



# FIRE

Foundation for Individual  
Rights and Expression

July 22, 2022

Richard C. Benson  
Office of the President  
The University of Texas at Dallas  
800 West Campbell Road  
Richardson, Texas 75080-3021

**URGENT**

*Sent via Next-Day Delivery and Electronic Mail (president@utdallas.edu)*

Dear Dr. Benson:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech, expression, and conscience, and other individual rights on campus, is concerned by the University of Texas at Dallas' investigation into Professor Timothy Farage for tweeting that experts should consider finding a "cure" for homosexuality. While some may have been offended by Farage's remarks, they do not fall into a category of speech unprotected by the First Amendment, which bars UTD from investigating or punishing protected expression.

Specifically, it is our understanding that Farage is a professor of instruction in UTD's department of computer science who, on July 15, 2022, tweeted from his personal account: "Can we at least try to find a cure for homosexuality, especially among men? Homosexual men have anal sex, which can lead to a variety of diseases."<sup>1</sup> He also included a statistic that 95% of monkeypox patients in New York City are men.<sup>2</sup> Numerous students and LGBTQ+ groups at UTD have criticized Farage's comments.<sup>3</sup> On July 18, UTD publicly announced an investigation into Farage based on complaints about his tweets.<sup>4</sup> While the foregoing reflects what we know

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<sup>1</sup> Timothy P Farage (@TimFarage), TWITTER (July 15, 2022, 5:22 PM) (on file with author). This tweet, as well as Professor Farage's account, has since been deleted.

<sup>2</sup> *Id.*

<sup>3</sup> See Ben Nguyen, *CS professor calls for 'cure for homosexuality'*, MERCURY (July 16, 2022), <https://utdmercury.com/cs-professor-calls-for-cure-for-homosexuality>; see also Valeria Olivares, *LGBT students denounce UT-Dallas professor who wants 'a cure for homosexuality'*, DALL. MORNING NEWS (July 19, 2022, 5:34 PM), <https://www.dallasnews.com/news/education/2022/07/19/lgbt-students-denounce-ut-dallas-professor-who-wants-a-cure-for-homosexuality>.

<sup>4</sup> UT Dallas (@UT\_Dallas), TWITTER (July 18, 2022, 9:38 AM), [https://twitter.com/UT\\_Dallas/status/1549025705127809024](https://twitter.com/UT_Dallas/status/1549025705127809024).

from publicly reported facts, we appreciate that you may have additional information to offer and invite you to share it, toward which end please find enclosed an executed privacy waiver authorizing you to do so. But if the facts are as we understand them, UTD’s investigation of Farage presents grave constitutional concerns.

It is well-established that the First Amendment constrains public universities from penalizing faculty’s protected expression,<sup>5</sup> and equally well-established that it does not make a categorical exception for expression deemed offensive to some. As such, whether speech is protected by the First Amendment is “a legal, not moral, analysis,”<sup>6</sup> and Farage’s tweet does not fall into any category of expression unprotected by the First Amendment. 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>7</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>8</sup> recognizing that those with authority “cannot make principled distinctions” in determining what speech is sufficiently offensive or inoffensive to suppress.<sup>9</sup>

This principle is particularly important on campus, 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 “political cartoon . . . depicting policemen raping the Statue of Liberty and the Goddess of Justice.”<sup>10</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>11</sup>

This calculus is not modified where speech “concern[s] sensitive topics . . . where the risk of conflict and insult is high.”<sup>12</sup> To the contrary, freedom of expression “embraces [the] heated exchange of views” in this context, and 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>13</sup> Freedom of expression protects both Farage’s tweet and the criticism that followed. Academic freedom relies on this exchange of ideas, however sharp and uncomfortable it may sometimes become.

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<sup>5</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>6</sup> *Animal Legal Def. Fund v. Reynolds*, 353 F. Supp. 3d 812, 821 (S.D. Iowa 2019).

<sup>7</sup> *Snyder v. Phelps*, 562 U.S. 443, 458 (2011), (citing *Texas v. Johnson*, 491 U.S. 397, 414 (1989)).

<sup>8</sup> *Boos v. Barry*, 485 U.S. 312, 322 (1988) (cleaned up).

<sup>9</sup> *Cohen v. California*, 403 U.S. 15, 25 (1971).

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

<sup>11</sup> *Id.*

<sup>12</sup> *Rodriguez v. Maricopa Cnty. Cmty. Coll. Dist.*, 605 F.3d 703, 708 (9th Cir. 2009).

