



June 2, 2017

M. Brian Blake, PhD
Executive Vice President and Provost
Drexel University
3141 Chestnut Street
Philadelphia, Pennsylvania 19104

Sent via Electronic Mail (mbrian.blake@drexel.edu)

URGENT

Dear Provost Blake:

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 for the state of freedom of expression at Drexel University posed by your ongoing investigation into the personal tweets and views of Professor George Ciccariello-Maher, notwithstanding Drexel's repeated promises that its constituents—and Ciccariello-Maher in particular—enjoy freedom of expression. We understand that interviews in furtherance of this investigation are to be conducted on Monday morning, and we urge you to abandon this chilling effort immediately.

The following is our understanding of the facts, based on public reports; please inform us if you believe we are in error.

George Ciccariello-Maher is an Associate Professor of Politics and Global Studies at Drexel and a commentator on national and international political affairs. He expresses his views through a variety of venues, including a private Twitter account with a disclaimer that his tweets represent Ciccariello-Maher's "views, not those of @DrexelUniv."

On December 24, 2016, Ciccariello-Maher tweeted on his private Twitter account: "All I Want for Christmas is White Genocide." The tweet was, to those familiar with the context of the debate, a criticism of the notion that miscegenation will bring about the end of white people—an argument labeled "white genocide" by its proponents. In response to criticism that he was endorsing the slaughter of white people, Ciccariello-Maher retorted: "To clarify: when the

whites were massacred during the Haitian revolution, that was a good thing indeed.” Critics seized on this tweet to argue, among other things, that Ciccariello endorsed genocide and rape.

Bowing to the responsive surge of criticism on Twitter and in the media, Drexel announced on Christmas Day that it had “contacted Ciccariello-Maher today to arrange a meeting to discuss this matter in detail.” Drexel’s response explicitly noted that the university “recognizes the right of its faculty to freely express their thoughts and opinions in public debate” but criticized Ciccariello-Maher’s comments as “utterly reprehensible, deeply disturbing,” and stated that they “do not in any way reflect the values of” Drexel University.

According to a subsequent statement from Ciccariello-Maher, Drexel reaffirmed to him in a private phone call its “support for faculty who participate in vigorous public debate” and that he would not be disciplined for the tweets.

In letters to Ciccariello-Maher dated February 2 and April 3, 2017, you took a position contrary to Drexel’s public commitment to freedom of expression. According to *Inside Higher Ed*, your letters expressed concern with other views expressed by Ciccariello-Maher and committed the university to launching “a special committee of inquiry to investigate your conduct and provide findings and recommendations to me concerning your extremely damaging conduct.” In the same sentence announcing the investigation, you concluded that it was Ciccariello-Maher’s conduct, not that of his critics, that was “damaging” to the university, which has faced “heightened concerns for community safety” and “received significant negative feedback.” That feedback included “suggested violence” and a “volume of venomous calls” that “compelled the university to consider turning off its phones in the days following” the Christmas Eve tweet.

Later in April, Ciccariello-Maher’s tweets were again the subject of public criticism, this time due to allegations that he had attacked or disrespected members of the United States Armed Forces when he tweeted, “Some guy in first class gave up his seat for a uniformed soldier. People are thanking him. I’m trying not to vomit or yell about Mosul.” Drexel issued a statement simultaneously expressing support for Ciccariello-Maher’s expressive rights and support for the military-affiliated members of Drexel’s community. But the provost’s office launched a chilling inquiry into whether Ciccariello-Maher’s exercise of his rights negatively impacted the university, including whether his expression caused donors to withhold funds or caused prospective students to withdraw their acceptance to Drexel.

Drexel is a private institution, and thus not bound by the First Amendment. It has nevertheless promised that its students and faculty, including Ciccariello-Maher in particular, enjoy freedom of speech. Having committed itself to this principle, Drexel is legally and morally bound to adhere to it. It has manifestly failed to do so.

There is no dispute that Ciccariello-Maher’s tweets are protected expression. While, again, Drexel is a private institution not bound by the exact rigors of the First Amendment, longstanding judicial interpretations of the First Amendment provide insight into what freedom of expression means and what students reasonably expect when an institution

promises to protect these freedoms. As the Supreme Court has observed, “[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools[,]” including colleges. *Healy v. James*, 408 U.S. 169, 180 (1972); *see also DeJohn v. Temple Univ.*, 537 F.3d 301, 314 (3d Cir. 2008) (“free speech is of critical importance because it is the lifeblood of academic freedom”).

