



May 15, 2019

VIA ELECTRONIC MAIL AND USPS

Dr. Claire E. Sterk
President
Emory University
408 Administration Building
201 Dowman Drive
Atlanta, Georgia 30322

Dear President Sterk:

Mr. Paul J. Zwier, a tenured professor of law in the Emory University School of Law with sixteen years of service to the institution, has sought the advice and assistance of the American Association of University Professors as a result of having been suspended from his academic responsibilities. Professor Zwier received notice of this action in a November 12 email message from James B. Hughes Jr. the interim dean of the law school, who wrote, "In accordance with Emory policy 4.72, you are being placed on Administrative Leave with pay pending an investigation into whether your repeated use of the N-word constitutes a violation of Emory's discriminatory harassment policy." He further stated, "I believe that your presence in the Law School at this time will be needlessly disruptive, and therefore respectfully request that you not attend Law School events and remain away from the building until further notice."

Professor Zwier has informed us that the law school administration did not consult a faculty body prior to making the decision to remove him from the classroom and banish him from Gambrell Hall, has not communicated to him the recommendations resulting from an investigation concluded by the Office of Equity and Inclusion in December, and has evidently extended the suspension through fall 2019, as his courses do not appear on the schedule for that term.

Our interest in Professor Zwier's case stems from our Association's longstanding commitment to fundamental tenets of academic freedom, tenure, and due process, as enunciated in the enclosed 1940 *Statement of Principles on Academic Freedom and Tenure*, the joint formulation of the AAUP and the Association of American Colleges and Universities. More than 250 scholarly societies and higher-education organizations have endorsed the 1940 *Statement*, including the Association of American Law Schools. We are pleased to note the prominent incorporation of the 1940 *Statement* in the university's *Statement of Principles Governing Faculty Relationships* ("Gray Book") and the decision of the Emory board of trustees to "accept the general principles and purposes embodied in" the 1940 *Statement*. Procedural standards derived from the 1940 *Statement* are set forth in the AAUP's *Recommended Institutional Regulations on Academic Freedom and Tenure* (also enclosed).

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Because of its damaging consequences for an affected faculty member's reputation and career, the AAUP has long regarded the suspension of a faculty member from his or her primary responsibilities to be a severe sanction, second only to dismissal, and has insisted that faculty members so sanctioned be afforded the protections of academic due process.

Under Regulation 5c(1) of the *Recommended Institutional Regulations*, if an administration seeks to impose a suspension with a dismissal potentially in prospect it can do so only in order to address a threat of "immediate harm" and only after consulting with an appropriate faculty body:

Pending a final decision by the hearing committee, the faculty member will be suspended, or assigned to other duties in lieu of suspension, only if immediate harm to the faculty member or others is threatened by continuance. Before suspending a faculty member, pending an ultimate determination of the faculty member's status through the institution's hearing procedures, the administration will consult with the Faculty Committee on Academic Freedom and Tenure [or whatever other title it may have] concerning the propriety, the length, and the other conditions of the suspension. A suspension that is intended to be final is a dismissal and will be treated as such.

If the facts of the case are as they have been reported to us, the action against Professor Zwier has directly contravened Regulation 5c(1). We have no information indicating that the administration consulted with a duly constituted faculty body regarding the appropriateness, the duration, or any other aspects of the suspension imposed upon Professor Zwier. Dean Hughes did not provide a reason for the suspension, which was clearly not necessitated because Professor Zwier constituted a threat to himself or others.

Most troubling from a procedural standpoint, the suspension has stood since November and will apparently continue through fall 2019. Professor Zwier has further informed us that he has received no word regarding its duration. The suspension thus appears to be indefinite. As the 1940 *Statement* notes, "A suspension which is not followed by either reinstatement or the opportunity for a hearing is in effect a summary dismissal in violation of academic due process" (Interpretive Comment No. 9).

The AAUP therefore regards the action against Professor Zwier as a summary dismissal, in disregard of the 1940 *Statement*. The AAUP has asserted this position in a number of cases, most recently in a highly publicized case at the University of Nebraska, which resulted in Association investigation and censure (see the enclosed report *Academic Freedom and Tenure: University of Nebraska*).

We are equally troubled by the serious substantive issues this case poses, as Professor Zwier has plausibly claimed that the action against him was effected in violation of his academic freedom.

