



FIRE

Foundation for Individual
Rights and Expression

November 1, 2022

Joanne Berger-Sweeney
Office of the President
Trinity College
1300 Broad Street
Hartford, Connecticut 06106

URGENT

Sent via U.S. Mail and Electronic Mail (President@trincoll.edu)

Dear President Berger-Sweeney:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned by a video of a Trinity College employee removing a student's political flags from his dorm window, while reportedly allowing flags of students with opposing political views to remain up. While the college may impose reasonable time, place, and manner restrictions on the display of flags and other expressive material on campus, it may not selectively enforce those policies based on viewpoint.

Yesterday, the Twitter account Libs of TikTok posted a video of a college employee removing a student's "Don't Tread on Me" flag and American flag containing a red, blue, and green line, which hung outside the student's dorm room window.² The video and subsequent pictures posted by Libs of TikTok showed other students had also hung flags from their windows, including a transgender flag.³ The administrator in the video said the college had asked all students to remove flags hanging from their windows—however, she did not respond when the student noted she had not only asked him to remove his flags but forcibly removed them herself, while other students' flags remained up.⁴

¹ For more than 20 years, FIRE has defended freedom of expression, conscience, and religion, and other individual rights on America's college campuses. You can learn more about our recently expanded mission and activities at thefire.org.

² Libs of TikTok (@libsoftiktok), TWITTER (Oct. 31, 2022, 6:05 PM), <https://twitter.com/libsoftiktok/status/1587204184884924416>. Our recitation of facts is drawn from public reports. We appreciate that you may have additional information to offer and invite you to share it with us.

³ *Id.* See also Libs of TikTok (@libsoftiktok), TWITTER (Oct. 31, 2022, 9:09 PM), <https://twitter.com/libsoftiktok/status/1587250402508312576>.

⁴ *Id.*

Trinity’s Student Integrity Contract guarantees students “[f]ree inquiry and free expression[.]” which it says “are essential for the attainment of” the college’s goals.⁵ Additionally, Trinity’s social media policy also states the college “is committed to free speech, academic freedom, diversity of thought, and mutual respect.”⁶ Having made these clear promises, Trinity is legally and morally bound to keep them.⁷

While Trinity is a private institution not bound by the First Amendment, the First Amendment provides a reasonable baseline for interpreting what the college’s free expression promises mean in practice. Colleges may establish “reasonable restrictions on the time, place and manner” of speech and expressive activity.⁸ Restrictions on student expression on campus must be viewpoint- and content-neutral, narrowly tailored to serve a significant government interest, and leave open ample alternative channels for communication.⁹ Although Trinity’s policy prohibiting the display of materials outside dorm windows appears on paper to meet this standard,¹⁰ online reports suggest the college is selectively enforcing the policy by targeting some flags that express disfavored views. Any such practice is a clear violation of students’ expressive rights.

The removal of some flags but not other similarly sized and positioned flags is viewpoint-based. When authorities target “not subject matter but particular views taken by speakers on a subject, the violation [of expressive rights] is all the more blatant.”¹¹ While the removed flags may have offended some observers, whether speech is protected under free expression principles is “a legal, not moral, analysis.”¹²

The Supreme Court has repeatedly, consistently, and clearly held that expression may not be restricted on the basis that others find it offensive. This core First Amendment principle is why authorities cannot outlaw burning the American flag,¹³ punish wearing a jacket emblazoned with “Fuck the Draft,”¹⁴ penalize a parody ad depicting a pastor losing his virginity to his mother in an outhouse,¹⁵ or disperse civil rights marchers out of fear that “muttering” and

⁵ *Statement of Rights and Responsibilities*, TRINITY COLL., <https://www.trincoll.edu/dean-of-students/community-standards/student-integrity-contract> [<https://perma.cc/W39W-CU89>].

⁶ Trustees of Trinity Coll., *Policy on Social Media*, TRINITY COLL. (Dec. 20, 2021), <https://www.trincoll.edu/wp-content/uploads/2021/12/Social-Media-Policy.pdf> [<https://perma.cc/9HR9-UQNL>].

⁷ *Bass ex rel. Bass v. Miss Porter’s Sch.*, 738 F. Supp. 2d 307 (D. Conn. 2010) (The basic relationship between a student and a private university is contractual in nature, and this rule is well-settled).

⁸ *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).

⁹ *Id.* at 791.

¹⁰ *Windows and Screens*, STUDENT HANDBOOK 2021-22, TRINITY COLL., <https://www.trincoll.edu/wp-content/uploads/2021/01/StudentHandbook.pdf> [<https://perma.cc/ACB9-87DZ>].

¹¹ *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995).

¹² *Animal Legal Def. Fund v. Reynolds*, 353 F. Supp. 3d 812, 821 (S.D. Iowa 2019).

¹³ *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (burning the American flag was protected by the First Amendment, the “bedrock principle underlying” the holding being that government actors “may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable”).

¹⁴ *Cohen v. California*, 403 U.S. 15, 25 (1971).

¹⁵ *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 50 (1988).

“grumbling” white onlookers might resort to violence.¹⁶ In ruling that the First Amendment protects protesters holding insulting signs outside of soldiers’ funerals, the Court reiterated this fundamental principle, remarking that “[a]s a Nation we have chosen . . . to protect even hurtful speech on public issues to ensure that we do not stifle public debate.”¹⁷ The Court has also held “the mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of ‘conventions of decency.’”¹⁸

Viewpoint discrimination is “an egregious form” of censorship, and authorities “must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.”¹⁹ If Trinity is refraining from removing *some* students’ flags hanging outside dorm windows, it must refrain from removing *all* similarly displayed flags. Even better, Trinity could further support a culture of free expression by allowing all such displays to remain up.

No matter how it proceeds, Trinity must clarify that it will not enforce its speech-related policies in a viewpoint-discriminatory manner. Students offended by expressive displays on Trinity’s campus should be encouraged to exercise their own right to criticize or question them,²⁰ but the college—having promised free expression—may not resort to institutional censorship.

We request a substantive response to this letter no later than the close of business on Tuesday, November 8, 2022, making publicly clear that the college will enforce all speech policies in a viewpoint-neutral manner.

Sincerely,



Sabrina Conza
Program Officer, Campus Rights Advocacy

¹⁶ *Cox v. Louisiana*, 379 U.S. 536, 557 (1965).

¹⁷ *Snyder v. Phelps*, 562 U.S. 443, 448, 461 (2011).

¹⁸ *Papish v. Board of Curators of the Univ. of Mo.*, 410 U.S. 667–68 (1973).

¹⁹ *Rosenberger*, 515 U.S. at 829.

²⁰ *See Whitney v. California*, 274 U.S. 357, 377 (1927).