

IN RE TERMINATION OF PROFESSOR DUE TO CHARLIE KIRK-RELATED SPEECH

Opinion of the Emory University Senate Standing Committee for Open Expression

No. CFOE-25-1

October 21, 2025

Executive Summary

In the wake of the assassination of Charlie Kirk, an Emory professor posted certain comments about the assassination on social media—first writing “Good riddance,” and then writing that they “[didn’t] feel bad” about the assassination and that Kirk “seem[ed] like a disgusting individual.” The Emory administration, characterizing these comments as celebrating and inciting violence, terminated the professor.

The Committee for Open Expression finds that most of the reasons given by Emory for the termination are inconsistent with Emory’s Open Expression Policy (Policy 8.14).

- Inconsistency with Emory’s values cannot itself be a reason for termination.
- People’s mere distress that an Emory professor can make such statements cannot itself be a reason for termination.
- The Open Expression Policy cannot justify bowing to outsiders’ efforts to put pressure on Emory to fire the professor by making threats to other members of the Emory Community.
- Patients’ and parents’/students’ distrust cannot justify termination when it is not based on actual patient care or the content of teaching.
- Violation of Emory’s Social Media Guidelines cannot be the basis for termination, because these guidelines do not present themselves as being mandatory; and if they did, a termination cannot be based on the failure to provide a disclaimer in a context like this one, where a disclaimer would serve no useful purpose.
- The relevant unit of the University seems to have not considered Open Expression rights during the disciplinary process, which violates the Policy’s requirement that Open Expression rights be given substantial consideration before any discipline occurs.

The only potentially valid reason is the professor’s initial denial of having made the first of the two statements; but this seems unlikely to have been a deliberate lie, and so it seems unlikely to have violated the policy mandating cooperation with investigations. The Committee therefore concludes that the professor’s termination violated the Open Expression Policy.

I. INTRODUCTION

A. *Background of This Case*

On September 10, 2025, conservative activist Charlie Kirk was assassinated while speaking at an event at a university in Utah. Kirk had been a polarizing figure, and this was nowhere more evident than in the reactions to his assassination. Some people lionized him and felt that he had contributed to the culture of debate on university campuses; some deplored his views while also opposing the use of violence to silence political opponents; some merely stressed what a harmful person they believed he had been.

One untenured associate professor at Emory shared their views on social media. In a comment on someone else's Facebook post about Charlie Kirk, they wrote "Good riddance" (hereinafter "Statement 1").¹ Then, in a later comment in the same thread, they wrote: "Should I feel bad that I don't feel bad about Charlie Kirk? Reading his sayings, he seems like a disgusting individual. He said gay people deserve to die. That black women have 'slow processing brains'. His teachers would have been my generation. Disgusting messaging. Sad for his wife and kids" (hereinafter "Statement 2").

The professor was under the impression that their social media activity was private because their own profile had been set to "private," but they did not realize that comments on someone else's "public" post were visible to everyone. Soon, complaints about their statements were shared widely on social media. One account on X named "Leftism," devoted to "Exposing Leftism," with over 200,000 followers, tweeted the professor's comments together with a photo of the professor and the professor's publicly available "Details" showing that they were an Emory professor; this tweet was viewed over 4 million times. That tweet was retweeted by someone else, with the added comment "Day 3: Still employed. . . . This is what Emory University is protecting." That retweet was viewed over 7 million times, and was in turn retweeted by U.S. Representative Derrick Van Orden (R-Wis.), who wrote: "I will be looking into freezing every single contract[t]he federal government has with this institution [i.e., Emory] until this is dealt with. We're not gonna be supporting anybody that is OK with domestic terrorism."

These complaints were part of a national movement to get people fired for posting positively about Kirk's assassination. Shortly after the assassination, Vice President Vance, guest-hosing Kirk's podcast, said: "When you see someone celebrating Charlie's murder, call them out. Hell, call their employer."² One state legislator said, of teachers and professors who had made comments he found objectionable: "We're not saying jail them. . . . We're just saying they shouldn't teach children. They shouldn't teach young

¹ As discussed in Part III.C below, the professor denied making Statement 1 and later said they did not remember making Statement 1. For purposes of this opinion, we assume that the professor did in fact make Statement 1.

² Rachel Leingang, JD Vance Threatens Crackdown on "Far-Left" Groups After Charlie Kirk Shooting, *Guardian*, Sept. 15, 2025.

people on the taxpayer dime.”³ As a result of this movement, dozens of faculty, staff, and students at higher education institutions have been punished for their Charlie Kirk-related speech.⁴

On September 15, a high-ranking University official circulated a statement about the Kirk assassination that included the following:

We are aware of the recent post connected to an Emory faculty member and understand that it has raised concerns among our colleagues and communities. Please know that we are actively looking into the situation. We are unable to discuss personnel matters.

Throughout Woodruff Health Sciences, we value free speech and respectful disagreement. We believe that having diversity of perspectives enriches our community. However, let me be clear: any celebration or incitement of violence, including on social media, is not acceptable under any circumstances and is inconsistent with our values. These types of expressions undermine both our shared values and the safety of our entire community. Please ensure you are following Emory University’s social media guidelines and standards of conduct guidelines. Violations of these guidelines may result in consequences, including termination of employment.

