



May 4, 2021

Dr. John J. DeGioia
Office of the President
Georgetown University
204 Healy Hall
37th & “O” Streets, NW
Washington, D.C. 20057

Sent via Electronic Mail (president@georgetown.edu)

Dear President DeGioia:

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 by Georgetown University’s initiation of an investigation into Professor Michele Swers’ pedagogically-relevant discussion of a racial epithet during her U.S. Political Systems class. While others may—and did—find Swers’ vocalization of a racial epithet offensive, it falls squarely within the protection afforded by academic freedom, which gives faculty members the breathing room to determine whether—and how—to discuss material students may find offensive.

FIRE calls on Georgetown to end its investigation of Swers and reaffirm to its faculty that it will protect their academic freedom and expressive rights.

I. Swers Quotes an Epithet During a Lecture on Free Speech

Our understanding of the facts, derived from public reports, is as follows. We appreciate that you may have additional facts to offer and invite you to share it with us.

Michele Swers is a Professor of American Government in the Department of Government at Georgetown University, and has taught at Georgetown since 2002.¹ Swers teaches U.S.

¹ Michele L Swers, GEORGETOWN UNIV., <https://bit.ly/3xJlvco> (last visited May 3, 2021).

Political Systems, which “provides students with a broad understanding of the political system in the United States” and “train[s] students both as citizens and as scholars.”²

On April 15, 2021, Swers gave a lecture about free speech. At the beginning of the lecture, Swers reportedly told students that the topics discussed may be sensitive.³ During the lecture, Swers explained that during the Vietnam War, the United States Supreme Court adopted stronger protections of free speech rights. As an example, she discussed the landmark case of *Brandenburg v. Ohio*,⁴ which, in 1969, established the legal test for incitement, differentiating between speech that is offensive and speech that is intended and likely to lead to imminent lawless action. There, a Ku Klux Klan leader was convicted of violating an Ohio law that prohibited speech advocating crime, sabotage, and violence. In discussing *Brandenburg*, Swers quoted the text of the Supreme Court’s opinion, which itself quotes the KKK leader verbatim: “Personally, I believe the nigger should be returned to Africa and the Jew returned to Israel.”⁵ The quote also appeared in a PowerPoint slide Swers presented to the class, which described the key facts and questions at issue in the *Brandenburg* case.

When students sent messages in the Zoom chat box stating that they were uncomfortable with Swers’ use of the epithet, Swers explained that she is also “uncomfortable using that language,” but “feel[s] from an educational standpoint that I owe it to you all to try and lay out these issues.”⁶ After the class ended, Swers sent a Canvas message to her students notifying them that she had removed the epithet from her PowerPoint.

On April 16, students in the class sent Swers a letter criticizing her use of the epithet and asking that she (1) apologize to the class, (2) review her presentation and lecture material for “potential bias,” and (3) demonstrate an “understanding of the history of the N-word and why it is inappropriate for a non-Black person to say it in any context, including an educational context.”⁷ A student also submitted a formal bias complaint to Georgetown’s Office of Institutional Diversity, Equity and Affirmative Action.⁸

On April 18, Swers sent an email to the class apologizing and stating that she had changed her curriculum for future semesters. During the class’s next meeting, Swers apologized again to the class and provided her students a Google form to share their thoughts.

Georgetown told *The Hoya* that it is investigating the matter.⁹

² GOVT-020-01 US Political Systems Spring 2021 - Spring 2021, GEORGETOWN UNIV., <https://bit.ly/3nRpCQk> (last visited Apr. 30, 2021).

³ Letter from Students of U.S. Political Systems to Swers, <http://bit.ly/3b0NATP> (last visited Apr. 30, 2021).

⁴ 395 U.S. 444 (1969).

⁵ *Id.*

⁶ Gabe Fleisher, *Professor’s Use of N-Word in Class Prompts Letter, Formal Complaint*, THE HOYA, Apr. 23, 2021, <https://thehoya.com/professors-use-of-n-word-in-class-prompts-letter-formal-complaint>.

⁷ Letter from Students of U.S. Political Systems to Michele Swers, *supra* note 3.

