



June 1, 2021

Tiffany Gabrielson  
Assistant Dean & Associate Director  
Office of Community Standards  
Stanford University  
Tresidder Memorial Union, 2nd Floor, Suite 9  
459 Lagunita Drive  
Stanford, California 94305-3010

**URGENT**

*Sent via Express Mail and Electronic Mail (tgabriel@stanford.edu)*

Dear Ms. Gabrielson:

The Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

FIRE is concerned by Stanford University's investigation into Nicholas Wallace, a law student whose email satirizing the Federalist Society spurred a complaint from the Stanford chapter of the Federalist Society alleging that the email "defamed the student group, its officers, Senator Josh Hawley, and Texas Attorney General Ken Paxton." Satire is speech protected under Stanford's commitment to freedom of expression and Education Code section 94367.

In initiating an investigation into Wallace—and placing his degree on hold two weeks before his graduation—Stanford has violated its commitment to freedom of expression and California law. FIRE calls on Stanford to immediately abandon its investigation and commit to procedural reforms to protect the expressive rights Stanford promises to its students.

**I. Wallace's Email Satirizing the Stanford Federalist Society, Sen. Hawley, and Texas Attorney General Ken Paxton**

The following is 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.

A. *Wallace’s January 25 email advertising a January 6 “Originalist Case for Inciting Insurrection” event.*

Stanford Law provides several student-operated listservs. The “law-announce” list is used for promoting events.<sup>1</sup> A separate listserv, “law-talk,” is “for rebuttals to previous postings [students] found offensive or about which [they] disagree” and “political commentary of any kind.”<sup>2</sup>

On January 25, 2021, Nicholas Wallace, a third-year law student, sent an email to the “law-talk” listserv.<sup>3</sup> The email used the logo and format of previous emails promoting events held by the Stanford Federalist Society (“Stanford FedSoc”).<sup>4</sup> Previous Stanford FedSoc emails promoting their events had been sent to the law-announce listserv, not the law-talk listserv.

Wallace’s email, sent under the subject line “The Originalist Case for Inciting Insurrection,” purported to invite students to attend an event held on January 6—nineteen days earlier. It prominently featured a photo of Texas Attorney General Ken Paxton speaking at then-President Trump’s January 6 “Save America Rally,” which preceded the violence at the U.S. Capitol,<sup>5</sup> and a photo of Sen. Josh Hawley raising his fist in support of demonstrators before he entered the Capitol that day.<sup>6</sup> The email informed recipients that “[r]iot information will be emailed the morning of” the past event, adding:

Please join the Stanford Federalist Society as we welcome Senator Joshua Hawley and Texas Attorney General Ken Paxton to discuss violent insurrection. Violent insurrection, also known as doing a coup, is a classical system of installing a government. Although widely believed to conflict in every way with the rule of law, violent insurrection can be an effective approach to upholding the principle of limited government. Senator Hawley will argue that the ends justify the means. Attorney General Paxton will explain that when the Supreme Court refuses to exercise its Article III authority to overturn the results of a free and fair election, calling on a violent mob to storm the Capitol represents an appropriate alternative remedy.<sup>7</sup>

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<sup>1</sup> E-mail from Rachel Bowanko, Co-President, Stanford Law Ass’n, to “law-announce” listserv (Sept. 17, 2020, 3:18 PM) (on file with author).

<sup>2</sup> *Id.*

<sup>3</sup> E-mail from Nicholas Wallace to the “law-talk” listserv (Jan. 25, 2021, 8:54 AM) (enclosed) (“Originalist Case for Inciting Insurrection email”).

<sup>4</sup> Fundamental Standard Form (“Stanford FedSoc complaint”) (enclosed).

<sup>5</sup> Chuck Lindell, *Paxton at Trump rally: While Texas fought, Georgia surrendered*, AUSTIN AMERICAN-STATESMAN, Jan. 6, 2021, <https://www.statesman.com/story/news/2021/01/06/texas-ag-ken-paxton-praises-texas-rips-georgia-pro-trump-rally/6564017002>.

<sup>6</sup> Katie Bernard, *A photographer and a fist pump. The story behind the image that will haunt Josh Hawley*, KANSAS CITY STAR, Jan. 7, 2021, <https://www.kansascity.com/article248354085.html>.

<sup>7</sup> Originalist Case for Inciting Insurrection email.

