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November 25, 2021

Dear Dean Spanbauer,

The Academic Freedom Alliance (AFA) is a coalition of faculty members from across the country and across the ideological spectrum who are committed to upholding the principles of academic freedom and professorial free speech.

We are disturbed by the University of Illinois's handling of complaints involving Professor Jason Kilborn, which have reasonably been characterized as a "[witch hunt](#)." As you know, the [controversy began](#) in December 2020 when Professor Kilborn included on his final exam in a civil procedure class a hypothetical involving redacted slurs. This spurred a student protest and additional accusations against Professor Kilborn. He was suspended without adequate process or justification, and a university investigation found most of the allegations against him to be meritless. The law school reached an agreement with Professor Kilborn that would allow him to resume his professional activities on a basis that both sides found acceptable, but students have [continued to call](#) for sanctions against him and the law school has failed to adhere to its own agreement. He has been denied the annual raise provided to all of his colleagues despite his positive job evaluation, and the law school has imposed new demands that he complete sensitivity training before fully resuming his duties.

I write on behalf of the Academic Freedom Alliance to express our firm view that these disciplinary actions directed toward Professor Kilborn are an egregious violation of his academic freedom. This interpretation and application of the university's harassment policy would conflict with longstanding principles of academic freedom embraced by American universities, and it would be in breach of the University of Illinois's own stated commitment to academic freedom.

The University of Illinois at Chicago guarantees academic freedom for its faculty. The [faculty handbook](#) clearly states that professors "are entitled to freedom in the classroom in developing and discussing – according to their areas of competence – the subjects that they are assigned." The only qualification on this freedom that the university recognizes is that faculty must teach "in a manner consistent with the scheduled time, course content, and course credit as approved by the faculty." Moreover, the Board of Trustees for the University of Illinois system have recognized that speech that is protected under the First Amendment must be secured even when it might "cause ill will and harm within an organization as large and diverse as ours" and that such "ill will" is the "price to be paid for a steadfast loyalty to free speech." The federal courts have specifically recognized that classroom speech by professors is constitutionally protected. *Keyishian v. Board of Regents*, 385 U.S. 589 (1967); *Hardy v. Jefferson Community College*, 260 F.3d 671 (6<sup>th</sup> Cir. 2001). The United States Court of Appeals for the Sixth Circuit just months ago emphatically reaffirmed that the First Amendment does not tolerate state actions



“that cast a pall of orthodoxy over the classroom” or that “stifles a professor’s viewpoint on a matter of public import.” Quite simply, “the First Amendment protects the free-speech rights of professors when they are teaching.” *Meriwether v. Hartop*, No. 20-3289, slip op. at 13 (6<sup>th</sup> Cir. 2021).

As the AAUP has elaborated on the implications of this freedom to teach, it has repeatedly emphasized that classroom discussions of the type at issue here are well within the bounds of the principles of academic freedom to which Illinois has contractually committed itself and that are generally accepted within the profession. The AAUP’s [1994 report on freedom of expression](#) firmly concluded that it would be a breach of professional ethics and outside the bounds of academic freedom for a professor to ridicule or harass a student in the classroom, but that such “verbal assaults” had to be sharply distinguished from the expression of hateful ideas, including the words that are used to express those ideas. Offensive speech must sometimes be used in the classroom, and it is subversive of the protection of freedom of classroom teaching to depart from established legal standards of harassment to proscribe frank classroom discussions of the ideas, words and behaviors that might be used to harass. Likewise, the AAUP’s [2007 report on freedom in the classroom](#) emphasized that “ideas that are germane to a subject under discussion in a classroom cannot be censored because a student with particular religious or political beliefs might be offended.” It would be “inimical to the free and vigorous exchange of ideas necessary for teaching and learning in higher education” if professors could be sanctioned because of the reaction of one or more students to the words and ideas being discussed.

For the University of Illinois at Chicago to retaliate against and sanction Professor Kilborn for constitutionally and contractually protected classroom speech would be a grave violation of academic freedom. The Academic Freedom Alliance stands firmly behind Professor Kilborn in this matter, calls on the University of Illinois at Chicago to adhere to its academic freedom principles and to abandon any conditions on his full return to his academic duties, and to publicly and emphatically reaffirm that professors at the university are free to conduct classroom discussions and to draft class exams that engage relevant but controversial language and materials.

Sincerely,

A handwritten signature in black ink, appearing to read "KW", with a long, sweeping horizontal line extending to the right.

Keith Whittington  
Chair, Academic Committee, Academic Freedom Alliance  
William Nelson Cromwell Professor of Politics, Princeton University



cc. Michael D. Amiridis, Chancellor  
Thomas R. Bearrows, University Counsel  
Javier Reyes, Provost and Vice Chancellor of Academic Affairs  
Donald J. Edwards, Chair, Board of Trustees  
Donald Wink, Chair of the Executive Committee of the Faculty Senate  
Jason Kilborn, Professor of Law