



FIRE

Foundation for Individual
Rights and Expression

October 28, 2022

Dr. Richard Carvajal
Office of the President
Valdosta State University
1500 N. Patterson Street
Valdosta, Georgia 31698

Sent via U.S. Mail and Electronic Mail (president@valdosta.edu)

Dear President Carvajal:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned by Valdosta State University's infringement of Professor Leslie Sandra Jones' right to academic freedom by prohibiting her from teaching pedagogically relevant material in class due to parental complaints. While some may have objected to the material, it is nonetheless protected by the First Amendment's guarantee of academic freedom, which allows public university faculty to select content for classroom instruction. Valdosta State must rescind any restrictions it has placed on Jones' teaching in this regard and reaffirm its commitment to upholding the constitutional protection afforded to faculty.

I. Valdosta State Gives Professor Ultimatum to Change Teaching Methods or Be Removed from Class

Jones is a Valdosta State Department of Biology faculty member who teaches Evolution and the Diversity of Life, among other courses.² Evolution and Diversity of Life places "special emphasis on ecological and evolutionary processes and relationships."³ Among the many lessons in the course, Jones teaches "Biology of Sex," "Cultural Construction of Gender," and

¹ 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.

² The recitation of facts here reflects our understanding of the pertinent facts. We appreciate that you may have additional privacy 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.

³ *Biology Course Descriptions*, VALDOSTA STATE UNIV., <https://www.valdosta.edu/biology/course-descriptions.php> (last visited Oct. 25, 2022).

“Human Diversity Is Not Race.”⁴ Jones’ “Biology of Sex” lesson discusses the bimodal nature of sex, while the “Cultural Construction of Gender” lesson teaches there is more variation in gender. In her “Human Diversity Is Not Race” lecture, Jones teaches that there is no biological basis to race.

On September 8, after Jones’ lesson about gender, Valdosta State College of Science and Mathematics Dean Pierre-Richard Cornely informed Jones via a phone call that the university had received a complaint from a parent that Jones had taught “woke shit,” as the parent called her gender-related material.

On September 16, Cornely emailed Jones that the requirement that she stop teaching social justice “is not just about ‘sound biology and crossing curricular’, political push back, and cowardice, it is about (i) serving the customer who is paying the bills and (2) [*sic*] minimizing controversial situations that affect our ability to deliver overall.”⁵

On September 23, Jones sent Cornely an article about interdisciplinary teaching and a note that the university would “look very bad” if its censorship of her became a “legal issue.”⁶ Cornely responded that he does not want to “deal with constant student complaints” about Jones’ teaching and that the university could either “move [her] to another class,” or Jones must change her “approach to minimize the complaints.”⁷

II. Valdosta State’s Infringement on Jones’ Academic Freedom Violates its First Amendment Obligations

Valdosta State’s ultimatum violates Jones’ academic freedom to select course content, as well as her right and that of her students to engage in pedagogically relevant classroom discussions. As a public institution of higher education, Valdosta State’s prior experience illustrates that it is bound by the First Amendment,⁸ under which the Supreme Court has held in no uncertain terms that college classrooms are “peculiarly the ‘marketplace of ideas’” where academic freedom is of “special concern.”⁹ The “[n]ation’s future depends on” the ability of students to gain “wide exposure to that robust exchange of ideas which discovers truth out of a multitude of tongues, rather than through any kind of authoritative selection.”¹⁰

⁴ Syllabus, Biol 1010: Evolution & the Diversity of Life, *available at* <https://www.valdosta.edu/biology/documents/syllabi/2022-fall/biol-1010-jones2.pdf> (last visited Oct. 17, 2022).

⁵ Email from Pierre-Richard Cornely to Leslie S. Jones (Sept. 16, 2022, 8:43 AM) (on file with author).

⁶ Email from Jones to Cornely (Sept. 23, 2022, 8:51 AM) (on file with author).

⁷ Email from Cornely to Jones (Sept. 23, 2022, 9:48 AM) (on file with author).

⁸ *Barnes v. Zaccari*, 592 F. Appx. 859, 867-69, 873-75 (11th Cir. 2015); *see also Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969) (“First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students”); *Healy v. James*, 408 U.S. 169, 180 (1972) (“[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools”) (quoting *Shelton v. Tucker*, 364 U.S. 479, 487 (1960)).

⁹ *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967).

