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**INTERVIEWER:** And the saga over academic freedom at St. Paul's Hamline University continues with the professor at the center of it filing suit against the school. Professor Erika López Prater announced yesterday she's suing Hamline for defamation and religious discrimination. The small liberal arts university, in a campus-wide email, called López Prater's decision to show artwork depicting the prophet Muhammad in her fall course Islamophobic. That's after a Muslim student complained. López Prater's attorney says, the scholar has been associated with that word, "Islamophobic," in the international news cycle, and that has hurt her career goal of one day becoming a tenured college professor.

Here to help us understand the lawsuit is a legal expert. Jane Kirtley is the Silha Professor of Media Ethics and Law at the University of Minnesota's Hubbard School of Journalism. Welcome back, professor. Nice to hear your voice.

**JANE KIRTLEY:** Thank you.

**INTERVIEWER:** The suit makes several complaints against Hamline, and the first is that the school violated the professor's religious freedom under the Minnesota Human Rights Act. Do you think that law applies in this case?

**JANE KIRTLEY:** It's interesting, isn't it, to see this law used in this context? One would normally think the situation would be reversed, and the lawsuit would have been brought by the student, who was offended by the classroom content. I think, it's an interesting question because essentially, what she's arguing is that Hamline has established sort of a prior or a hierarchy of different kinds of religions, and that because she's not Muslim, she's being disadvantaged in the way she teaches her course.

**INTERVIEWER:** You, of course, are a defamation expert. Another claim is that the school defamed the professor by describing her actions as Islamophobic and intolerant. How does defamation fit with the situation as this-- like this one?

**JANE KIRTLEY:** Well, this is a really interesting question because, as a general rule, using just an epithet to describe somebody is not considered to be defamatory in the sense that it can be the basis of a libel suit. It's an expression of opinion. And so, old cases about calling somebody a communist, for example, in the current view. This would not constitute libel.

I think, the key question here is going to be what the factual basis is underpinning this accusation of Islamophobia. If you look at the lawsuit, there's a dispute here about what the professor did and the way Hamline characterized it. If those facts are not found to be truthful or an accurate, then the expression of opinion might not be protected under our libel law.

**INTERVIEWER:** What happens if the professor can prove damage, that she's not-- she can't be hired as a tenured professor because of this?

**JANE KIRTLEY:** Well, if this is not libel, per se, libel on the face of it, then she has to prove some kind of damages in order to be able to prevail in a libel suit. In the complaint, she alleges a number of different ways that she has been and expects to be damaged in the future, particularly in the context of being hired at other universities in the future. That will help determine what the calculation for the monetary damages would be, but at this point, all she really has to do is allege that she has suffered damages. It would be up to the trial court to decide whether she really did sustain those damages as a result of Hamline's communications.

**INTERVIEWER:** If you-- as you look at this, how strong, in your opinion, are the claims in the suit?

**JANE KIRTLEY:** I think, they're pretty strong. We have a very interesting situation here, where there's a conflict between academic freedom and a [INAUDIBLE] against the student's alleged religious concerns. Contract is a big deal here, and it's no surprise that they are claiming violation of the contract because Hamline is not a state university, it's not bound by the First Amendment, but it is bound by whatever its contracts say. And if its contracts say, for example, that it supports academic freedom, and the professor is successful in arguing that this is the antithesis of supporting academic freedom, it's really possible that she could prevail on some of the counts of her lawsuit.

**INTERVIEWER:** What can professors and universities learn from this situation?

**JANE KIRTLEY:** Well, I think, first thing is that, of course, we always have to be sensitive to the concerns of our students and listen to what they have to say, but unfortunately, to me, this situation suggests an instance of what we call the "heckler's veto," where someone who is unhappy with some kind of expressive activity basically plays the trump card of shutting the speaker down. Every university deals with this-- in the classroom, on the speaker's podium, everywhere-- and they really have to make up their mind about how they're going to balance, again, these complimentary interests of protecting the student in reasonable circumstances, but also ensuring that a university can really be a marketplace of ideas. Because whether it's a state school or a private school, if that school says we embrace the notion of academic freedom, then you have to protect the ability of not just faculty, but students and other speakers to express controversial ideas, and recognize that, that may be distressing to some students, but the way to deal with that is not to shut down that speech, but to provide opportunities for those with opposing viewpoints to be heard.

**INTERVIEWER:** As a person who spends a lot of time thinking about free speech and academic freedom and defamation and libel, what about this story is the most interesting thing to you?

**JANE KIRTLEY:** I think, what I find most interesting is that this is an instance, at least based on what I know about this case, where the professor really went out of her way to provide warnings, alerts to the students about what the content of the class would be, what her academic rationale was for including it, and giving students a chance to opt out. I think, she did everything anyone reasonably could have expected her to have done, and if that's not enough, in the face of a student, who I'm sure, sincerely is really offended, then I don't know where that leaves other professors when you're trying to balance legitimate pedagogical concerns against the sensitivity of students. So that, to me, is going to be the most interesting calculation that will come out of this case.

**INTERVIEWER:** I wonder, what other universities, what they'll be looking for here when it comes to this case, to your point, maybe changing policy, perhaps.

**JANE KIRTLEY:** Well, I think, again, to me, a university, first and foremost, has to be about the free exchange of ideas. And I think it's really important to, as part of the educational mission, to explain that to students, and to tell them-- you are going to encounter ideas here that are alien to you, that you've never heard before. You may find them really offensive, and you have a right to be offended, but you don't have a right to shut down that discussion. Make a better argument, make the better case, and if you're hearing bad ideas, counter them with better ideas. That is a critical part of an educational mission, I think, and unfortunately, I think some universities, are not doing that as vigorously, as I think they should.

**INTERVIEWER:** Always a pleasure talking to you. Thank you so much.

**JANE KIRTLEY:** Thank you.

**INTERVIEWER:** We've been talking to Jane Kirtley. She's the Silha Professor of Media Ethics and Law at the University of Minnesota's Hubbard School of Journalism. Now, Hamline University leaders released a statement yesterday, after news of the suit broke, and they said describing the professor's actions as Islamophobic was, quote, "flawed," and they announced the university will host discussions about academic freedom, student well-being, and religion.