FIRE
Foundation for Individual Rights in Education

October 22, 2020

Monica A. Velazquez
General Counsel
Collin College
3452 Spur 399
McKinney, Texas 75069

Sent via Electronic Mail (mvelazquez@collin.edu)

Dear Ms. Velazquez:

Thank you for your October 19 response to our letter of October 15, 2020, concerning Collin College's response to Prof. Lora D. Burnett's tweets criticizing Vice President Pence.

FIRE appreciates your interest in a meaningful dialogue concerning the First Amendment rights of faculty at Collin College. However, we are disappointed that Collin College did not take this opportunity to ease tension in response to the reasonable concerns raised about the College's commitment to fundamental First Amendment rights. Instead, the facts added by Collin College do not change our analysis, and its response only renews our concerns.

First, Collin College raises—for no apparent, defensible reason—Burnett's contractual status as a professor, whose term contract expires in May 2021, in order to argue that she has no property interest in her role. Her role as an adjunct is immaterial to the application of the First Amendment to extramural expression. The United States Supreme Court has long and "specifically held that the *nonrenewal* of a nontenured public school teacher's one-year contract may not be predicated on his exercise of First and Fourteenth Amendment rights. . . ."[1] If the College fails to renew Burnett's contract because of her extramural political expression or criticism of the institution, it will violate the First Amendment and further erode its reputation. Raising the possibility of a non-renewal exacerbates FIRE's concerns about Collin College's fidelity to its fundamental First Amendment obligations.

Second, we find puzzling the College's insistence that Burnett "misread anything into" the October 12 email because the email "did not mention Prof. Burnett at all," a fact "glaringly absent from the narrative." That email included a statement about the "hateful, vile and ill-

[1] *Perry v. Sindermann*, 408 U.S. 593, 598 (1972) (emphasis added).

considered Twitter posts by one of [Collin College's] faculty members." It is not unreasonable to interpret that statement as concerning Burnett, it is rather a manifestly reasonable inference—to the best of FIRE's knowledge Prof. Burnett was the only Collin College faculty member whose tweets had garnered national media attention at the time.

Third, the College's assertion that faculty members are "contractually obligated" to "make clear that the views they express are their own and . . . avoid creating the impression that they speak or act on behalf of the College" is not relevant, as none of the expression at issue can reasonably be interpreted as speaking on behalf of Collin College.

With respect to her tweets, the College does not dispute that Burnett's Twitter account has consistently made clear that her tweets are her own, not those of the College. The infirmity of the College's position is nowhere as pronounced as in its assertion that *tagging* the College in tweets amounts to speaking on its behalf. Mentioning another account on Twitter directs speech *to* or *about* that account, not *from* it.[2] No reasonable person would interpret a tweet tagging another user as speaking on behalf of that user.[3]

Nor do Burnett's emails run afoul of this requirement. The point of an email signature is to identify the individual speaker. Again, identifying an institutional relationship does not render the speech on *behalf* of the institution. Indeed, in *Pickering*, the Supreme Court—evaluating a letter identifying himself as a teacher employed by the school district he criticized—observed that it is "essential" that teachers "be able to speak out freely" about their employers "without fear of retaliatory dismissal."[4] Moreover, the question of whether speech is that of an employee or private citizen turns on a variety of factors, "most importantly, whether or not the statements were pursuant to an official duty," whether the statements were expressed "publicly," and the "subject matter" of the statements.[5] Using a professional email signature and government resources is "not dispositive" in evaluating this question.[6]

---

[2] *See generally*, TWITTER, *About replies and mentions*, https://help.twitter.com/en/using-twitter/mentions-and-replies (last visited Oct. 21, 2020); *see also*, *Knight First Amendment Inst. at Columbia Univ. v. Trump*, 302 F.Supp.3d 541, 571–73 (S.D.N.Y. May 23, 2018) (distinguishing government speech through a Twitter account from the public forum generated in the interactive space of Twitter, through which other users interact with the account).

[3] Likewise, the College's invocation of its "guide" to social media does not change this analysis. The guide expressly distinguishes between "personal" accounts and "institutional" accounts, applying to "posting on behalf of the college." To the extent that Collin College believes that its faculty members are contractually obligated to be "respectful" on social media, that position would bring the College into sharp odds with the First Amendment. *See, e.g.*, *Rodriguez v. Maricopa Cnty. Comm. Coll. Dist.*, 605 F.3d 703, 708–09 (9th Cir. 2009) (Even the "desire to maintain a sedate *academic* environment does not justify limitations on a teacher's freedom to express himself on political issues in vigorous, argumentative, unmeasured, and even distinctly unpleasant terms.") (emphasis added).

[4] *Pickering v. Bd. of Educ.*, 391 U.S. 563, 571–72 (1968).

[5] *Benes v. Puckett*, 602 Fed. Appx. 589, 593 (5th Cir. 2015).

[6] *Id.* at 594.

Burnett's emails, sent to members of the public who contacted her discussing national political affairs, are incidental to her employment, not speech *as* an employee.

Fourth, and similarly, the College fails to explain how responding to emails sent to her is not well within the "incidental" use of email authorized under its policies. We strongly doubt that other faculty and administrators at Collin College have not responded to personal emails received at their collin.edu address. Disparate treatment, particularly when it follows pressure from state legislators, is a strong indication that the response is animated by viewpoint-discrimination.[7]

Again, we appreciate Collin College's willingness to engage in a "meaningful discussion," but we remain troubled by the College's unwillingness to reaffirm, without reservation, that Burnett's comments are protected by the First Amendment. Doing so is not an endorsement of her comments but merely a recognition that the First Amendment limits how the College may respond. Moreover, the College's posture—raising the prospect of executing "personnel policies" and now tying Burnett's contract terms to her First Amendment rights—continues to provide new reasons for concern.

We again call on Collin College to reaffirm that Burnett's comments are protected by the First Amendment and that it will not retaliate against her for exercising those rights. We request receipt of a response to this letter by October 30, 2020.

Sincerely,

Adam Steinbaugh
Director, Individual Rights Defense Program

[7] *See, e.g.*, *Gerlich v. Leath*, 861 F.3d 697, 707 (8th Cir. 2017) (public university's use of an "unusual" process in denying a student group's request to use the university's trademarks followed "pressure from Iowa politicians" opposed to the group's views on the legalization of marijuana).