



FIRE

Foundation for Individual
Rights and Expression

December 15, 2023

Cindy R. Jebb
Office of the President
Ramapo College
505 Ramapo Valley Road
Mahwah, New Jersey 07430

URGENT

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

Dear President Jebb:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned by Ramapo College's public announcement of an investigation into Professor Renata Gangemi for her pro-Palestinian social media posts.² While some may have taken offense to Gangemi's posts, they are clearly protected political expression under the First Amendment, which binds Ramapo as a public college. Ramapo must end the investigation and avoid investigating its faculty's protected expression moving forward.

Our concerns arise out of the social media account StopAntisemitism's November 26 post of an image of Gangemi along with a post from her personal Facebook page featuring an image of a baby being cut in half by a cleaver held by a hand painted with Israeli and American flags,³ to which StopAntisemitism appended your contact information and a call for its followers to share their views with you.⁴ On November 28, Ramapo publicly announced an investigation

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 here reflects our understanding of the pertinent facts, which is based on publicly available information. We appreciate that you may have additional information to offer and invite you to share it with us.

³ StopAntisemitism (@StopAntisemites), X (Nov. 26, 2023, 1:41 PM), <https://twitter.com/StopAntisemites/status/1728846576062287941> [<https://perma.cc/6VP5-9QVP>].

⁴ StopAntisemitism (@StopAntisemites), X (Nov. 26, 2023, 7:44 PM), <https://twitter.com/StopAntisemites/status/1728937916880347548> [<https://perma.cc/LZX6-95QR>].

into “social media posts from a member of the Ramapo College community,”⁵ and an admonition that it expects its members to “model civil discourse, demonstrate empathy, and treat each other with dignity.”⁶ Both the investigation and the mandate are at odds with Ramapo’s First Amendment obligations as a public institution.⁷

The First Amendment protects Ramapo faculty’s right to comment on matters of public concern,⁸ and restricts the college from penalizing protected faculty speech—including that which “concern[s] sensitive topics” like ethnicity or religion, “where the risk of conflict and insult is high.”⁹ Gangemi’s posts are undoubtedly protected speech on a matter of public concern, as issues related to ethnic and political conflict generally are—and the ongoing Israeli-Palestinian conflict in particular currently captivates conversation on the news and social media while triggering large public protests nationwide.

As the Supreme Court has held, “the public interest in having free and unhindered debate on matters of public importance” is “the core value” underlying First Amendment protection of free expression.¹⁰ Political speech, including speech on the Israeli-Palestinian conflict, merits the highest level of First Amendment protection as “there is practically universal agreement that a major purpose of [the] Amendment was to protect the free discussion of government affairs.”¹¹ Discussion of geopolitics is undoubtedly “core political speech” at the very heart of any conception of free expression, and is where First Amendment protection is “at its zenith.”¹²

The fact that some observers took offense to Gangemi’s posts does not deprive her speech of protection, as whether speech is protected by the First Amendment is “a legal, not moral, analysis.”¹³ The Supreme Court has repeatedly, consistently, and clearly held that government actors may not restrict expression on the basis that others find it offensive or hateful,¹⁴ because

⁵ Ramapo College (@RamapoCollegeNJ), X (Nov. 28, 2023, 1:00 PM), <https://twitter.com/RamapoCollegeNJ/status/1729560947943973128?s=20> [<https://perma.cc/K6ZJ-6SRU>].

⁶ Ramapo College (@RamapoCollegeNJ), X (Nov. 28, 2023, 1:00 PM), <https://twitter.com/RamapoCollegeNJ/status/1729560951790113149> [<https://perma.cc/EPG8-36FZ>].

⁷ *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 quotations and citation omitted).

⁸ *Connick v. Myers*, 461 U.S. 138, 143 (1983).

⁹ *Id.* at 140 (“[P]ublic employee[s] do[] not relinquish [their] First Amendment rights to comment on matters of public concern by virtue of government employment.”).

¹⁰ *Pickering v. Bd. of Educ.*, 391 U.S. 563, 573 (1968); *see also, e.g., Id.* at 145 (“[S]peech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.”).

¹¹ *Mills v. Alabama*, 384 U.S. 214, 218 (1966).

