



May 19, 2020

President John H. Garvey
Office of the President
The Catholic University of America
620 Michigan Ave. NE
Washington, D.C. 20064

URGENT

Sent via Electronic Mail (office-of-the-president@cua.edu)

Dear President Garvey:

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 the suspension of, and investigation into, a member of the faculty of The Catholic University of America due to tweets critical of political figures. This response to extramural political expression, however offensive it may be to its critics, is a marked departure from the university's express commitments to freedom of expression.

I. The Catholic University of America Suspends Professor John Tieso

Our understanding of the pertinent facts follows. As our understanding is premised on public reports, we appreciate that you may have additional information to offer and invite you to share it with us.

John Tieso has been an instructor or an adjunct assistant professor in business management at The Catholic University of America since August 2013. He is scheduled to teach two summer session courses at the university, Management of Information (MGT 240) and Database Management (MGT 331).

Since June of 2009, Tieso has operated a personal Twitter account, @johntieso, where he shared his personal views on matters of national political importance.¹ The account's profile identified him as an "educator," but did not list his employment by The Catholic University of America.² Over the course of Tieso's decade-plus use of this account, which he has since deleted, he tweeted some 96,000 times.

On May 13, 2020, a local television station alleged that Tieso's Twitter account had been "removed" after the university received an "anonymous letter from a student at another university" identified three tweets as "racist."³

One of the tweets, dated June 18, 2018, quoted another user's tweet, which featured a clip of former President Barack Obama speaking at an event in South Africa,⁴ which the user criticized as Obama's "[e]xtremely insensitive" complaint "about how much money he has" while giving a speech in "one of the poorest Countries."⁵ Tieso's tweet commented on the video:

That's the Obama we all came to know and hate. Incredibly incompetent and vain. perhaps he might consider staying in Africa and giving all his money to his people.

The WUSA9 article did not disclose the other two tweets. In emails with Tieso, the WUSA9 journalist reportedly referenced a May 5 tweet referring to Senator Kamala Harris as a "former escort."⁶ The third offending tweet, of Tieso's 96,000 tweets, is not publicly known.

¹ John Tieso (@johntieso), TWITTER, *archived at* <http://web.archive.org/web/20200430222340/https://twitter.com/johntieso/>.

² Since at least August 31, 2018—the earliest archive of his now-deleted account—Tieso's Twitter "bio" has read only: "Author, Educator, Consultant, Conservative, #MAGA, #secedecalifornia #indichillary #draintheswamp #trump2020 Named #MagaMoron (6-22-2018) by LIBTARDS." John Tieso (@johntieso), TWITTER, *archived at* <http://web.archive.org/web/20180831220622/https://twitter.com/johntieso>.

³ Larry Miller, *Twitter account of Catholic University Professor removed after complaint*, WUSA9, May 13, 2020, <https://www.wusa9.com/article/news/local/an-anonymous-letter-from-a-student-at-another-university-was-sent-to-the-dean-of-the-busch-school-of-business-last-week-a-copy-of-the-letter-was-obta/65-91d07737-13d2-4803-9088-fa389be04276>.

⁴ Matthew Haag, *Obama Warns of 'Strongman Politics' After Trump's Meeting With Putin*, N.Y. TIMES, July 17, 2018, <https://www.nytimes.com/2018/07/17/world/africa/obama-speech-south-africa.html>.

⁵ @Jamierodr14, TWITTER (July 18, 2018 7:47 AM), <https://twitter.com/Jamierodr14/status/1019549101468209153>.

⁶ Connor Ellington, *University suspends professor for criticizing Barack Obama, Kamala Harris in tweets*, COLLEGE FIX, May 19, 2020, <https://www.thecollegefix.com/university-suspends-professor-for-criticizing-barack-obama-kamala-harris-in-tweets>.

