



October 20, 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)

Dear Provost Blake:

As you will recall from our prior correspondence, 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 disappointed to be writing to you once again to express concerns about the propriety of Drexel's ongoing, eight-month investigation into the tweets and views of Professor George Ciccariello-Maher. These concerns continue to mount as Drexel first suspended Ciccariello-Maher and then restricted his access to campus in response to threats, the provenance and credibility of which are unclear, which were specifically intended to silence his speech. We are also concerned that the threats, on which Drexel University bases its actions, may have been impacted by Russian efforts to influence American political discourse.

Drexel must defend the freedom of expression and academic freedom that it has promised to its faculty—and upon which its accreditation relies—against censorial efforts, no matter the source. In suspending Ciccariello-Maher in the midst of a lengthy investigation, Drexel has rewarded, and thereby incentivized, threats motivated by contempt for Ciccariello-Maher's political views.

The following is our understanding of the facts, based on public reports and information provided by a student. If our information is incomplete, we again invite Drexel to provide any additional information that would clarify matters.

I. Facts

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 his own “views, not those of @DrexelUniv.”

Ciccariello-Maher’s tweets have been a lightning rod for criticism, largely from conservatives opposed to his political and academic views, and often spurred by remarks taken out of context. For example, Ciccariello-Maher’s tweet about wishing for “white genocide” on Christmas Eve was a play on words lampooning the view that the existence of a white race is threatened by miscegenation, a theory its proponents refer to as “white genocide.”¹ As we explained in our letter of June 2, even if the interpretation of Ciccariello-Maher’s critics is accepted at face value, his words are undisputedly protected by the First Amendment.

In recent days, *BuzzFeed* and the *Daily Beast* have joined a Russian outlet in publishing reports alleging that a popular Twitter account purporting to be Republicans from Tennessee, @TEN_GOP, was not based in Tennessee, but Russia.² This account was a driving factor in the viral spread of Ciccariello-Maher’s “white genocide” tweet, garnering thousands of retweets of a screenshot shared with its 61,949 followers³ and identifying Ciccariello-Maher as a Drexel professor.⁴

In letters to Ciccariello-Maher dated February 2 and April 3, 2017, you announced the intent to form “a special committee of inquiry to investigate [his] conduct and provide findings and recommendations to me concerning [his] extremely damaging conduct.” In the course of this investigation, Drexel University’s “special committee of inquiry” scheduled at least one formal interview.

On June 2, FIRE sent a letter to you raising our concerns over the chilling effects of formal, institutional investigations into protected speech, and calling upon Drexel to cancel its intended interviews. Our letter warned, in particular, that such investigations “only . . . reward

¹ 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. *See, e.g.*, Kathy Gilsinan, *Why Is Dylann Roof So Worried About Europe?*, THE ATLANTIC, June 24, 2015, <https://www.theatlantic.com/international/archive/2015/06/dylann-roof-world-white-supremacist/396557/> (“white genocide” is “a watchword among white supremacists for immigration and fertility trends that could lead to whites losing their majority status in U.S. and European populations in the coming decades.”).

² Kevin Collier, *Twitter Was Warned Repeatedly About This Fake Account Run By A Russian Troll Farm And Refused To Take It Down*, BUZZFEED, Oct. 18, 2017, <https://www.buzzfeed.com/kevincollier/twitter-was-warned-repeatedly-about-this-fake-account-run>; Betsy Woodruff, *et al.*, *Trump Campaign Staffers Pushed Russian Propaganda Days before the Election*, DAILY BEAST, Oct. 18, 2017, <https://www.thedailybeast.com/trump-campaign-staffers-pushed-russian-propaganda-days-before-the-election>.

³ “Tennessee GOP” (@TEN_GOP), TWITTER (archived on Dec. 23, 2016), http://web.archive.org/web/20161223122139/https://twitter.com/TEN_GOP/.

