

August 14, 2025

William S. Wainwright
Office of the President
Southeastern Louisiana University
Dyson Hall, Room 106
SLU Box 10784
Hammond, Louisiana 70402

Sent via U.S. Mail and Electronic Mail (william.wainwright@southeastern.edu)

Dear President Wainwright:

FIRE, a nonpartisan nonprofit that defends free speech,¹ is concerned by Southeastern Louisiana University's use of its media policies to suppress Professor of Library Science and Head of Reference Dayne Sherman's social media posts and radio show appearances. Contrary to SLU's assertions, Sherman did not speak on behalf of the university, and while his speech may have offended some, the First Amendment bars SLU from punishing Sherman for his protected expression. We urge SLU to clear Sherman's file of any negative references to his extramural speech and confirm its adherence to the First Amendment, including its faculty's right to free expression.

During his free time, Sherman maintained an active personal online presence and appeared as a regular guest on the WRKF 89.3 "Talk Louisiana with Jim Engster" radio program, where he regularly discussed and commented on local and national political issues.

On August 21, 2024, Library Director David Sesser met with Sherman and informed him that you and Provost Tena Golding had received a complaint about his Facebook posts.² For example, Sherman had commented on a post linking to a SLU alumna's *Southern Living* article, in which he wrote: "A propaganda article about my hometown: Hammond, Louisiana. The place

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 *Library Faculty Annual Activity Report May 2024 - April 2025*, Dayne Sherman, 7–8 (on file with author). The recitation here, which is partly based on Sherman's own narrative, reflects our understanding of the pertinent facts. We appreciate that you may have additional information to offer 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.

has a dark side of racism, segregation, poverty, violent crime, murder, drug trafficking, and police brutality.”³

Sesser also told Sherman that, according to you and Golding, his regular guest appearances on “Talk Louisiana” violated university policies because Sherman had failed to preface his appearances with a sufficient disclaimer that the views shared were his own and not those of SLU.⁴ Sesser showed Sherman a screenshot of the WRKF 89.3 webpage for Sherman’s August 14, 2024, appearance on “Talk Louisiana,” where Sherman was described as a “Southeastern professor and Democratic blogger” who would “discuss various local and national political topics including the Jeff Landry administration thus far and the upcoming presidential election and its candidates.”⁵ Sesser added that you and Golding mentioned that “Louisiana Gov. Jeff Landry might punish the University for [Sherman’s] speech.”⁶ Shortly following this meeting with Sherman, Sesser sent him an email linking to SLU’s social media policy, but did not explain exactly which section of the policy Sherman had violated, nor how the policy was violated.⁷

On September 26, Sherman informed Sesser that per their previous conversation, he had “complied” by “not writing anything on any social media that is questionable at this time[.]”⁸ He added that he “won’t be back on Jim Engster’s show in the near future.”⁹ Sesser responded, “It has been noticed that you have complied.”¹⁰

On June 2, 2025, while completing his Library Faculty Annual Activity Report, Sherman wrote in the comment section that during the August 21 meeting with Sesser, he felt “threatened with demotion and/or termination for ongoing protected extramural speech activities,” adding: “[t]hough I have attempted to comply... I believe this is a clear violation of my faculty free speech rights and responsibilities.”¹¹ Sherman wrote that he was “asking for this threat of

³ Screenshot of Facebook post on file with author.

⁴ *Library Faculty Annual Activity Report*, *supra* note 2 at 7–8.

⁵ Screenshot of WRKF 89.3 webpage on file with author; Jere Longman, Scott Wilfong, Dayne Sherman, Rabbi Peretz Kazen, *Talk Louisiana*, WRKF 89.3, <https://www.wrkf.org/show/talk-louisiana/2024-08-14/jere-longman-scott-wilfong-dayne-sherman-rabbi-peretz-kazen> [<https://perma.cc/6D6B-5CJK>] (After being introduced on the show as “speaking as citizen Sherman,” Sherman made several comments addressing Landry’s governance, including, “[t]hings like the [Education Savings Accounts], which I’m totally against...I think it’s a bad direction and it’s going to end up bankrupting the state”).

