

December 19, 2024

Jann L. Joseph
Office of the President, B-3500
Georgia Gwinnett College
1000 University Center Lane
Lawrenceville, Georgia 30043

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

Dear President Joseph:

FIRE, a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned by the letter of reprimand filed against Associate Professor Amir Azarvan for an alleged comment in class about race-based jokes.² Yet Azarvan's comment represents nothing more than the First Amendment-protected exchange of views in class. As a public institution bound by the First Amendment, Georgia Gwinnett must rescind its letter of reprimand and cure any adverse treatment of Azarvan that may arise from its placement in his file.

Our concerns arise from a June 10, 2024 letter of reprimand placed in Azarvan's file by George S. Low, the now-retired Senior Vice President for Academic and Student Affairs.³ This letter alleged that during a Comparative Politics class discussion about racial and cultural stereotypes, Azarvan engaged in a "dialogue referencing 'black jokes' during a conversation about the use of race and cultural stereotypes in comedy[.]"⁴ The letter added that once Azarvan became aware of a student complaint about "racial comments," he told the class that

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 mission and activities at thefire.org.

² The recitation of facts reflects our understanding of the pertinent information, although we acknowledge that some facts are in dispute. We appreciate that you may have additional information to offer and invite you to share it with us. To these ends, please find enclosed an executed privacy waiver authorizing you to share information about this matter.

³ Azarvan did not receive a copy of the letter of reprimand until September 9, 2024, because the letter had initially been sent to an old address.

⁴ Letter of Reprimand from George S. Low, Senior Vice President for Academic and Student Affairs, to Amir Azarvan, Associate Professor (June 10, 2024) (on file with author).

he “didn’t want that one student to complain,” which Low stated “could be considered retaliation[.]”⁵

Low’s letter served as a “formal reprimand” of Azarvan, alleging that he made students in the class feel “targeted, diminished, and ridiculed by [his] discussion of racialized humor[.]” It added that all expression must come with “civility and mutual respect,”⁶ stated it was intended to “deter” Azarvan “from making any further such comments,” and threatened “disciplinary action up to and including termination” for any further violations of college directives.⁷ And indeed, on October 12, 2024, a review committee denied Azarvan’s application for promotion to the rank of full professor, citing an insufficient service record.⁸

The First Amendment binds public colleges like Georgia Gwinnett,⁹ such that its actions and decisions—including the pursuit of disciplinary sanctions¹⁰—must comply with constitutional requirements. Even assuming Georgia Gwinnett’s characterization of the in-class exchange is entirely accurate, the use of the phrase “black jokes” and the discussion of the use of racial stereotypes is protected classroom expression for which Georgia Gwinnett may not discipline Azarvan, even if a student may have found Azarvan’s alleged reference to “black jokes” offensive.

As an initial matter, Azarvan cannot be punished solely on the basis that his speech violated a nebulous standard of “civility and mutual respect.” Subjective “civility” norms imposed on faculty will inevitably be abused to punish those who merely express disfavored viewpoints. Courts have thus held that any conception of free expression in the public college setting must allow room for speech others subjectively feel to be “unprofessional” or “uncivil.”¹¹ Georgia

⁵ *Id.*

⁶ *Id.* The letter of reprimand also claims that Azarvan criticized the student who made the complaint in class, which could be considered “retaliation.” Azarvan denies having made this criticism.

⁷ *Id.* According to Azarvan’s recollection of the in-class exchange, a student had asked Azarvan if she could share a “black joke” with the class. Azarvan demurred, saying that while he enjoys the racial humor of comedians like Eddie Murphy and Dave Chappelle, he did not think a college classroom was a place for racist jokes. He also denied making any comment about a student complaining. Email from Azarvan, professor, to Mills, Interim Senior Vice President of Academic and Student Affairs/Provost (Sept. 10, 2024) (on file with author).

⁸ *Memo*, RE: Dr. Amir Azarvan’s Application for Promotion from the Rank of Associate Professor to the Rank of Professor, from Dr. David Mason, Chair Promotion and Credentialing Review Committee, to Dr. Marc Gilley, Interim Dean (Oct. 10, 2024) (on file with author).

⁹ *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).

¹⁰ *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 667–68 (1973).

