FIRE

Foundation for Individual Rights in Education
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October 10, 2011

President Garrett D. Hinshaw
Catawba Valley Community College
Office of the President
2550 Highway 70 Southeast
Hickory, North Carolina 28602

URGENT

Sent via U.S. Mail and Facsimile (828-327-7276)

Dear President Hinshaw:

The Foundation for Individual Rights in Education (FIRE; thefire.org) unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals from across the political and ideological spectrum on behalf of liberty, free speech, legal equality, due process, the right of conscience, and academic freedom on America's college campuses.

FIRE writes you today out of grave concern about the threat to freedom of expression presented by Catawba Valley Community College's (CVCC's) ill-advised decision to suspend a student for two semesters due to a comment he wrote on CVCC's Facebook page.

This is our understanding of the facts. Please inform us if you believe we are in error.

On June 20, 2011, CVCC announced that "all curriculum students will receive a CVCC branded Debit Mastercard" in partnership with a financial services company named Higher One. This debit card also serves as CVCC's student identification card, rendering its use essential.

CVCC student Marc Bechtol began to advocate against the partnership. Bechtol was concerned by what he saw as Higher One's "high fees" and "the inconvenience of the service." He also was concerned about CVCC's sharing of students' sensitive personal information with Higher One. According to Bechtol, after he received his debit card and went to Higher One's website, he found that he had to verify his Social Security number, date of birth, and student number in order to receive information about his card account, suggesting that Higher One already had his information. Further, according to Bechtol, the partnership

between Higher One and CVCC also resulted in repeated marketing contacts by Higher One to students. For example, according to Bechtol, CVCC and Higher One marketed Higher One checking accounts through emails to students such as one on September 19, 2011, which reportedly had the subject line "Want your refund? Activate your CVCC Onecard today" in all capital letters. Similarly, on September 28, 2011, according to Bechtol, he received a phone call "with an offer from Orchard Bank."

In response to this unwanted solicitation, Bechtol wrote a comment on CVCC's Facebook page: "Did anyone else get a bunch of credit card spam in their CVCC inbox today? So, did CVCC sell our names to banks, or did Higher One? I think we should register CVCC's address with every porn site known to man. Anyone know any good viruses to send them?" He immediately added a second comment, "OK, maybe that would be a slight overreaction."

On October 4, as Bechtol waited for his second class of the day to begin, he was pulled out of the classroom by CVCC Executive Officer of Student Services Cynthia L. Coulter and told that he could not return. On October 5, he was sent a letter from Coulter, who wrote that Bechtol's first Facebook comment was "disturbing" and "indicates possible malicious action against the college." The letter stated that Bechtol had violated CVCC Student Conduct Policy 3.18(j), "Commission of any other offense which, in the opinion of the administration or faculty, may be contrary to the best interest of the CVCC community." Bechtol was suspended without a hearing and was banned from campus for two semesters. He also was granted an appeal hearing, scheduled for October 7.

Bechtol saw Coulter's letter for the first time at his appeal hearing on October 7. Following that meeting, he reports that CVCC is considering a revised punishment in which Bechtol would be banned from commenting on CVCC social media sites for two semesters and must complete his two "seated" courses online.

To be clear: CVCC's punishment of Bechtol is unconstitutional. CVCC may not punish Bechtol for engaging in speech protected by the First Amendment, including his Facebook comment. That the First Amendment's protections fully extend to public colleges such as CVCC has long been settled law. See, e.g., *Healy v. James*, 408 U.S. 169, 180 (1972) (internal citation omitted) ("[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'"); *Widmar v. Vincent*, 454 U.S. 263, 268–69 (1981) ("With respect to persons entitled to be there, our cases leave no doubt that the First Amendment rights of speech and association extend to the campuses of state universities").

Bechtol's Facebook comment utterly fails to meet the exacting legal definition of a "true threat" articulated by the Supreme Court in *Virginia v. Black*, 538 U.S. 343, 359 (2003), in which the Court held that only "those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals" are outside the boundaries of First Amendment protection. Nor does the comment meet the standard for "incitement," another type of expression not protected by the First

Amendment. According to the Supreme Court, for speech to be considered "incitement," it must be "directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Brandenburg v. Ohio*, 395 U.S. 444 (1969). See also *Hess v. Indiana*, 414 U.S. 105 (1973) (holding that a protestor who shouted, "We'll take the fucking street later" was not guilty of incitement because his "threat" "amounted to nothing more than advocacy of illegal action at some indefinite future time.").

Further, no public institution may retaliate against a student for speech fully protected under the First Amendment because administrators or others on campus feel offended or annoyed. Such an "exception" to the First Amendment would invite abuse by permitting public institutions to deny students freedom of expression virtually at their whim. The Supreme Court made this clear in *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667 (1973), in which the Court upheld the First Amendment right of a college student newspaper to publish an article with the headline "Motherfucker Acquitted," writing that "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.'"

The First Amendment's guarantee of freedom of expression does not exist to protect only non-controversial speech; indeed, it exists precisely to protect speech that some members of a community may find controversial or offensive. In *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949), the Court held that "a function of free speech under our system of government is to invite dispute. It 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." In *Texas v. Johnson*, 491 U.S. 397, 414 (1989), the Court explained the rationale behind these decisions well, saying that "[i]f there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." Under these standards, there can be no question that Bechtol's Facebook comment is protected.

Finally, CVCC's catchall policy banning anything "contrary to the best interest of the CVCC community" provides an impermissible level of discretion to CVCC administrators and fails to provide any shelter for protected speech. The Supreme Court has held that laws must "give a person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly," or else they are unconstitutionally vague. *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972). The policy used to punish Bechtol is extremely vague and therefore unconstitutional, as there is no way for students to know what administrators might decide is contrary to the college's best interest. Faced with this vague proscription, students will inevitably self-censor, as they rationally choose to stay silent and avoid risking punishment for engaging in speech that a college administrator may subjectively deem "contrary to the best interest of the CVCC community." The chilling effect that results from CVCC's vague ban is inimical to the First Amendment freedom of expression that CVCC, as a public institution, has a legal duty to uphold.

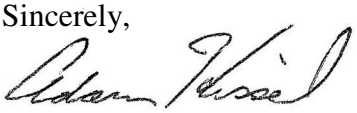
FIRE urges CVCC to correct its error and to immediately lift all sanctions against Marc Bechtol. While we hope this situation can be resolved amicably and swiftly, we are committed to using all of our resources to see this situation through to a just and moral conclusion. Please spare the

college the embarrassment of fighting against the Bill of Rights, by which it is legally and morally bound.

With this letter we enclose a signed FERPA waiver from Marc Bechtol, permitting you to fully discuss his case with FIRE.

We ask for a response by 5:00 p.m., October 11, 2011.

Sincerely,



Adam Kissel
Vice President of Programs

Encl.

cc:
Bill Dulin, Vice President of Student and Technology Services, Catawba Valley Community College
Keith Mackie, Vice President of Instruction, Catawba Valley Community College
Cynthia L. Coulter, Executive Officer of Student Services, Catawba Valley Community College
Deputy Chris Mills, Catawba County