



November 9, 2020

President Wendy Wintersteen
Iowa State University
Office of the President
515 Morrill Road
1750 Beardshear Hall
Ames, Iowa 50011

URGENT

Sent via Electronic Mail (wwinters@iastate.edu)

Dear President Wintersteen:

The Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

FIRE is concerned for the state of First Amendment rights at Iowa State University in light of its response to a recent social media post by the Iowa State College Republicans. That response pledges punishment of any "suggestion of armed activity." The First Amendment exceptions for true threats and incitement do not sweep so broadly as to permit punishment of this tweet or any similar "suggestion." As a public university bound by the First Amendment, Iowa State may not punish students for political expression that falls within the First Amendment's protection.

I. Iowa State Pledges to Punish Any "Suggestion" of "Armed Activity"

The following is our understanding of the pertinent facts, which is based on public information. We appreciate that you may have additional information to offer and invite you to share it with us.

The Iowa State College Republicans are a recognized student organization at Iowa State. Other recognized organizations include the Rifle and Pistol Club (which meets weekly to

“practice rifle and pistol marksmanship”),¹ Students for 2A (which educates students on the “safe handling and practical applications of firearms”),² the Iowa State Trap and Skeet Club (promoting participation and instruction in “Shotgun sports”),³ the Kendo Club (practicing an “armed Japanese martial art”),⁴ as well as the Army ROTC and similar organizations relating to service in the armed forces.⁵

On November 7, shortly after media outlets began projecting that Joe Biden would win the 2020 presidential election, the Iowa State College Republicans tweeted: “Everyone, you must arm up, expect these people to attempt to destroy your life, the elites want revenge on us.”⁶

On November 8, Iowa State responded to complaints via its official Twitter account:

University leaders are aware of the activity on the account and are taking steps to address conduct that violates university policy. Clearly, any offensive language/actions of these individuals do not reflect the values we hold at #IowaState.⁷

Later that day, Iowa State issued a statement reading, in pertinent part:

Iowa State University is aware of a social media post by one of its student organizations, encouraging others to ‘arm up,’ Any suggestion of armed activity by an Iowa State student organization is prohibited by university policy. Any conduct that violates university policy will be addressed in an appropriate manner.⁸

¹ IOWA STATE UNIV., STUDENT ORG. DATABASE: RIFLE & PISTOL CLUB, <https://www.stuorg.iastate.edu/403> (last visited Nov. 9, 2020).

² IOWA STATE UNIV., STUDENT ORG. DATABASE: STUDENTS FOR 2A, <https://www.stuorg.iastate.edu/3058> (last visited Nov. 9, 2020).

³ IOWA STATE UNIV., STUDENT ORG. DATABASE: TRAP & SKEET CLUB, <https://www.stuorg.iastate.edu/498> (last visited Nov. 9, 2020).

⁴ IOWA STATE UNIV., STUDENT ORG. DATABASE: KENDO CLUB, <https://www.stuorg.iastate.edu/kendoisu> (last visited Nov. 9, 2020).

⁵ IOWA STATE UNIV., STUDENT ORG. SEARCH, <https://www.stuorg.iastate.edu/organizations?search=rotc> (last visited Nov. 9, 2020).

⁶ Kylee Haueter, *Iowa State College Republicans post tweet encouraging people to “arm up” in response to Biden’s projected election win*, IOWA STATE DAILY (Nov. 8, 2020), https://www.iowastatedaily.com/news/iowa-state-college-republicans-post-tweet-encouraging-people-to-arm-up-in-response-to-bidens-projected-election-win-2020-presidential-race-results-ryan-hurley-matthew-delisi-university-police-department/article_e2a243a6.

⁷ Iowa State Univ. (@IowaStateU), TWITTER (Nov. 8, 2020, 1:52 PM), <https://twitter.com/IowaStateU/status/1325511408893775880>.

⁸ Haueter, *supra* note 6.

II. The College Republicans' Tweet is Protected by the First Amendment

It is well-established that Iowa State may not punish the expression of students or student organizations when it is protected by the First Amendment. This is particularly true when it comes to political expression, which is often tinged with rhetorical themes of violence.

