



February 3, 2021

Chancellor Philip P. DiStefano
University of Colorado Boulder
Office of the Chancellor
914 Broadway Avenue
Boulder, Colorado 80309

Sent via Electronic Mail (chancellor@colorado.edu)

Dear Chancellor DiStefano:

FIRE¹ appreciates that the University of Colorado Boulder is one of the few institutions in the country whose policies governing expression earn a “green light” rating from FIRE. We are, however, concerned by CU Boulder’s response to visiting scholar John Eastman’s appearance at then-President Donald Trump’s “Save America Rally” on January 6, 2021.

CU Boulder has acknowledged—correctly—that Eastman’s extramural expression is protected by the First Amendment. As a public institution bound by the First Amendment, the university is sharply limited in how it may respond to faculty members’ speech as private citizens. CU Boulder’s response—cancelling Eastman’s classes, removing him from his role in curating a lecture series, prohibiting his participation in community outreach, and preemptively refusing to renew his contract—exceeds the boundaries permitted to it by the First Amendment and cannot be justified by the rationales proffered by the university.

I. Eastman’s Comments on the Election and Remarks on the Ellipse

The following is our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us. To that end, please find enclosed an executed privacy waiver authorizing you to share information about this matter.

¹The Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America’s college campuses.

John C. Eastman was a former dean and, until he retired on January 14, 2021, a tenured professor of law at Chapman University.² Eastman is the 2020-21 Visiting Scholar in Conservative Thought and Policy at CU Boulder's Benson Center for the Study of Western Civilization. Eastman is not affiliated with CU Boulder's law school.

In his capacity as a visiting scholar, he is tasked with teaching two undergraduate classes each semester, organizing a lecture series during the 2020–21 academic year, and speaking to community organizations.

A. Eastman's Remarks on the Ellipse on January 6, 2021

Following the November 2020 election, Eastman served as an attorney for Donald J. Trump in Trump's personal capacity as a candidate for President of the United States.

On January 6, 2021, Eastman spoke during Trump's rally on the Ellipse in Washington, D.C. alongside Rudy Giuliani. After Giuliani's remarks, Eastman addressed the audience. Eastman's remarks, lasting less than three minutes, were in full:

Hello, America! Sorry, I had to say that.

Look, we've got petitions pending before the Supreme Court that identify—in chapter and verse—the number of times state election officials ignored or violated a state law in order to put Vice President Biden over the finish line. We know there was fraud— traditional fraud—that occurred. We know that dead people voted. But we now know, because we caught it live last time in real time, how the machines contributed to that fraud. And let me as simply as I can explain it.

You know, the old way was to have a bunch of ballots sitting in a box under the floor, and when you needed more, you pull them out in the dark of night. They put those ballots in a secret folder and the machines, sitting there waiting until they know how many they need. And then the machine after the close of polls, we now know who's voted, and we know who hasn't. And I can now—in that machine—match those unvoted ballots with an unvoted voter and put them together in the machine. And how do we know that happened last night in real time? You saw when it got to 99 percent of the vote total and then it stopped. The percentage stopped, but the votes didn't stop. What happened—and you don't see this on Fox or any of those stations—but the data shows that the denominator: How many ballots remained to be counted? How else do you figure out the percentage that you have? How many remain to be counted? That number started moving up. That means they were unloading the ballots from that secret folder, matching

² John C. Eastman, *John Eastman's Statement on His Retirement from Chapman University's Fowler School of Law*, Jan. 14, 2021, <https://americanmind.org/salvo/john-eastmans-statement-on-his-retirement-from-chapman-university-fowler-school-of-law>.

‘em—matching ‘em to the unvoted voter, and voila! we have enough votes to barely get over the finish line. We saw it happen in real time last night, and it happened on November 3rd as well. And all we are demanding of Vice President Pence is this afternoon at one o’clock, he let the legislatures of the state look into this so we get to the bottom of it, and the American people know whether we have control of the direction of our government or not.

