

Emory University Senate's Committee for Open Expression
Preliminary opinion on termination of School of Medicine faculty member
September 23, 2025

This document represents the Committee for Open Expression's preliminary thinking and may not reflect the precise content of the opinion that it will ultimately release.

1. We have not yet determined whether the University followed proper procedures in terminating the faculty member. So the following discussion reflects our judgment as to whether the termination was proper even if all proper procedures were followed.
2. The following provisions of Emory's Open Expression Policy (8.14) are relevant in this case:
 - 2.1. "Emory . . . respects the protections and principles of free speech and assembly as set forth in the First Amendment (and the corresponding sections of the Georgia Constitution). This standard, with appropriate limitations developed by the courts, generally embodies a reasonable balance between the free-speech interests of faculty, staff, and students, and the significant interests of the university (which include, among other activities central to the university mission, teaching, research, healthcare, housing, dining services, and providing safety on the Emory campuses). All members of the Emory Community have broad latitude to speak, write, listen, challenge, and learn, whether they are on or off campus. These freedoms are limited to the extent necessary to protect significant university interests enumerated above, and any regulations should not discriminate with respect to viewpoint or content" (8.14.1).
 - 2.2. "Listeners' feelings of offense or the unpopularity of the view expressed are not sufficient bases for regulating speech on campus. The University . . . shall not arbitrarily suppress opinions on public questions" (8.14.2.7).
 - 2.3. "In any instance in which a member of the Emory Community may face disciplinary consequences (under an applicable student or employee code of conduct, for example), Open Expression rights should be given substantial consideration before such disciplinary action is taken" (8.14.3.6).
 - 2.4. Thus, the Open Expression Policy applies to disciplinary proceedings (as well as all other University action), and we look to how comparable cases at public universities would be treated under the First Amendment.
3. The First Amendment standard for public employees (including university employees) is established by the U.S. Supreme Court's opinion in *Pickering v. Board of Education* (1968), as applied and interpreted in numerous cases over the last several decades. The *Pickering* standard seeks "to arrive at a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." The government's interests in controlling the employee's speech are at a

maximum when the employee is speaking on the job and pursuant to their work duties, or if the employee's speech damages the efficiency of the government employer's operation. Conversely, the employee's interests in speaking freely are at a maximum when the employee is off the job and speaking in their private capacity. This includes social media comments. This is true even if people are aware of who the employee works for, e.g., if the employee's work affiliation is listed as part of their "About Me" on their social media account.

4. The University's statement about the employee's termination claims that "any celebration or incitement of violence, including on social media, is not acceptable under any circumstances and is inconsistent with [Emory's] values" and that "[t]hese types of expressions undermine both our shared values and the safety of our entire community." It is true that *incitement of violence* is unprotected, both under the First Amendment and under the Open Expression Policy (8.14.2.1). However, there is no similar exception for *celebration of violence*. The Supreme Court has ruled in favor of public employees even when they praised violent acts (like the attempted assassination of President Reagan). Moreover, a rule against celebration of violence would prevent speech on all kinds of current political controversies—it would prevent statements of support for revolutions, resistance movements, or aggressive political activism all around the world, in contexts from Ukraine to Gaza to the events of January 6 to the Black Lives Matter protests. And to the extent the University seeks to limit this policy to celebration of unjustified or illegitimate violence, that would introduce a sort of viewpoint discrimination that the Open Expression Policy expressly rejects.
5. Therefore, our preliminary judgment is that the termination of the faculty member violated the Open Expression Policy. We repeat that this judgment is tentative and subject to revision on further research or consultation with the parties involved.