



University of Colorado  
Boulder

To: President Mark Kennedy

From: Chancellor Phil DiStefano

Re: Bruce D. Benson Center for the Study of Western Civilization/Professor John Eastman

Date: January 11, 2021

Several regents have asked questions about the Bruce D. Benson Center for the Study of Western Civilization and its relationship with Professor John Eastman. I have prepared this memo to address those questions.

## **I. Campus Policy on Centers**

Before discussing the Benson Center, I wanted to spend a moment discussing the relationship between centers and the campus.

Our campus policies define centers as single or multi-disciplinary units organized around a theme that generally combine research, scholarship and creative work with education, leadership and/or service activities. Centers are often multidisciplinary and encompass work spanning a number of academic units. Often, centers have an annual operating budget that is separate from the budget of the parent unit.

Each center has a “parent unit,” which is a college, school, or institute that is responsible for overseeing the center’s fiscal and administrative operations. The parent unit has the ultimate responsibility for the center’s financial integrity.

Each center has a director. The director is responsible for the day-to-day programmatic, fiscal, and personnel decisions associated with the center.

## **II. Benson Center**

The Benson Center was founded in 2006 as the Center for Western Civilization, Thought, and Policy and renamed the Bruce D. Benson Center for the Study of Western Civilization in 2019.

The Center operates under a set of bylaws. Under its bylaws, the Benson’s Center’s mission is to broaden the sphere of conversation at the University of Colorado, exposing students and the larger community to the full range of intellectual discourse that takes place in today’s world. The Benson Center aims to foster open dialogue rather than acrimonious debate and serves as a home for thoughtful reflection rather than partisan rhetoric.

Key components of the Center's activities include the Visiting Scholars in Conservative Thought and Policy (CTP) program, Scholars in Residence, Faculty Fellows, graduate and undergraduate fellows, and an ongoing series of campus seminars, lectures and programs, faculty and student grants, undergraduate classes, a summer institute and community outreach

The College of Arts and Sciences serves as the parent unit, and the Benson Center is under the supervision of the Interim Dean of the College of Arts and Sciences, Jim White.

Professor Daniel Jacobson is the current director of the Benson Center and is responsible for its day-to-day operation, management, and administration. The chancellor appoints the director for a renewable term of up to four years after receiving recommendations from the President of the University of Colorado, Provost, Dean of the College of Arts and Sciences, and the Benson Center's Executive committee and Board of Advisors. After appointment, the director reports directly to the Dean of the College of Arts and Sciences.

The Benson Center has an Executive Committee of between eight to ten faculty members from departments across the campus, with the director serving as its chair. The Executive Committee advises the director and promotes the center's interests, such as by suggesting programs and activities, reviewing and providing comments on proposals, helping to publicize events, and serving as a conduit between the center and the rest of the university.

The Benson Center has an external Board of Advisors of between eight and twelve members from disciplines including law, business, politics, philanthropy, the arts, sciences, and the academy, including at least one former Visiting Scholar in Conservative Thought and Policy. The Board of Advisors is responsible for maintaining the center's role and mission, providing guidance to the center in the area of programming, and contributing to the advancement of the Center through its knowledge, experience, leadership, and assistance in raising funds. The Chancellor appoints the board's members after consulting with the Provost, the Dean of the College of Arts & Sciences, the President of the University of Colorado, and current and former Board members.

### **III. Annual Report and Expenses**

Each year, the Benson Center's bylaws require it to publish a report that details its activities and expenses. The most recent report is available at [bensoncenter-annualreport-2019-20.pdf](https://www.bensoncenter.org/annualreport-2019-20.pdf) ([colorado.edu](https://www.colorado.edu)).

In the most recent year, the Benson Center had total expenses of \$1,178,079. Of those expenses, \$918,595 were for salaries and benefits (\$588,810 faculty, \$115,387 exempt/officer, \$14,581 student hourly, \$199,817 benefits), \$259,484 were for operating costs (\$178,348 operating expenses, \$21,116 travel, \$60,020 faculty and student grants). The Benson Center's funding comes from gift funding. The Benson Center has secured over \$25 million in gifts. No campus or college general funds are being provided to the Benson Center in FY 21.

#### **IV. Visiting Scholar in Conservative Thought and Policy**

One of the Benson's Center's annual activities is that it hires a Visiting Scholar in Conservative Thought and Policy.