The suspension was apparently imposed in response to two incidents (hence, the interim dean's reference to Professor Zwier's "repeated" use of the racial epithet), the first of which poses issues of academic freedom. According to Professor Zwier's account, this incident occurred on August 23, at the beginning of the fall 2018 semester, when he introduced the 1967 case of

Fisher v. Carrousel Motor Hotel, Inc. in his first-year torts class. He has informed us that he was lecturing on the “tort of offensive battery,” in particular, on how the choice of words “can massively impact potential legal claims.” The case concerns a black mathematician employed by NASA, who, when attending a conference in an Alabama hotel, was ejected from the dining room by an employee, who shouted that the establishment “would not serve a Negro.” Professor Zwier went on to suggest that the word actually used was not “Negro,” as recorded in the case brief, but the highly offensive racial epithet. We have nevertheless seen no evidence that Professor Zwier employed the word in question other than as an integral part of his pedagogical goals.

According to the understanding of academic freedom promulgated by the AAUP and widely accepted in American higher education, a faculty member’s classroom speech is protected. As the 1940 *Statement* famously declares, “Teachers are entitled to freedom in the classroom in discussing their subject.” With regard to racial epithets, the Association’s enclosed statement *On Freedom of Expression and Campus Speech Codes* asserts that “rules that ban or punish speech based upon its content cannot be justified. An institution of higher learning fails to fulfill its mission if it asserts the power to proscribe ideas—and racial or ethnic slurs, sexist epithets, or homophobic insults almost always express ideas, however repugnant. Indeed, by proscribing any ideas, a university sets an example that profoundly disservices its academic mission.”

Despite this wide latitude, a professor’s freedom of classroom speech is not boundless. The sentence from the 1940 *Statement* quoted above continues as follows: “they should be careful not to introduce into their teaching controversial matter which has no relation to their subject.” A faculty member’s academic freedom is also qualified by ethical obligations. Under the AAUP’s enclosed *Statement on Professional Ethics*, “As teachers, professors encourage the free pursuit of learning in their students. . . . Professors demonstrate respect for students as individuals and adhere to their proper roles as intellectual guides and counselors. . . . They avoid any exploitation, harassment, or discriminatory treatment of students.”

The facts available to us, however, indicate that Professor Zwier’s classroom speech was germane to the subject matter and accordant with standards of professional ethics. Its suppression is thus inimical to principles of academic freedom, with ramifications not only for Professor Zwier but for other faculty members and students in the law school. As the Association’s enclosed statement *Freedom in the Classroom* asserts, “Ideas that are germane to a subject under discussion in a classroom cannot be censored” because students might be offended. “Instruction cannot proceed in the atmosphere of fear that would be produced were a teacher to become subject to administrative sanction based upon the idiosyncratic reaction of one or more students. This would create a classroom environment inimical to the free and vigorous exchange of ideas necessary for teaching and learning in higher education.”

Most of the information we have received about this case has come to us from Professor Zwier, and we appreciate that you may have additional information that would contribute to our understanding of what has occurred. We would therefore welcome your comments. Assuming the essential accuracy of the foregoing account, we would urge that you immediately restore Professor Zwier to his professional responsibilities. If the administration intends to continue his

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suspension or to seek his dismissal, we would urge that he soon be afforded a hearing consistent with the provisions set forth in Regulation 5 of the *Recommended Institutional Regulations*. As we hope the foregoing has made clear, we regard Professor Zwier's classroom speech on August 23 as an illegitimate ground for dismissal or any other sanction.

We look forward to your timely response.

Sincerely,

A handwritten signature in black ink that reads "Gregory F. Scholtz". The signature is written in a cursive style and is positioned above the typed name.

Gregory F. Scholtz, Director
Department of Academic Freedom, Tenure, and Governance

Enclosures by electronic mail

Cc: Dr. Dwight A. McBride, Provost and Executive Vice President for Academic Affairs
Mr. James B. Hughes Jr., Interim Dean, Emory University School of Law
Professor Karen Hegtvedt, President, Faculty Senate
Professor Thomas Rogers, President, Emory University AAUP Chapter
Professor Robert M. Scott, President, Georgia AAUP Conference
Professor Paul J. Zwier