FIRE
Foundation for Individual Rights and Expression

September 26, 2025

Saúl Jiménez-Sandoval
Office of the President
California State University, Fresno
Haak Center, Library 4104
5200 North Barton
Fresno, California 93740

URGENT

Sent via U.S. Mail and Electronic Mail (sjimenez@mail.fresnostate.edu)

Dear President Jiménez-Sandoval:

FIRE, a nonpartisan nonprofit that defends free speech,[1] is concerned by California State University, Fresno's decision to place Lecturer Barri Brennan on leave pending an investigation for her fleeting classroom comments about the assassination of political activist Charlie Kirk.[2] After a student brought up that Kirk had been shot (but before his death was announced), Brennan stated "You want to know what I think? It's too bad he's not dead."[3] Fresno State's obligations under the First Amendment bar it from investigating or punishing protected political expression—even that which some may view as poorly timed, tasteless, inappropriate, or controversial.[4] Fresno State must therefore end the investigation into Brennan's comment and restore her to her position.[5]

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

[2] Micheal Tellez, *Fresno State lecturer on leave after inappropriate comments about Charlie Kirk's death*, ABC7 (updated Sept. 16, 2025, 6:35 AM), https://katv.com/news/nation-world/fusd-professor-on-leave-for-inappropriate-comments-on-charlie-kirks-death. The recitation of facts reflects our understanding of the pertinent information. We appreciate that you may have additional information and invite you to share it.

[3] Chief Trumpster (@ChiefTrumpster), X (Sept. 14, 2025, 1:44 AM), https://x.com/ChiefTrumpster/status/1967102053962109059 [https://perma.cc/UZ5Y-SS5Q].

[4] *Healy v. James*, 408 U.S. 169, 180 (1972) ("the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.") (internal citation omitted).

[5] To the extent Fresno State is investigating or punishing other faculty for their protected expression relating to Kirk, it must end those investigations or reverse those punishments.

Popular expression rarely needs protecting. It is in moments of controversy that institutional commitments to free expression are put to the test.[6] The Supreme Court has long held that the First Amendment protects speech others may deem offensive, uncivil, or even hateful.[7] This includes expressing vitriol about public figures and engaging in rhetorical hyperbole that may reference violence.[8]

The Supreme Court made this point clear decades ago in *Rankin v. McPherson*, in which a police department fired one of its employees who, after hearing that President Ronald Reagan had been shot, said: "If they go for him again, I hope they get him."[9] The Court held that the employee's firing was unconstitutional, noting that whether listeners found her statement to be of "inappropriate or controversial character" was "irrelevant" to its constitutional protection.[10] Likewise, while Brennan's comments about Kirk may be viewed as inappropriate and hateful, that does not justify "discipline … for expressing controversial, even offensive, views."[11]

The law in this area is clear, and it has not changed. Just days ago, on September 24 of this year, a federal court in South Dakota issued a temporary restraining order returning University of South Dakota Professor Michael Hook to the classroom after he was placed on administrative leave for his social media posts about Kirk's assassination.[12] The district court concluded that Hook's posts as a private citizen were entitled to First Amendment protection.[13]

To be sure, universities have a legitimate interest in ensuring classroom discussion is not disrupted. But that interest does not justify punishing a professor for a fleeting comment in the classroom. This is especially true of political expression, where free speech protection is "at its zenith."[14] A university may justify some restrictions on a professor's expression when its interest "in promoting the efficiency of the public services it performs" outweighs the

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[6] Whether speech is protected by the First Amendment is "a legal, not moral, analysis." *Animal Legal Def. Fund v. Reynolds*, 353 F. Supp. 3d 812, 821 (S.D. Iowa 2019).

