



# FIRE

Foundation for Individual  
Rights and Expression

February 3, 2023

Wendy Wintersteen  
Office of the President  
Iowa State University  
1750 Beardshear Hall  
515 Morrill Road  
Ames, Iowa 50011

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

Dear President Wintersteen:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,<sup>1</sup> is concerned by Iowa State University's punishment of its club lacrosse team for a photo posted online by the unaffiliated Instagram account "ISU Barstool," showing an ISU vehicle used by club lacrosse team members in front of a Colorado marijuana dispensary, which an administrator claimed negatively impacted ISU's reputation. ISU may not punish students for a third party's expression, and even if it could, the First Amendment protects expression that may embarrass the university. We call on ISU to rescind the sanctions imposed on the club lacrosse team for this photo.

## **I. ISU Punishes Lacrosse Team Over Photo Taken in Front of Marijuana Dispensary**

In November 2022, the ISU Barstool Instagram account<sup>2</sup> posted a since-deleted photo of an ISU vehicle used by the club lacrosse team parked in front of the High Plainz Strains Dispensary, a marijuana dispensary lawfully operating under Colorado state law.<sup>3</sup> The team rented the vehicle from ISU for a game in Colorado Springs, parked in front of the dispensary before

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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 Barstool ISU Instagram account is an affiliate of Barstool Sports, a blog website and digital marketing company. The account is unaffiliated with ISU or its students. See @BarstoolISU, INSTAGRAM, <https://www.instagram.com/barstoolisu>; *Barstool Sports*, <https://www.barstoolsports.com> (last accessed Jan. 30, 2023).

<sup>3</sup> Email from Nathan Pick, Senior Assistant Director of Sports Programs, to Max Gula, ISU Club Lacrosse Team President (Jan. 20, 2023, 9:42 AM) (enclosed). This letter reflects our understanding of the pertinent facts, though we appreciate you may have additional information to offer and invite you to share it with us.

entering a restaurant in the vicinity, and was unaware someone took a photo of the vehicle and sent it to ISU Barstool. The team members did not enter the dispensary or buy its products.

On December 8, Senior Assistant Director of Sports Programs Nathan Pick and Sports Clubs Coordinator Landon Wolfe suspended the team from using personal or university vehicles for team travel through May 2023.<sup>4</sup> Pick claimed his “[o]verall concern” is “poor representation” and students creating a “negative reputation for Iowa State University.”<sup>5</sup> He stated that the ISU Sport Clubs Manual “outlines possible infractions including ‘Displaying conduct that is incompatible with the University’s function as an educational institution and the purpose of the Sports Club Program.’”<sup>6</sup>

ISU did not charge the team with violating any specific university policies or provide an opportunity for the team to contest the allegations.

## **II. ISU May Not Punish Students for Third-Party Expression That May Embarrass the University**

Nothing in the ISU Student Handbook or Sport Clubs Manual permits the university to punish any student for the unauthorized actions of a third party—in this case, ISU Barstool.<sup>7</sup> Such manifestly unfair disciplinary action violates students’ First Amendment and due process rights, which ISU is legally obligated to uphold.<sup>8</sup>

ISU’s sole concern is the speculated claim that ISU Barstool’s photo negatively impacted the university’s reputation. Even if the club lacrosse team was responsible for taking and posting the photo, ISU still would not have authority to punish these students, as expression that damages the university’s reputation remains protected by the First Amendment.<sup>9</sup> Successful

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

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

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

<sup>7</sup> *Student Code of Conduct*, IOWA STATE UNIV. (updated Sept. 2, 2022), <https://www.policy.iastate.edu/policy/SDR> [<https://perma.cc/F9WT-N4R6>]; *Sports Clubs Manual*, IOWA STATE UNIV., (2021-22), <https://www.recservices.iastate.edu/wp-content/uploads/2022/02/Sport-Clubs-Manual-2021-22-jan22-Landon-Wolfe.pdf> [<https://perma.cc/YY44-C6CX>].

