Foundation for Individual Rights in Education
601 Walnut Street, Suite 510 • Philadelphia, Pennsylvania 19106
T 215-717-3473 • **F** 215-717-3440 • fire@thefire.org • www.thefire.org

April 29, 2009

President Alex Johnson
Community College of Allegheny County
800 Allegheny Avenue
Pittsburgh, Pennsylvania 15233

Sent via U.S. Mail and Facsimile (412-237-4420)

Dear President Johnson:

As you can see from the list of our Directors and Board of Advisors, the Foundation for Individual Rights in Education (FIRE; www.thefire.org) unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, freedom of speech, freedom of conscience, and freedom of association on America's college campuses.

FIRE is deeply concerned about the threats to freedom of speech and freedom of association posed by the Community College of Allegheny County's (CCAC's) hostile response to a flyer distributed by a student seeking to establish a Students for Concealed Carry on Campus student organization at CCAC.

This is our understanding of the facts; please inform us if you believe we are in error. Earlier this month, CCAC student Christine Brashier created flyers to distribute to her classmates regarding a potential Students for Concealed Carry on Campus (SCCC) student organization at CCAC. (A copy of the flyer is enclosed.) The flyer states that SCCC "supports the legalization of concealed carry by licensed individuals on college campuses." She personally distributed copies of the flyer. The flyer noted that SCCC "is not affiliated with the NRA, a political party, or any other organization." Instead, she identified herself as a "Campus Leader" of the effort to start the SCCC chapter, as follows:

Christa Brashier
Campus Leader
Students for Concealed Carry on Campus
Community College of Allegheny County

Email: CommunitySCCC@gmail.com

On Friday, April 24, 2009, Jean Snider, Student Development Specialist at CCAC's Allegheny Campus, summoned Brashier to a meeting that day with Snider and Yvonne Burns, Dean of Student Development at CCAC's Allegheny Campus. According to Brashier, she asked Snider if she was in any "trouble," and Snider replied that she was not.

At the meeting, according to Brashier, Dean Burns did most of the talking. Deans Burns and Snider (primarily Dean Burns) told Brashier that passing out these non-commercial flyers was prohibited because it was "solicitation." They told Brashier that trying to "sell" other students on the idea of the organization was prohibited.

They also told Brashier that identifying herself on the flyer as a student at CCAC was prohibited, and that use of the words "Community College of Allegheny County" on any printed material or website was prohibited, even if it was clear that the words did not imply endorsement by CCAC. They insisted that Brashier destroy all copies of the pamphlet and any other information that mentioned CCAC in the context of her efforts to start a SCCC chapter at CCAC. They highlighted the name of the college on one copy of the flyer and placed it in a manila folder, suggesting that it was a disciplinary folder.

They also told Brashier that personally distributing literature of any kind to fellow students must be pre-approved by the college administration, and that flyers like hers would not be approved.

Brashier also was interrogated about why she was distributing the flyers, how she came to learn of SCCC, whether she owns a licensed firearm, whether she had ever brought her licensed firearm to campus (she replied that she has not), whether she carries a concealed firearm off campus, and whether she disagrees with the existing college policy banning concealed weapons on campus. When Brashier stated that she wanted to be able to discuss this policy freely on campus, she was told to stop doing so without the permission of the CCAC administration. Dean Burns also reportedly said, "You may want to discuss this topic but the college does not, and you cannot make us."

Brashier was then told to cease all activities related to her involvement with SCCC at CCAC because of the gravity of the situation, that such "academic misconduct" would not be tolerated, and that she was free to leave at that point so long as she understood these things.

Several hours later, Brashier e-mailed her account of this meeting to Deans Burns and Snider, requesting that they verify its accuracy within three days and telling them that if they did not, she would assume they found it to be an accurate account of what happened. They chose not to respond.

FIRE considers this matter to be of utmost urgency, with the most essential constitutional and moral values at stake. As a public college, CCAC is both legally and morally bound by the First Amendment's guarantees of freedom of association and freedom of expression. That the First Amendment's protections fully extend to public colleges like CCAC is settled law. See, e.g., *Keyishian v. Board of Regents*, 385 U.S. 589, 605-06 (1967) ("[W]e have recognized that the university is a traditional sphere of free expression so fundamental to the functioning of our society that the Government's ability to control speech within that sphere by means of conditions

attached to the expenditure of Government funds is restricted by the vagueness and overbreadth doctrines of the First Amendment"); *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); *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").

