



July 3, 2017

Joanne Berger-Sweeney, Ph.D.
Office of the President
Trinity College
300 Summit Street
Hartford, Connecticut 06106

Sent via Electronic Mail (president@trincoll.edu)

Dear President Berger-Sweeney:

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 threat to freedom of expression and academic freedom at Trinity College posed by Trinity's response to Professor John Eric Williams's political speech. The comments at issue, which Trinity appears to acknowledge have been publicly misconstrued, amount to core political speech protected by the First Amendment. As such, the ongoing investigation being conducted by Trinity College contradicts fundamental principles of the First Amendment and Connecticut state law.

The following is our understanding of the facts, based upon public reports; please inform us if you believe we are in error.

I. Facts

On June 16, 2017, Williams shared on his personal Facebook page a controversial essay titled "Let Them Fucking Die."¹ The essay, which was not authored by Williams, discussed the actions of a "queer black woman" who saved the life of Rep. Steve Scalise, "one of the most anti-LGBTQ politicians in Washington," after he was shot during a congressional baseball practice.² The piece urged that aid should not be offered to people "who practice bigotry" and

¹ Anthony Gockowski, *Prof calls whites 'inhuman assholes,' says 'let them die,'* CAMPUS REFORM (June 20, 2017, 11:55 AM), <https://www.campusreform.org/?ID=9334>.

² Son of Baldwin, *Let Them Fucking Die*, MEDIUM (June 16, 2017), <https://medium.com/@SonofBaldwin/let-them-fucking-die-c316eee34212>.

advocated that when such people are in need of aid, the proper response is to “[d]o nothing.”³ Williams offered no commentary on the piece.

Two days later, on June 18, 2017, a black woman named Charleena Lyles was shot to death by two police officers in Seattle.⁴ That evening, following news of the Lyles shooting, Williams made two posts to his private Facebook page, reading in full:

I’m fed the fuck up with self identified ‘white’s daily violence directed at immigrants, Muslim, and sexual and racially oppressed people. The time is now to confront these inhuman assholes and end this now.

It is past time for the racially oppressed to do what people who believe themselves to be ‘white’ will not do, put an end to the vectors of their destructive mythology of whiteness and their white supremacy system.
#LetThemFuckingDie

Several days later, Williams’ posts were published by a media outlet, which alleged that Williams “appeared to endorse the idea that first responders to last week’s congressional shooting should have let the victims ‘fucking die’ because they are white.”⁵ Others described Williams’ comments as “anti-white” and asserted that his “pure[ly] evil” point was that “Congressman Steve Scalise should have been left to die because he’s white.”⁶

Amidst the criticism of Williams’ posts, Trinity announced on June 21 that it would shut down for the day, citing threats spurred by the controversy. Hartford Deputy Chief Brian Foley described these as “non-specific, non-credible threats from around the country” and said that police did not believe that “any students or staff are in any danger.”⁷ Trinity acknowledged that the closure was “out of an abundance of caution.”⁸

On June 21, Trinity issued a public statement asserting that Trinity’s dean of faculty would conduct a “review” into Williams’ “reprehensible” Facebook posts to determine “whether college procedures or policies were broken.”⁹ On June 23, you used Twitter to highlight an

³ *Id.*

⁴ Scott Greenstone, Steve Miletich, & Mike Carter, *‘Get back! Get back!’: Seattle police release recordings of fatal shooting of Charleena Lyles*, SEATTLE TIMES (June 19, 2017), <http://www.seattletimes.com/seattle-news/crime/get-back-get-back-seattle-police-release-audio-of-fatal-shooting-of-charleena-lyles>.

⁵ Gockowski, *supra* note 1.

⁶ Todd Starnes, *Professor’s profane, anti-white messages cause campus controversy*, FOX NEWS (June 21, 2017), <http://www.foxnews.com/opinion/2017/06/21/professors-profane-anti-white-messages-cause-campus-controversy.html>.

⁷ Kathleen Morgan, *Trinity Campus Closed Due to Threats After Professor’s Facebook Post*, HARTFORD COURANT (June 21, 2017), <http://www.courant.com/breaking-news/hc-trinity-campus-closed-threats-20170621-story.html>.

⁸ *Id.*

⁹ Letter from Joanne Berger-Sweeney, President, Trinity College, to Members of the Trinity Community (June 21, 2017), *available at* <http://www.trincoll.edu/NewsEvents/NewsArticles/pages/StatementSocialMedia21June17.aspx>.

article in *The Chronicle of Higher Education* noting that Williams' comments had been "mischaracterized," adding that you believed the point was "[s]omething to consider."¹⁰

On June 26, you issued another statement, this one announcing that Trinity had placed Williams on leave and that the "review" would "continue."¹¹ We understand that this leave, which you assert is "in the best interest of both Professor Williams and the college," was involuntary.¹² The balance of your June 26 statement was a paean to the need to "be able to engage in conversations about these difficult and complex issues." You concluded that "Trinity College and other places like it are precisely where such conversations should occur."

