FIRE
Foundation for Individual Rights in Education

May 16, 2019

Dr. Jesse Smith
Office of the President
Jones County Junior College
Hutcheson Hubbard Administration Building, 233
900 South Court Street
Ellisville, Mississippi 39437

Via U.S. Mail and Electronic Mail (jesse.smith@jcjc.edu)

Dear President Smith:

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 at Jones County Junior College (JCJC) posed by the college's restrictive policies regarding speech and expressive activity on campus and their enforcement against a student engaging in peaceful, non-disruptive expressive activity.

On two occasions since February 2019, student Mike Brown was prevented by staff and campus police from attempting to encourage fellow students to join his nascent chapter of Young Americans for Liberty (YAL). These restrictions on Brown's speech are a consequence of college policies imposing onerous permission requirements on all student expression on campus. Such policies and their application contravene JCJC's obligations under the First Amendment. FIRE calls on the college to immediately suspend and revise these policies consistent with its duty as a public institution.

I. Statement of facts

The following is our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us. Please find enclosed an executed waiver authorizing you to share information with FIRE.

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Since summer 2018, Mike Brown has been a member of YAL and has endeavored to start a chapter of the national organization on his campus. On several occasions during the summer and fall of 2018, Brown talked to his fellow students on campus and distributed pamphlets and pocket copies of the U.S. Constitution without incident.

On February 26, 2019, Brown came to campus with former student Mitch Strider, also a member of YAL, to set up a "free speech ball," an oversized beach ball on which passersby are invited to write a message of their choice. When passing students paused to write on the ball, Brown and Strider talked to them about the importance of free speech and other issues of interest to YAL. For approximately an hour, Brown and Strider rolled the beach ball around the open grass area in front of Jones Hall. At that point, they were approached by an administrator who asked if they had permission to be on campus. Shortly after, Dean of Student Affairs Mark Easley also approached and informed Brown and Strider that they would have to take the ball down that day because they had not filed the necessary paperwork for the activity under the school's policies. Easley called Stan Livingston, Chief of Campus Police, noting that there was "profanity" written on the ball.

Livingston arrived and brought Brown and Strider to his office. He informed Strider that, as a non-student, he had to leave campus or risk arrest for trespass. He informed Brown that if he wished to be on campus with the free speech ball, he would have to meet with Vice President of Student Affairs Gwen Magee and go through her office's approval procedures because she must approve every "activity" on campus. Livingston noted that Brown would have to do so at a later time, however, because Magee was not on campus that day. Livingston emphasized that Brown needed to sit down with Magee so that she could get an understanding of his goal and "agenda" and clarify the relevant policies, which he said could be interpreted differently by Livingston and Brown. After leaving Livingston's office, Brown and Strider deflated the free speech ball.

On April 4, 2019, Brown again went to the open grass area in front of Jones Hall to recruit other students to join his YAL chapter. He was joined by his girlfriend, then a JCJC student, and a YAL staff member, Nathan Moore. To catch students' attention and prompt conversation, they brought with them a sign designed to be a poll, inviting passersby to mark the sign in a space indicating whether they thought marijuana should be illegal, legal for medical use, or legal for recreational use.

Brown and his companions were on campus for only a short time when they were approached by Luke Hammonds, Director of Human Resources, who asked if they had spoken to Livingston about their expressive activity. Two students who had approached Brown to talk about the sign hurriedly walked away. When Brown said he had not spoken to Livingston about his presence on campus that day, Hammonds called campus police.

A police officer arrived shortly thereafter and asked what the three were doing. Brown attempted to explain their purpose, but the officer said they were not permitted to engage

in such activity without permission. She escorted them into Jones Hall, took down their names, contact information, and the student ID numbers of Brown and his girlfriend. Livingston arrived, instructed the officer to take Brown and his girlfriend to his office, and left to take Moore to his car with instructions to leave campus immediately and not return, on pain of arrest for trespass.

Livingston returned to his office and told Brown he should have "known better" than to be out on campus that day without prior approval and asked if Brown was trying to make him "look like a fool." Brown responded that he thought his February meeting with Livingston was triggered by the presence of the free speech ball. Livingston said they were not allowed to be on campus "interrupting the education process." Easley entered the office and reiterated to Brown that any expressive activity on campus requires prior administrative approval. He instructed Brown to contact Magee before conducting future activities on campus.