On September 17, the professor was terminated by a letter from the chair of their department. That letter stated, in relevant part:

I write to inform you of your termination as an employee of Emory University and as a non-tenured faculty member . . . , effective immediately, due to violations of Emory’s conduct expectations and applicable policies, including but not limited to its Standards of Conduct Policy and social media guidance. This decision was reached after careful review and consideration of your recent social media posts concerning the death of Charlie Kirk and related information.

Specifically, in one social media post, you stated “good riddance” regarding the murder of Mr. Kirk. In a second social media post, you wrote: “Should I feel bad that I don’t feel bad about Charlie Kirk? Reading his sayings, he seems like a disgusting individual . . .” In addition, while admitting making the latter statement during Emory’s initial investigation into this matter on September 12, 2025, you adamantly denied making the “good riddance” comment and insisted that your account was “hacked” during two separate interviews with . . . leadership, despite understanding the requirement of fully cooperating with the investigation into your actions. Only when technology experts established that no sign of tampering

³ Tyler Kingkade, Teachers’ Punishment for Social Media Posts on Charlie Kirk’s Death Prompts Free Speech Debate, NBC News, Sept. 18, 2025.

⁴ Ellie Davis et al., Employees and Students at These Colleges Have Been Punished for Comments on Charlie Kirk’s Death, Sept. 22, 2025.

with your Facebook account exist and found the record of your creating the “good riddance” statement on September 16, 2025, did you change your stance and then assert that you did not recall that posting.

Your social media statements concerning the murder of another human being were inflammatory, inappropriate, and wholly inconsistent with Emory’s values and mission. Your decision to make these statements in a public forum in which you also chose to identify yourself as a member of the Emory faculty has resulted in significant distress to our community and its members, and you have harmed the reputation of the University. Your actions have also incited others, thereby creating safety concerns. Among the many complaints Emory has received about your social media posts, your statements have resulted in threats and unwanted attention to individual members of the Emory community who do not know you and who had nothing to do with your comments. In addition, patients have expressed distrust in receiving care at Emory due to your words. Similarly, your actions have resulted in parents questioning Emory’s ability to educate their students. For these reasons, your relationship with Emory must end.

On September 18, Noëlle McAfee, president of the Emory University Senate, wrote an open letter to the relevant dean. “Because this termination concerns the free-speech rights of members of the University community with respect to their off-the-job speech,” she requested that the University Senate’s Committee for Open Expression, “which is tasked with interpreting Emory’s open expression policy, look into and provide a report on the matter.” This opinion is the result of that request.⁵

B. Emory’s Open Expression Policy

Most of the rights guaranteed by the U.S. Constitution, including the free-speech guarantee of the First Amendment, only apply against the government itself, or against people or organizations that can be characterized as “state actors.”⁶ Emory, however, is a private institution.⁷ Therefore, the First Amendment does not automatically apply to actions of the Emory administration. However, nothing prevents private institutions from voluntarily committing themselves to free-speech principles. Indeed, it might seem incongruous that members of the Emory Community should have more restricted free-

⁵ We spoke with the professor involved. The chair of the relevant department and the Dean of the relevant school said they could not discuss personnel matters. This opinion is based on the information available to us; as always, our opinion could change based on information that was not provided due to confidentiality concerns. See Policy 8.14.3.7. Pursuant to Policy 8.14.3.8, we are minimizing the amount of identifying information about the people involved in this opinion.

⁶ See, e.g., *Brentwood Acad. v. Tenn. Secondary Sch. Athl. Ass’n*, 531 U.S. 288 (2001); *Manhattan Community Access Corp. v. Halleck*, 587 U.S. 802 (2019).

⁷ The fact that Emory receives federal funds does not make it into a state actor. See, e.g., *Rendell-Baker v. Kohn*, 457 U.S. 830 (1982).

speech rights than their counterparts at public universities like University of Georgia or Georgia State University.⁸

Accordingly, Emory has adopted an Open Expression Policy which states, in its very first section, at the beginning of the section titled “General Principles”:⁹

Emory . . . respects the protections and principles of free speech and assembly as set forth in the First Amendment (and the corresponding sections of the Georgia Constitution). This standard, with appropriate limitations developed by the courts, generally embodies a reasonable balance between the free-speech interests of faculty, staff, and students, and the significant interests of the university (which include, among other activities central to the university mission, teaching, research, healthcare, housing, dining services, and providing safety on the Emory campuses).¹⁰

The Open Expression Policy thus generally endorses the First Amendment standard, and even in some ways goes beyond it. (For instance, the Policy provides that “[n]o one may unreasonably interfere with or disrupt the protected expression of others.”¹¹ Thus, students who shout down a speaker are violating the Open Expression Policy. By contrast, at a public university, the First Amendment would protect the speaker against the government—i.e., the University itself, not private individuals like students.) Therefore, as we have written before, “while the authority to interpret the Policy rests with the Committee, judicial interpretations of the First Amendment in the context of cases supporting the rights of individuals at public universities are persuasive authority as to the Policy’s meaning.”¹²

C. The Committee for Open Expression

The Policy creates a standing committee of the University Senate called the Committee for Open Expression, which is composed of faculty, staff, and students.¹³ This Committee has “a role in interpreting the Policy, opining on issues that arise under the Policy, and advising the Emory Administration.”¹⁴ The Committee is authorized to interpret the Policy when an Emory Community member complains that their rights were violated

⁸ See, e.g., Derek Bok, Protecting Freedom of Expression on the Campus, Bos. Globe, Mar. 25, 1991 (“I have difficulty understanding why a [private] university such as Harvard should have less free speech than the surrounding society—or than a public university.”).

