



February 4, 2021

H. Neil Matkin, Ed.D.
District President
Collin College
3452 Spur 399
Collin Higher Education Center
Room 406
McKinney, Texas 75069

Sent via Electronic Mail (nmatkin@collin.edu)

URGENT

Dear President Matkin:

FIRE¹ is alarmed by Collin College’s response to faculty members’ criticism of your administration’s policies concerning the COVID-19 pandemic, a matter of utmost public concern. We write today to raise our concerns in particular with Collin College’s retaliation against professors Audra Heaslip and Suzanne Jones. Collin College ended their employment because it viewed their public criticism of your administration—an attempt to exert “external pressure” on the College—as not working “collaboratively” and because of their relationship with the Texas Faculty Association. Heaslip and Jones, whose contracts were nonrenewed within hours of each other, are two of three leaders of the newly-formed TFA chapter composed of Collin College faculty.

The First Amendment protects faculty members’ right to associate with a union and to publicly criticize their institutions’ public health policies. Collin College’s actions represent not only an abdication of its well-established obligations under the First Amendment, but a failure to abide by its own policies, which require it to “uphold vigorously the principles of academic freedom and to protect the faculty from . . . censorship[.]”²

¹ As you will recall from correspondence as recent as this week, the 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.

² COLLIN COLL., EMPLOYEE RIGHTS AND PRIVILEGES: EMPLOYEE EXPRESSION AND USE OF COLLEGE FACILITIES (DGC (LOCAL)) (Aug. 12, 2020), [https://pol.tasb.org/Policy/Download/304?filename=DGC\(LOCAL\).pdf](https://pol.tasb.org/Policy/Download/304?filename=DGC(LOCAL).pdf).

I. Collin College Ends Relationship with Heaslip and Jones Over Criticism of COVID-19 Policy, Affiliation with Texas Faculty Association

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.

A. The Collin College Chapter of the Texas Faculty Association

The Texas Faculty Association (“TFA”) is a non-collective bargaining union with chapters consisting of faculty members at six institutions of higher learning in Texas, including Collin College.³ In the summer and fall of 2020, Heaslip and Jones joined other faculty members at Collin College in forming a chapter of the organization.⁴ Heaslip and Jones are two of the three officers of the Collin College chapter, serving as vice president and secretary, respectively. Jones also serves as the secretary and treasurer of the statewide TFA.⁵

The TFA’s website listed its chapter of Collin College faculty members along with a link (“Click to Contact”) to Jones’ personal email address.⁶ During the fall of 2020, a Collin College dean directed Jones to remove the reference to the Collin College chapter from the TFA website. Although Jones’ role as secretary did not endow her with the authority to remove or modify the TFA’s website, she asked the TFA to—and the TFA did—remove the listing from the “Chapters” page.

B. Heaslip and Jones Criticize Collin College’s COVID-19 Policies

On June 30, 2020, the Collin College Faculty Council adopted a resolution “strongly recommend[ing]” that the College move classes to a “fully online modality” or implement measures to mitigate the potential effect of the novel coronavirus on faculty.⁷ The resolution, adapted from a white paper written by Heaslip, followed multiple meetings of the Council, discussions with more than 93 faculty members,⁸ and a commitment from the College’s

³ TEX. FACULTY ASS’N, *Chapters*, <https://www.texasfacultyassociation.org/chapters> (last visited Feb. 1, 2021). The “Chapters” page no longer lists Collin College because of the events described in this letter.

⁴ Talia Richman & Anna Caplan, *Collin College professors say admin pushing them out over COVID-19 criticism*, DALLAS MORNING NEWS, Feb. 1, 2021, <https://www.dallasnews.com/news/education/2021/02/01/collin-college-professors-say-admin-pushing-them-out-over-covid-19-criticism>.

⁵ TEX. FACULTY ASS’N, *Dr. Suzanne Jones*, <https://www.texasfacultyassociation.org/team/dr.-suzanne-jones> (last visited Feb. 1, 2021).

⁶ TEX. FACULTY ASS’N, *Chapters*, archived at <https://web.archive.org/web/20200925015328/https://www.texasfacultyassociation.org/chapters> (archived on Sept. 25, 2020).

⁷ COLLIN COLL. FACULTY COUNCIL, Resolution (June 30, 2020), *available at* https://facultycouncil.org/Motions/Faculty_Council_Resolution.pdf.

⁸ COLLIN COLL. FACULTY COUNCIL, Minutes (June 19, 2020 and June 23, 2020), *available at* <http://facultycouncil.org/minutes/2019-20/Faculty%20Council%20Notes%20June%202020.pdf> and <http://facultycouncil.org/minutes/2019-20/Faculty%20Council%20Notes%20June%2023%202020.pdf>. In all, more than 127 faculty signatures or comments were submitted.

leadership to establish a “COVID-19 Fall 2020 Restart Task Force” with members drawn from the faculty, including Heaslip.

You issued a response to that resolution on July 14, agreeing to some demands and demurring as to others, and shared that response in a faculty-wide email the following day.⁹ You lauded the “faith that has been shown in the administration of the college” and the fact that faculty “can speak openly and disagree without fear of recourse,” but warned that it was “absolutely critical that we work within the processes and policies of the college,” and added:

I find it ironic that some of the chief proponents of closing our campuses and going fully online failed to speak to the faculty they were charged to represent. We will explore this further together as time goes on.¹⁰

In August of 2020, you opined that the COVID-19 pandemic had been “blown utterly out of proportion across our nation,” comparing the odds of dying from COVID-19 to dying in a motor vehicle accident.¹¹ You argued that residents of Collin County were “over one hundred times more likely” to die from a motor vehicle accident than from the coronavirus.

These remarks were publicized in two news articles, both of which quoted Heaslip. On November 11, 2020, a *KERA News* report compared Collin College’s COVID-19 transparency with other Texas institutions, noting that “[w]hile the caliber of information varies, Collin College is noteworthy because it refuses to publicly divulge anything.”¹² The report quoted Heaslip commenting on the college’s lack of a “central place for [COVID-19] numbers,” which she said “are not being shared with the faculty, the staff, any employees or the public.”¹³

The *KERA News* report also made public for the first time your remarks about the pandemic, including your assertion that the number of people who have died from COVID-19 is “clearly inflated.”¹⁴ On November 23, *The Chronicle of Higher Education* brought these remarks to a broader audience, quoting both your remarks and Heaslip’s criticism of the college.¹⁵

⁹ E-mail from H. Neil Matkin, Dist. Pres., Collin Coll., to Faculty (July 15, 2020, 3:25 PM) (on file with author).

¹⁰ *Id.*

¹¹ Emma Pettit, ‘One of Us’: A President’s Message Stuns Faculty After Their Colleague Dies of Covid-19, *CHRON. OF HIGHER ED.*, Nov. 23, 2020, <https://www.chronicle.com/article/one-of-us-a-presidents-message-stuns-faculty-after-their-colleague-dies-of-covid-19>; Email from H. Neil Matkin, President, Collin Coll., to Faculty (Aug. 18, 2020, 1:49 PM) (on file with author).

¹² Bill Zeeble, *Collin College Doesn’t Post A COVID-19 Dashboard. Faculty, Students Ask Why.*, *KERA NEWS*, Nov. 11, 2020, <https://www.keranews.org/health-science-tech/2020-11-11/why-does-collin-college-refuse-to-publish-online-campus-covid-updates>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Pettit, *supra* note 11.

C. Collin College Ends Its Relationship with Heaslip and Jones, Citing Their Criticism of the COVID-19 Reopening and Affiliation with the TFA

On January 28, Heaslip met via Zoom with Mark Smith, Provost of the McKinney Campus, and Floyd Nickerson, Chief Human Resources Officer of Collin College. During that meeting, Smith informed Heaslip that her Associate Dean, her Dean, the Council on Excellence—tasked with making recommendations for contract renewals¹⁶—and Smith himself had each recommended that Heaslip’s contract be renewed, citing her “amazing work” and teaching.

