



November 15, 2021

Dear President Whitten,

The Academic Freedom Alliance (AFA) is a coalition of faculty members from across the country and across the ideological spectrum who are committed to upholding the principles of academic freedom and professorial free speech.

We are disturbed by the reports that Steve Sanders, a member of the law school faculty and a member of the Academic Freedom Alliance, is being harassed for his investigation of and writing on the university's presidential search. In October 2020, the board of trustees for Indiana University appointed a search committee to find a successor when Michael McRobbie retired on June 30, 2021. The search process was long and complicated. Professor Sanders, who is not only an interested member of the faculty but also has a professional and scholarly interest in university governance and administration, began to conduct research on the search process as well as the trustees' secret approval of \$582,000 in new post-presidential compensation to McRobbie. It was clearly evident to his correspondents that Professor Sanders planned to critically examine these decisions and the conduct of officials responsible for them. Professor Sanders' investigations have [brought to light](#) new facts regarding the presidential transition that are broadly of public interest.

The Indianapolis law firm Hoover, Hull, Turner, LLP filed a request under the Indiana Access to Public Records Act for emails of Professor Sanders relating to the presidential search. The law firm has not disclosed who hired it to conduct this investigation. In the face of [inquiries](#) from [media outlets](#), Professor Sanders, and other concerned faculty members, including the leaders of the local AAUP chapter, the university has refused to deny that the law firm was acting on the behalf of the university itself.

I write on behalf of the Academic Freedom Alliance to express our concern at this apparent effort to intimidate and harass a member of the faculty, potentially at the behest of the university leadership. If the university or any of its officers is responsible for the law firm's actions, this would represent a grave violation of the principles of academic freedom to which the university is committed.

As a public employee at a state university, the university email of Professor Sanders is legally subject to public records requests. Nonetheless, such procedures can be abused and have been used as a means to intimidate and silence university professors and chill speech. It would be a particularly troubling attack on academic freedom if faculty emails are accessed at the request of university officials.



It is a basic component of academic freedom that professors have the right to express themselves on matters of university policy and governance. In its 1994 statement [On the Relationship of Faculty Governance to Academic Freedom](#), the American Association of University Professors stated that the “academic freedom of faculty members includes the freedom to express their views (1) on academic matters in the classroom and in the conduct of research, (2) on matters having to do with their institutions and its policies, and (3) on issues of public interest generally.” As the AAUP emphasized in a [2009 report](#), professors are “institutional citizens,” and as such professors should “not be made subject to retribution because the position he or she has advanced on matters relating to governance displeases those in power” nor should they suffer “institutional retaliation” for “expressing a lack of confidence in the institution’s trustees or president” or communicating informally by e-mail messages or other channels criticism of institutional policies or governance. Moreover, courts have recognized a First Amendment interest in university professors being able to freely express criticisms of the university leadership. *Adamian v. Board of Regents*, 523 F.2d 929 (9th Cir. 1975). Indiana University itself has embedded protections for this aspect of academic freedom in its own governing document [ACA-32](#), declaring that “academic freedom includes the freedom to express views on matters having to do with the university and its policies, and on issues of public interest generally.”

It has increasingly been recognized that public records requests for faculty email correspondence can pose a significant threat to academic freedom and can be used to chill speech. When assessing public record requests, the AAUP has urged courts to weigh in the balance the First Amendment interests of scholars to keep their communications confidential. As the [AAUP explained](#), “courts should balance the public’s general right to disclosure against the risks of chilling effects that may result from forcing scholars and institutions to disclose collegial academic communications and internal research and deliberative materials.” Courts have been receptive to those concerns, recognizing that disclosure requests “threaten substantial intrusion into the enterprise of university research, and there are several reasons to think they are capable of chilling the exercise of academic freedom.” *Dow Chemical Co. v. Allen*, 672 F.2d 1262, 1276 (7th Cir. 1982). Scholars have [pointed out](#) that such open record requests can often be “an effort to intimidate a prominent critic by conducting fishing expeditions through private communications – an expedition aimed at producing fodder for additional attacks on his reputation.” As the then-director of the National Institutes of Health [testified](#) to Congress, open records requests can lead to “unwarranted violations of privacy, the potential harassment of scientific investigators and the chilling effect that inappropriate public scrutiny could have on the free exchange of ideas and the willingness to take risks to find answers.” Universities should be seeking to shield members of their faculty from such inappropriate efforts to bully scholars and should certainly not be engaging in such bullying themselves.



The announced purpose of the Indiana’s open records law is to facilitate giving “the people . . . [full and complete information](#) regarding the affairs of government and the official acts of those who represent them as public officials and employees.” It would fly in the face of this policy if a public university were to use the open records law to harass one of its own professors for bringing to light important matters of public concern about the conduct of that university’s officials. Even worse would be a university covering its tracks by hiring a law firm to carry out a public records request to achieve this end.

The Academic Freedom Alliance stands firmly behind Professor Sanders in this matter and calls on Indiana University to clearly state what it knows about the circumstances leading to the demand for his email correspondence and provide an accounting of any involvement by the university or its officials in the activities of Hoover, Hull, Turner, LLP in this matter.

Sincerely,

A handwritten signature in black ink, appearing to be "KW", with a long horizontal flourish extending to the right.

Keith Whittington
Chair, Academic Committee, Academic Freedom Alliance
William Nelson Cromwell Professor of Politics, Princeton University

cc. Jacqueline Simmons, Vice President and General Counsel
Austen Parrish, Dean of the School of Law
W. Quinn Buckner, Chair, Board of Trustees
Marietta Simpson, president, Bloomington Faculty Council