Trinity's insistence upon a baseless "review" of Williams' views contradicts its commitment to freedom of expression. A college cannot credibly embrace freedom of inquiry and expression while simultaneously burdening those who exercise it with investigations and involuntary leave. Trinity must immediately end its review of Williams' expression and reinstate him.

II. Trinity College's Promises and Policies, and Connecticut Law, Prohibit a Punitive Response

While Trinity College is a private institution, it is legally and morally bound to oblige the commitments it voluntarily makes to protect its faculty members' freedom of speech and academic freedom. Additionally, by operation of section 31-51q of the Connecticut General Statutes, the protections of the First Amendment are extended to Williams in his place of employment and, accordingly, Trinity must refrain from responding to its employees' protected speech by taking steps that could be construed as punitive. In short, Trinity's voluntary commitments and Connecticut law prohibit the college from launching an investigation or otherwise penalizing Williams because of the content of his speech or how it was interpreted by others.

Beyond your June 26 affirmation of Trinity's commitment to freedom of expression, Trinity College voluntarily commits itself in various official pronouncements to extending freedom of expression to its constituents. Its mission statement, for example, notes that "[f]ree inquiry and free expression are essential" to attainment of Trinity's mission. Indeed, these commitments are a condition of Trinity College's accreditation by the Commission on Institutions of Higher Education of the New England Association of Schools and Colleges, which requires that accredited institutions be "committed to the free pursuit and

¹⁰ @JBergerSweeney, TWITTER (June 23, 2017, 5:44 PM), <https://twitter.com/JBergerSweeney/status/878413448341803009>.

¹¹ Letter from Joanne Berger-Sweeney, President, Trinity College, to Members of the Trinity Community (June 26, 2017), *available at* <http://www.trincoll.edu/NewsEvents/NewsArticles/pages/WilliamsUpdate26June17.aspx>.

¹² Colleen Flaherty, *Trinity Suspends Targeted Professor*, INSIDE HIGHER ED. (June 27, 2017) <https://www.insidehighered.com/news/2017/06/27/trinity-college-connecticut-puts-johnny-eric-williams-leave-over-controversial>.

dissemination of” knowledge and protective of academic freedom for all faculty members, and that its policies be consistent with its mission.¹³

Additionally, Connecticut law prohibits “[a]ny employer” from “subject[ing] any employee to discipline or discharge on account of the exercise by such employee of rights guaranteed by the [F]irst [A]mendment to the United States Constitution.” Conn. Gen. Stat. § 31–51q. As discussed below, this prohibition bars baseless investigations, such as the “review” being conducted by Trinity.

Williams’ speech fits within the protection of the First Amendment. Contrary to the characterization advanced by his critics, Williams asserts that he was talking about the shooting by Seattle police, not the Rep. Scalise shooting. Williams’ assertion has merit. Williams’ posts discussed putting an end to the “mythology of whiteness” and called for an end to the “white supremacy system.” Rather than encouraging people to ignore those in need of life-saving aid, as the *Medium* piece explicitly urged, Williams’ posts advocated for ending what he views as systems of white supremacy. Borrowing the refrain of the *Medium* post, Williams argued that it was time to “put an end to the vectors of their destructive mythology of whiteness and their white supremacy system”—*i.e.*, to let those “vectors” and that “system” die.

As such, Williams’ posts are political speech in response to a police shooting of a black woman, undoubtedly a subject of public importance. Political speech is accorded the highest protection under the First Amendment, and our system grants considerable deference to even threatening language posed in a political context. *See Watts v. United States*, 394 U.S. 705, 708 (1969) (“The language of the political arena . . . is often vituperative, abusive, and inexact. We agree with petitioner that his only offense here was ‘a kind of very crude offensive method of stating a political opposition to the President.’ Taken in context, and regarding the expressly conditional nature of the statement and the reaction of the listeners, we do not see how it could be interpreted otherwise.”). Courts approach “with extreme care” claims that “highly charged political rhetoric lying at the core of the First Amendment” amounts to unlawful threats or incitement. *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 926–27 (1982). The First Amendment requires that society refrain from penalizing “insulting, and even outrageous, speech in order to providing adequate breathing space” to freedom of expression. *Boos v. Barry*, 485 U.S. 312, 322 (1988).

Even under the interpretation advanced by his critics, Williams’ speech is protected by the First Amendment. Although the First Amendment’s protection does not extend to true threats or incitement, Williams’ words cannot be said to fall within either of these categories.

¹³ COMM’N ON INST. OF HIGH EDUC.: NEW ENGLAND ASS’N OF SCHS. AND COLLS., STANDARDS FOR ACCREDITATION 26 (2016), https://cihe.neasc.org/sites/cihe.neasc.org/files/downloads/Standards/CIHEofNEASC_Standards_July_1_2016.pdf.

