



February 11, 2019

Dr. Paul Pribbenow
President
Augsburg University
2211 Riverside Avenue
Minneapolis, Minnesota 55454

Sent via U.S. Mail and Electronic Mail (augpres@augsborg.edu)

Dear President Pribbenow:

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 for the state of freedom of expression and academic freedom at Augsburg University posed by the institution's suspension and institution of disciplinary proceedings against Professor Phillip Adamo arising out of his discussion of a racial slur used in the book, *The Fire Next Time*. Augsburg University's actions are inconsistent with its public commitment to academic freedom and contrary to its established policies, including the American Association of University Professors (AAUP) Statement of Principles on Academic Freedom and Tenure.

I. Statement of Facts

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. Please find enclosed an executed waiver authorizing you to share information with FIRE. However, if the facts set forth here are substantially accurate, Augsburg University's actions cannot be reconciled with its stated policies and public commitment to academic freedom.

Professor Phillip Adamo is employed by Augsburg University as a Professor of History and Medieval Studies and served as the Director of Augsburg University's Honors Program. He was named 2015 "Minnesota Professor of the Year" by the Carnegie Foundation for the

Advancement of Teaching and the Council for Advancement and Support of Education, and consistently received excellent reviews for his teaching.

Adamo teaches an Honors Program course, “The Scholar Citizen,” concerning “the connections between learning and citizenship” and “the public uses of knowledge.”¹ One of the assigned readings for the course is *The Fire Next Time*, a nonfiction book that, when it was published in 1963, was described by the *New York Times* as an attempt to “translate what it means to be a Negro in white America so that a white man can understand it.”² At the time, its author was “exalted as *the* voice of black America.”³ Half a century after its publication, the book remains widely read; this past fall, Loyola University Maryland required all of its first-year students to read *The Fire Next Time* before coming to campus.⁴

During the October 30, 2018 meeting of Adamo’s class, while discussing *The Fire Next Time*, a student read aloud a quote from the book’s opening paragraph: “You can only be destroyed by believing that you really are what the white world calls a *nigger*. I tell you this because I love you, and please don’t you ever forget it.”⁵

After the student used the word, Adamo led a discussion with the class about the word, using it once himself at the beginning of the discussion. The class came to the consensus that the word should not be used, even as a quotation. Later in the day, Adamo broached the same subject with another section of the course, again using the word at the opening of the discussion. Following the class, Adamo sent to the members of each section two online articles presenting opposing perspectives on the word’s use, one suggesting that the word should be used sparingly by teachers, and another suggesting that the word never be used.⁶

Following the October 30 discussion, a series of discussions were held at Augsburg at the initiation of various groups and through multiple channels. These include a November 1 effort

¹ AUGSBURG UNIV., AUGSBURG UNIVERSITY 2018-2019 COURSE DESCRIPTIONS 137 (rev. June 22, 2018), *available at* <http://web.augsburg.edu/registrar/catalog/2018-19-Course-Descriptions.pdf>.

² Sheldon Binn, *The Fire Next Time*, N.Y. TIMES, Jan. 31, 1963, <http://movies2.nytimes.com/books/98/03/29/specials/baldwin-fire.html>.

³ Henry Louis Gates, Jr., *The Fire Last Time*, NEW REPUBLIC, June 1, 1992, <https://newrepublic.com/article/114134/fire-last-time>.

⁴ Loyola Univ. Maryland, *Common Text Study Guide*, <https://www.loyola.edu/department/messina/common-text/study-guide> (last visited Feb. 4, 2019).

⁵ JAMES BALDWIN, *THE FIRE NEXT TIME* 3 (First Vintage Int’l ed., Feb. 1993) (emphasis in original).

