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July 16, 2010

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Every rationale for this action that was given by any university official depended on the content of Howell's e-mail. According to the ADF letter, McKim said that the e-mail "had prompted a series of complaints" and that it "would hurt the Department and the University." Furthermore, according to *The News-Gazette* of July 9,

In a series of e-mail exchanges between McKim and UI administrators about how to proceed regarding Howell's teaching and his appointment as an adjunct professor, McKim states he will send a note to Howell's students and others who were forwarded his e-mail to students, "disassociating our department, College, and university from the view expressed therein."

In addition, according to the article and a July 9 Associated Press article, Associate Dean Ann Mester told other UIUC staff that "the e-mails sent by Dr. Howell violate university standards of inclusivity, which would then entitle us to have him discontinue his teaching arrangement with us."

According to a July 16 article in *The News-Gazette*, you asked UIUC's Faculty Senate's Committee on Academic Freedom and Tenure to review Howell's case. According to University of Illinois President Michael Hogan, as quoted in the article, the review is intended "to be able to reassure ourselves there was no infringement on academic freedom here."

### **The Refusal to Rehire Professor Howell Plainly Violates His Academic Freedom and Freedom of Speech**

As a public university, UIUC is both legally and morally bound by the First Amendment's guarantees of freedom of expression and academic freedom. The Supreme Court has held that academic freedom is a "special concern of the First Amendment" and that "[o]ur nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to teachers concerned." *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967) (internal citations omitted). As the Supreme Court wrote in *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957):

The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. ... Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.

This principle holds whether the subject is communism, Catholicism, or climate change. Howell's e-mail was precisely on the topic of classroom instruction and highly relevant to his class, and it promoted critical thinking and understanding rather than any sort of indoctrination. It thus is fully protected by academic freedom as both a legal matter under the First Amendment and as a moral matter under the traditional canons of academic freedom.

We trust that you understand that the First Amendment's protections fully extend to public universities like UIUC. See, e.g., *Keyishian*, 605–06 ("[W]e have recognized that the university

is a traditional sphere of free expression so fundamental to the functioning of our society that the Government's ability to control speech within that sphere by means of conditions attached to the expenditure of Government funds is restricted by the vagueness and overbreadth doctrines of the First Amendment"); *Healy v. James*, 408 U.S. 169, 180 (1972) (citation omitted) ("[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, 'the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools'").


Even if Howell expressed full agreement with the Catholic positions he was teaching about, it is vital to understand that the principle of freedom of speech does not exist to protect only non-controversial speech. Indeed, it exists precisely to protect speech that some members of a community may find "controversial" or "offensive." The Supreme Court stated in *Texas v. Johnson*, 491 U.S. 397, 414 (1989), that "[i]f there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." Similarly, the Court wrote in *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667, 670 (1973) that "the mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of 'conventions of decency.'" No public university may retaliate against a professor because others on campus, including the professor's own students, felt offended by fully protected speech.

### **Rights of Adjunct Faculty**

Adjunct faculty do not have diminished First Amendment rights because of their employment status. Adverse employment action against an adjunct faculty member, when that action is due to the professor's protected expression, violates the professor's First Amendment rights. This includes decisions not to rehire adjunct faculty members who have a reasonable expectation of being rehired. See *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 283 ("[A teacher's] claims under the First and Fourteenth Amendments are not defeated by the fact that he [does] not have tenure."); *Berndt v. Jacobi*, 781 F. Supp. 553, 557 (N.D. Ill. 1991) ("The fact that the public employee lacks tenure, *i.e.*, lacks a property interest in his employment, makes no difference if his public employer has made an adverse employment decision based on the



Indeed, although you have sent this matter to a faculty committee, no professional academic experience is required to judge Howell's e-mail as

A handwritten signature in black ink, appearing to read "R. J. ...". The signature is written in a cursive style and is somewhat faint.