



April 26, 2022

David R. Anderson  
Office of the President  
St. Olaf College  
1520 St. Olaf Avenue  
Northfield, Minnesota 55057

**URGENT**

*Sent via U.S. Mail and Electronic Mail (anderson@stolaf.edu)*

Dear President Anderson:

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 St. Olaf College's rescission of its appointment of Edmund Santurri as Morrison Family Director of the Institute for Freedom and Community. It is concerning that St. Olaf based its decision on objections to speakers Santurri invited to campus, because while some at the school may have been offended by some of those speakers' opinions, Santurri was exercising the academic freedom and expressive rights St. Olaf promises its faculty. Indeed, as the Director of an Institute with the stated mission of encouraging debate and discussion on campus, any reasonable faculty member would understand this role to not only *permit* but to *require* inviting controversial scholars to St. Olaf's campus.

Given the college's laudable commitments to free expression and academic freedom, St. Olaf must ensure that Santurri's academic freedom and expressive rights are henceforth respected and assure faculty that they will not face institutional punishment for exercising those rights.

**I. St. Olaf Removes Santurri as Institute Director Following Objections to Invited Speakers**

The following reflects our understanding of the pertinent facts, though we appreciate you may have additional information and invite you to share it with us.

Edmund Santurri is a Professor of Religion and Philosophy and the Morrison Family Director at St. Olaf's Institute for Freedom and Community ("Institute Director").<sup>1</sup> The Institute's

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<sup>1</sup> Edmund Santurri, ST. OLAF COLL., <https://www.stolaf.edu/profile/santurri> (last visited Apr. 21, 2022).

mission is to “shape America’s future by educating students with a passion for public affairs and a commitment to free inquiry and the search for truth.”<sup>2</sup> Its goals include supporting “free inquiry and free and spirited expression,” as well as offering “opportunities to study and debate these ideas and issues” using “resources to enliven the discussion.”<sup>3</sup> Santurri’s July 14, 2021, appointment letter extended his appointment as Institute Director through August 31, 2023.<sup>4</sup>

On February 16, 2022, the Institute hosted an event titled “The Point of View of the Universe: A Philosophical Conversation with Peter Singer”<sup>5</sup> featuring the eponymous Australian moral philosopher and Princeton professor, who has faced criticism for comments some deem offensive toward disabled people.<sup>6</sup> The event led to controversy on campus, including criticism of Singer and of the Institute’s decision to invite him to speak.<sup>7</sup> Other Institute events, such as a speaking engagement featuring John McWhorter and a discussion of The New York Times’ 1619 Project, also received criticism.

Santurri alleges that after the Singer event, you came to his office and told him regents had complained to you about the event. You also reportedly said members of the presidential leadership team complained “it was not the time” to host the Singer, McWhorter, and 1619 Project events.

On March 28, at a meeting with Institute Advisory Board Chair John Grotting, you allegedly told Santurri that his appointment as Institute director was being rescinded. Later that day, Santurri emailed you and Grotting asking you to reconsider.<sup>8</sup>

On March 31, at a meeting between you and Santurri, you allegedly told him you would not reconsider the decision to rescind his appointment and said the decision reflected that he had created new enemies for the Institute during the spring term. Santurri ultimately accepted the removal, but requested appointment as a member of the Institute Advisory Board by the chair of the St. Olaf College Board of Regents. That request was denied.

On April 20, you informed St. Olaf faculty and staff that the college would launch a search for the next Institute Director among current members of the St. Olaf community.<sup>9</sup> The next day,

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<sup>2</sup> Mission, Goals, and Principles, INST. FOR FREEDOM AND COMMUNITY, ST. OLAF COLL., <https://institute.stolaf.edu/about/mission> (last visited Apr. 21, 2022).

<sup>3</sup> Id.

<sup>4</sup> Letter from David R. Anderson, President, St. Olaf Coll., to Edmund Santurri, Morrison Family Director, Inst. for Freedom and Community, St. Olaf Coll., July 14, 2021 (on file with author).

<sup>5</sup> The Point of View of the Universe: A Philosophical Conversation with Peter Singer, INST. FOR FREEDOM AND COMMUNITY, ST. OLAF COLL., <https://institute.stolaf.edu/public-programs/2021-2022/singer> (last visited Apr. 21, 2022).

<sup>6</sup> Daniel A. Gross, *Peter Singer Is Committed to Controversial Ideas*, NEW YORKER (Apr. 25, 2021), <https://www.newyorker.com/culture/the-new-yorker-interview/peter-singer-is-committed-to-controversial-ideas>.

<sup>7</sup> Emails on file with author.