We no longer live in a self-governing Republic if we can’t get the answer to this question. This is bigger than President Trump. It is the very essence of our republican form of government and it has to be done. And anybody that is not willing to stand up to do it does not deserve to be in the office. It is that simple.³

After Eastman spoke, Giuliani made concluding remarks and left the stage.⁴ For the next hour, there were no speakers on stage, and the audience listened to fourteen songs played through a PA system without incident or violence.⁵ After an hour, President Trump took the stage and spoke for an hour and fourteen minutes, concluding his remarks by encouraging the audience to “walk down Pennsylvania Avenue” to the Capitol,⁶ approximately 1.6 miles—a thirty-minute walk—from the Ellipse where the speeches occurred.

Eastman was not present at the Capitol protests and riot. He did not participate in any violence or unrest at or near the Capitol building.

B. CU Boulder’s Response to Eastman’s Extramural Comments

On January 7, you issued a public statement denouncing Eastman, writing that Eastman’s “continued advocacy of conspiracy theories is repugnant, and he will bear the shame for his role in undermining confidence in the rule of law.”⁷ You noted, accurately, that the Board of Regents’ policies bar the university from “censor[ing] a faculty member’s political statements” or “initiat[ing] disciplinary action because it disapproves of them,” citing the First Amendment’s protection of “even abhorrent or ignorant political speech” against “adverse action” by public employers.⁸ You pledged not to remove Eastman from his post, citing the expiration of his contract in May.⁹

On January 7, Professor Daniel Jacobson, Director of the Benson Center at CU Boulder, issued a public statement condemning Eastman’s “radical claims” and “public figures,

³ Bloomberg Quicktake: Now, *LIVE: Trump Delivers Remarks at the ‘Save America Rally’ in Washington, D.C.*, YOUTUBE (Jan. 6, 2021) at 1:30:13–1:33:00, <https://www.youtube.com/watch?v=ht20eDYmLXU> (“Video”).

⁴ Video at 1:33:00–1:33:38.

⁵ Video at 1:33:38–2:33:40.

⁶ Video at 2:33:40–3:47:43.

⁷ Phil DeStefano, *From the Chancellor – Upholding our values and democracy*, UNIV. OF COLO. BOULDER, Jan. 7, 2021, <https://www.colorado.edu/chancellor/newsletter/chancellor/upholding-our-values-and-democracy>.

⁸ *Id.*

⁹ *Id.*

including public intellectuals, who make excuses for political violence or make public statements that exacerbate dangerous situations.”¹⁰ The statement reiterated that the Benson Center “defends the right of its scholars to express unpopular opinions within the limits of the law,” and acknowledged that Eastman “did not call for the violence that occurred after the event, and his speech is protected by the First Amendment.”¹¹

On January 10, Jacobson sent Eastman an email faulting Eastman for having “done irreparable damage to the Center, which threatens its future viability and the continued existence of the” visiting scholar post.¹² Jacobson cited “hours of meetings with antagonistic administrators and faculty” and the “terrible press due to your behavior as” a visiting scholar, warning that he had been “informed that it will get substantially worse.”¹³ Jacobson complained that Eastman’s “actions have shown no concern for our reputation or for the continued viability of the Benson Center.”¹⁴

Jacobson continued:

I am changing your courses next term to independent studies. This is a less drastic measure not only than those demanded by many hostile to the Center but also by some of its strongest supporters. In addition, I’m sure you’ve gathered from the Chancellor’s statement that renewal of your appointment is out of the question.¹⁵

Jacobson concluded by demanding that “any reply” from Eastman be accompanied by producing evidence “that the election was stolen,” specifically reciting allegations Eastman made in his remarks on the Ellipse.¹⁶ Jacobson remarked that if Eastman “had such evidence,” it “hardly matters” if it were now presented, as it should have been publicly presented “when it might have saved the country from a putatively stolen election.”¹⁷

Jacobson’s criticism of Eastman was echoed by other CU Boulder administrators and faculty. S. James Anaya, Dean of the University of Colorado Law School, wrote in an email to the law school’s constituents that Eastman was an “embarrassment to our profession” and clarified that Eastman, with no relationship with the law school, “has not taught nor will he teach” at

¹⁰ BRUCE D. BENSON CTR. FOR THE STUDY OF WESTERN CIV., *Statement by the Benson Center*, Jan. 7, 2021, <https://www.colorado.edu/center/benson/2021/01/07/statement-benson-center>.