Wallace’s email spurred listserv criticism that “these jokes” were “in exceedingly poor taste” and would have been better received in “the satire portion of Stanford’s newspaper,” and engendered critical remarks about Stanford FedSoc. The email was posted to Twitter by another student “without mention that Wallace created or distributed it.” It was re-posted to a Facebook group for law school students known for irreverent posts, “Law School Memes for Edgy T14s,” where it yielded comments ranging from asking if this was a “real event,” feigning uncertainty (“[t]his has to be fake”), and criticizing the Federalist Society (“barely more absurd than an actual FedSoc event”).<sup>8</sup>

On January 27, *USA Today* published a “fact check” explaining that the email was “SATIRE,” later adding comments from a Stanford Law spokesperson noting that the email had been sent on January 25 and “was NOT emailed to students on January 6.”<sup>9</sup>

***B. Stanford University initiates an investigation into Wallace after Stanford FedSoc complaint that the email is defamatory.***

Four months later, on May 27, Wallace received a “PERSONAL AND CONFIDENTIAL” letter from the Stanford Office of Community Standards informing him that “a concern has been filed about you with our Office in regards to a possible violation of the Fundamental Standard.”<sup>10</sup> Wallace was provided with a complaint submitted by an officer of Stanford FedSoc.<sup>11</sup> The complaint was first submitted March 27 and informed the Office of Community Standards that they would like to pursue the complaint.<sup>12</sup>

The complaint avers that Wallace “impersonated” Stanford FedSoc, attributing “false and defamatory beliefs to persons he listed on the event flyer,” and “defamed the student group, its officers, Senator Josh Hawley, and Texas Attorney General Ken Paxton.”<sup>13</sup> Wallace did so, the complaint alleges, by “insinuating” that Stanford FedSoc “was encouraging and hosting a riot,” that Attorney General Paxton “advocates for ‘overturn[ing] the results of a free and fair election’ by ‘calling on a violent mob to storm the Capitol,’” and that Sen. Hawley “believes that violent insurrections are justified.”<sup>14</sup>

The complaint acknowledges that the email was sent from Wallace’s email address and did not purport to be sent by a Stanford FedSoc officer, but argued that “students would not be tipped off that the email was an impersonation based on the sender” and that the email “implied that

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<sup>8</sup> Post by David Gomez to “Law School Memes for Edgy T14s,” FACEBOOK (Jan. 25, 2021, 9:15 AM), <https://bit.ly/3yQXiT5>.

<sup>9</sup> Chelsey Cox, *Fact check: Satirical flyer promotes Capitol siege as Stanford law group event*, USA TODAY, Jan. 27, 2021, <https://www.usatoday.com/story/news/factcheck/2021/01/27/fact-check-flyer-calling-capitol-riot-stanford-event-satire/4267449001>.

<sup>10</sup> Letter from Tiffany Gabrielson, Asst. Dean & Assoc. Dir., Ofc. of Cmty. Standards, Stanford Univ., to Wallace, May 27, 2021 (on file with author).

<sup>11</sup> Stanford FedSoc complaint.

<sup>12</sup> E-mail from Alyce K. Haley, Asst. Dean of Students, Stanford Univ., to Wallace (May 27, 2021, 4:34 PM) (on file with author).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

the officers of [Stanford FedSoc] had approved the event and were responsible for creating the flyer.”<sup>15</sup> The complaint faults Wallace for not expressly noting that the “representations of identity were false.”<sup>16</sup> It alleges that some who viewed the email initially believed it to be real and that, although they “eventually understood” that it was not, the “harm had already been done” because unidentified “student groups have asked to cancel joint events” with Stanford FedSoc.<sup>17</sup> The complaint concludes: “[W]e, as officers of the organization, feel that our individual reputations have been harmed.”<sup>18</sup>

Wallace has since learned that Stanford has placed a hold on his degree. If that hold is not released, he will not receive his degree as planned on June 12.

## II. Stanford’s Investigation into Wallace Violates the University’s Obligation to Protect Student Expression

Wallace’s January 25 email is protected by Stanford’s commitment to freedom of expression and by California state law. In satirizing national political figures and a student chapter of a prominent legal organization, the email conveys a critical political opinion, which cannot constitute unprotected defamation. By instituting an investigation and placing a hold on Wallace’s degree days before his graduation, Stanford betrays its legal and moral commitments to respect its students’ expressive rights.

