



April 19, 2022

John deSteiguer
President
Oklahoma Christian University
2501 E. Memorial Road
Oklahoma City, Oklahoma 73013

Sent via U.S. Mail and Electronic Mail (john.desteiguer@oc.edu)

Dear President deSteiguer:

The Foundation for Individual Rights in Education, a nonpartisan nonprofit dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses, is concerned by Oklahoma Christian University's abrupt, process-free termination of Professor Michael O'Keefe over a talk by a guest speaker during one of O'Keefe's classes. As OC's actions are irreconcilable with its morally and legally binding commitments to free expression and due process, FIRE calls on OC to reaffirm those commitments and immediately reinstate O'Keefe.

I. Oklahoma Christian Fires O'Keefe Based on Guest Speaker Appearance

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. To these ends, please find enclosed an executed privacy waiver authorizing you to share information about this matter.

At the time of his firing, Michael O'Keefe was a tenured OC professor. On March 1, 2022, guest speaker Scott Hale gave a presentation in O'Keefe's "The Business of Branding Yourself" class. Hale spoke on the theme of developing resilience and character, discussing his experience growing up in Oklahoma and the difficulties he had coming to terms with his identity as a gay man.¹ At one point during the talk, Hale recounted a story of playing "truth or dare" as a young boy to illustrate the peer pressure he experienced and his desire to fit in with the "cool boys." He said that another boy had dared Hale to "show everyone your dick," and he accepted the dare. At another point, Hale noted the strict gender expectations in the Hooker, Oklahoma, community where he grew up, "the most important [of which] was don't ever be a boy who acts like a girl." Hale noted this was reflected in the different names of the school

¹ Prepared remarks of Scott Hale (on file with author).

district's boys' and girls' athletic teams: the Hooker Bulldogs and the Hooker Lady Dogs, wryly adding, "The Hooker Bitches were a formidable team."

On March 7, 2022, OC delivered O'Keefe a letter immediately terminating his employment "based on gross misconduct, conduct contrary to the mission and values of Oklahoma Christian University, and disregard of the policies and values of the university."² The letter contained no factual allegations to support these charges and constituted the first notice O'Keefe received concerning any alleged misconduct.

On March 16, in response to media coverage of O'Keefe's firing, Chief Legal Counsel Stephen Eck emailed OC faculty and staff to explain the university's decision. That email said the "employment termination process" was prompted by complaints about Hale's stories and "inappropriate and graphic language of a sexual nature," including "telling the class about his history of exposing his genitals to others and leading others to participate in a game he called 'truth or dick.'"³ Eck also claimed that after the class, "it appeared that O'Keefe attempted to squelch students' reporting or complaining about the content by intimidating a student and dismissing rather than addressing student concerns," and that O'Keefe discouraged complaints by claiming he had a "special relationship with university leadership and he used that special relationship to his advantage."⁴

O'Keefe is appealing the termination decision.

II. OC's Termination of O'Keefe Violates Its Commitments to Free Expression and Due Process

OC's termination of O'Keefe disregards his due process rights as a tenured professor and is difficult to square with the university's promises of academic freedom, which any reasonable faculty member in O'Keefe's position would understand to protect the classroom speech at issue.

A. OC's Commitment to Academic Freedom Protects O'Keefe's Hosting of a Guest Speaker

OC's Academic Policy Manual makes binding commitments to faculty members' academic freedom,⁵ extolling these commitments as consistent with the institution's religious mission. OC's Statement of Academic Freedom and Responsibility states the "mission of the University *demand*s freedom of inquiry and expression."⁶ To that end, "All members of the Christian academic community, and especially the Faculty, must feel safe to pursue ideas, to challenge

² Letter from Stephen Eck, Chief Legal Officer, Okla. Christian Univ., to Michael O'Keefe, Mar. 7, 2022 (on file with author).

³ Email from Eck to Okla. Christian Univ. Faculty and Staff (Mar. 16, 2022, 4:54 PM) (on file with author).

⁴ *Id.*

⁵ See *Tsotaddle v. Absentee Shawnee Hous. Auth.*, 20 P.3d 153, 158 (Okla. Civ. App. 2000) (recognizing employee manual may form the basis of contract between employer and employee).

