



May 22, 2015

Margaret B. Lee
President's Office
Oakton Community College
1505 DP
1600 East Golf Road
Des Plaines, Illinois 60016

Sent via U.S. Mail and Electronic Mail (plee@oakton.edu)

Dear President Lee:

The Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, freedom of speech, and freedom of conscience on America's college campuses. Our website, thefire.org, will give you a greater sense of our identity and activities.

FIRE is concerned by the threats to freedom of expression at Oakton Community College (OCC) posed by the college's response to faculty member Chester Kulis's email referencing the 1886 Haymarket Riots. In declaring Kulis's email a threat of violence and ordering him to cease and desist from sending similar messages, OCC and its attorney have ignored clear legal precedent, violated Kulis's rights, and deeply chilled expression on campus. OCC must immediately retract the cease and desist letter and respect the First Amendment rights of faculty members who criticize the college's administration or its policies.

The following is our understanding of the facts; please inform us if you believe we are in error.

Chester Kulis has been an adjunct faculty member at OCC, with the title of Lecturer, since 1989. Kulis is an active member of the Adjunct Faculty Association labor union and has sought to raise public awareness of the perceived mistreatment of adjunct faculty members at OCC. Kulis is presently engaged in a dispute with OCC over labor practices before the Illinois Educational Labor Relations Board, as well as arbitration.

On May 1, 2015, in response to a reception hosted by OCC in celebration of your upcoming retirement, Kulis sent an email to several colleagues, including yourself, titled “May Day – The Antidote to the Peg Lee Gala.” The email read, in its entirety:

Have a happy MAY DAY when workers across the world celebrate their struggle for union rights and remember the Haymarket riot in Chicago.

On May 7, Philip H. Gerner III, an attorney representing OCC, wrote to Kulis, asserting that Kulis’s email constituted a threat of violence:

The Haymarket Riot involved a bomb-throwing incident at a striking workers’ rally in Chicago which resulted in 11 deaths and more than 70 people injured.

Your reference to “remember the Haymarket riot” was clearly threatening the President that you could resort to violence against the President and the College campus. Threats of violence are not First Amendment protected free speech.

As an adjunct faculty member, you had the right to file and pursue a contractual grievance You have absolutely no right, however, to threaten violence against the College, College employees, or the College community.

Gerner’s letter instructed Kulis to “immediately cease and desist any communications which expressly or impliedly advocate violence against Oakton College, its employees, or the College community.” It further warned that failure to do so would result in potential legal action, including referral to law enforcement.

Kulis’s brief email is entirely protected by the First Amendment, and the charge that it was “clearly threatening” to anyone in the OCC community is without merit and wholly detached from our legal system’s understanding of what constitutes a true threat. OCC must immediately rescind its cease and desist letter and threats of further action against Kulis—its only acceptable option as a public institution bound by the First Amendment.

That the First Amendment is fully binding on public colleges like OCC is settled law. *Widmar v. Vincent*, 454 U.S. 263, 268–69 (1981) (“With respect to persons entitled to be there, our cases leave no doubt that the First Amendment rights of speech and association extend to the campuses of state universities.”); *Healy v. James*, 408 U.S. 169, 180 (1972) (“[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, ‘the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.’”) (internal citation omitted).

The Supreme Court has also repeatedly held that speech may not be punished merely because many may find it to be offensive or disrespectful. *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (“If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”); *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667, 670 (1973) (“[T]he mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of ‘conventions of decency.’”); *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949) (“[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.”).

The Supreme Court has defined “true threats,” which are not protected by the First Amendment, as “those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” *Virginia v. Black*, 538 U.S. 343, 359 (2003). The Court further elaborated that speech may lose protection as “intimidation,” a form of “true threat,” when “a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death.” *Id.* at 360. Kulis’s email invoking a historical event in the context of his ongoing labor activism cannot by any reasonable reading be considered threatening or intimidating in this regard.

Oakton Community College’s argument that Kulis’s expression constituted any kind of threat is an affront to the First Amendment and does not withstand basic scrutiny. FIRE asks that OCC immediately reassure Kulis that his First Amendment rights are respected on campus, rescind its cease and desist letter against him, and make clear to OCC faculty that they will not face backlash from OCC’s administration if they criticize the college, its administration, or its practices, as is their fundamental right.

FIRE is committed to using all of the resources at our disposal to see this matter through to a just conclusion. We request a response to this letter by June 5, 2015.

Sincerely,



Ari Z. Cohn

Senior Program Officer, Legal and Public Advocacy



Peter Bonilla

Director, Individual Rights Defense Program

cc:

Philip H. Gerner III, Robbins Schwartz Nicholas Lifton & Taylor, Ltd.

Joianne Smith, Vice President for Student Affairs, Oakton Community College