

September 29, 2025

Jeanette Nuñez
Office of the President
Florida International University
11200 SW 8th Street
Miami, FL 33199

URGENT

Sent via U.S. Mail and Electronic Mail (vespina@fiu.edu)

Dear President Nuñez:

FIRE, a nonpartisan nonprofit that defends freedom of speech,¹ writes to encourage your institution to stand with free expression and resist demands to punish faculty and students for their comments regarding the recent death of political activist Charlie Kirk. We are especially concerned in light of State University System Chancellor Ray Rodrigues's recent letter.

FIRE was horrified by Kirk's fatal shooting on September 10th. First and foremost, we were horrified for the personal toll inflicted on his loved ones. We were also horrified given our mission to defend free speech and open debate on campus, to which violence is never an acceptable response. Consistent with that mission, FIRE is also deeply concerned by government reactions to public discussion of the shooting, including the actual or threatened punishment of faculty members and students for exercising their First Amendment rights.

With this context in mind, it is incumbent on the SUSF system to take whatever steps are necessary to ensure that internal and external speakers can continue to share their message on Florida's campuses without unconstitutional restriction and without the fear of being subjected to violence. We are concerned, however, that Chancellor Rodrigues's memo undermines this priority by pushing universities to punish constitutionally protected speech.

Rodrigues wrote that "[c]elebrating or excusing campus violence—and in this case, the murder of Charlie Kirk—by members of our university system will not be tolerated."² He directed you

¹ For more than 25 years, FIRE has defended freedom of expression and other individual rights on America's university campuses. You can learn more about our mission and activities at thefire.org.

² Memo from Ray Rodrigues, Chancellor, to State University System Presidents (Sept. 15, 2025) (on file with author).

to “review policies, procedures and codes of conduct for employees and students regarding social media postings and other related communications and ensure such measures are deliberately enforced.”³ But as a public institution bound by the First Amendment,⁴ FIU’s must protect faculty and student expression, notwithstanding anything Chancellor Rodrigues or any other authority says.

While many may be offended by posthumous criticism of Kirk or celebration of his assassination, such expression is nonetheless protected by the First Amendment. FIU’s First Amendment obligations bar it from investigating or punishing protected political expression—even that which some may view as poorly timed, tasteless, inappropriate, or controversial.⁵

Popular expression rarely needs protecting; it is in moments of controversy that institutional commitments to the principles of free expression are put to the test.⁶ The Supreme Court has long held that the First Amendment protects expression others may deem offensive, uncivil, or even hateful.⁷ This includes expressing vitriol about public figures and engaging in rhetorical hyperbole that may reference violence.⁸

In fact, the Court has recognized this right even in the context of assassinations, like Kirk’s. In *Rankin v. McPherson*, a police department fired one of its employees who, after hearing that President Ronald Reagan had been shot, said: “If they go for him again, I hope they get him.”⁹ The Court held that the employee’s firing was unconstitutional, noting that whether listeners found her statement of “inappropriate or controversial character” was “irrelevant” to its constitutional protection.¹⁰ Likewise, while the comments made today about Kirk may be viewed as inappropriate, uncivil, and hateful, that does not justify “discipline ... for expressing controversial, even offensive, views.”¹¹ And on September 24, a United States district court in South Dakota granted a motion for a temporary restraining order regarding Michael Hook, a professor who sued the University of South Dakota after he was placed on administrative leave

³ *Id.*

⁴ *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).

⁵ *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 669–70 (1973).

⁶ Whether speech is protected by the First Amendment is “a legal, not moral, analysis.” *Animal Legal Def. Fund v. Reynolds*, 353 F. Supp. 3d 812, 821 (S.D. Iowa 2019).

⁷ See *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (burning American flag is protected by 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”); *Cox v. Louisiana*, 379 U.S. 536, 550 (1965) (fears that “muttering” and “grumbling” white onlookers might resort to violence did not justify dispersal of civil rights marchers).

⁸ *Watts v. United States*, 394 U.S. 705, 708 (1969) (draftee’s statement that “[i]f they ever make me carry a rifle the first man I want to get in my sights is L. B. J.” was First Amendment-protected rhetorical hyperbole); *Noto v. United States*, 367 U.S. 297–98 (1961) (abstract teaching of the moral necessity of violence “is not the same as preparing a group for violent action ... There must be some substantial direct or circumstantial evidence of a call to violence now or in the future”).

⁹ 483 U.S. 378, 381 (1987).

¹⁰ *Id.* at 387.

