FIRE
Foundation for Individual Rights in Education

December 14, 2017

Regina Stanback Stroud
President's Office
Skyline College
3300 College Drive
San Bruno, California 94066

Sent via U.S. Mail and Electronic Mail (stroudr@smccd.edu)

Dear President Stroud:

The Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

FIRE is concerned about the threat to free speech posed by Skyline College (Skyline) policies which require that students obtain administrative permission before engaging in even the most basic expressive activity on campus. As a public institution bound by the First Amendment and the California Constitution, Skyline may not maintain policies that unconstitutionally restrict its students' expressive rights. Moreover, Skyline's current policies conflict with the San Mateo County Community College District (SMCCCD) Board Policy pertaining to free speech.

The following is our understanding of the facts; please inform us if you believe we are in error.

I. Background

Skyline student Eric Corgas is the president of the Skyline chapter of the national organization Young Americans for Liberty (YAL). On October 25, Eric Corgas, other members of his chapter, and a YAL field representative brought a "free speech ball" (a large, inflated beach ball) and copies of the Constitution of the United States to Skyline's campus. They intended to distribute the Constitutions, invite passersby to write on the free speech ball, and encourage students to join YAL.

After Corgas finished setting up the free speech ball and a folding table, he was approached by a counselor in Skyline's Student Services department named Alberto Santellan. Identifying himself as a staff member for the Center for Student Life and Leadership Development,

Santellan told Corgas that he would get in trouble if he did not take the table down. Corgas took the table down and continued to distribute copies of the Constitution.

Shortly thereafter, Corgas was approached by another administrator, Amory Cariadus, Director of Student Development. Cariadus approached Corgas and told him, "We're okay with you guys doing free speech, but, like, you guys gotta, like, let me know, not just send me an email at, like, 1:00." Cariadus then instructed Corgas to complete a copy of Skyline's "Free Speech Permit." Cariadus told the students that "it probably, if [they] were, like, not disruptive, it wouldn't be an issue" if they did not fill out the permit. However, she later said that the school receives complaints about free speech all the time.

Since October 25, Corgas has continued to engage in expressive activity on Skyline's campus without completing the Free Speech Permit. Corgas has, however, emailed Cariadus to inform her of his plans. Cariadus has in turn requested that Corgas provide her with the specific dates and times that he plans to engage in expressive activity in advance. Most recently, in a December 1 email, Cariadus informed Corgas that, "We ask everyone to stop by the Center for Student Life and Leadership Development to fill out the "Free Speech Permit." Corgas has declined to provide Cariadus the requested information on the basis that any requirement that he do so would violate his First Amendment rights.

II. Policies

SMCCCD, of which Skyline is a part, has promulgated a Board Policy relating to the freedom of speech on district campuses.[1] The policy recognizes that "[p]ublic expression in the form of freedom of speech and advocacy is a fundamental American right and an essential element in the marketplace of ideas of higher education."[2] The Board Policy unambiguously opens the grounds of the community college campuses to expressive activity:[3]

> In the spirit of open discussion and freedom of expression, any individual or group may use campus and District exterior spaces, including lawns, plazas, quadrangles, patios, and similar or related open spaces on the College campuses and District grounds for the free exercise of academic freedom and free expression, subject to the regulations and the restrictions of this policy.

The Board Policy reiterates that "students, employees and members of the public are free to exercise their rights of free expression and academic freedom on its premises . . . ."[4] While the Board Policy *encourages* students to make reservations, it expressly forbids mandatory permitting schemes: "The District shall not prohibit speech or expressive activity on its

[1] *BP 2.31 Speech: Time, Place, and Manner*, SAN MATEO COMMUNITY COLLEGE DISTRICT, https://smccd-public.sharepoint.com/BoardPoliciesandProcedures/2_31.pdf (last visited Dec. 6, 2017).
[2] *Id.* at § 1.
[3] *Id.* at § 4.
[4] *Id.* at § 5.