First, Williams' words do not amount to unlawful incitement. "[M]ere *advocacy* of the use of force or violence does not remove speech from the protection of the First Amendment." *Claiborne Hardware Co.*, 458 U.S. at 927. Rather, to punish speech as "incitement," it must have been "directed to inciting or producing imminent lawless action and . . . likely to incite or produce such action." *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969). Additionally, where speech is "not directed to any person or group of persons" in particular, it cannot be said to be directed at commanding or urging any person to take action. *Hess v. Indiana*, 414 U.S. 105, 108–09 (1973).

Williams' Facebook posts do not meet either prong of the incitement test, as they were neither directed to producing imminent lawless action nor likely to do so. Williams did not call for any person to commit an unlawful act. His posts advocate, at most, that readers "confront . . . inhuman assholes" to "put an end to the vectors of their destructive mythology of whiteness and their white supremacy system." Nor do Williams' posts advocate *imminent* lawless action, vaguely encouraging only that readers take unspecified action after reading his post. Even if read as encouraging imminent unlawful action, it is not at all likely that upon reading Williams' Facebook post, readers would have been spurred to *immediately* undertake such action. In sum, Williams' posts cannot reasonably be read as calling for, and likely to incite, an immediate unlawful act. Accordingly, they remain protected by the First Amendment.

For similar reasons, Williams' political speech cannot reasonably be characterized as an unlawful "true threat" of violence, which would place it outside the scope of the First Amendment's protection. A "true threat" is a statement through which "the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." *Virginia v. Black*, 538 U.S. 343, 359 (2003). Within the jurisdiction of the United States Court of Appeals for the Second Circuit, a "true threat" is shown only where the speech satisfies an objective test, "namely, whether an ordinary, reasonable recipient who is familiar with the context of the [communication] would interpret it as a threat of injury." *U.S. v. Davila*, 461 F.3d 298, 305 (2d Cir. 2006). Williams' posts do not identify a specific group of individuals, and any reasonable person familiar with the context of Williams' posts would understand them to be expressing anger about a police shooting, not stating a serious intent to act violently toward anyone.¹⁴

Because Williams' speech was protected by the First Amendment, Trinity College's initiation and maintenance of a "review" of his expression offends both Trinity's stated commitment to freedom of expression and Connecticut state law. The Second Circuit has observed that a college's public announcement of a pending investigation into a professor's writings on race and intelligence, coupled with its pronouncement that his views "have no place at" the college,

¹⁴ Nor does Williams' act of sharing the *Medium* post, even if it amounts to an endorsement of its message, establish a true threat of violence or incitement. The *Medium* post urged, at most, that readers should stand idly by and decline to intervene when they encounter a perceived bigot in danger. This view, if taken seriously, might be viewed as uncaring, cruel, or inhumane, but it does not advocate for unlawful conduct; the law generally imposes no duty of rescue on bystanders. *See, e.g., Kaminski v. Fairfield*, 216 Conn. 29, 33 (Conn. 1990) ("absent a special relationship of custody or control, there is no duty to protect a third person from the conduct of another"); *State v. Miranda*, 245 Conn. 209, 217 (Conn. 1998); *Yania v. Bigan*, 155 A.2d 343 (Penn. 1959).

conveyed the possibility of discipline and had a chilling effect on the professor's speech. *Levin v. Harleston*, 966 F.2d 85, 89–92 (2d. Cir. 1992).

Connecticut law is in accord, recognizing that the institution of “bogus” investigations” based on an employee’s protected speech is a “form of retaliatory discipline” prohibited by section 31-51q of the Connecticut General Statutes. *Matthews v. Dep’t. of Pub. Safety*, No. HHDCV116019959S, 2013 WL 3306435, *14 (Conn. Super. Ct. May 31, 2013). That is surely the case here: Trinity recognizes that Williams’ speech was misconstrued, as evidenced by your promotion of an article explaining as much. Even if Trinity did not recognize as much, it is clear that Williams’ speech is protected by the First Amendment and thus immune from punishment by Trinity College.

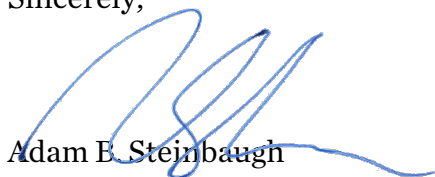
III. Conclusion

By carrying on with investigations it knows to be meritless, Trinity sends the message that there is some credible basis for an investigation and, ultimately, punishment. It may be expedient as a means of appearing to take action, but it incentivizes the use of threats in response to provocative or offensive speech. This is not a viable path to *reducing* threats. Rather, it demonstrates that even vague and unspecific threats will lead to some form of action against the speaker. Behavior that is rewarded will be repeated; if not at Trinity, then at other institutions. By refusing to aggressively defend the rights your institution purports to value, Trinity rewards behavior that will be repeated to others’ detriment.

Accordingly, we call on Trinity College to immediately desist its “review” into Professor Williams’ speech, reinstate him, and reaffirm its stated commitment to defending the freedom of inquiry and expression it promises to its students and faculty.

We look forward to your response, and request that it be received by July 17, 2017.

Sincerely,



Adam E. Steinbaugh
Senior Program Officer, Individual Rights Defense Program