⁹ Policy 8.14.1.

¹⁰ Policy 8.14.1.1.

¹¹ Policy 8.14.2.3.

¹² See, e.g., In re Emory Students for Justice in Palestine, No. CFOE–16–1 (Feb. 10, 2016), Part I.B, at 3, https://senate.emory.edu/_includes/documents/sections/committees/cfoe-palestine-16.02.10-revised2.pdf; In re Mock Eviction Notices, No. CFOE–19–3 (Apr. 15, 2019), Part II, at 5, https://senate.emory.edu/_includes/documents/sections/committees/cfoe-eviction-19.04.15.pdf.

¹³ Policy 8.14.3.5. The Open Expression Policy was first published on October 29, 2013, and comprehensively revised on March 20, 2025. The role of the Committee for Open Expression has been substantially the same since the inception of the Policy.

¹⁴ Id.

(which they may do by writing to openexpression@emory.edu), and is also authorized to do so on its own initiative (i.e., even when there is no complaint).¹⁵ The Committee has written numerous opinions interpreting the Policy since 2016.¹⁶

II. THE STANDARD FOR EMPLOYEE FREE-SPEECH CLAIMS

Because the Open Expression Policy endorses the First Amendment standard, we look to how a hypothetical similar incident would be handled at a public university.

A. *The Pickering Balancing Standard*

The basic framework for evaluating the free-speech claims of government employees—including schoolteachers and professors at public universities—comes from the U.S. Supreme Court’s opinion in *Pickering v. Board of Education* (1968),¹⁷ as applied and interpreted in numerous cases over the last several decades.

In *Pickering*, high school teacher Marvin Pickering was fired “for sending a letter to a local newspaper in connection with a recently proposed tax increase that was critical of the way in which the Board and the district superintendent of schools had handled past proposals to raise new revenue for the schools.”¹⁸ The Board of Education determined “that the publication of the letter was detrimental to the efficient operation and administration of the schools of the district and hence that interests of the schools required his dismissal.”¹⁹ The Supreme Court held that Pickering did not give up his First Amendment rights as a condition of his employment. At the same time, the Court granted that the government, as an employer, had a greater interest in regulating its employees’ speech than it did in regulating “the speech of the citizenry in general.”²⁰ “The problem in any case,” it wrote, “is to arrive at a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.”²¹

The Court concluded that the school board’s claims of disruption were unproven and speculative:

The Board’s original charges included allegations that the publication of the letter damaged the professional reputations of the Board and the superintendent and

¹⁵ Policy 8.14.3.7.

¹⁶ This Committee’s previous opinions are available at <https://senate.emory.edu/committees/open-expression.html>. Although they interpret previous iterations of the Policy, much of the analysis contained in this Committee’s previous opinions is still valid, especially to the extent that it relies on general First Amendment analysis.

¹⁷ 391 U.S. 563 (1968).

¹⁸ *Id.* at 564.

¹⁹ *Id.* at 564–65 (internal quotation marks, citations, and brackets omitted).

²⁰ *Id.* at 568.

²¹ *Id.*

would foment controversy and conflict among the Board, teachers, administrators, and the residents of the district. However, no evidence to support these allegations was introduced at the hearing. So far as the record reveals, Pickering's letter was greeted by everyone but its main target, the Board, with massive apathy and total disbelief. . . .

[His statements on a matter of public concern] are neither shown nor can be presumed to have in any way either impeded the teacher's proper performance of his daily duties in the classroom or to have interfered with the regular operation of the schools generally. In these circumstances we conclude that the interest of the school administration in limiting teachers' opportunities to contribute to public debate is not significantly greater than its interest in limiting a similar contribution by any member of the general public.²²

In light of "[t]he public interest in having free and unhindered debate on matters of public importance—the core value of the Free Speech Clause of the First Amendment,"²³ as well as the fact that the threat of being fired is "a potent means of inhibiting speech,"²⁴ the Court concluded that (in a case like Pickering's, where no disruption of the workplace had been shown) "a teacher's exercise of his right to speak on issues of public importance may not furnish the basis for his dismissal from public employment."²⁵

The *Pickering* test is now standard whenever discipline of government employees is at issue. The government's interests in controlling the employee's speech are at a maximum when the employee is speaking on the job and pursuant to their work duties²⁶ (though, even then, academic freedom might limit the government interest in limiting professors' in-class speech²⁷). Conversely, the employee's interests in speaking freely are much greater when the employee is speaking in their private capacity, on matters that are of public interest but are not job-related, in non-workplace-related venues (e.g., when commenting on current events on social media).²⁸

B. No Exception for Celebration of Violence

Public employees' First Amendment right is not merely the right to speak intelligently in political debate. The First Amendment also protects people's right to speak intemperately and offensively—even when their speech approves of political violence.

²² Id. at 570–71, 573 (footnote omitted).

²³ Id. at 573.

²⁴ Id. at 574.

