



May 18, 2021

Kurt D. Dykstra
Office of the President
Trinity Christian College
6601 West College Drive
Palos Heights, Illinois 60463

URGENT

Sent via Next-Day Delivery and Electronic Mail (president@trnty.edu)

Dear President Dykstra:

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 Trinity Christian College's response to social media posts by Assistant Professor Melissa Vanden Bout, which focused on, among other things, police brutality and transgender rights.

While others may—and did—find Vanden Bout's posts offensive, her comments were on matters of public concern and consist of extramural speech. They fall squarely within the Trinity's promise that faculty who "speak as citizens" will be "free from administrative or institutional censorship." Trinity must keep the promises it makes to its faculty and students. FIRE calls on Trinity to reinstate Vanden Bout and to reaffirm to the Trinity community that it remains committed to its faculty members' expressive rights.

I. Vanden Bout's Social Media Posts, Suspension, and Non-Renewal

The following is our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us. To these ends, please find enclosed an executed privacy waiver authorizing you to share information about this matter.

Melissa Vanden Bout is an Assistant Professor of philosophy at Trinity Christian College and has been employed there since the Fall of 2014. She is considered regular faculty on tenure track with a half-time appointment. Like many faculty members, Vanden Bout maintains a

personal account on social media, where she shares her personal views on political, social, and cultural matters.

On April 28, 2021, Provost Aaron Kuecker requested a meeting with Vanden Bout, saying only that there were “significant concerns.”¹ Kuecker did not specify their subject matter or origin. After Vanden Bout asked him to share more information regarding the complaints, Kuecker shared only that they were related to “concerns about professionalism in communication and its impact on the learning environment” and “about engagement with campus colleagues and its impact on the workplace environment.”²

The next day, a local police officer shared a screenshot of an undated tweet by Vanden Bout reading “Fuck the police.”³ The post has since garnered in excess of 500 responses and has been shared nearly 150 times. That day, Kuecker again emailed Vanden Bout stating that a social media post of hers was causing him to receive “notes of significant concern” and asking to move up their scheduled meeting to discuss the complaints.⁴ He did not identify the specific social media post, though by this time Vanden Bout was generally aware of the controversy sparked by her tweet. This email acknowledged that “Trinity cannot ask employees to take any action with regard to personal social media accounts,” but asked her to delete the posts.⁵

On April 30, Vanden Bout met with Kuecker, as well as Julia Foust, Director of Human Resources, and Aron Reppmann, Chair of the Philosophy Department. At that meeting, Kuecker discussed the complaints against Vanden Bout, but again failed to specify the precise nature of the complaints. Kuecker shared only that undefined “community members” found Vanden Bout intimidating, and he pressured her to apologize, which she refused to do because it was not clear to whom or for what she would be apologizing.

On May 7, Kuecker sent Vanden Bout a letter via email and U.S. Mail notifying her that her contract would be non-renewed.⁶ That same day, Vanden Bout discovered she was locked out of her Trinity accounts, preventing her from checking email and grading papers. The letter indicated concerns about her communications online, pointing to several tweets on Vanden Bout’s personal Twitter account and characterizing them as “vulgar, unprofessional, unbecoming of a faculty member, and intimidating.”⁷ The letter identified, in particular, the undated tweet in an exchange about policing in America and another about supporting transgender people. That tweet read: “Alright you transphobic bastards. When you attack my trans sisters, you attack me. And don’t fuck around with my trans brothers or my [nonbinary]

¹ Email from Aaron Kuecker to Melissa Vanden Bout (Apr. 28, 2021, 11:05 AM) (on file with author).

² Email from Kuecker to Vanden Bout (Apr. 29, 2021, 6:58 AM) (on file with author).

³ David DeBoer, FACEBOOK (Apr. 29, 2021), <https://facebook.com/david.deboer8/posts/10100210593357129>.

⁴ Email from Kuecker to Vanden Bout (Apr. 29, 2021, 5:23 PM) (on file with author).

⁵ *Id.*

⁶ Letter from Kuecker to Vanden Bout (May 7, 2021) (on file with author).

⁷ *Id.*

siblings. I'll take it personal. As a cis woman my identity is not located in my uterus. I'm a woman on the same basis as my trans sisters are."

In the letter, the college cited its internet usage policy, which states that "sending or posting material that could damage the institution's image or reputation" could lead to disciplinary action,⁸ and a workplace violence prevention policy that prohibits faculty from engaging in harassing and intimidating conduct.⁹

On May 10, the police officer updated his Facebook post asserting that "it appears that [Vanden Bout] was terminated last week" and, in response to a comment that "there are a lot of anti police professors that teach" at Trinity, posted an image reading: "One down!"¹⁰

II. Vanden Bout's Personal Social Media Posts are Extramural Speech Protected by Trinity's Promises of Freedom of Expression

Trinity expressly promises that its faculty members' extramural expression will not result in institutional censorship or discipline. That others find extramural speech offensive, disagreeable, or inappropriate is not a basis on which to censor or discipline a faculty member. In terminating Vanden Bout, Trinity defaults on its express commitments.

