



May 29, 2026

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Dear Trustees:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit that defends free speech nationwide, is concerned by recent revisions to the Michigan State University Board of Trustees Code of Ethics and Conduct. The revised code violates the First Amendment by restricting trustees' ability to speak about university affairs, criticize institutional decisions, and communicate candidly with the people they were elected to represent. FIRE therefore calls on the Board to revise the code to eliminate its unconstitutional defects and avoid chilling public debate about the governance of one of Michigan's premier public institutions.

Our concerns arise from the Board's May 17, 2026, special meeting, where it approved revisions to its Code of Ethics and Conduct by a 5-3 vote.¹ The revised code provides in part that trustees will "uphold the university's reputation" and will "not provide inaccurate, misleading, or false information concerning the university." It further states that "when the Board speaks through majority action," trustees "will not undermine and will support the majority decision of the Board and work cooperatively with fellow Board members and the administration to advance Board decisions and the goals of the University." Trustees must "embrace the principle of loyal opposition and raise issues of concerns [sic] in appropriate settings, in advance of Board action," and in a manner "protective of the integrity of the Board's deliberations and processes." Each trustee must sign and submit a statement of acknowledgment agreeing to be bound by the code.

¹ *Revisions to the Board of Trustees Code of Ethics and Conduct*, MICH. STATE UNIV. BD. OF TRS., <https://edge.sitecorecloud.io/michiganstab57e-msustrategi129d-prod9868-7e5e/media/project/msu/trustees/docs/2026/05-17-26/bot-code-of-ethics-and-conduct-combined-file.pdf>.

Trustees who fail to adhere to its terms “may be subject to sanctions, up to and including referral to the appropriate entities for removal.”²

The revised code’s adoption follows certain trustees’ public criticism of university and Board decisions, some of which drew pointed responses from MSU leadership and other trustees. For example, after Trustee Rema Vassar published an opinion essay criticizing MSU’s decision to roll back DEI programs,³ Board Chair Brianna Scott and MSU President Kevin Guskiewicz claimed she mischaracterized the university’s actions, with Scott stating her commentary “places us and the work that we’ve done into a negative light.”⁴ Trustees Mike Balow and Dennis Denno also recently wrote an op-ed calling for greater transparency into a university investment after the Board blocked a resolution they introduced for that purpose.⁵ According to Balow, in the days after, Scott later described the op-ed and related podcast interviews as “out of bounds” and “inappropriate.”⁶ Vassar, Balow, and Denno drew further condemnation from their colleagues for publicly raising concerns about the performance of MSU General Counsel Brian Quinn; the five other trustees issued a statement “condemn[ing] the conduct of those who chose to publicly ridicule and evaluate the performance of a university administrator,” calling it “inappropriate.”⁷

In explaining the revisions at the special meeting, Scott asserted that some trustees had been “undermining the president, the administration and decisions made by this board, attacking members of the administration and trying to interfere in personnel matters and spreading misinformation to constituent groups outside of and within the university, and that has got to stop.”⁸ Scott denied the changes were about “suppressing speech or preventing any trustee from speaking their mind,” but called out fellow trustees’ “podcasts, op-eds, [and] inappropriate email messages.” She also said President Guskiewicz was “frustrated” and “we want to foster an environment where he can be successful in his leadership and his vision for Michigan State University.” Trustee Rebecca Bahar-Cook defended the revised policy by saying it does not stifle discussion, but that there is a “time and place for that to occur,” namely in Board and committee meetings. She also said “relitigating” issues “over and over again” after they have been voted on

² Failing to sign the statement of acknowledgment may lead to sanctions including suspension of travel privileges, accommodations, and credentials for athletic tournaments; suspension from attending, in a trustee’s representative capacity, university-sponsored events that do not involve formal Board action or a Board quorum; prohibition from accessing university-managed hospitality areas; removal from official speaking programs, commencement platforms, and groundbreaking ceremonies; restriction of travel reimbursements to expenses necessary to attend official voting Board meetings or work sessions; and other punishments.