²⁵ Id.

²⁶ See *Garcetti v. Ceballos*, 547 U.S. 410 (2006).

²⁷ See id. at 425.

²⁸ See, e.g., *United States v. Nat'l Treas. Employees Union*, 513 U.S. 454, 466 (1995); cf. *Mahanoy Area Sch. Dist. v. B.L.*, 594 U.S. 180, 190 (2021) (schools have lesser leeway to regulate student speech when it occurs off campus).

Consider, for instance, the case of *Rankin v. McPherson*.²⁹ Ardith McPherson was a clerical worker in the office of the Constable of Harris County, Texas. In discussing the attempted assassination of President Reagan with a co-worker in her workplace, she said, “if they go for him again, I hope they get him.”³⁰ Nobody else heard the conversation except for one other co-worker, who told McPherson’s boss, who fired her.

The Court held that her termination violated the First Amendment. Applying the *Pickering* standard, it wrote: “Vigilance is necessary to ensure that public employers do not use authority over employees to silence discourse, not because it hampers public functions but simply because superiors disagree with the content of employees’ speech.”³¹ McPherson’s speech was on “a matter of public concern”: the president’s policies and the recent assassination attempt.³² Given that, the government bore the “burden of justifying the discharge on legitimate grounds.”³³ But there was “no evidence that [her statement] interfered with the efficient functioning of the office,” and the discharge was “not based on any assessment by the Constable that the remark demonstrated a character trait that made respondent unfit to perform her work.”³⁴ Therefore, the government had not relied on any legitimate interest that could overcome McPherson’s free-speech interest.

The Supreme Court’s analysis in *Rankin* is directly contrary to the University’s statement about the professor’s termination, which claims that “any celebration or incitement of violence, including on social media, is not acceptable under any circumstances and is inconsistent with [Emory’s] values” and that “[t]hese types of expressions undermine both our shared values and the safety of our entire community.”

It is true that *incitement of violence* is unprotected, both under the First Amendment and under the Open Expression Policy.³⁵ However, there is no similar exception for *celebration of violence*. This makes sense: all kinds of revolutions and resistance movements—including the American, French, or Russian Revolutions—proceed by violence. Whether one supports a violent resistance movement (or even whether one characterizes it as a “resistance movement” or “terrorism”) depends in large part on one’s assessment of the regime against which it’s resisting, and we presume that Emory does not presume to dictate who one may or may not support in Syria or Palestine or Myanmar. A rule against celebration of violence would chill discourse on domestic politics as well, from the events of January 6, 2021 to the Black Lives Matter protests.³⁶

The freedom to celebrate political violence was a hard-won victory in this country. The Smith Act of 1940 penalized advocating the violent overthrow of the government, and the

²⁹ 483 U.S. 378 (1987).

³⁰ *Id.* at 380–81.

³¹ *Id.* at 384.

³² *Id.* at 384–87.

³³ *Id.* at 388.

³⁴ *Id.* at 389.

³⁵ Policy 8.14.2.1.

³⁶ See, e.g., Vicky Osterweil, *In Defense of Looting: A Riotous History of Uncivil Action* (2020).

federal government prosecuted numerous Communist party officers under the Act. The Supreme Court initially upheld some of these convictions in 1951 in *Dennis v. United States*.³⁷ However, in 1957, in *Yates v. United States*,³⁸ the Court interpreted the Smith Act narrowly: “We are . . . faced with the question whether the Smith Act prohibits advocacy and teaching of forcible overthrow as an abstract principle, divorced from any effort to instigate action to that end, so long as such advocacy or teaching is engaged in with evil intent. We hold that it does not.”³⁹ And the Court later confirmed, in the classic 1969 case *Brandenburg v. Ohio*,⁴⁰ that *Yates*’s distinction between mere “advocacy” and “instigat[ing] action” was actually required by the First Amendment.⁴¹ *Yates* concerned Communist speech while *Brandenburg* concerned racist and antisemitic speech, but the message was the same: advocacy of political violence, with no evidence that the advocate is preparing to actually do anything, is protected under the First Amendment.

Coming back to the professor involved in this incident, their speech fell substantially short of even advocating anything: at most, they merely approved of the result. But even if the professor had gone further and advocated similar future acts, their speech would come within the protection of the First Amendment.

And if the University sought to limit the breathtaking scope of its anti-celebration-of-violence view by merely banning celebration of *unjustified* or *illegitimate* violence, that would not only run up against *Brandenburg* (where the speaker was a KKK leader) but would also introduce a sort of viewpoint discrimination that the Open Expression Policy expressly rejects.⁴²

C. The Need to Show Interference with Operations

The moral of these cases is clear. Members of the Emory Community have a right, under the Open Expression Policy, to comment on public events, in public, on social media, or elsewhere. If the University, for instance, sought to require that members of the Emory Community—whether employees or anyone else—refrain from using social media, such a blanket prohibition would be a clear violation of the Policy.

As discussed above, the government (and thus, the University here) has greater leeway to penalize its employees than it has to penalize ordinary citizens, because the government’s interests as an employer are given greater weight under the *Pickering* balancing test. *However, even then, without a legitimate justification based on interference with University operations, the University’s mere disagreement with the content of its*

³⁷ 341 U.S. 494 (1951).