A. *Trinity Promises Faculty the Right to "Speak as Citizens"*

Because Trinity is a private institution, the First Amendment does not compel it to grant faculty expressive freedoms. Nevertheless, Trinity has made clear commitments promising its faculty freedom of expression and academic freedom. These commitments represent not only a moral obligation, but a contractually binding legal duty on the part of the college.

In its Faculty Handbook, Trinity promises:

That when faculty members speak as citizens they are free from administrative or institutional censorship, but that as members holding a special position within the community they incur special obligations. As scholars and educators, both their professionalism and that of the institution will be judged by their actions. They should be accurate in their statements, exercise restraint in their opinions, and give due regard to the opinions of others. They are not to consider themselves as institutional spokespersons unless so authorized.¹¹

⁸ Faculty Handbook Chapter Ch. 6.8.4(I), TRINITY CHRISTIAN COLL. (2020).

⁹ *Id.* at Ch. 6.18.

¹⁰ DeBoer Facebook post, *supra* note 3.

¹¹ *Id.* at Ch. 2.1.1(E).

Additionally, in the section on academic freedom, the faculty handbook states:

A faculty member shall not be expected or required to retract or modify his/her utterances merely because a complaint against them has been received. Only complaints that allege a violation of such professional standards shall be considered, and then only when the evidence supporting the allegation is more substantial than rumor or hearsay.¹²

We think you will agree that Trinity should keep the promises that it makes. Abandoning these commitments will have a broader chilling effect, as faculty and students will understandably doubt that the college’s commitment to freedom of expression is meaningful, rather than conditioned on popular approval. So, too, may they doubt whether the college’s other commitments are meaningful.

These commitments form not only a moral obligation, but also a legal obligation. The contractual relationship between a private educational institution and its faculty requires the institution to adhere to its commitments to free expression and academic freedom.¹³ Thus, while Trinity is a private college not required to abide by the First Amendment, its commitment to the freedom to “speak as citizens” without censorship obliges it to refrain from censoring—including through retaliatory non-renewal—extramural expression.

B. Trinity’s Commitments to Freedom of Expression Prevent it from Penalizing Extramural Expression

Trinity’s promises to uphold the expressive rights of faculty include the wide latitude given to faculty members to engage in extramural expression—that is, speech in their capacity as private citizens.

A decision from the Wisconsin Supreme Court concerning your *alma mater* is illustrative in explaining the contours of extramural freedom and their binding nature in the context of private institutions.¹⁴ Marquette University, a private Catholic university, had adopted the 1940 Statement of Principles on Academic Freedom—the relevant portion of which has also been adopted by Trinity.¹⁵ A member of the faculty, aggrieved by a graduate student instructor’s exchange with a student about whether LGBTQ rights were an “appropriate” topic of class discussion, criticized the instructor on his personal blog, providing a link to the instructor’s contact information and assailing her attitude as “totalitarian.”¹⁶ The university

¹² *Id.* at Ch. 2.3.

¹³ *See, e.g., McAdams v. Marquette University*, 914 N.W.2d 708, 731 (Wis. 2018).

¹⁴ *Id.*

¹⁵ *Id.* at 730. *See supra* note 9.

¹⁶ *Id.* at 713–714.

punished the professor, citing the blog post as falling short of the university’s “standards of personal and professional excellence”¹⁷

The university’s commitment to academic freedom rendered the blog post “a contractually-disqualified basis for discipline.”¹⁸ Citing the AAUP’s *amicus curiae* brief,¹⁹ the court explained that “the doctrine of academic freedom comprises three elements: teaching; research; and extramural comments.”²⁰ The blog post, an “expression made in [the professor’s] personal, not professorial, capacity,” fell into the “extramural” category.²¹ Such remarks are protected under a commitment to academic freedom unless the remark “clearly demonstrates the faculty member’s unfitness for his or her position” in light of their “entire record as a teacher and scholar.”²² This “stringent standard” is “[s]o strict, in fact, that extramural utterances rarely bear upon the faculty member’s fitness for the position.”²³

C. *Vanden Bout’s Tweets are Protected Extramural Expression*

Trinity draws the same line as that drawn by the private university in *Marquette*. In contrast to that matter, Trinity’s interests in policing extramural expression are decidedly less substantial. In *Marquette*, a professor brought a graduate student’s intramural speech to an extramural audience, relying on “improperly obtained information”—a “surreptitious recording” and leading to the student’s receipt of “critical, sometimes vile, sometimes violently-worded, responses” after the professor made the story public.²⁴ In contrast, Vanden Bout’s tweets have no discernible relationship with the college: they were not sent to students or colleagues, do not discuss the institution, and were not related to her role at the college.