### A. *Stanford’s commitments and California law require the university to protect its students’ expressive rights.*

Although Stanford University is a private institution and the First Amendment does not compel it to extend freedom of expression to its students, Stanford promises to do so, including not only through its formal policies,<sup>19</sup> but through a website specifically established to promote Stanford’s commitment to freedom of expression.<sup>20</sup> Having made these promises to its students, Stanford has a moral and legal obligation to keep them.<sup>21</sup>

Even if Stanford did not independently promise free expression, California law requires that Stanford protect students’ expressive rights. California Education Code Section 94367 (the “Leonard Law”) bars secular, private colleges from making or enforcing any rule that would subject a student to discipline for speech that, were it “engaged in outside the campus . . . is protected from governmental restriction by the First Amendment” or the speech protections

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> See, e.g., STANFORD UNIV., *Freedom of Speech and the Fundamental Standard*, <https://communitystandards.stanford.edu/freedom-speech-and-fundamental-standard> (last visited May 31, 2021).

<sup>20</sup> STANFORD UNIV., *Free Speech at Stanford*, <https://freespeech.stanford.edu> (last visited May 31, 2021).

<sup>21</sup> The “basic legal relationship between a student and a private university or college is contractual in nature,” with its terms derived from the “catalogues, bulletins, circulars, and regulations of the institution made available to the matriculant[.]” *Zumbrun v. Univ. of S. Cal.*, 25 Cal.App.3d 1, 10 (Cal. App. 2d Dist. 1972).

in the California constitution.<sup>22</sup> The Leonard Law places private institutions on par with their public counterparts with respect to expression protected by the First Amendment.<sup>23</sup>

As a result, Stanford acknowledges—and a California court has held<sup>24</sup>—that the Leonard Law restricts the Fundamental Standard’s application to speech protected under the First Amendment, even when the speech causes “very real hurt” to others, “no matter how offensive . . . that speech may be.”<sup>25</sup>

***B. Wallace’s email is satiric parody protected by freedom of expression and is not unprotected defamation.***

Because Wallace’s January 25 email is satirical—figurative speech conveying a political opinion, not a serious statement of fact—it cannot reasonably be interpreted as defamatory speech, which is not protected by principles of freedom of expression.

***i. Satire and parody are protected expression, not defamation.***

Defamation is one of the “historic and traditional categories” of unprotected speech,<sup>26</sup> which are “well-defined and narrowly limited[.]”<sup>27</sup> Speech is defamatory only where it consists of a “false statement” of “objective fact” made with a particular level of fault.<sup>28</sup> This evaluation considers the “totality of the circumstances” and “the statement in its broad context,” the “reasonable expectations of the audience,” and whether the statement utilizes “figurative or hyperbolic language” to ascertain whether it is an assertion of fact.<sup>29</sup> Put another way, if speech cannot reasonably be “interpreted as stating *actual facts*,” it is not defamatory.<sup>30</sup>

Parody and satire are not defamatory because they are neither intended nor understood as sincere statements of fact. Instead, they are a form of figurative speech in which, “for comic effect or social commentary, [one] closely imitates the style” of another.<sup>31</sup> The “function of

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<sup>22</sup> Ed. Code § 94367, subd. (a).

<sup>23</sup> *Yu. v. Univ. of La Verne*, 196 Cal. App. 4th 779, 789 (2011) (Legislature’s intent in adopting the Leonard Law was that “a student shall have the same right to exercise his or [her] right to free speech on campus as he or she enjoyed when off campus”).

<sup>24</sup> *Corry v. Leland Stanford Jr. Univ.*, No. 740309 (Cal. Super. Ct. Feb. 27, 1995), *archived at* <https://bit.ly/3uD2VRJ>.

<sup>25</sup> STANFORD UNIV., *Freedom of Speech and the Fundamental Standard*, <https://communitystandards.stanford.edu/freedom-speech-and-fundamental-standard> (last visited May 31, 2021).

<sup>26</sup> *United States v. Stevens*, 559 U.S. 460, 468–69 (2010) (quoting, in part, *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 127 (1991)).

<sup>27</sup> *Chaplinsky v. New Hampshire*, 315 U.S. 568, 574 (1942).

<sup>28</sup> *Steam Press Holdings, Inc. v. Haw. Teamsters & Allied Workers Union, Local 996*, 302 F.3d 998, 1005 (9th Cir. 2002).

<sup>29</sup> *Underwager v. Channel 9 Australia*, 69 F.3d 361, 366 (9th Cir. 1995).

<sup>30</sup> *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 50 (1988) (emphasis added).