³ Rema Vassar, *MSU must return what they took — and add more*, BRIDGE MICH. (Feb. 2, 2026), <https://bridgemi.com/guest-commentary/opinion-msu-must-return-what-they-took-and-add-more>.

⁴ Anish Topiwala, *MSU President: ‘Disappointed’ by Trustee’s essay demanding reinstatement of DEI* (Feb. 6, 2026), STATE NEWS, <https://statenews.com/article/2026/02/msu-president-disappointed-by-trustees-essay-demanding-reinstatement-of-dei>.

⁵ Mike Balow and Dennis Denno, *To maintain trust, proper oversight at MSU is required*, DETROIT NEWS (Apr. 23, 2026), <https://www.detroitnews.com/story/opinion/2026/04/23/msu-trustees-demand-transparency-in-athletics-deal-balow-denno-opinion/89749426007>.

⁶ *Michigan State University’s new ethics policy: Gag order or commonsense loyalty guide for trustees?*, CBS NEWS (May 20, 2026), <https://www.cbsnews.com/detroit/news/msu-board-ethics-policy-dissent-trustees>.

⁷ Alex Walters and Owen McCarthy, *Board split over Quinn dossier*, STATE NEWS (Apr. 12, 2026), <https://statenews.com/article/2026/04/msu-trustees-divided-over-general-counsel-allegations>.

⁸ WILX News 10, *WATCH LIVE: Michigan State University Board of Trustees special meeting*, FACEBOOK (May 17, 2026), <https://www.facebook.com/wilxnews10/videos/2194849914795358>.

“doesn’t help us move forward.” Trustees Vassar and Balow have already been sanctioned for refusing to sign the statement of acknowledgment, with the Board revoking their credentials to attend the Mackinac Policy Conference.⁹

The revised code violates the First Amendment by restricting trustees’ ability to discuss university-related matters, express dissenting views, and communicate with the public they were elected to serve.

A “major purpose” of the First Amendment is “to protect the free discussion of governmental affairs.”¹⁰ This protection extends to speech by elected officials.¹¹ As the Supreme Court has explained, the “role that elected officials play in our society makes it all the more imperative that they be allowed freely to express themselves on matters of current public importance.”¹² Put differently, the “manifest function of the First Amendment in a representative government” is to give elected officials “the widest latitude to express views on issues of social policy.”¹³

The revised code violates these principles in multiple ways. First, its requirement that independently elected trustees “support” and “not undermine” Board decisions threatens sanctions for publicly disagreeing with those decisions. That is textbook viewpoint discrimination—an “egregious” form of censorship.¹⁴ The government must “abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.”¹⁵ Yet the policy restricts only speech critical of Board action; it does not similarly prohibit trustees from publicly defending, praising, or reiterating support for Board decisions. Likewise, the requirement that trustees “uphold the university’s reputation” opens the door to punishment for speech critical of university policies or leadership. While the Board may *encourage* collegiality, restraint, or respect for institutional decisions, it may

⁹ Julia Roeder, *After ethics showdown, two MSU trustees shut out of Mackinac conference*, STATE NEWS (May 26, 2026), <https://statenews.com/article/2026/05/after-ethics-showdown-two-msu-trustees-shut-out-of-mackinac-conference>. On May 27, President Guskiewicz announced he was leaving MSU to become the next president of Clemson University, stating that “too much energy has been spent revisiting past conflicts and internal disagreements.” *A Message to the Spartan Community*, MSU OFF. OF THE PRESIDENT, <https://president.msu.edu/communications/2026/05/05-27-2026-community-letter>.

¹⁰ *Ariz. Free Enter. Club’s Freedom Fund PAC v. Bennett*, 564 U.S. 721, 755 (2011).

¹¹ *Hous. Cmty. Coll. Sys. v. Wilson*, 595 U.S. 468, 478 (2022).