<sup>13</sup> *Id.*

Nor do a university's important obligations to address discriminatory harassment obligate it to censor expression in the absence of "something beyond the mere expression of views, words, symbols or thoughts" that others find offensive.<sup>14</sup> Farage's comment does not reach the exacting standard for "discriminatory harassment" established by the United States Supreme Court in *Davis v. Monroe County Board of Education*, which defines discriminatory harassment in the educational context.<sup>15</sup> For conduct to meet this standard, it must be "so severe, pervasive, and objectively offensive," as to "undermine[] and detract[] from the victim's educational experience, that the victim-students are effectively denied equal access to an institution's resources and opportunities."<sup>16</sup> Farage's tweet was not "severe, pervasive, and objectively offensive[.]" as it was a one-time post on social media not directed or targeted at any specific individual. Additionally, it does not deprive or limit individuals' access to educational resources. As such, Farage's tweets may not be punished as discriminatory harassment.

Although UTD has not yet formally punished Farage, an investigation alone into constitutionally protected speech can violate the First Amendment, even if the investigation concludes in favor of the speaker. The question is not whether formal punishment is meted out, but whether the institution's actions in response "would chill or silence a person of ordinary firmness from future First Amendment activities[.]"<sup>17</sup> Investigations into protected expression may meet this standard.<sup>18</sup> Here, the university has not identified a policy under which it is investigating Farage; however, its harassment policy implicates significant sanctions—ranging from employment probation to suspension or expulsion,<sup>19</sup> each of which is sufficient to meet the ordinary firmness test.<sup>20</sup> The investigation thus sends the message that UTD will punish speech like Farage's—or may punish similar speech in the future.

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As a public institution bound by the First Amendment, UTD may not investigate or punish faculty for subjectively offensive expression. This does not shield Farage from all consequences—indeed, he faced criticism from many students, faculty, the broader community, and the university itself. Criticism is a form of "more speech," the remedy to offensive expression that the First Amendment prefers to censorship.<sup>21</sup> However, the First Amendment limits the *types* of consequences that may be imposed, and who may impose them.

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<sup>14</sup> U.S. Dep't of Educ., Dear Colleague Letter from Gerald A. Reynolds, Assistant Sec'y for Civil Rights (July 28, 2003), *available at* <https://www2.ed.gov/about/offices/list/ocr/firstamend.html>.

<sup>15</sup> 526 U.S. 629, 651 (1999).

<sup>16</sup> *Id.*

<sup>17</sup> *Mendocino Env'tl. Ctr. v. Mendocino Cty.*, 192 F.3d 1283, 1300 (9th Cir. 1999).

<sup>18</sup> *See, e.g., White v. Lee*, 227 F.3d 1214, 1228 (9th Cir. 2000). *See also Levin v. Harleston*, 966 F.2d 85, 89–90 (2d Cir. 1992).

<sup>19</sup> *Nondiscrimination*, UNIV. OF TEX. AT DALL., <https://policy.utdallas.edu/utdbp3090> (last visited July 21, 2022).

<sup>20</sup> *Speech First, Inc. v. Fenves*, 979 F.3d 319, 332–33 (5th Cir. 2020).

<sup>21</sup> *Whitney v. California*, 274 U.S. 357, 377 (1927).

Given the urgent nature of this matter, we request receipt of a response to this letter no later than the close of business on July 29, 2022, confirming that UTD will immediately cease investigating Farage for his tweet.

Sincerely,

A handwritten signature in black ink, appearing to read "Sabrina Conza".

Sabrina Conza  
Program Officer, Campus Rights Advocacy

Cc: Dr. Stephanie G. Adams, Dean, Erik Jonsson School of Engineering and Computer Science

Encl.

## Authorization and Waiver for Release of Personal Information

I, Timothy Farage, do hereby authorize The University of Texas at Dallas (the "Institution") to release to the Foundation for Individual Rights and Expression ("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.

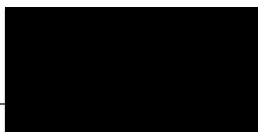
This authorization and waiver does not extend to or authorize the release of any information or records to any entity or person other than the Foundation for Individual Rights and Expression, and I understand that I may withdraw this authorization in writing at any time. I further understand that my 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 and Expression, 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.

Signature



Date

7/21/2022