



FIRE

Foundation for Individual
Rights and Expression

December 27, 2022

Fayneese Miller
Office of the President
Hamline University
1536 Hewitt Avenue, MS-C1914
Saint Paul, Minnesota 55104

URGENT

Sent via U.S. Mail and Electronic Mail (president@hamline.edu)

Dear President Miller:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned by reports that Hamline University dismissed an art history instructor for showing their class a medieval painting of Islam's prophet Muhammad.² After a student complained about the instructor's pedagogical choice to show the image, the university reportedly dismissed the instructor for "Islamophobia."³ You and David Everett, Hamline's associate vice president of inclusive excellence, apparently released a statement that "respect for the observant Muslim students in that classroom should have superseded academic freedom."⁴ And in announcing the nonrenewal of the instructor, Everett reportedly said, "It was decided it was best that this faculty member was no longer part of the Hamline community."⁵

These statements and actions violate Hamline's commitment "to academic freedom and . . . free expression for everyone" and its promise to "embrace[] the examination of all ideas, some

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 Christiane Gruber, *An Academic Is Fired Over a Medieval Painting of the Prophet Muhammad*, NEWS LINES MAG. (Dec. 22, 2022), <https://newlinesmag.com/argument/academic-is-fired-over-a-medieval-painting-of-the-prophet-muhammad>.

³ *Id.* The recitation of facts here reflects our understanding of the pertinent facts based on public reporting. We appreciate that you may have additional information to offer and invite you to share it with us.

⁴ *Id.*; see also Eugene Volokh, *Hamline University Lecturer "Is Fired Over a Medieval Painting of the Prophet Muhammad"*, REASON (Dec. 26, 2022), <https://reason.com/volokh/2022/12/26/hamline-university-apparently-fires-art-history-lecturer-for-showing-depictions-of-muhammed>.

⁵ *Id.*

of which will potentially be unpopular and unsettling, as an integral and robust component of intellectual inquiry.”⁶ If Hamline is truly committed to academic freedom, it cannot take adverse action against faculty for displaying pedagogically relevant material in their classroom, regardless of whether it offends particular students.⁷

Hamline’s nonrenewal of the instructor for showing an image of Muhammad violates the instructor’s pedagogical autonomy—protected by basic tenets of academic freedom—to determine whether and how to introduce or approach material that may be challenging, upsetting, or even deeply offensive to some. An instructor’s right to navigate difficult material—like whether to display a historical painting of Muhammad when many Muslims believe Muhammad “should not be pictured in any way”⁸—is well within Hamline’s commitment to protect academic speech that may “potentially be unpopular and unsettling.”⁹ Hamline’s policy also reflects nation’s broader commitment to academic freedom. In warning against “laws that cast a pall of orthodoxy over the classroom,” the Supreme Court called academic freedom “a special concern to the First Amendment” and a principle “of transcendent value to all of us and not merely to the teachers concerned.”¹⁰

Academic freedom necessitates that faculty members receive substantial breathing room to determine how to approach subjects and materials relevant to their courses, rather than allowing administrators, students, legislators, or outside authorities to unduly influence those decisions. Pedagogically relevant material may include words, concepts, subjects, or discussions that some, many, or most students find upsetting or uncomfortable, including displaying materials that may offend those who practice a certain religion. Faculty must be free of institutional restraints when confronting and examining complex issues, as this instructor was in examining the history of Islamic art in their art history course.

A similarly pedagogical action protected by academic freedom that students have found upsetting is professors’ decision to quote the word “nigger” from relevant readings in class. Courts have ruled that “nigger” and similarly subjectively offensive expression is protected. In *Hardy v. Jefferson Community College*, the U.S. Court of Appeals for the Sixth Circuit unequivocally rejected “the argument that teachers have no First Amendment rights when teaching, or that [authorities] can censor teacher speech without restriction” as “totally unpersuasive.”¹¹ There, a white adjunct instructor teaching “Introduction to Interpersonal Communication” lectured students about “language and social constructivism,” discussing

⁶ *Hamline University’s statement of civility*, OFFICE OF INCLUSIVE EXCELLENCE, HAMLINE UNIV., <https://www.hamline.edu/about/office-inclusive-excellence>.

⁷ See e.g., *McAdams v. Marquette Univ.*, 2018 WI 88 (2018) (private university breached its contract with a professor over a personal blog post because, by virtue of its adoption of the 1940 AAUP Statement of Principles on Academic Freedom, the post was “a contractually-disqualified basis for discipline”).

⁸ *Have pictures of Muhammad always been forbidden?*, BBC (Jan. 15, 2015), <https://www.bbc.com/news/magazine-30814555>.

⁹ *Hamline University’s statement of civility*, *supra* note 6.

¹⁰ *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967). Although Hamline is not bound by the First Amendment, students and faculty will reasonably interpret the university’s commitment to freedom of expression and academic freedom to be in line with the First Amendment’s protections.