⁶ Andre Perry, *Good teachers use the N-word*, HECHINGER REPORT, Aug. 21, 2018, <https://hechingerreport.org/good-teachers-use-the-n-word>; Ta-Nehisi Coates, *In Defense of a Loaded Word*, N.Y. TIMES, Nov. 23, 2013, <https://www.nytimes.com/2013/11/24/opinion/sunday/coates-in-defense-of-a-loaded-word.html>.

by a group of Augsburg house leaders to coopt Adamo's class for discussion of the matter,⁷ a November 3 optional discussion initiated by Interim Dean of Arts and Sciences Dave Matz, and numerous articles criticizing and defending Adamo.⁸ On November 4, the house leaders, unsatisfied by this more-speech approach, called on the administration to remove Adamo from the courses.

On November 13, Provost and Chief Academic Officer Karen Kaivola informed Adamo that he was, effective immediately, being removed from teaching the course and removed from his post as director of the Honors Program and asked further questions of Adamo about his teaching style, the incident in HON120, and whether he had used the word in previous years.

On November 28, Kaivola sent a letter via email to Adamo informing him that because he potentially violated the faculty handbook policies on professional ethics, and the Bias/Discrimination Reporting Policy, and that she would be moving forward with the "Informal Resolution Process."

On January 8, 2019, Adamo met with Matz and Kaivola as part of the Informal Resolution Process, where Matz and Kaivola brought up new and vague allegations that Adamo had violated university policies regarding bias and discrimination. On January 11, Kaivola sent Adamo a letter via email declaring that the Informal Resolution Process would no longer be sufficient, and that Augsburg would instead utilize the "Formal Resolution Process," citing unidentified "actions [that] go beyond the incidents that occurred in [the class] the week of October 30, 2018[.]"

On January 25, Kaivola announced a formal review of the entire Honors Program leadership and personnel to "to consider [...] personnel actions that may be appropriate responses to student concerns."⁹

⁷ Adamo and the house leaders discussed the dispute outside of the class, and Adamo invited the house leaders to continue the discussion both in his absence and in the class. One of the house leaders surreptitiously recorded part of that conversation and posted it to Facebook and YouTube. Citaly Escobar, *Phil Adamo Justifying Use of N-Word, Scholar Citizen*, YOUTUBE (Nov. 3, 2018), <https://www.youtube.com/watch?v=y1RVu4Ft0-8>. See also Citaly Escobar, *Phil Adamo Justifying Use of N-Word - Scholar Citizen*, YOUTUBE (Nov. 3, 2018), <https://www.youtube.com/watch?v=7KsQfDRY4DM>.

⁸ See, e.g., Robert Cowgill, et al., *Letter to the editor: AAUP defends academic freedom*, AUGSBURG ECHO, Nov. 9, 2018, <https://augsburgecho.com/2018/11/09/letter-to-the-editor-aaup-defends-academic-freedom>.

⁹ Ryan Moore, *Honors Program Leadership Enters Formal Review*, AUGSBURG ECHO, JAN. 31, 2019 <https://augsburgecho.com/2019/01/25/honors-program-leadership-enters-formal-review/>

II. Augsburg University’s commitment to academic freedom precludes the university from penalizing Adamo’s discussion of a popular book

A commitment to academic freedom embraces breathing room for a professor to choose whether, when, and how to teach, write, or discuss material that is germane to the topic of the course—even when that material might be deeply offensive to others. Accordingly, Adamo’s classroom discussion and circulation of articles published in, *inter alia*, *The New York Times*, is well within the academic freedom to which Augsburg is purportedly committed, and does not rise to the level of discriminatory harassment.

A. Augsburg University guarantees professors the right to academic freedom in its policies, in part to maintain its accreditation.

As a private institution, the university is not required to make these commitments by virtue of the First Amendment. But Augsburg University makes affirmative, robust commitments to provide its faculty members with the rights to freedom of expression and academic freedom, and is contractually and morally obligated to adhere to the promises it makes.

Most pertinent among these promises¹⁰ is Augsburg’s express adoption, at Section 2.3 of the Augsburg University Faculty Handbook,¹¹ of the 1940 AAUP Statement of Principles on Academic Freedom.¹² The adopted statement provides, in pertinent part:

The common good depends upon the free search for truth and its free exposition.

Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning. . . .

[...]