The Visiting Scholar in Conservative Thought and Policy should be senior-level, highly visible scholars who are deeply engaged in either the analytical scholarship or practice of conservative thinking and policymaking or both. The hiring of the Visiting Scholar begins with a search committee that consists of five voting members — tenured faculty representing Political Science, Economics, Philosophy, History and one additional faculty member — and five external nonvoting advisory members. Candidates also provide public seminars as part of the interview process.

The committee makes a recommendation to the Benson Center's director who, in collaboration with and consent of the Dean of the College of Arts and Sciences (or his designee — most recently Associate Dean Theresa Hernandez) and the Vice Provost and Associate Vice Provost for Faculty Affairs, makes a recommendation for hiring that is subject to the Provost's approval. The Visiting Scholar's tenure is generally one academic year. The Visiting Scholar reports to the Benson Center's director on a day-to-day basis and must comply with all University of Colorado policies.

All funding for the Visiting Scholar's salary comes from gift funds. The University of Colorado Foundation administers the Visiting Scholar in Conservative Thought and Policy Fund.

#### **V. Professor Eastman**

Professor John Eastman became a Visiting Scholar at the Benson Center in August of 2020. We are aware of the concerns about Professor Eastman's public statements and representation of President Trump.

##### *A. Prior Incidents and Responses*

In August 2020, Professor Eastman published an op-ed in Newsweek, in which he questioned whether Senator Kamala Harris would be able to meet the requirements of the citizenship clause to serve as Vice President of the United States. This op-ed harmed our efforts to advance diversity and inclusion on the University of Colorado Boulder campus.

I responded by acknowledging the harm that it caused, stating that I found it neither compelling nor consistent with my understanding of the constitution, declined to take any disciplinary action against him because it would falsely feed a narrative that the campus suppresses speech it doesn't like and would undermine the principles of freedom of expression and academic freedom, and reminded all of our faculty that people will judge our institution by their actions and statements.

In December 2020, Professor Eastman served as President Trump's personal counsel when the State of Texas sued four states and sought to invalidate their election results. Professor Eastman filed a petition seeking permission for President Trump to intervene in the lawsuit as a party in interest. The United States Supreme Court dismissed the lawsuit and took no action on the intervention.

At that time, I observed that Professor Eastman's representation of President Trump was outside his duties at the University of Colorado Boulder and that the university could not oversee his independently formed attorney-client relationship. The campus verified that Professor Eastman was not being compensated for his efforts and that his representation did not violate the one-sixth rule or conflict of interest policies.

*B. Professor Eastman's Known Actions on January 6, 2021 and Initial Response*

Last week, Professor Eastman spoke for less than three minutes at the rally that preceded the events where a mob breached the Capitol. I watched his remarks carefully and found that he did not urge anyone to act violently, did not advocate for anyone to overthrow the government, and did not urge anyone to march on the Capitol. Since then, I have found no evidence that he was present at the Capitol or otherwise participated in the illegal actions that took place.

Instead, Professor Eastman advanced conspiracy theories about how voting machines were rigged to provide votes to President-Elect Biden — theories that every court to consider them have rejected. He also stated that Vice President Pence should send the election results back to state legislators to have them examine this and claimed that we “no longer live in a self-governing republic if we can't get the answer to this question.” He claimed that, if Vice President Pence was not willing to take this action, he “doesn't deserve to be in the office.”

The campus immediately issued a statement in which it described Professor Eastman's speech as one where he made “baseless and unfounded statements” outside of his university duties. Professor Eastman responded to the Daily Camera by calling the campus statement “defamatory” because he claimed to have evidence supporting each of his statements. Professor Eastman has since commented in an article that he didn't believe the riot was incited by anything he said, explaining his position that “my short statement at the rally is verifiably true. It is a fact that state election officials violated state law in the conduct of the election.” He also denied that a riot occurred and that “it was perhaps a hundred thugs out of a quarter-million or half-million people.”

C. *My Analysis of Whether I Can Impose Discipline Against Professor Eastman for His Statements*

Almost immediately, people urged me to dismiss Professor Eastman. I had to review his conduct and determine whether I could take immediate disciplinary action. As a public institution we have deep experience and resources to assist me in making this determination.

i. Potential Violations of Law and First Amendment Limitations

I first had to consider whether I reasonably believed Professor Eastman may have violated any federal law. I could not determine whether he had in fact broken the law, which is a decision that prosecutors and the courts may make at an appropriate time, but needed to review the law to determine whether there would be any basis for taking disciplinary action against him at this time.