³⁸ 354 U.S. 298 (1957).

³⁹ *Id.* at 318.

⁴⁰ 395 U.S. 444 (1969).

⁴¹ *Id.* at 447–48; see also *United States v. Williams*, 553 U.S. 285, 298–99 (2008); *id.* at 321–22 (Souter, J., dissenting) (characterizing *Brandenburg* as “one of the milestones of American political liberty”).

⁴² See Policy 8.14.1.1 (prohibiting “discriminat[ion] with respect to viewpoint or content”).

employee’s speech—or even its judgment that the employee’s opinion is reprehensible or evil—cannot justify interference with the employee’s freedom of speech.

III. EVALUATING THE UNIVERSITY’S REASONS

Therefore, any evaluation of the professor’s termination under the Open Expression Policy must examine the University’s specific reasons and see whether any of the reasons are validly based on interference with Emory operations.

The professor’s termination letter (quoted in Part I.A above) does not list an exhaustive set of reasons for the professor’s termination, but it does list a number of negative consequences of the professor’s speech, a few policies that it states were violated, and the professor’s failure to cooperate with the investigation. We consider these three categories below.

A. Negative Consequences of the Professor’s Statements

The various negative consequences listed in the termination letter might count as “[i]nappropriate, disruptive, discourteous or irregular behavior adversely affecting students, employees, patients, or visitors” or “[b]ehavior harmful to the reputation and mission of Emory University”⁴³ within the meaning of the Standards of Conduct (see Part III.B.2 below), and which thus might justify termination. The letter listed (1) inconsistency with Emory’s values, (2) community distress and reputational harm, (3) incitement of others, and (4) patients’ and parents’ distrust. We will discuss these in turn.

1. Inconsistency with Emory’s Values

As the preceding discussion makes clear, the sentence about inconsistency with Emory’s values does not, by itself, state a valid reason for termination, because it does not (as the *Pickering* standard requires) establish any interference with the functioning of the workplace. Emory may promote its values and mission by engaging in its own speech, but members of the Emory Community are generally allowed to interpret the application of those values differently—and even to publicly take positions that are at odds with Emory’s values and mission.

2. Community Distress and Reputational Harm

The sentence about community distress and reputational harm correctly states that the professor self-identified as a member of the Emory faculty. But all this means here is that the publicly available information in their Facebook profile (e.g., the “About Me” section) stated their Emory affiliation. This is probably the case with most Emory Community members who have accounts on Facebook (or similar social media). One is thus implicitly self-identifying as an Emory Community member every time one says or does anything

⁴³ Policy 4.62.

on the platform. To the extent that this fact caused distress to the Emory Community and its members, this distress merely consisted of the knowledge that a faculty member made an inflammatory statement. But that mere knowledge—without (again, as the *Pickering* standard requires) a harm to the functioning of the workplace—cannot support a termination.

Similarly, to the extent there is a harm to the reputation of Emory, it is merely because outsiders are aware that an Emory faculty member made an inflammatory statement. But, just as above, that mere knowledge cannot support a termination. Indeed, the primary purpose of the Open Expression Policy is precisely to protect Emory Community members when they express offensive or unpopular views: “Listeners’ feelings of offense or the unpopularity of the view expressed are not sufficient bases for regulating speech on campus. The University . . . shall not arbitrarily suppress opinions on public questions.”⁴⁴ By protecting its Community members’ freedom of speech, the Policy draws a strong distinction between its own values and those of its Community members. Outsiders should not impute the views of Emory Community members to Emory itself; and to the extent they do so anyway, Emory cannot (consistently with the Open Expression Policy) give effect to such a mistaken attribution.

3. *Incitement of Others*

Responding to threats against Emory Community members is, in principle, a legitimate concern of the University’s; the Policy does list “providing safety on the Emory campuses” as a “significant interest[] of the university.”⁴⁵

Any balancing standard, like the *Pickering* standard, runs the risk of legitimizing a “heckler’s veto,” where someone’s speech is penalized because of complaints by offended parties. If the heckler’s veto is taken as legitimate, unpopular or radical speech would be less protected than mainstream speech. Ordinarily, the government is prohibited from taking such considerations into account. As the Supreme Court has recently written, “[T]he proudest boast of our free speech jurisprudence is that we protect the freedom to express ‘the thought we hate.’”⁴⁶ Or, as a Georgia Supreme Court Justice, who is now at the helm of this university, has written, “Our country places the highest priority on the right of its citizens to speak, to write and to otherwise express themselves as they see fit, even though some may find some of the expression objectionable.”⁴⁷

⁴⁴ Policy 8.14.2.7. The language quoted protects speech “on campus,” but clearly off-campus speech cannot have less protection than on-campus speech, and in any event the location of online speech is ambiguous (and its protection cannot depend on where one was physically located at the time one wrote it). See Policy 8.14.1.1 (“All members of the Emory Community have broad latitude to speak, write, listen, challenge, and learn, whether they are on or off campus.”).

⁴⁵ Policy 8.14.1.1. See also the statement, quoted in Part I.A above, that “[t]hese types of expressions undermine both our shared values and the safety of our entire community.”

⁴⁶ *Matal v. Tam*, 582 U.S. 218, 246 (2017) (quoting *United States v. Schwimmer*, 279 U.S. 644, 655 (1929) (Holmes, J., dissenting)).

