In the comments to the post, Venigalla explained that the photos were taken at "a Cabela's at Pennsylvania" and that, in the videos, he was shooting powder from unloaded 19th century firearms and "aiming at trees." Venigalla wrote "[n]o actual bullets were fired." Dozens of people saw the post; comments in response expressed interest in the types of firearms, with one friend sharing that he "cant wait to see [Venigalla] at the range bro" and another: "I haven't shot black powder yet, I'm a little jealous. That revolver looked like fun."

The second post identified by John was an April 27, 2018, Facebook post sharing Venigalla's disappointment in losing an election for a student government position. Venigalla shared his view that the Greek life system bore too much political power on campus:

> Now it's time to disperse the Greek life system. They're not evil but I think they are way too influential in some way. I want to represent the underrepresented. I wanted to be the non-Greek that beat out a Greek. Yet that was not to be. Oh well, I will continue to fight hard and fierce.

The third subject of the meeting was an academic paper Venigalla wrote for a class on war,

terrorism, and justice in November 2017, entitled "a short reflection on terrorism." In that paper, Venigalla speculated that targeted violence against state actors—not civilians—can sometimes be morally justified. His piece disclaims the notion that violence can be justified against civilian populaces, and cites the Boston Tea Party and other examples of political violence against political authorities. A copy of Venigalla's reflection paper is enclosed.[1] It is unclear how or why John came into the possession of Venigalla's reflection paper.

During the meeting, Venigalla reassured John that he did not feel any inclination toward violence, and was only interested in it on a scholarly level. John informed Venigalla that he was not currently facing disciplinary action, but Venigalla left the meeting unsure what expression could lead to disciplinary action, or if he was likely to face an investigation in the future.

II. Discussion

While LIU Post is a private university and thus not legally bound by the First Amendment, it is both morally and contractually bound to honor the promises it has made to its students. For example, the Planned Assembly, Demonstration or Picketing policy found in LIU Post's student handbook states, in part, that "LIU supports the rights of individuals, clubs and organizations, who are members of the LIU community, to free speech and peaceful assembly."[2] Additionally, the student handbook goes on to state that "intellectual inquiry and critical thought" and "artistic and creative expression" are among the university's "core values."[3]

John's demand that Venigalla come to campus—during his summer break—for an investigatory meeting is a departure from the university's commitment to freedom of expression. While we appreciate that LIU Post did not ultimately pursue sanctions, investigations into non-threatening social media posts and academic work are themselves chilling and contrary to LIU Post's commitment to academic freedom and freedom of expression and must be addressed.

John's investigation appears to have arisen out of Venigalla's benign photos and videos of himself with guns at a public event and a paper written to address philosophical and moral questions relating to the use of violence against state actors. Accordingly, the investigation appears steeped in the belief that Venigalla's posts and writings amount to a threat of violence. While, again, LIU Post is not legally bound by the First Amendment, decades of First Amendment jurisprudence set the baseline for the rights a student would reasonably expect to enjoy when LIU Post promises that it will respect freedom of expression. These well-worn principles and decisions clearly demonstrate that Venigalla's expressions fall far short of a threat meriting penalty or investigation.

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[1] Venigalla noted to FIRE that the reflection paper was well received by his philosophy professor, Alexander Najman.

[2] *LIU Post Student Handbook,* LONG ISLAND UNIVERSITY POST, http://liu.edu/post/studenthandbook (last visited Aug. 26, 2018).

[3] *Id.*

The principle of freedom of speech does not exist to protect only non-controversial expression; it exists precisely to protect speech that some may find controversial or offensive. Accordingly, the Supreme Court of the United States has explicitly held, in rulings spanning decades, that institutions of higher education may not restrict speech simply because it offends others. *See 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.'").

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. True threats do not, however, encompass rhetorical hyperbole or political speech. *See, e.g., Ranking v. McPherson*, 483 U.S. 378, 381 (1987) (not a true threat to express hope that the president might be assassinated); *Watts v. United States*, 394 U.S. 705, 706 (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 political hyperbole, not a true threat). To the contrary, freedom of speech protects discussion of violence because of the need to protect political expression, and due to our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *Watts*, 394 U.S. at 707–08.