In particular, I considered whether Professor Eastman may have engaged in conduct that violated the federal laws dealing with rebellion or insurrection, seditious conspiracy, advocating the overthrowing of the government, or traveling in interstate commerce with intent to incite riot. Each of these crimes contain similar elements, such that the person must “incite rebellion or insurrection against the authority of the United States” (28 U.S.C. §2383); “conspire to overthrow, put down or destroy by force the Government of the United States” (28 U.S.C. §2384); engage in conduct that “knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States. . . by force or violence” (28 U.S.C. §2385); or “travel in interstate commerce . . . with intent to “to incite a riot” or “organize, promote, encourage, or participate in, or carry on a riot” (28 U.S.C. §2101). For this last statute, I would also note that the Fourth Circuit Court of Appeals determined earlier this year that the language prohibiting “promoting” or “encouraging” a riot is unconstitutional, and I must take that ruling into account when I consider Professor Eastman’s statements.

As I described above, based upon the publicly available evidence, I could not determine *Professor Eastman’s* repugnant statements incited “rebellion or insurrection against the authority of the United States,” that he “conspire[d] to put down or destroy by force the Government of the United States,” that he “knowingly or willfully advocate[d] . . . [for] overthrowing or destroying the government of the United States. . . by force or violence,” or that he intended to “incite, . . . organize, . . . participate in, or carry on a riot.” That does not excuse him for undermining confidence in the electoral system or peddling baseless conspiracy theories without presenting any supporting evidence.

If there were any evidence Professor Eastman’s statements may have violated these federal laws, I then had to consider whether they still might be constitutionally protected.

Matters of “public concern” receive constitutional protection. A speech involves matters of public concern “when it can be fairly considered as relating to any matter of political, social, or other concern to the community, or when it is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public.” *Lane v. Franks*, 134 S. Ct. 2369, 2380 (2014).

Regardless of whether I vehemently disagreed with Professor Eastman's comments, I do not believe there was any realistic argument that they were unrelated to "any matter of political, social, or other concern to the community."

I then had to determine whether Professor Eastman's speech might fall into any of the First Amendment exceptions that would remove it from constitutional protection. The First Amendment does not protect certain modes of speech or expression, and the statutes if quoted permit speech to be punished if they incite imminent lawless action.

The First Amendment does not protect those words that, by their very utterance, inflict injury or tend to incite an immediate breach of the peace. But it is not enough that the words a speaker uses are offensive or even if they advocate unlawful action, as the First Amendment does not "permit a state to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting imminent lawless action and is likely to incite or produce such action." *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

I considered whether Professor Eastman's speech could be unprotected for inciting the riot that later occurred at the Capitol. Under the applicable legal standards, speech cannot be punished for inciting a riot unless (1) the speech explicitly or implicitly encouraged the use of violence or lawless action; (2) the speaker intends that his speech will result in the use of violence or lawless action; and (3) the imminent use of violence or lawless action is the likely result of his speech. I could not find any evidence that Professor Eastman explicitly or implicitly encouraged the use of violence or lawless action, that he intended his speech to result in the use of violence or lawless action, or that the imminent use of violence or lawless action was likely to result from *Professor Eastman's* speech.

I ultimately concluded, based upon the evidence available to me, that Professor Eastman's speech was likely constitutionally protected. If a prosecutor decides to charge Professor Eastman, I will reevaluate my conclusions in light of the charged offenses.

ii. The Laws of the Regents and Associated Policies

Having examined whether the First Amendment protected Professor Eastman's speech, I then examined the Laws of the Regents and the associated policies. Regent Policy 1D states:

University faculty are members of our communities and members of a learned profession. When university faculty speak or write as citizens, not in furtherance of their university duties or in the course and scope of their university employment, on matters of political, academic, artistic, or social concern, the university shall not censor their expression, initiate disciplinary action against them, or otherwise subject the faculty members to adverse employment actions because it disapproves of the substance of their expression.

Under the regents' policies, I could not "initiate disciplinary action" against Professor Eastman because I "disapproved of the substance of [his] expression."