WUSA9 reported that “[n]one of the students or alumni we talked [to] were aware of any prior student complaints regarding Tieso’s Twitter account,” and that students said he was “respectful” of students of color.⁷

After WUSA9 contacted the university, Tieso discussed the matter by phone with Busch School of Business Dean Andrew Abela, who told Tieso that his “Twitter account has to go if you want to stay a member of the faculty” and encouraged him to “stay off social media” for six months “to let this die down.”⁸ On the same day that WUSA9 contacted the university, Executive Director of Strategic Communications Karna Lozoya emailed Abela concerning “two tweets the students pointed to that were particularly offensive,” identifying the tweets about Obama and Harris.⁹

On Monday, May 18, Associate Dean Harvey Seegers emailed Tieso, informing him that Dean Abela had decided to “postpone” the courses he was set to teach during the first summer session, which began on that day, until the second session, which begins at the end of June.¹⁰ Seegers informed Tieso that the university had “received additional complaints, some from alumni, regarding your Twitter comments” and that, as a result, the Provost’s Office would conduct an investigation.¹¹ During that investigation, which is ongoing, Tieso has been suspended.¹²

II. Tieso’s Suspension Contravenes the University’s Express Commitment to Defend Freedom of Expression

Given your thoughtful consideration of the principles attendant with the freedoms of expression and inquiry in higher education,¹³ what follows is sure to be a tour of well-worn territory. However, these principles are worth review, as they illuminate why the university’s suspension of Tieso—predicated on complaints from alumni and a media report about his extramural political speech, not student concerns with his in-class conduct—is an improper departure from the university’s express commitment to expressive rights.

A. *The Catholic University of America pledges to defend freedom of expression.*

While The Catholic University of America is a private institution not bound by the First Amendment, it has committed itself to its students’ and faculty members’ freedom of

⁷ Miller, *supra* note 3.

⁸ Ellington, *supra* note 6.

⁹ Ellington, *supra* note 6.

¹⁰ Ellington, *supra* note 6; see also CATHOLIC UNIV. OF AM., *2020 Summer Sessions Calendar*, <https://summer.catholic.edu//courses/2020calendar.html> (last visited May 19, 2020).

¹¹ Ellington, *supra* note 6.

¹² Ellington, *supra* note 6.

¹³ See, e.g., John Garvey & Mark W. Roche, *What Makes a University Catholic?*, COMMONWEAL MAG., Jan. 26, 2017, <https://www.commonwealmagazine.org/what-makes-university-catholic>.

expression. As you noted in discussing threats to freedom of expression of higher education, “[y]ou can’t have a university without freedom of speech.”¹⁴

For example, the university’s Demonstrations Policy provides, in part, that the university “values *and defends* the right of free speech and the freedom of members of the University community to express themselves,” provided that the expression does not otherwise violate law or policy.¹⁵ Its faculty handbook, in setting forth the “Aims of the University,” dedicates the university as a “free and autonomous center” where “freedom is fostered and where the only constraint upon truth is truth itself.”¹⁶ The handbook likewise commits the university to the principles of academic freedom, “a tradition grounded on . . . individual rights” which “posits freedom of inquiry, open discussion and unrestricted exchange of ideas as essential to the pursuit of knowledge.”¹⁷

These promises are consistent with the university’s accreditation by the Middle States Commission on Higher Education, which requires that each accredited institution “possess[] *and demonstrate* . . . a commitment to academic freedom, intellectual freedom, [and] freedom of expression[.]”¹⁸ Middle States’ standards require not only dedication to these principles, but action in conformity with those promises.

The university is legally and morally bound to uphold the commitments it has made. This principle extends to private institutions’ commitments to academic freedom and freedom of expression. *See, e.g., McAdams v. Marquette Univ.*, 2018 WI 88, ¶84 (2018) (private university breached its contract with a professor over a personal blog post because, by virtue of its adoption of principles of academic freedom, the post was “a contractually-disqualified basis for discipline”). It is “well established” that a faculty handbook is a binding contract that “defines the rights” of faculty, and it is “especially true” that in universities, such contracts are interpreted based on the “expectations founded upon” the deference afforded to faculty members. *McConnell v. Howard University*, 818 F.2d 58, 63–66 (D.C. Cir. 1987).