A. *The First Amendment Binds Iowa State University.*

It has long been settled law that the First Amendment is binding on public schools like Iowa State.⁹ Accordingly, the decisions and actions of a public university—including the pursuit of disciplinary sanctions,¹⁰ recognition and funding of student organizations,¹¹ interactions with student journalists,¹² conduct of police officers,¹³ and maintenance of policies implicating student and faculty expression¹⁴—must be consistent with the First Amendment. Indeed, the United States Court of Appeals for the Eighth Circuit has ruled that student organizations at Iowa State University are entitled to protection under the First Amendment.¹⁵

B. *The First Amendment Protects Political Rhetoric Referencing Violence.*

Iowa State's pledge that it will punish any "suggestion of armed activity by an Iowa State student organization" because it is "prohibited by university policy" is a promise to violate its students' First Amendment rights. Although Iowa State has the authority to ban "well-defined and narrowly limited classes of speech"¹⁶ such as "true threats" and "incitement," the university's statement indicates an intention to punish a large amount of protected expression that does not fall within these narrow exceptions.

Political discourse has long been steeped in themes of violence. Perhaps most famously, Thomas Jefferson—a principal author of what ultimately became the First Amendment¹⁷—predicted that revolution and violence would be necessary to preserve liberty, writing: "The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. It is [its] natural manure."¹⁸ Because rhetoric tinged with violent themes often intersects with

⁹ *Healy v. James*, 408 U.S. 169, 180 (1972).

¹⁰ *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 667–68 (1973).

¹¹ *Bd. of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 221 (2000).

¹² *Stanley v. Magrath*, 719 F.2d 279, 282 (8th Cir. 1983); see also *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829–30 (1995).

¹³ *Glik v. Cunniffe*, 655 F.3d 78, 79 (1st Cir. 2011).

¹⁴ *Dambrot v. Central Mich. Univ.*, 55 F.3d 1177 (6th Cir. 1995).

¹⁵ *Gerlich v. Leath*, 861 F.3d 697, 709 (8th Cir. 2017).

¹⁶ *Chaplinsky v. New Hampshire*, 315 U.S. 568, 574 (1942).

¹⁷ *Everson v. Bd. of Educ.*, 330 U.S. 1, 11 (1947).

¹⁸ Letter from Thomas Jefferson to William Stephens Smith, Nov. 13, 1787, available at <https://founders.archives.gov/documents/Jefferson/01-12-02-0348>. See also, e.g., the license plate and state motto of New Hampshire, suggesting that residents "live free or die" in defense of liberty. *Wooley v. Maynard*, 430 U.S. 705, 722 (1977).

charged political expression, and the “language of the political arena . . . is often vituperative, abusive, and inexact,” the First Amendment requires an exacting standard to be met before a statement constitutes an unprotected “true threat” or “incitement.”¹⁹ Accordingly, courts approach “with extreme care” claims that “highly charged political rhetoric lying at the core of the First Amendment” falls into either category.²⁰

Under the First Amendment, a “true threat” is a statement through which “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.”²¹ This standard requires a showing that “a reasonable recipient would have interpreted as a serious expression of an intent to harm or cause injury to another.”²² Rhetorical hyperbole, particularly in the context of heated political expression, is insufficient.²³

Here, the College Republicans’ tweet—directed at no person in particular—does not on its face or in context indicate that the group intends to engage in any form of violence. It is, at most, a call to *acquire* firearms or other weapons, not a threat to use firearms in an unlawful manner. Further, the context of the statement, made soon after the outcome of a contentious presidential election to an unspecified online audience, demonstrates that is precisely the sort of political hyperbole that remains protected by the First Amendment. Indeed, the university’s own police department acknowledged that the tweet “might be a little alarming for some to read, but they do have the right” under the First Amendment.²⁴

Instead of threatening the *use* of weapons, the tweet is instead a call for others to take action. The perceived endorsement of violence does not amount to incitement, which requires both that the language “specifically advocate for listeners to take unlawful action” *and* that it be “directed to inciting or producing imminent lawless action and . . . likely to incite or produce such action.”²⁵

The tweet does not meet this standard. First, there is no indication that it would be unlawful for readers of the tweet to “arm up,” as acquiring firearms is a right protected by the Second

¹⁹ *Watts v. United States*, 394 U.S. 705, 708 (1969); *see also Burnham v. Ianni*, 119 F.3d 668, 671 (8th Cir. 1997) (finding that state university violated the First Amendment by removing photographs depicting its professors bearing weapons related to their academic interests).

