



FIRE

Foundation for Individual
Rights and Expression

August 9, 2023

William F. Tate IV
Office of the President
Louisiana State University
3810 Lakeshore Drive
Baton Rouge, Louisiana 70808

URGENT

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

Dear President Tate:

FIRE is disappointed we have not received a response to our enclosed July 21 letter explaining that LSU's dismissal of Marcus Venable from his graduate assistantship in response to a voicemail he left state Senator Mike Fesi violates Venable's First Amendment rights.¹ FIRE again calls on LSU to reinstate Venable and to cease any further investigations or disciplinary actions.

As noted previously, whether the First Amendment protects any particular speech is "a legal, not moral, analysis."² The Supreme Court has repeatedly, consistently, and clearly held that government actors may not restrict or punish expression simply because others find it offensive or even hateful.³

Venable's vitriol in the voicemail at issue, including his statement that "we'll put your fucking ass in the ground," is clear political hyperbole. While Venable may express a desire to see Fesi out of office, his statement cannot be fairly read as a promise to commit actual violence against Fesi and falls far short of the legal standard for "true threats."⁴ In accordance with the First

¹ Recall that the First Amendment binds public universities like LSU. *Healy v. James*, 408 U.S. 169, 180 (1972).

² *Animal Legal Def. Fund v. Reynolds*, 353 F. Supp. 3d 812, 821 (S.D. Iowa, 2019).

³ See e.g., *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (burning the American flag was protected by the First Amendment, the "bedrock principle underlying" the holding being that government actors "may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable"); *Cohen v. California*, 403 U.S. 15, 25 (1971) (publicly wearing a jacket emblazoned with the words "Fuck the Draft," is First Amendment-protected activity).

⁴ A "true threat" is a statement through which "the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." *Virginia v. Black*, 538 U.S. 343, 359 (2003). A true threat also requires that the speaker consciously disregarded a

Amendment, the Louisiana State Police found Venable's voicemail did not meet this standard, stating on July 30 that: "The case has been closed. No charges at this time."⁵ LSU's punishment of Venable thus cannot legitimately rest on any finding that his speech was a true threat.

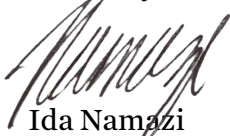
Additionally, Venable was not afforded due process, as he was made aware of his dismissal only through the press statement LSU released and never received an opportunity to appeal that determination. This violates LSU's Student Handbook, which states that:

Written notice of the alleged violation and reasons for enacting the Interim Measure must be provided to the Respondent within seventy-two (72) hours of determination of an immediate threat of harm to students, other individuals, or University premises.⁶

Venable received neither notification of any alleged violation, any reasoning for LSU imposing the interim measure of removal from teaching duties, nor any opportunity to respond or appeal the decision as of the date of this letter – weeks after the initial punishment. Had LSU afforded Venable the fundamental right to be heard prior to punishment, administrators may have recognized his statements constitute speech protected by the First Amendment.⁷

LSU cannot punish Venable for his protected political speech and must reinstate him if it wishes to avoid not only violating his rights, but chilling expression on its campus. Given the urgent nature of this matter, we request a substantive response to this letter no later than the close of business on August 16, confirming that LSU will rescind all disciplinary actions against Venable and reinstate him to his graduate assistantship.

Sincerely,



Ida Namazi
Program Officer, Campus Rights Advocacy

Cc: Carlton (Trey) Jones, III, Deputy General Counsel

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substantial risk that their speech would place another in fear of serious physical harm. *Counterman v. Colorado*, 143 S. Ct. 2106 (2023).

⁵ Lester Duhé, *LSU grad student will no longer teach at university after alleged profanity-laced voicemail to state lawmaker*, WAFB, Jul. 20, 2023, <https://www.wafb.com/2023/07/20/lsu-grad-student-no-longer-allowed-teach-university-after-allegedly-leaving-profanity-laced-voicemail-state-lawmaker/>.

⁶ *Code of Student Conduct*, Accountability Procedures, Interim Measures (effective Jan. 3, 2023) https://www.lsu.edu/saa/docs/code_of_student_conduct_revised_january_2023.pdf [<https://perma.cc/Y9D8-T3HF>].

⁷ *Wells v. Columbus Tech. Coll.*, 2013 U.S. App. LEXIS 4022, 5–6 (11th Cir. 2013) (citing *Castle v. Appalachian Tech. Coll.*, 631 F.3d 1194, 1200 (11th Cir. 2011)) (suspending a student without a hearing is generally a violation of due process).