<sup>31</sup> *Nike, Inc. v. “Just Did It” Enters.*, 6 F.3d 1225, 1227 (7th Cir. 1993).

satire” is to hold up another for “ridicule or contempt.”<sup>32</sup> In “*parodying* texts writers often thereby *satirize* the ideas, values, or attitudes embodied in them.”<sup>33</sup> This form of criticism necessarily requires statements that might, divorced from context, appear false—but this form of “knowingly false speech [is] highly protected” because there “is affirmative constitutional value in at least some knowingly false statements of fact.”<sup>34</sup>

Parody and satire are vital forms of expression used as vehicles to criticize public figures and comment on controversial social and political issues. The value of parody and satire has been reaffirmed by a landmark United States Supreme Court case, in which the Court determined that a magazine’s parody interview transcript—purporting to reveal televangelist Jerry Falwell describing the loss of his virginity to his own mother in an outhouse—was protected expression.<sup>35</sup> Although certain types of false speech are unprotected, the *Hustler* Court determined that the ad could not “reasonably be understood as describing actual facts about [Falwell],” but rather conveyed criticism of Falwell.<sup>36</sup> In its discussion, the *Hustler* Court emphasized the historical importance of parody in American civic life: “From the viewpoint of history, it is clear that our political discourse would have been considerably poorer without [it].”<sup>37</sup>

**ii. Wallace’s email is a protected form of satire.**

Wallace’s email is, on its face and in context, offered—and largely understood—as conveying criticism of prominent members of the Federalist Society. No reasonable person familiar with the email’s context would understand it to be sincere.

First, the email was sent on January 25, but purported to promote an upcoming event that in fact occurred nineteen days earlier. It utilized photos—including one that was widely distributed and would be instantly recognizable to anyone with a passing interest in political affairs—that occurred in the hours before the events of January 6.

Second, student recipients of the email would understand that it was not sent by the Stanford FedSoc chapter. Even if they did not know that Wallace was not a member of the organization, the email was sent to the listserv intended for commentary, not the listserv for announcing events. Even if some were lulled into momentary confusion by the email’s intentional use of the group’s logo and email style, having a “superficial degree of plausibility” is “the hallmark of satire.”<sup>38</sup>

Third, the email is laden with figurative language intended to impugn national political figures associated with both the events of January 6 and the Federalist Society. No reasonable person

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<sup>32</sup> *Knieval v. ESPN*, 393 F.3d 1068, 1082 (9th Cir. 2005) (Bea, J., dissenting).

<sup>33</sup> JONATHAN GREENBERG, *THE CAMBRIDGE INTRODUCTION TO SATIRE* 33 (2018) (emphasis in original).

<sup>34</sup> *United States v. Alvarez*, 617 F.3d 1198, 1213–1214 (9th Cir. 2010).

<sup>35</sup> *Hustler Magazine*, 485 U.S. 46 (1988).

<sup>36</sup> *Id.* at 57.

<sup>37</sup> *Id.* at 55.

<sup>38</sup> *New Times, Inc. v. Isaacks*, 146 S.W.3d 144, 160–61 (Tex. 2004).

could interpret an email about “doing a coup” (described as a “classical system of installing a government”) and sincerely believe that the Stanford FedSoc chapter was enunciating support for “violent insurrection” and training attendees on how to riot. To the contrary, the email is a sardonic commentary on the message sent by the Federalist Society’s continued relationship with supporters of Trump’s efforts to block certification of the 2020 presidential election—a debate that was then roiling the Federalist Society itself.<sup>39</sup>

Members of the Stanford FedSoc might chafe at the mode or substance of that commentary. Those who identify “with a social group under satiric attack will receive the satire differently from the person who identifies with the satirist.”<sup>40</sup> They likewise have the freedom of expression to complain to others, including the university. However, the “outrageous” character of the speech does not render it unprotected<sup>41</sup> and Stanford University may not grant illiberal demands to violate other students’ expressive right to voice political opinions. As the United States Court of Appeals for the Ninth Circuit has explained in another matter involving listserv emails others found offensive, the “desire to maintain a sedate academic environment does not justify limitations” on the right to express oneself “in vigorous, argumentative, unmeasured, and even distinctly unpleasant terms.”<sup>42</sup>

***C. Stanford’s investigation itself violates its commitment to its students’ expressive rights.***

Investigations into protected expression are inimical to the university’s purpose of unfettered discussion. Even if an investigation concludes in the speaker’s favor and no formal discipline is meted out, its very initiation will have an immediate chilling effect on student speech and long-term consequences for the speaker.