⁸ Fleisher, *supra* note 6.

⁹ *Id.*

II. Swers' Lecture Is Protected by Georgetown's Commitment to Academic Freedom

An investigation into Swers' pedagogically-relevant use of a racial epithet violates her pedagogical autonomy—protected by the basic tenets of academic freedom—to determine what material to teach and how it should be taught. These rights are protected by Georgetown's commitments to academic freedom and freedom of expression.

A. *Georgetown's Commitments to Academic Freedom Protect Swers' Choice to Quote an Epithet.*

As Georgetown is a private institution, the First Amendment does not compel it to grant faculty expressive freedoms. Nevertheless, Georgetown has made clear commitments to uphold its professors' right to freedom of expression and academic freedom. These commitments represent not only a moral obligation, but a contractually-binding legal duty on the part of the university.¹⁰

Georgetown's Faculty Handbook adopts the American Association of University Professors' 1940 Statement on Academic Freedom.¹¹ Georgetown further assures that its "commitment to academic freedom supports all faculty (and professional librarians) in research, teaching, and professional service in and beyond the University by protecting free inquiry and free expression."¹² The Faculty Handbook further provides that "[f]aculty enjoy academic freedom in . . . all the domains of their academic activity."¹³

Additionally, Georgetown has adopted a version of the University of Chicago's "Report of the Committee on Freedom of Expression," better known as the "Chicago Statement."¹⁴ Accordingly, Georgetown promises that "[d]eliberation or debate may not be suppressed because the ideas put forth are thought by some or even by most members of the University community to be offensive, unwise, immoral, or ill conceived."¹⁵

¹⁰ See *Preface*, FACULTY HANDBOOK, GEORGETOWN UNIV., <https://facultyhandbook.georgetown.edu/section1/a> ("The policies in this Faculty Handbook are the University's enunciation of the rights and responsibilities of faculty members, as approved by the Board of Directors. Faculty contracts make it explicit that those policies collected here form part of the contractual obligations of University and faculty.").

¹¹ GEORGETOWN UNIV., FACULTY HANDBOOK, <https://georgetown.app.box.com/s/ockilgo5adayspan6cisa8c08y6a6ewq>.

¹² *Id.*

¹³ *Id.*

¹⁴ Bill Rickards, *Georgetown University adopts 'Chicago Statement'*, FIRE, June 15, 2017, <https://www.thefire.org/georgetown-university-adopts-chicago-statement>; *Policy on Speech and Expression*, FACULTY HANDBOOK, *supra* note 11.

¹⁵ *Policy on Speech and Expression*, FACULTY HANDBOOK, *supra* note 11.

B. Academic Freedom Protects the Right to Discuss and Present Pedagogically-Relevant Material.

Academic freedom grants faculty members substantial breathing room to determine how to approach subjects and materials relevant to their courses.

These materials may include subjects that some, many, or most students find upsetting or uncomfortable, including discussion of America’s fraught and unresolved history of racism and discrimination. Faculty members confronting and examining that history must be free of institutional restraints in navigating these issues. Even express use of racial slurs in a pedagogically-relevant context is not uncommon. Princeton University, for example, defended a professor who used the word “nigger” in an anthropology course to discuss cultural and linguistic taboos.¹⁶ Law professors use it to teach the “fighting words” doctrine;¹⁷ journalism professors discuss how to tell stories that involve it;¹⁸ and sociology professors study the impact of the term in defining who is welcomed in various spaces.¹⁹

Although the First Amendment is not directly applicable to private universities, it provides a helpful baseline for faculty and students to determine what can be expected from universities—like Georgetown—that promise expressive rights.

In *Hardy v. Jefferson Community College*, the United States Court of Appeals for the Sixth Circuit unequivocally rejected “the argument that teachers have no First Amendment rights when teaching, or that the government can censor teacher speech without restriction” as “totally unpersuasive.”²⁰ There, a white adjunct instructor teaching “Introduction to Interpersonal Communication” lectured community college students about “language and social constructivism,” discussing how “language is used to marginalize minorities and other oppressed groups in society.”²¹ Students, solicited by the instructor for examples, suggested the words “lady,” “girl,” “faggot,” “nigger,” and “bitch.”²² The instructor’s use of those words as “illustrations of highly offensive, powerful language” was “clearly” relevant to his lecture exploring the “social and political impact of certain words,” and was not “gratuitously used . . . in an abusive manner.”²³

¹⁶ 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>.