⁴ “Tennessee GOP” (@TEN_GOP), TWITTER (Dec. 25, 2016, 4:59 PM) (archived Jan. 23, 2017), <http://archive.is/2pvha>.

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,” and that “behavior that is rewarded will be repeated, to Drexel’s detriment.”

Drexel’s letter in response, dated June 5, confirmed that the university was conducting an inquiry that would “make factual findings and recommendations to the administration” concerning Ciccariello-Maher’s “conduct,” and acknowledged the “important interest in preserving and protecting the safety, freedom and rights of all members of [Drexel’s] community, including students, faculty and professional staff.” To FIRE’s knowledge, this inquiry has not concluded or produced a final report in the eight months since it was first announced.

On October 2, following the mass shooting in Las Vegas, Ciccariello-Maher used his personal Twitter account to argue that mass shootings in general have a racial component, sowed by a “narrative of white victimization,” which also explained support for Trump.⁵ He later expanded on this argument in an opinion piece published in the *Washington Post*.⁶ Ciccariello-Maher’s argument was widely criticized in conservative media outlets, which often republished his “all I want for Christmas is white genocide” tweet alongside his commentary on mass shootings.⁷

On October 9, you sent a letter to Ciccariello-Maher which, according to the American Association of University Professors, informed him that he was being placed on administrative leave.⁸ The letter stated that there had been “a number of death threats and threats of violence,” and that the “Drexel Police Department, after consultation with other law enforcement agencies, has determined that your presence on campus poses a significant public safety risk to the Drexel University community.”⁹

⁵ George Ciccariello-Maher (@ciccmaher), TWITTER (Oct. 2, 2017, 10:29 AM), <https://twitter.com/ciccmaher/status/914859947212656640>.

⁶ George Ciccariello-Maher, *Conservatives are the real campus thought police squashing academic freedom*, WASH. POST (Oct. 10, 2017), https://www.washingtonpost.com/news/posteverything/wp/2017/10/10/conservatives-are-the-real-campus-thought-police-squashing-academic-freedom/?tid=ss_tw-bottom&utm_term=.be74be43fcfc.

⁷ See, e.g., Caleb Parke, *Professor blames Las Vegas massacre on ‘Trumpism,’ ‘narrative of white victimization,’* FOX NEWS (Oct. 3, 2017), <http://www.foxnews.com/us/2017/10/03/professor-blames-las-vegas-massacre-on-trumpism-narrative-white-victimization.html>; Rob Shimshock, *Prof: Vegas Massacre ‘Is What Happens When’ White People ‘Don’t Get What They Want,’* DAILY CALLER (Oct. 2, 2017), <http://dailycaller.com/2017/10/02/prof-vegas-massacre-is-what-happens-when-white-people-dont-get-what-they-want/>; Tom Ciccotta, *Drexel Professor Blames ‘White Supremacist Patriarchy’ for Vegas Shooting*, BREITBART (Oct. 2, 2017), <http://www.breitbart.com/tech/2017/10/02/drexel-professor-blames-white-supremacist-patriarchy-for-vegas-shooting/>; Matt Vespa, *College Professor on Las Vegas Shooting: This Is About ‘White Supremacist Patriarchy,’* TOWNHALL (Oct. 2, 2017), <https://townhall.com/tipsheet/mattvespa/2017/10/02/college-professor-on-las-vegas-shooting-this-is-about-the-white-supremacist-pat-n2389563>.

⁸ Letter from Hans-Joerg Tiede, Associate Secretary of the American Association of University Professors to Dr. M. Brian Blake, Provost of Drexel University, Oct. 12, 2017, *available at* <https://www.aaup.org/sites/default/files/Drexel-Ciccariello-Maher-10-12-17.pdf>.