campuses and grounds solely because the individual(s) or group did not make or does not have a reservation."[5]

The Board Policy also contains numerous provisions forbidding content- and viewpoint-based discrimination and recognizing the importance of "diverse views" on district campuses: "The Board of Trustees recognizes that fostering free speech and encouraging the broad expression of diverse views are essential to the District's goal of offering a rich educational environment."[6] In fact, "[n]o restrictions shall be placed on the subject matter, topics or viewpoints expressed by students . . . . The District shall have no content-based nor viewpoint-based restrictions on speech."[7]

In contravention of the Board Policy, however, Skyline has placed numerous restrictions on its students' expressive activities. First, Skyline has designated its campus a "non-public forum, except for designated free speech area[s]."[8] This stands in contrast to the Board policy, which recognizes the importance of expressive rights and opens the district campuses to student speech. Skyline also informs students that, "If the activity [inside of a free speech area] becomes a distraction to the education process, individuals will be asked to leave."

Skyline also imposes a prior restraint on student speech by requiring students who wish to engage in expressive activity on campus to complete an ironically named Free Speech Permit. The permit is made available on Skyline's website, which informs students that they "must carry the Free Speech Permit during the free speech activity."[9] The permit requires several pieces of information that open the door to viewpoint- and content-based discrimination. For example, applicants must identify the "Topic or Issue" they will address and the "Items to be displayed or distributed" during their "free speech activity." The permit also requires that applicants provide their name, the name of their organization, and the names of all participants. Skyline policy also provides that the Free Speech Permit "should be completed and submitted . . . prior to any activity beginning." Moreover, the permit contains a box with space for a signature labeled "Center for Student Life and Leadership Development Approval," making clear that obtaining a permit is mandatory.

III. Analysis

As the SMCCCD Board Policy recognizes, the First Amendment applies with full force on public college campuses. *See, e.g.*, *Widmar v. Vincent*, 454 U.S. 263, 268–69 (1981) ("With

---

[5] *Id.* at § 7.
[6] *Id.* at § 1.
[7] *Id.* at § 2.
[8] *Skyline College Guidelines For Free Speech Activities*, SKYLINE COLLEGE, https://www.skylinecollege.edu/centerforstudentlife/assets/eventplanning/FreeSpeechGuidelines.pdf (last visited Dec. 6, 2017).
[9] *Event Planning*, SKYLINE COLLEGE, https://www.skylinecollege.edu/centerforstudentlife/assets/eventplanning/FreeSpeechPermit.pdf (last visited Dec. 6, 2017).

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."); *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 670 (1973) ("[T]he 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.'"); *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 and quotation marks omitted). Nevertheless, in defiance of both Supreme Court precedent and SMCCCD policy, Skyline has labeled its campus a nonpublic forum, limited expression to specific designated locations, and enacted an unconstitutional prior restraint on speech.

Skyline's classification of its campus as a non-public forum is in sharp tension with governing legal precedent. In *OSU Student Alliance v. Ray*, 699 F.3d 1053, 1062, 1063 n.4 (9th Cir. 2012), the United States Court of Appeals for the Ninth Circuit—the rulings of which are fully binding on your institution—held that the campus of Oregon State University (OSU) was "at least a designated public forum" in a challenge brought by a student newspaper. The court cited an Oregon Administrative Rule stating: "University grounds are open to the public and the University community for speech activities except any grounds designated for authorized access only." *Id.* at 1063. The Ninth Circuit held that this rule intentionally dedicated OSU's campus to expressive activity and thereby created a designated public forum. *Id.* The court then struck down a campus policy that purported to place greater restrictions on "off-campus" newspapers than "on-campus" newspapers because it engaged in viewpoint discrimination and was an invalid time, place, or manner restriction. *Id.* at 1066.

