

Response to the KCCD “Statement of Charges”
Issued to Dr. Matthew Garrett on March 15, 2023
Submitted March 28, 2023

Each allegation in the KCCD March 15, 2023 “statement of charges” against Dr. Matthew Garrett is baseless. While many of the fact-claims intended to support the charges are true and correct, they do not actually support the allegations of misconduct made in the statement of charges. The statement of charges is little more than a series of non-sequitur assumptions paired with fact claims that simply do not prove the claim. The entire document consistently relies on proof by assertion claims without ever providing appropriate evidence to substantiate the claims. As such, there is a vast gap between the true facts and the assertion that said facts constitute “immoral or unprofessional conduct,” “Dishonesty,” “Unsatisfactory performance,” “Evident unfitness for service,” “Persistent violation of, or refusal to obey, the school laws of the state or reasonable regulations prescribed for the government of the community colleges,” or “Willful refusal to perform regular assignments without reasonable cause,” as charged by the KCCD “statement of charges.” Not only does KCCD fail to prove any of the allegations, KCCD makes little to no effort to prove any but two of the allegations, and even still only makes failing efforts to prove “dishonest” and “unprofessional” conduct. KCCD effectively abandons all other allegations, which begs the question: why were they included in the list of charges?

Rather than substantiate the intended allegations, the statement of charges and accompanying exhibits clearly support the claim that Dr. Garrett has consistently engaged in protected speech, as defined by state and federal law, as well as longstanding Supreme Court precedence. The attempt to misrepresent protected speech as some sort of offense worthy of termination without ever meeting the legal standard of those charges is deeply disturbing. If anything, the statement of charges is a clear testimonial that KCCD is overtly engaged in retaliation for protected speech. The statement of charges constitutes an [“an open war on whistleblower protections, faculty tenure, and the First Amendment.”](#)

The unsupported charges of misconduct include the following:

- Immoral conduct: the unsupported allegation of “immoral” conduct constitutes a gross defamatory claim which KCCD makes no effort to defend. Education Code clearly defines “immoral” conduct as a sexual offense (CA Ed Code §44932; §44010) or substance abuse related offense (CA Ed Code §44932; §44011). KCCD provides **absolutely no evidence** nor even any assertions to support these serious allegations of “immoral” conduct related to sexual or substance abuse. KCCD has not demonstrated Dr. Garrett to have been immoral but has now tarnished Dr. Garrett’s distinguished reputation with unsupported and libelous allegations of grave immorality that is statutorily reserved for perverts and drug addicts. KCCD’s allegations are wildly irresponsible and defamatory.

- Unprofessional conduct: though less vile, the allegations of “unprofessional” conduct are also unfounded and likewise constitute defamation, per se. The bulk of “unprofessional conduct” allegations hinge on Dr. Garrett’s public and private criticisms of various policies, expenditures, and agenda items in public committees, all of which is clearly protected speech. In *Pickering v. Board* (1968), the Supreme Court expressly rejected the argument that “the teacher by virtue of his public employment has a duty of loyalty to support his superiors” and instead held that “a teacher’s exercise of his right to speak on issues of public importance may not furnish the basis for his dismissal from public employment.” This is well-established and indisputable case law. More recently, the Ninth Circuit Court held in *Demers v. Austin* (2014) that faculty enjoy considerable First Amendment protections in “speech related to scholarship or teaching.” The KCCD faculty contract also guarantees that faculty “shall be free to exercise academic freedom” (Article 4.A.2) and that “The District recognizes the fundamental right of the faculty member to be free from any censorship or restraint which might interfere with the faculty member’s obligation to pursue truth and maintain his/her intellectual integrity in the performance of his/her teaching functions” (Article 4.A.4). In summation, KCCD has no legal right to discipline Dr. Garrett’s criticisms of public policy, expenditures, and agenda items on public committees, and as such, such comments cannot demonstrate or contribute to any charge of “unprofessional conduct.” It is particularly disturbing that KCCD has not limited its imagined oversight to workplace speech but has also sought to discipline Dr. Garrett for speech that occurred outside of business hours, on personal devices, and even in personal correspondence from Dr. Garrett’s personal accounts; KCCD has even sought to police Dr. Garrett’s political campaigning activities that run contrary to the will of the administration, all of which is protected speech.

