



Foundation for Individual Rights in Education

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March 21, 2008

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Sent via U.S. Mail and Facsimile (719-389-6933)

Dear Mr. Celeste:

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As you can see from our list of Directors and Board of Advisors, FIRE unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, due process, legal equality, voluntary association, freedom of speech, and religious liberty on America's college campuses. Our web page, www.thefire.org, will give you a greater sense of our identity and activities.

FIRE is deeply concerned about the investigation of two students for posting copies of a satirical flyer on campus. This is our understanding of the facts. Please inform us if you believe we are in error.

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Sometime in 2008, an anonymous group calling themselves "the Feminist and Gender Studies Interns" produced a flyer called "The Monthly Rag." The flyer included a reference to "male castration," an announcement about a lecture on "feminist porn" by a "world-famous prostitute and porn star," an explanation of "packing" (pretending to have a phallus), and a quotation from *The Bitch Manifesto*.

As a satirical response to "The Monthly Rag," in February, students [REDACTED] and Christopher Robinson posted a flyer called "The Monthly Bag" under the pseudonym "The Coalition of Some Dudes." The flyer included references to "chainsaw etiquette," the shooting range of a sniper rifle, a quotation regarding a sexual position from the website menshealth.com, and a quotation about "female violence and abuse" of men from the website www.batteredmen.com.

In response, you sent a campus-wide email, stating that "The flyers include threatening and demeaning content, which is categorically unacceptable in this community... Vigorous debate is welcome. Anonymous acts meant to demean and intimidate others are not."

In response to several complaints about the flyer, ██████████ and Robinson received notice on March 3 that the flyer “was allegedly interpreted by members of the campus community as an attempt to target certain campus populations with the intention of devaluing, intimidating, or even threatening harm.” The letter charged the two students with violating the following provisions of the Student Code of Conduct, if not also additional unnamed provisions:

Special Provisions

Colorado College reserves the right to suspend or dismiss any student whose conduct is regarded as being in conflict with the best interests of the college or in violation of its code of conduct.

College Value – Respect

Verbal Abuse – Verbal abuse includes spoken or written attacks of a vulgar or disrespectful nature intended to demean, embarrass, or intimidate another person.

Violence – Violence is defined as threatening physical harm, causing physical harm, or any other conduct which threatens or endangers the health or safety of any person and is prohibited.

College Value – Integrity

Deception – Students may not act in ways that are deceptive or manipulative.

This includes knowingly misrepresenting oneself, involving others in violations without their knowledge, or manipulating people or processes.

Honesty – Students are expected to communicate honestly and demonstrate a respect for the truth. It is prohibited to knowingly furnish false, falsified or forged information.

In addition, Ginger Morgan, Associate Dean of Students for Academic Support, sent a message to the Feminist and Gender Studies Student List on March 3, showing a strong predisposition to finding ██████████ and Robinson guilty:

Any person who would like to speak to the impact the Monthly Bag had on them is welcome to submit statements. We are shooting for optimal number of four who would also be willing to appear before the Student Conduct Committee. There are several students (and maybe staff) the respondents will bring who can be expected to say “it was meant to be funny” “no harm done” “free speech/slippery slope” “the Monthly Rag is just as offensive”... [ellipsis in original]

I am willing to serve as a complainant and come to the hearing [...] I am willing to serve to coordinate the complainants, though do not feel I must be at the center of this. Any complainant may contact Jeff Cathey directly with a statement or questions. I am also available to be useful in whatever way this evolving situation warrants.

A hearing was held by the Student Conduct Committee on March 10. According to *Know the Code: The Guide to the Student Conduct Committee*, the chair of the Committee forwards the

Committee's findings to the dean of students, who "generally accepts" the findings. As of today, the students have not been informed of either the Committee's findings or the dean's decision.

Be advised that any punishment will directly and unequivocally contradict Colorado College's own policies and its advertised commitments to free expression. While Colorado College, as a private institution, is not directly bound by the First Amendment's requirement of freedom of speech, the university has a moral and contractual obligation to live up to its promises to respect its students' freedoms.

Like many private universities, Colorado College has committed itself to the basic principle of freedom of expression. Colorado College's Diversity & Anti-Discrimination Policy states in no uncertain terms that "[f]reedom of thought and expression is essential to any institution of higher education." The meaning of this statement is subsequently explored at length:

On a campus that is free and open, no idea can be banned or forbidden. No viewpoint or message may be deemed so hateful that it may not be expressed. Nothing in this Anti-Discrimination Policy should be construed to interfere with the academic freedom of all persons at the college to express and debate diverse ideas. Persons who object to the expression of certain ideas should generally counter with refutation, not demands for sanctions or disciplinary action against the person who has expressed the controversial ideas.

An equally strong commitment to freedom of expression is found in the College's Policy and Procedure for Protest and Dissent, which states:

Academic institutions exist for the transmission of knowledge, the quest 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 college community members 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.

Given such a seemingly robust appreciation of the inherent academic and social value of freedom of expression, it is especially disheartening to find that the College's commitments currently ring hollow. A private institution that claims to cherish the right to free expression cannot, in good conscience, extend fewer rights and freedoms to its students than a public institution bound by the Constitution. Do students at Colorado College truly enjoy fewer protections of their expression than students at Colorado's community colleges? To restrict freedom of expression is to create a stifled and intellectually bereft environment—the very antithesis of what an institution like Colorado College claims to be.

"The Monthly Bag" is obviously an exercise in parody and satire, areas of political speech that are clearly and unambiguously protected under the First Amendment to the United States Constitution. Parody and satire exist to challenge, to amuse, and even to offend. In *Hustler Magazine v. Falwell*, 485 U.S. 46 (1988), for ready example, the Supreme Court ruled that the First Amendment protects even the most outlandish offensive parody—in that case, a cartoon

suggesting that the Reverend Jerry Falwell lost his virginity in a drunken encounter with his mother in an outhouse. Highly offensive material is protected under the First Amendment and should likewise be protected on any campus that claims to protect its students' right to free expression. If speech of this nature is considered outside of the parameters of protected speech at Colorado College, then no expression is safe.

Moreover, in response to your campus-wide email, it is worth noting that the First Amendment protects anonymous speech. Your email suggests yet another disappointing difference between the protections enjoyed by Colorado College students and those enjoyed by their counterparts at public colleges. The Supreme Court has ruled that "[t]he decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible...Accordingly, an author's decision to remain anonymous...is an aspect of freedom of speech protected by the First Amendment." *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 341-342 (1995).

Given the investigation and treatment of [REDACTED] and Robinson thus far, satirists now have more reason than ever to publish anonymously. The threat of being found guilty of harassment or worse, merely for publishing satire, will certainly chill speech at Colorado College. While this result may please some students and administrators, such action is fundamentally at odds with your school's stated values. It may sometimes be unpopular to stand up for speech that offends some part of the student body, but if universities are to survive as true marketplaces of ideas, they must have the courage to stand up for robust debate and discussion.

We have included signed waivers from both students with regard to their FERPA privacy rights. These waivers authorize you to discuss their case with FIRE.

We hope to see this matter resolved with respect for the principles of freedom of speech. Because of the urgency of this situation, please respond to us by Tuesday, March 25, 2008.

I look forward to hearing from you.

Sincerely,



Adam Kissel
Director, Individual Rights Defense Program

cc:

Mike Edmonds, Vice President for Student Life/Dean of Students, Colorado College
Ginger Morgan, Associate Dean of Students for Academic Support, Colorado College
Susan A. Ashley, Dean of the College, Colorado College