



March 24, 2022

Dr. Miles K. Davis
Office of the President
Linfield University
900 SE Baker Street
McMinnville, Oregon 97128

URGENT

Sent via U.S. Mail and Electronic Mail (president@linfield.edu)

Dear President Davis:

The Foundation for Individual Rights in Education¹ is deeply concerned by Linfield University's apparent investigation of Professor Reshmi Dutt-Ballerstadt based on posts on her private social media accounts pointing out tensions between the English and business departments and criticizing a well-known businessman. While some may have found Dutt-Ballerstadt's posts to be objectionable, they are clearly protected by Linfield's promises of freedom of expression.

I. Linfield Initiates Investigation into Dutt-Ballerstadt's Extramural Social Media Posts

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 these ends, please find enclosed an executed privacy waiver authorizing you to share information about this matter.

Reshmi Dutt-Ballerstadt is an English professor at Linfield.² Dutt-Ballerstadt has been critical of the university's firing of former Linfield professor Daniel Pollack-Pelzner without due process after he criticized Linfield's handling of sexual assault and harassment allegations against board members.³

¹ FIRE a nonpartisan nonprofit dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

² Reshmi Dutt-Ballerstadt, LINFIELD UNIV., <https://www.linfield.edu/faculty/rdutt-b.html> (last visited Mar. 23, 2022).

³ See Reshmi Dutt-Ballerstadt, *An Extraordinary Firing*, INSIDE HIGHER ED (June 4, 2021), <https://www.insidehighered.com/views/2021/06/04/universities-fire-tenured-faculty-without-due-process-are-setting-dangerous>; Julie Sabatier, *Linfield University professor concerned about 'culture of fear'*,

On March 9, 2022, Dutt-Ballerstadt saw two quotes on a whiteboard in TJ Day Hall. One, attributed to Henry Paulson, former chair and CEO of Goldman Sachs, said “I was actually an English major,” while the other, attributed to Michael Eisner, former chairman and CEO of The Walt Disney Company, said, “Literature is unbelievably helpful, because no matter what business you are in, you are dealing with interpersonal relationships.”⁴

The next day, Dutt-Ballerstadt posted pictures of those quotes to her personal Instagram account, along with the caption, “This made my day. Yep, English majors rule @linfieldenglish[.]” She also posted them to her personal Facebook page with the caption:

Our English dept is in a building that is being taken over by the
Business department. So today I saw this! It made my day. 😊😊
😂

I bet our rather subversive students have found a way to promote
being an English major right in front of the office for “School of
Business”⁵

She also commented on the post, saying, “The fine print here for the first quote should be, ‘I was a good humanitarian when I was an English major. Then when I studied business, I lost my soul and became a crook and learned how to steal from the 99% and enrich the pockets of the 1%’[.]”⁶

On March 22, Linfield’s Director of Human Resources, Lynn Johnson, emailed Dutt-Ballerstadt that a formal complaint was filed against her for “a series of events” and posts on “social media.”⁷ Johnson said the university would pursue the matter and is “in the process of securing an outside investigator to look into this matter.”⁸ Johnson’s email concluded, “This is formal notification that an investigation will be taking place,” and that Dutt-Ballerstadt’s “participation will be required.”⁹

II. Linfield’s Investigation Violates Its Free Expression Promises

Although Linfield is a private institution with no obligation under the First Amendment to promise expressive freedoms, the university makes commensurate promises that its community members are “entitled to use speech to convey disagreement, agreement, inquiry,

OPB (July 19, 2021), <https://www.opb.org/article/2021/07/19/linfield-professor-concerned-about-culture-of-fear>.

⁴ See Dr. Reshmi Dutt-Ballerstadt (@Reshmi777), TWITTER (Mar. 23, 2022, 3:31 AM), <https://twitter.com/Reshmi777/status/1506534032321904644>.

⁵ See Dr. Reshmi Dutt-Ballerstadt (@Reshmi777), TWITTER (Mar. 23, 2022, 3:31 AM), <https://twitter.com/Reshmi777/status/1506534037128560643>; Dr. Reshmi Dutt-Ballerstadt (@Reshmi777), TWITTER (Mar. 23, 2022, 3:31 AM), <https://twitter.com/Reshmi777/status/1506534041855488003>.

⁶ Dr. Reshmi Dutt-Ballerstadt (@Reshmi777), TWITTER (Mar. 23, 2022, 3:31 AM), <https://twitter.com/Reshmi777/status/1506534041855488003>.

