

BELOW IS A SUMMARY OF THE CASE YOU ARE FILING WITH THE **SUPREME COURT**.  
REVIEW ALL INFORMATION AND DOCUMENTS FOR ACCURACY PRIOR TO HITTING THE **SUBMIT** BUTTON  
IN THE NEXT PAGE.

**FILING ID #** 1043979 **APPELLATE #** A-000895-20  
**SUPREME #** 088471 **TRIAL COURT COUNTY** GLOUCESTER  
**CASE TITLE** A. DAWN TAWWATER V. ROWAN COLLEGE AT GLOUCESTER COUNTY, ET AL.  
**CASE TYPE** CIVIL **DISPOSITION DATE** 05/09/2023  
**CATEGORY** LAW-CIVIL PART  
**TRIAL COURT JUDGE**

#### PARTY/ATTORNEY

PARTY NAME	PARTY TYPE	FIRM NAME – ATTORNEY NAME	ADDRESS
A. DAWN TAWWATER	PLAINTIFF	DONALD F. BURKE - DONALD FRANCIS BURKE (ATTORNEY OF RECORD)	45 GALE RD, BRICK, NJ 08723 732-966-4922 donaldburkeesq@gmail.com dfbcool@gmail.com dfburkejr@gmail.com
ROWAN COLLEGE AT GLOUCESTER COUNTY BOARD OF TRUSTEES	DEFENDANT	BROWN & CONNERY, LLP - MICHAEL JOSEPH DI PIERO (ATTORNEY OF RECORD)	360 HADDON AVE, WESTMONT, NJ 08108 856-854-8900 MJDPIERO@BROWNCONNERY.COM SSTOKES@BROWNCONNERY.COM JCALVES@BROWNCONNERY.COM
DANIELLE MORGANTI	DEFENDANT	BROWN & CONNERY, LLP - MICHAEL JOSEPH DI PIERO (ATTORNEY OF RECORD)	360 HADDON AVE, WESTMONT, NJ 08108 856-854-8900 MJDPIERO@BROWNCONNERY.COM SSTOKES@BROWNCONNERY.COM JCALVES@BROWNCONNERY.COM
ROWAN COLLEGE AT GLOUCESTER COUNTY	DEFENDANT	BROWN & CONNERY, LLP - MICHAEL JOSEPH DI PIERO (ATTORNEY OF RECORD) BROWN & CONNERY, LLP - ANDREW S BROWN (CO-COUNSEL)	360 HADDON AVE, WESTMONT, NJ 08108 856-854-8900 MJDPIERO@BROWNCONNERY.COM SSTOKES@BROWNCONNERY.COM JCALVES@BROWNCONNERY.COM 360 HADDON AVE, WESTMONT, NJ 08108 856-854-8900 ABROWN@BROWNCONNERY.COM DLUPO@BROWNCONNERY.COM JEVANS@BROWNCONNERY.COM
MARNA L. CARLTON	DEFENDANT	BROWN & CONNERY, LLP - MICHAEL JOSEPH DI PIERO (ATTORNEY OF RECORD)	360 HADDON AVE, WESTMONT, NJ 08108 856-854-8900 MJDPIERO@BROWNCONNERY.COM SSTOKES@BROWNCONNERY.COM JCALVES@BROWNCONNERY.COM
LINDA MARTIN	DEFENDANT	BROWN & CONNERY, LLP - MICHAEL JOSEPH DI PIERO (ATTORNEY OF RECORD)	360 HADDON AVE, WESTMONT, NJ 08108 856-854-8900 MJDPIERO@BROWNCONNERY.COM SSTOKES@BROWNCONNERY.COM JCALVES@BROWNCONNERY.COM
PAUL RUFINO	DEFENDANT	BROWN & CONNERY, LLP - MICHAEL JOSEPH DI PIERO (ATTORNEY OF RECORD)	360 HADDON AVE, WESTMONT, NJ 08108 856-854-8900 MJDPIERO@BROWNCONNERY.COM SSTOKES@BROWNCONNERY.COM JCALVES@BROWNCONNERY.COM
ALMARIE JONES	DEFENDANT	BROWN & CONNERY, LLP - MICHAEL JOSEPH DI PIERO (ATTORNEY OF RECORD)	360 HADDON AVE, WESTMONT, NJ 08108 856-854-8900 MJDPIERO@BROWNCONNERY.COM SSTOKES@BROWNCONNERY.COM

FRED KEATING	DEFENDANT	BROWN & CONNERY, LLP - MICHAEL JOSEPH DIPIERO (ATTORNEY OF RECORD)	JCALVES@BROWNCONNERY.COM 360 HADDON AVE, WESTMONT, NJ 08108 856-854-8900 MJDIPERO@BROWNCONNERY.COM SSTOKES@BROWNCONNERY.COM JCALVES@BROWNCONNERY.COM
AMERICAN CIVIL LIBERTIES UNION OF NEW JERSEY	AMICUS CURIAE	AMERICAN CIVIL LIBERTIES UNION OF NEW JERSEY FOUNDATION - ALEXANDER R SHALOM (ATTORNEY OF RECORD) AMERICAN CIVIL LIBERTIES UNION OF NEW JERSEY FOUNDATION - JEANNE M LOCICERO (CO-COUNSEL) RUTGERS CONSTITUTIONAL RIGHTS CLINIC - RONALD KEVIN CHEN (OF COUNSEL)	570 BROAD ST, 11TH FLOOR, P.O. BOX 32159 NEWARK, NJ 07102 973-854-1720 ASHALOM@ACLU-NJ.ORG COURTFILING@ACLU-NJ.ORG 570 BROAD ST, 11TH FLOOR, P.O. BOX 32159 NEWARK, NJ 07102 973-854-1720 JLOCICERO@ACLU-NJ.ORG courtfiling@aclu-nj.org CENTER FOR LAW AND JUSTICE, 123 WASHINGTON ST NEWARK, NJ 07102-0000 973-353-5687 ronchen@law.rutgers.edu ronchen@andromeda.rutgers.edu
FOUNDATION FOR INDIVIDUAL RIGHTS IN EDUCATION	AMICUS CURIAE	GREUBEL LEGAL SERVICES - GREG HAROLD GREUBEL (ATTORNEY OF RECORD)	744 SOUTH ST, STE 715 PHILADELPHIA, PA 19147 267-838-8083 GREG.GREUBEL@THEFIRE.ORG

