



# FIRE

Foundation for Individual  
Rights and Expression

September 30, 2022

Vicki P. Karolewics  
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Wallace State Community College  
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**URGENT**

*Sent via U.S. Mail and Electronic Mail (vicki.karolewics@wallacestate.edu)*

Dear President Karolewics:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,<sup>1</sup> is concerned by Wallace State Community College's decision to investigate an instructor and place her on administrative leave for personal Facebook posts, which have offended some. As these social media comments do not fall into a category of speech unprotected by the First Amendment, Wallace State cannot legitimately—or constitutionally—investigate or punish the instructor for this expression.

According to media reports,<sup>2</sup> Wallace State history instructor Leigh Ann Courington posted the following comment on her private Facebook page on September 26:

The devil is attacking our beautiful town of Cullman now apparently...and the police chief is in on it? I heard he was a crazy-ass liberal but this??? We need a rally by the you-know-what to put an end to this foolishness. Of course, it may be as well-attended as the Juneteenth event the white liberal weirdos tried to do a few years ago in Hanceville.

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<sup>1</sup> 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 recently expanded mission and activities at [thefire.org](http://thefire.org).

<sup>2</sup> While the following reflects our understanding of events based on publicly reported facts, we appreciate you may have additional information to offer and invite you to share it. Lee Hedgepeth, *College history instructor calls for 'rally by the you-know-what' to halt Cullman pride event*, CBS 42 (Sept. 27, 2022), <https://www.cbs42.com/digital-exclusive/college-history-instructor-calls-for-rally-by-the-you-know-what-to-halt-cullman-pride-event>.

In another Facebook post the same day, Courington said, “YES!!! WHY are ‘Nazis’/’Hitler’ always the ‘go to’ insult ??? No mention of Communists who killed MILLIONS OF CHRISTIANS. It’s because ‘they’ want to demonize nationalism, and pride in being white, and standing up against sexual deviancy. Say what you will about the Nazis but at least they got some things right!”<sup>3</sup>

After Courington’s posts were screenshotted and re-posted on social media, the college released a statement on September 28 denouncing her and announcing it had placed her on administrative leave pending an investigation.<sup>4</sup> If the facts are as we understand them, Wallace State’s actions present grave constitutional concerns.

It is well-established that the First Amendment constrains public universities from penalizing faculty’s protected expression,<sup>5</sup> and equally well-established that it does not make a categorical exception for expression deemed offensive to some. Whether speech is protected by the First Amendment is “a legal, not moral, analysis,”<sup>6</sup> and Courington’s posts do not fall into any category of expression unprotected by the First Amendment—such as true threats, obscenity, or harassment. The “bedrock principle underlying” freedom of expression is that speech may not be limited “simply because society finds the idea itself offensive or disagreeable[.]”<sup>7</sup> It is this counter-majoritarian principle that protects “insulting, and even outrageous, speech in order to provide adequate breathing space” for public debate,<sup>8</sup> recognizing that those with authority “cannot make principled distinctions” between what speech is sufficiently offensive or inoffensive to suppress.<sup>9</sup>

This principle is particularly important on college campuses, where the exchange of views may sometimes be caustic, provocative, or inflammatory. Consider, for example, a student newspaper’s use of a vulgar headline (“Motherfucker Acquitted”) and a “political cartoon . . . depicting policemen raping the Statue of Liberty and the Goddess of Justice.”<sup>10</sup> These words and images—published at the height of the Vietnam War—were no doubt deeply offensive to many at a time of deep polarization and unrest. Yet, as the Supreme Court explained when

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<sup>3</sup> *WSCC instructor placed on leave following inflammatory messages*, CULLMAN TRIB. (Sept. 28, 2022), <https://www.cullmantribune.com/2022/09/28/wsc-instructor-placed-on-leave-following-inflammatory-messages>.

<sup>4</sup> *Statement by Wallace State Community College President Vicki Karolewics Regarding Recent Events*, WALLACE STATE CMTY COLL. (Sept. 28, 2022), [https://www.wallacestate.edu/news/2022/09/28/karolewics\\_statement.html](https://www.wallacestate.edu/news/2022/09/28/karolewics_statement.html) [<https://perma.cc/2JSD-XZ2M>].

<sup>5</sup> *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).

<sup>6</sup> *Animal Legal Def. Fund v. Reynolds*, 353 F. Supp. 3d 812, 821 (S.D. Iowa 2019).