¹¹ *Id.*

¹² Email from Daniel Jacobson, Director, Bruce D. Benson Ctr. for the Study of Western Civ., Univ. of Colo. Boulder, to John Eastman (Jan. 10, 2021, 10:29 AM) (on file with author).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

the law school.¹⁸ Over 700 faculty members and graduate students signed an open letter to the university's leadership faulting Eastman for "solicit[ing] a seditious act against the United States" and demanding his immediate dismissal and a "rigorous academic investigation into his scholarly conduct and work."¹⁹

On January 13, the *Denver Post* reported that CU Boulder had cancelled Eastman's two classes, citing the "low enrollment" in those courses.²⁰ The *Post* reported that two students had signed up for one course and six the other.²¹ Citing a university spokesman, the *Post* reported that the "College of Arts & Sciences typically requires 15 students for an undergraduate class."²²

On January 21, Eastman received a letter from Russell L. Moore, Provost and Executive Vice Chancellor for Academic Affairs for CU Boulder.²³ Moore, citing his responsibility "for determining what is in the best interests of the campus and its academic components, including the" Benson Center, wrote, in pertinent part:

As you know, the College of Arts & Sciences cancelled your spring 2021 classes, in accordance with college policy, due to lack of enrollment.

I am relieving you of the duties in your offer letter related to the speaker series for spring semester and to do outreach and speak with various groups as a representative of the Benson Center. The speaker series will from this point be the responsibility of Benson Center Director Daniel Jacobson. Although you are free to speak to whomever you wish and on any topic you wish in your personal capacity, you are therefore not authorized to engage in any outreach on behalf of the Benson Center or to utilize any Benson Center or campus resources for these purposes.

I take these actions because your continued pursuit of these duties for the University of Colorado Boulder is likely to be disruptive to the campus and the Benson Center. I do not believe that you can perform these duties without damaging the interests of the campus or the Benson Center.

You will continue to retain the title of Visiting Scholar and will remain rostered under the Benson Center until May 7, at which time your appointment will

¹⁸ Email from S. James Anaya, Dean & Univ. Distinguished Prof., Univ. of Colo. Law Sch., to CU Law Everyone listserv (Jan. 10, 2021, 5:06 PM) (on file with author).

¹⁹ Joel D. Eaves, Assoc. Prof. Dept. of Chem., *et al.*, to Mark Kennedy, Pres., Univ. of Colo. (Jan. 13, 2021) (on file with author).

²⁰ Elizabeth Hernandez, *CU Boulder cancels courses taught by conservative scholar John Eastman, citing single-digit enrollment*, DENVER POST, Jan. 13, 2021, <https://www.denverpost.com/2021/01/13/john-eastman-cu-boulder-classes-canceled>.

²¹ *Id.*

²² *Id.*

²³ Letter from Russell L. Moore, Provost & Exec. Vice C. for Academic Aff., Univ. of Colo. Boulder, to Eastman (Jan. 21, 2021) (on file with author).

expire. In the event that you contravene these directives, I will consider that an act of insubordination and determine an appropriate disciplinary response.

Eastman has no other substantial responsibilities associated with his position.

II. CU Boulder’s Response to Eastman’s Protected Speech Violates the First Amendment

The First Amendment will not protect a number of the individuals involved in the events of January 6, including those who engaged in violence, trespassing, or unlawful incitement, from the legal consequences of their actions. The First Amendment will not shield them from the criticism, ostracization, or political repercussions that flow to those involved, whether their actions were lawful or not. Eastman’s public comments and legal representation, however, do not meet the exacting legal definition of unprotected incitement and remain protected by the First Amendment.