¹¹ *Vega v. Miller*, 273 F.3d 460, 467 (2d Cir. 2001).

for his social media posts about Kirk’s assassination.¹² The district court concluded that Hook’s posts as a private citizen were entitled to First Amendment protection.¹³

Additionally, comments about the death of a prominent national political activist, whose assassination occurred during an event held on an American college campus, unquestionably deal with a “matter of public concern.” That is, they are engaged in speech that may “be fairly considered as relating to any matter of political, social, or other concern to the community[.]”¹⁴ Even comments about Kirk that could be considered harsh criticism are undoubtedly examples of “core political speech,” the area where free speech protection is “at its zenith.”¹⁵ Thus, comments publicly made to a broad audience¹⁶ about issues that are currently gripping the entire country and the front page of every newspaper cannot be grounds for institutional censure.¹⁷

The First Amendment’s protection shields FIU employees and students from official discipline and requires that public campuses take steps to ensure that dissent is not discouraged through violence or threats of violence. But it does not shield faculty or students from every consequence of their speech, including criticism by other faculty, students, or the broader community. Criticism is a form of “more speech,” the remedy the First Amendment prefers to censorship.¹⁸ FIU’s First Amendment obligations thus limit the *types* of consequences that may be imposed—and disciplining faculty or students for their protected expression clearly violates those obligations.

If FIU chooses to ignore its constitutional obligations and punish protected speech, it will open the door to censorship of a limitless array of views on campus, while chilling other faculty and

¹² *Hook v. Rave*, D.S.D., 2025 WL 2720978, at 8 (Sept. 24, 2025), *available at* <https://www.courthousenews.com/wp-content/uploads/2025/09/hook-v-rave-usdc-south-dakota-tro.pdf> (“[T]he court concludes that Hook has a ‘fair chance of prevailing’ in showing that defendants’ intention to terminate his position as a professor materially changed the terms and conditions of his employment and that the change to his employment status would ‘chill a person of ordinary firmness’ from continuing to engage in First Amendment protected activity.”).

¹³ *Id.* at 6.

¹⁴ *Snyder v. Phelps*, 562 U.S. 443, 453 (2011) (quoting *Connick v. Myers*, 461 U.S. 138, 146 (1983)).

¹⁵ “‘Core political speech’ involves ‘interactive communication concerning political change.’” *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 186–87 (1999) (quoting *Meyer v. Grant*, 486 U.S. 414 (1988)).

¹⁶ *See Hardy v. Jefferson Cmty. Coll.*, 260 F.3d 671, 683 (6th Cir. 2001) (“The purpose of the free-speech clause ... is to protect the market in ideas, broadly understood as the public expression of ideas, narratives, concepts, imagery, opinions—scientific, political, or aesthetic—to an audience whom the speaker seeks to inform, edify, or entertain.”) (citing *Swank v. Smart*, 898 F.2d 1247, 1250–51 (7th Cir. 1990) (citation omitted)).

¹⁷ *See, e.g., New York Post (@nypost)*, X, (Sept. 11, 2025, 9:24 AM) <https://x.com/nypost/status/1966130778019864803>; *see also Graziosi v. City of Greenville Miss.*, 775 F.3d 731, 737 (5th Cir. 2015) (citing *Garcetti v. Ceballos*, 547 U.S. 410, 419; *Pickering v. Bd. of Educ.*, 391 U.S. 563, 572) (commentary by “public employees is welcome as they occupy trusted positions in society ... and are the members of a community most likely to have informed and definite opinions on matters of import to the community”) (cleaned up).

¹⁸ *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring).

students from sharing their opinions.¹⁹ Both of these outcomes are unacceptable. We must not respond to calls for censorship with more censorship.²⁰

Given the urgent nature of this matter, we request a substantive response to this letter no later than the close of business on October 9, confirming FIU will commit to protecting the free speech rights of all its faculty and students, regardless of viewpoint.

Sincerely,

A handwritten signature in black ink, appearing to read "Gm Piro". The signature is fluid and cursive, with the first name "Gm" and the last name "Piro" clearly distinguishable.

Graham Piro

Faculty Legal Defense Fund Fellow

¹⁹ Free speech principles bar any “adverse government action against an individual in retaliation for the exercise of protected speech activities” which “would chill a person of ordinary firmness from continuing to engage in that activity.” *Keenan v. Trejeda*, 290 F.3d 252, 258 (5th Cir. 2002).

²⁰ Nico Perrino, *Violence must never be a response to speech*, FIRE (Sept. 11, 2025) <https://www.thefire.org/news/violence-must-never-be-response-speech>.