¹¹ 260 F.3d 671, 680 (6th Cir. 2001).

how “language is used to marginalize minorities and other oppressed groups in society.”¹² Students, solicited by the instructor for examples, suggested “lady,” “girl,” “faggot,” “nigger,” and “bitch.”¹³ The instructor’s use of those words as “illustrations of highly offensive, powerful language” was “clearly” relevant to his lecture exploring the “social and political impact of certain words,” and was not “gratuitously used . . . in an abusive manner.”¹⁴ Holding that the First Amendment protected the instructor’s speech, the court explained that expression, “however repugnant,” if “germane to the classroom subject matter,” is speech on “matters of overwhelming public concern—race, gender, and power conflicts in our society.”¹⁵

To this end, displaying an image of Muhammad may similarly be deeply offensive to some, but because it was pedagogically relevant to the course at issue, it is protected by basic tenets of academic freedom and Hamline’s commitment to protect potentially “unpopular and unsettling” expression.

Additionally, the instructor’s display of the image does not constitute discriminatory harassment. For conduct (including expression) to constitute actionable harassment, it must be (1) unwelcome, (2) discriminatory on the basis of a protected status like race or gender, *and* (3) “so severe, pervasive, and objectively offensive that it can be said to deprive the victim[] of access to the educational opportunities or benefits provided by the school.”¹⁶ Though it was not necessary, the instructor reportedly warned students before showing the image of Muhammad to allow Muslim students to look away if they chose.¹⁷ This clearly shows that even if their display of the image was unwelcome to some, it was not discriminatory. Nor was it “severe” or “pervasive,” as the instructor showed the image only once and for a clearly pedagogical reason—not to direct the image at any individual. Finally, Hamline cannot construe the instructor’s pedagogical choice as sufficient to deprive a reasonable person of the university’s educational opportunities or benefits, as this would mean any subjectively offensive teaching of pedagogically relevant material could meet Hamline’s impermissibly low bar to constitute harassment.

Hamline has both violated the academic freedom of this instructor by nonrenewing them for their pedagogically relevant teaching and created an impermissible chilling effect among all faculty, who may choose to censor their teaching rather than face nonrenewal. This chilling effect is particularly pronounced with respect to speech by adjunct faculty like this instructor, who often lack the procedural protections afforded to tenured faculty. As a result, adjunct faculty—who fill a growing percentage of instructional positions¹⁸—may rationally choose to avoid discussion of difficult subjects rather than risk nonrenewal if a student, colleague,

¹² *Id.* at 674.

¹³ *Id.* at 675.

¹⁴ *Id.* at 675, 679.

¹⁵ *Id.* at 679.

¹⁶ *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 683 (1999).

¹⁷ Volokh, *supra* note 4.

¹⁸ U.S. GOV’T ACCOUNTABILITY OFF., GAO-18-49, CONTINGENT WORKFORCE: SIZE, CHARACTERISTICS, COMPENSATION, AND WORK EXPERIENCES OF ADJUNCT AND OTHER NON-TENURE-TRACK FACULTY 8 (2017), *available at* <https://www.gao.gov/assets/gao-18-49.pdf>.

parent, or someone outside of the university complains. This is all the more so when an adjunct relies primarily on meager pay for income.¹⁹

Lecturers, librarians, researchers, and other contingent faculty members' expressive rights therefore depend on their institutions' commitments to refrain from using contract renewals as a vehicle to respond to criticism or unpopular speech. While an institution may generally decline to renew a contract for a good reason, a poor reason, or no reason at all, it cannot do so for a *retaliatory* reason, including retaliation for the expression of protected speech.²⁰ The breathing room afforded classroom discussion depends increasingly on institutions' in-practice commitment to uphold their promises of academic freedom, and to zealously guard against signaling that particular discussions, language, or materials may risk nonrenewal.

If this instructor was nonrenewed for showing an image of Muhammad in teaching Islamic art, adjunct faculty seeking to teach controversial material may rationally conclude that discussing such material is simply not worth the risk. That result would redound not only to the detriment of faculty, but to Hamline and the students it seeks to educate.

Accordingly, FIRE calls on Hamline to immediately reinstate the instructor and reaffirm its commitment to academic freedom. We request a substantive response to this letter no later than the close of business on Monday, January 9, 2023.

Sincerely,



Sabrina Conza
Program Officer, Campus Rights Advocacy

Cc: David Everett, Associate Vice President of Inclusive Excellence

¹⁹ Nearly a third of adjunct faculty members live below the federal poverty guidelines. See Colleen Flaherty, *Barely Getting By*, INSIDE HIGHER ED (Apr. 20, 2020), <https://www.insidehighered.com/news/2020/04/20/new-report-says-many-adjuncts-make-less-3500-course-and-25000-year>.

²⁰ See, e.g., *Perry v. Sindermann*, 408 U.S. 593, 598 (1972) (“[T]he nonrenewal of a nontenured public school teacher’s one-year contract may not be predicated on his exercise of First and Fourteenth Amendment rights.”) (internal citations omitted); see also *Jones v. Matkin*, ___ F.Supp.3d ___, 2022 U.S. Dist. LEXIS 153258 (E.D. Tex. Aug. 25, 2022) (institutions violate faculty members’ First Amendment rights by nonrenewing them for protected activity).