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**Via First Class Mail and Email**

December 22, 2014

Dr. Michael Lovell  
President, Marquette University  
1250 W. Wisconsin Ave.  
Milwaukee, WI 53233

michael.lovell@marquette.edu

Re: Dr. John McAdams

Dear President Lovell:

We are writing to you on behalf of and with our client, Dr. John McAdams. Dr. McAdams received a letter from Dean Richard Holz dated December 16, 2014, that suspends him from his duties as a member of the Marquette faculty, bars him from campus, and prohibits him from having any contact with Marquette students, faculty, or staff. The letter does not state any basis for this action, does not provide Dr. McAdams with any procedure to challenge the action, and violates Dr. McAdams' rights as a tenured faculty member at Marquette. These rights include but are not limited to his rights under Sections 306.01 and 307.03 of the Statutes of the University Academic Senate (the "Faculty Statutes"). Dr. McAdams' contract with Marquette is expressly subject to the Faculty Statutes and he is entitled to insist that they be followed.

*Marquette has not followed the procedures mandated by the Faculty Statutes.*

Section 306.01 of the Faculty Statutes provides that the University may suspend or terminate the appointment of a faculty member only for cause, as defined in Sections 306.02 and 306.03. Dean Holz does not set forth any "cause" in his December 16<sup>th</sup> letter. Section 307.03 provides that in all cases of suspension or termination, the University shall provide a notice to the faculty member which states what section of the Faculty Statutes the faculty member has allegedly violated, the date of the alleged violation, and a detailed description of the facts constituting the violation including the names of the witnesses against the faculty member. Sections 307.04–307.09 then provide a process for the faculty member to challenge the suspension or termination.

Dean Holz' letter does not even attempt to comply with these rules. It is a Kafkaesque document, telling Dr. McAdams that he is being investigated for some unnamed event that might violate some unidentified requirement of the university to be found somewhere in one of several documents enclosed with the letter. Dean Holz says that the university will proceed according to some unspecified procedure that, again, is possibly to be found somewhere in one of these documents. When Dr. McAdams sent Dean Holz an e-mail asking what he was being charged with, he did not receive the courtesy of a response.

While the charges and process are not disclosed, the punishment is – and it is one of the most significant that the university can impose. Not only is Dr. McAdams suspended, he is barred from campus as if he were a terrorist and subjected to some type of shunning such that he dare not engage in any “activity” that would involve interaction with anyone in the Marquette community. Such an action – particularly in conjunction with the statements made by the University described below – can effectively destroy a faculty member’s career.

A University spokesperson – but not Dean Holz – has now claimed that Dr. McAdams has not been “suspended.” Although “suspension” is not defined in the Faculty Statutes, the spokesperson claims that “suspended” means “without pay.” The Faculty Statutes say otherwise. Pursuant to Section 307.02, “in all cases of ... suspension ... a faculty member’s entitlement to salary and fringe benefits shall continue, irrespective of any suspension from duties.” Whatever distinguishes suspension from some other unspecified status, it is not the absence of pay.

The Oxford dictionary defines “suspension” as “[t]he official prohibition of someone from holding their usual post or carrying out their usual role for a particular length of time.” If a faculty member has had his classes cancelled, has been barred from teaching, has been forbidden to have contact with his colleagues, and has been banned from campus, he unquestionably has been “suspended” in the ordinary sense of that word. This is confirmed by the fact that Dean Holz’ action has been routinely described as a “suspension” in both the local and national media over the past week.

More fundamentally, if Dr. McAdams has not been “suspended,” what has happened to him? The University now says he is “under review” – a status that does not appear anywhere in the Faculty Statutes. While the University certainly ought to be able to investigate allegations against a faculty member, it would no doubt come as a surprise to tenured faculty that they may have their classes summarily cancelled and be banned from campus and from contact with their colleagues without any of the due process that the University has promised them.

*Dr. McAdams has done nothing to warrant suspension.*

Given the unusual nature of Dean Holz’ action, one might suspect that Dr. McAdams must stand accused of something truly awful – something so bad that he must be immediately and completely removed from the university community lest some harm befall someone. Yet it appears from the public statement issued by the University on December 17, 2014 that the letter relates to Dr. McAdams’ November 9, 2014 blog post about an exchange between an instructor in the Department of Philosophy and a student. During this exchange, the instructor told a student that opposition to gay marriage would not be tolerated in her class since such a view would be “homophobic” and would “offend” any gay students in the class. Dr. McAdams reported on this exchange and expressed the view that such a stance is inconsistent with academic freedom and the Catholic mission of Marquette. He argued that it has, unfortunately, become common for certain views to be dismissed out of hand as “offensive,” rather than argued on the merits. He believed that the exchange in question was an example of this.

We understand that the instructor and her supporters now claim that she did not say or, at least, did not mean to say, that a student could not argue against same sex marriage. However, the conversation was recorded. Dr. McAdams’ description of what was said is accurate. Not only is it a reasonable interpretation of the instructor’s comments, it would appear to be the only reasonable interpretation. The student repeatedly asked whether one could oppose same sex marriage in class and the instructor responded that such a view would be “experienced” as offensive or “come off” as homophobic and that “offensive” or “homophobic” comments would not be tolerated.

