



September 26, 2025

Kathryn O'Brien
Student Affairs
St. Bonaventure University
P.O. Box V
St. Bonaventure, New York 14778

URGENT

Sent via U.S. Mail and Electronic Mail (kobrien@sbu.edu)

Dear Ms. O'Brien:

FIRE, a nonpartisan nonprofit that defends free speech,¹ is concerned by St. Bonaventure University's suspension of student Emma Gavazzi for a Snapchat post of her smiling accompanied by a statement that political activist Charlie Kirk had been shot. While some may have been offended by Gavazzi's post, it is nonetheless protected. SBU's free expression commitment bars it from punishing protected political expression, even when some may find it poorly timed, tasteless, inappropriate, or controversial. SBU must therefore rescind Gavazzi's suspension and clear her file of any matters relating to her post.

On September 10, Gavazzi posted a story to her private Snapchat story. The post at issue contained a photograph of herself smiling, accompanied by the words "charlie kirk SHOT[.]"² This was eventually screenshotted and made public, and members of the public began calling on SBU to punish Gavazzi. The following day, SBU suspended Gavazzi pending an investigation into the post in order "to protect and maintain the safety of the University community."³ Over the next few days, Gavazzi alleges that multiple individuals messaged her, stating that student Jack Shea took credit for making Gavazzi's private post public. Gavazzi reached out to three

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. Please note we are not Gavazzi's lawyer; we are an advocacy group writing to inform you of your legal obligations.

² Screenshot of post on file with author (as written). The recitation of facts here reflects our understanding of the pertinent information. We appreciate that you may have additional information 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 Letter from Kathryn O'Brien, Vice President for Student Affairs, to Emma Gavazzi, student (Sept. 11, 2025) (on file with author).

individuals to confirm whether Shea was making such statements.⁴ One of those individuals responded in the affirmative while the other two did not respond.

On September 15, Dean of Students Robert DeFazio notified Gavazzi she was being charged with “Disorderly Conduct” and “Interference with Mission” for her Snapchat post and would have a hearing the next day.⁵ And on September 17, DeFazio notified Gavazzi she was being charged with “Harassment” for reaching out to the three students and would have another hearing the next day.⁶ Gavazzi attended both hearings. On September 19, DeFazio notified Gavazzi she had been found responsible on all three charges and suspended through May 17, 2026.⁷ Should Gavazzi return to SBU following the suspension, she may not hold any leadership positions.⁸ Gavazzi appealed the suspension on September 23.

According to SBU’s Student Code of Conduct, students have the right to “access multiple different perspectives, ideas, facts and opinions” as well as a “fair ... judicial hearing process[.]”⁹ SBU makes clear it “respect[s] every person’s right to speech”¹⁰ and that unacceptable behavior includes “interference with ... freedom of speech[.]”¹¹ These commitments to free speech—and a reasonable student’s interpretation of these commitments—are informed by decades of First Amendment jurisprudence and New York contract law.¹²

While Gavazzi’s Snapchat post may have upset some of those who saw it, a single social media post rarely rises to the level of material and substantial disruption the Supreme Court has made clear is required before a school can punish expression, and Gavazzi’s certainly does not.¹³ An “undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression”¹⁴ to which SBU commits itself, if free expression is to have any

⁴ Screenshot of messages on file with author.

⁵ Letter from Robert DeFazio, Dean of Students, to Gavazzi (Sept. 15, 2025) (on file with author). “Disorderly Conduct” is defined as “behavior that results in disruption or disturbance to one or more individuals or to the community in general.” *Student Code of Conduct*, Violations of the Student Code of Conduct, Disorderly Conduct, ST. BONAVENTURE UNIV., 10 (2025-2026), https://www.sbu.edu/docs/default-source/life-at-sbu-quick-center/student-conduct/code-of-conduct/2025-2026-student-code-of-conduct-25aug25.pdf?sfvrsn=2e48b324_2. [<https://perma.cc/G734-6292>].

⁶ Letter from DeFazio to Gavazzi (Sept. 17, 2025) (on file with author).

⁷ Letters from DeFazio to Gavazzi (Sept. 19, 2025) (on file with author).

⁸ *Id.*

⁹ *Supra*, note 5 at Student Code of Conduct, Student Rights/Responsibilities.

¹⁰ *Id.* at Violations of the Student Code of Conduct, Rioting/Unapproved Demonstrations.