The college insists that Vanden Bout’s nonrenewal is justified because her tweets might impair the institution’s reputation. Yet conditioning the protection of extramural speech on its popularity simply means that speech that offends or angers others is subject to veto. Expression may not be restricted merely because some or even many find—as Vanden Bout’s critics did—that speech to be offensive or disrespectful. Whether speech is protected is “a legal, not moral, analysis,”²⁵ and Vanden Bout’s tweets do not fall into an unprotected category of speech, as there is no exemption for speech on the basis that others find it disagreeable, offensive, or outrageous.

¹⁷ *Id.* at 714.

¹⁸ *Id.* at 737.

¹⁹ Brief for AAUP as Amicus Curiae Supporting Plaintiff–Appellant, *McAdams v. Marquette University*, 914 N.W.2d 708, available at https://www.aaup.org/sites/default/files/McAdams_Marquette_Feb2018.pdf.

²⁰ *McAdams*, 914 N.W.2d at 730.

²¹ *Id.*

²² *Id.* at 731–32, citing AAUP, Policy Documents and Reports, Committee A Statement on Extramural Utterances 31 (11th ed. 2014)).

²³ *Id.* at 732 (cleaned up).

²⁴ *Id.* at 733–734.

²⁵ *Animal Legal Def. Fund v. Reynolds*, 353 F. Supp. 3d 812, 821 (S.D. Iowa 2019).

This core First Amendment principle is why authorities cannot ban the burning of the American flag,²⁶ prohibit the wearing of a jacket emblazoned with the words “Fuck the Draft,”²⁷ penalize cartoons depicting a pastor losing his virginity to his mother in an outhouse,²⁸ or disperse civil rights marchers out of fear that “muttering” and “grumbling” white onlookers might resort to violence.²⁹ In ruling that the First Amendment protects protesters holding signs outside of soldiers’ funerals (including signs that read “Thank God for Dead Soldiers,” “Thank God for IEDs,” and “Fags Doom Nations”), the Court reiterated this fundamental principle, remarking that “[a]s a Nation we have chosen . . . to protect even hurtful speech on public issues to ensure that we do not stifle public debate.”³⁰

Trinity’s policies are in accord. Trinity’s faculty handbook provides that faculty are “free from administrative or institutional censorship” when they speak as citizens.³¹

Vanden Bout’s tweets fall well within these protections, even if others find them offensive. Her comments were extramural—taking place outside of the classroom, Trinity’s campus, and Vanden Bout’s job responsibilities—and do not amount to discriminatory conduct. Additionally, the tweets were not directed at members of the Trinity community and each tweet was posted in Vanden Bout’s capacity as a citizen on matters of public concern. The mere fact that the speech utilized strong language when discussing highly emotional topics does not render it unprotected by Trinity’s promises of free expression.

Moreover, Trinity’s promise of free expression means that it relinquishes the ability to determine what speech is offensive or in poor taste. In *Cohen v. California*, the Supreme Court held that a jacket emblazoned with the words “Fuck the Draft”—and worn in a courthouse hallway in the presence of children—was protected by the First Amendment.³² The Court explained that freedom of expression is the recognition that authorities “cannot make principled decisions” between what speech is offensive, and that they cannot strive to “cleanse public debate to the point where it is grammatically palatable to the most squeamish among us,” as it is “often true that one man’s vulgarity is another’s lyric.”³³ The Court aptly observed that although “the immediate consequence of this freedom may often appear to be only verbal tumult, discord, and even offensive” expression, that people will encounter offensive expression is “in truth [a] necessary side effect[] of the broader enduring values which the process of open debate permits us to achieve.”³⁴

²⁶ *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (burning the American flag was protected by the First Amendment, the “bedrock principle underlying” the holding being that government actors “may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable”).

²⁷ *Cohen v. California*, 403 U.S. 15, 25 (1971).

²⁸ *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 50 (1988).

²⁹ *Cox v. Louisiana*, 379 U.S. 536, 557 (1965).

³⁰ *Snyder v. Phelps*, 562 U.S. 443, 448, 461 (2011).

³¹ *Supra* note 11.

³² *Cohen*, 403 U.S. at 25–26.

³³ *Id.* at 25.

³⁴ *Id.* at 24–25.

