FIRE
Foundation for Individual Rights and Expression

December 17, 2024

Sally Kornbluth
Office of the President
Massachusetts Institute of Technology
77 Massachusetts Avenue
Cambridge, Massachusetts 02139-4307

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

Dear President Kornbluth:

The Student Press Freedom Initiative at the Foundation for Individual Rights and Expression (FIRE)[1] is concerned by MIT's content-based ban of the October edition of the student-run pro-Palestinian magazine *Written Revolution*. While members of the university community may have found an article in this edition offensive, it is protected by MIT's laudable commitment to freedom of expression.[2]

On November 1, 2024, Dean of Student Life David Randall emailed the editors of *Written Revolution*, ordering them to cease distribution of the magazine's October edition both on campus and "elsewhere using the ... [name] of any MIT-recognized organization."[3] Since the magazine has the same name as the MIT-recognized student organization that publishes it (also called Written Revolution), this constituted a complete ban on distributing the October edition. Randall expressed concern about an article titled "On Pacifism," which contained an image of a poster from the Popular Front for the Liberation of Palestine and what he described as "several troubling statements that could be interpreted as a call for more violent ... forms of protest at MIT."[4] These statements included a call for protestors to "'begin wreaking havoc' and

[1] FIRE is a nonpartisan nonprofit dedicated to defending freedom of speech and of the press on and off campus. You can learn more about our recently expanded mission and activities at thefire.org. FIRE's Student Press Freedom Initiative (SPFI) defends free press on campus by advocating for the rights of student journalists at colleges and universities across the country.

[2] *MIT Statement on Freedom of Expression and Academic Freedom*, MASS. INST. OF TECH., 1 (Dec. 21, 2022), https://facultygovernance.mit.edu/sites/default/files/reports/20221221_MIT_Statement_on_Freedom_of_Expression_and_Academic_Freedom.pdf [https://perma.cc/A7YJ-D6MW]. The following recitation represents our understanding of the facts. We recognize you may have additional information and invite you to share it with us.

[3] Email from David Warren Randall, Dean of Students, to *Written Revolution* editors, (Nov. 1, 2024, 4:26 PM) (on file with author).

[4] *Id.*

'exact[ing] a cost' at MIT."[5] Randall also alleged "numerous community members … expressed concern for their safety" after learning of the article.[6] Public reporting further suggests this article contributed to MIT barring *Written Revolution* editor Prahlad Iyengar from campus.[7]

As popular expression rarely needs protecting, an institution typically finds its commitment to free speech tested in moments of controversy. MIT failed this test with respect to the October edition of *Written Revolution*. While MIT is a private institution, it explicitly guarantees its community members freedom of expression for all speech except "speech which falls outside the boundaries of the First Amendment."[8] Since the "On Pacifism" article does not fall outside the First Amendment's protection, MIT may neither punish the editors of *Written Revolution* for the content of the article nor impose a ban on distribution of the October edition.

The Supreme Court has repeatedly, consistently, and clearly held that free speech principles protect expression others find offensive, or even hateful.[9] This is why the authorities cannot outlaw burning the American flag,[10] punish the wearing of a jacket emblazoned with the words "Fuck the Draft,"[11] penalize a parody ad depicting a pastor losing his virginity to his mother in an outhouse,[12] or disperse civil rights marchers out of fear that "muttering" and "grumbling" white onlookers might resort to violence.[13] In holding that free speech principles protect even protesters holding deliberately offensive and insulting signs outside of soldiers' funerals, the Court reiterated this fundamental principle, remarking that "[a]s a Nation we have chosen … to protect even hurtful speech on public issues to ensure that we do not stifle public debate."[14]

This principle applies with particular force to universities, which by their nature are dedicated to open debate and discussion. Take, for example, a student newspaper's front-page publication of a "political cartoon … depicting policemen raping the Statue of Liberty and the

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[5] *Id.* (quoting Prahad Iyengar, *On Pacifism*, WRITTEN REVOLUTION, October 2024, at 32, http://www.writtenrevolution.com/).

[6] *Id.*

[7] TOI World Desk, *MIT 'expels' PhD student Prahlad Iyengar for pro-Palestine essay*, THE TIMES OF INDIA, (Dec. 9, 2024), https://timesofindia.indiatimes.com/world/us/mit-expels-phd-student-prahlad-iyengar-for-pro-palestine-essay/articleshow/116143246.cms.

[8] *MIT Statement*, *supra* note 2. MIT's unequivocal endorsement of freedom of expression and the fact it uses the First Amendment as a standard create not just a moral obligation but a contractual one, as students will have a reasonable expectation that their rights are commensurate with those of their peers at public universities. *See Morris v. Brandeis Univ.*, No. CA002161, 2001 WL 1470357 (Mass. Super. Sept. 4, 2001).