## DOCUMENTS

DOCUMENT / FILE NAME	FILING PARTY	FIRM NAME/ATTORNEY NAME	SOURCE	DATE POSTED	DOCUMENT STATUS	SUPREME MODE
NOTICE OF PETITION FOR CERTIFICATION	A. DAWN TAWWATER	DONALD F. BURKE - DONALD FRANCIS BURKE	SYSTEM GENERATED	07/17/2023	APPROVED	C-UNASSIGNED-1
FILING TIME EXEMPTION	A. DAWN TAWWATER	DONALD F. BURKE - DONALD FRANCIS BURKE	SYSTEM GENERATED	07/17/2023	APPROVED	C-UNASSIGNED-1
NPC ACKNOWLEDGEMENT	Court		SUPREME COURT	07/20/2023	APPROVED	C-UNASSIGNED-1
TRANSCRIPTS - 10/19/20	Court		SUPREME COURT	07/20/2023	APPROVED	C-UNASSIGNED-1
TRANSCRIPTS - 01/02/18	Court		SUPREME COURT	07/20/2023	APPROVED	C-UNASSIGNED-1
TRANSCRIPTS - 08/11/17	Court		SUPREME COURT	07/20/2023	APPROVED	C-UNASSIGNED-1
ORDER- (GRANTED)	Court		SUPREME COURT	09/21/2023	APPROVED	M-00143-23
CERTIFICATION OF SERVICE	A. DAWN TAWWATER	DONALD F. BURKE - DONALD FRANCIS BURKE	SYSTEM GENERATED	07/17/2023	APPROVED	C-UNASSIGNED-1
MOTION FOR AN EXTENSION OF TIME	A. DAWN TAWWATER	DONALD F. BURKE - DONALD FRANCIS BURKE	SYSTEM GENERATED	08/07/2023	APPROVED	M-00143-23
AFFIDAVIT/CERTIFICATION IN SUPPORT	A. DAWN TAWWATER	DONALD F. BURKE - DONALD FRANCIS BURKE	UPLOAD	08/07/2023	APPROVED	M-00143-23
CERTIFICATION OF SERVICE	A. DAWN TAWWATER	DONALD F. BURKE - DONALD FRANCIS BURKE	SYSTEM	08/07/2023	APPROVED	C-

		FRANCIS BURKE	GENERATE D	3		UNASSIGNED- 1
ANSWERING BRIEF (LETTER)	ROWAN COLLEGE AT GLOUCESTER COUNTY	BROWN & CONNERY, LLP - MICHAEL JOSEPH DI PIERO	UPLOAD	08/07/202 3	APPROVED	M-00143-23
CERTIFICATION OF SERVICE	ROWAN COLLEGE AT GLOUCESTER COUNTY	BROWN & CONNERY, LLP - MICHAEL JOSEPH DI PIERO	SYSTEM GENERATE D	08/07/202 3	APPROVED	C- UNASSIGNED- 1
PETITION FOR CERTIFICATION WITH APPENDIX	A. DAWN TAWWATER	DONALD F. BURKE - DONALD FRANCIS BURKE	UPLOAD	10/23/202 3	CURED	C- UNASSIGNED- 1
CERTIFICATION OF SERVICE	A. DAWN TAWWATER	DONALD F. BURKE - DONALD FRANCIS BURKE	SYSTEM GENERATE D	10/23/202 3	APPROVED	C- UNASSIGNED- 1
PETITION FOR CERTIFICATION WITH APPENDIX (AMENDED)	A. DAWN TAWWATER	DONALD F. BURKE - DONALD FRANCIS BURKE	UPLOAD	10/23/202 3	APPROVED	C- UNASSIGNED- 1
CERTIFICATION OF SERVICE	A. DAWN TAWWATER	DONALD F. BURKE - DONALD FRANCIS BURKE	SYSTEM GENERATE D	10/23/202 3	APPROVED	C- UNASSIGNED- 1
APPELLATE DIVISION BRIEF	A. DAWN TAWWATER	DONALD F. BURKE - DONALD FRANCIS BURKE	UPLOAD	10/24/202 3	APPROVED	C- UNASSIGNED- 1
APPELLATE DIVISION APPENDIX (Vol. 1)	A. DAWN TAWWATER	DONALD F. BURKE - DONALD FRANCIS BURKE	UPLOAD	10/24/202 3	APPROVED	C- UNASSIGNED- 1
APPELLATE DIVISION APPENDIX (Vol. 2)	A. DAWN TAWWATER	DONALD F. BURKE - DONALD FRANCIS BURKE	UPLOAD	10/24/202 3	APPROVED	C- UNASSIGNED- 1
APPELLATE DIVISION APPENDIX (Vol. 3)	A. DAWN TAWWATER	DONALD F. BURKE - DONALD FRANCIS BURKE	UPLOAD	10/24/202 3	APPROVED	C- UNASSIGNED- 1
APPELLATE DIVISION APPENDIX (Vol. 4)	A. DAWN TAWWATER	DONALD F. BURKE - DONALD FRANCIS BURKE	UPLOAD	10/24/202 3	APPROVED	C- UNASSIGNED- 1
APPELLATE DIVISION APPENDIX (Vol. 5)	A. DAWN TAWWATER	DONALD F. BURKE - DONALD FRANCIS BURKE	UPLOAD	10/24/202 3	APPROVED	C- UNASSIGNED- 1
APPELLATE DIVISION APPENDIX (Vol. 6)	A. DAWN TAWWATER	DONALD F. BURKE - DONALD FRANCIS BURKE	UPLOAD	10/24/202 3	APPROVED	C- UNASSIGNED- 1
APPELLATE DIVISION APPENDIX (Vol. 7)	A. DAWN TAWWATER	DONALD F. BURKE - DONALD FRANCIS BURKE	UPLOAD	10/24/202 3	APPROVED	C- UNASSIGNED- 1
APPELLATE DIVISION APPENDIX (Vol. 8)	A. DAWN TAWWATER	DONALD F. BURKE - DONALD FRANCIS BURKE	UPLOAD	10/24/202 3	APPROVED	C- UNASSIGNED- 1
APPELLATE DIVISION REPLY BRIEF	A. DAWN TAWWATER	DONALD F. BURKE - DONALD FRANCIS BURKE	UPLOAD	10/24/202 3	APPROVED	C- UNASSIGNED- 1
APPELLATE DIVISION SUPPLEMENTAL BRIEF (LETTER) (LETTER)	A. DAWN TAWWATER	DONALD F. BURKE - DONALD FRANCIS BURKE	UPLOAD	10/24/202 3	APPROVED	C- UNASSIGNED- 1
CERTIFICATION OF SERVICE	A. DAWN TAWWATER	DONALD F. BURKE - DONALD FRANCIS BURKE	SYSTEM GENERATE D	10/24/202 3	APPROVED	C- UNASSIGNED- 1
REPLY BRIEF WITH APPENDIX	ROWAN COLLEGE AT GLOUCESTER COUNTY	BROWN & CONNERY, LLP - MICHAEL JOSEPH DI PIERO	UPLOAD	11/07/202 3	SUBMITTED	C- UNASSIGNED- 1
CERTIFICATION OF SERVICE	ROWAN COLLEGE AT GLOUCESTER COUNTY	BROWN & CONNERY, LLP - MICHAEL JOSEPH DI PIERO	SYSTEM GENERATE	11/07/202 3	SUBMITTED	C- UNASSIGNED-

