

July 28, 2025

Dr. Blake Flanders
President and CEO
Kansas Board of Regents
1000 SW Jackson Street, Suite 520
Topeka, Kansas 66612-1368

Sent via U.S. Mail and Electronic Mail (regents@ksbor.org)

Dear President Flanders:

FIRE, a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned by the Kansas Board of Regents' implementation of State Bill 125,² which imposes sweeping restrictions on state employee expression, including a prohibition on using "gender ideology" in "any ... form of communication." The law, and your guidance on implementing that law, vaguely proscribe a wide array of protected speech. We call on the Board to work with FIRE in balancing the state's interests as articulated in SB 125 with student and faculty expression rights.

I. Kansas Enacts New Restrictions on University Employee Speech

SB 125 reads, in relevant part:³

During fiscal year 2026, on or before August 1, 2025, the secretary of administration, in consultation with the governor's department, shall certify to the members of the state finance council that all state agencies have:

...
removed gender identifying pronouns or gender ideology from email signature blocks on state employee's email accounts and any other form of communication.

¹ For more than 25 years, FIRE has defended freedom of expression, conscience, and other individual rights on America's college campuses. You can learn more about our mission and activities at thefire.org.

² *Making and concerning supplemental appropriations for fiscal year 2025 and appropriations for fiscal years 2026 and 2027 for various state agencies, authorizing certain capital improvement*, KAN LEG., 125 (2025), https://kslegislature.gov/li/b2025_26/measures/documents/sb125_enrolled.pdf [<https://perma.cc/8C4B-BNCM>].

³ *Id.*

On June 18, the Kansas Board of Regents issued the following guidance to state universities regarding the new law:⁴

State universities are directed to, no later than July 31, 2025:

...

remove gender identifying pronouns or gender ideology from email signature blocks on state employee's email accounts and any other form of communication.

Neither the law nor Board guidance defines “gender ideology” or “any other form of communication.”

II. New Law, Board Guidance Impose Overly Broad and Vague Restrictions on Faculty Expression

The restrictions on speech enacted by SB 125 and Board guidance are overly broad, restricting a substantial amount of protected expression.⁵ In “communicating” with students, other employees, or anyone else, faculty members may not, per the guidance, use *any* “gender identifying pronouns.” Even words such as “man” or “woman” could land a faculty member in hot water because—depending on the context of usage and views of the administrators enforcing this policy—these words evidence a “gender ideology” (namely, that gender exists).

The First Amendment, which binds public universities under the Board’s charge, protects a wide variety of expression, ranging from the use of singular “they/them” pronouns to more traditional invocations of “he” or “she.” If the authorities cannot outlaw burning the American flag,⁶ punish wearing a jacket emblazoned with “Fuck the Draft,”⁷ or penalize cartoons depicting a pastor losing his virginity to his mother in an outhouse,⁸ surely they cannot prohibit *any* “gender ideology” or use of pronouns that implicate gender.

Additionally, the law and Board’s guidance are vague because they fail to “give a person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.”⁹ Without any definitions provided for key phrases such as “gender ideology” or “any other form of communication,” it’s simply impossible for faculty members to reasonably know which activities are permitted. While one implementing university could interpret “gender ideology” to only encompass affirmations of gender fluidity, another institution could

⁴ *Kansas Board of Regents Diversity Equity and Inclusion Guidance for State Universities in Kansas*, KAN. BOARD OF REGENTS (June 18, 2025), <https://www.k-state.edu/2025-federal-transition/DEI%20Guidance%20For%20State%20Universities%20in%20Kansas%206.18.2025.pdf> [<https://perma.cc/D7BW-NY3K>].

⁵ See *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973).

⁶ *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (burning the American flag is 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”).

⁷ *Cohen v. California*, 403 U.S. 15, 25 (1971).

⁸ *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 50 (1988).

⁹ *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972).

interpret the wording to entail virtually *any* assertion about gender, including a phrase such as “gender is biologically determined.” While both interpretations would impermissibly restrict protected expression, the policy’s vagueness underlies its unconstitutionality.

III. Conclusion

We urge the Kansas Board of Regents to work with FIRE to develop alternative guidance consistent with the First Amendment. FIRE would be pleased to assist in revising this policy guidance, free of charge and in accordance with our charitable mission. We respectfully request a substantive response to this letter no later than close of business on August 11, 2025.

Sincerely,

A handwritten signature in black ink, appearing to read "Dominic Coletti", written in a cursive style.

Dominic Coletti
Program Officer, Campus Rights Advocacy