<sup>8</sup> Email from Edmund Santurri, Morrison Family Director of the Institute for Freedom and Community, Professor of Religion and Philosophy, St. Olaf Coll., to David Anderson and John Grotting (March 28, 2022) (on file with author).

<sup>9</sup> Email from Anderson to St. Olaf Faculty and Staff (Apr. 20, 2022, 9:11 AM) (on file with author).

the Institute hosted an event featuring Gary Saul Morson as the last scheduled public event with Santurri as Institute Director.<sup>10</sup>

## **II. St. Olaf's Removal of Santurri as Institute Director Violates Its Commitments to Free Expression**

A commitment to academic freedom must necessarily allow an educator to choose which speakers to invite to campus—even when views those speakers express might offend some. Santurri's selection of Institute speakers is well within the academic freedom to which St. Olaf purportedly commits. Removing Santurri for simply doing his job to offer an array of speakers with diverging viewpoints is difficult to square with not only the college's clear commitments but also the Institute's mission and goals.<sup>11</sup>

### ***A. St. Olaf Guarantees Professors the Right to Academic Freedom in its Policies and Through its Accreditation.***

While St. Olaf is not required as a private institution to commit to academic freedom or free expression by virtue of the First Amendment, it has made affirmative, robust commitments to faculty in these regards,<sup>12</sup> and is thus contractually and morally obligated to honor those promises.<sup>13</sup>

These commitments to academic freedom and freedom of expression are not merely aspirational; they are critical to St. Olaf's status as an accredited institution of higher learning. The college is accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools, whose standards require that accredited institutions be "committed to freedom of expression and the pursuit of truth in teaching and learning."<sup>14</sup> In committing to the ideals of academic freedom and freedom of expression, St. Olaf rightly hews to the United States Supreme Court's observation that "[t]he college classroom with its surrounding environs is peculiarly the 'marketplace of ideas.'"<sup>15</sup>

### ***B. St. Olaf's Commitment to Free Speech, Academic Freedom Precludes the University from Penalizing a Professor for His Choice of Speakers***

Because St. Olaf promises its faculty freedom of expression and academic freedom, applications of the First Amendment's guarantee of "the freedom of speech" provide guidance for what the college's promises mean in practice.

<sup>10</sup> Partisan Science and Other Fundamentalisms, INST. FOR FREEDOM AND COMMUNITY, ST. OLAF COLL., <https://institute.stolaf.edu/public-programs/2021-2022/morson> (last visited Apr. 21, 2022).

<sup>11</sup> Mission, Goals, and Principles, *supra* note 2.

<sup>12</sup> See e.g., ST. OLAF COLL., *Speaker Policy*, <https://wp.stolaf.edu/thebook/general/speakers> (last visited April 22, 2022). ("Free inquiry and free expression are essential attributes of the [St. Olaf] community of scholars.")

<sup>13</sup> See, e.g., *McAdams v. Marquette Univ.*, 2018 WI 88, ¶84 (2018) (private university breached its contract with a professor over a 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>14</sup> HIGHER LEARNING COMM'N, CRITERIA FOR ACCREDITATION (rev. June 2014), *available at* <https://www.hlcommission.org/Policies/criteria-and-core-components.html>.

<sup>15</sup> *Healy v. James*, 408 U.S. 169, 180 (1972) (internal citation omitted).

A commitment to free speech presupposes that some on campus may take offense to an expressed viewpoint. However, the “bedrock principle underlying” freedom of expression is that speech may not be limited “simply because society finds the idea itself offensive or disagreeable[.]”<sup>16</sup> It is this counter-majoritarian principle that protects “insulting, and even outrageous, speech in order to provide adequate breathing space” for public debate.<sup>17</sup> These precepts recognize that those imbued with governmental authority “cannot make principled distinctions” between what speech is sufficiently offensive or inoffensive to suppress.<sup>18</sup>

This principle of abstention is particularly important in higher education, where the exchange of views may sometimes be caustic, provocative, or inflammatory. Consider, for example, a student newspaper’s use of a vulgar headline (“Motherfucker Acquitted”) and a front-page “political cartoon . . . depicting policemen raping the Statue of Liberty and the Goddess of Justice.”<sup>19</sup> These words and images—published at the height of the Vietnam War—were no doubt deeply offensive to many at a time of deep polarization and unrest. Yet, as the Supreme Court held, “the mere dissemination of ideas,” however “offensive” to others, “may not be shut off in the name alone of ‘conventions of decency.’”<sup>20</sup>

This calculus is not modified when the speech “concern[s] sensitive topics” like disability rights, “where the risk of conflict and insult is high,”<sup>21</sup> nor do the college’s important obligations to address discriminatory harassment obligate it to censor expression, absent “something beyond the mere expression of views, words, symbols or thoughts” that some find offensive.<sup>22</sup> To the contrary, the freedom of expression promised by St. Olaf “embraces [the] heated exchange of views” in this context, where the “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>23</sup>

### **III. Conclusion**

Freedom of expression protects the expressive rights of faculty, faculty-invited speakers, and any criticism their speech may prompt. It protects your right as St. Olaf’s president, and the rights of all at your institution, to criticize, confront, or condemn controversial speech. But that same expressive freedom also prohibits you from censoring it.

