



December 18, 2024

Frank Neville
Office of the President
Millsaps College
1701 North State Street
Jackson, Mississippi 39210

Sent via U.S. Mail and Electronic Mail (frank.neville@millsaps.edu)

Dear President Neville:

FIRE, a nonpartisan nonprofit that defends free speech,¹ is concerned that Millsaps College has violated its own policy by disciplining Professor James Bowley for sharing his personal opinions about the outcome of the 2024 presidential election with his students via his college email. Presidential elections are the subject of intense national debate, and Millsaps affords faculty the right to express themselves on matters of public concern. Bowley’s email to his students is thus protected, and Millsaps has no grounds to pursue investigative or disciplinary action.

On November 6—the day after the election—Bowley sent an email to the students in his “Abortion and Religions” class canceling that day’s session to “mourn and process this racist fascist country[.]”² Bowley canceled this class because he knew the political leanings of the three students enrolled in the class and believed they would be upset with the election results. On November 8, Interim Provost Stephanie Rolph informed Bowley that he had been placed on temporary administrative leave pending review, specifically for using his “Millsaps email account to share personal opinions with [his] students.”³

Under Millsaps’ own rules, the institution may not discipline or investigate a faculty member for sharing his or her opinions with their students. According to Millsaps’ “Major Facts,” the institution holds “freedom of speech and expression” as fundamental principles.⁴ Millsaps also specifically states that when “speaking or writing as a citizen, the teacher is free from

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

² Email on file with author.

³ Notice of Leave Pending Review from Stephanie Rolph, Interim Provost, to James Bowley, professor (Nov. 8, 2024) (on file with author).

⁴ *Major Facts*, Policies and Procedures, Expression and Assembly Policy, Personal Expression, MILLSAPS COLL., 36 (updated Aug. 2024), <https://millsaps.edu/wp-content/uploads/2024/08/Major-Facts-8.28.24.pdf> [<https://perma.cc/EBL7-HCRJ>].

institutional censorship or discipline[.]”⁵ That written commitment is laudable and would lead any faculty member to reasonably believe they have expressive rights commensurate with those guaranteed by the First Amendment. Therefore, while Millsaps is a private institution not explicitly bound by the First Amendment, First Amendment jurisprudence necessarily informs Millsaps’ commitments to free expression and academic freedom.

Bowley’s expression of opinion regarding the election falls squarely within his right to speak as a private citizen on matters of public concern.⁶ Expressions of public concern include speech that “can be fairly considered as relating to any matter of political, social, or other concern to the community[.]”⁷ A presidential election is a paradigmatic example of such a matter. And, while it came in an email to students, Bowley’s opinion was also expressed in his capacity as a private citizen. The “critical question” in determining whether the speech was that of an employee or private citizen is “whether the speech at issue is itself ordinarily within the scope of an employee’s duties, not whether it merely concerns those duties.”⁸ Institutions of higher education ordinarily employ faculty to teach students, to engage in scholarship, and to provide service to the institution. Briefly sharing an opinion, including criticism of an election outcome, is not within the scope of faculty members’ responsibilities, and students would not reasonably interpret it as speech on behalf of the institution.⁹

Even if Bowley’s speech were to be considered within the scope of his job duties,¹⁰ many U.S. circuit courts have recognized protection for a great deal of faculty expression,¹¹ including “speech related to matters of public concern, whether that speech is germane” to the class or not.¹² This is because the Supreme Court has recognized that higher education depends on “wide exposure to that robust exchange of ideas which discovers truth out of a multitude of tongues, rather than through any kind of authoritative selection.”¹³ And this is especially true of political speech—such as that at issue here—which lies at the core of the First Amendment’s

⁵ *Faculty Handbook, Faculty Rights and Privileges, Academic Freedom, MILLSAPS COLL.*, 4 (Revised 2023) (on file with author).

⁶ *Connick v. Myers*, 461 U.S. 138, 140 (1983).

⁷ *Snyder v. Phelps*, 562 U.S. 443, 453 (2011).

⁸ *Lane v. Franks*, 573 U.S. 228, 240 (2014).

⁹ According to the Fourth Circuit, for speech to be “pursuant to official duties,” the speech must be tied to a “more specific or direct employee duty[.]” *Adams v. Trs. of Univ. of N.C. - Wilmington*, 640 F.3d 550, 564 (4th Cir. 2011). Bowley has neither a specific nor direct duty to comment on election outcomes. Additionally, none of Bowley’s expression can reasonably be interpreted as speaking on behalf of Millsaps. It is commonly understood that when using their college email, faculty members are speaking for themselves rather than conveying that they speak *for* their employer.

¹⁰ Faculty speech as a general rule may not be protected if it occurs pursuant to their normal job duties. *Garcetti v. Ceballos*, 547 U.S. 410 (2006).

¹¹ *Demers v. Austin*, 746 F.3d 402, 412 (9th Cir. 2014); *see also Buchanan v. Alexander*, 919 F.3d 847 (5th Cir. 2019).

¹² *Meriwether v. Hartop*, 992 F.3d 492, 507 (6th Cir. 2021) (in the college setting, “there are three critical interests at stake (all supporting robust speech protection): (1) the students’ interest in receiving informed opinion, (2) the professor’s right to disseminate his own opinion, and (3) the public’s interest in exposing our future leaders to different viewpoints.”).

¹³ *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967) (cleaned up).

protections. As the Supreme Court has said, “[w]hatever 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.”¹⁴

Millsaps furthermore failed to afford Bowley due process. The college summarily placed Bowley on administrative leave pending a review only two days after Bowley sent the email and without any showing that Bowley’s continued teaching presented any kind of threat. This is inconsistent with the most basic principles of procedural due process, including the right to an initial hearing *before* punishment. Colleges must provide faculty members with “an opportunity to explain [their] version of the facts” before imposing any sort of punishment, including administrative leave pending a review.¹⁵

We accordingly request a substantive response to this letter no later than January 3, 2024, confirming Millsaps will drop the review into Bowley’s expression, allow him to resume his job duties, and decline to mete out any further disciplinary action against him.

Sincerely,



Haley Gluhanich
Senior Program Officer, Campus Rights Advocacy

Cc: Stephanie Rolph, Interim Provost

Encl.

¹⁴ *Mills v. Alabama*, 384 U.S. 214, 218 (1966).

¹⁵ *Goss v. Lopez*, 419 U.S. 565, 581-82 (1975) (school violated due process principles when it suspended a student without first gathering facts related specifically to the student, confronting the student with the facts, and giving the student an opportunity to explain). Placing Bowley on administrative leave is a disproportional response to Bowley’s speech, which merely shared his opinion. Administrative leave should be reserved for situations where the faculty member’s presence would constitute a continuing danger to himself, other individuals or property, or would seriously imperil the operation of the college, none of which is present here.

Authorization and Waiver for Release of Personal Information

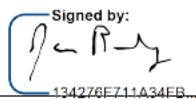
I, James Bowley, do hereby authorize Millsaps College (the "Institution") to release to the Foundation for Individual Rights and Expression ("FIRE") any and all information concerning my employment, status, or relationship with the Institution. This authorization and waiver extends to the release of 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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12/18/2024

Signature

Date