



# FIRE

Foundation for Individual  
Rights and Expression

November 29, 2022

Peter Salovey  
Office of the President  
Yale University  
3 Prospect Street  
New Haven, Connecticut 06511

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

Dear President Salovey:

FIRE<sup>1</sup> is concerned about Yale University policies and practices that strictly limit student journalists' freedom to report on campus.<sup>2</sup> As an institution clearly committed to free expression and a free press, Yale must correct course and restore its student journalists' rights.

On September 20, the *Yale Daily News* reported on the university's policies and practices—predominately maintained and implemented by the university's Office of Public Affairs & Communications (OPAC)—that restrict student journalists' ability to freely cover campus activities and work with university sources on stories.<sup>3</sup> These press restrictions include:<sup>4</sup>

- limits on reporters' ability to directly interact with university employees
- limits on university employees' ability to directly respond to press inquiries
- restrictions on press access to campus facilities
- requirements that reporters submit questions days ahead of time and for administrators to review them before providing a response
- administrators vetting and modifying responses from other university employees
- permission for only written responses from sources with no option for in person or telephone interviews

---

<sup>1</sup> As you may recall from prior correspondence, FIRE is a nonpartisan, nonprofit dedicated to defending freedom of expression, conscience, and religion, and other individual rights on America's college campuses.

<sup>2</sup> Sarah Cook, *Communications at Yale: Continued University growth has formed a complex media atmosphere*, YALE DAILY NEWS (Sept. 20, 2022) <https://yaledailynews.com/blog/2022/09/20/communications-at-yale-continued-university-growth-has-formed-a-complex-media-atmosphere>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

OPAC does not unilaterally impose these restrictions, which instead represent practices or policies of varied units across the university.<sup>5</sup> OPAC, however, provides guidance to university units on managing press inquiries and units' relationships with the press.<sup>6</sup>

While Yale, as a private university, is not bound by the First Amendment to grant students or faculty freedom of expression or to maintain an environment of transparency, it makes independent promises to the same effect, stating: "As an academic institution dedicated to free inquiry and the search for truth, the university is committed to free expression."<sup>7</sup> Yale's undergraduate regulations further state, "We take a chance, as the First Amendment takes a chance, when we commit ourselves to the idea that the results of free expression are to the general benefit in the long run, however unpleasant they may appear at the time."<sup>8</sup>

Yet overly restrictive press policies run afoul of these commitments by not only infringing the rights of a free campus press, but also by limiting the expressive rights of various campus constituents, like students or faculty who may wish to speak to reporters.

For example, policies requiring faculty or university staff to secure permission before granting media interviews impose an untenable prior restraint,<sup>9</sup> violating the right to speak as private citizens on matters of public concern.<sup>10</sup> Likewise, policies limiting journalists' access to campus facilities or requiring them to be escorted or accompanied by a minder often violate student reporters' rights to engage in expressive or newsgathering activities in open areas of campus akin to public fora.<sup>11</sup> Accordingly, policies and practices restricting the rights of the

---

<sup>5</sup> *Id.*

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

<sup>7</sup> See *Free Expression*, YALE UNIV., <https://yalecollege.yale.edu/policies-procedures/free-expression> [<https://perma.cc/52EG-AJZ8>].

<sup>8</sup> *Yale College Undergraduate Regulations 2022-2023*, YALE UNIV., <http://catalog.yale.edu/undergraduate-regulations/policies/free-expression/> [<https://perma.cc/4VH6-ANWN>]. Based on Yale's free expression promises, its constituents—including student journalists—should reasonably expect to enjoy free speech rights commensurate with those advanced by the First Amendment. Thus, courts' interpretations of the First Amendment's guarantee of freedom of expression provide a useful baseline for understanding constituents' reasonable expectations.

<sup>9</sup> A prior restraint is "the most serious and the least tolerable infringement on First Amendment rights." *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976). Requiring approval from officials before speaking is "offensive—not only to the values protected by the First Amendment, but to the very notion of a free society." *Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150, 165–66 (2002).

<sup>10</sup> See *United States v. National Treasury Employees Union (NTEU)*, 513 U.S. 454, 468 (1995); *Pickering v. Bd. Of Educ.*, 391 U.S. 563, 568 (1968); *Garcetti v. Ceballos*, 547 U.S. 410, 425 (2006) (reserving the question of whether limits to employee speech extend to faculty expression "related to academic scholarship or classroom instruction").

