



January 30, 2015

President Michael R. Lovell
Marquette University
Zilber Hall 441
1250 West Wisconsin Avenue
Milwaukee, Wisconsin 53233

Sent via U.S. Mail and Facsimile (414-288-3161)

Dear President Lovell:

The Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, freedom of speech, and freedom of conscience on America's college campuses. Our website, thefire.org, will give you a greater sense of our identity and activities.

FIRE is deeply concerned by Marquette University's suspension of Professor John McAdams, whom the university has banned from campus and whose classes have been unilaterally and punitively cancelled on the basis of opinions expressed on his blog. Marquette has repeatedly ignored its own policies governing faculty speech and due process, and has severely imperiled free speech and academic freedom through its unjust actions. We call on the university to promptly restore McAdams's full privileges as a tenured faculty member and to reaffirm its commitment to freedom of expression before the university's reputation is further damaged.

The following is our understanding of the facts. Please inform us if you believe we are in error. Since 2002, political science professor John McAdams has published the *Marquette Warrior* blog, in which he expresses personal views that are often outspoken and critical of university affairs. In an entry dated November 9, 2014, McAdams drew attention to an undergraduate student's recorded interaction with Cheryl Abbate, the student's instructor in a "Theory of Ethics" course; Abbate was at the time also a Ph.D. student in Marquette's Department of Philosophy. In this interaction, recorded following the end of class, Abbate expressed her opinion to the student that it was inappropriate to voice opinions opposing same-sex marriage in class. McAdams wrote in this entry, describing the encounter:

Abbate explained that “some opinions are not appropriate, such as racist opinions, sexist opinions” and then went on to ask “do you know if anyone in your class is homosexual?” And further “don’t you think it would be offensive to them” if some student raised his hand and challenged gay marriage? The point being, apparently that any gay classmates should not be subjected to hearing any disagreement with their presumed policy views.

[. . .]

She went on “In this class, homophobic comments, racist comments, will not be tolerated.” She then invited the student to drop the class.

McAdams further noted that the undergraduate student’s attempt to raise his concerns with the philosophy department was unsuccessful.

McAdams’s November 9 entry received widespread attention, with various persons defending or criticizing both McAdams’s and Abbate’s positions. In the weeks following this initial post, McAdams publicly defended his writing on the issue, highlighted media attention garnered by the controversy, and disputed criticisms directed at him by other faculty.

On December 16, Klingler College of Arts and Sciences Dean Richard C. Holz informed McAdams of the following in a letter:

The university is continuing to review your conduct and during this period – and until further notice – you are relieved of all teaching duties and all other faculty activities, including, but not limited to, advising, committee work, faculty meetings and any activity that would involve your interaction with Marquette students, faculty and staff.

McAdams was prohibited from entering the Marquette campus while suspended except with permission from the university. McAdams requested that Holz provide specific charges to justify his suspension via email on December 16; Holz did not respond to this email.

Though McAdams had not been presented with any formal charges, Marquette cancelled both of his scheduled courses for the current semester, informing students in emails sent December 18.

While Holz did not inform McAdams of any suspected policy violations, he provided McAdams with a copy of Marquette’s harassment policy, suggesting that Marquette was investigating McAdams for violating this particular policy. On December 17, Marquette released a statement on its suspension of McAdams, publicly insinuating that he was suspected of violating Marquette’s harassment policy. The statement read in part:

Our president has been very clear, including in a recent campus-wide letter, about university expectations and Guiding Values to which all faculty and staff are required to adhere, and in which the dignity and worth of each member of our community is respected, especially students.

[...]

Lovell noted that Marquette listens to any member of the campus community who expresses concerns alleging inappropriate behavior. **As stated in our harassment policy, the university will not tolerate personal attacks or harassment of or by students, faculty and staff.**

“To be clear, we will take action to address those concerns.” he said. “We deplore hatred and abuse directed at a member of our community in any format.”

[Emphasis added.]

On December 22, the Wisconsin Institute for Law & Liberty (WILL) wrote to Marquette on McAdams’s behalf, arguing that Marquette, by declining to provide any alleged policy violations committed by McAdams or specifying precisely what conduct merited his suspension, violated McAdams’s rights as a faculty member. WILL further argued that McAdams had not committed any policy violations and that his suspension was wrongfully imposed.

Holz elaborated on Marquette’s position in a January 2 letter to McAdams, in which he took the position—while still not specifying any alleged policy violations—that McAdams had impermissibly used Abbate’s name in his *Marquette Warrior* posts. Holz told McAdams he “had no justification to put our graduate student’s name in [his] internet posts” and referred to his decision to do so as “dishonorable and irresponsible.” Holz further wrote that Abbate had subsequently received threatening letters and emails, and that Marquette had placed a security officer outside her classroom as a result. Abbate transferred to a graduate program at another university shortly thereafter. Holz referred to this entire sequence of events as “plainly foreseeable.”