First, an investigation implies that the expression at issue may be punished, even if there is no reasonable indication that the speech is unprotected.<sup>43</sup> An investigation also imposes procedural burdens on a speaker, requiring them to participate in meetings or hearings in order to justify the content, tone, or purpose of their speech. In Wallace’s matter, Stanford’s notice states that he must “respect the confidential nature of this matter,” implying that he is prohibited from publicly discussing the allegations against him—itsself an impermissible prior restraint on speech.<sup>44</sup>

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<sup>39</sup> See, e.g., Debra Cassens Weiss, *Should the Federalist Society reckon with members who aided Trump’s false election claims?*, ABA JOURNAL, Jan. 19, 2021, <https://www.abajournal.com/news/article/should-federalist-society-reckon-with-members-who-aided-trumps-false-election-claims>.

<sup>40</sup> GREENBERG, *supra* note 33, at 24.

<sup>41</sup> *Hustler*, 485 U.S. at 55 (1988).

<sup>42</sup> *Rodriguez v. Maricopa Cty. Cmty. Coll. Dist.*, 605 F.3d 703, 708-09 (9th Cir. 2009) (cleaned up).

<sup>43</sup> See, e.g., *Levin v. Harleston*, 966 F.2d 85, 89 (2d Cir. 1992) (university’s investigation into a faculty member’s writings on race and intelligence violated the First Amendment).

<sup>44</sup> A prior restraint on speech is “the most serious and the least tolerable infringement on” freedom of expression. *Neb. Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976). Accordingly, it is prohibited by the Leonard Law’s provision that a private university shall not “make or enforce a rule” limiting a student’s protected expression. Ed. Code § 94367, subd. (a) (emphasis added).

Second, an investigation alone may have consequences for the speaker that persist after graduation. Students seeking professional licensure may be required to disclose the existence of an investigation in completing background checks or establishing their moral fitness.<sup>45</sup> Undergraduate and graduate-level students pursuing careers in highly-regulated fields might rationally choose not to engage in political or provocative speech, undermining the university's purpose.

Stanford could avoid these chilling effects by evaluating complaints *before* initiating an investigation to determine whether the allegations, on their face, involve protected expression. If so, Stanford must decline to open an investigation. We call on Stanford to pledge to adopt such a policy.

### III. Conclusion

Given the urgent nature of this matter, we request receipt of a response to this letter no later than the close of business on Friday, June 4, 2021, confirming that Stanford University will not pursue an investigation or disciplinary sanctions in this matter and that it will release the hold on Wallace's diploma. We also call on Stanford to commit to screening student complaints before initiating investigations into protected student expression.

Sincerely,



Adam Steinbaugh  
Director, Individual Rights Defense Program

Cc: Alyce Haley, Assistant Dean of Students  
Mark DiPerna, Associate Dean of Students & Director, Office of Community Standards  
Jenny Martinez, Richard E. Lang Prof. of Law & Dean, Stanford Law School

Encl.

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<sup>45</sup> See generally Alex Morey, *Iowa College of Dentistry controversy highlights impact of unnecessary investigations into student speech*, FIRE, Feb. 10, 2021, <https://www.thefire.org/iowa-college-of-dentistry-controversy-highlights-impact-of-unnecessary-investigations-into-student-speech>.

## Nicholas N Wallace

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**From:** law-talk <law-talk-bounces@lists.stanford.edu> on behalf of [REDACTED]  
**Sent:** Monday, January 25, 2021 1:55 PM  
**To:** [REDACTED]; law-talk@lists.stanford.edu  
**Subject:** RE: The Originalist Case for Inciting Insurrection  
**Attachments:** ATT00001.txt

To support what [REDACTED] and [REDACTED] have said below, I'd like to point out that what's truly in "exceedingly poor taste" and divisive was Fed Soc's decision to invite Former TX Solicitor General Scott Keller to speak at SLS just *last week*. Keller has been [a pioneer in undermining confidence in and access to elections](#).