⁹ *Id.*

On October 10, Ciccariello-Maher published an opinion piece in the *Washington Post*, detailing the “[h]ate mail and death threats” he received, and reporting that he had been placed on administrative leave.¹⁰ Later that day, Drexel University issued a statement citing the need to protect the “safety of Drexel’s students, faculty, professional staff, and police officers” and the “growing number of threats directed at” Ciccariello-Maher as the basis for the “necessary step” of placing him on administrative leave.¹¹

On October 15, you sent an email to students enrolled in Ciccariello-Maher’s classes, indicating that “the volume of negative phone calls and messages have lessened over the week.” Accordingly, Ciccariello-Maher was permitted to resume teaching his courses by way of “an online format from an off-campus location,” which you, after consulting with the Drexel Police Department, have “deemed . . . to sufficiently mitigate our security concerns to students in these classes.” Your email also indicated that the university had “posted plain clothes police officers previously,” but does not identify when or where these officers were posted, or why their presence was insufficient to mitigate any particular risk.

II. Drexel University’s Stated Commitments to Freedom of Expression

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 inquiry and expression. Drexel is morally and contractually bound to uphold those promises.

Indeed, Drexel has repeatedly made promises of freedom of expression *specific to Ciccariello-Maher*. In a December 25, 2016, statement following the “white genocide” tweet, Drexel affirmed that it “recognizes the right of its faculty to freely express their thoughts and opinions in public debate,” although it found Ciccariello-Maher’s statements “utterly reprehensible, deeply disturbing, and . . . not in any way” reflective of the “values of the University.”¹² In a subsequent statement, Ciccariello-Maher conveyed that 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 his tweets.¹³

Drexel also makes these promises to its faculty and students generally. Drexel’s Code of Conduct, which extends to faculty members, commits the university to “open and free

¹⁰ Ciccariello-Maher, *supra* 6.

¹¹ Chris Quintana, *Drexel Puts Professor on Leave After Tweet About Las Vegas Draws Conservative Ire*, CHRON. OF HIGHER ED. (Oct. 10, 2017), <https://www.chronicle.com/blogs/ticker/drexel-puts-professor-on-leave-after-tweet-about-las-vegas-draws-conservative-ire/120540>.

¹² Response to Professor George Ciccariello-Maher’s Tweet, DREXEL UNIV., Dec. 25, 2016, <http://drexel.edu/now/archive/2016/December/Drexel-response-Ciccariello-Maher/>.

¹³ Ian Simpson, *Professor behind ‘white genocide’ tweet says he has university support*, REUTERS (Dec. 27, 2016), <https://www.reuters.com/article/us-pennsylvania-professor/professor-behind-white-genocide-tweet-says-he-has-university-support-idUSKBN14G10A>.

inquiry.”¹⁴ Drexel’s Policy Statement on Academic Freedom distinguishes “freedom in the classroom” and freedom as a citizen, providing that when a faculty member “speaks or writes as a citizen, s/he should be free from institutional censorship or discipline,” and urges faculty members to exercise restraint, show respect for others’ opinions, and “make every effort to indicate that s/he is not an institutional spokesperson.”¹⁵

These promises are also important to maintaining Drexel University’s status as an institution accredited by the Middle States Commission on Higher Education (MSCHE). MSCHE’s standards for accreditation include an evaluation of an institution’s integrity.¹⁶ This evaluation inquires whether the institution both protects freedom of expression and adheres to its promises. Freedom of expression is “central to the academic enterprise” and “should be extended to all members of the institution’s community” including faculty and students. Restricting the expression of opinions “is to deny academic freedom.” An institution, to maintain its integrity, must in “all its activities, whether internal or external . . . keep its promises . . . and represent itself truthfully.”

These promises are not cabined to a narrow view of academic freedom; they are not limited to tutelage in the classroom or words published in a peer-reviewed journal. Rather, these commitments purport to protect a faculty member’s expression generally, whether as an academic, as a citizen, or as both. Having committed itself to the principles of freedom of inquiry and expression, Drexel must confine itself to its commitments.

III. Ciccariello-Maher’s Tweets Constitute Speech Protected Under Drexel’s Policies

Commentators have argued that Ciccariello-Maher’s statements are undeserving of protection from administrative consequences because of either their substance or forum. Neither the content of Ciccariello-Maher’s statements nor his choice to utilize Twitter presents a reasonable basis to penalize him for his tweets.