⁶ OKLA. CHRISTIAN UNIV., 2020 ACADEMIC POLICY MANUAL Art. V, § 5.01(c) ["ACADEMIC POLICY MANUAL"] (emphasis added) (on file with author).

popular opinion, and to explore evidence wherever it may lead.”⁷ OC recognizes the freedom of faculty to “discuss controversial subjects and viewpoints relevant to their academic area without undue restriction or fear of reprisal from sources inside the University.”⁸ A “faculty member may invite speakers of all political ideologies to speak in their classes on topics relevant to their subject matter.”⁹

Although OC reserves the authority to limit academic freedom “when behavior or expression seriously and adversely affects the University mission,” these limitations “should be narrowly construed so as not to impede the interchange of ideas.”¹⁰

Whatever expressive limits such a vague carveout purports to create, it cannot reasonably be understood to cancel the explicitly enumerated academic freedom rights guaranteed to OC faculty, including the right to host controversial speakers and to discuss controversial subjects without “fear of reprisal.” It is nonsensical for OC to declare its mission “demands” these freedoms and then, when a faculty member like O’Keefe exercises them, fire him for “conduct contrary to the mission and values” of the university. If OC wishes to subordinate academic freedom to other values, it must do so clearly and consistently, with precise and readily comprehensible limits on expression, so faculty and students have fair notice of these limits.

Hale’s speech about overcoming personal challenges and developing one’s identity was indubitably relevant to a course about “branding yourself.” OC cannot punish O’Keefe for the content of a guest speaker’s lecture that is relevant to the subject matter of a course without violating O’Keefe’s reasonable expectations of the academic freedom afforded to faculty by OC policy.¹¹

OC also claims it “appeared” O’Keefe “attempted to squelch students’ reporting or complaining” about the content of Hale’s speech, but O’Keefe denies these allegations, and OC’s use of the word “appeared” betrays its own uncertainty of their truthfulness. Given the absence of any process before O’Keefe was fired, the exact nature of these alleged comments remains unadjudicated and unknown. OC’s promises of expressive freedom would not preclude it, for example, from punishing O’Keefe for threatening retaliation against students seeking to exercise their own speech rights. But the promises would surely protect O’Keefe simply expressing his view of the merit of any complaints about Hale’s speech. The factual

⁷ *Id.*

⁸ ACADEMIC POLICY MANUAL Art. V, § 5.02(a); *accord Hardy v. Jefferson Cmty. Coll.*, 260 F.3d 671 (6th Cir. 2001) (under First Amendment, academic freedom protects even offensive classroom language when it is germane to the subject matter of the course); AM. ASS’N OF UNIV. PROFESSORS, 1940 STATEMENT OF PRINCIPLES ON ACADEMIC FREEDOM AND TENURE WITH 1970 INTERPRETIVE COMMENTS, <https://www.aaup.org/file/1940%20Statement.pdf> [<https://perma.cc/WR3D-986Q>] (“Controversy is at the heart of the free academic inquiry[.]”).

⁹ ACADEMIC POLICY MANUAL Art. V, § 5.02(e).

¹⁰ *Id.* § 5.02(f)(1).

¹¹ Moreover, OC’s characterization of Hale’s anecdote about being pressured by peers as a child to expose himself during a game of “truth or dare” as “telling the class about his history of exposing his genitals to others and leading others to participate in a game he called ‘truth or dick’” is objectively unreasonable and misleading.

dispute over what O’Keefe said makes all the more important OC’s obligation to provide him due process, including a meaningful opportunity to tell his side of the story.

B. OC’s Termination of O’Keefe Without Any Process Is Contrary to University Policy and the Ordinary Understanding of Tenure

Even granting the possibility that O’Keefe engaged in misconduct warranting termination, it is incumbent on OC to afford O’Keefe—a tenured professor—due process before imposing such a severe sanction. The Academic Policy manual establishes robust procedures for dismissal of tenured faculty—procedures designed to determine the truth of allegations and whether they justify sanctions *before* those sanctions are imposed.¹² The factual dispute over what exactly O’Keefe said to his students underscores the critical importance of providing him due process.