A. The First Amendment and University Policy Bind CU Boulder’s Response to Extramural Expression

It has long been settled law that the First Amendment is binding on public universities like CU Boulder.²⁴ Faculty at public universities do not “relinquish First Amendment rights to comment on matters of public interest by virtue of government employment.”²⁵ A government employer cannot penalize an employee for speaking as a private citizen on a matter of public concern unless it demonstrates that its interest “as an employer, in promoting the efficiency of the public services it performs through its employees” outweighs the interest of the employee, “as a citizen, in commenting upon matters of public concern[.]”²⁶

In addition to these constitutional obligations, CU Boulder’s policies provide additional support for faculty members’ broad expressive rights. Article 1 of the Regent Laws provides that “[s]peech related to political . . . and social concern . . . is within the boundaries of free expression, even when others construe that speech as wrong or insensitive.”²⁷

²⁴ *Healy v. James*, 408 U.S. 169, 180 (1972) (“[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, ‘the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.’”) (internal citation omitted).

²⁵ *Connick v. Myers*, 461 U.S. 138, 140 (1983).

²⁶ *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968).

²⁷ UNIV. OF COLO. BD. OF REGENTS, REGENT LAWS Art. 1.E.1, available at <https://www.cu.edu/regents/law/1>.

Regent Policy 1.D.3(D)(2) likewise provides:

University faculty are members of our communities and members of a learned profession. When university faculty speak or write as citizens, not in furtherance of their university duties or in the course and scope of their university employment, on matters of political, academic, artistic, or social concern, the university shall not censor their expression, initiate disciplinary action against them, or otherwise subject the faculty members to adverse employment actions because it disapproves of the substance of their expression.²⁸

Accordingly, CU Boulder has constitutional, contractual,²⁹ and moral obligations to adhere to these commitments.

B. Eastman’s Speech is Protected by the First Amendment

There are certain “well-defined and narrowly limited” exceptions to the First Amendment, such as obscenity, incitement, and fighting words.³⁰ Eastman’s remarks on the Ellipse do not fall into any of these categories. Indeed, CU Boulder has conceded that he “did not call for the violence that occurred after the event, and his speech is protected by the First Amendment.”³¹

i. Eastman’s Ellipse comments do not constitute unlawful incitement.

As the Supreme Court of the United States has explained, “a function of free speech under our system of government is to invite dispute,” and speech “may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.”³² Officials endowed with the authority to suppress speech they fear might lead to violence—or to arrest speakers when their supporters independently engage in unlawful activity—will abuse that authority to target unpopular speech or movements. Accordingly, the First Amendment draws a sharp distinction between protected advocacy—even advocacy of unlawful activity—and unprotected incitement to imminent lawless action.

Expression advocating “the use of force or of law violation” amounts to unprotected incitement only where it is “directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”³³ Accordingly, the speech must (1) “specifically

²⁸ UNIV. OF COLO. BD. OF REGENTS, REGENT POLICY Policy 1.D.3(D)(2), *available at* <https://www.cu.edu/regents/policy/1>.

²⁹ *See, e.g., McAdams v. Marquette University*, 914 N.W.2d 708, 737 (Wis. 2018) (private university’s commitment to academic freedom rendered a professor’s extramural blog post “a contractually-disqualified basis for discipline”).

³⁰ *Chaplinsky v. New Hampshire*, 315 U.S. 568, 574 (1942). The Supreme Court has indicated that it is unlikely to recognize new “categories of speech that have been historically unprotected” but not yet “specifically identified or discussed[.]” *United States v. Stevens*, 559 U.S. 460, 472 (2010).

³¹ *Statement by the Benson Center*, *supra* note 10.

³² *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949).

³³ *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).

advocate for listeners to take unlawful action”; (2) be “directed to inciting or producing imminent lawless action”; and (3) be “likely to incite or produce such action.”³⁴

Eastman’s January 6 comments do not meet these tests.

