



July 30, 2024

Tracy Brundage  
Office of the President  
Abraham Baldwin Agricultural College  
2802 Moore Highway  
Tifton, Georgia 31793-2601

*Sent via U.S. Mail and Electronic Mail (President@abac.edu)*

Dear President Brundage:

FIRE, a nonpartisan nonprofit dedicated to defending freedom of speech,<sup>1</sup> is concerned by Abraham Baldwin Agricultural College's investigation and reprimand of Associate Professor of Communication Jay Baldwin for his classroom speech. While Baldwin's comments regarding religion and sex may have offended some students, they constitute First Amendment-protected speech and cannot serve as a basis for investigation or discipline. We strongly urge ABAC to remove the written reprimand from Baldwin's personnel file and confirm it will no longer investigate or threaten faculty with discipline for protected speech.

Our concerns arise from ABAC's response to a student complaint regarding Baldwin's discussions of religion and sex in the classroom. In October 2023, five students filed a formal complaint against Baldwin alleging violations of the Employee Code of Conduct for what they perceived to be inappropriate discussions of religion and sex during his introductory human communication class.<sup>2</sup> ABAC did not provide Baldwin a copy of the complaint, but in addition to vague accusations regarding the tone and frequency of his references to sex and religion, the complaint also reportedly alleged that Baldwin used the word "orgasm" during a class discussion of the dopamine response to media messages, responded dismissively when a student said that Christians in present-day America are oppressed, and responded "you'll be

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<sup>1</sup> For more than 20 years, the Foundation for Individual Rights and Expression has defended freedom of expression, conscience, and religion, and other individual rights on America's college campuses. You can learn more about our mission and activities at [thefire.org](https://thefire.org).

<sup>2</sup> See Memo from Amy Willis, Interim Provost, and Richard Spancake, Director of Human Resources, to Jay Baldwin, Associate Professor (Mar. 7, 2024) (on file with author). The precise date the students filed the complaint is unknown, but Spancake and Dean of the School of Arts Matthew Anderson verbally informed Baldwin of the complaint and investigation on November 13.

missed” when a student told him she would be absent from the next class session (which the student took to be a sexual comment).<sup>3</sup>

ABAC’s formal investigation of the allegations ultimately concluded Baldwin had not violated the Employee Code of Conduct. But on March 13, Interim Provost Amy Willis, Human Resources Director Richard Spancake, and Dean Matthew Anderson presented Baldwin with a memo, authored by Willis and Spancake, which reprimanded Baldwin and threatened formal disciplinary action should he continue to discuss religion and sex with the same “problematic” frequency and tone.<sup>4</sup> They also placed a copy of the memo in his personnel file.

The memo stated that Baldwin had not engaged in either Inappropriate Conduct or Harassment. It nevertheless reproached Baldwin for his classroom speech:<sup>5</sup>

Based on the information obtained during the investigation, it appears that you use the topic of religion to promote your own personal views and opinions on religion on a regular basis. In the future, you should be more self-aware of this perception by students and others. You should also identify other topics, in addition to religion, to foster classroom discussion and participation. Please put yourself in the students’ place in your classroom; how would you feel if your professor, often if not continuously, argued against your strongly held personal belief system?

... [W]e find that the above issues affect the overall learning experience of your students in a negative manner. ... The two behaviors [frequent discussion of religion and sex] described above are not how the College expects faculty to interact with students in our academic environment. If these issues persist, formal disciplinary action could result.

In order to prevent “sexual and religious harassment” and “maintain[] a respectful and inclusive environment,” the memo advised Baldwin to “[b]e mindful of [his] Language, Tone, and Behavior,” “[b]e aware of [his] language and actions to ensure they are respectful,” “[a]void making sexually suggestive comments, jokes, or remarks,” and “[c]onsider the necessity of discussing personal or sensitive topics related to religion and how such comments impact the educational experience in your classes.”<sup>6</sup> In order to avoid future complaints, Willis, Spancake, and Anderson advised Baldwin during the meeting to speak to the level of the most sensitive

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<sup>3</sup> *Id.* ABAC declined to provide Baldwin access to the complaint despite Baldwin’s repeated requests for a copy as well as more information about the precise allegations against him. The description provided in this letter comes from the March 7 memo as well as other details Willis, Spancake, and Anderson shared orally with Baldwin during the November 13 and March 13 meetings.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 2.

<sup>6</sup> *Id.*

student, avoid words like “orgasm” because students may be unfamiliar with them, and use non-religious and non-Darwinian examples in his lectures.

After receiving the memo, Baldwin immediately canceled an upcoming public lecture, *How Ideas Have Sex: An Account of Human Communication*, due to his concern that the topic might run afoul of the parameters explained in the memo and result in formal consequences.<sup>7</sup> The lecture’s organizer, Professor James Galt-Brown, reportedly complained to Willis that the administration’s actions violated faculty free expression rights.<sup>8</sup> In response, Willis defended the administration’s actions by explaining that “[s]tudents should be provided an environment conducive to learning” and “[h]aving students who feel ridiculed, harassed, or threatened is not the environment that we endorse in our stated values[.]”<sup>9</sup>

ABAC’s investigation and reprimand of Baldwin raise serious constitutional concerns. The First Amendment restricts public colleges from penalizing an instructor for his protected pedagogical speech.<sup>10</sup> This includes speech which “concern[s] sensitive topics,” such as religion or sex, “where the risk of conflict and insult is high.”<sup>11</sup> As the Supreme Court has explained, academic freedom is “a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.”<sup>12</sup>

