



October 15, 2024

Tracy Brundage
Office of the President
Abraham Baldwin Agricultural College
2802 Moore Highway
Tifton, Georgia 31793-2601

Sent via U.S. Mail and Electronic Mail (President@abac.edu)

Dear President Brundage:

FIRE appreciates your August 22 response to our July 30 letter concerning the investigation and reprimand of Associate Professor of Communication Jay Baldwin for his classroom speech, and the policy considerations underlying ABAC’s actions. Unfortunately, your response only deepens our concern that ABAC investigated and reprimanded Baldwin for his protected speech—contrary to both its constitutional obligations and its own policies—and now seemingly relies on new allegations that his speech was not academically germane to defend its prior indefensible actions.

Your response states that the “investigation concluded that Professor Baldwin communicated personal religious beliefs, *not germane to his subject area*, in a way that was inappropriate. The investigation also concluded that he inappropriately included sexual overtones in his communications with the class and with individual students.”¹

First, the allegation that Baldwin’s classroom discussions of religion were not germane to his course is new and seemingly contradicts the text of the March 7 memo, “Matter of Record – Student Complaints Investigation,” as well as the information provided to Baldwin orally during the March 13 meeting with then-Interim Provost Amy Willis, Human Resources Director Richard Spancake, and Dean Matthew Anderson. The memo, in fact, explicitly acknowledges that discussion of religion is germane to Baldwin’s field: “The complaints included your frequent discussion of religion. *Religion is obviously a potential topic for discussion in your class*, but the frequency and tone of the topic being discussed appears to have been problematic.”²

¹ Letter from Tracy Brundage, president, to author (Aug. 22, 2024) (on file with author) (emphasis added).

² Memo from Amy Willis & Richard Spancake, to Jay Baldwin, Associate Professor (March 7, 2024) (on file with author) (emphasis added).

Vague complaints about “frequency” and “tone” are not a back door through which the administration may restrict faculty from expressing disfavored viewpoints in the classroom on content relevant to the course subject.³ Such speech is precisely what academic freedom exists to protect. And it is why academic freedom requires substantial breathing room for faculty to decide how to approach subjects and materials relevant to their courses—including how often and in what tone—rather than allowing administrators, students, legislators, or outside authorities to unduly influence those decisions.⁴

The same principles apply to discussions of sex. ABAC may not discipline Baldwin for his classroom speech about sex. Again, the college has already acknowledged that the topic of sex may be germane to Baldwin’s courses.⁵ Therefore, his classroom discussions about sex are protected by academic freedom. Likewise, speech that “inappropriately included sexual overtones”⁶ remains protected unless it rises to the level of harassment⁷—which ABAC already ruled out.⁸

ABAC’s commitment to provide students with “an environment conducive to learning”⁹ does not create a new exception to the First Amendment allowing administrators to censor constitutionally-protected faculty speech when students subjectively feel “ridiculed, harassed, or threatened.”¹⁰ Enforcing subjective norms regarding offensiveness or civility on faculty speech creates the inherent risk that administrators will use these standards to selectively punish faculty who express disfavored viewpoints—exactly what appears to have happened here. That is why the AAUP has long criticized the use of “collegiality” or “civility” requirements as a pernicious threat to academic freedom.¹¹

³ *Pernell v. Fla. Bd. of Govs. of State Univ. Sys.*, 641 F. Supp.3d 1218, 1238–39 (N.D. Fla. 2022).

⁴ See *1940 Statement of Principles on Academic Freedom and Tenure*, AMER. ASSN. OF UNIV. PROFESSORS, <https://www.aaup.org/report/1940-statement-principles-academic-freedom-and-tenure>.

⁵ Memo, *supra* note 2 (“[O]ccasional reference to the above area [the topic of sex] may be appropriate in your class.”).

⁶ Letter, *supra* note 1.

⁷ 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 of benefits provided by the school.” *Davis v. Monroe Cnty. Bd. of Ed.*, 526 U.S. 629, 650 (1999).

⁸ Memo, *supra* note 2 (“[W]e have not reached a finding of either Inappropriate Conduct or Harassment[.]”).

⁹ *Bd. of Regents Policy Manual*, § 6.5.1 Freedom of Expression and Academic Freedom, Academic Freedom, UNIV. SYS. OF GA., 80 (Sept. 18, 2024), https://www.usg.edu/policymanual/assets/policymanual/documents/bor_policy_manual.pdf.

¹⁰ Email from Willis to James Galt-Brown, professor (Mar. 26, 2024, 7:20 PM) (on file with author).