⁴⁷ *S.J.T., Inc. v. Richmond Cnty.*, 430 S.E.2d 726, 730 (Ga. 1993) (Sears-Collins, J., dissenting).

If the University could justify its disciplinary decisions by counting outsiders' complaints on the employer-interest side of the scale in *Pickering* balancing, that would provide an easy roadmap for any censorious activists seeking to pressure the University into firing anyone they find objectionable. Targeted professors are victims of the hecklers, and the University lives up to its free-speech commitments by protecting such professors, not by firing them. If the activists proceed not by mere complaints to the University but by threats to unrelated Emory Community members, the heckler's veto problem becomes even worse. If activists are taught that they can get someone fired merely by broadening their attack, we can expect to see much more of such activity whenever any ideological group has sufficient motivation. When a heckler's veto situation arises, protecting Community members from the hecklers is more consistent with free-speech norms than giving in to their demands.

Emory's Open Expression Policy demands that we be particularly sensitive to these dangers. In addition to its general language endorsing the First Amendment standard,⁴⁸ the Policy goes even further—preventing the University from acting on “[l]isteners’ feelings of offense or the unpopularity of the view expressed”⁴⁹ or from “discriminat[ing] with respect to viewpoint or content.”⁵⁰ Thus, in evaluating the University’s legitimate interests under the *Pickering* standard, we do not consider threats from outsiders to be sufficient to justify terminating an employee.⁵¹ This is especially the case when the threats come from ideologically motivated outsiders working together as part of a nationwide movement to seek out people who have expressed objectionable views and pressure their employers to penalize them for those views.⁵²

4. *Patients’ and Parents’ Distrust*

The distrust of students (or students’ parents) and patients is, in principle, a valid concern, since the Policy does list teaching and healthcare as “significant interests of the university.”⁵³

But the University cannot give effect to patients’ concerns about someone who (like the professor here) worked at a job involving no patient contact. Such concerns would be

⁴⁸ Policy 8.14.1.1.

⁴⁹ Policy 8.14.2.7.

⁵⁰ Policy 8.14.1.1.

⁵¹ Cf. *Damiano v. Grants Pass Sch. Dist. No. 7*, 140 F.4th 1117, 1146 (9th Cir. 2025) (“Considering these cases and Plaintiffs’ legitimate concerns about a heckler’s veto, we question whether complaints from individuals who have no connection to the District and live outside its service area should be given much, if any, weight in the *Pickering* analysis.”); *Melzer v. Bd. of Educ. of City Sch. Dist. of City of N.Y.*, 336 F.3d 185, 199 (2d Cir. 2003) (“[C]ommunity reaction cannot dictate whether an employee’s constitutional rights are protected. . . . [A]llowing the public, with the government’s help, to shout down unpopular ideas that stir anger is generally not permitted under our jurisprudence” (citing *McMullen v. Carson*, 754 F.2d 936 (11th Cir. 1985); *Flanagan v. Munger*, 890 F.2d 1557 (10th Cir. 1989))).

⁵² See Part I.A above.

⁵³ Policy 8.14.1.1; cf. also *Munroe v. Cent. Bucks Sch. Dist.*, 805 F.3d 454, 475–76 (3d Cir. 2015) (“[I]t is generally appropriate to consider the reactions of students and parents to an educator’s speech under the *Pickering* balancing test.”).

equally relevant if they were aimed at a receptionist in the law school or a payroll administrator in the College of Arts and Sciences. Similarly, to the extent “parents [have] question[ed] Emory’s ability to educate their students,” such questioning seems untethered to the actual content or quality of the professor’s teaching, but seems based on an opinion that someone with views like the ones expressed by the professor are *per se* inappropriate for a professor. And acting on such opinions is directly contrary to the values of the Open Expression Policy—which, as noted above, prevents the University from acting on “[l]isteners’ feelings of offense or the unpopularity of the view expressed”⁵⁴ or from “discriminat[ing] with respect to viewpoint or content.”⁵⁵

5. Conclusion

In short, the reasons discussed above fail to rise to the level of valid University interests that would justify terminating an employee. Under the *Pickering* standard, the University would have to show a cognizable interference with its functioning. But here, the terminated professor merely expressed themselves on a non-job-related matter (which was a matter of public concern) on an unrelated Facebook thread, and any job-related interference either stemmed from an opinion that such views are *per se* inappropriate or from the unilateral actions of activists who themselves brought the controversy into the workplace by improperly threatening unrelated parties. For Emory to terminate an employee for these reasons is contrary to the Open Expression Policy under the best of circumstances, but it is especially troublesome when the outside activism appears to be part of a nationwide movement to pressure employers into firing employees who had posted objectionable content about Charlie Kirk on social media, accompanied by public officials’ threats against the University.

B. Violations of Policies

The termination letter states that the professor violated “Emory’s conduct expectations and applicable policies, including but not limited to its Standards of Conduct Policy and social media guidance.” We begin by discussing the social media guidelines, and then move on to the Standards of Conduct Policy. To the extent the University is relying on any other policies, we would welcome clarification as to which ones those are.

