



FIRE

Foundation for Individual
Rights and Expression

November 17, 2023

Dr. Johnette McKown
Office of the President
McLennan Community College
1400 College Drive
Waco, Texas 76708

Sent via U.S. Mail and Electronic Mail (jmckown@mclennan.edu)

Dear President McKown:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned by McLennan Community College deleting comments on its social media accounts in violation of its First Amendment obligations, which bar the college from discriminating based on viewpoint if it opens a forum for discussion.

Our concerns involve the Campus Resources Education Web (CREW), an extension of MCC located in the Student Services building that provides students with resources for non-academic needs,² in connection with which there exists a CREW public Instagram account on which users can comment or like posts.³ There are no rules on the account establishing any limits on what content users may and may not post.⁴

On October 16, CREW added a post to its Instagram account advertising an event where students could connect with several resources in Waco, Texas, specifically, EOAC [Economic Opportunities Advancement Corporation] Headstart, Planned Parenthood, Heart of Texas

¹ For more than 20 years, FIRE has defended freedom of expression, conscience, and religion, and other individual rights on America's college campuses. You can learn more about our recently expanded mission and activities at thefire.org.

² CREW // *Campus Resources Education Web*, MCLENNAN CMTY. COLL., <https://www.mclennan.edu/campus-resource-guide/> [<https://perma.cc/5T23-CE6V>]. The following recitation of facts is our understanding of the situation. We appreciate you may have additional information to offer and invite you to share it with us. To these ends, please find enclosed an executed privacy waiver authorizing you to share information about this matter.

³ Campus Resources Education Web | MCC CREW (@mclennan_crew), INSTAGRAM, https://www.instagram.com/mclennan_crew/ [<https://perma.cc/6KUV-DEBN>].

⁴ *Id.* As is generally the case, Instagram allows the administrator of an account to manually remove individual comments.

Goodwill, and Communities in Schools.⁵ MCC student Madison Evans expressed concern about one of these groups, commenting on the post: “the murder of innocent babies is not a great resource ever. as a student i am disappointed & disgusted that murder of innocent lives is being encouraged.”⁶ An administrator of CREW’s Instagram account deleted Evans’s comment.⁷

On October 18, after Evans met with MCC Associate Director of Marketing and Communications Jennifer Norman to discuss the comment’s removal, Norman said she would look into the matter. In a follow-up text message the next day, Norman told Evans “MCC’s social media accounts are not appropriate platforms for expressing concerns about the values of another community organization.”⁸

But that view does not comport with the First Amendment, to which public colleges must adhere.⁹ When government officials—including public college administrators—create forums for open discussion, whether in-person or online, the First Amendment restrains the regulation of speech within the forum.¹⁰ Among other things, viewpoint discrimination is forbidden, as established in longstanding precedent.¹¹

In *Davison v. Randall*, for example, the U.S. Court of Appeals for the Fourth Circuit held that interactive aspects of a Facebook page maintained by the chair of a county board of supervisors bore “the hallmarks of a public forum,” as its comment section was compatible with expressive activity and the chair had opened it to public discourse.¹² The court thus held the act of restricting a constituent’s ability to interact with the page based on the constituent’s critical views was unconstitutional viewpoint discrimination, which is “prohibited in all [public] forums.”¹³

Like the Facebook page in *Davison*, CREW posts content on its Instagram account and permits users to post comments and reply to and like comments and posts. Because CREW has

⁵ Campus Resources Education Web | MCC CREW (@mclennan_crew), INSTAGRAM (Oct. 16, 2023), <https://www.instagram.com/p/CydxQgDOYJ8/> [<https://perma.cc/4RJK-T4GR>].

⁶ Screenshot of comment on file with author (as written).

⁷ Screenshot on file with author.

⁸ Screenshot of text message on file with author.

⁹ *Healy v. James*, 408 U.S. 169, 180 (1972) (“[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, ‘the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.’”) (internal citation omitted).

