



November 20, 2020

President Julio Frenk
University of Miami
Office of the President
230 Ashe Building, 1252 Memorial Drive
Coral Gables, Florida 33146

Sent via Electronic Mail (president@miami.edu)

Dear President Frenk:

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 aware that the University of Miami (UM) has publicly committed to refrain from terminating UM School of Law lecturer Daniel B. Ravicher over his tweets regarding the 2020 presidential election.¹ However, Ravicher has alleged that, during a phone call with School of Law Dean Anthony Varona on November 7, Varona suggested the university may not renew Ravicher's contract upon its expiration because of his tweets. A refusal to renew a lecturer's contract due to protected speech is an adverse employment action tantamount to termination,² carrying the precise chilling effect barred by UM's laudable dedication to

¹ Jay Weaver, *UM law professor tries to make a case for Trump on Twitter. Some of his colleagues object*, MIAMI HERALD (updated Nov. 18, 2020, 10:06 AM), <https://www.miamiherald.com/news/local/article247235334.html>. 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 waiver authorizing you to share information with FIRE.

² *Perry v. Sindermann*, 408 U.S. 593, 598 (1972) (“[T]his Court has specifically held that the nonrenewal of a nontenured public school teacher’s one-year contract may not be predicated on his exercise of First and Fourteenth Amendment rights We reaffirm those holdings here.”) (internal citations omitted). *Kazar v. Slippery Rock Univ. of Pa.*, No. 16-2161, 2017 WL 587984 (3d Cir. Feb. 14, 2017) (acknowledging that a nontenured professor could state a First Amendment claim if the non-renewal of her contract was based on her protected expression); *Kahan v. Slippery Rock Univ. of Pa.*, 50 F. Supp. 3d 667, 687 (W.D. Pa. 2014), *aff’d* 664 F. App’x 170 (3d Cir. 2016) (“There can be no reasonable dispute that the non-renewal of [Plaintiff]’s one-year, probationary contract qualifies as an adverse employment action.”); *Hardy v. Jefferson Cmty. Coll.*, 260 F.3d 671 (6th Cir. 2001) (holding that an untenured professor’s in-class speech constituted expression on a matter of public concern, and that the college’s non-renewal of his appointment violated the First Amendment); *Lewis v. Spencer*, 468 F.2d 553 (5th Cir. 1972) (holding that “lack of tenure is immaterial” to a First Amendment retaliation claim when a contract is not renewed).

protecting its faculty members' academic freedom and free speech rights.³ This threat to expressive rights is of particular concern to contingent and adjunct faculty, who often do not enjoy the procedural protections afforded to tenured faculty members.

Accordingly, in addition to the university's welcome affirmations that it will not terminate Ravicher for his protected speech, we ask that the university please resolve the lingering ambiguity by clarifying that Ravicher's contract renewal will not be predicated on his extramural expression.

We respectfully request receipt of a response to this letter no later than the close of business on December 3, 2020.

Sincerely,

A handwritten signature in black ink, appearing to read "Zach", with a stylized flourish extending to the right.

Zachary Greenberg
Senior Program Officer, Individual Rights Defense Program

Cc: Anthony E. Varona, School of Law Dean

Encl.

³ UNIV. OF MIAMI, FACULTY MANUAL 64, 124, 181 (2020-2021),
https://fs.miami.edu/_assets/pdf/facultysenate/Documents/FacultyManual.pdf.