

# FIRE

Foundation for Individual  
Rights and Expression

October 5, 2022

Elizabeth Davis  
Office of the President  
Furman University  
3300 Poinsett Highway, ADM 200  
Greenville, South Carolina 29613

**URGENT**

*Sent via U.S. Mail and Electronic Mail (elizabeth.davis@furman.edu)*

Dear President Davis:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,<sup>1</sup> is concerned by Furman University's decision to investigate Professor Christopher Healy and place him on leave for attending a political protest in 2017. While some may be deeply offended by Healy's attendance at that protest, Furman promises its community freedom of expression and cannot backtrack based on the exercise of that freedom. As explained below, because there is no legitimate basis on which Furman may sanction Healy, it must immediately end its investigation and reinstate him to his teaching duties.

Christopher Healy teaches computer science at Furman.<sup>2</sup> On September 30, 2022, an anti-fascist Twitter account posted images of Healy in 2017 at the Unite the Right rally in Charlottesville, Virginia. The 2017 protest, originally organized to object to the city's plan to remove a statue of Confederate general Robert E. Lee, became violent, leading to dozens of

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<sup>1</sup> For more than 20 years, FIRE has defended freedom of expression, conscience, and religion, and other individual rights on America's college campuses. You can learn more about our recently expanded mission and activities at [thefire.org](https://thefire.org).

<sup>2</sup> The following is our understanding of the pertinent facts, though we appreciate 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.

injuries and the death of a counter-protester.<sup>3</sup> However, the images of Healy show him peacefully standing in a crowd of individuals.<sup>4</sup>

Furman nevertheless immediately placed Healy on administrative leave and launched an investigation into “the circumstances surrounding recent Twitter posts documenting [his] attendance at the Unite the Right Rally[.]”<sup>5</sup> The university claims it is investigating whether Healy “engaged in conduct that directly, substantially, and consistently impairs” Healy’s fulfillment of his professional responsibilities.<sup>6</sup> The university also banned Healy from campus as the investigation proceeds.<sup>7</sup>

Additionally, you put out a statement reading in part that:<sup>8</sup>

The views of the organizers of the Unite the Right rally do not reflect the values that I hold, and they are not the values that we have committed to in our vision, mission and values statements. They are harmful to members of our community, diminish a sense of belonging, and inhibit each individual’s opportunity to thrive. It is our responsibility when matters like these come to light to engage in robust dialogue about what belonging and thriving mean on our campus and beyond. As we continue to struggle with this difficult situation, we intend to engage our campus in further conversation.

Although Furman is a private institution, it has made clear promises that members of its community enjoy expressive rights. The university’s Faculty Handbook adopts American Association of University Professors’ 1940 Statement of Principles on Academic Freedom and Tenure, which guarantees that faculty will be “free from institutional censorship or discipline” when they “speak or write as citizens[.]”<sup>9</sup> Based on this strong commitment, faculty would reasonably believe they have expressive rights commensurate with those guaranteed by the First Amendment. Additionally, apart from any commitment that Furman has made, South

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<sup>3</sup> Amanda Shaw, *Furman investigating after photos surface of professor at Unite the Right rally*, FOX CAROLINA (Oct. 3, 2022), <https://www.foxcarolina.com/2022/10/03/furman-investigating-after-photos-surface-professor-unite-right-rally>.

<sup>4</sup> Sunlight Anti-Fascist Action (@SunlightAFA), TWITTER (Sept. 30, 2022, 4:25 AM), <https://twitter.com/sunlightafa/status/1575763767148744704?s=51&t=X1xWhA19lwxLN0lArTisBw>.

<sup>5</sup> Email from Jeremy Cass, Dean of Faculty, Furman Univ., to Christopher Healy (Sept. 30, 2022, 5:54 PM) (on file with author).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Shaw, *supra* note 3.

<sup>9</sup> Faculty Policies and Procedures, Furman Univ. (adopted Mar. 29, 1999) (on file with author); *see also* 1940 Statement of Principles on Academic Freedom and Tenure, Am. Ass’n. of Univ. Professors, <https://www.aaup.org/report/1940-statement-principles-academic-freedom-and-tenure>.