¹⁴ Joan Frawley Desmond, *How Catholic University Campuses Handle Free Speech in an Age of Intolerance*, NAT’L CATHOLIC REGISTER, Oct. 30, 2017, <https://www.ncregister.com/daily-news/how-catholic-university-campuses-handle-free-speech-in-an-age-of-intolerance>; *see also DeJohn v. Temple Univ.*, 537 F.3d 301, 314 (3d Cir. 2008) (on public campuses, “free speech is of critical importance because it is the lifeblood of academic freedom”).

¹⁵ CATHOLIC UNIV. OF AM., DEMONSTRATIONS POLICY (rev. July 24, 2019) (emphasis added), <https://policies.catholic.edu/safety/demonstrations.html>.

¹⁶ CATHOLIC UNIV. OF AM., FACULTY HANDBOOK, PART I: THE GOVERNMENT OF THE UNIVERSITY 11 (rev. Dec. 2017), available at https://policies.catholic.edu/_media/docs/facultyhandbooki_2018.pdf.

¹⁷ *Id.* at 14.

¹⁸ MIDDLE STATES COMM’N ON HIGHER EDUC., STANDARDS FOR ACCREDITATION AND REQUIREMENTS OF AFFILIATION 5 (13th ed. 2015) (emphasis added), <http://www.msche.org/wp-content/uploads/2018/06/RevisedStandardsFINAL.pdf>.

B. *Tieso’s Twitter account contained speech as a private citizen, not as a university employee, in compliance with university policy.*

The university’s commitments also extend to personal political expression on social media. Its Political Activities Policy pledges the university “to the free and open discussion of ideas and opinions,” promising that “[f]aculty, staff and students are free to express their individual and collective political views,”¹⁹ and its Social Media Policy recommends (but does not require) a disclaimer when a faculty member’s “University affiliation is listed.”²⁰ The distinction between speech on behalf of the university and speech as a private citizen expressly recognized by the university’s social media policy tracks the First Amendment’s protection of employee expression, which protects speech as a public citizen on matters of public concern. *Connick v. Myers*, 461 U.S. 138, 150 (1983); *Pickering v. Board of Education*, 391 U.S. 563 (1968). This sensible approach recognizes the autonomy of students and faculty to speak on political matters in their personal capacity, without fear that their institution will penalize them.

Tieso’s Twitter activity was in compliance with this policy. His account did not identify his association with the university, instead only noting that he is an “educator.” No reasonable reader would believe that Tieso’s Twitter account, brimful of charged political rhetoric, purported to represent the university’s official positions, or that Tieso is employed to present his views on Twitter. Indeed, an expansive search of Twitter reveals that only one person had, until this month, learned that he was associated with the university at all,²¹ and others indicated uncertainty about where he taught.²²

C. *Tieso’s tweets addressed matters of public concern and remain protected speech, even if others found them subjectively offensive.*

Tieso’s political views may be deeply offensive to others. Indeed, a number of people with no ongoing relationship to the institution—a media outlet, a student at another institution altogether, and alumni—have contacted the university to raise questions or complain. Yet Tieso’s tweets do not reflect any discriminatory *conduct*, nor even any offensive expression directed at any member of the university community. Indeed, the media report spurring his suspension describes his relationship with students of color as “professional” and devoid of complaint.²³

¹⁹ CATHOLIC UNIV. OF AM., POLITICAL ACTIVITIES POLICY (rev. Apr. 22, 2016), <https://policies.catholic.edu/governance/politicalactivites.html>.

²⁰ CATHOLIC UNIV. OF AM., SOCIAL MEDIA POLICY § I, V (rev. Oct. 29, 2018), <https://policies.catholic.edu/marketing-communications/socialmedia.html>.