<sup>7</sup> *Snyder v. Phelps*, 562 U.S. 443, 458 (2011), *citing Texas v. Johnson*, 491 U.S. 397, 414 (1989).

<sup>8</sup> *Boos v. Barry*, 485 U.S. 312, 322 (1988) (cleaned up).

<sup>9</sup> *Cohen v. California*, 403 U.S. 15, 25 (1971).

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

holding such speech was nonetheless protected, “the mere dissemination of ideas,” however “offensive” to others, “may not be shut off in the name alone of ‘conventions of decency.’”<sup>11</sup>

This calculus is not modified where speech “concern[s] sensitive topics . . . where the risk of conflict and insult is high.”<sup>12</sup> To the contrary, freedom of expression “embraces [the] heated exchange of views” in this context, and the “desire to maintain a sedate academic environment does not justify limitations on a teacher’s freedom to express himself on political issues in vigorous, argumentative, unmeasured, and even distinctly unpleasant terms.”<sup>13</sup> And to be clear, freedom of expression protects both Courington’s posts and the criticism that followed. Whatever one’s view of the posts may be, the First Amendment protects these exchanges of ideas, however pointed or uncomfortable they may sometimes become.

Wallace State should further note that a university’s important obligations to address discriminatory harassment do not obligate it to censor expression in the absence of “something beyond the mere expression of views, words, symbols or thoughts” that others find offensive.<sup>14</sup> Courington’s posts do not reach the exacting standard for “discriminatory harassment” established by the United States Supreme Court in *Davis v. Monroe County Board of Education*, which defines discriminatory harassment in the educational context.<sup>15</sup> For conduct to meet this standard, it must be so “severe, pervasive, and objectively offensive” that it limits a reasonable person’s access to educational resources.<sup>16</sup> Courington’s posts were not severe or pervasive, as they were one-time posts on social media not directed or targeted at any specific individual. Students who were offended by the posts found out about them only after they were screenshotted and re-distributed online. Additionally, because the posts do not deprive or limit individuals’ access to educational resources, Courington’s posts cannot constitute discriminatory harassment.

Removing Courington from teaching her course in the interim is a severe violation of her rights to free speech and to academic freedom. Even if it ultimately resolves in Courington’s favor, an investigation alone into constitutionally protected speech can violate the First Amendment where the institution’s actions “would chill or silence a person of ordinary firmness from future First Amendment activities[.]”<sup>17</sup> Here, Wallace State has made clear that its investigation is due to animus against Courington’s views. A chilling effect has almost certainly set in, not only against Courington, but also other faculty members who might hold opinions out-of-step with the majority at Wallace State. This investigation sends a clear message to Courington and other faculty that they may not express their personal opinions in the future without risking punishment.

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<sup>11</sup> *Id.*

<sup>12</sup> *Rodriguez v. Maricopa Cnty. Comm. Coll. Dist.*, 605 F.3d 703, 708 (9th Cir. 2009).

<sup>13</sup> *Id.*

<sup>14</sup> U.S. Dep’t of Educ., Dear Colleague Letter from Gerald A. Reynolds, Assistant Sec’y for Civil Rights (July 28, 2003), available at <https://www2.ed.gov/about/offices/list/ocr/firstamend.html>.

<sup>15</sup> 526 U.S. 629, 651 (1999).

<sup>16</sup> *Id.*

<sup>17</sup> *Mendocino Envtl. Ctr. v. Mendocino Cty.*, 192 F.3d 1283, 1300 (9th Cir. 1999). See, e.g., *White v. Lee*, 227 F.3d 1214, 1228 (9th Cir. 2000); see also *Levin v. Harleston*, 966 F.2d 85, 89–90 (2d Cir. 1992).

As a public institution bound by the First Amendment, Wallace State may not investigate or punish faculty for subjectively offensive expression. Importantly, this principle does not shield Courington from all consequences—indeed, she has faced harsh criticism from many students, faculty, the broader community, and the university itself. Criticism is a form of “more speech,” the remedy to offensive expression the First Amendment prefers to censorship.<sup>18</sup> However, the First Amendment limits the *types* of consequences that may be imposed, and who may impose them.

Given the urgent nature of this matter, we request receipt of a response to this letter no later than the close of business on Friday, October 7, 2022, confirming that Wallace State will immediately cease the investigation of Courington and return her to the classroom.

Sincerely,



Sabrina Conza  
Program Officer, Campus Rights Advocacy

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<sup>18</sup> *Whitney v. California*, 274 U.S. 357, 377 (1927).