



January 12, 2021

Chancellor Patrick Gallagher  
University of Pittsburgh  
Office of the Chancellor  
4200 Fifth Avenue  
Pittsburgh, Pennsylvania 15260

*Sent via Electronic Mail (chancellor@pitt.edu)*

Dear Chancellor Gallagher:

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 about the state of free expression and academic freedom at the University of Pittsburgh ("Pitt") in light of its punishment of Associate Professor of Medicine Norman C. Wang over his academic writing. Pitt's actions violate its obligation to uphold the First Amendment rights of its professors, and Wang's punishment must be rescinded.

**I. Pitt Punished Wang Over Viewpoints Expressed in His Academic Writing**

The following is our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us. Please find enclosed an executed waiver authorizing you to share information with FIRE. However, if the facts here are substantially accurate, Pitt's punishment of Wang over his academic writing is inconsistent with the university's obligations as a public institution bound by the First Amendment.

Norman C. Wang is an Associate Professor of Medicine at the University Pittsburgh Department of Medicine, specializing in cardiology. On March 24, Wang published an academic article in the Journal of the American Heart Association (JAHA) discussing the racial and ethnic composition of the cardiology workforce.<sup>1</sup> The paper drew opposition from

---

<sup>1</sup> Norman C. Wang, *Diversity, Inclusion, and Equity: Evolution of Race and Ethnicity Considerations for the Cardiology Workforce in the United States of America From 1969 to 2019*, J. AM. HEART ASS'N, Mar. 24, 2020, available at <https://www.ahajournals.org/doi/10.1161/JAHA.120.015959>.

medical practitioners on Twitter, with much of the criticism focusing on Wang's arguments regarding diversity initiatives.<sup>2</sup>

On July 31, in an email to other faculty members, Pitt Division of Cardiology Chairman Samir Saba stated that Wang is no longer the director of the electrophysiology training program, citing Saba's "deep disagreement" with Wang's paper, and adding that "the views expressed in the paper are incompatible with our core beliefs about who we train and how we train them."<sup>3</sup> On August 1, Saba informed Wang that he had been removed from his directorship, explaining that "[w]e believe the views expressed in this paper are incompatible with your ability to function in a leadership position within HVI [Heart and Vascular Institute]."<sup>4</sup>

On August 4, Cardiology Fellowship Program Director Kathryn Berlacher informed Wang that he was being removed from all teaching duties:

Due to your recent publications, expressed beliefs and your ongoing stance to defend them, we have had to evaluate the teaching environment that you create and the safety of our learners when you are in a superior or authoritative role. After discussion with our fellows and division leaders as well as GME [General Internal Medicine] leadership, it is clear to us that any educational environment in which you partake is inherently unsafe, increasing our learners' risk for undue bias and harm.

Thus, we can no longer have you serve in any medical education role in the institution, specifically pertaining to the general cardiology and electrophysiology fellows, while also including medical students and residents. This relates to any and all supervisory and evaluative capacities for trainees, including but not limited to serving as the attending of record on service or during a procedure, teaching didactics, precepting clinics, and mentoring research projects.<sup>5</sup>

On August 6, JAHA retracted Wang's article, stating: "The author's institution, the University of Pittsburgh Medical Center (UPMC), has notified the Editor-in-Chief that the article contains many misconceptions and misquotes and that together those inaccuracies,

---

<sup>2</sup> See, e.g., Harriette Van Spall (@hvanspall), TWITTER (Aug. 2, 2020, 7:12 PM), <https://twitter.com/hvanspall/status/1290062937055301632>; Ann Marie Navar (@AnnMarieNavar), TWITTER (Aug. 3, 2020, 9:10 AM), <https://twitter.com/AnnMarieNavar/status/1290273799355547648>.

<sup>3</sup> Email from Saba Samir, Division of Cardiology Chairman, to Heart and Vascular Institute faculty (July 31, 12:22 PM) (on file with author).

<sup>4</sup> Email from Saba Samir, Chairman, Division of Cardiology, to Wang (Aug. 31, 2020, 1:04 PM) (on file with author).

<sup>5</sup> Email from Kathryn Berlacher, Director, Cardiology Fellowship Program, to Wang (Aug. 4, 2020, 10:58 AM) (on file with author).

misstatements, and selective misreading of source materials void the paper of its scientific validity.”<sup>6</sup> JAHA did not specify the “misconceptions” or “misquotes” identified by UPMC.

