

FIRE

Foundation for Individual
Rights and Expression

May 2, 2023

Melissa Baumann
Office of the President
Ohio Northern University
525 South Main Street
Ada, Ohio 45810

URGENT

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

Dear President Baumann:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is deeply concerned by Ohio Northern University's suspension of Professor Scott Gerber over unspecified collegiality concerns. ONU must promptly provide Gerber the specific allegations against him and rescind any punishment based on his exercise of academic freedom, which the university promises to protect.

On April 14, ONU campus security escorted Gerber off campus after ONU suspended him from teaching, service, and scholarship duties, purportedly "to ensure [his] safety, the safety of others, and to protect the instructional integrity of the college of law's program of instruction."² ONU alleges Gerber "repeatedly violated the provisions of the ONU Faculty Handbook and ONU Staff Handbook governing collegiality," and that his "conduct rises to a level sufficient to support separation" per the Faculty Handbook.³ ONU offered Gerber an opportunity to resign or retire in lieu of initiating the termination process. But despite Gerber's repeated requests to be informed about the allegations being made against him, ONU has persistently refused to provide this basic information.

ONU's punishment of Gerber for unspecified collegiality concerns violates its commitment to academic freedom. In its Faculty Handbook, ONU "acknowledges the importance of academic

¹ 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.

² Letter from Charles H. Rose III, Pettit College of Law Dean, to Scott Gerber, Professor of Law (Apr. 14, 2023) (on file with author). The recitation here is our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us. To these ends, please find enclosed an executed privacy waiver authorizing you to share information about this matter.

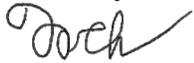
³ *Id.*

freedom,” explaining how a “faculty member is entitled to freely study, discuss, investigate, teach and publish.”⁴ This commitment to academic freedom reflects ONU’s accreditation by the Higher Learning Commission, which requires accredited institutions to be “committed to academic freedom and freedom of expression in the pursuit of truth in teaching and learning.”⁵ Ohio courts notably construe faculty handbooks as binding legal contracts to which institutions like ONU must adhere.⁶ Accordingly, any ONU faculty member would reasonably expect the institution to protect their academic freedom.

Yet ONU’s punishment of Gerber here, ostensibly for lacking “collegiality,” suggests his alleged misconduct involves expression protected by academic freedom, as even speech deemed offensive or uncivil retains protection under this principle.⁷ And ONU’s justification of protecting the “instructional integrity of the college of law’s program of instruction” suggests it may have suspended Gerber for expression related to his teaching or research, which academic freedom also protects.⁸ ONU’s repeated refusal to provide Gerber with the factual basis of the allegations against him even now—weeks after flatly banning him from campus without justification—raises the question of whether there is *any* legitimate basis for punishing him.

ONU’s must immediately provide Gerber sufficiently detailed information about the allegations against him so he may prepare a defense. And if those allegations rest solely on the exercise of Gerber’s protected expression or academic freedom, ONU must promptly rescind any punishment. Given ONU’s ongoing suspension of Gerber, FIRE requests a substantive response to this letter no later than the close of business on Thursday, May 4, 2023.

Sincerely,



Zachary Greenberg
Senior Program Officer, Campus Rights Advocacy

Cc: Lisa Lang, Vice President and General Counsel
Charles H. Rose III, Dean, Pettit College of Law
Julie Hurtig, Provost & Vice President for Academic Affairs

Encl.

⁴ *Faculty Handbook*, OHIO N. UNIV., (2022-23) (on file with author).

⁵ *Criteria for Accreditation*, HIGHER LEARNING COMM’N, (Sept. 1, 2020), <https://tinyurl.com/2zjm3433>.

⁶ *E.g., Pagano v. Case W. Rsrv. Univ.*, 166 N.E.3d 654, 665 (Ohio Ct. App. 2021) (“It is undisputed that Dr. Pagano had a contract with CWRU, consisting of the Faculty Handbook, Bylaws, and appendices, and that the rules and regulations concerning academic procedures were incorporated into that contract.”).

⁷ FIRE previously warned ONU about the chilling effect of its civility requirement on faculty expression, in violation of the university’s committed to academic freedom. Peter Bonilla, *FIRE asks Ohio Northern University to reform troublesome ‘collegiality’ provision in faculty handbook*, FIRE (Nov. 15, 2017), <https://tinyurl.com/yckjb9tc>.

⁸ The American Association of University Professors, in explaining how civility requirements can violate academic freedom, caution that “an absence of collegiality ought never, by itself, to constitute a basis for nonreappointment, denial of tenure, or dismissal for cause.” *On Collegiality as a Criterion for Faculty Evaluation*, AM. ASS’N OF UNIV. PROFESSORS, (rev. 2016), <https://tinyurl.com/yc83zjfy>.

Authorization and Waiver for Release of Personal Information

I, Scott Gerber, do hereby authorize Ohio Northern University (the "Institution") to release to the Foundation for Individual Rights and Expression ("FIRE") any and all information concerning my employment, status, or relationship with the Institution. This authorization and waiver extends to the release of any personnel files, investigative records, disciplinary history, or other records that would otherwise be protected by privacy rights of any source, including those arising from contract, statute, or regulation. I also authorize the Institution to engage FIRE and its staff members in a full discussion of all information pertaining to my employment and performance, and, in so doing, to disclose to FIRE all relevant information and documentation.

This authorization and waiver does not extend to or authorize the release of any information or records to any entity or person other than the Foundation for Individual Rights and Expression, and I understand that I may withdraw this authorization in writing at any time. I further understand that my execution of this waiver and release does not, on its own or in connection with any other communications or activity, serve to establish an attorney-client relationship with FIRE.

If the Institution is located in the State of California, I request access to and a copy of all documents defined as my "personnel records" under Cal. Ed. Code § 87031 or Cal. Lab. Code § 1198.5, including without limitation: (1) a complete copy of any files kept in my name in any and all Institution or District offices; (2) any emails, notes, memoranda, video, audio, or other material maintained by any school employee in which I am personally identifiable; and (3) any and all phone, medical or other records in which I am personally identifiable.

This authorization and waiver does not extend to or authorize the release of any information or records to any entity or person other than the Foundation for Individual Rights and Expression, and I understand that I may withdraw this authorization in writing at any time. I further understand that my execution of this waiver and release does not, on its own or in connection with any other communications or activity, serve to establish an attorney-client relationship with FIRE.

I also hereby consent that FIRE may disclose information obtained as a result of this authorization and waiver, but only the information that I authorize.

Signature 

5/2/2023
Date