The lesser chunk of allegations center on Dr. Garrett’s private complaints to his employer. These comments too are clearly protected. District Policy 7700 Whistleblower Protection states that “District employees shall not: retaliate against an employee or applicant for employment who has made a protected disclosure, assisted in an investigation, or refused to obey an illegal order.” More importantly, Government Code §8547.1 states that “The Legislature finds and declares that state employees should be free to report waste, fraud, abuse of authority, violation of law, or threat to public health without fear of retribution. The Legislature further finds and declares that public servants best serve the citizenry when they can be candid and honest without reservation in conducting the people’s business.” California Labor Code §1102.5 likewise protects employees who file complaints. The courts have consistently held that the reporting of complaints is a “protected activity,” even if they turn out to be incorrect (see *Yanowitz v. L’Oreal USA, Inc.*, 2005). Dr. Garrett’s sincere complaints are undeniably protected, notwithstanding KCCD’s persistent circular reasoning of declaring them false because KCCD declares them false. Furthermore, Gov. Code §8547.8(b)

further warns that “Any person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a state employee or applicant for state employment for having made a protected disclosure, is subject to a fine not to exceed ten thousand dollars (\$10,000) and imprisonment in the county jail for a period not to exceed one year” and §8547.8(c) adds “shall be liable in an action for damages brought against him or her by the injured party.” As such, the current threat to terminate Dr. Garrett for his sincere and protected complaints—which KCCD openly admits to as a motivating factor—is not only wildly unlawful and defamatory, but also places KCCD administrators and/or trustees at great personal risk.

- Dishonesty: the unsupported allegations of “dishonesty” are predicated upon nothing more than obscene denial of demonstrably true statements, some of which are wildly obvious truths such as Dr. Garrett’s truthful articulation of the existence of such policies as a [mask and vaccine mandate](#) and [priority registration for preferred groups](#) (see allegation 14.d) or the [funding of UFW advocacy fake news webpage Kern Sol News](#) (see allegation 3.h.i). KCCD provides absolutely no evidence that any of Dr. Garrett’s written or spoken comments are untrue. Instead, KCCD simply declares true comments untrue, in spite of substantial evidence confirming Dr. Garrett’s claims. The baseless allegations of “dishonest” conduct are utter poppycock, and without any substantiation whatsoever. KCCD never even attempts to debunk any of Dr. Garrett’s earnest and accurate comments, which are protected by the First Amendment regardless of their efficacy (*New York Times Co. v. Sullivan*, 1964). Dr. Garrett’s comments are consistently true and accurate, and KCCD has not even attempted to offer any evidence to the contrary.

Furthermore, KCCD has provided no evidence that Dr. Garrett knew any of the allegedly false claims to be false, which is a necessary perquisite to “dishonesty.” KCCD may not simply declare true facts as false to justify accusations of dishonesty; KCCD must prove they are false *and* that Dr. Garrett knew otherwise. KCCD has done neither, but instead engaged in a very disturbing policy of declaring obvious truths false to circumvent protections on speech by way of alleging “dishonesty.” KCCD has not demonstrated Dr. Garrett to have been dishonest but has now tarnished Dr. Garrett’s reputation with baseless and unsupported allegations of dishonesty.

- Unsatisfactory Performance: the allegations of “unsatisfactory performance” exist in direct contrast to Dr. Garrett’s many and consistently satisfactory evaluations. KCCD provides no evidence to support the allegations except to repeatedly assert them as truth, citing examples of protected speech as evidence. KCCD provides no concrete examples of “unsatisfactory performance” related to Dr. Garrett’s official duties and only reaffirms that discipline is in response to legally protected speech and persistence

in engaging in protected speech outside of Dr. Garrett's assigned duties. Dr. Garrett's formal evaluations by students and peers clearly demonstrate he has completed his work with the highest possible ratings (satisfactory) from the start of his employment in 2010. KCCD has not demonstrated Dr. Garrett to have been unsatisfactory but has now tarnished Dr. Garrett's reputation with baseless and unsupported allegations of unsatisfactory performance in his professional capacities.