²¹ The search of Twitter for the string “johntieso AND (“CatholicUniv” OR “Catholic University”)” may be replicated by visiting <https://bit.ly/2WKssKZ>.

²² @dgranvillet, TWITTER (Mar. 19, 2018 5:17 PM), <https://twitter.com/dgranvillet/status/975843824676241408> (“Where are you an ‘educator’? Trump University?”).

²³ Miller, *supra* note 3.

Even if others within or without the university community find his personal political views offensive or wrongheaded, that alone is insufficient to justify curtailing the expressive freedom guaranteed to him by the university's commitment. Whether speech is protected is "a legal, not moral, analysis." *Animal Legal Def. Fund v. Reynolds*, 353 F. Supp. 3d 812, 821 (S.D. Iowa 2019).

i. Tieso's tweets are political expression on matters of public concern.

Tieso's tweets are "core political speech," where "First Amendment protection is 'at its zenith.'" *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182, 186–87 (1999) (quoting *Meyer v. Grant*, 486 U.S. 414, 425 (1988)). When speaking as a private citizen, Tieso would reasonably expect a commitment to protect his expression on matters of public concern. "Speech deals with matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community[.]" *Snyder v. Phelps*, 562 U.S. 443, 453 (2011) (picketers' signs outside of a fallen soldier's funeral, including "Thank God for dead soldiers," related to matters of public concern).

Criticism of a former president and a current U.S. Senator unquestionably falls within this ambit, even if others find the nature of that expression, as is often the "language of the political arena[. . .] vituperative, abusive, and inexact . . ." *Watts v. United States*, 394 U.S. 705, 708 (1969). For example, Tieso's barb about Senator Harris invoked criticism that the senator's political career could be attributed to her personal relationship with the former mayor of San Francisco.²⁴ Likewise, his criticism that Obama should "consider staying in Africa and giving all his money to his people" invokes the long-discussed question of his birthplace, which ultimately led Obama to produce his "long form" birth certificate.²⁵ That others find the statements to be of an "inappropriate or controversial character" is of no moment in weighing whether the speech is protected because it "deals with a matter of public concern." *Rankin v. McPherson*, 483 U.S. 378, 387 (1987) (expression of hope that President Ronald Reagan might be assassinated was protected against retaliation).

ii. Expression may not be curtailed or investigated on the basis that others find it subjectively offensive.

The right to freedom of expression includes "the right to criticize public men and measures—and that means not only informed and responsible criticism, but the freedom to speak foolishly and without moderation." *Baumgartner v. United States*, 322 U.S. 665, 673–74 (1944). The Supreme Court has repeatedly, consistently, and clearly held that expression may not be restricted merely because some or even many find it to be offensive or disrespectful. For example, in holding that burning the American flag was protected expression, the Supreme

²⁴ Andrea González-Ramírez, *Kamala Harris' Dating Life Is Scrutinized Because Of Course We're Still Sexist In 2019*, REFINERY29, Jan. 28, 2019, <https://www.refinery29.com/en-us/2019/01/222799/kamala-harris-willie-brown-relationship-sexist-coverage>.

²⁵ Dan Pfeiffer, *President Obama's Long Form Birth Certificate*, WHITE HOUSE, Apr. 27, 2011, *archived at* <https://obamawhitehouse.archives.gov/blog/2011/04/27/president-obamas-long-form-birth-certificate>.

Court urged that “[i]f there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” *Texas v. Johnson*, 491 U.S. 397, 414 (1989). More recently, the Court has refused to establish a limitation on speech viewed as “hateful” or demeaning “on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground.” *Matal v. Tam*, 137 S. Ct. 1744, 1764 (2017).

This principle applies with particular strength with respect to institutions of higher education.²⁶ As the Supreme Court explained in overturning legal barriers to faculty members with “seditious” views:

Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern to the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.