The Ninth Circuit's decision in *OSU* is particularly relevant here because the SMCCCD Board Policy, like the Oregon Administrative Rule, expressly and unequivocally designates Skyline's campus a forum for expressive activity. The Board Policy could not be more clear on this front: "[A]ny individual or group may use campus and District exterior spaces, including lawns, plazas, quadrangles, patios, and similar or related open spaces on the College campuses and District grounds for the free exercise of academic freedom and free expression . . . ."[10] The outdoor areas of Skyline's campus are, accordingly, at minimum a designated public forum.

Consequently, Skyline's policy designating "free speech areas" for expressive activity cannot be sustained. Not only is it inconsistent with Board policy, but courts have also repeatedly struck down such broad limitations on student speech in a public forum.[11] Skyline must

[10] *BP 2.31 Speech: Time, Place, and Manner*, SAN MATEO COMMUNITY COLLEGE DISTRICT at ¶ 4, https://smccd-public.sharepoint.com/BoardPoliciesandProcedures/2_31.pdf (last visited Dec. 6, 2017).

[11] *See, e.g., Justice for All v. Faulkner*, 410 F.3d 760, 769 (5th Cir. 2005) (striking down literature distribution policy challenged by student organization because "[a] university campus is clearly an appropriate place for communication of views on issues of political and social significance") (internal quotation omitted); *Hays Cnty. Guardian v. Supple*, 969 F.2d 111 (5th Cir. 1992) (enjoining anti-solicitation policy that covered distributing

confirm that its students are permitted to engage in expressive activity in all of the open, outdoor, or similarly generally accessible areas of campus.

Skyline has, however, done more than misclassify its campus as a non-public forum and inappropriately limit expression to free speech areas. It has also enacted an unconstitutional prior restraint. "Even if the issuance of permits . . . is a ministerial task . . . a law requiring a permit to engage in such speech constitutes a dramatic departure from our national heritage and constitutional tradition." *Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150, 166 (2002); *accord Forsyth v. Nationalist Movement*, 505 U.S. 123, 132–33 (1992) (striking down permit policy on First Amendment grounds for lacking "articulated standards"). Thus, "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, 150–51 (1969); *see also City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 770 (1988) ("Standards provide the guideposts that check the licensor and allow courts quickly and easily to determine whether the licensor is discriminating against disfavored speech."). Moreover, "any permit scheme controlling the time, place, and manner of speech must not be based on the content of the message, must be narrowly tailored to serve a significant governmental interest, and must leave open ample alternatives for communication." *Forsyth*, 505 U.S. at 131.

As a threshold matter, Skyline's policy fails this test because it allows administrators to consider the content or viewpoint of speech when deciding whether to approve or deny a permit. Skyline's Free Speech Permit requires that applicants identify the "Topic or Issue" they plan to discuss and the materials they plan to distribute. By requiring that potential speakers provide this information, in the absence of any articulated standards governing the approval of permits, Skyline opens the door for content- and viewpoint-based discrimination.

Problems with the permits would remain even without the specter of content- and viewpoint-based discrimination because Skyline's policy is not narrowly tailored. "The presumptive invalidity and offensiveness of advance notice and permitting requirements stem from the significant burden that they place on free speech." *Berger v. City of Seattle*, 569 F.3d 1029, 1037 (9th Cir. 2009) (*en banc*); *Rosen v. Port of Portland*, 641 F.2d 1243, 1249 (9th Cir. 1981) (noting that prior restraints "prevent speech that is intended to deal with immediate issues"); *NAACP, W. Region v. City of Richmond*, 743 F.2d 1346, 1356 (9th Cir. 1984) ("simple delay may permanently vitiate the expressive content of a demonstration"). Accordingly, the Ninth Circuit "ha[s] refused to uphold registration requirements that apply to individual speakers or small groups in a public forum." *Berger*, 569 F.3d at 1039. Moreover, "the requirement that potential speakers identify themselves to the government, and the concomitant loss of

