



August 11, 2020

Dr. Harvey Kesselman
Office of the President
Stockton University
101 Vera King Farris Drive
Galloway, New Jersey 08205-9441

URGENT

Sent via Electronic Mail (harvey.kesselman@stockton.edu)

Dear President Kesselman:

FIRE is in receipt of Stockton University's August 7 response to our letter, sent earlier that day, regarding the disciplinary charges against doctoral student Robert Dailyda over his political expression. We appreciate that Stockton has rescinded the charges relating to Dailyda's choice of a Zoom background image, and that the university will not punish him for it. In doing so, Stockton correctly recognizes that the First Amendment bars it from punishing Dailyda's protected speech.

However, we write to reiterate our concerns with the remaining charge, arising from Dailyda's Facebook post. That charge is also incompatible with Stockton's obligations as a public institution under the First Amendment and must be rescinded immediately.

According to the enclosed August 10, 2020, amended disciplinary letter sent to Dailyda by Craig Stambaugh, Assistant Vice President for Student Affairs, Engagement & Community Development, Stockton has rescinded all disciplinary charges against Dailyda except for a charge of "Disruptive Behavior."¹ Additionally, in a phone call this morning, Deputy General Counsel Ellen Bailey clarified to FIRE that the sole basis for this charge is Dailyda's Facebook post and at least one other person's comments on his post. Bailey also asserted that the university interpreted Dailyda's expression on Facebook—that he is willing to "fight to the

¹ Letter from Craig Stambaugh, Assistant Vice President for Student Affairs, Engagement & Community Development, to Robert Dailyda (Aug 10, 2020) (on file with author); Stockton Univ., *Campus Conduct Code* (May 2, 2018), <https://stockton.edu/policy-procedure/documents/policies/I-55.pdf>.

death for our country”—as a threat, and asked if FIRE would provide the university with a copy of the post, which it apparently does not possess.

As FIRE explained in our August 7 letter, Dailyda’s Facebook post is quintessential political expression meriting the highest level of protection under the First Amendment, which Stockton is bound to uphold. Dailyda’s expression falls far short of the exacting legal standard of an unprotected “true threat”—and Stockton itself does not treat it as a threat²—as no reasonable person could construe it as a serious expression of an intent to undertake violence.³ To the contrary, boasting a willingness to “fight to the death for our country” is rhetorical hyperbole often deployed to underscore the speaker’s unwillingness to concede an argument or position.⁴ As a public university, Stockton must tread carefully with metaphorical political rhetoric; we hope that this is not the hill Stockton wants to die on.

FIRE urges Stockton to adhere to First Amendment obligations by rescinding the remaining disciplinary charge against Dailyda.

Sincerely,



Zachary Greenberg
Program Officer, Individual Rights Defense Program

Cc: Amy Jones, Director of Care and Community Standards
Stacey Rose, Assistant Director of Care and Community Standards
Craig Stambaugh, Assistant Vice President for Student Affairs, Engagement & Community Development
Ellen Bailey, Deputy General Counsel

Encl.

² Stockton’s assertion that Dailyda’s expression is a threat is undermined by Stockton’s rescinding the disciplinary charge of “Harm,” defined by its Code of Conduct as “[a]ction that intentionally or recklessly causes or threatens bodily harm, presents imminent danger, or endangers the health or safety of any person.” *Campus Conduct Code*, *supra* note 1. As the only provision in Stockton’s Code of Conduct penalizing threatening conduct, Stockton’s removal of this charge in its August 11 letter to Dailyda casts doubt on its explanation that the remaining charge is predicated on the university’s belief that he was threatening others.

³ *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 926–27 (1982) (explaining how rhetoric tinged with violent themes often intersects with charged political expression, and thus government actors must take “extreme care” to ensure that the exacting true threats standard be met, lest “highly charged political rhetoric lying at the core” of freedom of expression be misinterpreted as unprotected expression).

⁴ See, e.g., *Bergstein v. Stroock & Stroock & Lavan LLP*, 236 Cal. App. 4th 793, 798 (2015) (litigation posture described as a “war” and “fight to the death”); *Golden v. Clear Advantage Mktg.*, No. 4:16-cv-00529-JAJ-CFB, 2020 U.S. Dist. LEXIS 88130, at *55 (S.D. Iowa Mar. 30, 2020) (lawyer characterizing litigant’s posture as “willing to go gladiator over and fight to the death” instead of settling).