Faculty must therefore have substantial breathing room to decide how to approach subjects and materials relevant to their courses. Pedagogically relevant material may include words, concepts, subjects, or discussions that some students may find upsetting or uncomfortable, but that are nevertheless important to advance understanding of the subject. These decisions are properly the province of the faculty to make, and administrators, students, legislators, or outside authorities may not unduly influence those decisions.<sup>13</sup>

University System of Georgia policy—which ABAC is bound to follow—and ABAC’s own policies also enshrine these principles.<sup>14</sup> USG policy is clear: “[T]he constitutionally protected right to freedom of speech includes both academic freedom and freedom of expression. USG and all of its institutions shall vigorously protect those freedoms. ... Ideas and opinions should be openly and freely debated and discussed, both inside and outside of the classroom, without fear of suppression or reprisal.”<sup>15</sup> ABAC itself also commits to protecting academic freedom by

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<sup>7</sup> Email from Baldwin to James Galt-Brown (Mar. 26, 2024, 8:30 AM) (on file with author).

<sup>8</sup> Email from Willis to Galt-Brown (Mar. 26, 2024, 7:20 PM) (on file with author).

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

<sup>10</sup> *Heim v. Daniel*, 81 F.4th 212, 228–29 (2d Cir. 2023).

<sup>11</sup> *Rodriguez v. Maricopa Cnty. Comm. Coll. Dist.*, 605 F.3d 703, 705 (9th Cir. 2009).

<sup>12</sup> *Keyishian v. Bd. of Regents*, 385 U.S. 589, 602–04 (1967).

<sup>13</sup> See *1940 Statement of Principles on Academic Freedom and Tenure*, AMER. ASSN. OF UNIV. PROFESSORS, <https://www.aaup.org/report/1940-statement-principles-academic-freedom-and-tenure>.

<sup>14</sup> *Bd. of Regents Policy Manual*, § 6.5 Freedom of Expression and Academic Freedom, UNIV. SYS. OF GA., [https://www.usg.edu/policymanual/assets/policymanual/documents/bor\\_policy\\_manual.pdf](https://www.usg.edu/policymanual/assets/policymanual/documents/bor_policy_manual.pdf); *Academic Freedom Policy*, ABRAHAM BALDWIN AG. COLL., <https://catalog.abac.edu/academic-policies-and-procedures/academic-freedom-policy> [<https://perma.cc/N5ZX-SFPE>].

<sup>15</sup> *Bd. of Regents Policy Manual*, *supra* note 14 at § 6.5.

subscribing to the American Association of University Professors' *1940 Statement of Principles on Academic Freedom and Tenure*.<sup>16</sup>

Baldwin's right to choose how to discuss matters of public concern—including religion and sex—is therefore protected both inside the classroom, pursuant to his official teaching duties,<sup>17</sup> and outside the classroom, as a private citizen who may share his views in a newspaper editorial or public lecture.<sup>18</sup>

ABAC nevertheless unconstitutionally chilled academic discourse and the free exchange of ideas by investigating Baldwin for allegations of clearly protected speech and then, despite clearing him of any conduct violations, issuing the memo admonishing him for the same protected speech—ultimately leading Baldwin to voluntarily cancel a planned public lecture for fear of formal discipline.<sup>19</sup> That ABAC did not formally punish Baldwin is of no moment; the constitutional question is whether an institution's actions “would chill or silence a person of ordinary firmness from future First Amendment activities.”<sup>20</sup> The memo's explicit threat of future discipline undoubtedly meets this standard.<sup>21</sup>

ABAC must assure Baldwin and the rest of its faculty that they need not fear punishment for their protected speech in the future because the institution will protect academic freedom as required by both law and policy. We request a substantive response to this letter no later than the close of business on August 13, confirming that ABAC will remove the memo from Baldwin's personnel file and will no longer investigate or threaten faculty with discipline for their protected speech.

Sincerely,



Jessie Appleby  
Program Officer, Campus Rights Advocacy

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<sup>16</sup> *Academic Freedom Policy*, *supra* note 14.

<sup>17</sup> *Hardy v. Jefferson Cmty. Coll.*, 260 F.3d 671, 674 (6th Cir. 2001) (holding that an adjunct instructor's “use of racial and gender epithets in an academic context, designed to analyze the impact of these words upon societal relations, touched upon a matter of public concern and thus fell within the First Amendment's protection”).

<sup>18</sup> *Lane v. Franks*, 573 U.S. 228, 240–41 (2014).

<sup>19</sup> Email from Baldwin to Galt-Brown, *supra* note 7.

<sup>20</sup> *Mendocino Env'tl. Ctr. v. Mendocino Cnty.*, 192 F.3d 1283, 1300 (9th Cir. 1999).

<sup>21</sup> *Surita v. Hyde*, 665 F.3d 860, 878 (7th Cir. 2011) (“The First Amendment prohibits threats of punishment designed to discourage future speech.”). Even the implicit threat of future discipline found in mere investigation or reprimand may meet this standard. *See, e.g., Levin v. Harleston*, 966 F.2d 85, 89 (2d Cir. 1992) (threat of discipline implicit in college president's creation of ad hoc committee to study whether professor's extramural speech could be considered misconduct “was sufficient to create a judicially cognizable chilling effect on [the professor's] First Amendment rights”); *White v. Lee*, 227 F.3d 1214, 1228 (9th Cir. 2000).

Cc: Amy P. Willis, Interim Provost/Vice President of Academic and Student Affairs  
Richard Spancake, Director of Human Resources  
Matthew Anderson, Dean of the School of Arts and Sciences

Encl.

### Authorization and Waiver for Release of Personal Information

I, Jay Baldwin, do hereby authorize Abraham Baldwin Agricultural College (ABAC) (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.

Signed by:  
  
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7/30/2024

Signature

Date