---

political materials to passersby); *McGlone v. Bell*, 681 F.3d 718 (6th Cir. 2012) (in context of non-student plaintiffs on campus, onerous advance notice requirement for all speech held unconstitutional); *University of Cincinnati Chapter of Young Americans for Liberty v. Williams*, No. 1:12-cv-155, 2012 U.S. Dist. LEXIS 80967 (S.D. Ohio June 12, 2012) (enjoining free speech area policy); *Roberts v. Haragan*, 346 F. Supp. 2d 853, 870 (N.D. Tex. 2004) (enjoining free speech area policy).

anonymity, is one of the primary *evils* the Supreme Court cited when it struck down the permitting requirement in *Watchtower Bible*." *Berger*, 569 F.3d at 1044 (emphasis in original).

It is not surprising that courts have held that colleges cannot impose burdensome waiting or permission requirements upon students who wish to exercise their First Amendment rights. In *University of Cincinnati Chapter of Young Americans for Liberty v. Williams*, No. 1:12-cv-155, 2012 U.S. Dist. LEXIS 80967 (S.D. Ohio June 12, 2012), a federal district court enjoined a policy requiring students to give the college at least five days' notice before they engaged in expressive activity outside of a designated free speech area. The court reasoned, "while the 'breadth and unprecedented nature of this regulation does not alone render [it] invalid,' it is indicative of the University's failure to narrowly tailor the regulation to serve a compelling interest." *Id.* at *21 (quoting *Watchtower*, 536 U.S. at 166). The "mere fact that the notice requirement applie[d] to all student speech raise[d] constitutional concerns." *Id.* Similarly, in *Roberts v. Haragan*, 346 F. Supp. 2d 853, 870 (N.D. Tex. 2004), a federal district court held that Texas Tech University's requirement that students get a permit at least two days before engaging in any expressive activity outside designated free speech areas "sweeps too broadly in imposing a burden on a substantial amount of expression that does not interfere with any significant interests of the University."

In ruling that the permit policies at issue were not narrowly tailored to a significant government interest, both the *Williams* and *Roberts* courts noted that the universities could have easily drafted rules targeted at situations that pose a real threat of campus disruption, such as regulations regarding large crowds, sound amplification near buildings, or blocking building access. *Williams*, 2012 U.S. Dist. LEXIS 80967 at *20–22; *Roberts*, 346 F. Supp. 2d at 870 n.20. The *Williams* court noted that "[a]t least one other Ohio public university has been able to satisfy similar interests with nothing more than an anti-disruption policy." 2012 U.S. Dist. LEXIS 80967 at *21 n.3.

Skyline's permit requirement suffers from the same flaws as the above-cited cases. Skyline's policy sweeps incredibly broadly by covering to all student expression and applying even to single students or small groups. Skyline's policy likewise forbids anonymous speech by requiring that all speakers identify themselves and their organization to campus administrators before engaging in expressive activity. Skyline has also imposed a vague ban on activities "that become a distraction." Between the fact that *anything* could be a distraction to someone and Cariadus informing Corgas that Skyline receives numerous complaints about expressive activities, it can be assumed that Skyline could use this vague standard to ban any expressive activity it disagrees with under the pretense that it is a distraction.

Indeed, as the United States Department of Justice noted in a Statement of Interest filed on October 24, 2017, in a strikingly similar FIRE case, a number of federal circuits have joined the Ninth Circuit in holding that permit requirements applicable to peaceful protest by an individual or small group in a public forum are unconstitutional prior restraints. *See* United States' Statement of Interest at 11–13, *Shaw v. Burke*, 17-cv-2386 (C.D. Cal. Oct. 24, 2017) (copy enclosed). The *Shaw* case challenges a college policy—like Skyline's—requiring students to

obtain a permit before engaging in any expressive activity on campus. As the DOJ argues, college policies "prohibiting this kind of non-disruptive expressive activity by an individual or small group are unconstitutionally broad and, instead of 'being narrowly tailored to protect speech,' are 'tailored so as to preclude speech.'" *Id.* at 13 (citing *Grossman v. City of Portland*, 33 F.3d 1200, 1206–07 (9th Cir. 1994)). The DOJ also argued that forcing students to provide their names and organizational affiliation as part of a registration requirement violates the First Amendment by effectively banning all spontaneous speech. Skyline's policies, like the policies at issue in *Shaw v. Burke*, apply to the expressive rights of even a single student who seeks to distribute literature without being forced to register in advance and effectively ban spontaneous speech.