Smith informed Heaslip that Collin College’s administration had refused these recommendations. Smith explained that the nonrenewal was premised on Heaslip’s not having always “worked collaboratively” with the administration and having gone “outside” of the “shared governance structure” by trying to “exert external pressure” on Collin College to not reopen for face-to-face instruction. Heaslip was faulted for not having worked toward the administration’s goals “once the Board determined” that the College would reopen, explaining that she should instead have directed her concerns to her supervisor or other administrators. At the conclusion of the meeting, Heaslip was presented with a written notice averring that you had “approved this recommendation[.]”¹⁷

Approximately one hour before Heaslip’s meeting, Collin College also informed Jones that it would not renew her contract, citing two reasons. First, like Heaslip, Jones was faulted for criticizing the College’s COVID-19 plan. Second, Jones was faulted because the TFA’s website listed its chapter of Collin College faculty and used her personal email address as a contact point for the group, and because Jones had signed a public letter calling for the removal of Confederate statues as “Suzanne Jones, education professor, Collin College.”¹⁸

II. Collin College’s Response to Heaslip and Jones Violates the First Amendment

The First Amendment protects the right of faculty members to speak as private citizens on matters of public concern, as well as to associate with one another through employee unions. Its nonrenewal of Heaslip and Jones in response to their expression and association with a faculty union violates well-established First Amendment rights.

¹⁶ COLLIN COLL., EMPLOYMENT PRACTICES, TERM CONTRACTS (Sept. 18, 2020), [https://pol.tasb.org/Policy/Download/304?filename=DCA\(LOCAL\).pdf](https://pol.tasb.org/Policy/Download/304?filename=DCA(LOCAL).pdf).

¹⁷ Letter from Toni P. Jenkins, Sr. Vice Pres. of Campus Ops., Collin Coll., to Heaslip (Jan. 28, 2021) (on file with author).

¹⁸ Michael Phillips & Edward Sebesta, *Dallas’ Confederate memorials scream ‘white supremacy’*, DALLAS MORNING NEWS, Aug. 4, 2017, <https://www.dallasnews.com/opinion/commentary/2017/08/04/dallas-confederate-memorials-scream-white-supremacy>.

A. *The First Amendment Limits Collin College’s Authority to Police Faculty Expression*

Faculty at public colleges do not “relinquish First Amendment rights to comment on matters of public interest by virtue of government employment.”¹⁹ A government employer cannot penalize an employee for speaking as a private citizen on a matter of public concern unless it demonstrates that its interests “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[.]”²⁰

Collin College’s own policies recognize the importance of these interests, expressly promising that faculty members “are citizens, and, therefore, possess the rights of citizens to speak freely outside the classroom on matters of public concern and to participate in lawful political activities.”²¹ That policy also guarantees that “[p]rior restraint or sanctions will not be imposed upon faculty members in the exercise of their rights as citizens or duties as teachers.”²²

1. Collin College’s response to the COVID-19 pandemic, a public health crisis, is a matter of significant public concern.

As an initial matter, Heaslip and Jones’ criticism of Collin College is unquestionably speech on a matter of public concern, which includes speech that “can be fairly considered as relating to any matter of political, social, or other concern to the community[.]”²³ The global pandemic has driven public policy and altered the day-to-day actions of billions of people. No part of civil society has been untouched by its sweep. Indeed, the College’s own policies—and your controversial remarks about the virus—have attracted regional and nationwide coverage. This is why, for example, a federal court had no difficulty finding that a faculty member who emailed his university colleagues about his institution’s COVID-19 policies spoke as a private citizen on matters of public concern: the “health and safety of not only [their university] community, but also those beyond the immediate community.”²⁴

2. Heaslip and Jones spoke as private citizens, not as employees.

Likewise, it is clear that Heaslip and Jones spoke as private citizens. The College’s *express* rationale for declining to renew Heaslip’s contract was her choice to speak “outside” of the “shared governance structure,” for speaking publicly instead of to her supervisor and administrators, and for attempting to exert “external pressure” on the institution. When a “public employee takes [their] concerns to persons outside the work place in addition to

¹⁹ *Connick v. Myers*, 461 U.S. 138, 140 (1983).

²⁰ *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968).

