



November 25, 2015

Jill Tiefenthaler
Office of the President
Colorado College
14 East Cache La Poudre Street
Colorado Springs, Colorado 80903

URGENT

Sent via U.S. Mail and Electronic Mail (president@coloradocollege.edu)

Dear President Tiefenthaler:

The Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, freedom of speech, and freedom of conscience on America's college campuses. Our website, thefire.org, will give you a greater sense of our identity and activities.

FIRE writes to express serious concern regarding the threat to freedom of expression at Colorado College posed by the 21-month suspension of student Thaddeus Pryor on the basis of an anonymous comment on the social media application Yik Yak. This disciplinary action contradicts Colorado College's promises of free expression and chills campus speech, compromising the robust debate that Colorado College claims to value.

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

In November 2015, an unidentified individual posted a comment reading "#blackwomenmatter" on the social media application Yik Yak. Shortly thereafter, two anonymous replies were posted, the second of which read "They matter, they're just not hot." After the post was brought to the attention of Colorado College, the secretary of Senior Associate Dean of Students Rochelle T. Mason telephoned student Thaddeus Pryor on the morning of November 19 and summoned him to Mason's office in order to discuss the matter.

That afternoon, Pryor met with Mason and admitted to authoring the anonymous reply, maintaining that it was a joke. Later that evening, Mason requested via email that Pryor return to her office in order to discuss the college's response to his post. On November 20, Mason met with Pryor and provided him with a letter informing him that she had found him responsible for violating Colorado College policies governing "Abusive Behavior" and "Disruption of College Activities." The offenses are defined by the college's Student Conduct Policies as follows:

Abusive Behavior: The college prohibits abusive behavior, which is any act that endangers the mental or physical health or safety of a student or group, or which destroys or removes public or private property, or which produces ridicule, embarrassment, harassment, intimidation or other similar result. Spectators at athletic events should convey enthusiasm and team support; demeaning, disrespectful or vulgar behavior may be found to be in violation of this policy.

Disruption of College Activities: Disruption of college business, activities, and academic courses is prohibited. Examples of violations of this policy include, but are not limited to:

- Obstructing freedom of movement of community members or campus visitors, either pedestrian traffic or vehicular traffic;
- Causing noise or participating in a demonstration that disrupts the normal college activities (see the Protest and Dissent page for information about acceptable ways to protest and express dissent);
- Leading or inciting others to disrupt scheduled or normal activities of the campus.

Mason's letter further notified Pryor that he would be suspended, effective immediately, until August 28, 2017, and that during this time he would be banned from Colorado College's campus and would not be allowed to take classes at other institutions for academic credit. Finally, Mason's letter conditioned Pryor's reinstatement after the suspension on the submission of a petition letter explaining how his behavior had improved during his suspension. Pryor intends to submit an appeal of Mason's decision today.

As a private institution, Colorado College is not bound by the First Amendment. Nevertheless, it is both morally and contractually bound to honor the explicit, repeated, and unequivocal promises of freedom of expression it has made to its students. For example, Colorado College's student handbook's statement on "Rights and Responsibilities" states, in part:

Academic institutions exist for the transmission of knowledge, the quest for truth, the development of students, and the general well-being of society. In

the pursuit of these ends, all members of the college community have such basic rights as freedom of speech, freedom of press, freedom of peaceful assembly and association, freedom of personal beliefs, and freedom from personal force and violence, threats of violence and personal abuse.

Accordingly, Colorado College’s policy titled “Freedom of Expression” promises:

Freedom of thought and expression is essential to any institution of higher learning. Uncensored speech – which does not include a right to harass, injure, or silence others – is essential in an academic community and will be vigorously defended.

Colorado College’s heavy-handed overreaction in this matter is at odds with these principles and unacceptably chills the expressive rights of Colorado College students, which the college has pledged to vigorously protect. Colorado College must immediately reverse the charges and sanctions against Thaddeus Pryor.