⁷ See Dr. Reshmi Dutt-Ballerstadt (@Reshmi777), TWITTER (Mar. 23, 2022, 3:31 AM), <https://twitter.com/Reshmi777/status/1506534026869305344>.

⁸ *Id.*

⁹ *Id.*

or commentary in keeping with the principles underlying constitutionally protected free expression.”¹⁰ Accordingly, this policy bars Linfield from investigating and punishing speech that is constitutionally protected.

Although Dutt-Ballerstadt’s posts may have bothered some readers, they do not fall into a category of speech unprotected by the First Amendment, and therefore remain protected under any reasonable reading of Linfield’s policy.¹¹ Additionally, these posts were made in Dutt-Ballerstadt’s personal capacity as a private citizen,¹² not in her capacity as a faculty member of Linfield. Faculty have the right to post messages—even those seen as uncivil—as private citizens.

Linfield’s initiation of an investigation alone—even if no punishment results—violates its promises of free expression. An investigation of constitutionally protected speech can itself violate the First Amendment, even if that investigation concludes in favor of the speaker. The question is not whether formal punishment is meted out, but whether the institution’s actions in response “would chill or silence a person of ordinary firmness from future First Amendment activities[.]”¹³

Investigations into protected expression may meet this standard.¹⁴ For example, a public university launched an investigation into a tenured faculty member’s writings on race and intelligence, announcing an *ad hoc* committee to review whether the professor’s expression—which the university’s leadership said “ha[d] no place at” the college—constituted “conduct unbecoming of a member of the faculty.”¹⁵ This investigation alone constituted an implicit threat of discipline, and the resulting chilling effect constituted a cognizable First Amendment harm.¹⁶

Here, Linfield’s initiation of an investigation into clearly protected, extramural speech certainly meets the ordinary firmness test—particularly given the university’s past, repeated disregard for due process and free expression.¹⁷ Any reasonable faculty member would conclude from Linfield’s investigation into Dutt-Ballerstadt’s speech that their personal expressive rights are similarly jeopardized.

III. Linfield Must End Its Investigation into Dutt-Ballerstadt

In order to comport with the promises it makes its faculty, Linfield must immediately cease investigating Dutt-Ballerstadt for her protected speech and publicly reaffirm that faculty

¹⁰ LINFIELD UNIV., FACULTY HANDBOOK Appx. IV.3 (Fall 2020) (“HANDBOOK”), available at https://inside.linfield.edu/_files/academic-affairs/2020-21-FACULTY-HANDBOOK-01-06-21.pdf.

¹¹ Given that Linfield promises faculty that their speech is protected “in keeping with the principles underlying constitutionally protected free expression,” faculty will reasonably assume that they will not be punished for speech which would be protected by the First Amendment.

¹² *Bradley v. James*, 479 F.3d 536, 538 (8th Cir. 2007).

¹³ *Mendocino Envtl. Ctr. v. Mendocino Cty.*, 192 F.3d 1283, 1300 (9th Cir. 1999).

¹⁴ See, e.g., *White v. Lee*, 227 F.3d 1214, 1228 (9th Cir. 2000).

¹⁵ *Levin v. Harleston*, 966 F.2d 85, 89 (2d Cir. 1992).

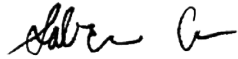
¹⁶ *Id.* at 89–90.

¹⁷ *Tenured professor abruptly fired after raising allegations of anti-Semitic speech by Linfield University’s president*, FIRE (April 29, 2021), <https://www.thefire.org/tenured-professor-abruptly-fired-after-raising-allegations-of-anti-semitic-speech-by-linfield-universitys-president>.

enjoy robust expressive rights. Launching investigations into faculty's protected extramural speech is an unacceptable outcome at a university that makes clear promises of free expression. The university must also provide clarity as to why it has taken the extraordinary step to solicit an external investigator in this case.

Given the urgent nature of this matter, we request receipt of a response to this letter no later than the close of business on Friday, March 25, 2022, confirming that Linfield has ended its investigation.

Sincerely,



Sabrina Conza
Program Officer, Individual Rights Defense Program

Cc: Lynn Johnson, Director of Human Resources

Encl.

Authorization and Waiver for Release of Personal Information

I, Reshmi Dutt-Ballerstadt, do hereby authorize
Linfield University (the "Institution") to release to the Foundation for Individual Rights in Education ("FIRE") any and all information concerning the investigation the university informed me of on March 22, 2022 (the "investigation"). 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 which relate to the investigation, 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 the investigation, 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.

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.

Signature

3/24/2022
Date