



October 19, 2020

Via E-mail adam@thefire.org

Adam Steinbaugh
Director Individual Rights Defense Program
Foundation for Individual Rights in Education
510 Walnut Street, Suite 1250
Philadelphia, PA 19106

Dear Mr. Steinbaugh:

I write in response to your October 15th letter directed Collin College expressing your concerns and requests with respect to Professor Lora D. Burnett.

Before we can continue a meaningful discussion about the items you have raised in your letter, please let me clarify a few facts that have been omitted from the narrative.

Faculty Contract

Professor Burnett is not a tenured faculty member. Collin College employs Prof. Burnett on the basis of a one-year Faculty Contract. Under the Faculty Contract, Prof. Burnett's 170-day assignment at Collin College expires on the last scheduled day in May 2021. Under well-settled Texas law, Collin College Board policy, and the express terms of Paragraph 6 of the Faculty Contract, Prof. Burnett does not have a property interest beyond, or a right of continued employment beyond, the Term of her Faculty Contract.¹

Accordingly, Collin College is well-aware of the fact that it cannot indiscriminately terminate Prof. Burnett's Faculty Contract on a whim, or based on the demands of individuals who vehemently disagree with her choice of words. To be abundantly clear, Collin College did not terminate – nor threaten to nor imply termination of – Prof. Burnett. Collin College did not even state that it would consider terminating Prof. Burnett or that it was examining or weighing its options, as other institutions have done in response to similar calls for the termination of a faculty member.

¹ See Texas Education Code §51.943(g). Collin College Board Policy DCA(LEGAL) which is available at: <https://pol.tasb.org/Home/Index/304>; and Collin College Full-Time Faculty Contract 2020-2021 signed by Lora Burnett on May 5, 2020 ("Faculty Contract"), at ¶6.

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If Prof. Burnett misread anything into the expression included in the October 12th email that the College would not air (or play out) a personnel matter in a public setting – that misperception is solely of her own-making. Notably, and glaringly absent from the narrative, is that fact that the October 12th email did not mention Prof. Burnett at all. As you may recall, Prof. Burnett chose to self-identify and, again of her own making, air this matter publically on Twitter. The fact, however, that the College did not buckle to calls for the termination of Prof. Burnett’s contractual employment does not mean that the College does not have the right and obligation to address Prof. Burnett’s conduct, particularly, with the use of the College’s email systems.

Collin College’s Governing Board Policies and Procedures

While you correctly note that Collin College is a public institution, Prof. Burnett is subject to all of the College’s governing policies, not merely selected portions of our *Employee Expression and Use of College Facilities*, DGC(LOCAL) Board policy. In fact, under the express terms of the Faculty Contract, Prof. Burnett agreed to comply with “Collin College’s Board Policies, Collin College Core Values, rules, procedures, regulations, all applicable state and federal law and any administrative directives...”² Prof. Burnett is contractually obligated to comply with the standards that the College has set for all its employees. This includes concomitant obligations imposed on Prof. Burnett as a faculty member under Board Policy:

“The academic freedom of the College District faculty members will be accompanied by equally compelling obligations and responsibilities to their profession, their students, the College District, and their community. Faculty members will defend the rights of academic freedom while accepting willingly the responsibilities enumerated below:

*** *** ***

4. Faculty members will recognize that the public will judge their institution and their profession by their public conduct. **Therefore, faculty members will always make clear that the views they express are their own and will avoid creating the impression that they speak or act on behalf of the College District or of their profession.**³

Under the College’s long-standing Social Media Procedures Guide, Prof. Burnett was also responsible for indicating that she did not represent the views of Collin College and for engaging in respectful conduct.⁴

² See Faculty Contract, at ¶5.

³ See Board Policy DGC(LOCAL), at p. 3,

⁴ See Collin College’s Social Media Procedures Guide, at pp. 2-5 (emphasis added) which is available at: <https://www.collin.edu/news/newsfiles/2014SocialMediaGuide.pdf>.

Prof. Burnett Did Not Deliberately Speak as a Private Citizen

Prof. Burnett did not adhere to such Board policies and social media procedures. Specifically:

- On Oct. 9, 2020, when requested by Fox News to comment on her prior Tweets, Prof. Burnett unequivocally replied as a Professor of History at Collin College. Prof. Burnett spoke about her official duties, including in educating students. Nowhere in her email did she indicate that her Tweets or comments were strictly her own. Prof. Burnett then put the entirety of her email response as an employee of the College to Fox News on her Twitter feed, including her blatant identification as a History Professor at Collin College.⁵
- On Oct. 9, 2020, at 7:29 p.m., Prof. Burnett unequivocally tied her views to Collin College by tagging @CollinCollege in a Tweet and indicating that the College could not terminate her for exercising her first amendment rights and expressing her religious beliefs.⁶
- Thereafter, Prof. Burnett continued to tag the College in several of her Tweets, including in one Tweet on Oct. 10, where she included a “cc” to Collin College.