[7] *See Texas v. Johnson*, 491 U.S. 397, 414 (1989) (burning the American flag is protected by 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"); *see also Cox v. Louisiana*, 379 U.S. 536, 557 (1965) (fears that "muttering" and "grumbling" white onlookers might resort to violence did not justify dispersal of civil rights marchers). The Court has refused to a limitation on speech viewed as "hateful" or demeaning "on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground." *Matal v. Tam*, 137 S. Ct. 1744, 1764 (2017).

[8] *Watts v. United States*, 394 U.S. 705, 708 (1969) (draftee's statement that "[i]f they ever make me carry a rifle the first man I want to get in my sights is L. B. J." was First Amendment-protected rhetorical hyperbole).

[9] 483 U.S. 378, 381 (1987).

[10] *Id.* at 387.

[11] *Vega v. Miller*, 273 F.3d 460, 467 (2d Cir. 2001).

[12] *Hook v. Rave*, D.S.D., Case 4:25-cv-04188-KES (Sept. 24, 2025), *available at* https://www.courthousenews.com/wp-content/uploads/2025/09/hook-v-rave-usdc-south-dakota-tro.pdf ("[The court concludes that Hook has a 'fair chance of prevailing' in showing that defendants intention to terminate his position as a professor materially changed the terms and conditions of his employment and that the change to his employment status would 'chill a person of ordinary firmness' from continuing to engage in First Amendment protected activity.").

[13] *Id.* at 7, 8.

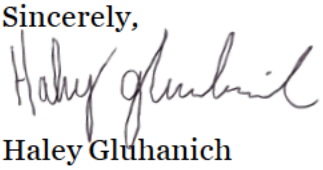
[14] "'Core political speech' involves 'interactive communication concerning political change.'" *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 186-87 (1999) (quoting *Meyer v. Grant*, 4886 U.S. 414 (1988)).

employee's interest "in commenting upon matters of public concern."[15] But the mere "desire to maintain a sedate academic environment does not justify limitations on a teacher's freedom to express [themselves] on political issues in vigorous, argumentative, unmeasured, and even distinctly unpleasant terms."[16] Thus, fleeting classroom comments that violate no law and that deal with issues that are currently gripping the entire country cannot be grounds for institutional censure.[17]

Brennan's speech here is clearly protected. This does not shield Brennan from every consequence of her speech—including criticism by other faculty, students, or the broader community—but it does shield her from punishment by an agency of the state. Criticism is a form of the "more speech" remedy that an institution bound by the First Amendment must favor over censorship.[18] Fresno State's First Amendment obligations thus limit the *types* of consequences that can be imposed, and disciplining Brennan for her protected speech clearly violates that obligation.

Given the urgent nature of this matter, we request a substantive response to this letter no later than the close of business on September 30, 2025, confirming Fresno State will end the investigation into Brennan's comment and restore her to her position.

Sincerely,



Haley Gluhanich
Senior Program Counsel, Campus Rights Advocacy

Cc: Mildred García, CSU Chancellor
John Walsh, University Counsel

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[15] *Pickering v. Bd. of Educ.*, 391 U.S. 563, 576-78 (1968). To justify a punishment, the school must demonstrate the speech "impairs discipline by superiors or harmony among co-workers, has a detrimental impact on close working relationships for which personal loyalty and confidence are necessary, or impedes the performance of the speaker's duties or interferes with the regular operation of the enterprise." *Rankin*, 483 U.S. at 388; *see also Nichols v. Dancer*, 657 F.3d 929, 933 (9th Cir. 2011).

[16] *Rodriguez v. Maricopa Cnty. Comm. Coll. Dist.*, 605 F.3d 703, 705 (9th Cir. 2009).

[17] *See also Graziosi v. City of Greenville Miss.*, 775 F.3d 731, 737 (5th Cir. 2015) (citing *Garcetti v. Ceballos*, 547 U.S. 410, 419; *Pickering*, 391 U.S. at 572) (commentary by "public employees is welcome as they occupy trusted positions in society ... and are the members of a community most likely to have informed and definite opinions on matters of import to the community") (cleaned up).

[18] *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring).