



February 23, 2021

Mark C. Reed, Ed.D., MBA
Office of the President
Saint Joseph's University
5600 City Avenue
Philadelphia, Pennsylvania 19131

URGENT

Sent via Electronic Mail (mark.reed@sju.edu)

Dear Dr. Reed:

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 the suspension of, and investigation into, Professor Gregory Manco by Saint Joseph's University (SJU) in response to posts on his personal Twitter account. While these posts—which do not involve any other member of the SJU community—may be offensive to some, they are an exercise of the right to “speak or write as citizens . . . free from institutional censorship or discipline” promised to him as a faculty member at SJU.

Accordingly, SJU's investigation into Manco violates the university's public promises to respect freedom of expression and academic freedom. We call on SJU to rescind Manco's suspension, cease its investigation, and reassure its faculty that it remains committed to the rights it promises to them.

I. After Complaints about Tweets, SJU Initiates an Investigation into Manco

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.

Manco has been teaching at SJU since 2005 and has been a visiting assistant professor of mathematics since 2007.

Manco maintains a personal Twitter account where he shares his thoughts on local, state, and national political and social issues. That account, @SouthJerzGiants, does not list his affiliation with SJU.

On February 19, 2021, a Twitter user shared screenshots of tweets from Manco’s personal account, including text identifying Manco as the operator of the account, tagging SJU, and asking: “this your mans?”¹ The accompanying screenshots depicted three of Manco’s tweets.

The first was a tweet in response to an Associated Press report² that President Joe Biden’s White House was “giving its support to studying reparations for Black Americans” following proposed legislation to establish a commission on the history of slavery and discriminatory government policies:³

Suppose your great-great-grandfather murdered someone. The victim’s great-great-grandson knocks on your door, shows you the newspaper clipping from 1905, and demands compensation from you. Your response?

Now get this racist reparation bullshit out of your head for good.

The second screenshot depicted an exchange with a member of the public—who has no discernible relationship to SJU—who had responded to the Associated Press tweet. That individual’s tweet responded: “While I’m heartened to hear of the African American community getting considered, they’re not the only ones who have suffered at the hands of white bigotry in this country. American Indian cultures have been hurt horribly as well.”⁴ Manco’s tweet—joining a dozen other individuals in responding—read: “Yet here you still are.”

The third tweet was in response to a tweet by the Vice President of the National Wildlife Federation concerning racism in the United States and a poll indicating that “56 percent of Americans say society is racist, while 44 percent disagree.”⁵

¹ karl marx (@conjoinedtopez), TWITTER (Feb. 19, 2021, 10:55 AM), <https://twitter.com/conjoinedtopez/status/1362792958513340416>.

² Kevin Freking, *Biden backs studying reparations as Congress considers bill*, ASSOCIATED PRESS, Feb. 17, 2021, <https://apnews.com/article/biden-study-reparations-congress-e3c045ece4d0e0eae393a18a09a4a37e>.

³ South Jersey Giants (@SouthJerzGiants), TWITTER (Feb. 17, 2021, 7:54 PM), <https://twitter.com/SouthJerzGiants/status/1362203789269348356>.

⁴ Elizabeth Redmond (@naturegall1954), TWITTER (Feb. 17, 2021, 6:51 PM), <https://twitter.com/naturegall1954/status/1362188070129438721>.

⁵ Mustafa Santiago Ali (@EJinAction), TWITTER (Feb. 18, 2021, 9:26 AM), <https://twitter.com/EJinAction/status/1362408082702290944>. See also, Tom Sykes, *WSJ/NBC News Poll: 56 Percent of American Voters Say America Is Racist*, DAILY BEAST, July 21, 2020, <https://www.thedailybeast.com/poll-shows-56-percent-of-american-voters-think-america-is-racist-two-months-after-george-floyds-killing>.

Manco's tweet responded:⁶

So if these numbers are true about peoples' perceptions of racism, what does it say about all of the race/bias "training" that has been going on for some years now?

Could it be that such training actually divides us and *worsens* race relations?

None of the screenshots depicted exchanges with any member of the SJU community, nor has Manco received any indication that there have been any complaints concerning his interactions with students or colleagues.

SJU responded to the complaint about Manco, thanking the Twitter user "for bringing this to our attention" and asserting that SJU was "looking into this immediately."⁷

On February 19, 2021, Manco was called into a Zoom meeting with Mathematics Department Chair Kristopher Tapp, College of Arts and Sciences Dean Shaily Menon, and Chief Human Resources Officer Zenobia Hargust. Manco was informed that he was being placed on paid leave pending an investigation into his tweets.

Later that day, Manco received a follow-up email from Hargust confirming that SJU was investigating "online postings . . . of a biased or discriminatory nature" and citing the "evolving nature of multiple student complaints" and the concern "about the impact on students in the classroom."⁸

Manco's students have also been told that Manco will not be returning to teach his courses for the remainder of the semester.

Manco has a meeting with Alexandra Morrison, SJU's Title IX Coordinator, today, February 23, at 1:30 PM, "to discuss next steps and answer any questions" about the investigation "regarding activity on [Manco's] Twitter account."⁹

⁶ South Jersey Giants (@SouthJerzGiants), TWITTER (Feb. 18, 2021, 12:07 PM), <https://twitter.com/SouthJerzGiants/status/1362448602862387202>.

⁷ Saint Joseph's University (@saintjosephs), TWITTER (Feb. 19, 2021, 11:09 AM), <https://twitter.com/saintjosephs/status/1362796474053058560>.

⁸ Email from Zenobia Hargust, Chief Human Resources Officer, to Gregory Manco, Feb. 19, 2021, 5:19 PM (on file with author).

⁹ Email from Alexandra Morrison, Director of the Office of Title IX Equity Compliance and Title IX Coordinator, to Manco, Feb. 22, 2021, 10:43 AM (on file with author).

II. SJU's Suspension and Investigation of Manco Violate Its Promises of Free Expression and Academic Freedom

In investigating Manco for extramural political expression, SJU defaults on the promises it makes to protect its constituents' freedom of expression. However offensive others may find the posts at issue, these posts are extramural speech, which SJU promises to protect.

A. *SJU Promises Freedom of Expression*

As SJU is a private institution, the First Amendment does not compel it to grant faculty expressive freedoms. Nevertheless, SJU has made clear commitments promising its faculty 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 college.

Most pertinent here is SJU's adoption of the American Association of University Professors' 1940 Statement on Academic Freedom, including its commitments that when professors "speak or write as citizens, they should be free from [university] censorship or discipline."¹⁰ This commitment is also recognized in SJU's "Interim Policy Prohibiting Discrimination, Harassment and Retaliation," which quotes the 1940 Statement and affirms that "Saint Joseph's strongly supports and protects the principle of academic freedom."¹¹

These are rights that inure to the benefit of *all* members of SJU's community. SJU makes clear, public commitments to uphold the expressive rights of faculty and students.¹² Eroding the rights of Manco represents a threat to the rights of all students and faculty at SJU.

B. *SJU's Commitments to Freedom of Expression Bind it to Refrain from Penalizing Extramural Expression*

These commitments form a legal obligation on the part of the university. The contractual relationship between a private educational institution and its faculty requires the institution to adhere to its commitments to free expression and academic freedom.¹³ These rights include the wide latitude given to faculty members to engage in extramural expression—that is, speech in their capacity as private citizens.

¹⁰ FACULTY HANDBOOK, SAINT JOSEPH'S UNIV. (updated August 2020) (on file with author).

¹¹ INTERIM POLICY PROHIBITING DISCRIMINATION, HARASSMENT AND RETALIATION, SAINT JOSEPH'S UNIV. (updated August 2020), <https://sites.sju.edu/humanresources/files/2018/09/Policy-Prohibiting-Discrimination-Harassment-and-Retaliation.pdf>.

¹² POLICY ON ASSEMBLY AND EXPRESSION, ST. JOSEPH'S UNIV., (approved Feb. 20, 2020), https://sites.sju.edu/humanresources/files/2020/08/Mandate-for-Assembly-and-Expression-Amended-and-Approved-2.20.20.docx#_ga=2.84085721.1103720553.1613766501-509005551.1613766501 (making clear that "members of the University community" may "assemble and express views on campus" and "are free to . . . take positions on issues").

¹³ See, e.g., *McAdams v. Marquette Univ.*, 914 N.W.2d 708 (Wis. 2018) (a private university breached its contract with a professor over a personal blog post because, by virtue of its adoption of the 1940 AAUP Statement of Principles on Academic Freedom and Tenure, the post was "a contractually-disqualified basis for discipline").

A recent decision from the Wisconsin Supreme Court is illustrative in explaining the contours of extramural freedom and their binding nature in the context of private institutions.¹⁴ Marquette University, a private Catholic university, had adopted the 1940 AAUP Statement of Principles on Academic Freedom—the same statement adopted by SJU.¹⁵ A member of the faculty, aggrieved by a graduate student instructor’s exchange with a student about whether LGBTQ rights were an “appropriate” topic of class discussion, criticized the instructor on his personal blog, providing a link to the instructor’s contact information and assailing her attitude as “totalitarian.”¹⁶ The university punished the professor, citing the blog post as falling short of the university’s “standards of personal and professional excellence”¹⁷

The university’s commitment to academic freedom rendered the blog post “a contractually-disqualified basis for discipline.”¹⁸ Citing the AAUP’s *amicus curiae* brief,¹⁹ the court explained that “the doctrine of academic freedom comprises three elements: teaching; research; and extramural comments.”²⁰ The blog post, an “expression made in [the professor’s] personal, not professorial, capacity,” fell into the “extramural” category.²¹ Such remarks are protected under a commitment to academic freedom unless the remark “clearly demonstrates the faculty member’s unfitness for his or her position” in light of their “entire record as a teacher and scholar.”²² This “stringent standard” is “[s]o strict, in fact, that extramural utterances rarely bear upon the faculty member’s fitness for the position.”²³

Similarly, a federal court applying these standards to a professor’s *on-campus* protests explained that the 1940 Statement’s protection of extramural expression was “intended to assure a professor his full measure of [F]irst [A]mendment rights,” reasoning that a university’s interests in regulating faculty expression wane considerably outside of the classroom.²⁴

In sum, Manco’s extramural expression is protected against institutional discipline or censorship unless it falls into an unprotected category of speech.

¹⁴ *Id.*

¹⁵ *Id.* at 730.

¹⁶ *Id.* at 713–14.

¹⁷ *Id.* at 714.

¹⁸ *Id.* at 737.

¹⁹ Brief for AAUP as Amicus Curiae Supporting Plaintiff–Appellant, *McAdams v. Marquette University*, 914 N.W.2d 708 (Wis. 2018), available at https://www.aaup.org/sites/default/files/McAdams_Marquette_Feb2018.pdf.

²⁰ *McAdams*, 914 N.W.2d at 730.

²¹ *Id.*

²² *Id.* at 731–32, citing AAUP, POLICY DOCUMENTS AND REPORTS, COMMITTEE A STATEMENT ON EXTRAMURAL UTTERANCES 31 (11th ed. 2014)).

²³ *Id.* at 732 (cleaned up).

²⁴ *Adamian v. Jacobsen*, 523 F.2d 929, 934 (9th Cir. 1975).

C. *Manco's Tweets Are Protected Extramural Expression.*

As evidenced by students submitting complaints, some who saw Manco's tweets found them offensive. However, whether speech is protected is "a legal, not moral, analysis,"²⁵ and Manco's tweets do not fall into an unprotected category of speech, as there is no exemption for speech on the basis that others find it disagreeable, offensive, or outrageous.

Expression may not be restricted merely because some or even many find it to be offensive or disrespectful. This core First Amendment principle is why the authorities cannot ban the burning of the American flag,²⁶ prohibit the wearing of a jacket emblazoned with the words "Fuck the Draft,"²⁷ penalize cartoons depicting a pastor losing his virginity to his mother in an outhouse,²⁸ or disperse civil rights marchers out of fear that "muttering" and "grumbling" white onlookers might resort to violence.²⁹ In ruling that the First Amendment protects protesters holding signs outside of soldiers' funerals (including signs that read "Thank God for Dead Soldiers," "Thank God for IEDs," and "Fags Doom Nations"), the Court reiterated this fundamental principle, remarking that "[a]s a Nation we have chosen . . . to protect even hurtful speech on public issues to ensure that we do not stifle public debate."³⁰

SJU's policies are in accord. In addition to its robust commitments to freedom of expression broadly and its adoption of the 1940 Statement, SJU's harassment policy provides that it "shall not be construed or applied to restrict academic freedom at the University, nor shall it be construed to restrict constitutionally protected expression, even though such expression may be offensive, unpleasant, or even hateful."³¹

Manco's tweets fall well within these protections, even if others find them "offensive, unpleasant, or even hateful."³² His comments were extramural, taking place outside of the classroom and SJU's campus, and do not amount to discriminatory conduct. The tweets were not directed at members of the SJU community.

²⁵ *Animal Legal Def. Fund v. Reynolds*, 353 F. Supp. 3d 812, 821 (S.D. Iowa 2019).

²⁶ *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (burning the American flag was protected by the First Amendment, the "bedrock principle underlying" the holding being that government actors "may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable").

²⁷ *Cohen v. California*, 403 U.S. 15, 25 (1971).

²⁸ *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 50 (1988).

²⁹ *Cox v. Louisiana*, 379 U.S. 536, 557 (1965).

³⁰ *Snyder v. Phelps*, 562 U.S. 443, 448, 461 (2011).

³¹ INTERIM POLICY PROHIBITING DISCRIMINATION, HARASSMENT AND RETALIATION, SAINT JOSEPH'S UNIV. (updated August 2020), <https://sites.sju.edu/humanresources/files/2018/09/Policy-Prohibiting-Discrimination-Harassment-and-Retaliation.pdf>.

³² *Id.*

III. SJU Must Cease Its Investigation into Manco

SJU makes laudable commitments to defend its constituents' freedom of expression. Those commitments require it to refrain from utilizing its disciplinary system as a means of addressing speech that others—whether within or outside of the SJU community—find objectionable. Doing so will have an impermissible chilling effect, even if SJU ultimately imposes no formal discipline.³³ That is an unacceptable result at an institution that promises its students and faculty expressive rights.

Accordingly, we call on SJU to immediately disband its investigation and rescind Manco's suspension. We request receipt of a response to this letter no later than the close of business on Friday, February 26, 2021.

Sincerely,



Sabrina Conza
Program Analyst, Individual Rights Defense Program

Cc: Zenobia Hargust, Chief Human Resources Officer
Alexandra Morrison, Director, Office of Title IX and Equity Compliance

Encl.

³³ See, e.g., *Levin v. Harleston*, 966 F.2d 85, 89 (2d Cir. 1992) (university's investigation into a faculty member's writings on race and intelligence violated the First Amendment).

Authorization and Waiver for Release of Personal Information

I, Gregory Manco, do hereby authorize Saint Joseph's University (the "Institution") to release to the Foundation for Individual Rights in Education ("FIRE") any and all information concerning my employment, status, or relationship with the Institution. This authorization and waiver extends to the release of any personnel files, investigative records, disciplinary history, or other records that would otherwise be protected by privacy rights of any source, including those arising from contract, statute, or regulation. I also authorize the Institution to engage FIRE and its staff members in a full discussion of all information pertaining to my employment and performance, and, in so doing, to disclose to FIRE all relevant information and documentation.

This authorization and waiver does not extend to or authorize the release of any information or records to any entity or person other than the Foundation for Individual Rights in Education, and I understand that I may withdraw this authorization in writing at any time. I further understand that my execution of this waiver and release does not, on its own or in connection with any other communications or activity, serve to establish an attorney-client relationship with FIRE.

If the Institution is located in the State of California, I request access to and a copy of all documents defined as my "personnel records" under Cal. Ed. Code § 87031 or Cal. Lab. Code § 1198.5, including without limitation: (1) a complete copy of any files kept in my name in any and all Institution or District offices; (2) any emails, notes, memoranda, video, audio, or other material maintained by any school employee in which I am personally identifiable; and (3) any and all phone, medical or other records in which I am personally identifiable.

This authorization and waiver does not extend to or authorize the release of any information or records to any entity or person other than the Foundation for Individual Rights in Education, and I understand that I may withdraw this authorization in writing at any time. I further understand that my execution of this waiver and release does not, on its own or in connection with any other communications or activity, serve to establish an attorney-client relationship with FIRE.

I also hereby consent that FIRE may disclose information obtained as a result of this authorization and waiver, but only the information that I authorize.

DocuSigned by:

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Signature

2/22/2021
Date