



July 20, 2010

Via U.S. Mail & Facsimile at (217) 244-2370

Steven A. Veazie, Esq.  
Office of University Counsel  
University of Illinois  
258 Henry Administration Building  
506 South Wright Street  
Urbana, Illinois 61801

**Re: The University's Continuing Violation of Dr. Kenneth Howell's First and Fourteenth Amendment Rights**

Dear Mr. Veazie:

The Alliance Defense Fund Center for Academic Freedom received your July 15, 2010 letter and directed it to me, Dr. Kenneth Howell's litigation counsel, for a response. We appreciate the University of Illinois' commitment to uphold the principles of the First Amendment and academic freedom; however, it has failed to do so with Dr. Howell.

The University violated Dr. Howell's First and Fourteenth Amendment rights when it relieved him of all teaching duties based on the content of his speech. Our previous letter outlined these constitutional violations and I will not belabor them here. Suffice it to say that the University inflicted constitutional injuries on Dr. Howell and has failed to correct them.

Since sending our first demand, we understand that the University suspended the decision communicated by Dr. Robert McKim pending further review by the Faculty Senate's Committee on Academic Freedom and Tenure ("Committee"). While this is a step in the right direction, suspension of the University's decision to relieve Dr. Howell of his teaching duties does not reinstate him or cure the constitutional injuries he suffered. Prior to the University's actions against Dr. Howell, he was scheduled to teach during the fall 2010 semester. Yet as of today, he does not have a teaching assignment. While he continues to hold his appointment as adjunct professor, that title is virtually meaningless if he has no classes to teach.

Further, the University's current actions do not change the fact that Associate Dean Ann Mester stated that Dr. Howell's academic email to his class violated "university standards of inclusivity."<sup>1</sup> Relieving Dr. Howell of his teaching duties based on violation of these standards chilled his speech and violated his First and Fourteenth Amendment rights. *See Pickering v. Bd. of Educ. of Twp. High Sch. Dist. 205*, 391 U.S. 563, 574 (1968) (holding school district violated teacher's First Amendment rights by terminating her employment after she spoke on an issue of

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<sup>1</sup> See Jodi Heckel, *Instructor of Catholicism at UI claims loss of job violates academic freedom*, The News-Gazette, July 9, 2010, available at <http://www.news-gazette.com/news/university-illinois/2010-07-09/instructor-catholicism-ui-claims-loss-job-violates-academic-free> (last visited July 19, 2010).

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public concern); *Mt. Healthy City Bd. of Educ. v. Doyle*, 429 U.S. 274, 283-84 (1977) (finding a public employee may “establish a claim to reinstatement if the decision not to rehire him was made by reason of his exercise of constitutionally protected First Amendment freedoms”); *Hardy v. Jefferson Cmty. Coll.*, 260 F.3d 671, 680 (6th Cir. 2001) (finding adjunct professor’s “rights to free speech and academic freedom outweigh the College’s interest in limiting that speech” in the classroom such that the College’s actions terminating the professor’s employment violated the First Amendment). Thus, independent of the University’s current actions, Dr. Howell suffered constitutional injuries and may seek redress of them in a court of law.

We are concerned that the Committee’s investigation into this matter is tainted already with bias toward affirming the dismissal. President Michael Hogan commented that the purpose of the Committee is to “reassure ourselves there was no infringement on academic freedom here.”<sup>2</sup> This remark gives us concern that University officials do not appreciate the gravity of the constitutional violations in this situation. Also, the University has provided no assurance that this review will be fair and in accordance with due process. Prior to receiving your letter, I contacted the incoming Committee Chair, Professor Matthew Finkin, to inquire about the Committee’s procedures and ask if it needed anything from Dr. Howell. Please advise if you represent Professor Finkin and the Committee and whether I should direct future correspondence to you. If the University is truly committed to the First Amendment freedoms of its faculty and their academic freedom in the classroom as your letter claims, then there is no need for the Committee’s review of this matter. President Hogan must simply correct the constitutional injuries by restoring Dr. Howell to his previously assigned teaching responsibilities.

The University continues to violate Dr. Howell’s First and Fourteenth Amendment rights each day this situation goes uncorrected and he need not await the decision of the Committee before redressing his grievances in court. *See Patsy v. Bd. of Regents*, 457 U.S. 496 (1982) (holding public employees do not need to exhaust their administrative remedies in order to pursue a federal claim under 42 U.S.C. § 1983). Thus, absent written assurance that Dr. Howell will continue to teach his regularly assigned courses in the fall of 2010, he will proceed to litigation. Please respond to me in writing by **July 27, 2010** that the University reinstated Dr. Howell’s teaching assignments for the fall of 2010.

Very truly yours,



David J. Hacker  
Litigation Staff Counsel  
ADF CENTER FOR ACADEMIC FREEDOM

cc: Dr. Kenneth Howell

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<sup>2</sup> See Julie Wurth, *UI administrators ask committee to examine academic freedom over issue of fired professor*, The News-Gazette, July 13, 2010, available at <http://www.news-gazette.com/news/religion/2010-07-13/ui-administrators-ask-committee-examine-academic-freedom-over-issue-fired-p> (last visited July 19, 2010).