Be advised that FIRE's Stand Up For Speech Litigation Project has coordinated a number of successful First Amendment lawsuits nationwide challenging so-called "free speech area" or "free speech zone" policies limiting demonstration and expressive activity to small areas of campus and similar permitting policies. The majority of these cases settled quickly and the defendant institutions revised their policies and paid substantial sums in damages and attorney's fees, as described below.[12]

- At Modesto Junior College in California, FIRE coordinated a lawsuit challenging a policy requiring students to obtain advance permission to use designated "free speech zones" on campus. The college ultimately settled the lawsuit by agreeing to pay $50,000, rescinding its policy, and dismantling its free speech zones.

- FIRE coordinated a lawsuit against the University of Hawaii at Hilo challenging a policy that required students to limit non-permitted speech to a small, isolated free speech zone and to obtain advance permission to engage in speech activity on the balance of the campus. The case settled in December 2014, resulting in policy reform throughout the University of Hawaii system and a payment of $50,000.

- At Citrus College in California in 2013, FIRE helped a student challenge three unconstitutional speech codes, including a free speech zone policy, a burdensome approval process for expressive activity, and a harassment policy. Citrus College ultimately agreed to revise all three policies and paid $110,000 in damages and legal fees.

- In March 2015, FIRE coordinated litigation against California State Polytechnic University, Pomona, regarding school policies limiting speech and material distribution to a free speech zone and requiring advance registration and approval. The case settled four months later, with revisions to the challenged policies and an agreement to pay $35,000 in damages and fees.

[12] For more information on these and other Stand Up For Speech cases, please visit http://www.standupforspeech.com.

- In March 2015, FIRE coordinated litigation against Dixie State University in Utah regarding the school's limitation of speech activity to a free speech zone and a requirement that students obtain permission before holding any events on campus. That case settled in September 2015, with the policies being revised and the school paying $50,000 in damages and fees.

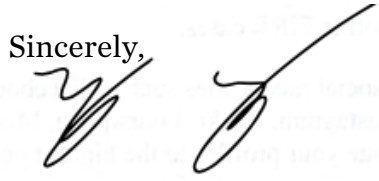
- FIRE assisted a student in challenging several unconstitutional restrictions on free speech at Blinn College in Texas, including a requirement that students seek permission to engage in expressive activity outside of the school's designated free speech zone. In May 2016, the Board of Trustees agreed to settle the case, to revise the college's policies, and to pay $50,0000 in damages and fees.

IV. Conclusion

Skyline's policies prohibiting non-disruptive literature distribution or demonstrations by students in generally accessible areas of campus without prior permission contradict the SMCCCD Board Rules and violate the First Amendment. Happily, however, Skyline's policies may be easily revised to comply with both the Board Rules and the Bill of Rights. FIRE would welcome the opportunity to work with Skyline to achieve such revisions and to reaffirm the college's commitment to students' free exchange of ideas. However, FIRE is committed to using all of the resources at its disposal to see this matter through to a just conclusion.

We request a response to this letter by January 4, 2017.

Sincerely,



Brynne S. Madway, Esq.
Staff Attorney

cc:

Amory N. Cariadus, Director of Student Development
Ron Galatolo, Chancellor
Eugene Whitlock, Vice-Chancellor of Human Resources and Employee Relations and General Counsel

Encl.