<sup>8</sup> It has long been settled law that the First Amendment binds public universities like ISU, such that its actions and decisions—including the pursuit of disciplinary sanctions—must comply with the First Amendment. *E.g.*, *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>9</sup> The First Amendment prevents public universities from punishing students for expression that may embarrass the university or damage its reputation. *E.g.*, *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 667–68 (1973) (First Amendment protects student newspaper’s uses of a vulgar headline “Motherfucker Acquitted” and a “political cartoon . . . depicting policemen raping the Statue of Liberty and the Goddess of Justice.”); *Iota Xi Chapter of Sigma Chi Fraternity v. George Mason Univ.*, 993 F.2d 386, 388–392 (4th Cir. 1993) (First Amendment protects “offensive and sophomoric” skits depicting women and minorities in derogatory stereotypes); *Gay Students Org. of Univ. of N.H. v. Bonner*, 509 F.2d 652, 661 (1st Cir. 1974) (First Amendment protects student group conducting “shocking and offensive” expressive activities).

First Amendment litigation against ISU has demonstrated the futility of violating students' free speech rights to protect the university's image.<sup>10</sup>

ISU has also failed to meet its legal obligation to provide due process to any student or student group accused of misconduct.<sup>11</sup> Due process—which ensures basic fairness in any disciplinary proceeding and lends legitimacy to its outcome—must include “notice and . . . a fair and impartial hearing” where “the parties must be given a fair opportunity to present their positions.”<sup>12</sup> It requires that students “be afforded a meaningful hearing” where they have “a meaningful opportunity to be heard.”<sup>13</sup>

These fundamental due process rights are also guaranteed by the university itself. ISU's Student Code of Conduct details specific procedural protections the university must provide to students prior to discipline.<sup>14</sup> For example, ISU states that “due process includes the following: . . . Notice of the specific conduct violations that a student is alleged to have violated and the grounds for the charges,” as well as the “opportunity to . . . provide evidence and witnesses on their behalf,” “participate in a hearing that is fair and consistent with the policies of the institution and past decisions,” and “appeal any disciplinary decision that concludes a case.”<sup>15</sup> As ISU acknowledges, basic fairness helps all parties—including the university—ensure a reliable outcome.

Yet none of these critical procedural protections were provided to the club lacrosse team. Considering ISU based its punishment on the conduct of ISU Barstool—a third-party unaffiliated with the students here—ISU would have been well-served by affording the team a hearing to demonstrate they did not even post the photo that allegedly harmed ISU's reputation.

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<sup>10</sup> *Gerlich v. Leath*, 861 F.3d 697, 706-07 (8th Cir. 2017) (finding that Iowa State University violated the First Amendment by denying students permission to use university trademark over opposition to students' advocacy for reforming federal and state marijuana laws); see Marieke Tuthill Beck-Coon, *FIRE lawsuit against Iowa State University administrators ends with nearly \$1 million in damages and fees*, FIRE (Mar. 23, 2018), <https://tinyurl.com/599xzmsd>.

<sup>11</sup> See, e.g., *Iota Xi Chapter v. Patterson*, 538 F. Supp. 2d 915, 924-25 (E.D. Va. 2008), *aff'd on other grounds*, 566 F.3d 138, 149 (4th Cir. 2009); *Alpha Eta Chapter of Pi Kappa Alpha Fraternity v. Univ. of Fla.*, 982 So. 2d 55, 56-57 (Fla. Dist. Ct. App. 2008) (ordering university to reinstate fraternity due to numerous due process violations during disciplinary hearing); *Sigma Chi Fraternity v. Regents of Univ. of Colo.*, 258 F. Supp. 515, 528 (D. Colo. 1966) (requiring university to provide fraternity with “adequate notice of opposing claims, reasonable opportunity to prepare and meet them in an orderly hearing adapted to the nature of the case and finally, a fair and impartial decision”).

<sup>12</sup> *Sigma Chi Fraternity*, 258 F. Supp. at 528.

<sup>13</sup> *Iota Xi Chapter*, 538 F. Supp. 2d at 924-25 (internal citations and quotations omitted), *affirmed on other grounds*, 566 F.3d at 149; see also *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (The right to present potentially exculpatory evidence “before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society.”).

<sup>14</sup> *Student Code of Conduct*, *supra* note 7.

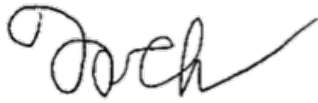
<sup>15</sup> *Id.*

### **III. Conclusion**

ISU has no basis to punish members of the lacrosse team for the constitutionally-protected speech of a third party. This fact would have been discovered had the university met its legal obligations to provide these students due process.

We request a substantive response to this letter no later than the close of business on February 17, 2023, confirming that any punishment arising from this incident will be reversed.

Sincerely,



Zachary Greenberg  
Senior Program Officer, Student Organizations, Campus Rights Advocacy

Cc: Nathan Pick, Senior Assistant Director of Sports Programs  
Toyia K. Younger, Senior Vice President for Student Affairs  
Michael Norton, General Counsel and Chief Risk Officer

Encl.

**From:** Pick, Nathan D [REC S] ndpick@astate.edu  
**Subject:** RE: Disciplinary action information  
**Date:** January 20, 2023 at 9:42 AM  
**To:** Gula, Max D  
**Cc:** Wolfe, Landon J [REC S] wolfe@astate.edu



Max,  
I believe the information you are requesting is below.  
Thanks

### Situation

- Club president, Max Gula, received a speeding ticket while driving a university vehicle back from a men's lacrosse competition on 10/23/22. Chief Newton was traveling off duty on the same route of the club and witnessed the ISU vehicle traveling around 100 mph.
- A picture of an ISU vehicle parked by a High Plainz Strains Dispensary (Log Lane Village, CO) was posted on the ISU Barstool Instagram account. The vehicle in the photo was determined to be #8289, a 2020 Chevy Suburban from ISU Transportation Services. The men's lacrosse club took this vehicle to Colorado Springs to play games vs. Air Force Academy. They left Ames at 9:39 AM on Friday, Nov 11 and returned the vehicle at 10:54 PM on Sunday, Nov 13.
- Overall concern in both situations is student compliance with university and sport club policies as well as poor representation and concern for negative reputation for Iowa State University.

### Background

- Sport club policies are provided to all participants and reviewed on an annual basis. These policies can be found here: <https://www.recservices.iastate.edu/wp-content/uploads/2022/10/Sport-Clubs-Manual-2022-23.pdf>
  - The Sport Club Manual does outline possible infractions including "Displaying conduct that is incompatible with the University's function as an educational institution and the purpose of the Sports Club Program."
- Additionally, Recreation Services maintains department policies and procedures that would encompass Sport Clubs found here: <https://www.recservices.iastate.edu/policies/>
- The team is done with competition until spring semester; activities between now and February would consist of practices, mainly indoor at Lied Recreation.
- In similar situations in the past, Recreation Services has issued suspensions or other follow up for misconduct.

### Recommendation

With senior leadership approval, Rec Services will implement the following steps:

- Rec leaders sit down with Max and discuss the incident, expectations going forward, and support that is available for Max.
  - Max will be issued a one game suspension as part of the spring 2023 lacrosse season.
- Rec leaders sit down with the club to discuss the Barstool ISU post and how this is not in alignment with conduct expectations found in the Sport Clubs Manual, or with Recreation Services policies. We will set expectations for future behavior and also share support resources.
  - The team will be suspended from using university vehicles through the end of

- this academic year (May 2023.) If the team wants to travel for competitions, they will be required to use a charter service and work with Transportation Services. The team will have to fund the charter services.
- o All club members will be required to review the sport club manual.

**NATHAN PICK**

*Senior Assistant Director, Sport Programs*

*Recreation Services*

515-294-4186

**IOWA STATE UNIVERSITY**  
Student Health and Wellness

Recreation Services - Student Wellness - Student Counseling Services - Thielen Student Health Center  
1180 State Gym | 2642 Union Drive | Ames, IA 50011

[CycloneHealth.org](http://CycloneHealth.org)



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**From:** Gula, Max D [REDACTED]  
**Sent:** Friday, January 20, 2023 1:56 AM  
**To:** Wolfe, Landon J [REC S] <[wolfe@iastate.edu](mailto:wolfe@iastate.edu)>  
**Subject:** Disciplinary action information

Hi Landon,

I would like to receive a copy of all communication regarding A: my personal punishment and B: teamwide punishment. Please let me know if any clarification is needed.

Best,  
Max Gula

