



# FIRE

Foundation for Individual  
Rights and Expression

September 7, 2022

Hiram E. Chodosh  
Office of the President  
Claremont McKenna College  
888 N Columbia Ave.  
Claremont, California 91711

*Sent via U.S. Mail and Electronic Mail (Hiram.Chodosh@ClaremontMcKenna.edu)*

Dear President Chodosh:

As Director of FIRE's Campus Rights Advocacy program, I've been working closely with Program Officer Amanda Nordstrom, our former Executive Director Robert Shibley, FIRE's President Greg Lukianoff (cc'd), and others here at our organization as we set out to assist the Claremont McKenna College professors who sought our help. We've also endeavored to meaningfully respond to your subsequent concerns about our publication of those professors' allegations and our letter to you, as well as assure you that we appreciate CMC's laudable commitment to free expression. I wanted to reach out to you personally to see if we can find a mutually agreeable path toward resolving both your remaining concerns, and ours.

I have reviewed in detail the documentation you sent yesterday. Our fundamental disagreement continues to regard the nature of the action CMC took against Professors Faggen, Nadon, and Revesz. We remain concerned the professors were, either collectively or individually, subject to adverse employment actions arising solely from consternation over their controversial but protected, pedagogically-relevant expression. These actions include but are not limited to investigations, warnings, bans under the guise of "informal" "advise[ment]," and non-renewal.

For example, your contention that professor Revesz was not quoting a racial slur from a course text but rather blurted it out during a relevant course discussion does not remove that word from the protection of CMC's free speech promises. Of course, had she *targeted* that slur at a student, that would be a different matter; but no one alleges that. Likewise, Professor Faggen may have objected to our description of what happened to him as punishment or warning; he prefers we say he was "advised," and when he requested we change the phrasing in our letter to CMC, we did. But whatever word was used to describe it, he stands by his account to both us and you, that Associate Vice President Gray told him it was acceptable to play a recording of someone saying a racial slur but "not acceptable" for him "to say it or read it." Setting aside the fact that Gray denies she said this, Faggen's allegation is that Gray told him he is not allowed to

say or read certain words in his class, however pedagogically relevant or protected under CMC's policies. Whereas "advice" functions merely to inform,<sup>1</sup> telling someone they are not allowed to do something, as Gray allegedly did, would qualify as a "ban," defined as an official prohibition.<sup>2</sup>

CMC would have us agree that a pattern of emailing faculty with "serious concerns" about their in-class speech, summoning them for "informal" meetings with senior university leadership, and non-renewing their employment after complaints about their protected in-class speech is totally within CMC's purview and poses no danger to expressive rights. As you observed, the AAUP, an organization FIRE deeply respects and admires, recently suggested that being asked by an administrator to discuss the pedagogy underlying one's classroom use of the N-word is not, in and of itself, a reprimand and that most people would "be hard pressed" to imagine a scenario where the context suggested it was. Here, we disagree with the AAUP. The subtext of any such scheme is that faculty members will understand that administrators, with power over their jobs, are upset with their speech. We think most people would be hard pressed to imagine a situation where such a summons from one's superior would *not* carry with it a threatening subtext.

Faculty who wish to keep their jobs without further friction, particularly adjuncts without tenure protections, will self-censor before teaching material that causes "serious concerns" again. Case law supports our view that, to be problematic, a college's actions or omissions need simply be *likely* to chill a professor of ordinary firmness from speaking in the future.<sup>3</sup>

When we decide to intervene in any situation at any college or university, we do so after analyzing the entire record available to us—always acknowledging an institution may have additional information and inviting them to share it with us. While we may continue to disagree about semantics, the record here suggested a pattern of expressive rights violations sufficiently serious for us to publicize without first contacting you, even though CMC has heretofore had a great track record on free speech. These allegations from three separate faculty members suggested a substantial departure from CMC's free speech commitments, which we felt a duty, as an advocacy organization, to report.

---

<sup>1</sup> *Advice*, MERRIAM-WEBSTER (2022), available at <https://www.merriam-webster.com/dictionary/advice>.

<sup>2</sup> *Ban*, MERRIAM-WEBSTER (2022), available at <https://www.merriam-webster.com/dictionary/ban>.

<sup>3</sup> See e.g., *Mendocino Env't Center v. Mendocino Cnty.*, 192 F.3d 1283, 1300 (9th Cir. 1999) (holding that when "an official's act would chill or silence a person of ordinary firmness from future First Amendment activities," that act violates the First Amendment); *White v. Lee*, 227 F.3d 1214, 1228 (9th Cir. 2000) (holding that a government investigation into clearly protected expression chilled speech and therefore violated the First Amendment); *Levin v. Harleston*, 966 F.2d 85, 89 (2d Cir. 1992) (holding that a university administrator's initiation of a formal investigation into faculty member's writings carried an implicit threat of discipline).

The kind of systematic faculty intimidation alleged by these faculty members poses a serious threat to academic freedom, no matter which words one uses to describe it. The processes CMC appears to now be defending cannot stand at any school committed to free expression, much less one like CMC, which appears to be an otherwise exceptionally strong proponent of free speech. We are truly eager to work with you on these matters, but need assurances CMC will take steps to protect academic freedom before we consider this matter closed.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alex Morey', with a stylized flourish at the end.

Alex Morey  
Director, Campus Rights Advocacy