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November 17, 2016

President James M. Smith  
Office of the President  
202 Welch Hall  
Ypsilanti, Michigan 48197  
[president@emich.edu](mailto:president@emich.edu)

VIA EMAIL AND FIRST CLASS MAIL

Re: Request to stop expulsion proceedings of African American activists protesting racism at Eastern Michigan University

Dear President Smith:

The American Civil Liberties Union of Michigan calls upon Eastern Michigan University to immediately abandon the expulsion proceedings against the brave African American students at EMU who were peacefully protesting the rash of racist graffiti that has plagued EMU's campus this fall. Public universities should be places where students are encouraged to engage in the political process and where protection of the free exchange of ideas is at its zenith. Instead of threatening to expel these students, the University should thank them for standing up in the face of an environment of hate and working to make EMU a more welcoming place for students of color.

### Facts

We have consulted with students and faculty at EMU and leaders of civil rights groups on campus. Leading up to and following the presidential election, there has been a scourge of racist incidents at college and high school campuses across the country. EMU has been hit particularly hard in this respect, with racist graffiti spray painted repeatedly on campus buildings and dorms, including racial slurs demanding that black students leave and "KKK." Students of color and religious and ethnic minorities feel like they are under siege, unsafe and unwelcome on campus.

Rather than accept the racially hostile environment on campus as the status quo, students of color and allies, in the best American tradition, began to organize and demonstrate. Among the protests was one used by college students for generations: a sit-in. While students at other campuses often sit-in a university president's office for multiple days or try to take over an administration building, the EMU organizers simply opted to have a peaceful sit-in in the student center. Students marched into the center and, after chanting for a short period, settled in to do

homework and talk. When the student center closed, half the students left at the request of the campus police and the other half stayed until the morning and left without incident.<sup>1</sup>

In response to this harmless protest against hate and racial intolerance, EMU has singled out four African American students who helped organize the sit-in for expulsion proceedings. The University exercised its discretion to forego discipline of the rest of the protestors.

### **EMU Should Immediately Drop the Expulsion Proceedings**

There are at least four reasons the university should stop the disciplinary proceedings. First, the university has a legal duty under both federal and state law to ensure that students of color are not subjected to a racially hostile educational environment. 42 U.S.C. § 2000d; M.C.L. § 37.2402. Obviously, the horribly racist graffiti spray painted on school buildings and dorms can create a hostile learning environment for students of color. The administration can, and has, taken some steps to ameliorate this condition through its statements and various programs that it is sponsoring. However, whether a racially hostile environment exists depends on the totality of the circumstances. One of the factors that must be considered is the manner in which the University targeted for expulsion hearings the African American leaders of a peaceful sit-in in the student center to protest the racist graffiti. It is reasonable for students of color to conclude that the university singled out the leaders of a civil rights action and threw the book at them in order to deter others from engaging in similar anti-racist activism. This is especially true if the university has a history of exercising its discretion by declining to institute expulsion hearings against students who violate other university rules. At a minimum, bringing disciplinary proceedings against the black activists under these circumstances undermines the efforts the university is taking to make students of color to feel welcome.

Second, free speech on campus enjoys “a special concern of the First Amendment.”<sup>2</sup> As the Supreme Court has stated, “[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools”<sup>3</sup> because “[t]he Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth ‘out of a multitude of tongues.’”<sup>4</sup> Furthermore, in situations such as these where students seek to engage in “interactive communication concerning political change,” First Amendment protections are “at its zenith.”<sup>5</sup>

There is no question that there is no more important issue today at universities, and indeed, in the country, than the growing intolerance to racial, religious and ethnic minorities.

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<sup>1</sup> See <http://www.freep.com/story/news/local/michigan/2016/11/09/eastern-michigan-students-face-punishment-peaceful-protest/93547840/?hootPostID=2610c761cf667de1e7ba4c8ee3dd1521>.

<sup>2</sup> *Keyishian v. Board of Regents of University of State of N. Y.*, 385 U.S. 589, 603, 87 S.Ct. 675, 683 - 684 (1967).

<sup>3</sup> *Id* (quoting *Shelton v. Tucker*, 364 U.S. 469, 487, 81 S.Ct. 247 (1960)).

<sup>4</sup> *Id*.

<sup>5</sup> *Buckley v. American Constitutional Law Foundation, Inc.* 525 U.S. 182, 186-187, 119 S.Ct. 636, 639 - 640 (1999) (quoting *Meyer v. Grant*, 486 U.S. 414, 422, 425, 108 S.Ct. 1886, 100 L.Ed.2d 425 (1988)).

One need only open the paper or put on the radio to hear about the latest racist verbal and physical assaults on students in colleges and high schools. If ever there was a time when voices against intolerance and hate crimes should be welcomed on campus it is now.

Third, the university's justification for expelling the students is baseless. A university spokesperson, in explaining the charges against the students for not leaving the building at closing, claimed that EMU had "no choice." According to the Detroit Free Press, he said, "It's the student code. You can't pick and choose" what to enforce.<sup>6</sup> However, its beyond dispute that police, prosecutors, government officials and university administrators have the discretion not to enforce rules or laws when justice so requires. This week, thousands of demonstrators in Grand Rapids violated city ordinance by demonstrating in the streets without the police making a single arrest.<sup>7</sup> Similarly, thousands of University of Michigan students violated university rules and Ann Arbor law this week when they walked out of class, engaged in loud protests in the halls, and then purposely halted traffic to protest the president-elect and the attacks on minorities on campus; yet, there is no discipline planned, much less expulsion proceedings.<sup>8</sup> Tens of thousands of University of Iowa fans stormed a football field on Saturday night in violation of university rules, but no disciplinary action is planned.<sup>9</sup> Indeed, even EMU exercised discretion in this instance by deciding to move to expel only certain leaders of the sit-in and not all students who remained in the student center after closing time. EMU clearly has discretion to drop the expulsion charges. Again, if ever there was a time that justice required an exercise of such discretion, the time is now.

Finally, if EMU cares about attracting a diverse student body, prosecuting these students is a public relations disaster. It is bad enough that people are painting "KKK" and threatening racial epithets on campus buildings and EMU cannot catch the perpetrators. But to top that off, the administration is insisting on expelling African American students for leading a harmless, non-disruptive sit-in as a response to the hate. People of color and religious and ethnic minorities do not feel safe on campus and are traumatized. Your response is viewed as callous and may scare away hundreds of prospective students of color who might otherwise consider EMU.

We truly hope you will do the right thing and listen to the hundreds of students and faculty members who are pleading with you to drop the charges.

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<sup>6</sup> See <http://www.freep.com/story/news/local/michigan/2016/11/09/eastern-michigan-students-face-punishment-peaceful-protest/93547840/>.

<sup>7</sup> See [http://www.mlive.com/news/grand-rapids/index.ssf/2016/11/2000\\_protestors\\_take\\_over\\_gran.html](http://www.mlive.com/news/grand-rapids/index.ssf/2016/11/2000_protestors_take_over_gran.html).

<sup>8</sup> See [http://www.mlive.com/news/ann-arbor/index.ssf/2016/11/thousands\\_fill\\_halls\\_streets\\_a.html](http://www.mlive.com/news/ann-arbor/index.ssf/2016/11/thousands_fill_halls_streets_a.html).

<sup>9</sup> See <http://www.usatoday.com/story/sports/ftw/2016/11/13/an-incredible-amount-of-fans-rushed-the-field-after-iowa-upset-michigan/93755776/>.

Very truly yours,

A handwritten signature in black ink, appearing to read 'M.J. Steinberg', with a stylized flourish at the end.

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