Though Abbate is apparently no longer at Marquette, McAdams remains suspended by the university, prohibited from teaching and from entering the campus except with Marquette’s advance permission. Marquette, meanwhile, has framed McAdams’s suspension as justified by the need to protect students’ physical safety and has continued to publicly suggest that McAdams is being investigated under Marquette’s harassment policy. A January 12, 2015, *Fox6Now* article, for instance, carried a statement from Marquette stating in part:

The safety of our students and campus community is our top priority. The university has a policy in which it clearly states that it does not tolerate harassment and will not stand for faculty members subjecting students to any form of abuse, putting them in harm's way. We take any situation where a student's safety is compromised extremely seriously.

Professor McAdams's suspension is an affront to faculty due process rights, in brazen disregard of Marquette's established, written policies. This suspension also raises serious concerns for free speech and academic freedom at Marquette, with deeply chilling implications for all faculty. We urge Marquette to promptly restore McAdams's campus and teaching privileges in light of its serious and numerous failures to respect his rights in this matter.

We note first the duplicity with which Marquette has publicly presented its suspension of McAdams. In a December 18, 2014, article, Marquette spokesperson Brian Dorrington told the *Milwaukee Journal Sentinel* that McAdams was "under review" as opposed to having been suspended for cause, and claimed, "Our definition of suspension is without pay." This is transparently false by any plain reading of Marquette's faculty policies. Section 307.02 of Marquette's Faculty Handbook states, for instance:

In all cases of nonrenewal, suspension, or termination for absolute or discretionary cause (except resignation), a faculty member's entitlement to salary and fringe benefits shall continue, irrespective of any suspension from duties:

(1) for a period of at least thirty days after the cause arises;

Further, Marquette's faculty policies recognize no such disciplinary category as "under review." In effect, Marquette has invented a new category of discipline to suit its public needs in this particular instance, while ignoring the procedures it *does* maintain. Section 307.03 of the Faculty Handbook states, for instance, that any notice of suspension should include:

(1) **The statute allegedly violated**; the date of the alleged violation; the location of the alleged violation; a sufficiently detailed description of the facts constituting the violation including the names of the witnesses against the faculty member.

(2) **The nature of the University's contemplated action**, with a specification of the date or dates upon which such action is to become effective with respect to faculty status, duties, salary, and benefit entitlements, respectively.

[Emphases added.]

Holz's December 16 suspension notice to McAdams satisfied neither of these requirements. It outlined no specific charges against McAdams, only suggesting (by enclosing a copy of the policy) that Marquette was investigating him for violating its harassment policy. Likewise, it did not provide McAdams with any indication of what action the university was contemplating beyond the suspension, or any timeline as to when its review of his conduct would be completed. Holz's January 2 follow-up letter to McAdams, while providing more detail on the substance of McAdams's alleged conduct violations, nonetheless failed again to outline any specific charges or detail the planned course of its investigation—it provided nothing more than a rudimentary notification that his conduct was still being “reviewed.”

Marquette's rationale for suspending McAdams, cancelling his classes, and banning him from entering the Marquette campus appears to be based on the questionable assertion that publicly identifying a graduate student as a course's instructor in the midst of disputing and criticizing her statements to a student violated Marquette policy in some way. Yet no Marquette policy explicitly shields graduate student instructors from criticism by faculty, nor do generally accepted precepts of academic freedom. In fact, Marquette's academic freedom promises seem to explicitly *forbid* taking such action against McAdams. We note that section 306.03 of the Faculty Handbook—concerning “Cause for Nonrenewal, Suspension, Termination”—states:

In no case, however, shall discretionary cause be interpreted so as to impair the full and free enjoyment of legitimate personal or academic freedoms of thought, doctrine, discourse, association, advocacy, or action.

This warning should carry particular weight in light of McAdams's original concern that sparked this incident in the first place: The quality of liberal education diminishes if certain opinions are deemed unwelcome in the classroom simply because they may prove subjectively hurtful to some people. Indeed, the issue of whether overly sensitive campus environments or overly broad university policies have the effect of inhibiting discussion on matters of public interest is a concern McAdams has written about previously,¹ and one with implications for the Supreme Court's long-cherished holding that the college environment is “peculiarly the ‘marketplace of ideas.’” *Healy v. James*, 408 U.S. 169, 180 (1972).