¹⁰ Augsburg makes express commitments to academic freedom and freedom of expression in other policies. For example, the university’s Sexual Misconduct Policy pronounces Augsburg as “committed to protecting and supporting academic freedom” and that the “University and its faculty subscribe to” the AAUP standards. Augsburg Univ., *Sexual Misconduct Policy: Reporting Procedures & Protocols*, available at <https://inside.augsburg.edu/studentaffairs/harassment-and-sexual-harassment-reporting-form/process-resources> (last visited Feb. 5, 2019).

¹¹ AUGSBURG UNIVERSITY, FACULTY HANDBOOK, 2018, pp. 10-11.

¹² The AAUP’s 1940 Statement was created in partnership with the American Association of Colleges and Universities, of which Augsburg University is an institutional member. Augsburg Univ., *Accreditation*, available at <http://www.augsburg.edu/academics/accreditation> (last visited Feb. 5, 2019).

Teachers are entitled to freedom in the classroom in discussing their subject, but they must be careful not to introduce into their teaching controversial matter which has no relation to their subject. Limitations of academic freedom because of religious or other aims of the institution must be clearly stated in writing in the contract at the time of the appointment.

Augsburg's commitment to academic freedom and freedom of expression is not purely aspirational; this commitment is also critical to its status as an accredited institution of higher learning. Augsburg University is accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools, whose standards require that accredited institutions be "committed to freedom of expression and the pursuit of truth in teaching and learning."¹³

Courts have ruled that when schools like Augsburg make express commitments to academic freedom, they are obliged to adhere to them. *See, e.g., McAdams v. Marquette Univ.*, 2018 WI 88, ¶84 (2018) (Private Catholic university breached its contract with a professor over a blog post because, by virtue of its adoption of the 1940 AAUP Statement of Principles on Academic Freedom, the blog post was "a contractually-disqualified basis for discipline.").

Augsburg's Student-Faculty Bias/Discrimination Reporting Policy similarly commits the university to academic freedom, even where that freedom leads to discussion or expression which deeply offends others.¹⁴ That policy announces in its introduction the university's "commitment to academic freedom, which lies at the heart of Augsburg's educational mission," which "ensures each member of the community is free to hold, explore, or express ideas, however unpopular, without censorship or fear," even "when those ideas challenge, disturb, or offend, as they inevitably will in diverse communities." The latter part explains how the university should conduct itself regarding the controversy over Adamo's teaching methods, but unfortunately in his case Augsburg has chosen censorship and sanction in response to "ideas that challenge, disturb, or offend."

¹³ HIGHER LEARNING COMM'N, CRITERIA FOR ACCREDITATION (rev. June 2014), *available at* <https://www.hlcommission.org/Policies/criteria-and-core-components.html> (last visited Feb. 8, 2019). Notably, the Higher Learning Commission is likely to augment this standard by expressly referencing academic freedom and adopting, in its glossary, a comment explaining that academic freedom entails more than just "freedom from constraint." *Id.*

¹⁴ AUGSBURG UNIV., STUDENT-FACULTY BIAS/DISCRIMINATION REPORTING POLICY (rev. Apr. 11, 2018), *available at* http://web.augsburg.edu/academicaffairs/Academic%20Affairs%20Policies/Bias_Discrimination%20policy%20-%20April%202018%20approved.pdf (last visited Feb. 8, 2019).

B. Academic freedom entails a right to confront, use, and discuss offensive language in teaching and scholarship.

Academic discussions require that faculty members and students alike have the freedom to discuss, touch upon, and view materials that may shock or offend others—including the “n-word.”

Use of the word in a teaching context is widespread: Princeton University, for example, defended a professor who used the word in an Anthropology course to discuss cultural and linguistic taboos.¹⁵ Law professors use it to teach the “fighting words” doctrine;¹⁶ journalism professors discuss how to tell stories that involve it;¹⁷ sociology professors study the impact of the term in defining who is welcomed in various spaces.¹⁸ Faculty and students cannot study American racism without confronting manifestations of it.