The 2020 Academic Policy Manual provides that when the Chief Academic Officer (CAO) proposes to terminate a tenured faculty member for personal circumstances, including conduct contrary to the mission and purposes of the university, the faculty member must have an opportunity to “immediately request in writing that the Rank and Tenure Committee review and comment on the proposal, within ten (10) business days of receiving notice of the proposal.”¹³ The CAO “must inform the Faculty member in writing of the reason for the dismissal before any hearing occurs.”¹⁴ The faculty member will then “have the opportunity to speak on his or her own behalf before all bodies and individuals reviewing the Chief Academic Officer’ decision,” and may choose to have an attorney or other person accompany him during the hearing.¹⁵ If, after all of that, OC decides to terminate the faculty member, the CAO must “inform the Faculty member of the decision in writing and advise the Faculty member of the specific reasons for that decision.”¹⁶

OC revised the Academic Policy Manual in 2021 to state that Rank and Tenure Committee review is unavailable for charges of “gross misconduct” or “conduct contrary to the mission and purposes of the University”—however, retroactive application of this provision to faculty members like O’Keefe, who secured tenure before the manual was revised to remove this procedural safeguard, is fundamentally unjust.

At a minimum, O’Keefe was entitled to the basic procedural protections of prior notice of the charges—including an explanation of *how* his speech or conduct allegedly violated OC policy—

¹² The United States Supreme Court’s interpretations of the Due Process Clause have recognized the critical importance of due process for those facing deprivations of life, liberty, or property. *See, e.g., Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (“The right to be heard before being condemned to suffer grievous loss of any kind . . . is a principle basic to our society. The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.”) (cleaned up); *see also Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 171 (1951) (Frankfurter, J., concurring) (“The validity and moral authority of a conclusion largely depend on the mode by which it was reached. . . . No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it.”).

¹³ ACADEMIC POLICY MANUAL Art. V, § 7.14(B).

¹⁴ *Id.* § 7.14(C).

¹⁵ *Id.* § 7.14(D), (E).

¹⁶ *Id.* § 7.14(F).

and a meaningful opportunity to respond. He received neither. OC's refusal to provide O'Keefe *any* process turns the concept of tenure on its head. The purpose of tenure is to ensure faculty members' continued employment is not subject to the whims of administrators or outside observers who may object to a faculty member's protected exercise of academic freedom.¹⁷ By arrogating to itself a new authority to fire a tenured professor without any process whatsoever, simply by labeling something he allegedly said or did as "gross misconduct" or "conduct contrary to the mission and purposes of the University" (offenses OC does not define), OC does an end-run around tenure protections and effectively nullifies its promises of academic freedom.

Although O'Keefe has an opportunity to appeal his dismissal, that does not make up for the egregious lack of process that preceded it. Not only must O'Keefe now start from a presumption of guilt, reversing the burden of proof that is OC's to bear, there is also no indication he will receive a hearing or any other procedural safeguards.

III. OC Must Immediately Reinstate O'Keefe

OC's firing O'Keefe without process is an abdication of its legal and moral responsibilities. The absence of process will leave faculty, students, and the public without confidence in the accuracy or legitimacy of OC's allegations against O'Keefe, not to mention OC's Academic Policy Manual, and suggests OC is cognizant that its assertions about O'Keefe cannot withstand scrutiny.

OC must immediately reinstate O'Keefe and ensure any investigation of alleged wrongdoing fully complies with OC's policies governing academic freedom and due process. We request receipt of a response to this letter no later than the close of business on May 3, 2022, confirming that OC is rescinding O'Keefe's termination.

Sincerely,



Aaron Terr
Senior Program Officer, Individual Rights Defense Program

Cc: Stephen Eck, Chief Legal Officer
Jeff McCormack, Ph.D., Chief Academic Officer

Encl.

¹⁷ *Tenure*, AM. ASS'N OF UNIV. PROFESSORS, <https://www.aaup.org/issues/tenure> [<https://perma.cc/4YNM-TSLZ>] (last visited Apr. 5, 2022) ("The principal purpose of tenure is to safeguard academic freedom.").

Authorization and Waiver for Release of Personal Information

I, Michael O'Keefe, do hereby authorize Oklahoma Christian University (the "Institution") to release to the Foundation for Individual Rights in Education ("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 in Education, 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 in Education, 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.

DocuSigned by:



Signature

3/31/2022

Date