²¹ COLLIN COLL., EMPLOYEE RIGHTS AND PRIVILEGES: EMPLOYEE EXPRESSION AND USE OF COLLEGE FACILITIES (Aug. 12, 2020), [https://pol.tasb.org/Policy/Download/304?filename=DGC\(LOCAL\).pdf](https://pol.tasb.org/Policy/Download/304?filename=DGC(LOCAL).pdf).

²² *Id.*

²³ *Snyder v. Phelps*, 562 U.S. 443, 453 (2011).

²⁴ *Woolslayer v. Driscoll*, No. 20-573, 2020 U.S. Dist. LEXIS 186610, at *11 (W.D. Pa. Oct. 8, 2020).

raising them up the chain of command at [the] work place, then those external communications are ordinarily not made as an employee, but as a citizen.”²⁵

Faculty are not required to share their concerns only with administrators and otherwise remain silent about the policies and practices of their own administrations. In the seminal case addressing the protection of employee speech under the First Amendment—in which a public school teacher criticized his administration in a public letter identifying himself as an employee—the Supreme Court of the United States explained:

Teachers are, as a class, the members of a community most likely to have informed and definite opinions as to how funds allotted to the operation of the schools should be spent. Accordingly, it is essential that they be able to speak out freely on such questions without fear of retaliatory dismissal.²⁶

Because Heaslip and Jones spoke as private citizens on a matter of public concern, their speech is protected by the First Amendment against retaliation by college officials.

3. Jones’ 2017 signature on an open letter criticizing Confederate monuments is protected speech as a private citizen

So, too, is Jones’ 2017 participation in an open letter concerning Confederate monuments protected by the First Amendment.

First, the monuments are a matter of public concern. Even if they were not controversial today, their erection itself reflects public sentiment, as monuments “in public spaces represent what the city, county, state or nation seeks to represent as its core beliefs.”²⁷ Today, public debate over whether to remove the monuments has filled newspaper columns, led to campus protests, and echoed in the halls of legislatures.

Second, Jones spoke as a private citizen, not on behalf of Collin College. No reasonable person believes that references to the roles of the letter’s signatories—who number over 100—represent statements on behalf of their institutions. To the contrary, a reasonable person familiar with the practice of signing open letters would understand that colleges and universities are composed of students and faculty with *conflicting* beliefs and opinions, and that a faculty member’s reference to their post is simply burnishing their credentials, not speaking *for* the institution.

Whatever interest Collin College may have in preventing staff, faculty, or students from purporting to speak *on behalf* of the institution, that interest does not justify a broad restriction on non-commercial expression. Courts routinely reject efforts by educational

²⁵ *Davis v. McKinney*, 518 F.3d 304, 313 (5th Cir. 2008).

²⁶ *Pickering v. Bd. of Educ.*, 391 U.S. 563, 571–73 (1968).

²⁷ *Phillips, et al.*, *supra* note 18.

institutions to restrict student expression on the notion that the citizenry may confuse permitting such speech as official endorsement.²⁸ Notably, the principal decision of the United States Supreme Court concerning the speech rights of employees held that the First Amendment protected a teacher’s letter to the editor identifying himself as a teacher at a public high school.²⁹ As a result, a speaker’s act of identifying her employer does not transform her speech into speech *on behalf* of her employer.

B. The First Amendment Protects the Right to Associate with Unions

It is “well established” by the United States Court of Appeals for the Fifth Circuit—the decisions of which are binding on Collin College—that the First Amendment’s “right of association encompasses the right of public employees to join unions and the right of their unions to engage in advocacy and to petition government in their behalf.”³⁰ As a result, state action taken “to intimidate public employees from joining a union or from taking an active part in its affairs” or to “retaliate against those who” violate these fundamental rights.³¹

These rights still apply when the union is not engaged in collective bargaining.³² To the contrary, the absence of compulsory membership renders it all the more important that the right of expressive association be zealously guarded, as the chilling effect occasioned by officials’ intimidation of union members will sweep more broadly. This risk is on display here: After the nonrenewals of Heaslip and Jones, hours apart, prospective members of the Collin College chapter of the TFA rationally decided that membership was not worth the risk. So, too, did the statewide TFA remove references to Collin College from its website, inhibiting the ability of the organization to reach prospective members.