⁶ *Library Faculty Annual Activity Report*, *supra* note 2 at 7–8.

⁷ Email from David Sesser, Library Director, to Dayne Sherman, professor (Aug. 21, 2024 at 8:08 AM) (on file with author); *see also Social Media Policy*, Section IV: Guidelines for an Employee’s Personal Use of Social Media, SE. LA. UNIV., 5–6 (revised Oct. 1, 2022), https://www.southeastern.edu/resources/policies/policy_detail/social_media/ [<https://perma.cc/VHH9-ENAW>].

⁸ Recorded Meeting, at 00:34, Sesser and Sherman (recorded September 26, 2024) (on file with author).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Library Faculty Annual Activity Report*, *supra* note 2 at 7–8.

retaliation and/or demotion for [his] constitutionally protected free speech activities to be rescinded in writing by Library Director, Provost, and President.”¹²

In response to Sherman’s comments, Sessor noted on Sherman’s June 2025 performance review that Sherman needed “to continue to follow established university policies,” which “include but are not limited to the *Media Inquiries, Advertising and Public Records Requests Policy* and the *Social Media Policy*.”¹³

It has long been settled law that the First Amendment binds public universities such as SLU,¹⁴ and that faculty members do not surrender their “First Amendment rights to comment on matters of public interest by virtue of government employment.”¹⁵

As an initial matter, Sherman’s Facebook posts and radio interviews unquestionably dealt with matters of public concern, which include speech that could “be fairly considered as relating to any matter of political, social, or other concern to the community[.]”¹⁶ Here, Sherman wrote on Facebook and spoke on the radio about such topics as racism, poverty, crime, public education, Louisiana’s governor, and the upcoming presidential election. Because Sherman made his comments publicly to a broad audience¹⁷ about community issues with which the citizens of Hammond, the state of Louisiana, and the country overall are surely concerned, his speech cannot be grounds for SLU censure.¹⁸

While any discussion on matters of public concern may offend some person or persons—though here it would be a stretch to argue that Sherman’s speech was particularly offensive—the First Amendment protects offensive expression and prohibits SLU from punishing professors

¹² *Id.*

¹³ *Library Faculty Annual Activity Report*, *supra* note 2 at 7–8; *see also Media Inquiries, Advertising and Public Records Requests Policy*, Purpose of Policy–Policy Procedure, SE. LA. UNIV., 1 (revised May 8, 2018), https://www.southeastern.edu/wp-content/uploads/policies/media_inquiries.pdf [<https://perma.cc/Q7MK-B5K4>] (“In order to ensure that an appropriate image of the university is projected and maintained among various publics, all news releases or media statements should be arranged through UCCS[.] ... Southeastern faculty and staff should not directly respond to media requests for interviews unless coordinated through UCCS. All media inquiries regarding university programs and activities in general should be referred to UCCS”); *see also Social Media Policy*, *supra* note 7.

¹⁴ *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).

¹⁵ *Connick v. Myers*, 461 U.S. 138, 140 (1983).

¹⁶ *Snyder v. Phelps*, 562 U.S. 443, 453 (2011) (quoting *Connick*, 461 U.S. at 146).

¹⁷ *See Hardy v. Jefferson Cmty. Coll.*, 260 F.3d 671, 674 (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)).

¹⁸ *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).

merely for offending others (even if they are university presidents or state governors).¹⁹ As the Supreme Court has clearly held, expression may not be restricted on the basis that others find it offensive.²⁰

Additionally, Sherman's Facebook posts and radio appearances are speech as a private citizen,²¹ and not within the scope of his roles as either Head of Reference or professor.²² Universities ordinarily do not employ their faculty to post on their personal social media pages or appear on radio shows, nor do universities ordinarily employ reference librarians to issue political commentary.²³ Moreover, the fact that Sherman's speech was not addressed to his employer's "chain of command" strongly indicates that he was expressing himself as a private citizen.²⁴ Thus, SLU cannot reasonably say that Sherman's social media posts and/or radio show appearances had anything to do with his official duties.²⁵

Even if another Facebook user or radio listeners were aware of Sherman's position as an employee at SLU, the mere *knowledge* of a speaker's employment does not turn his words into speech on behalf of his employer—the listener would still have to reasonably believe that the speaker was speaking for their employer.²⁶ Here, because Sherman does not occupy a designated SLU leadership role that, per SLU's *Social Media Policy*, carries a "high level of campus and community visibility," no reasonable person could think that Sherman's Facebook

¹⁹ See e.g., *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").