¹⁷ 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/2017/2/9/free-speech-professor-takes-heat-using-racial-epit>.

¹⁸ 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>.

¹⁹ 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.

²⁰ 260 F.3d 671, 680 (6th Cir. 2001).

²¹ *Id.* at 674.

²² *Id.* at 675.

²³ *Id.* at 675, 679.

Finding that the instructor’s speech was protected, the Sixth Circuit held that expression, “however repugnant,” that is “germane to the classroom subject matter” constitutes speech on “matters of overwhelming public concern -- race, gender, and power conflicts in our society.”²⁴ Consequently, the college’s administrators were not entitled to qualified immunity because punishing the lecturer was “objectively unreasonable.”²⁵

Like the situation at Jefferson Community College, Swers’ vocalization of a racial epithet was germane to the classroom subject matter. Swers used the epithet in her lecture on free speech, while discussing the facts of a case that led to the establishment of important Supreme Court precedent concerning the outer boundaries of speech protected by the First Amendment. In using the epithet, she was quoting the words of the United States Supreme Court, which itself unflinchingly quoted the Klan leader’s remarks in order to evaluate what the First Amendment does and does not protect. The exact language used by the KKK leader was highly relevant to Swers’ lecture, laying bare the ugliness of the Klan leader’s remarks in order to demonstrate a core principle of the First Amendment in the leading case on the subject.

Because Swers’ use of the racial epithet is clearly protected by fundamental principles of academic freedom, the initiation of an investigation into the matter is itself a violation of Swers’ academic freedom, even if Georgetown ultimately imposes no formal discipline. Investigations into protected expression are an implicit threat of discipline and will have a chilling effect on faculty members’ willingness to confront challenging or difficult material.²⁶ That is an unacceptable result at an institution that makes clear commitments to protect its faculty’s academic freedom rights.

C. The Proper Response to Offensive Speech is More Speech.

Many students who were offended by Swers’ use of a racial epithet—regardless of its pedagogical relevance—took the appropriate approach: they wrote to Swers to express their opinion on the situation. In response to student feedback, Swers asked her students for more input on her teaching style and amended her materials and lesson plans based on their concerns. Although, to be clear, Swers is not obligated to change her approach because of others’ feedback, she made the decision, without institutional coercion, to seek student input and make her preferred changes.

This displays the role that *more speech*, the remedy for offensive expression that the First Amendment prefers to censorship, may play in influencing faculty members’ pedagogical choices.²⁷ Having of her own volition apologized to her students and amended her teaching

²⁴ *Id.* at 683.

²⁵ *Id.* at 675, 683.

²⁶ See, e.g., *Levin v. Harleston*, 966 F.2d 85, 89 (2d Cir. 1992) (public university’s investigation into a faculty member’s writings on race and intelligence violated the First Amendment).

²⁷ *Whitney v. California*, 274 U.S. 357, 377 (1927).

materials, Swers has resolved the situation without institutional action. There is nothing for Georgetown to investigate.

III. Georgetown Must End Its Investigation of Swers and Refrain From Punishing Her

Swers' use of an epithet when quoting a Supreme Court case is well within the breathing room afforded by academic freedom. That freedom does not shield the speaker from criticism, including by students, colleagues, and administrators. Criticism, after all, is a form of "more speech." However, academic freedom places firm limits on *how* Georgetown may respond.

FIRE calls on Georgetown to end its investigation of Swers and to expressly disclaim any intent to punish her over her protected expression. We request receipt of a response to this letter no later than the close of business on May 11, 2021.

Sincerely,



Sabrina Conza
Program Analyst, Individual Rights Defense Program

Cc: Rosemary Kilkenny, Vice President for Diversity, Equity & Inclusion and Chief
Diversity Officer
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