¹⁰ The First Amendment governs speech within both physical and online forums. *Knight First Amendment Inst. at Columbia Univ. v. Trump*, 928 F.3d 226, 237 (2d Cir. 2019) (“[S]ocial media is entitled to the same First Amendment protections as other forms of media.”); *see also Rodriguez v. Maricopa Cty, Cmty. Coll. Dist.*, 605 F.3d 703, 710 (9th Cir. 2009) (characterizing professor’s emails to a list maintained by a public college as “pure speech; they were the effective equivalent of standing on a soap box in a campus quadrangle and speaking to all within earshot”).

¹¹ *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829–830 (1995); *accord Rodriguez*, 605 F.3d at 710 (even assuming public college’s “email list and servers were limited or nonpublic forums ... state actors may not suppress speech because of its point of view.”).

¹² 912 F.3d 666, 682 (4th Cir. 2019).

¹³ *Id.* at 687–88 (citation omitted).

administrative control of its Instagram account and invites the public to engage with it, the account is a public forum subject to First Amendment constraints.

Evans's comment concerning her opinions on abortion was relevant engagement with the Instagram post that Planned Parenthood was coming to campus to connect with students, and CREW's decision to delete the comment silenced that part of the discourse surrounding this contentious political and cultural debate. CREW's Instagram administrators' selective removal of Evans' critical yet relevant comment is textbook viewpoint discrimination.¹⁴ Were there any doubt, Norman's averment that concerns about other organizations are inappropriate comments for MCC social media accounts confirmed the First Amendment violation. Such a statement makes clear that expressing views *against* organizations on MCC social media posts are not to be tolerated while, presumably, views that *praise* such organizations are permissible.

As the *Davison* court noted, the First Amendment forbids restricting speech based on the viewpoint expressed in any government forum,¹⁵ including "concerns about the values" of other organizations. "Discrimination against speech because of its message is presumed to be unconstitutional" and "[t]he government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction."¹⁶

Thus, MCC and CREW officials may not suppress disfavored views when moderating social media commentary on accounts open to public posts. Nothing in the law requires public colleges to manage an Instagram account, but the law does impose obligations when they choose to do so.

FIRE accordingly requests a substantive response to this letter no later than close of business December 1, 2023, confirming MCC and CREW will restore Evans's comment to CREW's Instagram post, that it will not undermine the First Amendment rights of its students, and that it will cease any practice of moderating social media comments based on viewpoint.

Sincerely,



Haley Gluhanich
Program Officer, Campus Rights Advocacy

Cc: Jennifer Norman, Associate Director of Marketing and Communications

Encl.

¹⁴ *Knight*, 928 F.3d at 238 n.8 (a government actor is "not permitted to 'amplify' favored speech by banning or burdening viewpoints with which it disagrees.") (emphasis added).

¹⁵ *Id.*

¹⁶ *Rosenberger*, 515 U. S. at 82-829 (1995)

Authorization and Waiver for Release of Personal Information

I, Madison Evans, born on 05/04/2005, do hereby authorize McLennan Community College (the "Institution") to release to the Foundation for Individual Rights and Expression ("FIRE") any and all information concerning my current status, disciplinary records, or other student records maintained by the Institution, including records which are otherwise protected from disclosure under the Family Educational Rights and Privacy Act of 1974. I further authorize the Institution to engage FIRE's staff members in a full discussion of all matters pertaining to my status as a student, disciplinary records, records maintained by the Institution, or my relationship with the Institution, and, in so doing, to fully disclose all relevant information. The purpose of this waiver is to provide information concerning a dispute in which I am involved.

I have reached or passed 18 years of age or I am attending an institution of postsecondary education.

In waiving such protections, I am complying with the instructions to specify the records that may be disclosed, state the purpose of the disclosure, and identify the party or class of parties to whom disclosure may be made, as provided by 34 CFR 99.30(b)(3) under the authority of 20 U.S.C. § 1232g(b)(2)(A).

This authorization and waiver does not extend to or authorize the release of any information or records to any entity or person other than the Foundation for Individual Rights and Expression, and I understand that I may withdraw this authorization in writing at any time. I further understand that my execution of this waiver and release does not, on its own or in connection with any other communications or activity, serve to establish an attorney-client relationship with FIRE.

I also hereby consent that FIRE may disclose information obtained as a result of this authorization and waiver, but only the information that I authorize.

DocuSigned by:

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11/13/2023

Student's Signature

Date