



July 25, 2024

Susan Donovan
Office of the President
Bellarmine University
2001 Newburg Road
Louisville, Kentucky 40205

URGENT

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

Dear President Donovan:

FIRE, a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned by Bellarmine University's firing of English Professor John James over objections to his recent Instagram commentary on the attempted assassination of former President and current presidential candidate Donald Trump. Bellarmine's academic freedom and social media policies bar it from punishing protected political expression—even that which some view as inappropriate or controversial. Accordingly, to meet its binding obligations to respect faculty's expressive rights, Bellarmine must promptly reinstate James to his teaching position.

Our concerns arise out of James's July 13 post of an article to Instagram about the attempted assassination, to which he added commentary that, "If you're gonna shoot, man, don't miss,"² leading to a July 15 notice from Vice President for Academic Affairs and Provost Mark Wiegand that Bellarmine was placing James on unpaid leave until August 20.³ The notice's stated reason was that "[w]ords and actions that condone violence are unacceptable and contrary to values

¹ For 25 years, the Foundation for Individual Rights and Expression (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 Libs of TikTok (@libsoftiktok), X (July 14, 2024, 5:51PM), <https://x.com/libsoftiktok/status/1812605890274693233> [<https://perma.cc/76FA-GJFP>] (screenshot of James' post) (cleaned up). The recitation in the text 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. To these ends, please find enclosed an executed privacy waiver authorizing you to share information about this matter.

³ Letter from Mark Wiegand, Vice President for Academic Affairs & Provost, to John James, professor (on file with author).

of Bellarmine University,” and that James’s post “reflects badly on Bellarmine as an institution and [his] position on the faculty.”⁴

After Bellarmine evacuated parts of campus that same day due to an email from someone who, “in the name of Donald Trump,” claimed to have placed explosive devices in two buildings,⁵ Wiegand notified James the following day that, “upon further consideration,” Bellarmine was terminating his instructor appointment.⁶ The stated reason was that James’s post violated unspecified terms of his appointment and of university policy.⁷ James is requesting a dismissal hearing per faculty procedures.⁸

Such further review is imperative, as Bellarmine’s termination of James violates its clear academic freedom and social media policies. As popular expression rarely needs protecting, it is in moments of controversy when institutional commitments to free expression are put to the test. So far, Bellarmine has failed this test with respect to James’s Instagram post.

That is because Bellarmine’s Academic Freedom policy explicitly states that when professors “speak or write as citizens, they should be free from institutional censorship or discipline,”⁹ and its employee Social Media Protocols guarantee that Bellarmine “respects academic freedom and freedom of speech.”¹⁰ Faculty reading these policies would reasonably believe they enjoy expressive rights commensurate with those the First Amendment guarantees.¹¹

The Supreme Court has long held that free speech principles protect expression others may deem offensive, uncivil, or even hateful.¹² This includes expressing vitriol about public figures

⁴ *Id.*

⁵ *Bellarmino University evacuated after bomb threat in ‘the name of Donald Trump’*, WDRB.com (July 15, 2024), https://www.wdrb.com/news/bellarmino-university-evacuated-after-bomb-threat-in-the-name-of-donald-trump/article_b5515cf4-4319-11ef-96ba-479bdb379230.html [https://perma.cc/J4LJ-SJAV] (Bellarmine latest announced that “the threat to [the] campus was deemed not credible.”).

⁶ Letter from Wiegand to James (July 16, 2024) (on file with author).

⁷ *Id.*

⁸ *Faculty Policies & Procedures Manual*, Faculty Termination, Dismissal, Suspension, or Other Sanctions, Dismissal and Suspension, A, BELLARMINE UNIV. (revised Nov. 3, 2021), https://www.bellarmino.edu/docs/default-source/hr-docs/faculty_handbook.pdf?sfvrsn=d0369877_4 [https://perma.cc/DU2X-P37Q].

⁹ *Id.* at The Position of the Faculty in the University, Academic Freedom, D.

¹⁰ *Employee Handbook*, Human Resources – Staff Handbook, Workplace Conditions, Social Media Protocols, 48, BELLARMINE UNIV. (effective Aug. 2017), <https://www.bellarmino.edu/docs/default-source/hr-docs/employee-handbook.pdf?sfvrsn=8> [https://perma.cc/76ZT-ULNE].

¹¹ While Bellarmine, as a private university, is not bound by the First Amendment, courts’ interpretations of free speech principles should inform its commitment to upholding faculty free speech rights and its faculty’s reasonable expectation of what those rights encompass.