MOTION FOR AN EXTENSION OF TIME	A. DAWN TAWWATER	DONALD F. BURKE - DONALD FRANCIS BURKE	D SYSTEM GENERATE D	11/16/2023	APPROVED	1 M- UNASSIGNED- 2
AFFIDAVIT/CERTIFICATION IN SUPPORT	A. DAWN TAWWATER	DONALD F. BURKE - DONALD FRANCIS BURKE	UPLOAD	11/16/2023	APPROVED	M- UNASSIGNED- 2
CERTIFICATION OF SERVICE	A. DAWN TAWWATER	DONALD F. BURKE - DONALD FRANCIS BURKE	SYSTEM GENERATE D	11/16/2023	APPROVED	C- UNASSIGNED- 1
AMICUS CURIAE BRIEF	FOUNDATION FOR INDIVIDUAL RIGHTS IN EDUCATION	GREUBEL LEGAL SERVICES - GREG HAROLD GREUBEL	UPLOAD	11/17/2023	SUBMITTED	C- UNASSIGNED- 1
CERTIFICATION OF SERVICE	FOUNDATION FOR INDIVIDUAL RIGHTS IN EDUCATION	GREUBEL LEGAL SERVICES - GREG HAROLD GREUBEL	SYSTEM GENERATE D	11/17/2023	SUBMITTED	C- UNASSIGNED- 1

## FEES AND PAYMENTS

Fee Type	Fee Amount	Fee Status	Fee Paid	Date Paid	Amount Due
No record found.					

---

---

# Supreme Court of New Jersey

---

Docket No. 088471

A. DAWN TAWWATER,	:	CIVIL ACTION
	:	
<i>Plaintiff-Petitioner,</i>	:	ON PETITION FOR
	:	CERTIFICATION FROM SUPERIOR
vs.	:	COURT OF NEW JERSEY,
	:	APPELLATE DIVISION
ROWAN COLLEGE AT	:	
GLOUCESTER COUNTY;	:	DOCKET NO.
ROWAN COLLEGE AT	:	A-000895-20-T1
GLOUCESTER COUNTY BOARD	:	
OF TRUSTEES; GENE J.	:	Sat Below:
CONCORDIA, Chairperson;	:	HON. FRANCIS J. VERNIOIA, J.A.D.
YOLETTE C. ROSS, Vice	:	HON. LISA A. FIRKO, J.A.D.
Chairperson; DOUGLAS J. WILLS,	:	HON. ARNOLD L. NATALI, J.A.D.
ESQUIRE, Treasurer; JEAN L.	:	
DUBOIS, Secretary; LEN DAWS;	:	
	:	
<i>(For Continuation of Caption</i>	:	
<i>See Next Page)</i>	:	

---

---

## BRIEF OF *AMICUS CURIAE* FOUNDATION FOR INDIVIDUAL RIGHTS AND EXPRESSION IN SUPPORT OF PETITION FOR CERTIFICATION OF PLAINTIFF-PETITIONER

---

---

*On the Brief:*

GREG HAROLD GREUBEL  
Attorney ID# 171622015  
FOUNDATION FOR INDIVIDUAL  
RIGHTS AND EXPRESSION  
510 Walnut Street, Suite 1250  
Philadelphia, Pennsylvania 19106  
(215) 717-3473  
greg.greubel@thefire.org

*Attorney for Amicus Curiae Foundation  
for Individual Rights and Expression*

Date Filed: November 17, 2023



COUNSEL PRESS • (800) 5 APPEAL

---

DR. JAMES J. LAVENDER; RUBY :  
LOVE; CODY D. MILLER; :  
PEGGY NICOLosi; DR. GEORGE :  
J. SCOTT; VIRGINIA N. SCOTT; :  
DR. FRED KEATING, President; :  
DR. LINDA MARTIN, Vice :  
President for Academic Services; :  
DANIELLE MORGANTI, :  
Executive Director of Human :  
Resources; DR. PAUL RUFINO, :  
Dean of Liberal Arts; ALMARIE :  
JONES, Director of Diversity; and :  
MARNA L. CARLTON, Assistant :  
Director of Human Resources (in :  
their individual and official :  
capacities) and JOHN DOES 1-5 :  
(being agents, servants and :  
employees of defendants as a :  
continuing investigation may reveal :  
who are fictitiously named because :  
their true identities are unknown), :  
:  
*Defendants-Respondents.* :

---

## **TABLE OF CONTENTS**

	<b>Page(s)</b>
TABLE OF AUTHORITIES .....	ii
PRELIMINARY STATEMENT .....	1
STATEMENT OF INTEREST OF <i>AMICUS CURIAE</i> .....	3
STATEMENT OF THE FACTS AND PROCEDURAL HISTORY .....	4
ARGUMENT .....	4
I.    The First Amendment Protects Professor Tawwater’s Rights to Free Speech and Academic Freedom. ....	5
II. <i>Amicus</i> FIRE’s Work Demonstrates That Faculty Speech Rights Are Under Threat Nationwide. ....	9
A.   The data reveal alarming levels of faculty censorship at America’s institutions of higher education.....	9
B.   Plaintiff-Petitioner Tawwater is just one of many professors disciplined or terminated for protected pedagogical decisions. ....	11
CONCLUSION .....	16