Critics argue that Ciccariello-Maher’s statements are undeserving of protection, and thereby subject to penalty, because they were made on Twitter, not in a classroom, and are therefore unprotected by academic freedom. To the contrary, the choice of the forum makes little, if any, difference in whether the university may punish that speech. It cannot. If professors’ speech may be restricted on the basis that it reaches (and angers) a broader audience outside the university, or that the chosen forum does not resemble traditionally ‘academic’ fora, there would be a significant chilling effect on academia’s willingness to engage with the public. Thus, a university must avoid regulating speech on the basis that it offends, whether that speech takes place in a lengthy, peer-reviewed article or occurs in 140 characters at a time.

¹⁴ CPO-1, Code of Conduct, DREXEL UNIV., <http://drexel.edu/cpo/policies/cpo-1/> (effective July 1, 2014).

¹⁵ Academic Freedom – Office of the Provost, DREXEL UNIV., http://drexel.edu/provost/policies/academic_freedom/ (last visited Oct. 16, 2017).

¹⁶ MIDDLE STATES COMM’N. ON HIGHER ED., CHARACTERISTICS OF EXCELLENCE IN HIGHER EDUCATION: REQUIREMENTS OF AFFILIATION AND STANDARDS FOR ACCREDITATION, *available at* <https://www.msche.org/publications/CHX-2011-WEB.pdf>.

Others argue that the substance of Ciccariello-Maher’s tweets—whether mocking theories on “white genocide” or arguing that mass shootings find their roots in race relations—that disqualifies his statements from protection. Yet his expression does not approach the legal limits of unprotected true threats or incitement.¹⁷ Whether some or many take offense to a particular statement is not a defensible basis to penalize speech.

FIRE takes no position on whether Ciccariello-Maher’s theory about mass shootings has merit. Certainly, the *Washington Post* found it sufficient to meet its editorial guidelines, and public examination of issues of grave importance—like mass shootings—requires the ability to offer theories and conjecture, even if society or academia ultimately reject them. It cannot be that Ciccariello-Maher’s views are worthy of consideration in the pages of the *Washington Post*, but not on the campus of Drexel University. Moreover, if Drexel is seen to be willing to defer, to those who would issue vague threats, the decision as to who may speak or teach on its campus, then any and every viewpoint is at risk.

While it is true that freedom of expression does not shield a speaker from consequences, it does limit the *type* and *source* of consequences that may result. Drexel’s written policies disqualify the university from acting as a referee of permissible words or views in order to facilitate academic freedom and open discourse. However, by launching an investigation and barring Ciccariello-Maher from campus, Drexel exercises precisely the authority it promised to relinquish.

IV. Drexel University’s Ongoing Investigation Undermines Freedom of Expression

The chilling effect associated with a formal investigation alone violates Drexel’s commitment to freedom of expression. Investigations carry with them attendant costs, including lost time, stress, and embarrassment, even if the speaker is ultimately vindicated. Thus, the methods employed by investigators, the way in which authorities communicate with the accused and the public about the nature and scope of the investigation, and the length of the investigation can each have impermissible chilling effects. In addition to the potential effects on the targeted speaker, such investigations will also discourage people *other than* the targeted speaker from participating in dialogue.

¹⁷ *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). Even if Ciccariello-Maher’s tweet could be read as advocating the use of force, it was not directed to inciting imminent lawless action nor likely to result in imminent lawless action. Nor was it a true threat, as it did not express a serious intent to engage in unlawful violence.

Accordingly, courts have recognized that official “inquiry alone trenches upon” freedom of expression. *Paton v. La Prade*, 469 F. Supp. 773, 778 (D.N.J. 1978) (high school student’s speech impermissibly chilled when anonymous request for information from a political organization resulted in the student being labeled a “subversive” and formally investigated). The Supreme Court has likewise observed that investigations “are capable of encroaching upon the constitutional liberties of individuals” and have an “inhibiting effect in the flow of democratic expression.” *Sweezy v. New Hampshire*, 354 U.S. 234, 245–48 (1957).