- Unfit for service: at no point does the statement of charges offer any evidence that demonstrates Dr. Garrett is unfit for service. Prior California Community College cases involving the charge of "unfit for service" include such alleged behavior as repeatedly missing class, repeatedly sexually harassing others, or repeatedly violating clearly identified procedures (*Mitchell v. Los Rios Community College District*, 1996; *Navia v. San Francisco Community College District*, 2014; *Gray v. Los Angeles Community College District*, 2017). In the body of the charges, KCCD has not even attempted to argue the point that Dr. Garrett is unfit for service except in one vague passing reference on page 4 (allegation 2.d.ii) referring to one incident in which KCCD (erroneously) asserts dishonesty. KCCD fails to demonstrate Dr. Garrett's claims were untrue, let alone knowing untrue, and as such KCCD utterly fails to demonstrate dishonesty and, by extension, "unfit for service." Certainly, KCCD fails to demonstrate (or even argue) any habitual misconduct, other than Dr. Garrett's truthful and protected. KCCD has not demonstrated Dr. Garrett to have been unfit for service but has tarnished Dr. Garrett's reputation with baseless and unsupported allegations of being unfit in his professional capacities.
- Persistent violation of laws or reasonable regulations: KCCD provides no evidence to support the allegation of "persistent violation of, or refusal to obey, the school laws of the state or reasonable regulations." Indeed, at no point within the detailed charges does KCCD even assert that Dr. Garrett has violated any "school laws of the state or reasonable regulations," and certainly not repeatedly so. Like others, this allegation is woefully unsubstantiated. It would seem the administration has misinterpreted "persistent violation of, or refusal to obey, the school laws of the state or reasonable regulations" to mean persistent refusal to support partisan objectives on public matters that Dr. Garrett has no obligation to support (recalling the Court's comments in *Pickering*). California Education Code does not permit termination for refusal to adopt administrative viewpoints, and Dr. Garrett's questioning of viewpoints, policies and expenditures does not constitute refusal to obey "school laws of the state or reasonable regulations." Dr. Garrett has followed all laws and reasonable regulations, and KCCD has not identified a single law or regulation that Dr. Garrett may have violated. However, KCCD has tarnished Dr. Garrett's reputation with baseless and unsupported allegations of unlawful conduct.

- Willful refusal to perform regular assignments: the allegation of “willful refusal to perform regular assignments without reasonable cause” is also unsubstantiated by any statement of fact. The regular assignments of faculty are clearly spelled out in the KCCD faculty contract Article 4.C, which outlines nineteen core duties. KCCD has not identified nor alleged failure to complete any of those duties, instead preferring yet another unsupported vague allegation of misconduct without clarification or appropriate evidence. In attempting to assert willful refusal to perform regular assignments, the statement of charges does cite examples wherein Dr. Garrett engaged in protected speech; however, such speech is protected and has nothing to do with the completion of “regular assignments.” It is, effectively, a non sequitur argument, as is the entire statement of charges. In fact, KCCD provides no example of “regular assignments” that Dr. Garrett failed to perform—merely protected speech that KCCD administrators oppose. This is particularly obvious in the allegation that Dr. Garrett wrongfully opposed proposed curriculum (allegation 3.a.v) despite an unprecedented notation on the curriculum that the Chancellor herself desired immediate approval (thereby encroaching on faculty 10+1 rights in Title 5 §53200, as well as protected speech outlined by *Demers*). It would seem the administration has misinterpreted the concept of “willful refusal to perform regular assignments” as “willful refusal to surrender intentent thought on mattes of public interest.” Dr. Garrett’s willful assertion of a dissenting viewpoint does not constitute willful refusal to perform regular assignments. In fact, Dr. Garrett has performed his regular assignments with great accolades, as evidenced by formal student and peer evaluations, as well as awards and recognition granted by the administration and outside organizations. Dr. Garrett has not only earned the highest possible ratings on all evaluations since his date of hire, but Dr. Garrett is also the recipient of the following campus awards for service and leadership: 2017 President's Leadership Award, the 2018 Disabled Students Service Program Award, and the 2021 Margaret Levinson Faculty Leadership Award. If anything, Dr. Garrett has been the model employee and KCCD has utterly failed to demonstrate any failure to perform regular assignments. Instead, KCCD has further tarnished Dr. Garrett’s previously shining reputation with baseless and unsupported allegations.