It is apparent that the basis of John's concerns is Venigalla's discussion of violence, but none of his writings—whether viewed in isolation or considered as a whole—approximate a threat of any sort. Venigalla's most recent post, consisting of photos and videos showing Venigalla smiling and holding lawful firearms during an exhibition, was not perceived as threatening in nature by the dozens of people who saw it. How an audience perceives a statement is an important barometer in weighing whether a statement amounted to a threat. In *Watts*, for example, the Supreme Court observed that the audience who heard the alleged threat to kill the president "laughed after the statement was made." *Watts*, 394 U.S. at 707. There, the "reaction of the listeners" showed that those who heard the statement perceived it as a joke or political rhetoric, not an expression reflecting an intent to engage in violence. *Id.* at 708. Likewise, Venigalla's audience expressed interest in the use of firearms as a hobby.

Further, two of the writings at issue—Venigalla's paper and his Facebook post about a student government election—are months old. The latter expressly disclaims any view of members of the Greek system as being "evil," instead expressing Venigalla's view that the Greek system has a deleterious effect on campus politics. His reflection paper is a brief meditation on the morality of violence against governments, not civilians. If LIU Post considers academic writings about the morality of violence against government actors and a photo of a person holding a gun to be "threats," it will have abandoned any understanding of the term.

Moreover, because Venigalla's speech is protected expression, LIU Post's initiation of an investigation brings the university into conflict with core principles of freedom of expression. In applying these principles to government actors, several appellate courts have held that investigations into protected expression have impermissible chilling effects on freedom of speech. *See, e.g.*, *White v. Lee*, 227 F.3d 1214, 1228 (9th Cir. 2000) (holding that a government investigation into clearly protected expression chilled speech and therefore violated the First Amendment); *Levin v. Harleston*, 966 F.2d 85 (2d Cir. 1992) (upholding a trial court's finding that a university president's creation of a committee to investigate protected speech by a professor unconstitutionally chilled protected expression because it implied the possibility of disciplinary action); *Rakovich v. Wade*, 850 F.2d 1180, 1189 (7th Cir. 1988) ("an investigation conducted in retaliation for comments protected by the first amendment could be actionable . . . .").

LIU Post's insistence on a formal meeting to question Venigalla about the purpose and meaning of tepid expression utterly devoid of threats not only has a chilling effect on Venigalla in particular, but sends a message to all students that their expression, if it offends others, could subject them to official investigation and questioning. As a result, students will likely refrain from speaking rather than risk investigation or discipline—the very definition of the impermissible chilling effect on protected speech. Indeed, Venigalla has expressed to FIRE that the meeting gave him the impression that, going forward, he must be careful about what he says.

We do not mean to suggest that LIU Post must ignore true threats or statements implying the possibility of harm. However, without more, students cannot be summoned for questioning every time they post a photo of themselves engaging in recreational firearm use. The possibility of a chilling effect resulting from inquiry into concerning posts could be minimized, if not avoided altogether, by conducting an initial analysis of the reported expression before questioning reported students. If, as here, the expression is plainly protected academic or political expression, then the respondent students should not be investigated or questioned.

If it is LIU Post's practice to question students over political expression, it is a practice that the university must abandon. In any event, LIU Post must mitigate the chilling effect it has cast by reassuring Venigalla that he will not face any discipline or further investigatory meetings for his protected speech. LIU Post must also explain the circumstances by which an administrator obtained and reviewed Venigalla's November 2017 paper. LIU Post cannot promise in good faith that it "supports the rights of individuals . . . to free speech" while calling in students whose speech offends or upsets administrators or campus community members.

We request a response to this letter by September 14, 2018.[4]

[4] We have enclosed with this letter a FERPA waiver executed by Venigalla, permitting LIU Post to freely discuss his concerns with FIRE.

Sincerely,

Sarah McLaughlin
Senior Program Officer, Legal and Public Advocacy

Encl.

cc:
Ashley John, Director of Student Engagement
Sandra Richard, Executive Assistant to the President
Nicole Thomas, Associate Director of Campus Life