¹⁰ *Id.*

These principles do not waver where some, many, or even most people may find certain faculty lectures, materials, or remarks offensive. Constitutional protection for the freedom of speech does not exist to protect only non-controversial expression. Rather, it exists precisely to protect speech that some or even most members of a community may find controversial or offensive. Speech cannot be restricted simply because it offends others, on or off campus.¹¹

The United States Court of Appeals for the Sixth Circuit’s ruling in *Hardy v. Jefferson* demonstrates the high bar courts have set for restricting faculty speech. In *Hardy*, an adjunct instructor teaching “Introduction to Interpersonal Communication” lectured students about “language and social constructivism,” discussing how “language is used to marginalize minorities and other oppressed groups in society.”¹² Students, asked by the instructor to provide examples, suggested the words “lady,” “girl,” “faggot,” “nigger,” and “bitch.”¹³ The Sixth Circuit found the instructor’s use of those words “clearly” relevant to his lecture exploring the “social and political impact of certain words,” and not “gratuitously used . . . in an abusive manner.”¹⁴ Accordingly, it remained protected expression, even if some found it offensive.¹⁵

Classroom discussions and lectures—including materials, views, and remarks that some students or others may find offensive, “however repugnant”—are “protected by the First Amendment” when the comments are “germane to the classroom subject matter.”¹⁶ This principle gives ample breathing room to faculty members’ lectures, discussions, and remarks, even when they may be objectionable to students in the classroom or colleagues, administrators, donors, legislators, or others outside of it.

While Jones’ lessons included discussion of social justice-related issues, they are interdisciplinary lessons, which also discuss material related to the evolution of biological traits. These interdisciplinary lessons are pedagogically relevant in Jones’ biology class, as they discuss how biology and sociology interact. Additionally, the university has tacitly admitted the lessons are pedagogical relevant by citing only complaints about controversy and tuition money in censoring Jones’ lessons, rather than disputing their pedagogical relevance.

The First Amendment bars not only termination or non-renewal premised on protected expression, but any “adverse government action against an individual in retaliation for the exercise of protected speech activities” which “would chill a person of ordinary firmness from

¹¹ 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.”). This is particularly so on the campus of a public college. For example, in holding that a student newspaper’s political cartoon depicting the Statue of Liberty and Goddess of Justice being raped by police officers was protected speech, the Supreme Court explained that “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.’” *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 670 (1973).

¹² 260 F.3d 671, 674 (6th Cir. 2001).

¹³ *Id.* at 675.

¹⁴ *Id.* at 679.

¹⁵ *Id.*

¹⁶ *Id.* at 683.

continuing to engage in that activity.”¹⁷ This standard may be satisfied by an employer’s reprimand,¹⁸ “unwarranted disciplinary investigation,”¹⁹ or “threat of disciplinary action.”²⁰ Valdosta State’s directive that Jones change her teaching materials and methods or be removed from her class satisfies this standard. This threat of adverse action, expressly meant to chill Jones’ expression of pedagogically relevant material, is a clear violation of the limits the First Amendment places on Valdosta State.

III. Valdosta State Must Rescind its Ultimatum

Valdosta State’s ultimatum in response to Jones’ teaching of pedagogically relevant material is inconsistent with the public university’s obligations under the First Amendment. We call on Valdosta State to make clear it will not infringe on Jones’ autonomy to determine the content taught in her courses, and to rescind the ultimatum.

We request receipt of a substantive response to this letter no later than the close of business on Thursday, November 10, 2022, confirming that Valdosta State will allow Jones to teach pedagogically relevant material regardless of student or parent complaints.

Sincerely,



Sabrina Conza
Program Officer, Campus Rights Advocacy

Cc: Pierre-Richard Cornely, Dean, College of Science and Mathematics

Encl.

¹⁷ *Keenan v. Tejada*, 290 F.3d 252, 258 (5th Cir. 2002).

¹⁸ *See, e.g., Mote v. Walthall*, 902 F.3d 500, 503 (5th Cir. 2018) (qualified immunity denied where police officers “began getting written reprimands [for] petty violations”).

¹⁹ *Coszalter v. City of Salem*, 320 F.3d 968, 976 (9th Cir. 2003).

²⁰ *Id.*

Authorization and Waiver for Release of Personal Information

I, Leslie Sandra Jones, do hereby authorize Valdosta State 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



10/25/2022

Date