<sup>11</sup> *E.g.*, *McGlone v. Bell*, Nos. 10-6055, 10-6169, 2012 U.S. App. LEXIS 8266, at \*33 (6th Cir. Apr. 23, 2012) (finding that the open, outdoor areas of the Tennessee Technological University's campus are public fora); *OSU Student All. v. Ray*, 699 F.3d 1053, 1063 (9th Cir. 2012) (finding that the Oregon State University campus is a public forum); *Justice for All v. Faulkner*, 410 F.3d 760, 768–69 (5th Cir. 2005) (open outdoor areas of University of Texas at Austin found to be designated public fora as to students); *ACLU v. Mote*, 423 F.3d 438, 444 (4th Cir. 2005) (finding that an open, outdoor area of the University of Maryland is a public forum); *Shaw v. Burke*, No. 17-cv-2386, 2018 U.S. Dist. LEXIS 7584, at \*22 (C.D. Cal. Jan. 17, 2018) ("open, outdoor areas of universities . . . are public fora[.]" regardless of a college's regulations to the contrary); *Univ. of Cincinnati Chapter of Young Ams. for Liberty v. Williams*, Civ. No. 12-155, 2012 U.S. Dist. LEXIS 80967, at \*29–30 (S.D.

student media in this way, especially those that constitute prior restraint or mandate prior review, do not comport with a stated commitment to the ideals of free speech and press.<sup>12</sup>

Beyond violating the clear expressive promises Yale makes to its student journalists and campus constituents with whom they work, restrictive press policies harm the entire campus community and members of the public, weakening trust in institutions of higher education. A corollary of the right to free speech is the public's right to know. In striking down prior restraints on government employee speech—policies and practices structurally similar to Yale's—the Supreme Court recognized that such bans impose “a significant burden on the public's right to read and hear what Government employees would otherwise have written and said.”<sup>13</sup> Student media is an important conduit for the public's right to know about what happens on America's college campuses. Courts have recognized that the media act as “surrogates for the public” in keeping a watchful eye on the operations of government and restraining institutional abuse of power.<sup>14</sup>

Yale's limitations on the student press are profoundly unwise, casting doubt upon the university's commitment to transparency about decisions and events that affect its entire community. The unique role of universities as “peculiarly the ‘marketplace of ideas’”<sup>15</sup> cannot be squared with burdens on student journalists' clear right to seek information. FIRE calls on Yale to examine its policies and practices and to make any necessary revisions to demonstrate its commitment to upholding expressive freedoms and maintaining transparency. We further call on Yale's OPAC to review the guidance it provides university units to ensure they, too, comport with the university's stated commitments to free expression and a free student press. FIRE is more than happy to offer our assistance to ensure your institutional interests can be met without burdening students' or faculty's expressive rights.<sup>16</sup>

---

Ohio June 12, 2012) (open, outdoor areas of campus are designated public fora for students); *Roberts v. Haragan*, 346 F. Supp. 2d 853, 862–63 (N.D. Tex. 2004) (“[T]o the extent [Texas Tech University] has park areas, sidewalks, streets, or other similar common areas, these areas are public forums, at least for the University's students, irrespective of whether the University has so designated them or not. These areas comprise the irreducible public forums on the campus.”).

<sup>12</sup> See *Nebraska Press Ass'n*, 427 U.S. at 559; *Stanley v. Magrath*, 719 F.2d 279, 282 (8th Cir. 1983) (public institutions of higher education “may not constitutionally take adverse action against a student newspaper, such as withdrawing or reducing the paper's funding, because it disapproves of the content of the paper”); *Husain v. Springer*, 494 F.3d 108, 124 (2d Cir. 2007) (“[W]hen a public university establishes a student media outlet and requires no initial restrictions on content, it may not censor, retaliate, or otherwise chill that outlet's speech, or the speech of the student journalists who produce it, on the basis of content or viewpoints expressed through that outlet.”); see also *United States v. Stevens*, 559 U.S. 460, 480 (2010) (The First Amendment “does not leave us at the mercy of the *noblesse oblige*,” and an unconstitutional grant of authority cannot be left in place merely because its holders “promised to use it responsibly”).

<sup>13</sup> *United States v. National Treasury Employees Union (NTEU)*, 513 U.S. 454, 470 (1995); see also *Stanley v. Georgia*, 394 U.S. 557, 564 (1969) (noting it is “well established” that freedom of expression “protects the right to receive information and ideas”).

<sup>14</sup> *Richmond Newspapers v. Virginia*, 448 U.S. 555, 573 (1980).

<sup>15</sup> *Keyishian v. Bd. of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 603 (1967).

<sup>16</sup> As a nonprofit, FIRE's services are always free of charge.

We appreciate your time and attention to our concerns. We respectfully request a substantive response to this letter no later than December 13, 2022.

Sincerely,

A handwritten signature in cursive script that reads "Anne Marie Tamburro".

Anne Marie Tamburro  
Program Officer, Campus Rights Advocacy

Cc: Karen Peart, Interim Vice President for Communications