²⁰ *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 926–27 (1982).

²¹ *Virginia v. Black*, 538 U.S. 343, 359 (2003).

²² *United States v. Mabie*, 663 F.3d 322, 332 (8th Cir. 2011) (internal quotations and citations omitted)

²³ *Watts*, 394 U.S. at 708 (man’s statement, after being drafted to serve in the Vietnam War—“If they ever make me carry a rifle the first man I want to get in my sights is L. B. J.”—was rhetorical hyperbole protected by the First Amendment, not a true threat to kill the president).

²⁴ Haueter, *supra* note 6.

²⁵ *Nwanguma v. Trump*, 903 F.3d 604, 609–10 (6th Cir. 2018) (then-candidate Trump’s repeated “get ‘em out of here” statements to a crowd at a rally, concerning protesters, did not constitute specific advocacy of violence, even if the statements could be understood as encouraging violence); *see also Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) (incitement standard requires a showing that speech was “directed to inciting or producing imminent lawless action and . . . likely to incite or produce such action.”).

Amendment.²⁶ Even assuming the tweet were directed to encouraging unlawful activity, the “mere *advocacy* of the use of force or violence does not remove speech from the protection of the First Amendment,”²⁷ and assertion of the “moral propriety or even moral necessity for a resort to force or violence” remains protected speech.²⁸ Second, speech encouraging others to engage in unlawful conduct meets the incitement standard only where it is intended to and likely to result in *imminent* lawless activity. A tweet exhorting others to “arm up” in the future is little more than “advocacy of illegal action at some indefinite future time,” which remains protected speech.²⁹

Iowa State’s intention to punish any “suggestion of armed activity” encompasses a vast array of protected expression, endangering the free speech rights of not only the College Republicans, but the many student groups dedicated to discussing issues regarding weapon use. For example, will Iowa State initiate disciplinary proceedings against its Ames Area Collegiate Hunting Club for planning hunting trips,³⁰ its Archery Club for seeking longbow upgrades,³¹ or any other student organization promoting the use of weapons?³² The First Amendment forbids Iowa State from outlawing the “suggestion” of taking up arms.

III. Iowa State Must Promise to Refrain from Punishing Students Over Their Protected Expression

FIRE calls on Iowa State to refrain from punishing its student groups for expression protected by the First Amendment. We request receipt of a response to this letter no later than the close of business on Friday, November 14, confirming that Iowa State will not pursue discipline over the College Republicans’ tweet.

Sincerely,



²⁶ *McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010).

²⁷ *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 927 (1982) (emphasis in original).

²⁸ *Noto v. United States*, 367 U.S. 290, 297–98 (1961).

²⁹ *Hess v. Indiana*, 414 U.S. 105, 107–108 (1973) (statement during an antiwar demonstration that “[w]e’ll take the fucking street later” was not incitement).

³⁰ IOWA STATE UNIV., STUDENT ORG. DATABASE: AMES AREA COLLEGIATE HUNTING CLUB <https://www.stuorg.iastate.edu/2049> (last visited Nov. 9, 2020),

³¹ IOWA STATE UNIV., STUDENT ORG. DATABASE, ARCHERY CLUB, <https://www.stuorg.iastate.edu/isac> (last visited Nov. 9, 2020).

³² IOWA STATE UNIV., STUDENT ORG. DATABASE: COLLEGIATE CHAPTER OF PHEASANTS FOREVER, <https://www.stuorg.iastate.edu/21> (last visited Nov. 9, 2020).

Zach Greenberg
Senior Program Officer, Individual Rights Defense Program

Cc: Michael Norton, University Counsel