



January 15, 2016

Eben S. Moulton
Chair, Colorado College Board of Trustees
Seacoast Capital
55 Ferncroft Road
Suite 110
Danvers, Massachusetts 01923

Sent via U.S. Mail and Electronic Mail (emoulton@seacoastcapital.com)

Dear Mr. Moulton:

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 you and the Board of Trustees of Colorado College today to bring to your attention a troubling matter regarding freedom of speech that has implications for the entire Colorado College student community. Dishearteningly, the serious concerns brought to Colorado College's attention by FIRE and echoed by the college's faculty have been met with silence from the administration. We call on the Board of Trustees to rectify the college's serious errors in this case by honoring its fundamental commitment to student rights.

FIRE's concerns arise from the suspension of Colorado College student Thaddeus Pryor on the basis of an anonymous comment that he posted as a joke on the social media application Yik Yak. In November 2015, Colorado College learned of a number of racially charged comments posted to Yik Yak and came to suspect Pryor may have been involved. When asked about his involvement by Senior Associate Dean of Students Rochelle T. Mason, Pryor admitted that he was responsible for replying to a post reading "#blackwomenmatter" by commenting—as a joke—"They matter, they're just not hot."

Likely due in part to the recent protests over racial tensions that have caused the resignation of multiple senior administrators at campuses across the country, Colorado College immediately found Pryor responsible for "Abusive Behavior" and "Disruption of

College Activities,” and imposed an excessively harsh 21-month suspension, during which Pryor was to be forbidden from taking courses for academic credit at any other institution.

FIRE wrote to Colorado College President Jill Tiefenthaler on November 25, 2015, asking Colorado College to rescind the disciplinary findings and sanctions against Pryor, which were imposed in violation of the college’s institutional commitment to free expression.

As we noted in our November 25 letter, the allegation that Pryor disrupted any college activities defies credibility. Pryor’s Yik Yak comments did not impact Colorado College’s operations and cannot even be fairly said to have encouraged others to do so. Furthermore, the reaction of listeners hostile to a message may not, consistent with the ideals of free speech, be grounds for punishing a speaker. *See, e.g., Forsyth County v. Nationalist Movement*, 505 U.S. 123, 134–35 (1992) (“Speech cannot be financially burdened, *any more than it can be punished or banned*, simply because it might offend a hostile mob.”) (emphasis added).

FIRE further pointed out that there is no credible evidence Pryor’s joke threatened the “mental or physical health” of any Colorado College student, nor did it satisfy any reasonable definition or interpretation of harassment. Colorado College does its students a grave disservice by setting the bar as to what constitutes “abusive behavior” so low that a joke about the types of individuals one finds physically attractive is transformed into a disciplinary offense worthy of severe sanctions. Will Colorado College also sanction students who express that they do not find members of a particular gender attractive?

Despite FIRE’s intervention, criticism of Colorado College’s actions in the local and national media (including by at least one prominent black media personality¹), and the consternation of members of Colorado College’s own faculty, the college has failed to respond to FIRE’s concerns. After an appeal from Pryor, submitted the same day as FIRE’s letter, Colorado College reduced the suspension to a term of six months, without any acknowledgement of the expressive rights promised to Colorado College students.

The reduction of the sanctions against Pryor on appeal does not end this matter.

Thaddeus Pryor—and all Colorado College students—deserve better than the administration’s disregard for its students’ rights and the silence with which it has responded to concerns. Colorado College has displayed a striking lack of regard for the principles of free expression and common sense—a course of action with chilling implications. Pryor’s educational career and opportunities have been unjustly interrupted, and all students must now fear that offending a classmate will likewise subject them to severe disciplinary action. Students will undoubtedly choose to self-censor rather than take this risk—an unacceptable and untenable result at an institution of higher education.

¹ Montel Williams, FACEBOOK (Dec. 16, 2015), <https://www.facebook.com/MontelWilliamsFan/posts/10153780175361873>. A copy of Williams’ post is enclosed for ease of reference.