¹² See *Texas v. Johnson*, 491 U.S. 397, 414 (1989); see also *Cox v. Louisiana*, 379 U.S. 536, 557 (1965) (fears that “muttering” and “grumbling” white onlookers might resort to violence did not justify dispersal of civil rights marchers); *Cohen v. California*, 403 U.S. 15, 25 (1971); *Hustler Mag., Inc. v. Falwell*, 485 U.S. 46, 50 (1988).

and engaging in rhetorical hyperbole that may reference violence.¹³ In fact, the Supreme Court has made this point clear in a context quite similar to that in which James spoke.

In *Rankin v. McPherson*, a police department fired one of its employees who, after hearing that President Reagan had been shot, expressed contempt for his welfare policies by stating: “If they go for him again, I hope they get him.”¹⁴ The Court held the employee’s firing was unconstitutional, noting that whether listeners found her statement of “inappropriate or controversial character” was “irrelevant” to its constitutional protection.¹⁵ This type of harsh criticism is undoubtedly “core political speech,” where free speech protection is “at its zenith.”¹⁶

James’s comment was no different than the police employee’s in *Rankin*. They both expressed disdain for a political figure by showing disappointment over an unsuccessful assassination attempt. While both statements may have been viewed as inappropriate, uncivil, and hateful, neither amounted to anything more than use of unfortunate events to fashion hyperbole. As such, *Rankin* should inform Bellarmine in how to address this kind of situation—that is, it should not dismiss James for his controversial speech. This is especially true considering Bellarmine is committed to free speech and academic freedom, which instructs them “not to discipline a college teacher for expressing controversial, even offensive, views.”¹⁷

This remains true even when there is third party misconduct. A university should never reward “community outrage,” however ugly, by curtailing free speech principles,¹⁸ because the value of academics’ freedom to engage in the exchange of ideas cannot be outweighed by public incentive.¹⁹ When a safety issue arises in close temporal proximity to a professor expressing controversial views, as it did here, Bellarmine can and must address it *without* censoring the professor.²⁰ Otherwise, the university incentivizes future threats at the expense of expressive rights and the safety of its own campus community.

If Bellarmine chooses to ignore its free speech commitments to punish James’s speech, it will open the door to censorship of a limitless array of views on campus and will chill other faculty

¹³ *Watts v. United States*, 394 U.S. 705, 708 (1969) (draftee’s statement that “[i]f they ever make me carry a rifle the first man I want to get in my sights is L. B. J.” was First Amendment-protected rhetorical hyperbole).

¹⁴ 483 U.S. 378, 381 (1987).

¹⁵ *Id.* at 387.

¹⁶ *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 186-87 (1999) (quoting *Meyer v. Grant*, 488 U.S. 414 (1988)).

¹⁷ *See, e.g., Vega v. Miller*, 273 F.3d 460, 467 (2d Cir. 2001).

¹⁸ *See Levin v. Harleston*, 966 F.2d 85, 88 (2d Cir. 1992). Abstract teaching of the moral necessity of violence “is not the same as preparing a group for violent action ... There must be some substantial direct or circumstantial evidence of a call to violence now or in the future ...” *Noto v. United States*, 367 U.S. 290, 298 (1961).

¹⁹ *Levin*, 966 F.2d at 88.

²⁰ *See Bible Believers v. Wayne Cnty.*, 805 F.3d 228, 254 (6th Cir. 2018) (listing “easily identifiable measures” that could be taken without censoring the speech).

from sharing their opinions.²¹ Both of these outcomes are unacceptable at an institution that plainly promises to protect faculty expressive rights.

Of course, none of this shields James from every consequence of his speech—including criticism by students, faculty, or the broader community. Criticism is a form of the “more speech” remedy that an institution committed to free speech must prefer over censorship.²² Bellarmine’s commitment to free speech principles thus limits the *types* of consequences that may be imposed, and terminating James for his comment clearly violates that commitment.²³

Given the urgent nature of this matter, we request a substantive response to this letter no later than the close of business on August 8, confirming Bellarmine will reinstate Professor James to his teaching position.

Sincerely,



Haley Gluhanich
Senior Program Officer, Campus Rights Advocacy

Cc: Mark Wiegand, Vice President for Academic Affairs & Provost
Mary Huff, Dean of Bellarmine College

Encl.

²¹ Free speech principles bar any “adverse government action against an individual in retaliation for the exercise of protected speech activities” which “would chill a person of ordinary firmness from continuing to engage in that activity.” *Keenan v. Trejeda*, 290 F.3d 252, 258 (5th Cir. 2002).

²² *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring).

²³ James’s termination also cannot be squared with the most basic principles of procedural due process, which includes timely and adequate notice of charges, adequate time to respond, and the ability to defend oneself before discipline is meted out. *Due Process on Campus*, FIRE, <https://www.thefire.org/research-learn/due-process-campus>.

Authorization and Waiver for Release of Personal Information

I, John James, do hereby authorize Bellarmino University (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:
John James
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Signature

7/25/2024

Date