First, Eastman’s comments did not “specifically advocate for listeners to take unlawful action[.]”³⁵ Even if the speech could be said to have a “mere tendency to encourage unlawful acts,” that would not be sufficient to remove it from the First Amendment’s protection.³⁶ “[T]he subjective reaction of any particular listener cannot dictate whether the speaker’s words enjoy constitutional protection”; instead, “it is the words used by the speaker that must be the focus of the incitement inquiry[.]”³⁷ Only “*specific* advocacy of violence” or unlawful action will qualify as unprotected incitement.³⁸ This is true even if the speaker intended to encourage violence and “the tendency of his statement to result in violence” can be shown.³⁹

Eastman’s remarks made demands that then-Vice President Pence take action (“all we are demanding of Vice President Pence is this afternoon at one o’clock, he let the legislatures of the state look into this so we get to the bottom of it”), and sought to shame Pence as unfit for office if he did not do so. Eastman did not utter any words calling for violence, insurrection, or unlawful action.⁴⁰

Second, Eastman’s comments were not directed to nor likely to cause “*imminent* lawless action.”⁴¹ Eastman’s remarks on the Ellipse were not immediately followed by violence, nor were they likely to do so. Those in the audience were not likely to decamp for the Capitol upon hearing Eastman’s remarks, given that the marquee speaker—Trump—had yet to speak. In between Eastman’s remarks and the beginning of Trump’s speech, the audience stood idle for an hour, listening to fourteen rock songs, then listened to Trump speak for over an hour, then made the half-hour walk to the Capitol. Even had Eastman exhorted them to undertake unlawful action, “advocacy of illegal action at some indefinite future time” is “not sufficient” to satisfy the imminence criteria.⁴²

³⁴ *Nwanguma v. Trump*, 903 F.3d 604, 609–10 (6th Cir. 2018).

³⁵ *Id.* at 610.

³⁶ *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 253 (2002).

³⁷ *Nwanguma*, *supra* note 34, at 613.

³⁸ *Id.* at 610 (emphasis in original).

³⁹ *Id.* at 611 (citing *Hess v. Indiana*, 414 U.S. 105, 107–09 (1973)).

⁴⁰ Even assuming Eastman’s remarks calling on *Pence* to act were advocacy of unlawful action on Pence’s part, it was not likely to produce that action. At that point, Pence had rejected Eastman’s position and was not present to be swayed by Eastman’s on-stage remarks.

⁴¹ *Hess v. Indiana*, 414 U.S. 105, 108 (1973) (emphasis in original).

⁴² *Id.* (“We’ll take the fucking street later” was not advocacy of imminent unlawful action).

ii. **Eastman’s views about the 2020 election are protected speech.**

CU Boulder’s response to Eastman is predicated on statements that administrators characterize as “conspiracy theories” and “radical claims,” criticizing his assertions as false. However, even if Eastman’s statements are false, there is no “general exception” to the First Amendment for “false statements.”⁴³ The government’s interest in “truthful discourse” does not “give government a broad censorial power” over statements officials believe to be false, inaccurate, or erroneous.⁴⁴

As the Supreme Court explained in its seminal decision in *New York Times v. Sullivan*, the First Amendment allows members of the public to make mistakes in order to facilitate speech:

That erroneous statement is inevitable in free debate, and that it must be protected if the freedoms of expression are to have the “breathing space” that they “need . . . to survive[.]”⁴⁵

That the assertions made by Trump and his allies were unsuccessful in altering the election’s outcome does not remove them from the protection of the First Amendment: The very “theory of our Constitution” is that “the best test of truth is the power of the thought to get itself accepted in the competition of the market.”⁴⁶ Even the widespread rejection of a theory, an argument, or a claim is not a basis to punish the speaker who offered it.