[9] *See, e.g.*, *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992) (striking down an ordinance that prohibited placing on any property symbols that "arouse[] anger, alarm or resentment in others on the basis of race, color, creed, religion or gender"). The Court has refused to a limit on speech viewed as "hateful" or demeaning "on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground." *Matal v. Tam*, 582 U.S. 218, 245–46 (2017). While MIT is not bound by the First Amendment, courts' interpretations of free speech principles should inform MIT's commitment to upholding expressive rights and students' reasonable expectation of what those rights encompass.

[10] *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (burning the American flag was protected by the 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 disagreeable").

[11] *Cohen v. California*, 403 U.S. 15, 25 (1971).

[12] *Hustler Mag., Inc. v. Falwell*, 485 U.S. 46, 50 (1988).

[13] *Cox v. Louisiana*, 379 U.S. 536, 557 (1965).

[14] *Snyder v. Phelps*, 562 U.S. 443, 448, 461 (2011).

Goddess of Justice" and use of a vulgar headline ("Motherfucker Acquitted").[15] 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 the Supreme Court held that the First Amendment protected the right to publish such content.

The *Written Revolution* October edition may have similarly offended students. But as the Supreme Court made clear with respect to the cartoon, expression does not lose First Amendment protection based on its subjective offensiveness alone.[16] MIT therefore may not impose sanctions on *Written Revolution* or its editors.

Under the First Amendment standards incorporated into MIT policy,[17] speech, including "On Pacifism," is presumptively protected unless it falls into one of a few narrow categories of unprotected speech. The only two such exceptions that could possibly apply to the article are those dealing with "incitement" and "true threats," but neither applies to this edition of *Written Revolution*.

First, the article does not amount to an unprotected true threat, a statement through which "the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals."[18] The exception does not encompass speech that amounts to rhetorical hyperbole, the endorsement of violence,[19] or even the assertion of the "moral propriety or even moral necessity for a resort to force or violence." All of these remain protected under free speech principles,[20] and MIT has pointed to nothing in the article that goes beyond these boundaries.

Likewise, the endorsement of violence in the general sense does not amount to unprotected incitement, where the speaker "specifically advocate[s] for listeners to take unlawful action"[21] *and* the message is "directed to inciting or producing imminent lawless action and … likely to incite or produce such action."[22] While the article argues against non-violence for its own sake, it does not on its face or in context indicate that the author intends to engage in any form of violence, let alone against any particularized group of people on or around campus. Indeed, it is hard to imagine a reader feeling that a newspaper article calling for generalized "havoc" could be seen as a concrete threat to that reader as an individual. Further, there is no indication that the article *did* produce any lawless action, and while the author endorsed violence in the name of a larger cause (as do, given their historical context, documents ranging from the Declaration of Independence to the Gettysburg Address) he made no specific, identifiable threats. This

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[15] *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 667–68 (1973).

[16] *Id.*

[17] *See MIT Statement*, *supra* note 2

[18] *Virginia v. Black*, 538 U.S. 343, 359 (2003).

[19] *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).

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

[21] *Nwanguma v. Trump*, 903 F. 3d 604, 609–10 (6th Cir. 2018) (then-candidate Trump's repeated "get 'em out of here" statements to a crowd at a rally, concerning protesters, did not constitute specific advocacy of violence, even if the statements could be understood as encouraging violence).

[22] *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).

important distinction prevents MIT from punishing him for making a true threat or inciting violence.[23]

MIT's restriction of future distribution of the October issue also violates its expressive guarantees by imposing a prior restraint, "the most serious and the least tolerable infringement on" freedom of expression.[24] Prior restraints, a form of censorship in which authorities silence communication before it can be expressed, are valid only in the most extreme circumstances, such as those having to do with national security secrets.[25] Unsurprisingly, courts analyzing prior restraints therefore impose a "heavy presumption against [their] constitutional validity,"[26] and have repeatedly struck them down.[27] Given the article in question contains *only* protected speech, MIT may not restrain its future publication in a manner consistent with MTI's expressive promises.

The speech in the October edition of *Written Revolution* is clearly protected. While MIT may offer support and resources to concerned students, it may neither censor *Written Revolution* nor punish the magazine's editors for publishing and distributing that content. This principle does not shield the magazine or its editors from every consequence of the article—including criticism by students, faculty, or the broader community. Criticism is a form of "more speech," the remedy to offensive expression that the First Amendment prefers to censorship.[28] First Amendment principles do not protect the speaker from all consequences from his or her speech, but they do limit the *types* of consequences that may be imposed and who may impose them.

We request a substantive response to this letter no later than the close of business on December 31, 2024 confirming that MIT will allow publication of *Written Revolution* and will refrain from using the content of students' protected expression to impose or enhance disciplinary sanctions.

Sincerely,

Dominic Coletti
Program Officer, Campus Rights Advocacy

Cc: Melissa Nobles, Chancellor

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[23] *See Watts*, 562 U.S. at 708 (1969).
[24] *Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976).
[25] *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 716 (1931).
[26] *N.Y. Times Co. v. United States*, 403 U.S. 713, 714 (1971).
[27] *See id.*; *In re Providence Journal Co.*, 820 F. 2d 1342, 1348 (1st Cir. 1986).
[28] *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring).