



FIRE

Foundation for Individual
Rights and Expression

April 30, 2024

Mark D. Gearan
Office of the President
Hobart and William Smith Colleges
300 Pulteney Street
Geneva, New York 14456

URGENT

Sent via U.S. Mail and Electronic Mail (gearan@hws.edu)

Dear President Gearan:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned by Hobart and William Smith Colleges' suspension of Professor of Politics Jodi Dean for writing a blog post about the Israeli-Palestinian conflict.² While Dean's writing may be offensive to some, it is unquestionably protected by HWS's strong academic freedom promises. We therefore urge HWS to uphold these commitments by promptly restoring Dean to her teaching role.

As popular expression rarely needs protecting, colleges find their commitments to academic freedom tested in moments of controversy. HWS affirms that academic freedom is one of its "core values," recognizing that when faculty "speak or write as citizens, they should be free from institutional censorship or discipline."³

Yet in an April 13 email to the HWS community, you condemned as "repugnant" Dean's April 9 blog post that expressed support for the Palestinian resistance against Israel.⁴ Although you

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 expanded mission and activities at thefire.org.

² Jodi Dean, *Palestine speaks for everyone*, VERSO (Apr. 9, 2024), <https://www.versobooks.com/blogs/news/palestine-speaks-for-everyone>.

³ Sarah Kirk, *Statements: Academic Freedom*, HOBART AND WILLIAM SMITH COLLS. (Apr. 15, 2024), <https://www.hws.edu/offices/oafa/statements/academic-freedom.aspx> [<https://perma.cc/J722-D3CS>].

⁴ Mark D. Gearan, *Message to the Hobart and William Smith Colleges Community*, HOBART AND WILLIAM SMITH COLLS. (Apr. 13, 2024), <https://www.hws.edu/offices/president/statements/a-message-from-president-mark-d-gearan.aspx> [<https://perma.cc/MU5F-CMET>]; Dean, *supra* note 2.

clarified “these are her personal views and not those of our institution,” you nonetheless criticized her statement about feeling “exhilarated and energized by the paragliders on October 7” and announced HWS had removed her from the classroom pending investigation, stating: “we can never and will never condone or praise violence.”⁵

Dean’s personal views on the Israeli-Palestinian conflict are undoubtedly “core political speech” at the very heart of free expression, where academic freedom’s protection is “at its zenith.”⁶ This principle encompasses expression others find repugnant, offensive, or even hateful,⁷ and applies with particular force to colleges dedicated to open debate and discussion like HWS.⁸ Dean’s political views expressed in her personal capacity fall squarely within this protection and may not form the basis of punishment.⁹

Moreover, punishing faculty or students for views that “condone or praise violence” imperils a broad range of political speech and academic inquiry, especially in times of intense disagreement on global affairs.¹⁰ HWS may properly punish unprotected true threats, harassment, and discrimination.¹¹ But the colleges’ commitment to academic freedom

⁵ *Id.* Note that this recitation has reflected our understanding of the pertinent information. We appreciate that you may have additional information to offer and invite you to share it with us. To these ends, please find enclosed an executed privacy waiver authorizing you to share information about this matter.

⁶ *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 186-87 (1999) (quoting *Meyer v. Grant*, 486 U.S. 414 (1988)); see also *Mills v. Alabama*, 384 U.S. 214, 218 (1966) (“Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs.”). While HWS is not bound by the First Amendment, courts’ interpretation of the First Amendment should inform HWS’s commitment to academic freedom and faculty members’ reasonable interpretation of their rights.

⁷ See, e.g., *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992) (striking down ordinance that prohibited placing on any property symbols that “arouse[] anger, alarm or resentment in others on the basis of race, color, creed, religion or gender”). The Supreme Court has notably refused to a limitation on speech viewed as “hateful” or demeaning “on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground.” *Matal v. Tam*, 137 S. Ct. 1744, 1764 (2017).

⁸ See, e.g., *Vega v. Miller*, 273 F.3d 460, 467 (2d Cir. 2001) (academic freedom instructs colleges “not to discipline a college teacher for expressing controversial, even offensive, views.”); see also *Rodriguez v. Maricopa Cnty. Cmty. Coll. Dist.*, 605 F.3d 703, 705 (9th Cir. 2009) (faculty member’s use of system-wide listserv to send “racially-charged emails” was not unlawful, as First Amendment “embraces such a heated exchange of views,” especially when they “concern sensitive topics like race, where the risk of conflict and insult is high”).

⁹ The immediate suspension of teaching duties without a prior hearing, even for a short while, is a harsh punishment reserved for violent or severe misconduct not remotely present here. See *Recommended Institutional Regulations on Academic Freedom and Tenure*, AM. ASS’N OF UNIV. PROFESSORS (revised 2023), <https://www.aaup.org/report/recommended-institutional-regulations-academic-freedom-and-tenure> (explaining how interim suspensions of teaching duties is appropriate only when there is an “immediate harm” to the campus community).

¹⁰ Gearan, *supra* note 4.

¹¹ *Unprotected Speech Synopsis*, FIRE, <https://www.thefire.org/research-learn/unprotected-speech-synopsis>.

encompasses rhetorical hyperbole, the conceptual endorsement of violence,¹² and assertions of the “moral propriety or even moral necessity for a resort to force or violence.”¹³

If HWS chooses to water down their principled academic freedom commitments to exempt Dean’s expression, they open the door to censorship of a limitless array of views on campus, to the detriment of the ability of opposing activists to find common ground. FIRE urges HWS to instead stand up for free speech by immediately reinstating Dean to the classroom. Given HWS’s current suspension of Dean, we request a substantive response to this letter no later than close of business May 3, 2024.

Sincerely,



Zachary Greenberg
Senior Program Officer, Campus Rights Advocacy

Cc: Sarah Kirk, Provost and Dean of Faculty

Encl.

¹² *Watts v. United States*, 394 U.S. 705, 708 (1969).

¹³ *Noto v. United States*, 367 U.S. 290, 297–98 (1961); see also Aaron Terr & Matthew Harwood, *Why (most) calls for genocide are protected speech*, FIRE (Dec. 8, 2023), <https://www.thefire.org/news/why-most-calls-genocide-are-protected-speech>.

Authorization and Waiver for Release of Personal Information

I, Jodi Dean, do hereby authorize Hobart and William Smith Colleges (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:
Jodi Dean
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Signature

4/30/2024

Date