## **TABLE OF AUTHORITIES**

### **Cases:**

### **Page(s)**

<i>DeJohn v. Temple Univ.</i> , 537 F.3d 301 (3d Cir. 2008) .....	6
<i>Hardy v. Jefferson Cmty. Coll.</i> , 260 F.3d 671 (6th Cir. 2001) .....	6-7
<i>Keyishian v. Bd. of Regents</i> , 385 U.S. 589 (1967).....	5, 6, 11
<i>Sweezy v. New Hampshire</i> , 354 U.S. 234 (1957).....	5, 6

### **Other Authorities:**

@BlessUSA2024, Twitter (Sept. 19, 2020, 2:37AM) .....	12
Am. Ass’n of Univ. Profs., <i>1940 Statement of Principles of Academic Freedom and Tenure with 1970 Interpretive Comments</i> (1970).....	6
Andrew Koppelman, <i>Is This Law Professor Really a Homicidal Threat?</i> , Chron. of Higher Educ. (Jan. 19, 2021) .....	14
Brief for FIRE as <i>Amicus Curiae</i> Supporting Neither Affirmance Nor Reversal, <i>Meriwether v. Hartop</i> , 992 F.3d 492 (6th Cir. 2021) (No. 20–3289) .....	3
Brief for FIRE as <i>Amicus Curiae</i> Supporting Plaintiff-Appellant, <i>Kashdan v. George Mason Univ.</i> , No. 20-1509 (4th Cir. Aug. 19, 2020) .....	3



Colleen Flaherty, <i>Professor Who Questioned Student’s Request Reinstated</i> , Inside Higher Ed (Sept. 15, 2020) .....	13
Colleen Flaherty, <i>Suspended: Professor Who Mocked Exam Request</i> , Inside Higher Ed (June 10, 2020).....	13
Compl., <i>Klein v. Bernardo</i> , No. 21SMCV01577 (Cal. Super. Ct. Sept. 27, 2021) .....	13
Decision of the W. Va. Pub. Emp. Grievance Bd., <i>Mosher v. Marshall Univ.</i> , No. 2021-1040-MU (Dec. 9, 2021) .....	12
Gary Robbins, <i>SDSU slammed, supported for reassigning teacher who used racial epithets in lectures</i> , San Diego Union-Trib. (Mar. 9, 2022) .....	14
Jordan Howell & Adam Steinbaugh, <i>How adjunctification undermines academic freedom, and what FIRE is doing to help</i> , FIRE (Dec. 6, 2021) .....	7
Josh Bleisch, <i>University of Illinois Chicago reneges on agreement with law professor Jason Kilborn</i> , FIRE (Nov. 22, 2021) .....	14
Komi Frey & Sean Stevens, <i>Scholars Under Fire: Attempts to Sanction Scholars from 2000 to 2022, Who is Target for Sanction?: Professional Characteristics</i> , FIRE (2023) .....	8, 10, 11
Komi T. German & Sean Stevens, <i>Scholars Under Fire: 2021 Year in Review</i> , FIRE (2022) .....	10
Letter from Adam Steinbaugh, FIRE, to Jerome A. Gilbert, President, Marshall Univ. (Oct. 7, 2020).....	12

Letter from Katlyn Patton, FIRE, to Christina M. Haines, Interim President, Scottsdale Cmty. Coll. (May 7, 2020) .....	15
Lilah Burke, <i>Professor on Leave After Statement on Trump Supporters</i> , Inside Higher Ed (Sept. 21, 2020) .....	12
Lorraine Longhi, <i>District to investigate Islam quiz questions, criticizes Scottsdale college's 'rush to judgment'</i> , Ariz. Republic (May 11, 2020) .....	15
Pl.'s Notice of Ruling, <i>Klein v. Bernardo</i> , No. 21SMCV01577, (Cal. Super. Ct. Apr. 1, 2022) .....	13
Press Release, FIRE, FIRE defends UCLA professor suspended for email on why he wouldn't change exam, grading for black students (June 10, 2020) .....	13
Press Release, FIRE, LAWSUIT: A history professor advocated for removing Confederate statues. Then his college fired him. (Mar. 8, 2022) .....	8-9
Press Release, FIRE, LAWSUIT: Fired for criticizing Mike Pence and COVID-19 response, a Collin College history professor sues to protect faculty rights (Oct. 26, 2021) .....	8
Sabrina Conza, <i>San Diego State claims to have evidence justifying its removal of a professor for referencing slurs in teaching linguistics. Let's see it.</i> , FIRE (Mar. 25, 2022) .....	14
<i>Tenure: What is academic tenure?</i> , AAUP, <a href="https://www.aaup.org/issues/tenure">https://www.aaup.org/issues/tenure</a> .....	7

## **PRELIMINARY STATEMENT**

This matter presents an important question regarding the State of New Jersey's protections for academic freedom. In 2014, Petitioner Dawn Tawwater worked at Rowan College as a full-time tenure-track professor, where she taught Sociology 101. During a September 2014 class on the topic of female objectification, she screened the video "Defined Lines," a parody of Robin Thicke's popular 2013 music video "Blurred Lines." The original "Blurred Lines" video featured topless female models and prompted worldwide discussions about sexism, sexual assault, and female objectification. Three female Australian law students created "Defined Lines" to highlight the female objectification and misogyny in the original video and in pop culture as a whole.

Some of Professor Tawwater's students took offense to "Defined Lines" because it objectified men by depicting them in their underwear—much like the original "Blurred Lines" depicted women topless in their underwear. "Defined Lines" did this as a way to highlight how *women* are objectified in popular culture, and the student reactions prove the video was successful in this regard. Nevertheless, their offense left Professor Tawwater unemployed. Rowan College administrators first directed Professor Tawwater to sign a "Last Chance Agreement" that would have sharply restricted her speech and

academic freedom in the classroom. When she refused, Rowan College terminated her for using “indecent language.” Professor Tawwater’s ability to challenge this unconstitutional decision was limited because she was not yet tenured, and therefore lacked tenure’s procedural protections.

