



Office of the Chancellor

February 11, 2021

Foundation for Individual Rights in Education
Attn: Adam Steinbaugh, Director
Individual Rights Defense Program
510 Walnut St., Suite 1250
Philadelphia, PA 19106

Sent via Electronic Mail to adam@thefire.org

Dear Mr. Steinbaugh:

Thank you for your correspondence dated January 19, 2021 and for sharing FIRE's perspective on principles of academic freedom and free speech, as these principles relate to certain content within a Civil Procedure II examination administered in December 2020 by UIC John Marshall Law School Professor Jason Kilborn (and events occurring thereafter).

The University of Illinois is committed to ensuring academic freedom and free speech rights of the entire campus community, including faculty, as evidenced by its strong policies affirming these principles. See, for example, *University of Illinois Statutes*, Article X, Section 2 (Academic Freedom) <https://www.bot.uillinois.edu/governance/statutes>; *UIC Faculty Handbook*, Section VI (Academic Freedom and Responsibility) <https://facultyhandbook.uic.edu/sections/section-vi-policies-governing-faculty-appointments/academic-freedom-and-faculty-responsibility/>; and *University of Illinois System Guiding Principles* (Freedom of Speech on Campus) https://www.uillinois.edu/about/guiding_principles. Among other things, the University's policies respect faculty members' autonomy to select classroom and examination content that is consistent with accepted principles of academic freedom and First Amendment rights that faculty at public universities enjoy.

The University necessarily balances principles of academic freedom against other very strong commitments that are central to its mission. One commitment is to ensure a non-discriminatory, non-harassing work and learning environment for the entire campus community. Another is to protect the privacy and safety of the entire campus community. To protect and harmonize these and many other interests, while still upholding the rights of faculty to present pedagogically-relevant content, the University maintains policies and procedures for investigation where concerns are raised, facts are disputed, or interests collide. All three circumstances are present here. Concerns relating to Professor Kilborn have been raised that go well beyond the one incident referred to in FIRE's January 19, 2021 letter. Among other things, a different incident was reported raising safety concerns, and Professor Kilborn was placed on a paid administrative leave (which has now ended with his return to active service).

The other concerns that have been brought forth relating to Professor Kilborn are currently being investigated. This investigative work does not focus upon Professor Kilborn's December 2020 examination question alone. The University stands by its compliance protocols and decision to confidentially investigate these matters. Investigation allows the University to obtain direct, relevant information before taking any action involving any member of the campus community.

The University therefore respectfully disagrees with FIRE's contention that any investigation into certain content within the Civil Procedure II examination administered by Professor Kilborn violates or chills his First Amendment rights or compromises principles of academic freedom. This matter involves multiple concerns and implicates the interests of several constituents, including not only Professor Kilborn but also the employees and students who have brought confidential concerns to the University's attention. The University rejects any suggestion that this investigation violates faculty rights or constitutes a sanction. Quite to the contrary, this is precisely the kind of situation in which an investigation is essential to protect the due process rights and principles of academic freedom enjoyed by Professor Kilborn, as well as the rights of others.¹

Moreover, in cases where faculty believe that they do not enjoy the academic freedom, which it is the policy of our institution to maintain and encourage, University policies provide faculty with a process by which they may seek review of the matter by the faculty senate's Committee on Academic Freedom and Tenure. This process allows faculty to raise concerns about alleged violations of academic freedom to faculty colleagues through the University's shared governance system. Indeed, Professor Kilborn has already availed himself of this process in the present case.

I hope that this letter addresses FIRE's concerns about this matter.

Sincerely,



Michael D. Amiridis
Chancellor

cc:

Darby Dickerson, Dean, UIC John Marshall Law School

Susan Poser, Provost and Vice President for Academic Affairs

Nancy Freitag, Vice Provost for Faculty Affairs

Caryn A. Bills, Associate Chancellor, Office for Access and Equity

George Papadantonakis, Chair, Senate Committee on Academic Freedom and Tenure

¹ Your letter quotes an opinion by the Sixth Circuit Court of Appeals for the proposition that an instructor's speech, "however repugnant," which is "germane to the classroom subject matter [Introduction to Interpersonal Communication]," is protected by the First Amendment. While briefly referencing the requirement that classroom content in fact be "pedagogically relevant," your letter argues that the content delivered by Professor Kilborn in his December 2020 examination falls within the scope of the Sixth Circuit opinion and should therefore be unreviewable. The University respectfully disagrees with the suggestion that the content of the examination at issue here is necessarily germane to the study of civil procedure (and specifically to issues surrounding the application of attorney-work product) or that such content is unreviewable. Rather, the pedagogical relevance of the classroom content used by Professor Kilborn is indeed reviewable, and it is an appropriate subject for review using the University's investigation and shared governance processes.

