



FIRE

Foundation for Individual
Rights and Expression

November 16, 2022

Rev. Kenneth Sicard
Office of the President
Providence College
Harkins Hall, Room 218
1 Cunningham Square
Providence, Rhode Island 02918

URGENT

Sent via U.S. Mail and Electronic Mail (ksicard@providence.edu)

Dear Reverend Sicard:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is deeply concerned by Providence College's pursuit of tenured biology Professor James Waters' dismissal for cause for having a box of Plan B contraception in their office and discussing contraception during class.² Dismissing a tenured professor without due process based on unsubstantiated rumors that the professor was distributing contraception, or because the professor discussed the mechanisms of how contraception works in a pedagogically-relevant class discussion or office hours is a clear violation of academic freedom, to which PC clearly commits and is therefore legally bound to provide. PC must halt any proceedings against Waters to the extent they arise from Waters' protected expression, and, if non-expressive misconduct is alleged, Waters must receive due process.

Professor Waters is a tenured associate professor of biology, currently teaching 140 students in a General Biology course.³ During a recent lecture on the mechanisms of hormonal contraception, Waters showed students a box of Plan B and invited anyone with further questions about it to visit their office hours. Unsubstantiated rumors then spread on campus that Waters was actively distributing Plan B to students. On November 8, Provost Sean Reid

¹ For more than 20 years, FIRE has defended freedom of expression, conscience, and religion, and other individual rights on America's college campuses. You can learn more about our recently expanded mission and activities at thefire.org.

² Waters uses they/them/their pronouns. See e.g. PROVIDENCE COLLEGE, Biology Faculty: James Waters, <https://biology.providence.edu/faculty-members/james-waters/> (last visited Nov. 16, 2022).

³ The following is our understanding of the facts. We appreciate that you might have additional information and welcome you to share it with us.

pulled Waters aside after a lecture and asked whether Waters had Plan B in their office. Waters confirmed they had one box for demonstration purposes, and complied when asked to immediately dispose of it.

On November 10, Waters was summoned to Reid’s office and notified that PC will be pursuing Waters’ termination for cause, citing two charges: “unprofessional conduct that seriously affects the functioning of the department or the College in an adverse fashion,” and “serious violation of provisions of contract.”⁴ Reid accused Waters of distributing Plan B to students, but failed to proffer any evidence that Waters did so.⁵ Reid also said the mere possession of the contraceptive was egregious enough behavior to constitute an unprofessional conduct violation, and that university leadership—from the board of trustees to the president—want Waters dismissed.⁹

While private institutions like PC are not bound by the First Amendment, PC has adopted commensurate policies—including the 1940 Statement of Principles on Academic Freedom and Tenure—clearly enshrining faculty members’ expressive and academic freedom rights:

The faculty member is entitled to freedom in the classroom in discussing his/her subject, but he/she should be careful not to introduce into his/her teaching controversial matter which has no relation to his/her subject. The College faculty member is a citizen, a member of a learned profession, and representative of an educational institution. When he/she speaks or writes as a citizen, he/she should be free from College censorship or discipline.⁶

Additionally, last year, PC was awarded a chapter of national academic honor society Phi Beta Kappa after working for years to demonstrate that the college’s free speech protections made it eligible.⁷ The college has also directly addressed how its Dominican Catholic identity and academic freedom are compatible, and how the college “bridges the common divides between ... faith and reason,” by encouraging students and faculty to take “the evidence at hand” in a given situation and arrive at a “thoughtful and reasonable response.” The college specifically cites biology as a field where this level of academic exploration is not only permitted, but mandated.⁸

Questions, debates and challenges are welcomed, as are people of
hesitant faith, different faiths, or even no faith at all. Believers

⁴ Appendix C – Adequate Cause for Dismissal, PROVIDENCE COLL., <https://catalog.providence.edu/content.php?catoid=27&navoid=942> (last accessed Nov. 16, 2022).