Keyishian v. Bd. of Regents, 385 U.S. 589, 603 (1967).

Federal courts have consistently protected faculty expression targeted for censorship or punishment due to subjective offense. In *Levin v. Harleston*, for example, a university launched an investigation into a tenured faculty member’s offensive writings on race and intelligence, announcing an *ad hoc* committee to review whether the professor’s expression—which administrators stated “ha[d] no place at [the college]”—constituted “conduct unbecoming of a member of the faculty.” 966 F.2d 85, 89 (2d Cir. 1992). The United States Court of Appeals for the Second Circuit upheld the district court’s finding that the investigation constituted an implicit threat of discipline and that the resulting chilling effect violated the professor’s expressive freedom, even though the faculty member was not terminated or formally disciplined.

In the absence of these principles, authorities—granted the power to distinguish the civil from the outrageous—would have unfettered discretion to penalize speech, and the extramural expression of faculty members would be curtailed whenever political factions or outside interests found them offensive. As James Madison wrote about the First Amendment, “[s]ome degree of abuse is inseparable from the proper use of everything.”²⁷ More recently, in *Cohen v.*

²⁶ For example, the Supreme Court unanimously upheld as protected speech a student newspaper’s front-page use of a vulgar headline (“Motherfucker Acquitted”) and a “political cartoon . . . depicting policemen raping the Statue of Liberty and the Goddess of Justice.” *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667, 667–68 (1973). These images were no doubt deeply offensive at a time of profound political polarization, yet “the mere dissemination of ideas—no matter how offensive to good taste” on a “university campus may not be shut off in the name alone of ‘conventions of decency.’” *Id.*

²⁷ James Madison, “Report on the Virginia Resolutions, Jan. 1800,” reprinted in 5 *THE FOUNDERS’ CONSTITUTION* 141, 43 (Philip Kurland & Ralph Lerner eds., 2000), available at http://press-pubs.uchicago.edu/founders/documents/amendI_speeches24.html.

California, the Court aptly observed that although “the immediate consequence of this freedom may often appear to be only verbal tumult, discord, and even offensive utterance,” encountering offensive expression is “in truth [a] necessary side effect[] of the broader enduring values which the process of open debate permits us to achieve.” 403 U.S. 15, 24–25 (1971). “That the air may at times seem filled with verbal cacophony is, in this sense not a sign of weakness but of strength,” because “officials cannot make principled distinctions” between what speech is sufficiently inoffensive, and the authorities have “no right to cleanse public debate to the point where it is . . . palatable to the most squeamish among us.” *Id.* at 25.

III. The Catholic University of America Must Rescind Tieso’s Suspension, Upholding its Commitments to Academic Freedom and Freedom of Expression

Several years ago, when the university’s Theological College rescinded an invitation to Fr. James Martin, S.J., you—rightly—concluded that the disinvitation was contrary to the university’s strong commitment to freedom of expression:

The campaigns by various groups to paint Fr. Martin’s talk as controversial reflect the same pressure being applied by the left for universities to withdraw speaker invitations[.] Universities and their related entities should be places for the free, civil exchange of ideas. Our culture is increasingly hostile to this idea.²⁸

Those principles are undermined by formal investigations into faculty members’ personal, extramural political speech. We call on the university to abandon any investigation into Tieso’s political speech, rescind his suspension, allow him to use social media on the same basis as other faculty, and reassure him that his current and future relationship with the university will not be impaired on the basis of past or future political expression.

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, May 22, 2020.

Sincerely,



Adam Steinbaugh
Director, Individual Rights Defense Program

Cc: Aaron Dominguez, Ph.D., Provost
Andrew V. Abela, Dean, The Busch School of Business

²⁸ THE CATHOLIC UNIV. OF AM., *University Statement on Father James Martin, S.J., Invitation* (Sept. 16, 2017), <https://communications.catholic.edu/news/2017/09/statement-martin.html>.