If criticism of the ideas proposed, and pedagogical choices made, by fellow instructors in this context are not protected by Marquette's seemingly robust promises of academic freedom, then it is not clear what is. While in its public statements Marquette professes that “all of our graduate student teaching assistants are students first,” the fact is that teaching and its associated public responsibilities are a pillar of doctoral studies and that they inevitably introduce the possibility of having one's teaching methods critiqued, perhaps publicly. Of course, graduate instructors in such positions enjoy the same rights of

¹ John McAdams, *Marquette's Bizarre Training on “Harassment”*, MARQUETTE WARRIOR, September 21, 2014, <http://mu-warrior.blogspot.com/2014/09/marquettes-bizarre-training-on.html>.

free speech and academic freedom to defend their ideas and pedagogical choices against such criticisms as their faculty peers.

Marquette's repeated and damaging public insinuations that McAdams has violated its harassment policy are also deeply problematic, given the policy's definition:

Harassment is defined as verbal, written or physical conduct directed at a person or a group ... where the offensive behavior is intimidating, hostile or demeaning or could or does result in mental, emotional or physical discomfort, embarrassment, ridicule or harm.

[. . .]

Harassment includes not only offensive behavior that interferes with a person's or group's well-being or development, but also such behaviors that interfere with one's employment, educational status, performance, or that create a hostile working, academic or social environment.

McAdams has committed no such harassment. Furthermore, there is no right to be free from all subjective feelings of "discomfort," "embarrassment," or "ridicule" that may result from others' comments, a fact of which Marquette seems aware. Dorrington acknowledges in the *Milwaukee Journal Sentinel*, for example, that "[u]nder faculty conduct rules, a professor cannot be relieved of teaching duties for voicing an opinion about whether a potentially controversial offensive subject should be allowed by a TA to be discussed in class." But it is clear that Marquette seeks to hold McAdams accountable not only for his own remarks but also for those of third-party individuals who contacted Abbate after reading his blog, despite the fact that McAdams had no control whatsoever over their actions. Our basic traditions of free speech thoroughly reject this imposition of vicarious responsibility on the speaker in all but the narrowest of circumstances. With the exception of incitement, which the Supreme Court held in *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) must be "directed to inciting or producing imminent lawless action" and must be "likely to incite or produce such action," speakers are not responsible for the actions taken by listeners in response to their protected speech. If they were, speech would cease to be free in any meaningful form, and what is left of our discourse would be awash with perverse incentives to censor individuals by distorting and weaponizing their messages to suit malicious ends.

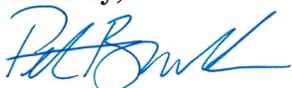
We further note that more recently, Marquette has publicly justified McAdams's extended banishment from campus by referring to "[t]he safety of our students and campus community"—a wholly unfounded and insulting implication that McAdams is a physical threat to campus safety. To put Marquette's error into full relief, the Supreme Court has defined "true threats" as "those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." *Virginia v. Black*, 538 U.S. 343, 359 (2003).

Just as McAdams's expression does not come close to crossing the threshold into harassment, it does not come close to crossing the threshold into true threats, either as a matter of common sense or as legally defined by the Supreme Court. McAdams himself did not express any intent to commit any act at all, let alone an act of unlawful violence. Whatever legitimate threats to Abbate's safety existed were entirely the doing of third-party individuals over whom McAdams had no control. While Marquette bears the duty to ensure safety in the face of such threats, McAdams is not responsible for the conduct of those making illegal threats against an instructor's safety simply because they read his blog before making the threats. Further, any claim—now that Abbate has transferred from Marquette—that McAdams remains a *general* threat to campus safety is baseless. Marquette has not provided *a single piece of evidence* to suggest that McAdams is guilty of anything other than exercising his own right to free expression through his blog—for which he has now been banned from the Marquette campus for six weeks and forced to forfeit an entire semester of teaching.

Marquette has totally disregarded John McAdams's due process and free speech rights throughout this case. Its actions have deeply chilling implications for academic freedom. As the Wisconsin Institute for Law & Liberty put it in its December 22 letter, "If Dr. McAdams' reporting of a fact about a Marquette instructor's conduct and offering his opinion on that fact are grounds for punishment, then academic discourse would dissolve in the face of a war of all against all." Marquette's unjust course of action requires no less than the immediate end of McAdams's suspension and banishment from the Marquette campus, and his return to teaching as soon as possible. We hope that Marquette will not risk further damaging its public standing with this misguided and chilling attack on faculty rights.

We request a response to this letter by February 13, 2015.

Sincerely,



Peter Bonilla

Director, Individual Rights Defense Program

cc:

Margaret Faut Callahan, Interim Provost

Richard C. Holz, Dean, Klingler College of Arts and Sciences