Throughout the body of the statement of charges, KCCD relies upon anonymous unsourced allegations in a blatant violation of the KCCD faculty contract Article 14.A.7, which reads “Any item to be placed in the file shall be clearly identified as to its source or originator and its date of origin or receipt by the District” and Article 14.A.9, which reads “Anonymous letters shall not be referenced or placed in any faculty member's personnel file.” The most grotesque example of this deviance from contractual obligations appears in charge 3.h, which centers on paraphrased comments from an unknown but surely hostile scribe who has conflated ideas uttered by Dr. Garrett and KNZR radio host Terry Maxwell during various radio interviews to generate wildly unreliable quotes and paraphrasing, which are now to be adopted as true and

accurate reflection of exact quotes from Dr. Garrett. Though perfectly protected speech (as per *Pickering*), few if any of the words ascribed to Dr. Garrett accurately capture Dr. Garrett's actual words.

Perhaps part of that problem could be solved had KCCD followed contractual protocols regarding the submission of complaints. The faculty contract further ensures that faculty are to be notified of any such complaints within ten working days of the district's receipt of said complaint. Article 14.B.3 explains: "When complaints against faculty members are made by individuals other than students, the appropriate administrator shall inform the faculty member of the existence of the complaint within ten (10) working days. The faculty member shall be notified that (1) a complaint has been made and (2) he or she is entitled to representation by the bargaining unit. All such complaints shall be in writing and signed by the complainant, except as otherwise required by law." Similarly, Article 14.B.2 outlines the procedure for student complaints, which KCCD also did not follow in asserting such allegations. KCCD has clearly ignored these contractual obligations in the spontaneous production of numerous exhibits and complaints of mysterious origin in order to substantiate the charges of misconduct. KCCD not only failed to give proper notice to Dr. Garrett for the great majority of complaints appearing in the statement of charges, but also failed to allow Dr. Garrett his bargaining unit representation, as well as the general due process that requirement implies. The total lack of due process afforded to Dr. Garrett is astounding, and this sort of disciplinary sandbagging is explicitly prohibited by the KCCD faculty contract.

In this context of manufactured complaints that appear without proper processes, it is particularly alarming to see multiple complaints that hang on hearsay and have already been debunked or hinge on the testimony of individuals with a documented history of antagonism toward Dr. Garrett. Indeed, perhaps the most outlandish of these allegations is that which was produced by students Dr. Garrett never met, at the [apparent coaching](#) of a professor with a history of hostility toward Dr. Garrett, and then confirmed by a Dean of Instruction against whom Dr. Garrett previously submitted an HR complaint for selective enforcement of Covid measures. But more alarming than the biases of accusers is the fact that the very dean who confirmed the accusations was physically present in the room of the alleged incident, and as such was knowingly lying when he confirmed the allegations in the Nov. 21 notice of unprofessional conduct. Of course, probably did not expect national media to review a leaked recording of the meeting and expose his dishonesty (eg. [Daily Wire](#), [InsideHigherEd](#), [Just the News](#)). Perhaps the most astonishing point is that after national media debunked KCCD's lies, KCCD did not rescind the exposed falsehoods but still added more last-minute heresy claims that Dr. Garrett is equally prepared to dispel, all originating from individuals with a documented history of animosity toward Dr. Garrett and all confirmed without any investigation. These baseless attacks on Dr. Garrett's upstanding moral character a disgusting continuance of administrative retaliation.

Throughout the body of the statement of charges, KCCD has issued contradictory messaging that suggests Dr. Garrett was to be disciplined for reporting harassment and retaliation he suffered, no matter the forum in which he reported it. While some charges explicitly threaten Dr. Garrett with discipline for filing proper human resources complaints (eg., 2.d.ii, 3.b, 3.c, 3.f, and 4), allegation 14.f seeks to discipline Dr. Garrett for “refusal” to “deliver his complaints and grievances to the appropriate channels.” The only permissible option KCCD seems to allow Dr. Garrett to engage in is silent suffering, even as Dr. Garrett’s character is wrongly assailed by colleagues. KCCD threatens to discipline Dr. Garrett for any effort to defend his image, be it in confidential HR complaints, public interviews, or even personal correspondence from Dr. Garrett’s personal email account outside of business hours.