Brown still wishes to recruit for his YAL chapter on the JCJC campus, but does not want to have to ask the school's permission ahead of time to simply speak to his fellow students. However, police and the administration have made clear that this is exactly what they expect of him.

II. JCJC policies

Brown's experiences with JCJC administrators and campus police are a result of the college's extremely restrictive policies governing speech and expressive activity on campus. These policies on their face encompass *all* campus speech, impermissibly requiring students to obtain prior approval from the President or Vice President of Student Affairs via an undefined process before engaging in *any* expressive activity.

The Student Code of Conduct, at Paragraph 9, prohibits "[d]isruptive activity, which is any . . . unauthorized events and activities of any and all segments of the college."[1] Section 2 of the Student Activities Policies, titled "Assemblies Regulations," provides:

> a. Any student parade, serenade, demonstration, rally, and/or other meeting or gathering for any purpose, conducted on the campus of the institution must be scheduled with the President or Vice President of Student Affairs at least 72 hours in advance of the event. [. . .] Names of the responsible leaders of the groups must be submitted to the institution at the time of scheduling. [. . .]

[1] JONES COUNTY JUNIOR COLLEGE, *2018-2019 Student Handbook, Code of Conduct*, at 95, http://online.pubhtml5.com/ducn/kwpr/#p=1 (hereinafter "Student Handbook").

> b. Students assembling for any meeting not authorized in accordance with paragraph one are subject to proper disciplinary action. Students present at such unauthorized meetings are considered to be participants.[2]

Although Brown's YAL chapter is not a recognized student organization, the Student Activity Policies and Student Program Procedures make clear that, if his club achieves that status, it will be subject to similar, if not *more* onerous, prior approval requirements.[3]

Given Easley's call to Livingston noting that Brown's free speech ball displayed "profanity," Brown must also be cognizant of Paragraph 17 of the Code of Conduct, which prohibits "public profanity" on campus.[4]

III. Law and analysis

It has long been settled law that the First Amendment is binding on public colleges. *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); *DeJohn v. Temple Univ.*, 537 F.3d 301, 314 (3d Cir. 2008) (on public campuses, "free speech is of critical importance because it is the lifeblood of academic freedom").

JCJC's policies and their enforcement by staff and campus police violate student First Amendment rights in several ways. Specifically, the college's sweeping prior approval requirement, encompassing all student speech, is an unconstitutional prior restraint on the time, place, and manner of student speech that vests apparently unlimited discretion in the hands of the Vice President of Student Affairs to grant or withhold approval. Additionally, the prohibition on "public profanity" is an impermissible restriction on the content of speech.

a. JCJC's policies and practices are an unconstitutional restriction on the time, place, and manner of student speech

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[2] Student Handbook, *Student Activity Policies,* at 112.

[3] *Id.* at 111 ("All college connected student activities conducted by a student organization at Jones Junior College must be scheduled by the Vice President of Student Affairs. The Vice President of Student Affairs reserves the right to schedule or not schedule any activity. . . . Permission for student activities may be obtained by completing the "Activity/Speaker Application Form". . . . All requests are due in the Office of the Student Affairs ***five days*** preceding the activity) (emphasis added); *see also* Student Handbook, *Student Program Procedures*, at 116 (on-campus activities are reserved through the Facilities Coordinator and must be approved by the Vice President of Student Affairs).

[4] Student Handbook, *Code of Conduct*, at 96.

The Supreme Court of the United States "has recognized that the campus of a public university, at least for its students, possesses many of the characteristics of a public forum." *Widmar v. Vincent*, 454 U.S. 263, 268–69 (1981). Accordingly, numerous federal courts, including the U.S. Court of Appeals for the Fifth Circuit—the rulings of which are binding on JCJC—have held that the outdoor, publicly accessible areas of a public college campus like JCJC are public forums.[5]

While a college may establish "reasonable time, place, and manner" restrictions on speech and expressive activity in a public forum, *Ward v. Rock Against Racism*, 491 U.S. 781 (1989), such restrictions must be "justified without reference to the content of the regulated speech, . . . [and] narrowly tailored to serve a significant governmental interest, and . . . leave open ample alternative channels for communication of the information." *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293 (1984). A restriction is narrowly tailored when it does not "burden substantially more speech than is necessary to further the government's legitimate interests." *Ward*, 491 U.S. at 798–99; *Hays County Guardian v. Supple*, 969 F.2d 111, 118 (5th Cir. 1992) (same).