²⁰ See *Cohen v. California*, 403 U.S. 15, 25 (1971) (wearing a jacket emblazoned with the words "Fuck the Draft" is First Amendment-protected activity).

²¹ The "critical question" in determining whether the speech was that of an employee or private citizen is "whether the speech at issue is itself ordinarily within the scope of an employee's duties, not whether it merely concerns those duties." *Lane v. Franks*, 573 U.S. 228, 240 (2014).

²² Speech is within the scope of an employee's duties only when it is "required by one's position or undertaken in the course of performing one's job." *Paske v. Fitzgerald*, 785 F.3d 977, 984 (5th Cir. 2015) (cleaned up). Courts consider a "number of factors ... in determining whether an employee is speaking pursuant to her official duties: the relationship between the topic of the speech and the employee's job; whether the employee spoke internally up the chain of command at her workplace; and whether the speech resulted from special knowledge gained as an employee." *Lewis v. San Jacinto Cnty. Appraisal Dist.*, 2010 WL 3784492, at *5 (S.D. Tex. Sept. 23, 2010) (citing *Davis v. McKinney*, 518 F. 3d 304, 312–14 (5th Cir. 2008)).

²³ See, e.g., *Higbee v. E. Mich. Univ.*, 399 F. Supp. 3d 694, 702 (E.D. Mich. July 1, 2019) (commenting on Facebook about the university's response to racial incidents "would not appear to be within a history professor's official duties").

²⁴ *Buddenberg v. Weisdack*, 939 F.3d 732, 740 (6th Cir. 2019).

²⁵ SLU's own policy states that "[u]nless your job duties entail the use of your personal media accounts on behalf of the University and such use is explicitly authorized, an employee's personal use of social media is deemed not in furtherance of their employment responsibilities on behalf of Southeastern." *Social Media Policy*, *supra* note 7 at Section VI: Guidelines for an Employee's Personal Use of Social Media.

²⁶ See, e.g., *Graziosi*, 775 F.3d at 737 ("identifying oneself as a public employee does not forfeit one's ability to claim First Amendment protections"); *Pickering*, 391 U.S. at 569–70, 576 (affording First Amendment protections to a public employee's statements in a letter to the editor despite the public employee identifying himself as a "teach[er] at the high school").

posts or radio comments were being made on behalf of or as a spokesperson for SLU.²⁷ Therefore, regardless of the extent to which he may have disclaimed that the views shared were his own, Sherman's speech lies squarely within the realm of speech protected by the First Amendment.

Because threats of demotion, notes in a performance review, or other such warnings would chill an ordinary person from exercising their First Amendment rights,²⁸ SLU may not use such means to punish or otherwise stifle Sherman's protected speech. Sherman remains reasonably concerned about the security of his position at SLU should he be reprimanded further for his protected expression. Accordingly, we request a substantive response to this letter no later than August 28, confirming SLU will clear Sherman's file of any negative references to his protected speech and affirming its adherence to First Amendment principles, including faculty members' right to free expression.

Sincerely,



Charlotte Arneson
Program Counsel, Campus Rights Advocacy

Cc: Eric Skipper, Provost
David Sesser, Library Director

Encl.

²⁷ *Social Media Policy*, *supra* note 7 at Section VI: Guidelines for an Employee's Personal Use of Social Media ("by virtue of their University leadership roles, some individuals such as the President, Vice Presidents, Deans, Athletics Director, Communications Spokespersons, etc., are generally presumed to be speaking on behalf of the University, and this presumption will extend to personal social media accounts").

²⁸ The pertinent question is whether the institution's actions in response to protected speech "would chill or silence a person of ordinary firmness from future First Amendment activities." *Mendocino Envt'l Ctr. v. Mendocino Cnty.*, 192 F.3d 1283, 1300 (9th Cir. 1999).