available information. We appreciate that you may have additional information to offer and invite you to share it with us.

³ Vanessa McCray, *Emory professor placed on leave after ‘antisemitic comments,’* THE ATLANTA JOURNAL-CONSTITUTION, (Oct. 17, 2023), <https://www.ajc.com/education/emory-professor-placed-on-leave-after-antisemitic-comments/VUP5H42T2BGH5IU7FWWLX2R7BU/>.

Israeli embassy. Thanks to Emory students for Justice in Palestine and all the other student bodies who helped me hang onto the last thread of my faith in humanity and hope for justice...one day One day!

They got walls, we got gliders / Glory to all resistance fighters / Palestine is our demand / No Peace for stolen land / Not another nickel, not another dollar / We will pay for Israel slaughter / Not another nickel, not another dime / We will pay for Israel crimes.⁴

Emory condemned the post “in the strongest possible terms” and said, “There is no place in our community for language and behavior based in hatred, that incites violence, and that is counter to the values that unite us as educators and health practitioners.”⁵

But Emory’s objection to AbouYabis’s speech does not remove it from the protection of Emory’s strong free expression policies, including that its promise community members enjoy “freedom of thought, inquiry, speech, activism, and assembly,”⁶ and “an environment where open expression of ideas is valued, promoted, and encouraged.”⁷ Elsewhere, Emory policies reassure faculty they are “entitled to the right to participate in activities related to citizenship in a democratic society,” of which exercising the First Amendment right to express oneself is an integral part.⁸

The Supreme Court has repeatedly held that the First Amendment protects views others may find offensive or hateful,⁹ remarking in one case 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.”¹⁰ The Court most recently reaffirmed this principle when it refused to bar protection for

⁴ Alyssa Guzman, *Atlanta cancer doctor put on leave after post celebrating Hamas’ ‘glory,’* N. Y. POST, (Oct. 17, 2023, 3:31 P.M.), <https://nypost.com/2023/10/17/atlanta-cancer-doctor-put-on-leave-after-pro-hamas-post-celebrating-glory-of-terrorist-group/> (errors in original).

⁵ *Id.*

⁶ *Id.*

⁷ *Respect for Open Expression*, EMORY UNIV. <https://campuslife.emory.edu/about/initiatives/open-expression/index.html> [<https://perma.cc/U9D4-BWWJ>]. While Emory is a private institution, its promise that community members enjoy freedom of “speech” and “assembly” provides a clear invocation of the values of the First Amendment, thus giving community members a reasonable expectation that they enjoy expressive rights on par with those enjoyed by peers at public institutions.

⁸ *Statement of Principles Governing Faculty Relationships*, Academic Freedom and Responsibility, EMORY UNIV. https://provost.emory.edu/faculty/_includes/documents/sections/faculty/tenure-and-promotions/Emory-Gray-Book.pdf.

⁹ Take, for example, the case of a man who wore inside a Los Angeles courthouse a jacket with the phrase “Fuck the Draft,” whose arrest the Court held unconstitutional, writing that, while the jacket’s language may have been “distasteful,” “one man’s vulgarity is another man’s lyric.” *Cohen v. California*, 403 U.S. 15, 25 (1971).

¹⁰ *Snyder v. Phelps*, 562 U.S. 443, 448, 461 (2011).

trademarks that included racial epithets, or speech viewed as “hateful” or demeaning “on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground.”¹¹

Nor does AbouYabis’s post meet the exacting legal standard for unprotected incitement, or any other narrowly defined category of unprotected speech, despite Emory’s suggestion to the contrary.¹² For example, speech satisfies the Supreme Court’s incitement test only where it “specifically advocates for listeners to take unlawful action,” is “directed to inciting or producing imminent lawless action,” and is “likely to incite or produce such action.”¹³ AbouYabis’s post, while discussing the “glory” of Palestinian resistance fighters, was not “directed to” calling for others to take unlawful action, or likely to result in imminent unlawful action. And even if she could be said to be broadly encouraging others (such as Palestinian resistance fighters), “mere *advocacy* of the use of force or violence does not remove speech” from the protection of the values of the First Amendment.¹⁴

Interim removal of AbouYabis from any of her academic roles constitutes adverse employment action arising from her protected expression and is a serious violation of her right to free speech. Emory’s suspension sends the message to all faculty that their extramural, protected speech could be met with suspensions or other harsh forms of discipline. All Emory faculty retain the right to speak out on political issues without administrative punishment, but Emory has sent the clear, opposing message in this circumstance and must correct course.

Emory’s commitments to its constituents’ expressive rights do not shield AbouYabis from every consequence of her expression—including criticism by students, faculty, or the broader community. But Emory chills faculty extramural speech when it publicly announces that it is suspending a faculty member for doing nothing more than expressing their views passionately.

Given the urgent nature of this matter, we request a substantive response to this letter no later than the close of business on Tuesday, October 31 confirming Emory will reinstate AbouYabis and refrain from punishing faculty for their protected expression.

Sincerely,



Graham Piro
Program Officer, Campus Rights Advocacy

Cc: Ravi V. Bellamkonda, Provost and Executive Vice President for Academic Affairs
Sagar Lonial, Chair, Department of Hematology and Medical Oncology

¹¹ *Matal v. Tam*, 582 U.S. 218, 246 (2017).

¹² Guzman, *supra* note 4.

¹³ *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).

¹⁴ *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 927 (emphasis in original.)