



Written by [Joe Wolverton, II, J.D.](#) on July 21, 2023

Does First Amendment Protect Opinions of Professors at State Universities?

“Without freedom of thought, there can be no such thing as wisdom; and no such thing as public liberty, without freedom of speech.”

— Thomas Gordon, *Cato's Letter* No. 15 (1721)

Should professors at state universities be allowed to write about controversial subjects outside of class? Should those professors be allowed to publish articles in their private lives that might offend some people at the university where they teach?

Believe it or not, these are the questions being considered by a federal court in the United States of America. There are people who believe that the answer to those questions is “no,” and they are prosecuting a professor for presenting the results of a scientific study in his lecture.

Here's a recap of the story, as written by Judge Aaron Polster in [his opinion in the case of *Pesta v. Cleveland State University*](#):



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This case concerns the Plaintiff's First Amendment rights to academic freedom, freedom of speech, and freedom of association as a professor at Cleveland State University (“CSU”). The Plaintiff alleges that the Defendants violated his constitutional rights when they investigated and fired him for advancing a “genetic hypothesis of the cause of the racial IQ gap” between black and white Americans in a published academic article....

The Plaintiff, Bryan Pesta ... was a Professor in the Department of Management at CSU. Professor Pesta received tenure at CSU in 2010 and promotion to full professor in 2016. In March 2022, CSU fired Professor Pesta....

In August 2019, the Plaintiff co-authored and published in the peer reviewed journal, *Psych*, an article entitled “Global Ancestry and Cognitive Ability.” The article essentially concluded that an IQ gap between white and black Americans was, at least in part, hereditary and the result of genetics. This conclusion is called a “hereditarian hypothesis.”... In conducting research for the article, the Plaintiff used National Institute of Health (“NIH”) data that consisted of over 9,000 individuals' actual DNA samples. The Plaintiff's article concluded that this data supported the belief that “genetics played a role in the mean differences in general intelligence between White and Black Americans.”



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Pesta admits that he knew that the article he co-wrote was “controversial.” After the article was published, some of Pesta’s fellow professors at CSU, groups of students at the school, as well as members of the community publicly called out Pesta and sent a petition to the administration of CSU to “discipline Professor Pesta.”

Kent Taylor is one of the professors critical of Pesta publishing the article at issue, and his statement is highlighted in Judge Polster’s opinion. In a letter to the president of the university, Dr. Taylor claimed that the article’s “use of NIH data for studies of racial differences in this way [was] both a violation of data use agreement and unethical.”

At some point before Pesta was fired, CSU removed the link to the article that earlier was available on the page listing Dr. Pesta’s professional publications.

Dr. Taylor, in speaking to a committee formed by CSU to investigate Pesta’s articles, said he particularly took issue with the last sentence of the abstract of one of the articles. The sentence he pointed to read: “Results converge on genetics as a potential partial explanation for group mean differences in intelligence.”

In an email to the committee, Dr. Taylor explained his outrage and opposition to that sentence and to the subject as an appropriate sphere of scientific inquiry: “In my opinion, this statement conflicts with the NIH policy NOT-OK-07-088 on taking care that data avoids stigmatization of US population sub-groups.”

Taylor then went on to accuse Pesta of being unethical, of violating data-use agreements, and remarked how it was unprofessional for a full professor to participate in studying the possibility of genetic factors in intelligence.

In January 2022, Pesta was fired. He sued the university for violating his right of free speech as protected by the First Amendment to the U.S. Constitution.

The court held that his argument had sufficient merit to be heard. Rather than copy the court’s explanation, I’ll sum it up for you. The court held that the issue isn’t the appropriateness or accuracy of the data used by Pesta in his article. The issue was whether a private citizens has a right to “write publicly on contentious academic topics without retaliation from his employer.” In it’s answer to Pesta’s complaint, the university claimed that since Pesta was a professor at a state school, the First Amendment did not protect his speech. The court dismissed that claim, as well, quoting an earlier opinion that held that the First Amendment does, in fact, affect “the ability of a public employer to leverage the employment relationship to restrict, incidentally or intentionally, the liberties employees enjoy in their capacities as private citizens.”

Curiously, with regard to precisely why Pesta was fired, neither Pesta nor the university provided the court with a copy of the termination letter. Subsequently, the court, following precedent, must “construe the complaint in the light most favorable to the Plaintiff [Pesta],” therefore the university’s motion to dismiss the case was denied.

Additionally, the court found that Pesta had produced sufficient evidence to support his claim that he was fired for exercising his right to free speech, as protected by the First Amendment.

The university insists that he was fired for “misrepresenting to the NIH how he would use the data he requested in violation of NIH policy and basic research ethics.”

With its decision that Cleveland State University was at least partially motivated to investigate and fire



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Pesta because they didn't like what he wrote in his article (or, they were offended by the article's controversial subject matter), and, therefore, they fired him for exercising rights protected by the Constitution, his case can continue on to trial.

Notice something very critical about the university's claims about why they fired Pesta. They never said Pesta faked the data he used or that he grossly misrepresented the data or that he didn't get permission to use the data, or any other type of behavior that anyone would consider unprofessional, unethical, or illegal. No, the university claimed he used the NIH data in a way that violated his agreement with NIH and that the article he co-wrote embarrassed them and damaged their academic reputation.

There seems to be little doubt that Dr. Pesta was fired for writing about the results of a study that the university didn't like. Imagine, however, that Dr. Pesta had co-authored an academic article about how denying medical care to "transgender minors" caused harm to the mental health of those children denied treatment. Do you think he would have been investigated and fired for *that*? There are many who would find that topic offensive and unprofessional, yet even the suggestion that professors who hold such opinions should be investigated or fired is enough to get the person suggesting it fired himself!

If we have come to the place in this country where people are only allowed to write or say things that committees of professors and administrators (or lawyers or politicians) approve of, then we have crossed the Rubicon, leaving reason and liberty on the other side of that fateful river.

The last word goes to Thomas Gordon, who in 1721 wrote:

In those wretched countries where a man cannot call his tongue his own, he can scarce call any thing else his own. Whoever would overthrow the liberty of the nation, must begin by subduing the freedom of speech.



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