C. Collin College’s Nonrenewal of Heaslip and Jones Violates These Well-Established First Amendment Rights

The First Amendment bars not only termination or non-renewal premised on protected expression, but any “adverse government action against an individual in retaliation for the exercise of protected speech activities” which “would chill a person of ordinary firmness from continuing to engage in that activity[.]”³³

²⁸ See, e.g., *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 841 (1995) (concern that a student organization’s expression might be “attributed to the University is not a plausible fear”); *Rumsfeld v. Forum for Acad. & Inst. Rights, Inc.*, 547 U.S. 47, 64–65 (2006) (rejecting a law school’s limitation on military recruiters’ use of its resources on basis that the law school “could be viewed as sending the message that they see nothing wrong with the military’s policies”); *Gerlich v. Leath*, 861 F.3d 697, 713 (8th Cir. 2017) (prohibiting university from imposing viewpoint-based restrictions on student use of its trademarked name in club materials).

²⁹ *Pickering*, 391 U.S. at 576–78.

³⁰ *Mote v. Walthall*, 902 F.3d 500, 507 (5th Cir. 2018) (quoting *Hitt v. Connell*, 301 F.3d 240, 249 (5th Cir. 2002)).

³¹ *Id.*

³² *Id.*

³³ *Keenan v. Tejada*, 290 F.3d 252, 258 (5th Cir. 2002).

The Fifth Circuit has expressly held that the nonrenewal of a nontenured public employee's contract may not be predicated on the employee's exercise of First Amendment rights.³⁴ Accordingly, a public college violates the First Amendment rights of faculty when their criticism of their administrations is a “substantial’ or ‘motivating’ factor in the decision not to rehire[.]”³⁵

It does not take a leap of faith to conclude that the professors' protected activity—Heaslip's public criticism of Collin College, Jones' involvement in raising COVID-19 concerns, and both faculty members' participation in union activity—was a substantial or motivating factor in the decision not to renew their contracts. In both instances, administrators expressly cited their protected activity and both—consisting of two of the three leaders of the local TFA chapter—were dismissed in successive fashion, within hours of each other. These actions were taken despite both professors having been recommended for renewal by those charged with evaluating their performance. Instead, those recommendations were overturned by the College's senior leadership, and the College expressly cited their protected speech and association as animating the decision not to rehire them.

III. Conclusion

In punishing faculty members for criticizing their institution's public health policies, Collin College violates its obligations under the First Amendment, its own policies, and your pledge that faculty can have “faith” that you will not punish them for dissent. FIRE calls on you to rescind the non-renewal of Jones and Heaslip's contracts and reassure Collin College's faculty that your administration will respect their expressive rights.

We respectfully request receipt of a response to this letter no later than the close of business on February 10, 2021.

Sincerely,



Adam Steinbaugh
Director, Individual Rights Defense Program

³⁴ *Montgomery v. Boshears*, 698 F.2d 739, 742–43 (5th Cir. 1983); see also *Lindsey v. Bd. of Regents*, 607 F.2d 672 (5th Cir. 1979) (state university professor and other faculty members' act of sending a questionnaire on matters of public concern to all faculty at the university was an exercise of their First Amendment rights and not a permissible basis for non-renewal of the professor's contract); *Goss v. San Jacinto Junior Coll.*, 588 F.2d 96 (5th Cir. 1979) (untentured instructor at public junior college met her burden of proving that the college's non-renewal of her contract in response to her political activities violated the First Amendment).

³⁵ *Montgomery*, 698 F.2d at 743.

Authorization and Waiver for Release of Personal Information

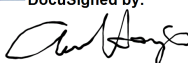
I, Audra Heaslip, do hereby authorize Collin College (the "Institution") to release to the Foundation for Individual Rights in Education ("FIRE") any and all information concerning my employment, status, or relationship with the Institution. This authorization and waiver extends to the release of any 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:

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Signature

2/4/2021

Date

Authorization and Waiver for Release of Personal Information

I, Suzanne Jones, do hereby authorize Collin College (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.

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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:
Suzanne E. Jones
8B1206AC91D249C...
Signature

2/3/2021
Date