The “Defined Lines” video, and Professor Tawwater’s pedagogical decision to show it during class, are both squarely protected by the First Amendment and academic freedom. Professor Tawwater was terminated for provoking her students to think critically about sexual objectification in media, or in other words, for doing her job as a sociology professor. Professor Tawwater’s story is all too familiar to *amicus* FIRE and faculty across the country. Faculty expressive rights within and outside the classroom are under siege, with dozens of faculty members each year facing prolonged investigations, suspensions, or terminations because of their pedagogical choices. That is particularly true for untenured faculty like Professor Tawwater.

In order for America’s colleges and universities to remain incubators for ideas, faculty must enjoy the breathing room to teach and explore ideas. In turn, courts must allow faculty to vindicate their expressive rights when colleges and universities like Rowan run afoul of the First Amendment, state constitutions, and their own policies. Professors who facilitate meaningful

classroom dialogue on controversial subjects should be rewarded for doing their jobs well, not subject to termination. This Court should grant Professor Tawwater's Petition.

**STATEMENT OF INTEREST OF *AMICUS CURIAE*<sup>1</sup>**

The Foundation for Individual Rights and Expression (FIRE) is a nonpartisan, nonprofit organization dedicated to defending the individual rights of all Americans to free speech and free thought—the essential qualities of liberty. Because colleges and universities play an essential role in preserving free thought, FIRE places a special emphasis on defending these rights on our nation's campuses. Since 1999, FIRE has successfully defended First Amendment rights on campuses nationwide through public advocacy, targeted litigation, and amicus curiae filings in cases that implicate expressive rights protecting civil liberties at our nation's institutions of higher education. *See, e.g.*, Brief for FIRE as *Amicus Curiae* Supporting Neither Affirmance Nor Reversal, *Meriwether v. Hartop*, 992 F.3d 492 (6th Cir. 2021) (No. 20–3289); Brief for FIRE as *Amicus Curiae* Supporting Plaintiff-Appellant, *Kashdan v. George Mason Univ.*, No. 20-1509 (4th Cir. Aug. 19, 2020).

---

<sup>1</sup> No counsel for a party authored this brief in whole or in part. Further, no person, other than *amicus*, its members, or its counsel contributed money intended to fund preparing or submitting this brief.

FIRE has a significant interest in this case because the appellate court decision, if allowed to stand, will deny Plaintiff-Petitioner Dawn Tawwater the opportunity to vindicate her expressive rights, which the arbitrator determined Rowan College likely violated in contravention of the New Jersey Civil Rights Act. FIRE knows from experience that allowing college administrators to escape responsibility for violating the First Amendment and corresponding provisions of state constitutions will engender further retaliation and censorship, thus eroding professors' ability to teach their students in New Jersey and across the nation. FIRE files this brief in support of Professor Tawwater to demonstrate the nationwide assault on faculty speech rights in this country, and to urge this Court to intervene.

### **STATEMENT OF THE FACTS AND PROCEDURAL HISTORY**<sup>2</sup>

*Amicus* FIRE relies on the Procedural History and Statement of Facts set forth in Plaintiff-Petitioner A. Dawn Tawwater's opening brief before the Appellate Division.

### **ARGUMENT**

The First Amendment, academic freedom, and the New Jersey constitution guarantee public university faculty the right to make decisions

---

<sup>2</sup> *Amicus* FIRE has combined the Statement of the Facts and Procedural History for the Court's convenience because the factual background and procedural history of the dispute are intertwined.

about what to teach and how to teach it. Those protections apply with particular force when professors teach about important, and sometimes contentious, issues. Rowan College subverted these guarantees by terminating Professor Tawwater for exploring the issue of female objectification in her sociology class. Unfortunately, Rowan College is not alone—amicus FIRE’s work proves many public colleges and universities have persecuted professors for their First Amendment-protected speech, particularly when they lack tenure like Professor Tawwater. In the classroom, both faculty and students must have the right to “remain free to inquire, to study and to evaluate . . . otherwise, our civilization will stagnate and die.” *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957). This Court should grant certification to restore that right for all public faculty in New Jersey.

**I. The First Amendment Protects Professor Tawwater’s Rights to Free Speech and Academic Freedom.**

American jurisprudence has long recognized the First Amendment’s free speech guarantee extends to public colleges and universities, and that academic freedom for professors is a core part of that guarantee. For example, in striking down a loyalty oath requirement for professors at the State University of New York, the United States Supreme Court noted that “[o]ur Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us, and not merely to the teachers concerned.” *Keyishian v. Bd. of Regents*, 385

U.S. 589, 603 (1967). As such, academic freedom is “a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.” *Id.* Academic freedom is thus a principle upon which colleges and universities “should be extremely reticent to tread.” *Sweezy*, 354 U.S. at 250; *see also DeJohn v. Temple Univ.*, 537 F.3d 301, 314 (3d Cir. 2008) (explaining that, on public campuses, “free speech is of critical importance because it is the lifeblood of academic freedom”).

The American Association of University Professors emphasized this point in its 1940 Statement of Principles on Academic Freedom and Tenure.<sup>3</sup> As the Association explained, “[t]eachers are entitled to freedom in the classroom in discussing their subject,” cabined by the limited exception that faculty should “avoid persistently intruding material which has no relation to their subject.”<sup>4</sup> As a general matter, then, faculty enjoy the discretion to determine how to approach subjects relevant to their courses. Faculty may even choose approaches that are controversial or subjectively offensive. *See Hardy v. Jefferson Cmty. Coll.*, 260 F.3d 671, 674–75, 683 (6th Cir. 2001) (holding a professor who used racial epithets to exemplify “how language is used to marginalize minorities” enjoyed the

---

<sup>3</sup> Am. Ass’n of Univ. Profs., *1940 Statement of Principles of Academic Freedom and Tenure with 1970 Interpretive Comments* (1970), <https://www.aaup.org/file/1940%20Statement.pdf> [<https://perma.cc/6GH5-JL2S>].

<sup>4</sup> *Id.* at 14 & n.4.



academic freedom to do so because expression that is “germane to the classroom subject matter,” “however repugnant,” is “protected by the First Amendment”).