1. Social Media Guidelines

Emory’s Social Media Guidelines,⁵⁶ as their name indicates, provide “guidelines” for Emory Community members’ use of social media. The guidelines have sections relevant to Emory University social media, Emory-affiliated social media accounts, and personal use of social media. Only this last category is relevant here.

⁵⁴ Policy 8.14.2.7.

⁵⁵ Policy 8.14.1.1.

⁵⁶ Emory University Social Media Guidelines (revised Apr. 2023), https://communications.emory.edu/_includes/documents/sections/consents-releases/emory-social-media-guidelines.pdf.

Only two statements in the “Personal use of social media” section (in the subsection for “Emory faculty and staff”)—both of them related to providing disclaimers—seem to be potentially relevant here:

- “When you are using social media for personal purposes and might be perceived as an employee/expert at Emory University, make it clear to your audience that your opinions are not those of the university.”⁵⁷
- “**Use a disclaimer.** If you identify yourself as an Emory employee on your social media accounts, include a disclaimer, such as ‘Opinions are my own’ or ‘Opinions do not reflect those of Emory University.’”⁵⁸

Initially, it is apparent that Emory’s Social Media Guidelines are not binding.

First, the term “guidelines” itself connotes advisory statements rather than mandatory rules.

Second, the “Personal use of social media” section contains the phrase: “Be mindful, and follow these pointers when using your personal social media accounts.” The term “pointer” further connotes advisory statements rather than mandatory rules. This phrase comes after the first disclaimer statement quoted above, but before the second disclaimer statement, so at least the second disclaimer statement is clearly marked as merely advisory. But if it is merely advisory for Emory faculty and staff to provide a disclaimer even when they explicitly *identify themselves* as Emory employees, surely it cannot be mandatory to provide a disclaimer when they merely *might be perceived* as such.

Third, if these disclaimer statements in the Social Media Guidelines were interpreted as mandatory requirements, they would violate the Open Expression Policy. At most, a disclaimer requirement would prevent an individual employee’s statement from being attributed to the University. But when someone who happens to be an Emory employee uses their personal social media account to post comments, the chance that such a statement will be attributed to the University is extremely low, unless the employee is speaking about a topic within their responsibilities. This is true even if the employee can be easily identified as an Emory employee—for instance, if their Emory work affiliation is listed in their “About Me” section on their social media account. In this case, when the statement was obviously a personal rant on a topic unrelated to Emory, the chance that a reasonable person would attribute the statement to Emory is essentially nil.

Therefore, in this case, any University interest that is served by providing a disclaimer is just as well served without a disclaimer. And in any event, because the Social Media Guidelines do not present themselves as mandatory, a “violation” of such guidelines cannot itself be a reason for an employee’s termination.

⁵⁷ Id.

⁵⁸ Id.

2. Standards of Conduct Policy

Emory's Policy 4.62, "Standards of Conduct," provides a non-exhaustive list of "[t]ypes of behavior and conduct that Emory considers inappropriate and which could lead to disciplinary action up to and including an unpaid suspension or termination of employment without prior warning, at the sole discretion of Emory."⁵⁹

The listed behaviors that seem relevant in this context are:

- "Failure to follow Emory's policies or procedures."⁶⁰
- "Inappropriate, disruptive, discourteous or irregular behavior adversely affecting students, employees, patients, or visitors."⁶¹
- "Refusal to cooperate with an Emory investigation."⁶²
- "Behavior harmful to the reputation and mission of Emory University."⁶³

The first point (i.e., failure to follow Emory policies other than the Standards of Conduct Policy itself) has been addressed in Part III.B.1 above; the second and fourth points have been addressed in Part III.A above; the third point is addressed in Part III.C below.

C. Refusal to Cooperate with the Investigation

The termination letter (quoted in Part I.A above) notes that the professor had initially denied making Statement 1 but admitted making Statement 2; then, when no evidence of hacking was found, the professor stated that they did not recall making Statement 1. According to the termination letter, this was inconsistent with "the requirement of fully cooperating with the investigation."

If the initial statement about not having made Statement 1 were a deliberate lie, that would fall within "Refusal to cooperate with an Emory investigation,"⁶⁴ which, as discussed above, is one of the actions listed in the Standards of Conduct (see Part III.B.2 above) that can justify termination.

However, the professor's initial denial of having made Statement 1 seems unlikely to be an intentional lie.⁶⁵ The professor did, after all, admit making Statement 2, and the two statements seem to be about equally objectionable, in that both convey approximately the same message—that Charlie Kirk's murder is not to be mourned and that it made the world a better place. Someone who was trying to evade responsibility would have been more likely to deny having made both statements. In context, it seems more likely that

⁵⁹ Policy 4.62 (last revised Sept. 24, 2024).

⁶⁰ Id.

⁶¹ Id.

⁶² Id.

⁶³ Id.

⁶⁴ Id.

⁶⁵ As noted in note 1 above, we assume for purposes of this opinion that the professor did in fact make Statement 1.

the professor made both statements—one brief statement and one more elaborate statement—and then remembered the more elaborate statement that required greater thought and effort to compose, while forgetting the initial, brief statement.

Thus, to the extent the University is relying on the professor’s mistaken denial as a failure to cooperate with an investigation, this seems like it was at most a venial failure; moreover, it seems that the University’s reliance on it is pretextual, especially since the other listed reasons for termination turn out to be inconsistent with the Policy.