## **II. Pitt’s Punishment of Wang Over His Academic Writings Violates the First Amendment**

As a public institution bound by the First Amendment and committed to academic freedom, Pitt may not punish its professors for the viewpoints expressed in their academic writings.

A commitment to academic freedom embraces breathing room for a professor to choose whether, when, and how to teach, write, or discuss material germane to their subject matter expertise, even when that material might be deeply offensive to others. Accordingly, the viewpoints Wang expressed in an academic article on the demographics of the cardiology workforce is well within the scope of the academic freedom to which Pitt commits itself, within the scope of academic freedom protected by the First Amendment, and may not be the subject of university punishment.

### ***A. Pitt is a Public Institution Bound by The First Amendment, and an Academic Institution That Promises to Uphold Academic Freedom.***

It has long been settled law that the First Amendment is binding on public colleges like Pitt.<sup>7</sup> Accordingly, the decisions and actions of a public university—including the pursuit of disciplinary sanctions,<sup>8</sup> recognition and funding of student organizations,<sup>9</sup> interactions with student journalists,<sup>10</sup> conduct of police officers,<sup>11</sup> and maintenance of policies implicating student and faculty expression<sup>12</sup>—must be consistent with the First Amendment.

### ***B. The First Amendment Protects Academic Freedom.***

Numerous courts have recognized that the First Amendment’s protection of freedom of speech is closely intertwined with academic freedom; indeed, “free speech is of critical importance [at universities] because it is the lifeblood of academic freedom[.]”<sup>13</sup> Universities

<sup>6</sup> Journal of the American Heart Association, *Retraction to: Diversity, Inclusion, and Equity: Evolution of Race and Ethnicity Considerations for the Cardiology Workforce in the United States of America From 1969 to 2019* (Aug. 6, 2020), <https://www.ahajournals.org/doi/10.1161/JAHA.119.014602>.

<sup>7</sup> *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).

<sup>8</sup> *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 667–68 (1973).

<sup>9</sup> *Bd. of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 221 (2000).

<sup>10</sup> *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).

<sup>11</sup> *Glik v. Cunniffe*, 655 F.3d 78, 79 (1st Cir. 2011).

<sup>12</sup> *Dambrot v. Central Mich. Univ.*, 55 F.3d 1177 (6th Cir. 1995).

<sup>13</sup> *DeJohn v. Temple Univ.*, 537 F.3d 301, 314 (3d Cir. 2008).

“occupy a special niche in our constitutional tradition,”<sup>14</sup> and “academic freedom [is an area] in which government should be extremely reticent to tread.”<sup>15</sup> As the United States Supreme Court explained in overturning legal barriers to faculty members with “seditious” views:

Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern to the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.<sup>16</sup>

As Supreme Court Justice David Souter has noted, the “ostensible domain” of speech that government employers cannot control “is spacious enough to include even the teaching of a public university professor,” and the right of employers to regulate employee expression must not “imperil First Amendment protection of academic freedom in public colleges and universities.”<sup>17</sup>

Indeed, “the argument that teachers have no First Amendment rights when teaching, or that the government can censor teacher speech without restriction” is “totally unpersuasive.”<sup>18</sup> Expression that, “however repugnant,” is “germane to the classroom subject matter” is “protected by the First Amendment.”<sup>19</sup> The First Amendment protects not only speech in a classroom, but also expression that is “*related to scholarship or teaching*.”<sup>20</sup>

### *C. Pitt Promises to Uphold the Academic Freedom of Its Professors.*

Beyond its legal obligations under the First Amendment, Pitt has committed itself to academic freedom, and it is morally and legally obligated to adhere to these commitments.

Pitt’s commitment to academic freedom encompasses a professor’s right to produce scholarly articles. Its “Statement on Academic Freedom” proclaims that:

[T]he academic freedom of all members of the University centers on the right of individual scholars to use their professional expertise to select and pursue lines of enquiry, to come to

<sup>14</sup> *Grutter v. Bollinger*, 539 U.S. 306, 329 (2003).

<sup>15</sup> *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957).

<sup>16</sup> *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967).