Prof. Burnett subsequently engaged in an admittedly exhausting Twitter war with many of those who attacked her. The College has never defended the vitriol that Prof. Burnett received. Instead of reporting such hateful Tweets and emails as she has since learned to do, Prof. Burnett chose to directly engage those individuals. While Prof. Burnett has the absolute right to engage in a Twitter war, she does not have a right to engage in her Twitter war using Collin College’s email system or to send responsive emails as an employee of the College. Specifically:

- Prof. Burnett responded to several emails she received through her College email account, discussed her teaching and other duties, and signed each email in her role as Professor of History at Collin College.
- In one particular email string dated October 11th, Prof. Burnett researched the person who emailed her, located that individual’s place of employment and where that individual went to college, and then copied the individual’s school district’s email account on the extensive response. Prof. Burnett discussed her teaching of students and indicated in her email that the individual also enjoyed first amendment rights “as a private citizen to express [his] views outside of [his] workplace.” All the while, signing her response as a Professor of History at Collin College and sending the email to both the individual’s personal email address (where it originated) and work email address, from Prof. Burnett’s work email address. Afterwards, Prof. Burnett posted the email response on her Twitter feed. Clearly, Prof. Burnett was not following her own

⁵ See Exhibit 1, attached hereto.

⁶ See Exhibit 2, attached hereto.

understanding of the First Amendment since she unequivocally brought this issue to debate *inside* of her role as a faculty member at the College.

- On October 10th, Prof. Burnett received a hateful email to her College email address. Prof. Burnett researched who the individual was, that the individual lived in Collin County, and then wrote to the individual twice on October 11th, again as a Professor of History at Collin College, and using her College-provided email address. Not only did Prof. Burnett copy the College's District President on the email responses, she also posted one of them on her Twitter feed. Thereby potentially creating the impression that she was formally speaking on behalf of Collin College twice, with her District President's endorsement – which was completely misleading.
- In launching Twitter counter-attacks on individuals and at least one local business, Prof. Burnett made no clear attempt to distance her words and actions away from the College or her teaching duties. Throughout her Twitter feed, you will find snippets of emails sent to her College email address. Prof. Burnett could have easily responded to each of those from her personal email account. Instead, Prof. Burnett deliberately chose to engage in some of the responses using her College email account, discussing her teaching duties, and by her own actions linked the College to the exercise of her expression.

While Prof. Burnett would conveniently like to re-frame this issue and the College's response as involving only one or two Tweets to fuel her self-serving interests, she cannot alter the consequences of the conduct in which she chose to engage.

To be abundantly clear, the College's October 12th email and statement was not a response to the singular "*demon mouth*" Tweet reaction to the moderator during the debate (which Prof. Burnett has admittedly identified as "snarky"), or to the profane "*scumbag lying sonofabitch*" re-Tweet (which Prof. Burnett admitted may have included "swear" language), or to any other Tweet Prof. Burnett has included in her Twitter feed or as a part of any other Twitter feed, many of which may not be directly related to matters of public concern. Collin College was forced to issue a statement based on Prof. Burnett's conduct deliberately linking her expression and actions to the College and her role as a faculty member. While the October 12th statement was critical of Prof. Burnett's initial Tweets, it also reiterated the fact that the "faculty member's expressed views were not consistent with the values of Collin College" and encouraged ***all*** (including the hate-mongers who attacked Prof. Burnett) to "express themselves with grace, civility, and respect."

The Coaching and Counseling Form

To the extent that Prof. Burnett linked the exercise of her expression to her teaching duties and role as a Professor of History at the College, much of that particular speech is not protected by the First Amendment under *Garcetti v. Ceballos*, 547 U.S. 410 (2006) (holding "when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their

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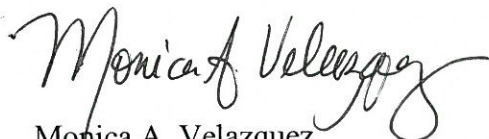
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communications from employer discipline.”) and well-settled precedent in the Fifth Circuit. In the Coaching and Counseling form, which is not a disciplinary warning, that was sent to Prof. Burnett on October 13th, Collin College specifically indicated that Prof. Burnett was free to post her views on her personal social media, but that she was not entitled to use the email system to engage in such private or personal conversations with those that respond to her posts. While the College is not able to address Prof. Burnett’s personal use of her Twitter account on genuine matters of public concern, Prof. Burnett is not entitled to use the College’s state- and taxpayer- funded email system to wage her Twitter war. That is the only aspect of this matter that the College seeks to address in the Coaching and Counseling form.