Instead, dialogue is the proper approach to engaging with controversial speech on campus, and it must be allowed to continue. Academic freedom relies on this exchange of ideas, however sharp and uncomfortable that exchange sometimes may be, as that process is

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<sup>16</sup> *Snyder v. Phelps*, 562 U.S. 443, 458 (2011), citing *Texas v. Johnson*, 491 U.S. 397, 414 (1989).

<sup>17</sup> *Boos v. Barry*, 485 U.S. 312, 322 (1988) (cleaned up).

<sup>18</sup> *Cohen v. California*, 403 U.S. 15, 25 (1971).

<sup>19</sup> *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 667–68 (1973).

<sup>20</sup> *Id.*

<sup>21</sup> *Rodriguez v. Maricopa Cnty. Comm. Coll. Dist.*, 605 F.3d 703, 708 (9th Cir. 2009).

<sup>22</sup> U.S. Dep’t of Educ., Dear Colleague Letter from Gerald A. Reynolds, Assistant Sec’y for Civil Rights (July 28, 2003), <https://www2.ed.gov/about/offices/list/ocr/firstamend.html>.

<sup>23</sup> *Id.*

one of “more speech”<sup>24</sup> and of open discussion—the remedy preferred by the First Amendment over the “authoritative selection” of views in academia.<sup>25</sup> Accordingly, St. Olaf must implement its policies implicating free expression in a steadfastly viewpoint-neutral manner, because diluting the strength of that right in the name of penalizing instances of unpopular speech will imperil the rights of others.

We recognize the current controversy places pressure on you to meet unpopular speech with censorship—an action contrary to St. Olaf’s stated values. However, this presents an opportunity to remind students, faculty, and the public—as have other institutions facing similar challenges<sup>26</sup>—that administrators at institutions that commit to expressive freedoms do not possess the authority to selectively censor, precisely because this power would be used to suppress speech across the ideological spectrum.<sup>27</sup>

St. Olaf must recommit to its laudable promises of free speech and academic freedom and reassure faculty they are free to exercise their rights without fear of institutional punishment. We additionally ask that St. Olaf pay Santurri all stipends pursuant to his appointment letter and grant his request to be appointed to the Institute Advisory Board.

We request a substantive response to our letter by close of business on Tuesday, May 3, 2022.

Sincerely,



Alex Morey  
Director, Individual Rights Defense Program

Cc: Carl Crosby Lehmann, Vice President and General Counsel  
Jay Lund, Chair, Board of Regents  
Susan Gunderson, Vice Chair, Board of Regents

<sup>24</sup> *Whitney v. California*, 274 U.S. 357, 377 (1927).

<sup>25</sup> *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967).

<sup>26</sup> Other institutions have assembled faculty panels to discuss controversies to help others articulate criticisms of the offending speaker’s views, or encouraged speakers to substantively engage with critics, or criticized the speaker directly themselves. These are forms of “more speech.” See, e.g., UNIV. OF NORTH TEXAS., *Embracing all of our community members – An Official Notice from the President*, Feb. 22, 2022, <https://www.unt.edu/notices/embracing-all-our-community-members-official-notice-president> [<https://perma.cc/X944-GDNH>] (“Here on our campus, we honor our First Amendment rights, even when we don’t agree with others’ opinions. Our views, or our very existence, might be challenged in ways that feel incredibly hurtful. . . . I encourage you to engage in open discourse, free expression, and debate. All individuals have the right to peacefully assemble, to speak, and to engage in expressive activity, including that which you may find offensive. Each of you has the freedom to express yourself and the freedom to walk away, disempowering those with intolerant views”).

<sup>27</sup> Witness, for example, legislative attempts to suppress discussion of “divisive concepts” in universities. Joe Cohn, *New wave of bills on race and sex stereotyping violate academic freedom*, FIRE (Jan. 26, 2022), <https://www.thefire.org/new-wave-of-bills-on-race-and-sex-stereotyping-violate-academic-freedom>.