C. CU Boulder’s Retaliatory Restrictions on Eastman Violate the First Amendment

The First Amendment prohibits more than prosecutions, terminations, or other formal sanctions for protected speech. Rather, it bars “[a]ny form of official retaliation for exercising one’s freedom of speech” which “would chill a person of ordinary firmness from continuing to engage in that activity[.]”⁴⁷ Each of the university’s responses to Eastman’s expression—including removing him from his role in organizing a lecture series and preemptively refusing to renew his contract—would, standing alone, be sufficient to deter a person of ordinary firmness from continuing to engage in protected speech. In particular, while a university may decline to renew a contract for any lawful reason or no reason at all, it cannot do so in retaliation for the exercise of a protected right.⁴⁸

⁴³ *United States v. Alvarez*, 567 U.S. 709, 718–23 (2012).

⁴⁴ *Id.*

⁴⁵ *New York Times Co. v. Sullivan*, 376 U.S. 254, 271–72 (1964) (quoting *NAACP v. Button*, 371 U.S. 415, 433 (1963)).

⁴⁶ *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting).

⁴⁷ *Smith v. Plati*, 258 F.3d 1167, 1176 (10th Cir. 2001) (quoting, in part, *Worrell v. Henry*, 219 F.3d 1197, 1212 (10th Cir. 2000)).

⁴⁸ The Supreme Court has long and “specifically held that the *nonrenewal* of a nontenured public school teacher’s one-year contract may not be predicated on his exercise of First and Fourteenth Amendment rights. . . .” *Perry v. Sindermann*, 408 U.S. 593, 598 (1972) (emphasis added).

i. CU Boulder’s cancellation of Eastman’s courses appears pretextual.

Only one of the university’s responses—the cancellation of his courses—is predicated on anything other than Eastman’s extramural speech. CU Boulder has asserted that the College of Arts and Sciences requires 15 students for undergraduate classes. We have not been able to locate a policy to that effect and have issued a public records request for any such policy.

The university’s course registration database, on the other hand, reveals a significant number of College of Arts and Sciences courses in which there are currently fewer than 15 students enrolled. This is consistent with the university’s advertisement of its small class sizes, noting that “more than 60 percent of undergraduate classes are small, with 25 or fewer students,”⁴⁹ and proclaiming that class sizes “can vary from lectures of 200 or more students to smaller classes of 10-20 students.”⁵⁰

There is no doubt that a university can require that its classes meet a minimum enrollment to remain open. However, any such requirement must be evenly enforced and not implemented in retaliation against protected expression. Because the university’s response to Eastman indicates that his “speech was a substantial or motivating factor” in its action, the university has the burden to show that it “would have taken the same action . . . even in the absence of the protected speech.”⁵¹

ii. Suspending Eastman’s curation role and preemptively non-renewing his contract are expressly retaliatory.

While the First Amendment obviously does not bar the university from criticizing Eastman, its other actions—cancelling his courses, suspending his ability to speak and to engage in community outreach, withdrawing his role in organizing campus discussions, and preemptively declining to renew his contract—are nakedly retaliatory.

The rationales *explicitly* invoked by the university are fundamentally at odds with the basic principles of freedom of expression. University administrators have cited angry members of the public, “antagonistic administrators and faculty,” the “terrible press,” “our reputation,” and intimated that pressure from “supporters” of the Center played a role in its decision.

⁴⁹ UNIV. OF COLO., 2020-2021 UNIVERSITY CATALOG, ARTS & SCIENCES, <https://catalog.colorado.edu/undergraduate/colleges-schools/arts-sciences> (last visited Jan. 27, 2021).

⁵⁰ UNIV. OF COLO., ACADEMIC CULTURE & RESOURCES, <https://www.colorado.edu/orientation/prearrival/academic-culture> (last visited Jan. 27, 2021).

⁵¹ *Lybrook v. Members of Farmington Mun. Sch. Bd. of Educ.*, 232 F.3d 1334, 1339 (10th Cir. 2000).