Federal case law regarding freedom of expression does not support the transformation of public institutions of higher education into places where constitutional protections are the exception rather than the rule. Federal courts have repeatedly held that "time, place, and manner" restrictions must be "narrowly tailored" to serve substantial governmental interests. *Ward v. Rock Against Racism*, 491 U.S. 781 (1989). Such restrictions on speech also must be content-neutral and viewpoint-neutral. The several bans on Brashier's oral and written expression, as reported above, focus almost entirely on the content of her expression and plainly violate her constitutional right to freedom of speech.

In addition, Deans Burns and Snider appear to have violated CCAC's Diversity/Equity Statement, which states that "CCAC genuinely supports a variety of perspectives that enhance our ultimate goal as an educational institution: providing quality education and services to all members of the community."

In particular, in requiring prior approval of student publications before distribution, the University may not *in any way* condition approval on the content or viewpoint of the materials to be distributed. According to the United States Supreme Court, "a law subjecting the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority, is unconstitutional." *Shuttlesworth v. Birmingham*, 394 U.S. 147, 150–151 (1969). Deans Burns and Snider, who essentially demand that Brashier acquire a "license" from the college in that they allow no distribution of flyers without the college's prior approval, have stated no such "narrow, objective, and definite standards." They have singled out Brashier's speech entirely because of its content.

Furthermore, if it is true that trying to "sell" students on an idea is prohibited as a matter of solicitation, virtually the entire enterprise of the college is prohibited. All persuasive speech at CCAC, except for the speech that is pre-approved by the college, would be prohibited. Such a rule would be absurd as well as unconstitutional at any public college in the United States.

Indeed, the assertion of an applicable solicitation policy is completely inappropriate in this case. The only solicitation policy FIRE can find, other than a policy that bans solicitation for illegal drugs, is Facilities Management Policy 7.0.5:

> **Solicitation:** The distribution or display of, and the personal contact with individuals or groups related to non-sponsored college material or events, without prior written approval of the college are prohibited. These actions are limited to

> public property; however, public property in this context does not include college property.

This policy is essentially incoherent and likely unconstitutionally vague. In order to comport with constitutional norms of due process, regulations such as CCAC's solicitation policy must "give a person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972). Indeed, the Supreme Court has held that concerns about vagueness are most pressing when the language in question "threatens to inhibit the exercise of constitutionally protected rights," as it does here. *Hoffman Estates v. Flipside, Hoffman Estates*, 455 U.S. 489, 499 (1982). CCAC's solicitation policy is so poorly written that it forces students to guess at what constitutes "personal contact" or at what might be interpreted as "related to non-sponsored college material or events." As a result, students will self-censor, holding back from engaging in protected expression because they do not know what CCAC's policy prohibits—that is, when not directly censored by CCAC administrators, as in the present case. At any rate, the result is either direct censorship or an impermissible "chilling effect" on speech, and neither result is lawful at a public college such as CCAC.

Further, the free distribution of noncommercial handbills is a quintessentially American tradition. In *Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150, 165–166 (2002) the Supreme Court strongly criticized a prior notice requirement for handbills:

> The mere fact that the ordinance covers so much speech raises constitutional concerns. It is offensive—not only to the values protected by the First Amendment, but to the very notion of a free society—that in the context of everyday public discourse a citizen must first inform the government of her desire to speak to her neighbors and then obtain a permit to do so. Even if the issuance of permits by the mayor's office is a ministerial task that is performed promptly and at no cost to the applicant, a law requiring a permit to engage in such speech constitutes a dramatic departure from our national heritage and constitutional tradition.

In addition, in a recent Allegheny County case decided by the United States Court of Appeals for the Third Circuit, *SEIU, Local 3 v. Municipality of Mt. Lebanon*, 446 F.3d 419, 426–427 (3d Cir. 2006) the court ruled that Mt. Lebanon's canvassing ordinance, which required all political and religious groups to register with the police before going door to door, violated "the First and Fourteenth Amendments' guarantee that no State shall abridge the freedom of speech." The Third Circuit court wrote:

> The scope of Mt. Lebanon's ordinance and the burden it places on free speech are comparable to the scope and "pernicious" effects found in *Watchtower*. Mt. Lebanon's registration requirement extends to the core First Amendment areas of religious and political discourse, and its regulation of written material encompasses all subject matter without limitation. Moreover, its effect on spontaneous speech, anonymous advocacy, and advocacy by those with religious or patriotic scruples is indistinguishable from that of the *Watchtower* ordinance. [Footnotes omitted.]

The court added:

> As the *Watchtower* Court concluded, "even if the interest in preventing fraud could adequately support [an] ordinance [regulating] commercial transactions and the solicitation of funds, that interest provides no support for its application to … political campaigns, or to enlisting support for unpopular causes."

Id. at 427 (internal citation omitted).