¹¹ *Id.* at Appendix Q – Maintenance of Public Order and Public Demonstrations Policy, Prohibited Conduct.

¹² *Novio v. N.Y. Acad. of Art*, 317 F. Supp. 3d 803, 805 (S.D.N.Y. 2018) (“New York State courts have permitted a student to bring a breach of implied contract action against an institution of higher education.”) (quoting *Keefe v. N.Y. Law Sch.*, 906 N.Y.S.2d 773 (Sup. Ct. 2009)).

¹³ *Tinker v. Des Moines*, 393 U.S. 503, 512 (1969) (quoting *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967)). While *Tinker* involved minor students in high school, the speech of university students cannot be restricted more than that of high school students. See *Tinker*, 393 U.S. at 515 (Stewart, J., concurring). Therefore, the protections described by the Court in *Tinker* are the floor for student expressive rights, not the ceiling. Even under *Tinker*’s disruption standard, Gavazzi’s post does not rise to the level of a punishable disruption.

¹⁴ *Id.* at 508.

meaning. And university students and employees—who are adults—can absolutely avert their eyes from social media posts they do not wish to see.

Nor may SBU punish Gavazzi for speech that interferes with the university’s mission. While SBU may have its own values aligned with its religious mission, the university makes affirmative promises of free speech that protect students’ rights to dissent from those values. And the Supreme Court has long held that free speech principles protect expression others may deem offensive or hateful.¹⁵ Were this not true, there would be no reason for SBU to promise its students free speech. Speech with no potential to upset anyone hardly requires protection. For SBU to construe its policies in such a contradictory fashion can only chill student speech by creating “a false dichotomy that students must forgo certain interests in civil discourse and speculative conversation should they wish to pursue an education within a religious context.”¹⁶

SBU also may not punish Gavazzi for harassment because her messages attempting to confirm whether Shea was making such statements do not qualify as actionable in the educational context under federal law. For sanctions on speech to be constitutional, the speech must be (1) unwelcome, (2) discriminatory on the basis of a protected class, and (3) “so severe, pervasive, and objectively offensive that it can be said to deprive the victim[] of access to the educational opportunities or benefits provided by the school.”¹⁷ Simply asking someone for confirmation on what another individual said is by no means severe or objectively offensive and it is *certainly* not discriminatory on the basis of a protected class. Nor can a message asking for such confirmation be said to deprive a reasonable person of their education.¹⁸

Finally, giving Gavazzi one day’s notice before each hearing did not align with SBU’s promise to ensure a “fair” hearing process. This short notice gave Gavazzi no meaningful opportunity to build a case for herself, such as by gathering witnesses or evidence, or even taking a minute to digest the fact that her educational career was being put on the line. Further, SBU had no legitimate reason to impose this short turnaround.

Given the urgent nature of this matter, we request a substantive response to this letter no later than the close of business on September 30, confirming SBU will rescind Gavazzi’s suspension and clear her file of any matters relating to her post.

¹⁵ 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”); see also *Cox v. Louisiana*, 379 U.S. 536, 557 (1965) (fears that “muttering” and “grumbling” white onlookers might resort to violence did not justify dispersal of civil rights marchers); *Matal v. Tam*, 137 S. Ct. 1744, 1764 (2017).

¹⁶ Graham Piro, *Shifting rationale behind crackdown on pro-choice protest at Loyola University New Orleans raises concerns*, FIRE (Nov. 18, 2022), <https://www.thefire.org/news/shifting-rationale-behind-crackdown-pro-choice-protest-loyola-university-new-orleans-raises>.

¹⁷ See *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 651 (1999).

¹⁸ *Id.* at 654 (“petitioner contends that the harassment had a *concrete*, negative effect on her daughter’s ability to receive an education”) (emphasis added); see also *Nungesser v. Columbia Univ.*, 169 F. Supp. 3d 353, 368 (S.D.N.Y. 2016) (“Examples of such negative effects include a drop in grades, missing school, being forced to transfer schools, or mental health issues requiring therapy or medicine.”).

Sincerely,

A handwritten signature in black ink, appearing to read "Haley Gluhanich". The signature is written in a cursive, flowing style.

Haley Gluhanich
Senior Program Counsel, Campus Rights Advocacy

Cc: Jeff Gingerich, President
Robert DeFazio, Dean of Students