Touting [baseless claims](#) of voter fraud, in 2016 Keller [defended](#) a Texas voter ID law similar to others that block minority voters' access to polls with "[surgical precision](#)." For more information on voter ID laws passed "[with discriminatory purpose](#)" in Texas:

- <https://www.texastribune.org/2016/07/21/after-texas-voter-id-ruling-whats-next/>
- <https://www.nytimes.com/2016/07/21/us/federal-court-rules-texas-id-law-violates-voting-rights-act.html>
- <https://www.texastribune.org/2016/09/23/texas-appeals-voter-id-rulings-us-supreme-court/>

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**From:** law-talk <law-talk-bounces@lists.stanford.edu> **On Behalf Of** [REDACTED]  
**Sent:** Monday, January 25, 2021 11:59 AM  
**To:** law-talk@lists.stanford.edu  
**Subject:** Re: The Originalist Case for Inciting Insurrection

Dear Law Talk:

To those of you made to feel unsafe by this fictional event, I invite you to likewise reflect on the actual events hosted by the Federalist Society that have threatened our classmates' wellbeing. To name but one of many examples: nearly one year ago to date, the Federalist Society hosted Texas Solicitor General Kyle Hawkins to present on his second attempt to end DACA. Five days ago, the Federalist Society hosted former Texas Solicitor General Scott Keller, who led the multistate litigation that ended DAPA in 2016.

For the sake of "academic freedom," our undocumented classmates must bear the trauma of attending an institution that welcomes speakers actively working to remove their right to remain in the country. I agree that the white nationalist attacks at the Capitol were traumatic for many of us; however, I hesitate to draw the line of what is acceptable discourse at pointing out the Federalist Society's complicity in this issue, even if done so satirically and at our discomfort.

**Our policy, as recently reaffirmed by Dean Martinez, is to promote discussion despite discomfort. I ask only that you reflect on the momentary dread you felt as an example of the cost of "academic freedom" we impose on our BIPOC and undocumented classmates.**

Best,

**From:** law-talk <[law-talk-bounces@lists.stanford.edu](mailto:law-talk-bounces@lists.stanford.edu)> on behalf of [REDACTED]  
<[lubash@stanford.edu](mailto:lubash@stanford.edu)>

**Date:** Monday, January 25, 2021 at 10:54 AM

**To:** [REDACTED], [REDACTED], [REDACTED], Nicholas N Wallace  
[REDACTED], "[law-talk@lists.stanford.edu](mailto:law-talk@lists.stanford.edu)" <[law-talk@lists.stanford.edu](mailto:law-talk@lists.stanford.edu)>

**Subject:** Re: The Originalist Case for Inciting Insurrection

Dear Law Talk,

While the original satirical post may not have been in the best taste (as satire rarely is) let us take this moment to reflect on **\*why\*** so many students believed this was a real event:

**The SLS Federalist Society has not shown one iota of leadership or made any attempt to disclaim the events of January 6.**

There has been no message of support to our community, no reflection upon how the actions of leaders within their organization led directly to those events, and no work done to distance themselves from this attack on our democracy and the rule of law. While other mentors to Sen. Hawley [have come out opposed](#) to his irresponsible behavior in Congress, our own Professor McConnell (whom Hawley clerked for) has remained silent, at least to my knowledge.

Because of this lack of leadership, the rest of us are left frightened, wondering what our fellow students (and professors) actually believe. While the time for leadership was weeks ago, I personally would still appreciate some response from Fed Soc indicating where they stand. While it may be uncomfortable, satire is often effective in illuminating truths about our society. Let us not forget the true reason why many of us are still afraid today.

Sincerely,

[REDACTED]

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[REDACTED]  
*Pronouns: he/him/his*

J.D. Candidate 2021

**Stanford** Law School

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**From:** law-talk <[law-talk-bounces@lists.stanford.edu](mailto:law-talk-bounces@lists.stanford.edu)> on behalf of [REDACTED]  
[REDACTED]

**Date:** Monday, January 25, 2021 at 9:46 AM

**To:** [REDACTED], [REDACTED], [REDACTED], Nicholas N Wallace [REDACTED], "[law-talk@lists.stanford.edu](mailto:law-talk@lists.stanford.edu)" <[law-talk@lists.stanford.edu](mailto:law-talk@lists.stanford.edu)>

**Subject:** Re: The Originalist Case for Inciting Insurrection

Poor taste. Did you have to send this out to all of us? Why not submit it to the satire portion of Stanford's newspaper, or circulate it among friends or your own club? Even a satire watermark would have been better.

If cannibalism were a real, widespread fear among people in your society, then I think A Modest Proposal would be inappropriate to email to everyone en masse, under the guise of a legitimate organizational proposal.

I don't know how to solve the divide in this country, but I have this worry that this rhetoric is just deepening the hate felt between groups and leading people to just dig in harder into what they already believed. I think people are living in two different universes of ideas about this country, and I worry that the distance is growing evermore quickly.