The principle of freedom of speech does not exist to protect only non-controversial expression; it exists precisely to protect speech that some or even most members of a community may find controversial or offensive. The Supreme Court has explicitly held, in rulings spanning decades, that speech cannot be restricted simply because it offends people. *See, e.g., Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667, 670 (1973) (“[T]he mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of ‘conventions of decency.’”). The freedom to offend some listeners is the same freedom to move or excite others. As the Supreme Court observed in *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949), speech “may indeed best serve its high purpose when it induces a condition of unrest . . . or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea.” The Court reiterated this fundamental principle in *Snyder v. Phelps*, 562 U.S. 443, 461 (2011), proclaiming that “[a]s a Nation we have chosen . . . to protect even hurtful speech on public issues to ensure that we do not stifle public debate.”

Ciccariello-Maher’s “White Genocide” tweet, which appears to be the first to spark public criticism, does not approach unprotected expression, even assuming (beyond all reasonable readings) that his critics are correct to characterize it as an endorsement of genocide. The tweet does not amount to a true threat of violence, nor does it approach the “incitement” standard set by the Supreme Court.¹ Rather, it is a hyperbolic political statement. While some portrayed the tweet as Ciccariello-Maher endorsing the killing of white people, in context, its satirizing of the concept of “white genocide” was clear.

Nor is there any indication that Ciccariello-Maher has engaged in any form of discrimination against his students, or that his students will be unable to express ideas or arguments opposed to Ciccariello-Maher. To the contrary, Ciccariello-Maher describes his classroom as a “free-for-all of ideas.” His characterization is credible. Anecdotally, FIRE’s own staff is comprised of a number of Ciccariello-Maher’s former students, some of whom agree with his politics, and some who do not. But all agree that Ciccariello-Maher invites, shares, and engages views different from his own.

¹ *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) (“advocacy of the use of force” or unlawful conduct is protected speech and does not amount to unprotected incitement unless it is “directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”); *Watts v. U.S.*, 394 U.S. 705, 706—708 (1969) (statement by draftee during anti-war protest that if “they ever make me carry a rifle the first man I want to get in my sights is L.B.J.” was political hyperbole, not an unprotected true threat).

Drexel's message to its faculty is chillingly clear: If faculty members encounter speech or views they find offensive and challenge them in a manner that draws attention, they are subject to investigation by their employer. If faculty members express their view that American military efforts are immoral, they and their colleagues will be summoned for official interviews.

Investigations and interviews like those Ciccariello-Maher now faces are antithetical to the freedom that Drexel purports to embrace: the right to express views on issues central to our national conversation in ways that might be provocative or disagreeable. Such responses will be counterproductive, serving only to reward complaints to Drexel administrators about the political speech of any faculty member or student, as complainants become confident that administrators will subject their adversary to punishment by process. Behavior that is rewarded will be repeated, to Drexel's detriment.

The guarantee of freedom of expression is not without cost. Some may decide that they do not wish to associate with a university that employs a professor with views they find offensive, rude, or in error. But this is the cost of credibly operating a university which values the ability to express and to confront challenging views. When a speaker exercises the rights afforded to him, a consequential attempt on the university's part to penalize him—by sanction or by subjecting him to the process of investigation—comes at the expense of the university's credibility and commitment to its central mission.

Drexel can promise freedom of speech, or it can penalize and burden protected speech. It cannot do both. If Drexel's stated commitments to freedom of expression are credible, it must immediately disengage its pursuit of investigations and interviews and reassure its constituents, including Ciccariello-Maher, that they will continue to enjoy the freedom of expression that the university has promised to them.

We ask that Drexel inform us by Monday at 8:30 a.m. whether it will proceed with these interviews. If it does, we ask for a formal response to this letter, explaining the inconsistency between Drexel's promises and its conduct, by June 16, 2017.

Sincerely,



Adam B. Steinbaugh
Senior Program Officer, Individual Rights Defense Program