Carolina law prohibits the university from dismissing Healy for his protected political activity.<sup>10</sup>

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>11</sup> It is this counter-majoritarian principle that protects “insulting, and even outrageous, speech in order to provide adequate breathing space” to public debate,<sup>12</sup> recognizing that those with authority “cannot make principled distinctions” in determining what speech is sufficiently offensive to suppress.<sup>13</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>14</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>15</sup> That is particularly important where, as here, the speech involves opinions on politics and race—core political speech at the very heart of expressive freedom, where the protection of free expression is “at its zenith.”<sup>16</sup>

This calculus does not change when some or many express deep disagreement with the speech at issue. 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>17</sup> Freedom of expression thus protects both Healy’s attendance at the Unite the Right rally and the more recent criticism of it that followed. Academic freedom relies on exchanges of ideas, however sharp and uncomfortable some exchanges may become. The process of protest and debate about it is one of “more speech”<sup>18</sup> and open discussion, the remedy preferred over the silencing or punishing protected expression.<sup>19</sup>

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<sup>10</sup> S.C. Code of Laws § 16-17-560 (“It is unlawful for a person to . . . discharge a citizen from employment or occupation . . . because of political opinions or the exercise of political rights and privileges guaranteed to every citizen by the Constitution and laws of the United States or by the Constitution and laws of this State.”).

<sup>11</sup> *Snyder v. Phelps*, 562 U.S. 443, 458 (2011) (citing *Texas v. Johnson*, 491 U.S. 397, 414 (1989)).

<sup>12</sup> *Boos v. Barry*, 485 U.S. 312, 322 (1988) (cleaned up).

<sup>13</sup> *Cohen v. California*, 403 U.S. 15, 25 (1971).

<sup>14</sup> *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 667–68 (1973).

<sup>15</sup> *Id.*

<sup>16</sup> *Buckley v. Am. Const. Law Found.*, 525 U.S. 182, 186–87 (1999) (quoting *Meyer v. Grant*, 486 U.S. 414 (1988)).

<sup>17</sup> *Rodriguez v. Maricopa Cnty. Cmty. Coll. Dist.*, 605 F.3d 703, 708–09 (9th Cir. 2009).

<sup>18</sup> *Whitney v. California*, 274 U.S. 357, 377 (1927).

<sup>19</sup> *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967).

The Supreme Court has made clear “the right to peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental.”<sup>20</sup> All pictures of Healy at the United the Right rally show him peaceably protesting. Importantly, the institution has not said it is investigating Healy for participating in violence or other unlawful conduct that day (no one has alleged he did), but rather for his mere association with viewpoints it deems “harmful.” The fact that Healy attended the rally cannot alone be a basis for punishing him, as the right to assemble “cannot be denied without violating those fundamental principles which lie at the base of all civil and political institutions.”<sup>21</sup>

As the tweets, and Healy’s attendance at the rally, provide no legitimate basis for punishing him, Furman has no ground on which to place him on leave—or to investigate him. Even if Furman ultimately metes out no formal punishment, its investigation of Healy itself violates its commitments to free expression if it “would chill or silence a person of ordinary firmness from future First Amendment activities[.]”<sup>22</sup> Investigations into protected expression often meet this standard.<sup>23</sup>

Here, Furman claims it is investigating whether Healy “engaged in conduct that directly, substantially, and consistently impairs” his fulfillment of his professional responsibilities—the exact standard the university uses to determine whether to dismiss a faculty member.<sup>24</sup> The prospect of this significant sanction satisfies the ordinary firmness test<sup>25</sup>—and sends the message that protected speech like that in which Healy engaged may be punished in the future.

In investigating and placing Healy on leave, Furman has thus violated its free expression promises—policies to which the university is contractually bound. Furman must accordingly restore Healy to teaching immediately and reaffirm to faculty that the university will honor its commitments to free expression.

Given the urgent nature of this matter, we request receipt of a response to this letter no later than the close of business on Wednesday, October 12, 2022.

Sincerely,



Sabrina Conza  
Program Officer, Campus Rights Advocacy

Cc: Jeremy Cass, Dean of Faculty

Encl.

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<sup>20</sup> *De Jonge v. Oregon*, 299 U.S. 353, 364 (1937).

<sup>21</sup> *Id.*

<sup>22</sup> *Mendocino Envtl. Ctr. v. Mendocino Cty.*, 192 F.3d 1283, 1300 (9th Cir. 1999).

<sup>23</sup> See, e.g., *White v. Lee*, 227 F.3d 1214, 1228 (9th Cir. 2000).

<sup>24</sup> *Faculty Policies and Procedures*, FURMAN UNIV. (adopted Mar. 29, 1999) (on file with author).

<sup>25</sup> *Speech First, Inc. v. Fenves*, 979 F.3d 319, 333 (5th Cir. Oct. 28, 2020).

## Authorization and Waiver for Release of Personal Information

I, Christopher A. Healy, do hereby authorize  
Furman University (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.

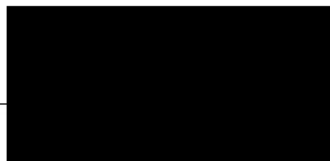
This authorization and waiver does not extend to or authorize the release of any  
information or records to any entity or person other than the Foundation for Individual  
Rights and Expression, and I understand that I may withdraw this authorization in  
writing at any time. I further understand that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

A black rectangular box redacting the signature of Christopher A. Healy.

10/5/2022

Date