Dr. McAdams’ post does not violate any Faculty Statute or other university requirement. Nothing in the statutes or any other university policy prohibits a faculty member from publicly

disagreeing with a graduate student, much less someone who has been given sole responsibility for a course and authority over every student enrolled in it. Having accepted that authority and responsibility, the instructor in question chose to express her view on what can and cannot be permitted in academic discourse. In fact she relied on her authority as a “professor of ethics” in order to do so. That was her right. But Dr. McAdams is free to offer his differing view. Punishing him for doing so would violate Section 306.03 of the Faculty Statutes, which prohibits suspension or termination for reasons that would impair the full and free enjoyment of legitimate personal or academic freedoms of thought, doctrine, discourse, association, advocacy, or action. Indeed, a recent statement by University spokesperson Brian Dorrington confirms that “a professor cannot be relieved of teaching duties for voicing an opinion about whether a potentially controversial offensive subject should be allowed by a TA to be discussed in class” and that “[a] professor also cannot be relieved of teaching duties for having a viewpoint contrary to the university's position on a moral issue . . . .”

If Dr. McAdams’ reporting of a fact about a Marquette instructor’s conduct and offering his opinion on that fact are grounds for punishment, then academic discourse would dissolve in the face of a war of all against all. No one could say anything critical of anyone else. One would, for example, expect the University to similarly punish every faculty member who has reported what Dr. McAdams wrote and then offered criticism. One would expect the suspension and banning from campus of a faculty member who confronted Dr. McAdams in public, expressing her disapproval of his view and claiming that the student was “lying.” If offering criticism via a blog post is “harassing,” surely such direct confrontational behavior must be harassing to an even greater degree. The instructor in question, who certainly seemed to be telling her student that his point of view was “homophobic” and “offensive,” would also be subject to discipline.

Ironically, on this narrow view of what can and cannot be said, the statement released by the University on December 17 might itself constitute a “harassing” or “disrespectful” statement. The statement connects the investigation of Dr. McAdams to Dr. Lovell’s statement that the University “deplores[s] hatred and abuse directed at a member of our community in any format.” Dr. McAdams’ differing view on the scope of academic freedom can hardly be called an expression of hate or abuse. To say otherwise could certainly be characterized as an attack on a member of the university community. Indeed, the University’s suggestion that Dr. McAdams has engaged in some expression of “hate or abuse” is false and defamatory, and has aggravated the injury to him.

It is our surmise – although we cannot know because Dean Holz won’t say – that Dr. McAdams’ post is somehow thought to be “harassing” or “disrespectful.” We cannot imagine how anyone could think so. To be sure, Dr. McAdams strongly disapproved of the view that this instructor expressed. But he did not use abusive language or criticize her on some extraneous basis. A guarantee of academic freedom that is subject to a post hoc parsing by the authorities to determine if perhaps whatever has been said could be better said – with suspension or the type of ostracization effected by Dean Holz’ action as the penalty for getting it wrong – is no guarantee at all.

#### *Dr. McAdams’ Objections*

This letter constitutes Dr. McAdams’ objection under Section 307.04 to his suspension and his objection to the remainder of Dean Holz’ letter barring him from campus and barring him from contact with Marquette faculty, students and staff.

Dr. Lovell, we have addressed the letter to you based on our understanding of Section 302.01 of the Faculty Statutes that you are the ultimate “appointing authority” at Marquette University. We are concerned that the University will contend that Dean Holz’ December 16<sup>th</sup> letter was “notice” under Section 307.03, even though the letter does not comply with the requirements of such notice. Pursuant to Section 307.04, Dr. McAdams would then have 10 days to file an objection with the “appointing authority.” That appears to be you. We have also had Dr.

McAdams co-sign the letter so that the University cannot later contend that the objection was not filed by the faculty member.

Our understanding of Section 307.04 of the Faculty Statutes is that this letter should be addressed to you as the "appointing authority" and, therefore, that communication directly with the President of the University is both authorized by law and required. We have also copied Dean Holz on this letter because he is the member of the administration who has taken the action that lead to this letter. Going forward, we understand that Marquette University may choose to be represented by its Office of General Counsel and, recognizing this possibility, we have copied Attorney Bauer on this letter. If the University's position is that it will be represented by its General Counsel and that all future communications from us should go to Attorney Bauer (or some other lawyer of its choosing), simply notify us of that fact and we will comply. We will assume in that instance that our sending communications to counsel satisfies all procedural requirements under University rules, policies, procedures, statutes, etc.

In addition to constituting an objection under Section 307.04, please consider this letter a demand that the actions taken by Dean Holz be immediately rescinded and that Dr. McAdams be restored to his duties and privileges as a tenured member of the faculty.

Very truly yours.



Richard Esenberg  
President and General Counsel



Dr. John McAdams  
Associate Professor of Political Science. Ph.D.,

cc: Attorney Cynthia Bauer  
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