These baseline First Amendment protections for academic freedom apply to all professors at public colleges and universities, regardless of tenure status. This Court should reaffirm that principle for untenured faculty here, because to do otherwise would set a dangerous precedent for retaliation against unpopular speech by untenured professors in the classroom. That is particularly vital in light of the recent “adjunctification” of higher education. Tenure provides additional substantive and procedural protections for academic freedom beyond the First Amendment, because it grants professors indefinite employment terminable “only for cause or under extraordinary circumstances.”<sup>5</sup> But as of 2019, “approximately three out of every four faculty were employed off the tenure track, and about half were part-time faculty, often known as ‘adjunct’ professors, who work on short-term contracts with no guarantee of renewal.”<sup>6</sup>

---

<sup>5</sup> *Tenure: What is academic tenure?*, AAUP, <https://www.aaup.org/issues/tenure> [<https://perma.cc/CUS9-ME3B>] (last visited Nov. 16, 2023).

<sup>6</sup> Jordan Howell & Adam Steinbaugh, *How adjunctification undermines academic freedom, and what FIRE is doing to help*, FIRE (Dec. 6, 2021), <https://www.thefire.org/how-adjunctification-undermines-academic-freedom-and-what-fire-is-doing-to-help/> [<https://perma.cc/8EDJ-QB2G>].

Non-tenured employees like Professor Tawwater often serve on term contracts that lack tenure's requirement that they be fired for cause. This means administrators can choose to fire them for a good reason, a bad reason, or for no reason at all, leaving First Amendment lawsuits as their only backstop for wrongful First Amendment retaliation. Research by FIRE proves that the lack of tenure has real consequences for adjunct faculty who engage in unpopular expression. For example, while tenured and tenure-track faculty are more likely to face attempts to professionally sanction them for their expression, adjunct faculty are far more likely to be actually terminated.<sup>7</sup> Some schools even deliberately eschew tenure to make it easier to fire unpopular faculty. For example, *amicus* FIRE has litigated on behalf of three professors fired from Collin College in Texas who each faced discipline and termination for speech administrators did not like, both inside and outside the classroom.<sup>8</sup> There is, by design, no tenure system at Collin College, so

---

<sup>7</sup> Komi Frey & Sean Stevens, *Scholars Under Fire: Attempts to Sanction Scholars from 2000 to 2022, Who is Target for Sanction?: Professional Characteristics*, FIRE (2023), <https://www.thefire.org/research-learn/scholars-under-fire-attempts-sanction-scholars-2000-2022#> [<https://perma.cc/95NK-3ENT>] [hereinafter *Scholars Under Fire 2023*].

<sup>8</sup> Press Release, FIRE, LAWSUIT: Fired for criticizing Mike Pence and COVID-19 response, a Collin College history professor sues to protect faculty rights (Oct. 26, 2021), <https://www.thefire.org/lawsuit-fired-for-criticizing-mike-pence-and-campus-covid-19-response-a-collin-college-history-professor-sues-to-protect-faculty-rights/> [<https://perma.cc/GW5Y-PF5V>]; Press Release, FIRE, LAWSUIT: A history professor advocated for removing Confederate statues. Then his college fired him. (Mar. 8, 2022), <https://www.thefire.org/lawsuit-a-history->

all three of those professors—and likely many others—had no immediate procedural protection from Collin College’s custom and practice of terminating professors for speaking out on public issues. Instead, they had to vindicate their rights in court.

## **II. *Amicus* FIRE’s Work Demonstrates That Faculty Speech Rights Are Under Threat Nationwide.**

Professor Tawwater’s case before this Court is emblematic of a larger problem in academia: Faculty expressive rights are under siege at colleges and universities across the nation. A brief survey of *amicus* FIRE’s recent work defending faculty rights illustrates the severity of the threat and the corresponding need for courts to vindicate the expressive rights of faculty like Professor Tawwater.

### **A. The data reveal alarming levels of faculty censorship at America’s institutions of higher education.**

*Amicus* FIRE publishes an annual report chronicling the threat to faculty expressive rights and academic freedom at America’s colleges and universities. Its most recent report, “Scholars Under Fire: Attempts to Sanction Scholars from 2000 to 2022,” chronicles over a thousand examples of scholars who have been targeted by “cancel culture,” defined as attempts to professionally sanction them for speech

---

professor-advocated-for-removing-confederate-statues-then-his-college-fired-him/  
[<https://perma.cc/ARD8-4DEC>].

that is (or would be, if it were at a public institution) protected by the First Amendment.<sup>9</sup> Sanction attempts often come in the form of petitions or open letters, and request sanctions ranging from investigation to suspension to termination.<sup>10</sup> Sanction attempts have increased dramatically over time, from only four incidents in 2000 to 26 in 2014 (including the firing of Professor Tawwater) to 145 in 2022.<sup>11</sup> Almost two thirds of the scholar sanction attempts resulted in an actual sanction, including 225 terminations.<sup>12</sup>

The data demonstrate faculty are most often targeted for speech concerning controversial sociopolitical issues like race, institutional policy, partisanship, and, like Professor Tawwater, gender.<sup>13</sup> Ironically, another topic for which faculty are frequently targeted is free speech itself.<sup>14</sup> And faculty expression that takes place in the classroom—where a professor’s right to academic freedom should protect

---

<sup>9</sup> See *Scholars Under Fire 2023, Executive Summary*, *supra* note 7.

<sup>10</sup> *Scholars Under Fire 2023, Sanction Attempts Increased Dramatically from 2000 to 2022*, *supra* note 7.

<sup>11</sup> *Scholars Under Fire 2023, Executive Summary*, *supra* note 7.

<sup>12</sup> *Id.*

<sup>13</sup> *Scholars Under Fire 2023, What Kinds of Expression Are Targeted for Sanction?*, *supra* note 7.

<sup>14</sup> Komi T. German & Sean Stevens, *Scholars Under Fire: 2021 Year in Review, Executive Summary*, FIRE (2022), <https://www.thefire.org/research/publications/miscellaneous-publications/scholars-under-fire/scholars-under-fire-2021-year-in-review-full-text/#findings> [<https://perma.cc/B3AE-K4X6>].

pedagogical decisions—is targeted more often than faculty speech on social media, in public, or in direct interactions.<sup>15</sup>

The U.S. Supreme Court has noted that academic freedom “is of transcendent value to all [Americans] and not merely to the teachers concerned.” *Keyishian*, 385 U.S. at 603. Academic freedom is thus “a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.” *Id.* Despite this, the data demonstrates that such a pall of orthodoxy is at work in college and university classrooms nationwide, not just at Rowan College.