Notably, the Coaching and Counseling form is sent to an employee after a discussion is held between the supervisor and employee about the issue. Prof. Burnett’s Associate Dean reached out to Prof. Burnett to engage in such a discussion and to schedule a Zoom call, but Prof. Burnett was ultimately unwilling to meet without her attorneys being present during the call. The Associate Dean sent Prof. Burnett a copy of the Coaching and Counseling form so that Prof. Burnett would have additional information to prepare for the scheduled meeting. As of October 13th, Prof. Burnett indicated that she would meet with her Associate Dean to discuss the issue. Based on your letter, it appears that Prof. Burnett is now again unwilling to meet and have a meaningful discussion about the items listed on the form, including the two specific examples of the misuse of the email system which the Associate Dean was prepared to discuss. Accordingly, in response to the three requests you have sent on behalf of your client:

1. Based on your October 15th request, the meeting scheduled for 2:00 p.m. on October 19th is hereby cancelled.
2. For the reasons stated above, Collin College stands by its previously issued Oct. 12th statement that Prof. Burnett’s expressed views are her own and do not represent the views of Collin College.
3. Collin College will not withdraw the October 13th Coaching and Counseling form sent to Prof. Burnett addressing her use of the College’s publically-funded email system to engage in responses to Twitter attacks. Prof. Burnett has until 1:00 p.m. on October 19th to return the signed Coaching and Counseling form to her Associate Dean merely acknowledging her receipt of it, as clearly indicated on the form.

Sincerely,



Monica A. Velazquez
General Counsel
Collin College

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L.D. Burnett

76.9K Tweets



L.D. Burnett @LDBurnett · Oct 9



This Fox News person is trying to bring a news story out of my tweets. Note that this fine journalist emailed me at 3:55 eastern time informing me of his



4:30 deadline. I guess he doesn't know me?

#USIH

#twitterstorians

#media #hack

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EXHIBIT

1

tabbles



To: Lora Burnett

Re: Fox News inquiry



Lora Burnett

To: Best Paul

Dear Paul,

You replied to this message on 10/9/20, 3:09 F

CAUTION: This email originated from outside of the organization. Please do not click on links, open attachments, or reply to this message unless you are expecting it from the sender.

Hello,

I'm a reporter for Fox News. I'm working on a story of criticism directed towards Mike Pence.

I just wanted to reach out to you and give you some feedback that is uncomfortable in your classes?

My deadline is 4:30 PM ET. Thanks!

Paul Best
Reporter, Fox News & FOX Business

How thoughtful of you to give me 35 minutes to respond to your query!

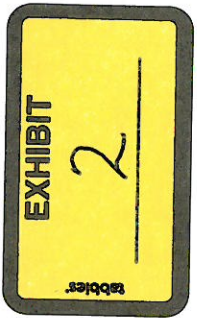
Throughout the entire time I have been on Twitter, my conservative students and liberal students, liberal Christian and liberal Islamic students, my Hindu students of various political perspectives comfortable in my classes, as my teaching evaluations from my past and current employers confirm, since I tend to disagree with a Marxist approach to historical analysis. I am certain my approach teaching with an absolute commitment to the highest ethical and professional standards, advancing my students' educational goals. My sole "agenda" in the classroom is to help them do what they can. I have summarized my ethics as a history professor in two places that are easily accessible to the historian's ethics in this blog post: <https://bestpaul.com/2020/09/a-social-ethic-for-historians/>

I will copy/paste the relevant written passage on ethics for you here.

"Historians have an ethical obligation to one another to be honest in how we represent our work to the scrutiny of our peers. If we find counter-evidence that cuts against our major claims, especially if that means we need to qualify our claims. We cannot twist the evidence available to us and charitably (I used the word "graciously" but I think it still holds) read and report and comprehensive explanation for the past that we can manage."

That's how I teach, and that's what my students of all political and religious persuasions feel comfortable with. I know this because I have had students who submit work that often comes from a private citizen. They feel comfortable submitting the work because they know they will

Lora Burnett
Professor of History
Collin College



L.D. Burnett

76.6K Tweets

Follow

L.D. Burnett Retweeted

L.D. Burnett @LDBurnett · Oct 9

How could @CollinCollege possibly fire me for 1) exercising my first amendment rights to free speech as a private citizen, including 2) expressing my sincerely-held religious beliefs.

The Trump administration is Satanic. That is my belief as a Christian. Can't be fired for that.

USA News @temp_cold · Oct 9

Replying to @LDBurnett

We do look for you too be fired shortly! Leftist Marxist teaching with the Frankford school theory will be removed . Admire Whittaker chambers do you..

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12

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