¹² *Wood v. Georgia*, 370 U.S. 375, 394–95 (1962).

¹³ *Bond v. Floyd*, 385 U.S. 116, 135–36 (1966) (state legislature violated the First Amendment when it refused to seat an elected representative after finding his comments criticizing the Vietnam War inconsistent with the state’s mandatory loyalty oath); *see also Libby v. Fecteau*, 145 S. Ct. 1378, 1378 (2025) (granting emergency injunction pending appeal, restoring a state representative’s voting and speaking rights that were suspended by the state legislature based on her criticism of a state policy; the appeal was later mooted after the legislature rescinded the sanction); *Werkheiser v. Pocono Twp.*, 780 F.3d 172, 178 (3d Cir. 2015) (“[D]ebate and diversity of opinion among elected officials are often touted as positives in the public sphere.”); *Velez v. Levy*, 401 F.3d 75, 98 (2d Cir. 2005) (explaining that school board members “are elected to provide additional voices — to oppose, critique, supplement, modify, and suggest policies — so that the Chancellor and the City Board can more effectively deliver education to the students of New York City”).

¹⁴ *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995).

¹⁵ *Id.*

not achieve those goals through viewpoint-based restrictions on speech about matters of public concern.

Even apart from the constitutionally fatal viewpoint discrimination, the revised code imposes impermissible content-based restrictions on trustees' speech—even things said in their individual capacities as elected officials. The code regulates speech based on the “topic discussed or the idea or message expressed,”¹⁶ namely, whether a trustee dissents from or “raises issues” or “concerns” about Board decisions, “undermine[s]” the Board majority, or conveys “inaccurate, misleading, or false information concerning the university.” Such restrictions are “presumptively unconstitutional” and subject to strict scrutiny,¹⁷ the “most demanding test known to constitutional law.”¹⁸ A content-based restriction survives strict scrutiny only if “narrowly tailored to be the least-restrictive means available to serve a compelling government interest.”¹⁹

The revised code cannot satisfy that standard. FIRE recognizes that the Board has legitimate interests in protecting confidential information, preserving channels for official communication, and ensuring the orderly functioning of university governance. But the code sweeps far beyond those narrow concerns, restricting broad categories of protected speech by elected officials on matters of public significance and thus impeding their ability to discharge the responsibilities of their office.

That trustees' criticism might “undermine” the administration or Board decisions—or even contribute to a president's voluntary resignation—does not make it a legitimate target of censorship. Michigan deliberately chose a system in which the governing boards of its flagship public universities are elected directly by the people. Trustees cannot fulfill their oversight role without being free to openly express their views about university issues and leadership. The Board has no legitimate interest, much less a compelling one, in limiting the “free flow of ideas and opinions on matters of public interest and concern,”²⁰ including speech by the public's elected representatives.²¹ That exchange of ideas “is the essence of self-government.”²² As elected officials, MSU trustees “have an obligation to take positions on controversial political questions so that their constituents can be fully informed by them” and “may be represented in governmental debates by the person they have elected to represent them.”²³ This system of democratic oversight necessarily entails public disagreement, criticism, and debate among trustees regarding university governance.

Even after the Board votes on a measure, trustees may reasonably choose to continue speaking about it for a variety of reasons, such as explaining their position to constituents or advocating

¹⁶ *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).

¹⁷ *Id.*

¹⁸ *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997).

¹⁹ *Bible Believers v. Wayne Cty*, 805 F.3d 228, 248 (6th Cir. 2015) (*en banc*). A compelling interest is one “of the highest order,” *Reed*, 576 U.S. at 172, like protecting national security. *See, e.g., In re Nat'l Sec. Letter v. Sessions*, 863 F.3d 1110, 1123 (9th Cir. 2017).

²⁰ *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 50 (1988).

²¹ *Bond*, 385 U.S. at 136–37.

²² *Garrison v. Louisiana*, 379 U.S. 64, 74–75 (1964).