Vanden Bout’s extramural speech cannot be restricted by Trinity on the basis that its message is contrary to the values of other members of its community. The values to which the institution commits itself include freedom of expression, which cannot be subordinated to the administration’s views on whether that expression is appropriate.

D. The Policies Cited by Trinity Are Inapplicable and Cannot Overcome its Commitment to Freedom of Expression

The two policies cited by Trinity—its internet usage policy stating that “sending or posting messages or material that could damage the institution’s image or reputation” could lead to disciplinary action,³⁵ and its workplace violence prevention policy broadly prohibiting harassment of another employee—are inapplicable to Vanden Bout’s extramural speech.

Trinity’s internet usage policy governs use of college technology resources and internet access *provided by Trinity*. Vanden Bout’s tweets were all sent on her own time with her own equipment using her own internet access. Likewise, its workplace violence prevention policy—adopted “to deal with intimidation, harassment, or other threats of (or actual) violence that may occur during business hours or on its premises”³⁶—is inapplicable, as it has no bearing on social media posts not directed at any other member of the college community.

Trinity has already—and correctly—conceded these points. Kuecker acknowledged to Vanden Bout ahead of their meeting that “Trinity cannot ask employees to take any action with regard to personal social media accounts.”³⁷ Just one week after admitting it could not influence its employees’ use of their personal social media accounts, Trinity terminated its employment relationship with Vanden Bout precisely because of such use. Trinity knew Vanden Bout’s tweets constituted protected extramural speech, acknowledged to her that it could not ask her to alter that speech, but then reneged on that acknowledgement and its broader free expression promises just a week later.

III. Trinity Must Reinstate Vanden Bout

Trinity Christian College has a moral and legal obligation to keep the promises it makes to its faculty members. While Vanden Bout’s extramural speech may have yielded some local criticism, Trinity should recognize that embracing censorship will earn far greater public disapproval, while chilling student and faculty members’ willingness to address difficult and sometimes caustic political and social issues. Trinity has asserted that its values include respecting its faculty members’ right to speak as citizens. Declining to censor its faculty members does not suggest that it agrees with their every utterance, but choosing to censor

³⁵ *Supra* note 8.

³⁶ *Supra* note 9.

³⁷ Email from Aaron Kuecker to Melissa Vanden Bout (Apr. 29, 2021) (on file with author).

Vanden Bout now means that every future uncensored remark carries the institution's approval.

Accordingly, FIRE calls on Trinity Christian College to reinstate Melissa Vanden Bout. Given the urgent nature of this matter, we request receipt of a response to this letter no later than the close of business on May 25, 2021, confirming that Trinity will reinstate Vanden Bout and will not pursue other disciplinary sanctions in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Bleisch', written in a cursive style.

Joshua Bleisch
Faculty Legal Defense Fund Fellow

Cc: Trinity Christian College Hearing Committee c/o Provost Aaron Keucker

Encl.

Authorization and Waiver for Release of Personal Information

I, Melissa Vanden Bout, do hereby authorize Trinity Christian College (the "Institution") to release to the Foundation for Individual Rights in Education ("FIRE") any and all information concerning my employment, status, or relationship with the Institution. This authorization and waiver extends to the release of any personnel files, investigative records, disciplinary history, or other records that would otherwise be protected by privacy rights of any source, including those arising from contract, statute, or regulation. I also authorize the Institution to engage FIRE and its staff members in a full discussion of all information pertaining to my employment and performance, and, in so doing, to disclose to FIRE all relevant information and documentation.

This authorization and waiver does not extend to or authorize the release of any information or records to any entity or person other than the Foundation for Individual Rights in Education, and I understand that I may withdraw this authorization in writing at any time. I further understand that my execution of this waiver and release does not, on its own or in connection with any other communications or activity, serve to establish an attorney-client relationship with FIRE.

If the Institution is located in the State of California, I request access to and a copy of all documents defined as my "personnel records" under Cal. Ed. Code § 87031 or Cal. Lab. Code § 1198.5, including without limitation: (1) a complete copy of any files kept in my name in any and all Institution or District offices; (2) any emails, notes, memoranda, video, audio, or other material maintained by any school employee in which I am personally identifiable; and (3) any and all phone, medical or other records in which I am personally identifiable.

This authorization and waiver does not extend to or authorize the release of any information or records to any entity or person other than the Foundation for Individual Rights in Education, and I understand that I may withdraw this authorization in writing at any time. I further understand that my execution of this waiver and release does not, on its own or in connection with any other communications or activity, serve to establish an attorney-client relationship with FIRE.

I also hereby consent that FIRE may disclose information obtained as a result of this authorization and waiver, but only the information that I authorize.

DocuSigned by:

M VandenBout

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Signature

5/14/2021

Date