IV. THE DEPARTMENT’S CONSIDERATION OF OPEN EXPRESSION

Generally, this Committee opines only on the interpretation of the Open Expression Policy and whether particular actions by the University or others comport with the Policy. Thus, we do not concern ourselves with whether the University followed proper procedures in other respects, even though such considerations are doubtless important. We do not inquire into *how* the University made its decisions, as long as the Open Expression Policy is followed.

However, there is one respect in which the Policy does govern University procedures. “In any instance in which a member of the Emory Community may face disciplinary consequences (under an applicable student or employee code of conduct, for example), Open Expression rights should be given substantial consideration before such disciplinary action is taken.”⁶⁶

Even without this section, it would be clear that the Open Expression Policy applies to disciplinary matters. After all, under the First Amendment, *Pickering* balancing applies to *any* adverse action against employees, including discipline and termination. If the contrary were true, the Policy would effectively be a nullity, because there would be no guarantee against discipline for students or employees based on their speech, and discipline (e.g., termination or expulsion) is the greatest sanction that the University has at its disposal. What this section adds, then, is a requirement that the units of the University involved in discipline “give[] substantial consideration” to Open Expression rights—and do so “*before* such disciplinary action is taken.”⁶⁷

There is no evidence that this was done in this case. The professor’s termination letter does not mention any consideration of Open Expression rights, and nobody mentioned Open Expression rights to the professor at any point in their disciplinary process.

Thus, this incident represents not only a failure of the University to respect Open Expression, but also a failure to respect the procedural requirement to consider Open Expression.

⁶⁶ Policy 8.14.3.6.

⁶⁷ Id. (emphasis added).

V. CONCLUSION

Most of the reasons given by the University administration for firing the professor turn out to be inconsistent with the Open Expression Policy:

- Inconsistency with Emory's values cannot itself be a reason for termination.
- People's mere distress that an Emory professor can make such statements cannot itself be a reason for termination.
- The Open Expression Policy cannot justify bowing to outsiders' efforts to put pressure on Emory to fire the professor by making threats to other members of the Emory Community.
- Patients' and parents'/students' distrust cannot justify termination when it is not based on actual patient care or the content of teaching.
- Violation of Emory's Social Media Guidelines cannot be the basis for termination, because these guidelines do not present themselves as being mandatory; and if they did, a termination cannot be based on the failure to provide a disclaimer in a context like this one, where a disclaimer would serve no useful purpose.
- The relevant unit of the University seems to have not considered Open Expression rights during the disciplinary process, which violates the Policy's requirement that Open Expression rights be given substantial consideration before any discipline occurs.

The only potentially valid reason is the professor's initial denial of having made Statement 1; but this seems unlikely to have been a deliberate lie, and so it seems unlikely to have violated the policy mandating cooperation with investigations.

We therefore conclude that the professor's termination violated the Open Expression Policy.

"Because . . . First Amendment rights . . . are the very preconditions to our free society and to public confidence in the functioning of our government, [one] must guard them with jealous attention and view with suspicion all attempted encroachments thereof. In fact, we must do our very best to hold fast to the values embodied by the First Amendment even in extreme and painful cases, because we cannot suspend it and remain all that we strive to be."⁶⁸ The author of these words is the interim president of this university, and this is one of those "extreme and painful cases."

The purpose of the Open Expression Policy (similar to the purpose of other policies, like academic freedom or tenure) is to provide assurance to members of the Emory Community that the University will protect them when they say controversial things and will not yield to demands that they be punished. The mob came for Communist professors during the Cold War, but as discussed above (see Part II.B), the Supreme Court's First

⁶⁸ Rockdale Citizen Pub. Co., Inc. v. State, 468 S.E.2d 764, 767 (Ga. 1996) (Sears, J., concurring).

Amendment doctrine prevents us from saying that expressing reprehensible ideas can be per se cause for termination. Today, the mob comes for those who approve of the murder of Charlie Kirk; tomorrow, the political winds will have changed, and new mobs will demand new victims. Taken individually, it may be hard to perceive the value of such speech, and the temptation to fire the offending professor (or expel the offending student) may be hard to resist. But any termination of a professor exerts a chilling effect on all future professors, because nobody can predict what the next mob will demand. This is why “we cannot suspend [our First Amendment values] and remain all that we strive to be.”

Composition of the Committee for Open Expression

- Obse Ababiya, staff, Emory Global Engagement
- ✓ Sohan Bellam, student, Emory College
- ✓ Travis Blalock, faculty, Emory School of Medicine
- ✓ Jennifer Cason, staff, Laney Graduate School
- ✓ Lauren Klein, faculty, Emory College
- ✓ Jessica Koyner, student, Goizueta Business School
- Liz Kufour, Graduate Student Government Association (ex officio, non-voting)
- Lisa Loveall, staff, Division of Campus Life
- ✓ Maximilian Nguyen, student, Emory School of Medicine
- Mekeshua North, staff, Division of Campus Life
- ✓ Elle Rosenthal, student, Emory College
- ✓ Alexander “Sasha” Volokh, faculty, Emory School of Law (chair)
- ✓ Daniel Weissman, faculty, Emory College

(members marked with a ✓ have voted in favor of this opinion; all others are non-voting members or have abstained)