⁵ *Id.*

⁶ 4.0 Faculty Rights and Responsibilities, PROVIDENCE COLLEGE, <https://catalog.providence.edu/content.php?catoid=27&navoid=953>, (last accessed Nov. 16, 2022).

⁷ *Providence College awarded chapter of Phi Beta Kappa, most prestigious academic honor society in U.S.*, PROVIDENCE COLL. (Aug. 5, 2021), <https://news.providence.edu/providence-college-awarded-chapter-of-phi-beta-kappa-most-prestigious-academic-honor-society-in-u-s>.

⁸ *What does it mean to be a Catholic and Dominican college?* PROVIDENCE COLL., <https://mission-ministry.providence.edu/about/meaning-catholic-dominican> (last accessed Nov. 16, 2022).

cannot take refuge in the assurances of faith but must learn to provide reasons for what they believe and, when it comes to the classroom, they must pursue biology, history or accountancy with uncompromising rigor and integrity as a biologist, historian or accountant.

PC cannot speak out of both sides of its mouth. Either its commitments to academic freedom mean something or they mean nothing. Of course, legally, that decision has already been made, as courts have held that promises contained in private colleges' faculty handbooks represent a contractually binding legal duty on the part of the college.⁹ PC's free speech and academic freedom promises are also critical to PC's status as an accredited institution by the New England Commission of Higher Education, whose standards require that "[t]he institution protects and fosters academic freedom for all faculty regardless of rank or term of appointment."¹⁰

Academic freedom grants faculty members substantial breathing room to determine how to approach subjects and materials relevant to their courses. These questions must be left for the faculty member in the classroom—not the administrator, donor, legislator, or outside authorities. Sometimes, pedagogically relevant material may include words, concepts, subjects, or discussions that some, many, or most students may find upsetting or uncomfortable. But at a college that promises academic freedom and commits to commensurate truth-seeking, this level of occasional discomfort must be tolerated.

Faculty members who read in PC's policies that they are granted academic freedom and free expression may reasonably look to the First Amendment and the jurisprudence surrounding its interpretation to understand the scope of those rights. The United States Court of Appeals for the Sixth Circuit, for example, has deemed "totally unpersuasive" "the argument that teachers have no First Amendment rights when teaching, or that [authorities] can censor teacher speech without restrictions."¹¹

A biology professor discussing Plan B in a lecture on the mechanisms of hormonal contraception, or lawfully possessing a box of the medication for the purpose of facilitating that discussion, is well within their academic freedom right to teach pedagogically relevant material. There has also been zero evidence proffered that the professor was distributing contraceptives out of their office. Serious misconduct charges of this nature require transparency and due process, including providing Waters details about the evidence against them, ample time to prepare a defense, assistance of an attorney, and other aspects of basic fairness that lend the required legitimacy to this kind of proceeding. Anything less puts all PC faculty at risk, sending the message that controversial teaching—even by faculty with tenure—can be met with summary dismissal by administrators. At a school bound morally and legally to respect academic freedom, this cannot stand. To preserve the academic freedom that

⁹ See, e.g., *McAdams v. Marquette Univ.*, 2018 WI 88, ¶84 (2018) (private university breached its contract with a professor over a blog post because, by virtue of its adoption of the 1940 AAUP Statement of Principles on Academic Freedom, the blog post was "a contractually-disqualified basis for discipline").

¹⁰ NEW ENGLAND COMM'N OF HIGHER EDUC., Standards for Accreditation (Rev. Jan. 2021), <https://www.neche.org/resources/standards-for-accreditation>.

¹¹ *Hardy v. Jefferson Cnty. Coll.*, 260 F.3d 671, 680 (6th Cir. 2001).

undergirds the college's important educational mission, we urge PC to immediately correct course.

Due to the urgent matter of this issue, we request a substantive response to this letter by close of business tomorrow, Thursday, November 17, 2022.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alex Morey', with a stylized flourish at the end.

Alex Morey
Director, Campus Rights Advocacy

Cc: Sean Reid, Provost and Senior Vice President