There is simply no justification for banning Brashier's flyers or requiring preapproval for her to distribute them, even if her cause is deeply unpopular with CCAC administrators. Indeed, CCAC has both a moral and legal obligation to honor the rights of those who, like Thomas Paine and Benjamin Franklin, choose to use the power of handbills and pamphlets to engage in societal and political debate.

As for the ban on using the words "Community College of Allegheny County" on any printed material or website, this too is unconstitutional in the present case. Brashier's flyer in no way suggested that CCAC endorsed the potential club or its message; in fact, the flyer explicitly stated that SCCC "is not affiliated with … any other organization." Students should be encouraged, not discouraged, from identifying themselves as campus leaders and as CCAC students. CCAC may have control over the use of its name for commercial purposes or on documents purporting to be official statements of CCAC, but Brashier's flyer neither proposes a commercial transaction nor claims official endorsement by CCAC of the flyer's message.

Finally, if Brashier and her fellow students submit a complete application for recognition of SCCC as a student organization, CCAC *may not* deny recognition to the group because of the group's expressive message, even if CCAC strongly disagrees with the group's viewpoint and has no intention of permitting what the group advocates. Denying a student the right to associate with other students who share the same beliefs violates the freedom of association to which all CCAC students are entitled by law. Any student at CCAC is entitled to the full protections of the First Amendment, including the right to associate with other students around issues of common interest.

If CCAC is to allow expressive organizations to exist on its campuses at all, it must allow political organizations such as SCCC to exist, to define their missions, to select their own members, and to establish policies, practices, and associations with other groups in pursuit of their goals. No group can control the delivery of its message if it is unable to determine its expressive purpose, membership, and activities. This principle is exemplified in the U.S. Supreme Court's decision in *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000). In this decision, the Court pointed out that "implicit in the right to engage in activities protected by the First Amendment is a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends" (internal citation and quotations omitted). *Id*. at 647. This right, the Court proclaimed, is "crucial in preventing the majority from imposing its views on groups that would rather express other, perhaps unpopular, ideas." *Id*. at 647–648. Indeed, all student organizations at CCAC, including political and religious organizations, must be treated equally with respect to their expressive purposes. See,

e.g., *Rosenberger v. University of Virginia*, 515 U.S. 819 (1995); *Board of Regents v. Southworth*, 529 U.S. 217 (2000). Freedom of association is a basic principle guaranteed by the First Amendment, and as a public institution of higher learning, CCAC has a moral and legal obligation to respect the Court's clear pronouncements with respect to this issue.

Please note that this obligation also applies to any body, such as a student government, that CCAC chooses to invest with its power to recognize student organizations.

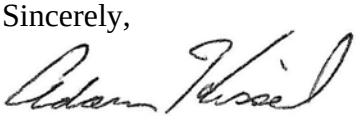
In addition, FIRE understands that according to CCAC policy, "all affiliations [of potential student organizations] with outside organizations must be approved by the executive Dean-Vice President." If CCAC wishes to have such a policy, it must not grant administrators *any* discretion to deny affiliation on the basis of a group's viewpoint or message. Such decisions may only be made in a content-neutral and viewpoint-neutral way, and, of course, any rule must be applied equally to all student organizations. If, as it appears, CCAC's current policy allows administrators the discretion to approve or reject groups based on viewpoint, it is unconstitutional.

Let us be clear: CCAC may use no policy or contrivance to interfere with, restrict, or deny Brashier the full exercise of her constitutional rights. Nor many CCAC use any policy or contrivance to retaliate against her for exercising her rights. In light of the unconstitutional and inaccurate statements made by Deans Burns and Snider, FIRE asks that you immediately recognize the college's legal obligation to guarantee freedom of expression and association on campus, with specific recognition of the right of CCAC students to distribute handbills and advocate for causes without need of prior approval, sponsorship, or permission from the college.

With this letter we enclose a signed FERPA waiver from Christine Brashier, authorizing you to discuss these matters with FIRE.

FIRE is committed to using all of its resources to reach a just and moral conclusion in this case. We request a response on this matter by 5:00 PM on Wednesday, May 13, 2009.

Sincerely,



Adam Kissel
Director, Individual Rights Defense Program

cc:
Elmer Haymon, President, Allegheny Campus, CCAC
Yvonne E. Burns, Dean of Student Development, Allegheny Campus, CCAC
Jean Snider, Student Development Specialist, Allegheny Campus, CCAC
Vladimir St. Surin, Director of Student Life, Allegheny Campus, CCAC
Gaina Miklusko, Student Life Specialist—Clubs and Organizations, Allegheny Campus, CCAC