<sup>17</sup> *Garcetti v. Ceballos*, 547 U.S. 410, 438 (2006) (Souter, J., dissenting). Following Justice Souter’s invitation, a number of courts have recognized an academic freedom exception to *Garcetti*’s general rule that public employers may regulate employees when they speak pursuant to their official duties. *Id.* at 421. *See, e.g., Demers v. Austin*, 746 F.3d 402, 406 (9th Cir. 2014), *Adams v. Trs. of the Univ. of N.C.-Wilmington*, 640 F.3d 550, 562 (4th Cir. 2011), *Van Heerden v. Bd. of Supervisors of La. State Univ.*, No. 3:10-cv-155, 2011 U.S. Dist. LEXIS 121414, at \*19–20 (M.D. La. Oct. 20, 2011), *Sheldon v. Dhillon*, No. C-08-03438, 2009 U.S. Dist. LEXIS 110275, at \*14 (N.D. Cal. Nov. 25, 2009).

<sup>18</sup> *Hardy v. Jefferson Cmty. College*, 260 F.3d 671, 680 (6th Cir. 2001).

<sup>19</sup> *Id.* at 683.

<sup>20</sup> *Demers v. Austin*, 746 F.3d 402, 406 (9th Cir. 2014) (emphasis added).

conclusions and to formulate scholarly opinions on the questions that they study, and to translate their knowledge and understanding into effective instruction appropriately grounded in principles and practices of disciplines and professions.<sup>21</sup>

When institutions of higher education make express commitments to academic freedom, they are legally obligated to adhere to those commitments.<sup>22</sup> Pitt has made strong commitments both to allow faculty members the breathing room provided by basic tenets of academic freedom, as well as to actively protect and defend that freedom, and is contractually bound to uphold those commitments.

***D. Punishing a Faculty Member on the Basis that Scholarly Writing or Research is Offensive Violates Academic Freedom and the First Amendment.***

The ability to engage in academic discussion requires that faculty members be afforded the freedom to discuss, touch upon, and view materials that may shock or offend others. Although the expression here may be offensive to those who read it, it remains protected by the First Amendment.

In *Hardy*, the United States Court of Appeals for the Sixth Circuit confronted the termination of a Caucasian adjunct instructor who led a “classroom discussion examining the impact of such oppressive and disparaging words as ‘nigger’ and ‘bitch.’”<sup>23</sup> The Sixth Circuit upheld the district court’s finding that “the use of the 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>24</sup> In denying qualified immunity to the administrators responsible for the termination, the court held that “reasonable school officials should have known that such speech, when it is germane to the classroom subject matter and advances an academic message, is protected by the First Amendment.”<sup>25</sup>

Similarly, the United States Court of Appeals for the Ninth Circuit explained that faculty members’ expression of offensive viewpoints on matters of public concern will rarely amount to actionable harassment.<sup>26</sup> In ruling on a hostile environment claim prompted by a math professor’s “racially-charged” emails, which were sent to a listserv that reached every employee in his community college district, the court expressed concern

---

<sup>21</sup> UNIV. OF PITTSBURGH, STATEMENT ON ACADEMIC FREEDOM (June 4, 2003),

<https://www.provost.pitt.edu/statement-academic-freedom#:~:text=After%20its%20review%20of%20the,select%20and%20pursue%20lines%20of.>

<sup>22</sup> See, e.g., *McAdams v. Marquette Univ.*, 914 N.W.2d 708, 739 (Wis. 2018) (private Catholic university breached contract with professor over blog post because, by virtue of its adoption of the 1940 AAUP Statement of Principles on Academic Freedom, the blog post was “a contractually-disqualified basis for discipline”).

<sup>23</sup> *Hardy*, 260 F.3d at 674 (cleaned up).

<sup>24</sup> *Id.* at 678.

<sup>25</sup> *Id.* at 683.

<sup>26</sup> *Rodriguez v. Maricopa Cnty. Cmty. Coll. Dist.*, 605 F.3d 703, 710 (9th Cir. 2009).

that limitations on faculty members' expression would cast a chilling effect on higher education, which has "historically fostered" the exchange of views.<sup>27</sup>

Berlacher expressed concern that Wang's scholarship threatened the safety of the students in his classroom, implying that the views expressed in his scholarship raise concerns about discrimination or harassment. As the court in *Rodriguez* explained, absent credible complaints of such unlawful conduct, this concern is misplaced. Expression of offensive viewpoints alone, in both teaching and scholarship, is protected by principles of academic freedom and does not, without more, constitute evidence of discriminatory conduct. As the Ninth Circuit explained, "[t]he desire to maintain a sedate academic environment does not justify limitations on a teacher's freedom to express himself on political issues in vigorous, argumentative, unmeasured, and even distinctly unpleasant terms."<sup>28</sup>