**B. Plaintiff-Petitioner Tawwater is just one of many professors disciplined or terminated for protected pedagogical decisions.**

Professor Tawwater’s case, regrettably, is not an isolated incident. Colleges and universities across the country are curbing faculty academic freedom rights, including in the classroom, to prevent subjective offense. The following are just a few examples from FIRE’s extensive archives:

*Marshall University.* Administrators at Marshall, a state university in West Virginia, terminated microbiology professor Jennifer Mosher for joking comments she made about mask-wearing and what she saw as risky behavior amidst the COVID-19 pandemic in September 2020, shortly after the

---

<sup>15</sup> *Scholars Under Fire 2023, Where Does Controversial Expression Occur?*, *supra* note 7.

university returned to in-person instruction.<sup>16</sup> During the first few minutes of her microbiology and “Biology of COVID-19” courses, Mosher joked about hoping “certain people” holding rallies—alluding to supporters of President Donald Trump—would suffer the effects of the virus.<sup>17</sup> After a video clip of her comments went viral on Twitter, Marshall terminated her employment.<sup>18</sup> Because Mosher was a tenured professor, she was able to successfully challenge her termination before the West Virginia Public Employee Grievance Board. The Board held Mosher’s remarks were constitutionally protected and “not an appropriate cause for dismissal.”<sup>19</sup>

*University of California, Los Angeles.* In June 2020, UCLA removed adjunct professor Gordon Klein from his teaching post for three weeks after he declined a student request to alter exam dates and grading for black students

---

<sup>16</sup> Lilah Burke, *Professor on Leave After Statement on Trump Supporters*, Inside Higher Ed (Sept. 20, 2020), <https://www.insidehighered.com/quicktakes/2020/09/21/professor-leave-after-statement-trump-supporters> [https://perma.cc/YPC5-VBKT].

<sup>17</sup> Letter from Adam Steinbaugh, FIRE, to Jerome A. Gilbert, President, Marshall Univ. (Oct. 7, 2020), <https://www.thefire.org/fire-letter-to-marshall-university-october-7-2020/> [https://perma.cc/YHC8-486E].

<sup>18</sup> @BlessUSA2024, Twitter (Sept. 19, 2020, 2:37AM), <https://twitter.com/BlessUSA2024/status/1307207048833232896> [https://perma.cc/G3DV-JLW2].

<sup>19</sup> Decision of the W. Va. Pub. Emp. Grievance Bd., *Mosher v. Marshall Univ.*, No. 2021-1040-MU (Dec. 9, 2021), <https://www.thefire.org/mosher-v-marshall-university-docket-no-2021-1040-mu-december-9-2021-order-of-the-west-virginia-public-employees-grievance-board/> [https://perma.cc/6LPE-V4HX].

following the murder of George Floyd, despite the fact that Klein’s response was in accord with UCLA policy.<sup>20</sup> In a letter sent to the campus community, a senior UCLA administrator characterized Klein’s email to the student declining the request as an “abuse of power,” claiming that Klein had demonstrated “a disregard for our core principles.”<sup>21</sup> After an investigation of Klein’s “offensive” comments, he was eventually reinstated.<sup>22</sup> Klein, who, like Professor Tawwater, did not have the procedural protections of tenure, sued UCLA and its administrators, overcame the defendants’ anti-SLAPP motion, and is scheduled for trial in March 2024.<sup>23</sup>

*San Diego State University.* In March 2022, SDSU removed Professor J. Angelo Corlett from the classroom after he quoted racial epithets during a

---

<sup>20</sup> Press Release, FIRE, FIRE defends UCLA professor suspended for email on why he wouldn’t change exam, grading for black students (June 10, 2020), <https://www.thefire.org/fire-defends-ucla-professor-suspended-for-email-on-why-he-wouldnt-change-exam-grading-for-black-students/> [<https://perma.cc/W9DL-GZFY>].

<sup>21</sup> Colleen Flaherty, *Suspended: Professor Who Mocked Exam Request*, Inside Higher Ed (June 11, 2020), <https://www.insidehighered.com/quicktakes/2020/06/11/suspended-professor-who-mocked-exam-request> [<https://perma.cc/LJ7Q-2DXD>].

<sup>22</sup> Colleen Flaherty, *Professor Who Questioned Student’s Request Reinstated*, Inside Higher Ed (Sept. 16, 2020), <https://www.insidehighered.com/quicktakes/2020/09/16/professor-who-questioned-students-request-reinstated> [<https://perma.cc/QFA5-ZKTH>].

<sup>23</sup> Compl., *Klein v. Bernardo*, No. 21SMCV01577 (Cal. Super. Ct. Sept. 27, 2021); Pl.’s Notice of Ruling, *Klein v. Bernardo*, No. 21SMCV01577, (Cal. Super. Ct. Apr. 1, 2022).

lecture on the use-mention distinction in his course on critical thinking.<sup>24</sup>

SDSU removed Corlett from the course, and from his Philosophy, Racism, and Justice course, asserting that he was “not effective” at teaching the course because of “numerous student complaints,” which administrators refused to share with Corlett or his attorney.<sup>25</sup> Corlett was not allowed to return to the classroom for the rest of the semester because of his use of a pedagogically relevant epithet in class.

*University of Illinois, Chicago.* In January 2021, UIC investigated law professor Jason Kilborn for using a *redacted* reference to a racial slur in an employment law-related exam question.<sup>26</sup> UIC removed Kilborn from the classroom pending an investigation, then reneged on its agreement to allow him to return to the classroom for the spring 2022 term.<sup>27</sup>

---

<sup>24</sup> Gary Robbins, *SDSU slammed, supported for reassigning teacher who used racial epithets in lectures*, San Diego Union-Trib. (Mar. 9, 2022), <https://www.sandiegouniontribune.com/news/education/story/2022-03-09/san-diego-state-university-teacher-racial-epithets> [https://perma.cc/WGX5-DCDX].