¹¹ *See, e.g., Levin v. Harleston*, 966 F.2d 85, 89 (2d Cir. 1992) (public university violated First Amendment in launching investigation into a faculty member’s writings on race and intelligence, which administrators stated “ha[d] no place at [the college]” and constituted “conduct unbecoming of a member of the faculty”); *Coll. Republicans at S.F. State Univ. v. Reed*, 523 F.Supp.2d 1005, 1018–20 (N.D. Cal. 2007) (ordering university

Gwinnett therefore cannot punish Azarvan simply for engaging in speech the administration deems uncivil.

Furthermore, Azarvan has the academic freedom right to decide how to approach interactions with students about class material. In warning against “laws that cast a pall of orthodoxy over the classroom,” the Supreme Court called academic freedom “a special concern to the First Amendment” and a principle “of transcendent value to all of us and not merely to the teachers concerned.”¹² Azarvan’s decision to explain his own feelings about race-based jokes and then move on from the topic to keep his class on-track is precisely the type of pedagogical choice protected by this freedom.

The Supreme Court has repeatedly, consistently, and clearly held expression cannot be punished solely on the basis that others find it offensive.¹³ This principle applies with particular strength to institutions of higher education, which are dedicated to open debate and discussion. Take, for example, a student newspaper’s front-page publication of a “political cartoon ... depicting policemen raping the Statue of Liberty and the Goddess of Justice” and use of a vulgar headline (“Motherfucker Acquitted”).¹⁴ These words and images—published in 1969, at the height of the Vietnam War—were no doubt at least as offensive to many at that time of deep polarization and unrest as the was the discussion alleged to have taken place in Azarvan’s class. Yet the Court insisted then (as now) that “the mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of ‘conventions of decency.’”¹⁵

Finally, the process of imposing the letter of reprimand cannot be squared with the most basic principles of procedural due process. Providing procedural safeguards to professors accused of misconduct helps ensure fairness and impartiality in disciplinary proceedings. That, in turn, lends legitimacy to those proceedings and confidence among complainants, respondents, and members of the public that those decisions are fair. These procedural rights include:¹⁶

- Timely and adequate written notice of the charges;
- Adequate time to prepare a defense with access to relevant evidence;
- A meaningful hearing process;
- The right to present evidence to the fact-finder; and

to stop enforcing policy requiring students to “be civil to one another” because it was overbroad and infringed on their expressive rights).

¹² *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967).

¹³ See, e.g., *Matal v. Tam*, 582 U.S. 218, 246 (2017) (refusing to limit speech viewed as “hateful” or demeaning “on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground”); *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”); *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”).

¹⁴ *Papish*, 410 U.S. at 667–68.

¹⁵ *Id.*

¹⁶ *Due Process on Campus*, FIRE, <https://www.thefire.org/research-learn/due-process-campus>.

- A meaningful right to appeal

Courts have established that the “opportunity to present reasons, either in person or in writing, why proposed action should not be taken is a fundamental due process requirement.”¹⁷ Yet Georgia Gwinnett failed to provide Azarvan with the opportunity to contest the allegations, which include the serious charge of retaliation, before it issued the letter of reprimand. Indeed, Azarvan was not able to present a defense of himself until three months after the letter had been placed in his file. The College’s refusal to afford Azarvan with a meaningful opportunity to dispute the allegation or present evidence that concerned his legally protected expression casts grave doubt on the legitimacy of this disciplinary action.

Given that Azarvan was denied promotion to full professor shortly after this letter was added to his file, FIRE is also concerned that this reprimand has already damaged Azarvan’s career and will continue to do so. The First Amendment bars any “adverse government action against an individual in retaliation for the exercise of protected speech activities” which “would chill a person of ordinary firmness from continuing to engage in that activity.”¹⁸ The placement of the letter of reprimand in Azarvan’s file and its warning to refrain from undefined further expression will certainly chill him from exercising his well-established expressive rights—an unacceptable result at a public college bound by the First Amendment.

Accordingly, we request a substantive response to this letter no later than the close of business on January 3, 2025, confirming that Georgia Gwinnett will rescind the letter of reprimand placed in Azarvan’s file.

Sincerely,



Graham Piro
Faculty Legal Defense Fund Fellow

Cc: Chavonda Mills, Interim Senior Vice President of Academic and Student Affairs/Provost

Encl.

¹⁷ *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546 (1985).

¹⁸ *Keenan v. Trejeda*, 290 F.3d 252, 258 (5th Cir. 2002); *Mendocino Envtl. Ctr. v. Mendocino Cty.*, 192 F.3d 1283, 1300 (9th Cir. 1999).