Courts have also grappled with the use of this particular language in the context of higher education and have consistently ruled on the side of academic freedom. In the case of *Hardy v. Jefferson Community College*, the United States Court of Appeals for the Sixth Circuit denied qualified immunity to administrators who terminated a Caucasian adjunct instructor who led a “classroom discussion examining the impact of such oppressive and disparaging words as ‘nigger’ and ‘bitch.’” 260 F.3d 671, 674 (6th Cir. 2001) (cleaned up). The Sixth Circuit upheld the district court’s finding that “the use of the racial and gender epithets in an academic context, designed to analyze the impact of these words upon societal relations, touched upon a matter of public concern and thus fell within the First Amendment’s protection.” *Id.* at 678. In denying qualified immunity, the Sixth Circuit held that “reasonable school officials should have known that such speech, when it is germane to the classroom subject matter and advances an academic message, is protected by the First Amendment.” *Id.* at 683.

¹⁵ Colleen Flaherty, *The N-Word in the Classroom*, INSIDE HIGHER ED, Feb. 12, 2018, <https://www.insidehighered.com/news/2018/02/12/two-professors-different-campuses-used-n-word-last-week-one-was-suspended-and-one>.

¹⁶ Frank Yan, *Free Speech Professor Takes Heat for Using Racial Epithets in Lecture at Brown*, CHICAGO MAROON, Feb. 9, 2017, <https://www.chicagomaroon.com/article/2017/2/10/free-speech-professor-takes-heat-using-racial-epit/>.

¹⁷ Frank Harris III, *Without Context, N-Word Goes Best Unsaid*, HARTFORD COURANT, Feb. 13, 2018, <https://www.courant.com/opinion/hc-op-harris-ct-teacher-uses-n-word-20180209-story.html>.

¹⁸ See, e.g., Elijah Anderson, *The White Space*, SOCIOLOGY OF RACE & ETHNICITY, 2015 Vol. I pp. 10–21, available at https://sociology.yale.edu/sites/default/files/pages_from_sre-11_rev5_printer_files.pdf.

Similarly, the Ninth Circuit has explained that faculty members' expression of offensive viewpoints, as they pertain to matters of public concern, will rarely amount to actionable workplace harassment. *Rodriguez v. Maricopa Cty. Cmty. Coll. Dist.*, 605 F.3d 703, 710 (9th Cir. 2009). In ruling on a hostile environment claim prompted by a math professor's "racially-charged" emails, which were sent to a listserv that reached every employee in his community college district, the Ninth Circuit distinguished between protected expression and targeted harassment:

Harassment law generally targets conduct, and it sweeps in speech as harassment only when consistent with the First Amendment. For instance, racial insults or sexual advances directed at particular individuals in the workplace may be prohibited on the basis of their non-expressive qualities, as they do not 'seek to disseminate a message to the general public, but to intrude upon the targeted [listener], and to do so in an especially offensive way[.]'

Id. (cleaned up). The Ninth Circuit was particularly concerned that limitations on faculty members' expression would cast a chilling effect on higher education, which has "historically fostered" the exchange of views. *Id.* at 708. "The desire to maintain a sedate academic environment does not justify limitations on a teacher's freedom to express himself on political issues in vigorous, argumentative, unmeasured, and even distinctly unpleasant terms." *Id.* at 708–09 (quoting *Adamian v. Jacobsen*, 523 F.2d 929, 934 (9th Cir. 1975)) (cleaned up).

C. *Preliminary removal from the classroom before a formal hearing violates basic principles of due process and the AAUP's 1958 Statement on Procedural Standards in Faculty Dismissal Proceedings.*

In 1958, the AAUP supplemented the 1940 Statement by articulating standards for faculty disciplinary proceedings in its Statement on Procedural Standards in Faculty Dismissal Proceedings. Augsburg has bound itself to this policy, as it is one of the "Policy Documents and Reports published by the AAUP" on the subject of academic freedom referred to in Augsburg's Faculty handbook section 2.3. The 1958 Statement¹⁹ reads, in pertinent part:

Suspension of the Faculty Member. Suspension of the faculty member during the proceedings is justified only if **immediate harm to the faculty member or others is**

¹⁹ AAUP, STATEMENT ON PROCEDURAL STANDARDS IN FACULTY DISMISSAL PROCEEDINGS (rev. Jan. 1990) (emphasis added), available at <https://www.aaup.org/report/statement-procedural-standards-faculty-dismissal-proceedings> (last visited Feb. 8, 2019).

threatened by the faculty member’s continuance. Unless legal considerations forbid, any such suspension should be with pay.