<sup>25</sup> *Id.*; Sabrina Conza, *San Diego State claims to have evidence justifying its removal of a professor for referencing slurs in teaching linguistics. Let’s see it.*, FIRE (Mar. 25, 2022), <https://www.thefire.org/san-diego-state-claims-to-have-evidence-justifying-its-removal-of-a-professor-for-referencing-slurs-in-teaching-linguistics-lets-see-it/> [https://perma.cc/4RKN-SS66].

<sup>26</sup> Andrew Koppelman, *Is This Law Professor Really a Homicidal Threat?*, Chron. of Higher Educ. (Jan. 19, 2021), <https://www.chronicle.com/article/is-this-law-professor-really-a-homicidal-threat>.

<sup>27</sup> Josh Bleisch, *University of Illinois Chicago reneges on agreement with law professor Jason Kilborn*, FIRE (Nov. 22, 2021),



*Scottsdale Community College*. In May 2020, Scottsdale Community College in Arizona investigated professor Nicholas Damask—and attempted to force him to issue an apology drafted by the college’s public relations department—after the wording of three quiz questions about Islamic terrorism in his World Politics course offended a student and prompted criticism on social media.<sup>28</sup> The college promised in a social media post of its own that Damask would apologize, then sent him the public relations department’s pre-written apology to sign that promised the questions will be “removed from all further courses,” along with any “additional insensitivities.”<sup>29</sup> Only after an urgent letter from FIRE did the chancellor of the district apologize “for the uneven manner in which this was handled and for our lack of full consideration of our professor’s right of academic freedom.”<sup>30</sup>

These are just a few recent examples of public colleges and universities punishing faculty for protected in-class expression. FIRE’s archives contain

---

<https://www.thefire.org/university-of-illinois-at-chicago-reneges-on-agreement-with-law-professor-jason-kilborn/> [<https://perma.cc/53BB-YY7M>].

<sup>28</sup> Letter from Katlyn Patton, FIRE, to Christina M. Haines, Interim President, Scottsdale Cmty. Coll. (May 7, 2020), <https://www.thefire.org/fire-letter-to-scottsdale-community-college-may-7-2020/> [<https://perma.cc/BS6F-3N3Q>].

<sup>29</sup> *Id.*

<sup>30</sup> Lorraine Longhi, *District to investigate Islam quiz questions, criticizes Scottsdale college’s ‘rush to judgment’*, Ariz. Republic (May 11, 2020), <https://www.azcentral.com/story/news/local/scottsdale/2020/05/11/district-investigate-islam-quiz-questions-criticizes-scottsdale-college-criticism-nick-damask/3109055001/> [<https://perma.cc/3WVA-PMU5>].

many more. Because of the frequency of institutional attempts to silence outspoken, dissenting, or critical faculty members, this Court should grant certification here to reaffirm that the First Amendment grants faculty the right to determine what to teach and how to teach it, even when some students may find those pedagogical choices offensive—as was the case with Professor Tawwater’s Defined Lines video.

### **CONCLUSION**

For the foregoing reasons, this Court should grant Professor Tawwater’s petition.

Respectfully submitted,

Dated: November 17, 2023

s/ Greg H. Greubel

---

GREG HAROLD GREUBEL

FOUNDATION FOR INDIVIDUAL RIGHTS  
AND EXPRESSION

*Attorney for Amicus Curiae  
Foundation for Individual Rights  
and Expression*

GREG HAROLD GREUBEL , Esq.  
GREUBEL LEGAL SERVICES  
744 SOUTH ST  
PHILADELPHIA, PA, 19147  
267-838-8083  
GREG.GREUBEL@THEFIRE.ORG  
Attorney Bar ID: 171622015

SUPREME COURT OF NEW JERSEY  
APP. DIV. # A-000895-20  
SUPREME COURT # 088471

CRIMINAL ACTION

A. Dawn Tawwater,  
Plaintiff-Petitioner,  
v.

Rowan College at  
Gloucester County,  
Rowan College at  
Gloucester County  
Board of Trustees,  
Dr. Fred Keating, President,  
Dr. Linda Martin, Vice  
President for Academic  
Services,  
Danielle Morganti,  
Executive Director of Human  
Resources, Dr. Paul Rufino,  
Dean of Liberal Arts, Almarie  
Jones, Director of Diversity,  
and Marna L. Carlton,  
Assistant Director of Human  
Resources, in their individual  
and official capacities,  
Defendants,  
and  
Gene J. Concordia,  
Chairperson, et al.,  
Defendants.

CERTIFICATION OF SERVICE

I hereby certify that the following documents, AMICUS CURIAE  
BRIEF were submitted and transmitted to the parties listed below in  
the following format:

ELECTRONICALLY TO:

ATTORNEY NAME: ALEXANDER R SHALOM , Esq.  
ASHALOM@ACLU-NJ.ORG  
COURTFILING@ACLU-NJ.ORG

---

ATTORNEY NAME: ANDREW S BROWN , Esq.  
ABROWN@BROWNCONNEREY.COM  
DLUPO@BROWNCONNEREY.COM  
JEVANS@BROWNCONNEREY.COM

ATTORNEY NAME: DONALD FRANCIS BURKE, Esq.  
dfbcool@gmail.com  
dfburkejr@gmail.com  
donaldburkeesq@gmail.com

ATTORNEY NAME: JEANNE M LOCICERO , Esq.  
courtfiling@aclu-nj.org  
JLOCICERO@ACLU-NJ.ORG

ATTORNEY NAME: MICHAEL JOSEPH DI PIERO , Esq.  
JCALVES@BROWNCONNEREY.COM  
MJDIPIERO@BROWNCONNEREY.COM  
SSTOKES@BROWNCONNEREY.COM

ATTORNEY NAME: RONALD KEVIN CHEN , Esq.  
ronchen@andromeda.rutgers.edu  
ronchen@law.rutgers.edu

BY MAIL:

I certify that the foregoing statements made by me are true.  
I am aware that if any of the foregoing statements made by me are  
willfully false, I am subject to punishment.

Attorney for Filing Party  
FOUNDATION FOR INDIVIDUAL RIGHTS IN  
EDUCATION

S/ GREG HAROLD GREUBEL , Esq.

Dated: 11/17/2023