Administrative procedures requiring a speaker to obtain a license or permit, or to register with the government before speaking, are highly disfavored under long-established law. *See N.Y. Times v. United States*, 403 U.S. 713, 714 (1971) ("Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity.") (internal quotation marks omitted); *see also Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150, 165–66 (2002) ("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.").

Based on the principles enshrined in these and other binding precedents, blanket prior approval or permit requirements applicable to an individual or small group in a public forum are routinely struck down by courts, including the Fifth Circuit, for failure to meet the "narrow tailoring" requirement. *See Boardley v. Dep't of Interior*, 615 F.3d 508, 520–23

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[5] *Justice for All v. Faulkner*, 410 F.3d 760, 768–69 (5th Cir. 2005) (open outdoor areas of University of Texas at Austin found to be designated public fora as to students); *Hays Cty. Guardian v. Supple*, 969 F.2d 111, 116 (5th Cir. 1992) ("The undisputed facts show that the outdoor grounds of the campus such as the sidewalks and plazas are designated public fora for the speech of university students."); *see also* OSU Student Alliance v. Ray, 699 F.3d 1053, 1063 (9th Cir. 2012) (holding that Oregon State University campus is, at minimum, a designated public forum); *Shaw v. Burke*, No. 17-cv-2386, 2018 U.S. Dist. LEXIS 7584, at *22 (C.D. Cal. Jan. 17, 2018) ("open, outdoor areas of universities . . . are public fora[,]" regardless of a college's regulations to the contrary); *Univ. of Cincinnati Chapter of Young Ams. for Liberty v. Williams*, No. 12-cv-155, 2012 U.S. Dist. LEXIS 80967, at *29–30 (S.D. Ohio June 12, 2012) (open, outdoor areas of campus are designated public fora for students); *Roberts v. Haragan*, 346 F. Supp. 2d 853, 862–63 (N.D. Tex. 2004) ("[T]o the extent [Texas Tech University] has park areas, sidewalks, streets, or other similar common areas, these areas are public forums, at least for the University's students, irrespective of whether the University has so designated them or not. These areas comprise the irreducible public forums on the campus.").

(D.C. Cir. 2010) (permit requirement for small groups held unconstitutional); *Knowles v. City of Waco*, 462 F.3d 430, 436 (5th Cir. 2006) ("Other circuits have held, and we concur, that ordinances requiring a permit for demonstrations by a handful of people are not narrowly tailored to serve a significant government interest."); *Cox v. City of Charleston*, 416 F.3d 281, 285–87 (4th Cir. 2005) (striking down permitting requirement that did not contain an exception for small groups); *Burk v. Augusta-Richmond Cty.*, 365 F.3d 1247, 1255 n.13 (11th Cir. 2004) (noting "that several courts have invalidated content-neutral permitting requirements because their application to small groups rendered them insufficiently tailored"); *Douglas v. Brownell*, 88 F.3d 1511, 1524 (8th Cir. 1996) (entertaining doubt about whether a permit requirement was narrowly tailored as applied to groups of ten individuals); *Grossman v. City of Portland*, 33 F.3d 1200, 1205–1208 (9th Cir. 1994) (notice requirement was not narrowly tailored as applied to individuals or small groups). This is clearly established law.

Courts have likewise struck down prior approval requirements that encompass all student speech in public areas of college campuses. Such requirements cannot be justified by the speculative possibility that any student expression *might* be disruptive. As the Supreme Court has made clear, "undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 508 (1969).