None of these is a defensible basis to penalize a member of an academic community. To the contrary, if donor interests,⁵² public anger, reputation,⁵³ or administrators' ire are sufficient to grant the institution the authority to punish members of its faculty, then only speech popular with donors, the public, and administrators is protected. This inverts the purpose of the freedom of expression CU Boulder purports—and is required by the First Amendment—to protect, as unpopular speech is often the very speech most in need of protection.

III. Conclusion

Again, the First Amendment will not protect the participants in the events of January 6 from a wide range of consequences, whether political, social, or economic. In many cases, it will not shield them from criminal charges. Eastman's remarks and views, however, do not cross the threshold into unprotected speech, and are protected by the First Amendment. A public university abandoning its binding legal and moral commitment to the fundamental right of freedom of expression will only accelerate a loss of confidence in our system of government—the very threat the university purports to oppose.

We call on the university to rescind the sanctions imposed on Eastman, reassure its faculty that they will not be subject to retaliatory actions for engaging in unpopular speech, and reaffirm its commitment to the First Amendment.

We request receipt of a response to this letter by the close of business on February 10, 2021.

Sincerely,



Adam Steinbaugh
Director, Individual Rights Defense Program

Cc: Mark Kennedy, President, Univ. of Colo.
Russell L. Moore, Provost & Exec. Vice C. for Academic Aff., Univ. of Colo. Boulder
Daniel Jacobson, Director, Bruce D. Benson Ctr. for the Study of Western Civ.

Encl.

⁵² See, e.g., Adam Steinbaugh, *Why did a Bellevue College administrator censor an art installation memorializing Japanese-American internment camps? Public records suggest a motive.*, FIRE, May 19, 2020, <https://www.thefire.org/why-did-a-bellevue-college-administrator-censor-an-art-installation-memorializing-japanese-american-internment-camps-public-records-suggest-a-motive>.

⁵³ *Goza v. Memphis Light, Gas & Water Div.*, No. 2:17-cv-2873, 2019 U.S. Dist. LEXIS 100057, at *2, 29–31 (W.D. Tenn. June 14, 2019) (“Public perception alone cannot justify a restriction on free speech. . .” and “concern” about “brand or reputation is not sufficient to outweigh” First Amendment rights).

Authorization and Waiver for Release of Personal Information

I, John C. Eastman, do hereby authorize The University of Colorado (the "Institution") to release to the Foundation for Individual Rights in Education ("FIRE") any and all information concerning my employment, status, or relationship with the Institution. This authorization and waiver extends to the release of any personnel files, investigative records, disciplinary history, or other records that would otherwise be protected by privacy rights of any source, including those arising from contract, statute, or regulation. I also authorize the Institution to engage FIRE and its staff members in a full discussion of all information pertaining to my employment and performance, and, in so doing, to disclose to FIRE all relevant information and documentation.

This authorization and waiver does not extend to or authorize the release of any information or records to any entity or person other than the Foundation for Individual Rights in Education, and I understand that I may withdraw this authorization in writing at any time. I further understand that my execution of this waiver and release does not, on its own or in connection with any other communications or activity, serve to establish an attorney-client relationship with FIRE.

If the Institution is located in the State of California, I request access to and a copy of all documents defined as my "personnel records" under Cal. Ed. Code § 87031 or Cal. Lab. Code § 1198.5, including without limitation: (1) a complete copy of any files kept in my name in any and all Institution or District offices; (2) any emails, notes, memoranda, video, audio, or other material maintained by any school employee in which I am personally identifiable; and (3) any and all phone, medical or other records in which I am personally identifiable.

This authorization and waiver does not extend to or authorize the release of any information or records to any entity or person other than the Foundation for Individual Rights in Education, and I understand that I may withdraw this authorization in writing at any time. I further understand that my execution of this waiver and release does not, on its own or in connection with any other communications or activity, serve to establish an attorney-client relationship with FIRE.

I also hereby consent that FIRE may disclose information obtained as a result of this authorization and waiver, but only the information that I authorize.

DocuSigned by:

422B552101FF41F...
Signature

2/2/2021

Date