Again, Colorado College explicitly promises that “all members of the college community have such basic rights as freedom of speech.” The principle of freedom of speech does not exist to protect only non-controversial expression; it exists precisely to protect speech that some members of a community may find controversial or offensive. The Supreme Court of the United States stated in *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949) that speech “may indeed best serve its high purpose when it induces a condition of unrest . . . or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea.” The Court reiterated this fundamental principle in *Snyder v. Phelps*, 131 S. Ct. 1207, 1220 (2011), proclaiming that “[a]s a Nation we have chosen . . . to protect even hurtful speech on public issues to ensure that we do not stifle public debate.” Accordingly, the Supreme Court has explicitly held, in rulings spanning decades, that speech cannot be restricted simply because it offends people. *See Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667, 670 (1973) (“[T]he mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of ‘conventions of decency.’”).

In light of these foundational principles and Colorado College’s promise to protect them, the charge of “Abusive Behavior” against Pryor cannot stand. There is simply no credible argument that Pryor’s joke “endangers the mental or physical health or safety” of any student, nor that it satisfies any reasonable definition of harassment or intimidation.

Speech that produces “embarrassment” or “ridicule” must generally be fully protected by Pryor’s freedom of expression. Indeed, in discussing matters of societal importance, many of which are highly controversial, one would be hard-pressed to find an opinion that does not deeply offend *someone*. In the course of rigorously debating such issues, many may feel embarrassed or ridiculed as ideological opponents dispute their beliefs and ideas. Would Colorado College discipline a pro-life advocate for accusing women who have terminated

pregnancies of murder? Would it discipline a Palestinian advocate for accusing Israel of apartheid and racism? The answer must be no. Otherwise, the expressive rights laudably promised to Colorado College students are meaningless.

Furthermore, the charge of “Disruption of College Activities” is plainly inappropriate. The fact that some found Pryor’s comment offensive does not support Colorado College’s conclusion that his expression was disruptive to college operations. While this policy may properly be applied to regulate *conduct* that is objectively disruptive or disorderly, it is wholly unsuitable for the regulation of *speech*—the overall effect of which depends on the subjective reaction of its audience. Punishing student expression as “disruption” simply because it may upset others will chill student expression at Colorado College by leaving freedom of expression at the mercy of the most sensitive members of the college community, no matter how unreasonable their response. Such a chill is unacceptable at a college claiming to value freedom of expression, as Colorado College does.

On November 10, you wrote to the campus community regarding instances of hateful speech on campus, noting in part:

Our commitment to diversity and inclusion is interwoven with our commitment to discourse and liberal learning. As alumnus Bro Adams ’72 said in his commencement address in May: “Engaging our challenges in these ways won’t make them disappear, but it will allow for a deeper understanding of who we are, how we got here, and how we might lead better lives.”

Colorado College may not lay claim to the intellectual vitality that results from freedom of expression while simultaneously indicating to its students that the expression of controversial opinions in any forum will be met with severe punishment should any individual take offense and complain to the college. By allowing such a result, Colorado College in fact prevents its community from reaching the “deeper understanding” that you proclaimed as something to aspire to.

FIRE is aware that, in light of recent events at other campuses across the country, your administration may be facing significant pressure to take swift and harsh action in response to any speech that can be interpreted as racist or hateful. But that pressure cannot and must not lead to the subordination of Colorado College students’ expressive rights and the principles of free speech essential to the college’s mission. We urge you to rectify this mistake immediately and reverse the charges and sanctions against Thaddeus Pryor.

FIRE is committed to using all of the resources at our disposal to see this matter through to a just conclusion. We have enclosed with this letter a signed FERPA waiver from Thaddeus Pryor, permitting you to fully discuss this case with FIRE.

We request a response to this letter by December 2, 2015.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ari Z. Cohn". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Ari Z. Cohn
Senior Program Officer, Legal and Public Advocacy

Encl.

cc:

Mike Edmonds, Dean of Students and Vice President of Student Life
Rochelle T. Mason, Senior Associate Dean of Students