The “immediate harm” referred to in the 1958 Statement is understood by the AAUP to refer to physical safety, and not reputational harm to a university, or a more abstract notion of emotional harm.²⁰ At no point has it been alleged that Adamo posed a threat to the safety of anyone at Augsburg University. By unilaterally removing Adamo from his post as director of the Honors Program, and from teaching, Augsburg unambiguously violates both the 1958 AAUP Statement and its own policies.

D. Augsburg’s allegation of “actions” is unspecific, undermining core principles of due process.

Some two months after removing Adamo from his course and terminating him from the honors program, Augsburg informed Adamo that it was shifting to a “formal” process of discipline, citing “actions” outside of the class discussions during the week of October 30. Augsburg has not informed Adamo of the nature or specifics of the “actions” compelling this response. Instead, Augsburg specifically cites “concerns students have voiced,” “further reflection,” and the “complexity of the issues involved.” Informing Adamo of these unspecified charges, the university’s January 11 letter pledged that the university was “working to protect your rights” and cited the “responsibility to honor due process rights for you.” Adamo has sought to know what these “actions” are, and has been told vaguely by Kaivola that students feel “bullied” and fear retaliation, without providing any specific evidence of conduct by Adamo has caused these alleged feelings.

A fundamental, unavoidable principle of due process is that a faculty member must have a fair opportunity to know the charges against them. It is clear that Augsburg University did not unilaterally remove Adamo from the class and from his position on the basis of these unidentified “actions,” but on the basis of student anger at a discussion clearly within the scope of his academic freedom.

If Augsburg has credible evidence that Adamo engaged in discriminatory conduct or harassment, which would not be protected by academic freedom, then Augsburg must provide Adamo notice of the specific allegations against him. If Augsburg *did* have such evidence, it should not take two months of “further reflection” to decide to act on that evidence.

²⁰ Hans-Jorge Tiede, LETTER TO AUGSBURG UNIVERSITY PRESIDENT REGARDING PHILLIP ADAMO, Jan. 22, 2019, available at <https://www.aaup.org/news/letter-augsburg-university-president-regarding-phillip-adamo>.

III. Conclusion

Faculty members' academic freedom includes the choice to engage with material or language germane to their teaching that might offend, shock, or anger their students. That freedom does not render its exercise wise in every instance, nor immunize the faculty member from criticism, whether from the university's leadership, students, colleagues, or the general public. Criticism, no matter how vociferous, is not censorship; it is the polar opposite of censorship, but Augsburg's treatment of Adamo is action, not mere speech.

Augsburg University is free to criticize Adamo's choice, but it has renounced any authority to penalize expression on the basis that it causes even grave offense, and its commitment to academic freedom obligates it to abstain from punishing unpopular or offensive speech falling short of actionable harassment. In taking unilateral action against Adamo for in-class speech, and before any finding of responsibility, Augsburg has run roughshod over academic freedom and its own policies. In accordance with its written policies and promises, Augsburg must immediately rescind any coercive sanctions imposed upon Adamo and clarify that Augsburg will not penalize speech, research, or discussions on the basis that they offend others.

We request receipt of a response to this letter no later than the close of business on Friday, February 22, 2019.

Sincerely,

A handwritten signature in black ink that reads "Ryne Weiss". The signature is written in a cursive, flowing style.

Ryne Weiss
Program Associate, Individual Rights Defense Program

Cc: Dr. Karen Kaivola, Provost and Chief Academic Officer