There is an exception in the regent policy indicating that "the freedom of expression recognized in [the previous] section does not grant university faculty the right to refuse to perform official duties, to materially disrupt the university environment or university activities, or to disregard the standards of ethical conduct as expressed in article 8, part B of the Laws of the Regents or regent policy 8.A."

I considered whether Professor Eastman's conduct "materially disrupt[ed] the university environment or university activities" and could not find that they had. No classes or other activities occurring on campus were disrupted. If I deemed Professor Eastman's speech a material disruption because it brought criticism upon the university or created a political uproar, it would substantially undermine the protections of freedom of expression contained in the Laws of the Regents and other university policies.

I considered the provisions of the *Laws of the Regents* addressing academic freedom, as some faculty have argued Professor Eastman's comments are contrary to the definition of academic freedom, which is the "freedom to inquire, discover, access, publish, disseminate, and teach truth as the individual understands it, subject to no control or authority save the control and authority of the rational methods by which knowledge is established in the field." Academic freedom does not protect fabrication or falsification, but I do not believe the provisions on academic freedom or research misconduct apply here. Academic freedom attaches when a faculty member is engaged in "teaching, scholarly, or creative work" as part of their university duties, and research misconduct is similarly limited to "scholarship and creative activities within the responsibilities of faculty, staff, or students that are designed as original works or are intended to contribute to generalizable knowledge in a field of academic inquiry."

Professor Eastman's statements were political activities outside of his university duties, and I would not denigrate our faculty's scholarship by bringing his statements under this mantle. If, however, there were evidence that Professor Eastman had engaged in fabrication or falsification in the course of his scholarship, I would refer those allegations to our faculty Standing Committee on Research Misconduct to evaluate, as that is the appropriate course of action, and it is the one that I have always taken when I have received allegations that a faculty member may have engaged in research misconduct.

I also considered the provisions of Article 5 of the Laws of the Regents that allow for dismissal for cause when a tenured or tenure-track faculty member engages in conduct "below minimum standards of professional integrity." This provision does not apply to Professor Eastman because he is not a tenured or tenure-track faculty member. Even if it applied, I do not believe that I could construe this provision as allowing for dismissal under circumstances where Article 1 of the Laws of the Regents prohibit me from taking disciplinary action.

Because I was unwilling to take action that would be inconsistent with either the First Amendment or the university's own governing documents, I turned instead to Article 1D of the *Laws of the Regents*, which states, "The proper response to ideas that members of the university community find offensive or unwarranted is to challenge those ideas through the exercise of reason and debate, rather than attempt to interfere with or suppress them."

I released a statement where I explained that I found Professor Eastman's ideas repugnant, that he has embarrassed the university, and that I believe he will bear the shame of his role in the events that occurred last week.

#### *D. Current Status*

To my knowledge Professor Eastman has not returned to campus for the spring semester. He was scheduled to teach two courses this semester. The first, Foundations of Western Civilization: Federalist/Anti-Federalist Debates, has only three students enrolled. The second, The Western Tradition, has only five students enrolled. Consistent with the policies in the College of Arts & Sciences, if these courses do not enroll fifteen students, the college will cancel them. Professor Eastman could continue to offer independent study opportunities to anyone who wished to pursue them. If he returns to campus, we will have to prepare for ongoing protests of his presence, and we will have to ensure that there is adequate security to maintain the safety of the campus environment.

#### **VI. Conclusion**

In my statement, I observed that Professor Eastman has contributed nothing of value to the University of Colorado Boulder or the Benson Center. I stand by that statement and look forward to the day when he leaves the campus.

Since then, I have seen statements or heard from current and former regents, faculty, staff, students, and donors who advocate that I should dismiss Professor Eastman. Absent new evidence demonstrating that he engaged in unlawful or improper conduct that of which I am currently unaware, I will not take this action. I take this position not because terminating Professor Eastman could expose the campus to liability, but because doing so would undermine the university's core values, and I would respectfully ask for your support in the days ahead.

Please do not construe my disdain for Professor Eastman and the manner in which his time has reflected upon the University of Colorado Boulder as a lack of support for the Benson Center. I have supported the Benson Center since its inception. Many of the Visiting Scholars of Conservative Thought and Policy have contributed to our campus, and I welcome diverse viewpoints. The Benson Center is currently recruiting a visiting scholar who will replace Professor Eastman after his term expires in May, and I hope the new visiting scholar will help to repair the damage that Professor Eastman has done.