¹² *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 186-187 (1999) (quoting *Meyer v. Grant*, 488 U.S. 414 (1988)).

¹³ *Animal Legal Def. Fund v. Reynolds*, 353 F. Supp. 3d 812, 821 (S.D. Iowa 2019).

¹⁴ *See e.g., Cox v. Louisiana*, 379 U.S. 536, 557 (1965) (dispersing civil rights marchers out of fear that “muttering” and “grumbling” white onlookers might resort to violence violated the First Amendment.);

“[a]s a Nation we have chosen ... to protect even hurtful speech on public issues to ensure that we do not stifle public debate.”¹⁵

The fact that some may have felt Gangemi expressed herself in an uncivil or disagreeable manner similarly does not allow Ramapo to investigate or punish her, as expectations that community members “model civil discourse”¹⁶ imposes an unconstitutional civility norm. Courts have held that any conception of free expression in the public university setting must allow room for speech others subjectively feel is “unprofessional” or “uncivil.”¹⁷ FIRE has also seen these norms frequently abused to selectively punish faculty who express disfavored viewpoints—exactly as happened here.

Investigation of constitutionally protected speech can itself violate the First Amendment even if concluded in the speaker’s favor.¹⁸ The question is not whether formal punishment follows, but whether the institution’s actions “would chill or silence a person of ordinary firmness from future First Amendment activities[.]”¹⁹ For example, when a public university launched an investigation into a faculty member’s writings on race and intelligence, it carried an implicit threat of discipline and the resulting chilling effect constituted a cognizable First Amendment harm, especially given that the university announced an *ad hoc* committee to review whether the professor’s expression—which university leadership said “ha[d] no place at” the college—constituted “conduct unbecoming of a member of the faculty.”²⁰

Here, publicly announcing an investigation with the implicit threat of discipline sends the unmistakable message to other Ramapo faculty members that if they speak out on a political issue in a manner with which Ramapo administrators disagree, they risk incurring an investigation and more significant discipline. Such an outcome is unacceptable at a public institution legally bound to uphold faculty expressive rights.

To be sure, Gangemi is not shielded from every consequence of her expression—including criticism by students, faculty, or the broader community that takes the form of the “more

Cohen v. California, 403 U.S. 15, 25 (1971) (wearing a jacket reading “Fuck the draft” in public was protected expression); *Hustler Mag., Inc. v. Falwell*, 485 U.S. 46, 50 (1988) (a parody ad depicting a pastor losing his virginity to his mother in an outhouse was protected expression); *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (burning the American flag was protected by the First Amendment, the “bedrock principle underlying” which is that government actors “may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable”).

¹⁵ *Snyder v. Phelps*, 562 U.S. 443, 448, 461 (2011).

¹⁶ Ramapo College, *supra* note 6.

¹⁷ See *Levin v. Harleston*, 966 F.2d 85, 89 (2nd Cir. 1992); *Coll. Republicans at S.F. State Univ. v. Reed*, 523 F.Supp.2d 1005, 1018-20 (N.D. Cal. 2007) (ordering university to stop enforcing policy requiring students to “be civil to one another because it was overbroad and infringed on their expressive rights”).

¹⁸ See, e.g., *White v. Lee*, 227 F.3d 1214, 1228 (9th Cir. 2000).

¹⁹ *Mendocino Envtl. Ctr. v. Mendocino Cty.*, 192 F.3d 1283, 1300 (9th Cir. 1999).

²⁰ *Levin v. Harleston*, 966 F.2d 85, 89–90 (2d Cir. 1992).

speech,” remedy the First Amendment prefers to censorship.²¹ But the First Amendment limits the *types* of consequences that may attach, and *who* may impose them.

Given the urgent nature of this matter, we request a substantive response to this letter no later than the close of business on Friday, December 29, confirming Ramapo will promptly end its investigation of Gangemi and publicly commit to upholding faculty expressive rights.

Sincerely,

A handwritten signature in cursive script, appearing to read "Graham Piro".

Graham Piro
Program Officer, Campus Rights Advocacy

Cc: Michael Middleton, Provost

²¹ *Whitney v. California*, 274 U.S. 357, 377 (1927).