

February 5, 2026

Neeli Bendapudi
Office of the President
The Pennsylvania State University
201 Old Main
University Park, Pennsylvania 16802

URGENT

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

Dear President Bendapudi:

FIRE, a nonpartisan nonprofit that defends free speech,¹ is concerned by Pennsylvania State University's public statement that it is "investigating" an anti-ICE poster. While the poster may have offended some community members, it does not fall into one of the narrow categories of speech unprotected by the First Amendment. Therefore, Penn State is barred from investigating or punishing protected expression. We urge Penn State to immediately cease any further review or investigation of this anti-ICE poster.

On January 29, a poster depicting a person wearing an ICE vest hanging from a noose under the words "DEAD ICE AGENTS CAN'T KILL" was discovered on a light pole outside the student union (the "HUB").² Images of the poster circulated online with calls to identify and punish the responsible party.³ In response, the university announced it is investigating the poster.⁴

Penn State's public announcement that it is "investigating" protected speech raises serious constitutional concerns.⁵ As a public institution, Penn State's regulation of expression must

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

² Adam Wittenberg, *Penn State College Republicans call for action after poster threatens ICE agents*, THE LION (Feb. 3, 2026), <https://readlion.com/penn-state-college-republicans-call-for-action-after-poster-threatens-ice-agents/>. While this article implies that a student is behind the poster, the identity of the person(s) behind the poster is not yet publicly known. The recitation here reflects our understanding of the pertinent facts. We appreciate that you may have additional information and invite you to share it with us.

³ *Id.*

⁴ *Id.* ("Penn State condemns this and any calls for violence or attempts to frighten or intimidate. We are aware of this image circulating online, and University Police and Public Safety is investigating.")

⁵ The Supreme Court has long held that free speech principles protect expression others may deem offensive, uncivil, or even hateful. This includes expressing vitriol about public figures and engaging in rhetorical hyperbole that may reference violence. *See Texas v. Johnson*, 491 U.S. 397, 414 (1989) (burning 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

comport with the First Amendment’s “bedrock principle” of viewpoint neutrality, even toward ideas and views some may find offensive or hateful.⁶ It is well-settled that Penn State “may not restrict speech or association simply because it finds the views expressed by any group to be abhorrent.”⁷

The anti-ICE poster falls well within any reasonable understanding of political advocacy protected by both the First Amendment⁸ and university policy.⁹ The Trump administration’s ongoing immigration enforcement actions are a politically salient topic both on and off campus. Such discussions inevitably bring forth strong feelings, but the fact that others found the poster to be “inappropriate or controversial” is “irrelevant” to whether the poster is protected speech.¹⁰

Nor does the poster fall into any of the recognized, narrowly defined categories of unprotected speech, such as incitement,¹¹ true threats,¹² or discriminatory harassment.¹³ The First Amendment protects expression perceived as conceptually endorsing or celebrating violence¹⁴ or arguing for the “moral propriety or even moral necessity for a resort to force or violence.”¹⁵

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); *Cohen v. California*, 403 U.S. 15, 25 (1971); *Hustler Mag., Inc. v. Falwell*, 485 U.S. 46, 50 (1988).

⁶ *Snyder v. Phelps*, 562 U.S. 443, 458 (2011) (quoting *Texas*, 491 U.S. at 414); *Iancu v. Brunetti*, 588 U.S. 388, 397–98 (2019); *see also 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)).

⁷ *Healy*, 408 U.S. at 187–88.

⁸ *Meyer v. Grant*, 486 U.S. 414, 425 (1988) (holding that political speech is “an area in which the importance of First Amendment protections is at its zenith”) (internal citations omitted); *see also, e.g., Snyder*, 562 U.S. at 451–52 (“Speech on matters of public concern is at the heart of the First Amendment’s protection.”) (cleaned up).

⁹ *Free speech and expression on campus*, Office of the Executive Vice President and Provost, PENN. STATE UNIV., <https://provost.psu.edu/free-speech/> [<https://perma.cc/SCN4-W85L>].

¹⁰ *Rankin v. McPherson*, 483 U.S. 378, 387 (1987).

¹¹ *Brandenburg v. Ohio*, 395 U.S. 444, 447–48 (1969) (incitement is speech advocating violence that is both intended and likely to produce imminent lawless action by others).

¹² *Counterman v. Colorado*, 600 U.S. 66, 74 (2023) (“True threats are ‘serious expression[s]’ conveying that a speaker means to ‘commit an act of unlawful violence.’”) (quoting *Virginia v. Black*, 538 U.S. 343, 359 (2003)).

¹³ *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 650 (1999) (punishable harassment is unwelcome, discriminatory on the basis of gender or another protected status, and “so severe, pervasive, and objectively offensive that it can be said to deprive the victim[] of access to the educational opportunities or benefits provided by the school”).

¹⁴ *Watts v. United States*, 394 U.S. 705, 708 (1969) (man’s statement, after being drafted to serve in the Vietnam War—“If they ever make me carry a rifle the first man I want to get in my sights is L. B. J.”—was rhetorical hyperbole protected by the First Amendment, not a true threat to kill the president).

¹⁵ *Noto v. United States*, 367 U.S. 290, 297–98 (1961).

Of course, none of this shields the author(s) behind the anti-ICE poster from criticism by students, faculty, and the broader community. Criticism is a form of “more speech,” the remedy to offensive expression that the First Amendment prefers to censorship.¹⁶ But the university’s public announcement of an investigation unconstitutionally chills campus expression, regardless of whether the investigation results in formal discipline.¹⁷

Although Penn State may express its condemnation of the anti-ICE poster, we urge you to consider adopting a position of institutional neutrality on political and social questions unrelated to university governance.¹⁸ As articulated in the University of Chicago’s 1967 Kalven Report, a commitment to neutrality allows a university to fulfill its primary mission of generating and disseminating knowledge by welcoming the fullest range of views.¹⁹ By maintaining a principled position of neutrality, a university will confront fewer demands to censor particular voices or respond to every controversy. The university, according to the Kalven Report, “is the home and sponsor of critics; it is not itself the critic.”²⁰ Rather, it is faculty and students who are the “instrument[s] of dissent and criticism.”²¹ We would be happy to work with Penn State on adopting institutional neutrality to avoid further controversies and make the campus free expression climate more hospitable.

Given the urgent nature of this matter, we request a substantive response to this letter no later than February 19, confirming that Penn State will promptly end its investigation into students’ protected expression and refrain from imposing any disciplinary sanctions on the student(s).

Sincerely,

Charlotte Arneson
Program Officer, Campus Rights Advocacy



Cc: Dr. Fotis Sotiropoulos, Executive Vice President and Provost

Tabitha Oman, Vice President and General Counsel

¹⁶ *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring).

¹⁷ See *Mendocino Env’t Ctr. v. Mendocino Cnty.*, 192 F.3d 1283, 1300 (9th Cir. 1999); *Levin v. Harleston*, 966 F.2d 85, 89 (2d Cir. 1992).

¹⁸ As a government actor, Penn State may express a viewpoint so long as its expression does not unconstitutionally affect private speakers’ protected speech by, for instance, chilling private speakers’ expression.

¹⁹ See Kalven Committee, *Report on the University’s Role in Political and Social Action*, UNIV. OF CHICAGO (1967), <https://www.thefire.org/research-learn/report-universitys-role-political-and-social-action-kalven-report>.

²⁰ *Id.*

²¹ *Id.*