



# FIRE

Foundation for Individual  
Rights and Expression

February 3, 2023

Kent Fuchs  
Office of the President  
University of Florida  
226 Tigert Hall  
P.O. Box 113150  
Gainesville, Florida 32611

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

Dear President Fuchs:

FIRE<sup>1</sup> appreciates that the University of Florida is one of the few institutions in the country whose policies earn a “green light” rating from FIRE. We are, however, concerned by UF’s initiation of an investigation into chalk messages on the university’s sidewalks, which UF called “antisemitic” and condemned as “hatred and intolerance.” While the university may remove chalking pursuant to reasonable, content-neutral time, place, and manner restrictions, it may not, as a public university, ban speech others may find offensive in the name of upholding “conventions of decency.”<sup>2</sup>

On February 1, UF learned of chalk on its sidewalks reading “Ye is Right 2/2/23[.]” “Students for Ye[.]” “Ye 24[.]” and “Ye for President[.]”<sup>3</sup> Similar messages have appeared in recent weeks at Florida Atlantic University and the University of Alabama, where activists Dalton Clodfelter and Tyler Russel visited.<sup>4</sup> The same day, UF announced that although “no security threat has

---

<sup>1</sup> As you may recall from prior correspondence, the Foundation for Individual Rights and Expression has, for more than 20 years, 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](http://thefire.org).

<sup>2</sup> *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 667–68 (1973).

<sup>3</sup> Ella Thompson, *UF Jewish community, Fuchs react to antisemitic ‘Ye’ Kanye West messages - The Independent Florida Alligator*, ALLIGATOR (Feb. 1, 2023), <https://www.alligator.org/article/2023/02/antisemitic-chalk-kanye-west-university-of-florida>. The recitation of facts here reflects our understanding of the pertinent facts based on public reports. We appreciate that you may have additional information to offer and invite you to share it with us.

<sup>4</sup> See Jessica Abramsky, *Antisemitic demonstrators raise anger in student leaders*, Univ. Press (Jan. 18, 2023), <https://www.upressonline.com/2023/01/antisemitic-demonstrators-raise-anger-in-student-leaders>; Sabrina Conza, *University of Alabama cites ‘core values’ in investigating #YeIsRight chalk*, FIRE (Jan. 31, 2023), <https://www.thefire.org/news/university-alabama-cites-core-values-investigating-yeisright-chalk>.

been identified[.]” its police department was investigating the chalking. UF also said the messages were “acts of antisemitism, hatred, and intolerance.”<sup>5</sup>

UF’s Temporary Signage policy permits the use of chalk messages in some locations, including locations where the “Ye” messages were found, and forbids it in others.<sup>6</sup> The First Amendment tolerates such limits, which do not depend on what the chalk message says, only its location—that is, its place.

However, UF did not invoke that policy when announcing its investigation. Instead, administrators said the *content* of the messages was problematic. While UF may criticize messages it believes objectionable, the First Amendment forbids a public university from censoring or retaliating against expression because its message is subjectively offensive to others. Whether the First Amendment protects any particular speech is “a legal, not moral, analysis.”<sup>7</sup>

It is well-established, apropos of the current circumstances, that the First Amendment does not make an exception for hateful expression, and it is equally well-established that it constrains public universities in penalizing student expression. While the First Amendment may not protect some instances of hateful speech because it falls into recognized exceptions to the First Amendment (*e.g.* true threats), the Supreme Court has repeatedly held there is no categorical exception for expression others view as hateful.<sup>8</sup>

This principle does not waver in the context of public universities, whether the speech is a “heated exchange of views” on race<sup>9</sup> or a “sophomoric and offensive” skit depicting women and minorities in derogatory stereotypes,<sup>10</sup> for example. If authorities could punish expression

---

<sup>5</sup> W. Kent Fuchs (@PresidentFuchs), TWITTER (Feb. 1, 2023, 1:46 PM), <https://twitter.com/presidentfuchs/status/1620856053943664641>.

<sup>6</sup> According to *The Alligator*, the chalk was written near The Hub, outside Weimer Hall and in the courtyard between Pugh Hall, Dauer Hall and Farrison Hall, as well as near Flint Hall and Turlington. Thompson, *supra* note 3. UF’s Temporary Signage policy allows chalking in some of those locations but prohibits it in others. “Chalking is permitted ONLY on the following locations: Concrete sidewalks on the north side of the Reitz Union, up the emergency fire lane, to the eastern most point of the North Lawn Stage, and ending at the western most point of the emergency fire lane at the Reitz Union breezeway, and Concrete portions of the walkway located in the northeast corner of the Turlington Plaza (south of Union Road, west of Newell Drive, back to the northeast side of Turlington), including the tabling area.” *Temporary Signage*, UNIV. OF FLA. (Mar. 10, 2022), <https://hub.policy.ufl.edu/s/article/Temporary-Signage> [<https://perma.cc/G9LR-B6LA>]. Time, place, and manners restrictions, like the aforementioned policy, must be applied in a content-neutral manner and may not target specific viewpoints.

<sup>7</sup> *Animal Legal Def. Fund v. Reynolds*, 353 F. Supp. 3d 812, 821 (S.D. Iowa 2019).

<sup>8</sup> See, *e.g.*, *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992) (striking down an ordinance that prohibited placing on any property symbols that “arouse[] anger, alarm or resentment in others on the basis of race, color, creed, religion or gender”); see also, *e.g.*, *Matal v. Tam*, 137 S. Ct. 1744, 1764 (2017) (invalidating a limitation on speech viewed as “hateful” or demeaning “on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground”).

<sup>9</sup> See, *e.g.*, *Rodriguez v. Maricopa Cty. Cmty. Coll. Dist.*, 605 F.3d 703, 705 (9th Cir. 2009) (faculty member’s use of system-wide listserv to send “racially-charged emails” was not unlawful harassment, as the First Amendment “embraces such a heated exchange of views,” especially when they “concern sensitive topics like race, where the risk of conflict and insult is high”).

<sup>10</sup> *Iota Xi Chapter of Sigma Chi Fraternity v. George Mason Univ.*, 993 F.2d 386, 388–92 (4th Cir. 1993).

deemed hateful, it would imperil a broad range of political speech and academic inquiry, and would undoubtedly be used against those it is intended to protect. For example, when the University of Michigan briefly enacted an unconstitutional prohibition against hate speech, it was used almost universally to punish students of color who offended white students.<sup>11</sup>

FIRE does not object to UF’s reasonable removal of messages that violate viewpoint-neutral and neutrally-applied policies regulating chalking on campus. However, UF’s statement asserts it can and will investigate or punish messages deemed anti-Semitic, hateful, or intolerant. As to the former, the harm caused by investigations alone is not *de minimis*—investigations into protected expression frequently constitute implicit threat of discipline, and the resulting chilling effect can constitute cognizable First Amendment harm.<sup>12</sup> The implication that students could be investigated for similar messages would very likely “chill or silence a person of ordinary firmness from future First Amendment activities.”<sup>13</sup> If UF can investigate chalking that “Ye is Right” could it investigate a student for tweeting the same message?

FIRE urges UF to confirm to students that it cannot and will not investigate or punish similar subjectively offensive speech in the future. Again, UF may criticize views the university disagrees with. Criticism is a form of “more speech,” the remedy to offensive expression that the First Amendment prefers to censorship.<sup>14</sup> However, the First Amendment limits the *types* of consequences that may be imposed and who may impose them. At a public institution, administrators cannot use state power to censor controversial views.

Given the urgent nature of this matter, we request a substantive response to this letter no later than the close of business on Friday, February 17, 2023, making clear that students may express themselves even if others are offended.

Sincerely,



Sabrina Conza  
Program Officer, Campus Rights Advocacy  
UF College of Journalism and Communications ‘20

Cc: Linda Stump-Kurnick, Assistant Vice President, Public and Environmental Safety

---

<sup>11</sup> “[M]ore than twenty cases were brought by whites accusing blacks of racist speech; the only two instances in which the rule was invoked to sanction racist speech involved punishment of speech by a black student and by a white student sympathetic to the rights of black students, respectively; and the only student who was subjected to a full-fledged disciplinary hearing was a black student charged with homophobic and sexist expression.” Thomas. A. Schweitzer, *Hate Speech on Campus and the First Amendment: Can They Be Reconciled?*, 27 CONN. L. REV. 493, 514 (1995) (citing Nadine Strossen, *Regulating Racist Speech on Campus: A Modest Proposal*, 1990 DUKE L.J. 484, 557–58 (1990)); see also *Doe v. Univ. of Mich.*, 721 F. Supp. 852, 869 (E.D. Mich. 1989) (striking down the university’s speech code as unconstitutional).

<sup>12</sup> *Levin v. Harleston*, 966 F.2d 85, 89–90 (2d Cir. 1992).

<sup>13</sup> *Mendocino Envtl. Ctr. v. Mendocino Cty.*, 192 F.3d 1283, 1300 (9th Cir. 1999).

<sup>14</sup> *Whitney v. California*, 274 U.S. 357, 377 (1927).