



FIRE

Foundation for Individual
Rights and Expression

May 15, 2023

Angel Reyna
Office of the President
Madera Community College
30277 Ave 12
Madera, California 93638

URGENT

Sent via U.S. Mail and Electronic Mail (angel.reyna@maderacollege.edu)

Dear President Reyna:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned by Madera Community College placing Professor David Richardson on administrative leave because he distributed candy bars with labels reportedly meant to parody gender and pronoun use at an April 29 campus open house table display.² While some have found the labels objectionable, the First Amendment prohibits Madera Community College, as a public institution, from punishing this type of protected expression.³ As Richardson's expressive activity does not fall into a category of speech unprotected by the First Amendment, Madera must immediately rescind his administrative suspension.

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. The recitation here reflects our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us.

² Katherine Parks, *Professor who says he was suspended after bringing chocolates mocking pronouns claims free speech 'eliminated,'* FOX NEWS (MAY 12, 2023) <https://www.foxnews.com/media/professor-suspended-after-bringing-chocolates-mocking-pronouns-claims-free-speech-eliminated>. The bars containing nuts were labeled "he/him," while plain chocolate bars without nuts were labeled "she/her."

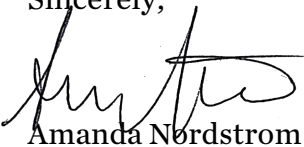
³ *Healy v. James*, 408 U.S. 169, 180 (1972) ("[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, 'the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.'" (internal citation omitted)).

It is apparent that Richardson distributed the parody candy bars to express his views about the gender, pronoun, and diversity issues he perceived on campus. Doing so falls squarely under the First Amendment’s protections for expressive activity. The Supreme Court has repeatedly, consistently, and clearly held government actors may not restrict expression on the basis that others find it offensive or hateful.⁴ The freedom of expression enshrined in the First Amendment “does not end at the spoken or written word.”⁵ To the contrary, any conduct “intend[ed] to convey a particularized message” that is likely to “be understood by those who viewed it” is expressive conduct within the meaning of the First Amendment.⁶ Conduct is also expressive when it falls within a traditionally protected genre—such as art—even if it does not convey a “narrow, succinctly articulable message.”⁷

Richardson’s expression here is clearly protected. Of course, these principles do not shield him from every consequence from his expression—including criticism by students, faculty, the broader community, or the university itself. Criticism is a form of “more speech,” the remedy to offensive expression that the First Amendment prefers to censorship.⁸ However, the First Amendment limits the *types* of consequences that may be imposed and who may impose them.

Given the urgent nature of this matter, we request a substantive response to this letter no later than the close of business on Friday, May 19, 2023 confirming that Madera Community College will rescind Richardson’s administrative suspension.

Sincerely,



Amanda Nordstrom

Program Officer, Campus Rights Advocacy

⁴ See e.g. *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”); *Snyder v. Phelps*, 562 U.S. 443, 448, 461 (2011) (the First Amendment protects protesters holding insulting signs outside of soldiers’ funerals because “[a]s a Nation we have chosen . . . to protect even hurtful speech on public issues to ensure that we do not stifle public debate.”).

⁵ *Johnson*, 491 U.S. at 404.

⁶ *Id.* at 406.

⁷ *Hurley v. Irish-American Gay, Lesbian & Bisexual Grp.*, 515 U.S. 557, 569 (1995).

⁸ *Whitney v. California*, 274 U.S. 357, 377 (1927).