[REDACTED]  
Stanford Law School | J.D. Candidate '22  
[REDACTED]

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**From:** law-talk <[law-talk-bounces@lists.stanford.edu](mailto:law-talk-bounces@lists.stanford.edu)> on behalf of [REDACTED]  
**Sent:** Monday, January 25, 2021 9:25 AM  
**To:** [REDACTED]; [REDACTED]; Nicholas N Wallace  
[REDACTED]; [law-talk@lists.stanford.edu](mailto:law-talk@lists.stanford.edu) <[law-talk@lists.stanford.edu](mailto:law-talk@lists.stanford.edu)>  
**Subject:** Re: The Originalist Case for Inciting Insurrection

I hope nobody in this thread ever reads A Modest Proposal.

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**From:** law-talk <[law-talk-bounces@lists.stanford.edu](mailto:law-talk-bounces@lists.stanford.edu)> on behalf of [REDACTED]  
**Sent:** Monday, January 25, 2021 12:22 PM  
**To:** [REDACTED]; Nicholas N Wallace [REDACTED]; [law-talk@lists.stanford.edu](mailto:law-talk@lists.stanford.edu)  
<[law-talk@lists.stanford.edu](mailto:law-talk@lists.stanford.edu)>  
**Subject:** RE: The Originalist Case for Inciting Insurrection

I found these jokes to be in exceedingly poor taste.

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**From:** law-talk <[law-talk-bounces@lists.stanford.edu](mailto:law-talk-bounces@lists.stanford.edu)> On Behalf Of [REDACTED]  
**Sent:** Monday, January 25, 2021 8:54 AM  
**To:** Nicholas N Wallace [REDACTED]; [law-talk@lists.stanford.edu](mailto:law-talk@lists.stanford.edu)  
**Subject:** Re: The Originalist Case for Inciting Insurrection

Poor judgement.

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**From:** law-talk <[law-talk-bounces@lists.stanford.edu](mailto:law-talk-bounces@lists.stanford.edu)> on behalf of Nicholas N Wallace  
[REDACTED]  
**Date:** Monday, January 25, 2021 at 10:38 AM  
**To:** "[law-talk@lists.stanford.edu](mailto:law-talk@lists.stanford.edu)" <[law-talk@lists.stanford.edu](mailto:law-talk@lists.stanford.edu)>  
**Subject:** The Originalist Case for Inciting Insurrection

*The Stanford Federalist Society presents:*



## *The Originalist Case for Inciting Insurrection*

Wednesday, January 6th

12:45 pm - 2:00 pm

[RSVP Here](#)

Riot information will be emailed the morning of the event.

The first thirty students to RSVP will receive a **\$10 Grubhub coupon** to be used on the day of the event.\*

Please join the Stanford Federalist Society as we welcome Senator Joshua Hawley and Texas Attorney General Ken Paxton to discuss violent insurrection. Violent insurrection, also known as doing a coup, is a classical system of installing a government. Although widely believed to conflict in every way with the rule of law, violent insurrection can be an effective approach to upholding the principle of limited government. Senator Hawley will argue that the ends justify the means. Attorney General Paxton will explain that when the Supreme Court refuses to exercise its Article III authority to overturn the results of a free and fair election, calling on a violent mob to storm the Capitol represents an

appropriate alternative remedy.

**Senator Joshua Hawley** is the junior United States senator from the state of Missouri. Before entering the senate, he served as the Attorney General of Missouri. He received his BA in History from Stanford University and his JD from Yale Law School, where he was president of the school's Federal Society chapter. He then clerked for then-Judge Michael McConnell on the United States Court of Appeals, and Chief Justice John Roberts on the United States Supreme Court.

**Ken Paxton** is the Attorney General of Texas. More information about Attorney General Paxton is available on his [official Federalist Society biography page](#). He is currently under investigation for securities fraud.



**The Stanford Federalist Society takes no position on particular legal or public policy issues. The views of individual speakers do not necessarily represent the views of the Stanford Federalist Society or its membership.**

\*Funding for these gift cards is generously provided by our national Federalist Society organization. No Law School funding was used. If you do not have access to Grubhub, we can work with you to find an alternative.

## **Fundamental Standard Form**

Accused Student: Nicholas N. Wallace

Date: January 25, 2021

Email: [REDACTED]

Time: 8:38 a.m.

Narrative:

On January 25, 2021, at 8:38 a.m., Nicholas Wallace sent an email to Stanford Law School's "Law Talk" email list-serv, where he impersonated the Stanford Federalist Society, a student group, through a false event flyer and attributed false and defamatory beliefs to persons he listed on the event flyer.