Additionally, KCCD closes the 22 points of alleged misconduct with the final baseless assertion that Dr. Garrett failed to comply with “each and every one of the directives” in the Nov. 21 notice of unprofessional conduct. Again, KCCD provides no evidence to support the false claims. The six directives in the Nov. 21 notice of unprofessional conduct include instruction that Dr. Garrett: (A) “comply with all lawful directives...,” (B) “comply with all Board Policies and Administrative Procedures,” (C) “use District resources to further the interests of the college and District only,” (D) “perform your duties with the civility...,” (E) “address grievances and complaints to appropriate college administrators,” and (F) suffer removal from the diversity committee without just cause. In fact, Dr. Garrett completed each of these tasks and KCCD has offered no example that Dr. Garrett fell short of any of them, and certainly not “each and every one of the directives.” Additionally, it is noteworthy that KCCD refused to provide any clarification or answer any correspondence seeking clarification on these points, except one belated response to declare it would not provide any clarification. This refusal to communicate created uncertainty and anxiety for Dr. Garrett, who felt obligated to self-sensor in a variety of ways, including non-participation in campus discussions and resignation as the Renegade Institute for Liberty faculty lead.

That same allegation (charge #22), closes by alleging that Dr. Garrett has targeted, retaliated against, or otherwise harmed some three dozen individuals, many of whom Dr. Garrett has never even met. KCCD provides no explanation for this bold claim. However, throughout the entire document KCCD employs hyperbolic language of “attack” to describe the expression of any viewpoint KCCD finds unappealing, and in so doing periodically alleges that Dr. Garrett somehow risked “the safety of the District’s students and employees,” always without explanation or evidence. It would seem KCCD has fallen into the fallacy of what Jonathan Haidt and Greg Lukianof have termed “safetyism.” From the opening allegation (2.a) that the term “cultural Marxism” causes “harm” to the closing allegation that students who Dr. Garrett has never met were somehow hurt, KCCD has consistently employed violent language of “attack” (17 occurrences), “safe”/“unsafe”/“safety” (8 occurrences) and “harm” (6 occurrences) to imagine non-existing threats in a misplaced effort to justify the suppression of dissenting ideas. Dr. Garrett’s persistent polite dissent stands in stark contrast to that of his tormentors. Acting

with impunity, they have employed habitual vulgar harassment, retaliation, and actual threats against Dr. Garrett and his colleagues, most poignantly demonstrated in Trustee John Corkin's publicly uttered intent to "[put a rope on some of them and take them to the slaughterhouse](#)." In fact, KCCD fails to provide a single example of any harm caused by Dr. Garrett to any student, employee, or community member, while simultaneously ignoring harassment and retaliation inflicted upon Dr. Garrett.

But more than an overly protective posture for select students and staff, KCCD administrators have demonstrated an eager willingness to knowingly lie, suspend due process, and openly retaliate against protected speech with the most revolting assault on not only Dr. Garrett's First Amendment rights but also his character. Baseless charges, particularly those of "immoral" conduct and "dishonesty," are alarming. Still, the repeated promotion of false claims – even those debunked in national media – for the sole purpose of destroying Dr. Garrett's good name are inexcusable. The March 15 statement of charges serves primarily as irrefutable evidence of malicious retaliation and institutional defamation.

KCCD has utterly failed to demonstrate that Dr. Garrett has engaged in any activity that is not constitutionally protected. Dr. Garrett's remarks are protected either as sincere Human Resources complaints (Gov Code §8547, CA Labor Code §1102.5, and KCCD Board Policy 7700; *Yanowitz v. L'Oreal*) or as First Amendment protected speech (*Pickering*; *Demers*; KCCD faculty contract Articles 4.A and 4.B). Furthermore, KCCD has not demonstrated that Dr. Garrett inappropriately disrupted any work on the campus; at no point does KCCD identify any project that failed to advance or was in any way obstructed. The only argument that KCCD has proven is that it is willing to go to extreme lengths to unlawfully misinterpret protected activities as unprofessional—augmented by demonstrably false accusations—to retaliate against Dr. Matthew Garrett for his use of protected speech to question policies and expenditures, often in his own personal time or in public meetings. KCCD's flagrant disregard for Dr. Garrett's constitutional rights is made more egregious by the openly dishonest assertions that run throughout the statement of charges, from allegations of "dishonesty" when no such dishonesty existed, to the misrepresentation of reasonable behavior as "unprofessional," to the outright fabrication of false and debunked claims assailing Dr. Garrett's character in an obvious attempt at constructive dismissal. Words do not express the shock Dr. Garrett reserves for the disgusting depths of KCCD's dishonesty and defamation-riddled accusations, flagrant disregard for civil liberties, and coordinated retaliation designed to drive Dr. Garrett from the workplace without just cause.

Matthew Garrett, PhD
Professor of History
Professor of Ethnic Studies
Bakersfield College