Indeed, the principle of freedom of speech does not exist to protect only non-controversial expression. Rather, it exists precisely to protect speech that some or even most find controversial or offensive. The Supreme Court has explicitly held, in rulings spanning decades, that speech cannot be restricted simply because it offends others, on- or off-campus.<sup>29</sup> The freedom to offend some listeners is the same freedom to move or excite others. As the Supreme Court observed over a half century ago, speech "may indeed best serve its high purpose when it induces a condition of unrest . . . or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea."<sup>30</sup> The Court reiterated this fundamental principle in 2011, proclaiming that "[a]s a Nation we have chosen . . . to protect even hurtful speech on public issues to ensure that we do not stifle public debate."<sup>31</sup>

This principle applies with particular strength to public universities—like Pitt—where students and faculty engage in debate and discussion about the issues of the day in pursuit of advanced knowledge and understanding. This dialogue may encompass speech that offends some, many, or even most. For example, the Supreme Court upheld as protected speech a student newspaper's front-page use of a vulgar headline ("Motherfucker Acquitted") and a "political cartoon . . . depicting policemen raping the Statue of Liberty and the Goddess of Justice."<sup>32</sup> These images were no doubt deeply offensive to many at a time of political polarization and civil unrest, yet "the 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.'"<sup>33</sup>

---

<sup>27</sup> *Id.* at 708.

<sup>28</sup> *Id.* at 708–09 (quoting *Adamian v. Jacobsen*, 523 F.2d 929, 934 (9th Cir. 1975)) (cleaned up).

<sup>29</sup> See, e.g., *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.")

<sup>30</sup> *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949).

<sup>31</sup> *Snyder v. Phelps*, 562 U.S. 443, 461 (2011).

<sup>32</sup> *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 667–68 (1973).

<sup>33</sup> *Id.*

Wang’s paper expressed his opinion on policies affecting the demographics of the cardiology profession—a public issue that is undoubtedly relevant to his academic expertise. Although JAHA and Pitt couch their actions in allegations about the paper’s academic integrity, their statements and actions indicate that Pitt’s punishment of Wang rests entirely on the university’s opposition to the viewpoints he expressed.

As of the date of this letter—more than six months after the paper’s publication—Pitt has not provided Wang with an account of the alleged inaccuracies of his paper, nor has it initiated the proper process for resolving such accusations.<sup>34</sup> Pitt has not asked Wang to account for, explain, or correct any potential inaccuracies, as required by its robust procedures for addressing academic misconduct.<sup>35</sup> Pitt’s failure to afford Wang the protections provided for in these procedures, or detail any specific violations of university policy, demonstrates that its punishment of Wang rests entirely on its “deep disagreement” with his “expressed beliefs.”<sup>36</sup>

### III. Pitt Must Rescind Its Punishment of Wang Based on His Viewpoints

Pitt has made laudable a commitment to protect the academic rights of its faculty. FIRE calls on Pitt to keep this commitment—and to abide by its First Amendment obligations—by rescinding its punishment of Wang for expressing his ideas.

We request receipt of a response to this letter no later than the close of business on January 26, 2021.

Sincerely,



Zachary Greenberg  
Senior Program Officer, Individual Rights Defense Program

Cc: Geovette E. Washington, Senior Vice Chancellor and Chief Legal Officer

Encl.

---

<sup>34</sup> Although Pitt has not detailed these alleged inaccuracies, JAHA’s retraction of Wang’s paper includes “[a] sample of the misconceptions and misquotes identified in correspondence from UPMC” and references “a series of responses to this article.” *Retraction, supra* note 6. However, the responses do not elaborate on the alleged academic misconduct, and Pitt has thus far failed to provide Wang with more information regarding the paper’s purported inaccuracies.

<sup>35</sup> See UNIV. OF PITTSBURGH, AC 39 UNIV. OF PITTSBURGH POLICY (revised Sept. 2005), <https://www.policy.pitt.edu/sites/default/files/Policies/Academic/Policy%20AC%2039.pdf> (describing procedures for resolving grievances regarding academic integrity).

<sup>36</sup> See Samir, *supra* note 3.