First, by way of example, coercive methods such as formal interviews will discourage other faculty members from participating in public discussions out of fear that their expressed views may subject them to a formal investigation. It is our understanding that Drexel’s “special committee of inquiry” has proceeded with at least one formal interview.

Second, the public announcement of an investigation into protected speech may have an impermissible chilling effect by suggesting that continued speech may subject the speaker to sanctions. *Levin v. Harleston*, 966 F.2d 85 (2d Cir. 1992), is instructive on this point. In *Levin*, a professor’s writings in various fora, including the *New York Times*, “contained a number of denigrating comments concerning the intelligence and social characteristics of blacks,” drawing public criticism. *Id.* at 87. Administrators seeking to quell the criticism announced the formation of an “Ad Hoc Committee on Academic Rights and Responsibilities” in order to determine “when speech both in and outside the classroom may go beyond the protection of academic freedom or become conduct unbecoming a member of the faculty, or some other form of misconduct.” *Id.* at 89. Six months after its formation, the committee was still deliberating. *Id.* Reviewing the matter, the U.S. Court of Appeals for the Second Circuit held that although the committee was “purely advisory,” the lower federal court did not err in finding that the investigation carried with it a “chilling threat of discipline” in violation of the First Amendment. *Id.* at 90.

Drexel’s ongoing investigation bears an unfortunate similarity to that of *Levin*. Like the academic institution in *Levin*, Drexel has launched an ad hoc committee in response to public criticism of a professor’s expression of views that members of the public found offensive. Distressingly, the threat of discipline is more explicit than in *Levin*, as the very announcement of the investigation contained the conclusion that Ciccariello-Maher had engaged in “extremely damaging conduct.” In characterizing the expression of views as “conduct,” as opposed to pure speech, and concluding that it was Ciccariello-Maher (and not his critics) who was “extremely damaging,” the outcome of the ad hoc committee’s investigation was tainted from the outset.

Third, if the coercive nature and presupposed conclusion were insufficient to render Drexel’s committee a dangerous affront to academic freedom, the failure to bring the investigation to a close suggests that the university is not serious about quickly resolving the matter. Drexel’s policies are intended to ward against lengthy investigations. The university’s “Investigation and Administrative Leave” policy requires that the university conduct investigations “in an

expedited manner as circumstances allow[.]”¹⁸ FIRE is not aware of any reasonable circumstances under which an investigation into 140-character messages should span eight months.

By continuing an investigation into clearly-protected speech, Drexel has refused to publicly foreclose the possibility that it will punish Ciccariello-Maher for his protected expression. Indeed, Drexel’s last correspondence with FIRE explicitly raised the prospect that Drexel might take “official action” against Ciccariello-Maher.¹⁹ Under any reasonable interpretation of free expression in the higher education context, which Drexel promises to uphold, it is clear that the university *cannot* punish Ciccariello-Maher’s speech. Put simply: if there is nothing the university can penalize, there is little, if anything, for it to investigate.

Even assuming that the investigation has concluded, Drexel’s failure to publicly announce as much will continue to present a risk of chilling campus discourse. If Drexel’s ad hoc committee has not yet issued a report, then Drexel must act to defend academic freedom in its stead. If its work has concluded, then Drexel must publicly re-commit to its faculty members’ freedom of expression.

V. Drexel University Effectuated the “Heckler’s Veto,” Incentivizing Threats

FIRE is additionally concerned that Drexel has effectuated the “heckler’s veto” by suspending Ciccariello-Maher. This pernicious form of censorship, wherein those angered by expression seek to silence it through the threat or use of violence, incentivizes outsiders to issue more threats whenever they dislike a speaker’s views. Silencing a speaker in order to quell those who resort to threats of violence is inconsistent with a university’s promise to defend freedom of inquiry and expression.