The Stanford Federalist Society hosts events frequently, typically once a week. The emails sent to advertise these events usually follow a similar template, which is recognizable to students. There is no Stanford Federalist Society email address; each week, different students send out the event flyers. As such, many students would not be tipped off that the email was an impersonation based on the sender. And although the email was sent from Wallace's email address, his email implied that the officers of the Stanford Federalist Society had approved the event and were responsible for creating the flyer.

Wallace clearly impersonated the Stanford Federalist Society through his event flyer. First, he included a line at the top of the flyer saying that "The Stanford Federalist Society presents" the advertised event. Second, he included the Stanford Federalist Society's logo near the bottom of the flyer. Third, the body of the event flyer identified the Stanford Federalist Society as the host. Moreover, he used the same distinctive template that the organization uses to advertise its other (real) events. This template is easily recognizable to other students. Nowhere in his email, nor on his flyer, did Wallace explain that these representations of identity were false.

Wallace defamed the student group, its officers, Senator Josh Hawley, and Texas Attorney General Ken Paxton. Wallace, impersonating the Stanford Federalist Society, wrote on the flyer that "Riot information will be emailed the morning of the event," insinuating that the student group was encouraging and hosting a riot. He also wrote that Attorney General Paxton advocates for "overturn[ing] the results of a free and fair election" by "calling on a violent mob to storm the Capitol." And he wrote that Senator Hawley believes that violent insurrections are justified.

The false event flyer was shared later that day on social media. Another Stanford student, [REDACTED], posted the false event flyer to Twitter without mention that Wallace created or

distributed it. The tweet, with a capture of Wallace’s flyer, received significant attention, including from Twitter users who believed it was a real event sponsored by the Stanford Federalist Society. The flyer was also posted on a public Facebook group with more than one hundred thousand members, where it received hundreds of comments. Again, many Facebook users believed that the event was real and criticized our organization for “hosting” it. The deceiving flyer was shared so widely, and so many who saw the flyer believed it was real, that a prominent media outlet — USA Today — did a fact check story on it to confirm that it was fictitious.

Many who saw Wallace’s flyer impersonating the Stanford Federalist Society were deceived. Various Stanford community members replied to Wallace’s email stating that they thought the flyer was created and sent by the Stanford Federalist Society. One student, [REDACTED], denounced the Stanford Federalist Society as having “poor judgement” for putting on the event advertised on the flyer, then later replied that he “thought this was a real event.” Another student, [REDACTED], also replied on the email chain to say that “like [REDACTED] [she] initially thought this was real too.” And although Stanford community members eventually understood that the Stanford Federalist Society was being impersonated, the harm had already been done. Other student groups have asked to cancel joint events planned with the Federalist Society as a result of the controversy created by this email. And we, as officers of the organization, feel that our individual reputations have been harmed.

Signed,

[REDACTED]  
[REDACTED]  
[REDACTED]

## Authorization and Waiver for Release of Personal Information

I, Nicholas Wallace, born on 09/15/1988, do hereby authorize The Leland Stanford Junior University (the "Institution") to release to the Foundation for Individual Rights in Education ("FIRE") any and all information concerning my current status, disciplinary records, or other student records maintained by the Institution, including records which are otherwise protected from disclosure under the Family Educational Rights and Privacy Act of 1974. I further authorize the Institution to engage FIRE's staff members in a full discussion of all matters pertaining to my status as a student, disciplinary records, records maintained by the Institution, or my relationship with the Institution, and, in so doing, to fully disclose all relevant information. The purpose of this waiver is to provide information concerning a dispute in which I am involved.

I have reached or passed 18 years of age or I am attending an institution of postsecondary education.

In waiving such protections, I am complying with the instructions to specify the records that may be disclosed, state the purpose of the disclosure, and identify the party or class of parties to whom disclosure may be made, as provided by 34 CFR 99.30(b)(3) under the authority of 20 U.S.C. § 1232g(b)(2)(A).

This authorization and waiver does not extend to or authorize the release of any information or records to any entity or person other than the Foundation for Individual Rights in Education, and I understand that I may withdraw this authorization in writing at any time. I further understand that my execution of this waiver and release does not, on its own or in connection with any other communications or activity, serve to establish an attorney-client relationship with FIRE.

I also hereby consent that FIRE may disclose information obtained as a result of this authorization and waiver, but only the information that I authorize.

DocuSigned by:  
  
Student's Signature

5/31/2021  
Date