Nothing short of a reversal of the charges and sanctions and the immediate reinstatement of Thaddeus Pryor will satisfy the promises that Colorado College makes to its students, and the ideals of higher education for which the college claims to stand.

Given the Colorado College administration's apparent unwillingness to protect the free speech rights of its students, it is incumbent on the Board of Trustees to do so in its place. We ask that the Colorado College Trustees see that the unjust charges and sanctions against Thaddeus Pryor are dismissed and expunged from his student records. Further, we ask that the Trustees work with the administration to ensure that Colorado College will not use its disciplinary process as a tool for waging campaigns to eliminate "offensive" speech at the expense of students' basic rights.

We have enclosed copies of FIRE's November 25, 2015, letter to Colorado College. We request a response to our letter by January 29, 2016.

Sincerely,



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

Encls.

cc:

Colorado College Board of Trustees
Jill Tiefenthaler, President
Mike Edmonds, Dean of Students and Vice President of Student Life
Rochelle T. Mason, Senior Associate Dean of Students



Montel Williams

December 16, 2015 at 4:06pm ·

I'll be the first to stand up in the face of racism or bigotry, and because of that I feel obligated to stand up when charges of racism and bigotry (which impugn the heart and soul of the accused) are thrown around haphazardly or to assuage unreasonable outrage. [Foundation for Individual Rights in Education](#) has made me aware today of such a case. I must speak because there are few charges more serious, more injurious to one's character than to be called a racist.

Thaddeus Pryor was suspended 21 months by [Colorado College](#) for a post on yik yak (anonymous social media) quoted below in the graphic, in which he affirms that while black women matter (as humans) he doesn't find them "hot" (aka sexually attractive). His comment was moronic and probably a little offensive - he admits as much to the Dean in his appeal letter - it was not on its face racist even if it was said in all seriousness. For one to not be a racist, one must accept that black people are equal as human beings and should be treated as such - one can have not an ounce of racism in their hearts and not find black people (or white people, or asian people, etc.) sexually attractive.

Racism on college campuses is real - we should be focussing on people putting nooses at the doors of black kids, people shouting the N word (the -er form) at black students, people who engage in behavior that legitimately threatens students on the basis of race. This is not racism, this is a lapse in good judgement that is hardly uncommon amongst college kids.

I don't defend his remark, nor does he himself in his correspondence to the Dean - he himself takes responsibility and appreciates his actions have consequences. I find it outrageous that he would be suspended for this - this is the collegiate equivalent of life in prison (expulsion being the death penalty). This is a conversation, this is having him go meet with a professor focussing on black history to learn more about prejudice, this is a conversation. This is a failure of leadership and faux PC outrage on the part of College leadership.

I did some homework on him before I wrote this - I won't compromise his privacy, but I'm unable to conclude he's anything other than a normal college kid.

Integrity is defined by what you do when no one is looking. But for Thaddeus admitting he wrote the post in question, the College could not have held him responsible. Perhaps his biggest mistake was being honest and taking responsibility for his conduct thereby subjecting him to a kafka-esque college judicial proceeding that I find **FATALLY FLAWED AND INHERENTLY BIASED AGAINST HIM**.

So Thaddeus Lloyd does not find the black women of Colorado College "hot." As black people we face real issues of prejudice, I don't understand how one white kid not finding the black women of his college "hot" threatens the physical or emotional safety of black women on that campus nor black women as a whole. Had he said "white women matter but they aren't hot," or "asian women matter but they aren't hot," or "women with brown hair matter but they aren't hot," his remark would have been moronic but can anyone say he'd have been suspended?

Life frequently presents us with input that is moronic, varying degrees of offensive - such is life. We have a right to be treated equally as humans, to not be subjected to prejudice on the basis of race, religion, sexual orientation, gender and we have a right to be physically safe and not face outrageous threats to our emotional safety. Was this that? College kids need to toughen up and administrators shouldn't coddle them.

FULL STORY <https://www.thefire.org/.../colorado-college-student-suspend.../>



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