



May 9, 2024

Eric W. Kaler
Office of the President
Case Western Reserve University
10900 Euclid Avenue
Cleveland, Ohio 44106-7001

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

Dear President Kaler:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned by your recent campus-wide email stating Case Western Reserve University “will not tolerate hate speech in any form.”² While we appreciate that your email acknowledged CWRU’s support for free speech, it is important to remember that a great deal of political expression frequently deemed hateful is nevertheless protected by CWRU’s policy on free speech. We therefore urge you to uphold this laudable policy commitment by publicly clarifying that CWRU will not punish speakers simply because some may classify their speech as “hateful.”

Your freedom of expression policy states that CWRU “is committed to the freedom of speech, thought, expression, and assembly, and guarantees all members of the CWRU community the fullest possible right to hold and express opinions, to speak and write, to listen, challenge, inquire and learn.”³ CWRU has both a moral and a legally-binding contractual obligation to

¹ For more than 20 years, FIRE has defended freedom of expression, conscience, and religion, and other individual rights on America’s university campuses. You can learn more about our expanded mission and activities at thefire.org.

² Email from Eric Kaler, president, to Jonathan Adler, professor (April 29, 2024, 11:12 AM) (on file with author). The recitation of facts here reflects our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us

³ *Policy on Freedom of Expression/Expressive Activities*, Policy, CASE W. RESERVE UNIV., <https://case.edu/provost/sites/default/files/2019-12/Policy%20on%20Freedom%20of%20Expression%20and%20Expressive%20Activities%20final.pdf> [<https://perma.cc/W5UP-4D6K>].

respect this policy, as it gives students and faculty every reason to believe they enjoy expressive rights commensurate with those guaranteed by the First Amendment.⁴

The Supreme Court has repeatedly and consistently held that freedom of speech, to be meaningful, must protect expression others find offensive or even hateful.⁵ For example, in holding the First Amendment protects protesters bearing insulting signs outside of soldiers' funerals, the Court remarked 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.”⁶ If CWRU promises to respect “the fullest possible right to hold and express opinions” on its campus, it must be willing to tolerate signs and chanting that others may find hateful or offensive.

As a university dedicated to the pursuit of knowledge, CWRU must not “cleanse” expression to make it “palatable to the most squeamish among us.”⁷ This is especially true regarding protected political speech, which is *most* necessary in times of intense disagreement on public issues such as global affairs,⁸ and which frequently and necessarily encompasses “sensitive topics” like ethnicity or religion “where the risk of conflict and insult is high.”⁹ In university contexts, “dissent is expected and, accordingly, so is at least some disharmony.”¹⁰

CWRU violates its commitments to free speech by implying it may punish or investigate (presumably for potential punishment) what others may find “hateful.” That CWRU cannot, pursuant to free speech principles and its own policy, take action against those who engage in controversial speech does not shield speakers from other consequences of their expression—including criticism by students, faculty, or the broader community. Such criticism is a form of the “more speech” remedy that our nation has chosen over censorship.¹¹ CWRU must allow students and faculty the freedom to express themselves while ensuring they do not fear investigation or retaliation for protected expression.

⁴ See *Doe v. Coll. of Wooster*, 243 F.Supp.3d 875, 888 (N.D. Ohio 2017) (“The relationship between a university and its students [is] contractual in nature” and “the terms ... are usually found in the college catalogue and handbook supplied to students.”)

⁵ See, e.g., *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992) (invalidating 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”). Notably, the Court has refused to allow 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); see also *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (burning the American flag was protected by the First Amendment under the “bedrock principle” that government actors “may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable”); *Cohen v. California*, 403 U.S. 15, 25 (1971) (holding that First Amendment prohibited punishing the wearing of a jacket with the words “Fuck the Draft”); *Cox v. Louisiana*, 379 U.S. 536, 557 (1965) (holding police cannot or disperse civil rights marchers out of fear that “muttering” and “grumbling” white onlookers might resort to violence).

⁶ *Snyder v. Phelps*, 562 U.S. 443, 448, 461 (2011).

⁷ *Cohen*, 403 U.S. at 25.

⁸ *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 186-87 (1999).

⁹ *Rodriguez v. Maricopa Cnty. Comm. Coll. Dist.*, 605 F.3d 703, 705 (9th Cir. 2010).

¹⁰ *Higbee v. E. Mich. Univ.*, 399 F.Supp. 3d 694, 704 (E.D. Mich. 2019).

¹¹ *Whitney v. California*, 274 U.S. 357, 377 (1927).

We request a substantive response to this letter no later than the close of business on May 23, confirming CWRU will alert its community that hate speech will not be punished.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ida Namazi', written in a cursive style.

Ida Namazi
Program Officer, Campus Rights Advocacy

Cc: Peter M. Poulos, General Counsel