The opinion of the U.S. Court of Appeals for the Sixth Circuit in *Bible Believers v. Wayne County, Michigan*, 805 F.3d 228, 252 (6th Cir. 2015), highlights an institution’s obligations when faced with the “balance between two important interests — free speech on one hand, and the [need to] maintain peace on the other[.]”

In this tension, however, “the scale is heavily weighted in favor of” freedom of speech. *Id.* at 252. Wherever there is speech that angers a great many people, there is almost certainly some faction likely to make threats, veiled or otherwise, concerning the offending speaker. Thus, there is almost always a security risk that authorities could cite to justify measures to silence the speaker. Invocations to the need for security naturally arouse sympathy. *Id.* at 251-55. A “heckler’s veto effectuated by the [authorities] will nearly always be susceptible to being

¹⁸ HR-44, Investigation and Administrative Leave, DREXEL UNIV., <http://drexel.edu/hr/resources/policies/duo-policies/HR44/> (effective Jan. 2017).

¹⁹ Letter from M. Brian Blake, Provost, Drexel Univ, to Adam B. Steinbaugh, Sr. Program Officer and Investigative Reporter, Found. Indiv. Rights in Ed., June 5, 2017, *available at* <https://www.thefire.org/drexel-university-letter-to-fire-june-5-2017/>.

reimagined and repackaged as a means for protecting the public, or the speaker himself, from actual or impending harm.” *Id.* at 255.

Accordingly, steps premised upon the need for security demand close scrutiny on the part of the public, and transparency on the part of the institution. While institutions are not required to submit to risks of violence that cannot reasonably be mitigated, the removal of the speaker is permitted only as the “last resort” after making “bona fide efforts” to mitigate the risks. *Id.* at 253, 255. The propriety of Drexel’s acts in removing Ciccariello-Maher from his classroom turn on the actual risks faced by the university and the “bona fide efforts” undertaken to avoid this drastic step.

We appreciate that our knowledge of the facts may not be complete, and that security concerns may not permit Drexel to disclose every fact available. We also acknowledge that Drexel has indicated that *some* steps were taken before barring Ciccariello-Maher from campus, and that the university is endeavoring to find a solution that preserves the ability of Ciccariello-Maher to teach.

Freedom of expression, however, requires more than trust in the word of authorities, and Drexel must exercise greater transparency in describing the steps it has taken, when it took those steps, and why it took those steps. Accordingly, we call on Drexel to detail, to the extent possible,²⁰ the answers to the following questions:

1. What is the nature of the threats? Were they specific or general? Were they threats of violence?
2. Has the university reported these threats to a law enforcement agency, or been contacted by law enforcement? If so, which agency? When?
3. Has any law enforcement agency determined the threats to be credible?
4. What steps has the university taken or considered in order to mitigate the possibility that threats might be carried out?
5. Have Ciccariello-Maher or his students been apprised of the security risks or threats? When?

VI. Conclusion

Since at least February of this year, Drexel University has drifted from its public commitment to defending its community members’ freedom of expression and inquiry. Drexel’s removal of Ciccariello-Maher from his classroom risks further undermining any confidence in the university’s ability, if not willingness, to defend the freedom of expression it guarantees to its community.

²⁰ Drexel University certainly knows how to thread the needle of providing detailed information while balancing a need to protect the integrity of an ongoing investigation. Just this month, Drexel issued a public statement concerning an investigation into, termination of, and criminal charges against a professor accused of sexual assault. *Formal Drexel neurologist terminated from university following internal investigation, now faces criminal charges*, THE TRIANGLE (Oct. 4, 2017), <https://thetriangle.org/news/former-drexel-neurologist-terminated-university-following-internal-investigation-now-faces-criminal-charges/>.

We ask that Drexel respond to this letter, and the questions raised herein, no later than the close of business on Tuesday, November 2, 2017.

Sincerely,



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

cc:

John A. Fry, President
Gregory Montanaro, Vice President