



July 16, 2020

Dr. Michael R. Lovell
Marquette University
P.O. Box 1881
Milwaukee, WI 53233-1881

via email: president@marquette.edu

Dear Dr. Lovell:

I am writing to express my concerns regarding the university's commitment to diversity of thought and inclusion on campus. A series of recent reports suggest that some members of the university community are discriminated against based on First Amendment expressions, and that the university has begun to tolerate the emergence of a mob-like, cancel culture on campus.

These issues are deeply personal to me for several reasons. First, I am a proud Marquette graduate. The university I know and love – the one that I attended 30 years ago – welcomed me and others with open arms. It was a place of great debate and robust conversation, and where my mind was opened to a wide array of opinions and perspectives on the world. Campus was filled with interesting people from all walks of life, who each brought with them very unique takes on current events and the subjects we studied in the classroom. Students were generally kind to each other. My professors challenged me to think critically and to always be open-minded to a new way of thinking. That rich experience helped instill in me a deep commitment to curiosity and a free society in which diverse points of view can flourish.

Not only is the Marquette campus better off with a wide array of perspectives, but so is our country. To that end, I have spent the better part of the last decade working to make life better for others by litigating to protect our fundamental, constitutional rights. Ten years ago, I co-founded the Liberty Justice Center, a national, public interest law firm that specializes in First Amendment and free speech litigation. We are best known for helping free non-union public sector workers from paying forced union fees in *Janus v. AFSCME*, 138 S. Ct. 2448 (2018) and just this month helping children attending religious schools receive publicly fund vouchers to help pay for their education. *Espinoza v. Montana*, No. 18-1195 (U.S. June 30, 2020) (Alito, J., concurring), slip. op. at 2 (citing Liberty Justice Center brief). I would be remiss if I did not mention that my staff includes several other Marquette graduates who share my feelings for our alma mater.

My colleagues and I have followed very closely reports regarding incoming freshman Samantha Pfefferle and allegations that her admission to the university was jeopardized as a result of her First Amendment expressions outside of campus. Our understanding is that another student drew attention to Ms. Pfefferle's online posts, she was accused of possessing "discriminatory" points of view, and that this other student then waged a campaign to petition university officials to revoke Ms. Pfefferle's admission. As a result, Ms. Pfefferle has received numerous death threats and other threatening messages.

Ms. Pfefferle has indicated in published reports that she was questioned by admissions officials about online videos expressing her views on politics and public policy matters and led to believe her admission to the university was in jeopardy. According to Ms. Pfefferle, an admissions official asked about her image on campus, her reputation as a result of her videos and how students who hold different points of view would feel if she was present on campus. My firm has not observed or been made aware of any instances of students who hold opposing points of view to Ms. Pfefferle being treated in remotely the same manner.

This circumstance is disturbing on numerous fronts. First, "the quality and creative power of student intellectual life to this day remains a vital measure of a school's influence and attainment. For the University . . . to cast disapproval on particular viewpoints of its students risks the suppression of free speech and creative inquiry in one of the vital centers for the Nation's intellectual life, its college and university campuses." *Rosenberger v. Rector & Visitors of the Univ. of Va.*,

515 U.S. 819, 835-36 (1995). Here, Marquette's actions disapproving an admitted student's viewpoint suppresses free speech and inquiry not only for this student, but for all other students who see clearly now the real risks of speaking up for their convictions.

Not only does such suppression run against the first principles of free speech, but it may violate the students' legal rights. University policies and handbooks are part of the contract between a student and the university. *Sund Park v. Ind. Univ. Sch. of Dentistry*, 692 F.3d 828, 830-31 (7th Cir. 2012); *McAdams v. Marquette University*, 2018 WI 88, ¶¶ 4-5. Marquette has made several commitments to students that guarantee their free speech. Marquette's mission statement states, "[W]e are firmly committed to academic freedom."¹ The University's guiding values also promise "an inclusive, diverse community that fosters . . . vigorous yet respectful debate."²

The American Association of University Professors, which Marquette recognizes as the source of its definition of academic freedom, see *McAdams* at ¶ 63, states that "[s]tudents and student organizations should be free to examine and discuss all questions of interest to them and to express opinions publicly and privately." *Joint Statement on Rights and Freedoms of Students*, Student Affairs § 2.a.³ This right of academic freedom is violated when a student experiences retaliation because she publicly shares her political beliefs. See *id.* at Off-campus Freedom of Students § 1.

Second, Marquette University has adopted a handbook provision which provides, "[T]he spirit of inquiry and challenge that the university seeks to encourage will produce many conflicts of ideas, opinions and proposals for action. The university community recognizes its responsibility to provide effective channels for internal communication, free discussion and rational persuasion as the normal and preferred means of airing and reconciling such differences."⁴ The policy goes on to recognize "the right of the members of the university community freely to communicate . . . the positions that they conscientiously espouse on vital issues of the day."

Finally, Marquette may risk its eligibility for continued program funding if it discriminates based on political beliefs. For instance, the U.S. Department of Agriculture prohibits "institutions participating in or administering USDA programs . . . from discriminating based on . . . political beliefs . . . in any program or activity conducted or funded by USDA."⁵ Various colleges within Marquette have accepted USDA grants.⁶ If a Marquette student enrolled in those departments experienced discrimination based on political beliefs, the loss of the opportunity to participate in those programs could put Marquette at risk for a federal civil rights complaint.

Moreover, I am left to wonder what would have become of Ms. Pfefferle's admission if she didn't have the courage to speak to the press. What will happen to others seeking a Marquette education — who like Ms. Pfefferle simply prefer a political candidate in opposition to the mob — and who don't have the power to speak? I hope it never comes to that again, but if it does please know that the Liberty Justice Center will be there to speak (and litigate) on their behalf.

I hope this letter inspires the university to think critically about what type of behavior is tolerated amongst its student body and how the university can reinforce and live out its commitment to diversity and inclusion of all — not just those who possess a particular point of view.

Sincerely,



Patrick J. Hughes
President and co-founder

Marquette University Class of 1991

cc: Brian Troyer, Dean of Undergraduate Admissions, brian.troyer@marquette.edu

¹ Available online at <https://www.marquette.edu/about/mission.php>.

² Available online at <https://www.marquette.edu/about/mission.php>.

³ Available online at <https://www.aaup.org/report/joint-statement-rights-and-freedoms-students>.

⁴ Available online at <https://www.marquette.edu/student-development/policies/demonstrations.php>.

⁵ Available online at <https://www.usda.gov/non-discrimination-statement>.

⁶ Available online at <https://www.marquette.edu/biology/research.php>; <https://www.marquette.edu/education/documents/hartman-center-summer-food-program.pdf>.