¹¹ See *On Collegiality as a Criterion for Faculty Evaluation*, AM. ASS’N OF UNIV. PROFESSORS (2016), <https://www.aaup.org/file/AAUP%20Collegiality%20report.pdf> [<https://perma.cc/TJS6-GPXT>] (“[C]ollegiality may be confused with the expectation that a faculty member ... evince ‘a constructive attitude’ that will ‘foster harmony’ or display an excessive deference to administrative or faculty decisions where these may require reasoned discussion. Such expectations are flatly contrary to elementary principles of academic freedom, which protect a faculty member’s right to dissent from the judgments of colleagues and administrators.”).

Pedagogically relevant material often includes words, concepts, subjects, or discussions that some, or even most, students may find upsetting or uncomfortable. Any conception of free expression or academic freedom must allow room for speech others, including students, subjectively feel is offensive or distressing—particularly at a public college bound by the First Amendment.¹² As the Supreme Court has held, controversial or unpopular speech needs the most protection: “[M]ere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of ‘conventions of decency.’”¹³

Finally, ABAC’s obligation to investigate all student complaints in no way justifies a five-month long investigation and written reprimand for protected classroom speech the college itself determined did not violate policy.¹⁴ Where student complaints appear to allege no more than protected speech, the correct approach is to have administrators conduct a brief internal review. If the review confirms the speech is solely protected expression, ABAC can close the case without ever notifying the speaker—thus avoiding a chilling effect—while offering support to the aggrieved complainants.¹⁵

ABAC has an obligation to prevent discriminatory harassment, but in doing so it must not sacrifice its constitutional obligation to academic freedom and free expression. A written reprimand that threatens future discipline, accompanied by guidelines for future classroom speech, would unconstitutionally “chill or silence a person of ordinary firmness from future First Amendment activities.”¹⁶ Here, it was likely possible to determine from the bare facts that the complaint about Baldwin concerned nothing more than protected speech. Further action at that point—including notifying Baldwin of the complaint, conducting a months-long investigation, and issuing a written reprimand—was inappropriate and unnecessarily chills his speech and that of other faculty members.

This case is not complicated. ABAC investigated and reprimanded Baldwin for constitutionally-protected academic speech about religion and sex based on complaints from five students who found his views on these topics upsetting. Now ABAC relies on subjective, unwritten, and ill-defined norms regarding “tone” and “frequency” and a policy commitment

¹² See *Levin v. Harleston*, 966 F.2d 85, 89 (2d Cir. 1992) (holding a public university violated the First Amendment when it launched an investigation into a faculty member’s writings on race and intelligence, which administrators stated “ha[d] no place at [the college]” and constituted “conduct unbecoming of a member of the faculty”); *Coll. Republicans at S.F. State Univ. v. Reed*, 523 F.Supp.2d 1005, 1018–20 (N.D. Cal. 2007) (ordering university to stop enforcing a policy requiring students to “be civil to one another” because the policy was overbroad and infringed on their expressive rights).

¹³ *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 677 (1973).

¹⁴ See Memo, *supra* note 2.

¹⁵ See Graham Piro & Alex Morey, *Report: Stanford student may need to ‘take accountability,’ ‘acknowledge harm’ for reading Hitler’s ‘Mein Kampf’*, FIRE (Jan. 25, 2023), <https://www.thefire.org/news/report-stanford-student-may-need-take-accountability-acknowledge-harm-reading-hitlers-mein>; Haley Gluhanich, *VICTORY: Stanford adopts FIRE recommendation, will no longer notify students accused of engaging in protected speech*, FIRE (Apr. 18, 2023), <https://www.thefire.org/news/victory-stanford-adopts-fire-recommendation-will-no-longer-notify-students-accused-engaging>.

¹⁶ *Mendocino Envtl. Ctr. v. Mendocino Cty.*, 192 F.3d 1283, 1300 (9th Cir. 1999) (institutional response short of formal punishment can be unconstitutional if it “would chill or silence a person of ordinary firmness from future First Amendment activities”).

to providing “an environment conducive to learning” to justify its blatant violations of Baldwin’s academic freedom and free expression rights.

ABAC must assure Baldwin and the rest of the faculty that they no longer need to fear discipline for their protected speech—even when students are upset or offended—because the institution is committed to protecting academic freedom and free expression rights as required by both law and policy. We request a substantive response to this letter no later than October 29, confirming ABAC will officially rescind the memo, removing it from all college and departmental files, and will no longer investigate or threaten faculty with discipline for their protected speech.

Sincerely,



Jessie Appleby
Program Officer, Campus Rights Advocacy

Cc: Amy P. Willis, Vice President of Student Affairs
Richard Spancake, Director of Human Resources
Matthew Anderson, Dean of the School of Arts and Sciences
Jerry Baker, Interim Provost/Vice President for Academic Affairs

Encl.