²³ *Bond*, 385 U.S. at 136–37.

reconsideration. Such speech neither diminishes the Board’s authority to act nor alters the legal force of its decisions. Trustees may also wish to express their views about university matters outside Board meetings, or outside whatever the Board deems “appropriate settings,” in order to communicate more effectively with the people they serve. Trustees answer directly to Michigan voters, and the Board may not erect communicative barriers between the public and their representatives.

The restriction on “inaccurate, misleading, or false information concerning the university” also fails First Amendment scrutiny. The First Amendment contains no general exception for false speech, and the Supreme Court has emphasized that “[o]ur constitutional tradition stands against the idea that we need Oceania’s Ministry of Truth.”²⁴ Although society has a strong interest in truthful discourse, allowing censorship on that basis “would give government a broad censorial power unprecedented in ... our constitutional tradition.”²⁵ Such authority would cast “a chill the First Amendment cannot permit if free speech, thought, and discourse are to remain a foundation of our freedom.”²⁶ As the Court explained: “The remedy for speech that is false is speech that is true. This is the ordinary course in a free society.”²⁷

Counterspeech and democratic accountability are also less-restrictive remedies for other allegedly divisive, imprudent, or counterproductive speech of trustees.²⁸ The Board is always free to publicly rebut trustees’ statements, defend its decisions, and clarify institutional positions. Other members of the university community and the public may respond to trustees’ comments as well. And if Michigan voters conclude that a trustee has exercised poor judgment or failed to lead effectively, they can hold that trustee accountable at the ballot box.

Finally, the revised code is unconstitutionally vague because it fails to provide trustees fair notice of what speech is prohibited and grants the Board excessive discretion to determine what speech warrants sanction.²⁹ The code does not define what it means to “undermine” Board decisions, fail to “uphold the university’s reputation,” speak in “appropriate settings,” or raise concerns in a manner sufficiently “protective of the integrity of the Board’s deliberations and processes.” These inherently subjective standards invite arbitrary and selective enforcement against disfavored views. Statements by trustees defending the revisions—calling out colleagues for publicly criticizing administrators, publishing op-eds, appearing on podcasts, and allegedly undermining the president and Board decisions—only reinforce that concern.

The ban on “inaccurate, misleading, or false information concerning the university” is similarly vague and subjective. It could encompass anything from knowingly false factual assertions to speech that purportedly omits context, presents one-sided framing, or employs rhetorical

²⁴ *United States v. Alvarez*, 567 U.S. 709, 723 (2012) (holding federal statute making it illegal to falsely claim receipt of military honors violated First Amendment).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 727.

²⁸ *See Bible Believers*, 805 F.3d at 234 (quoting *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring)) (When it comes to speech to which listeners object, “the remedy to be applied is more speech, not enforced silence.”).

²⁹ *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972).

hyperbole—all common features of public debate. Trustees are left to guess when criticism or advocacy on contested issues might later be deemed sanctionable. And in the absence of clear, objective standards, determinations of whether speech is “misleading” risk turning on whether the Board majority agrees with a trustee’s viewpoint.

In addition to violating the First Amendment, the revised code undermines MSU’s own laudable commitment to free expression. The Board’s website contains a Statement on Free Speech calling the protection of First Amendment rights “[f]undamental to Michigan State University’s philosophy on campus dissent.”³⁰ But that commitment rings hollow when trustees may be sanctioned for publicly expressing dissenting views on university governance. The First Amendment and the free speech principles MSU has pledged to uphold require tolerating disagreement, criticism, and robust debate among all members of the campus community.

For these reasons, the Board must revise its Code of Ethics and Conduct to ensure compliance with the First Amendment. FIRE would be pleased to assist in that effort—at no cost.

We respectfully request a response by June 12, 2026.

Sincerely,



Aaron Terr
Director of Public Advocacy

³⁰ *Statement on Free Speech*, MICH. STATE. UNIV. BD. OF TRS., <https://trustees.msu.edu/about/mission/statement-free-speech>.