For example, 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 engaging in expressive activity outside of a designated free speech area. The "mere fact that the notice requirement applie[d] to ***all*** student speech raise[d] constitutional concerns." *Id.* at *21 (emphasis added). As 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 Bible*, 536 U.S. at 166). In identifying governmental interests, "the University cannot simply assert interests that are important in the abstract" because "[m]ere speculation that speech would disrupt campus activities is insufficient[.]" *Id.*

Similarly, in *Roberts v. Haragan*, 346 F. Supp. 2d 853, 870 (N.D. Tex. 2004), a federal court held that Texas Tech University's requirement that students obtain 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." The court reasoned: "While true that the University need not adopt the absolutely least restrictive or intrusive means to accomplish its purpose, neither has the University convinced this Court that its significant interests would be achieved less effectively under a more carefully drafted regulation." *Id.*

Likewise, a federal district court in California held last year that a student alleged a First Amendment violation in challenging a campus policy that required prior permission for all student expression, even where a permit could be issued on the same day. *Shaw v. Burke*, No. 2:17-CV-02386-ODW, 2018 U.S. Dist. LEXIS 7584 (C.D. Cal. Jan. 17, 2018). The court explained:

> The permitting requirement also impermissibly restricts speech because it applies to all speakers regardless of whether applicants intend to speak alone or as part of a group. . . . Courts strike permitting requirements where they indiscriminately apply regardless of the number of speakers. . . . These types of regulations are impermissible because they are not legitimately tied to the government's interests. Where a large group of protestors may disrupt class, or impede foot traffic, the likelihood that a single protestor would do the same is low. Furthermore, there are other, less restrictive avenues for the government to achieve its goals.

Id. at *29–30 (internal citations omitted).[6]

In ruling that the policies at issue were not narrowly tailored to a significant government interest, the *Williams*, *Roberts*, and *Shaw* courts reasoned that the colleges could have easily drafted rules targeted at situations posing a genuine threat of campus disruption or a safety hazard, instead of subjecting all student speech to blanket restrictions. *See Williams*, 2012 U.S. Dist. LEXIS 80967 at *20–22; *Shaw*, 2018 U.S. Dist. LEXIS 7584 at *26; *Roberts*, 346 F. Supp. 2d at 870 n.20. Schools could, for example, require permits for events involving large crowds, prohibit blocking building access, or regulate sound amplification near classrooms. *Williams*, 2012 U.S. Dist. LEXIS 80967 at *21–22; *Roberts*, 346 F. Supp. 2d at 870 n.20.

The *Williams* and *Shaw* courts also sustained First Amendment challenges to the campus policies on grounds they prevented all spontaneous or anonymous speech, citing the Supreme Court's decision in *Watchtower Bible*. *See Williams,* 2012 U.S. Dist. LEXIS 80967, at *20–21; *Shaw*, 2018 U.S. Dist. LEXIS 7584, at *30–31. The *Watchtower Bible* court struck down a village ordinance requiring a permit for all door-to-door solicitation, finding it placed a substantial burden on citizens' First Amendment rights by entirely preventing anonymous and spontaneous speech and deterring speakers who do not wish to seek a license. *Id.* at 166–68. On campus as in the village, regulations that leave students no avenue

[6] The United States Department of Justice filed a Statement of Interest in support of the *Shaw* student plaintiff's First Amendment claims, arguing that college policies requiring a permit for non-disruptive expressive activity by an individual or small group are unconstitutionally overbroad. United States' Statement of Interest, Shaw v. Burke, No. 2:17-CV-02386-ODW (C.D. Cal. Oct. 24, 2017), ECF No. 39. As the Statement notes, "instead of 'being narrowly tailored to protect speech,' [such policies] are 'tailored so as to preclude speech.'" *Id.* at 13 (quoting *Grossman*, 33 F.3d at 1206–07).

to timely respond to still-unfolding events, or without identifying themselves to the government, simply sweep too broadly and burden too much. *See Williams*, 2012 U.S. Dist. LEXIS 80967, at *20–21 ("Such expansive permitting schemes place an objective burden on the exercise of free speech.").

JCJC's policies suffer from the same constitutional infirmities as those successfully challenged in *Williams*, *Roberts*, and *Shaw*. They make "unauthorized events and activities" a disciplinary infraction and require that any "student parade, serenade, demonstration, rally, and/or other meeting or gathering for any purpose" be scheduled at least 72 hours in advance with the President or Vice President of Student Affairs. These policies on their face impose a permission requirement on all student expressive activity without regard to its impact on a campus function. They also entirely prevent anonymous and spontaneous speech. Indeed, Brown's encounters with campus police underscore that the policies are not tied to a legitimate government interest. Despite Livingston's assertion that Brown could not be on campus "interrupting the education process," there is no indication that his activities—either rolling the free speech ball or simply holding a sign—had any impact at all on campus or academic functions.

As the courts have emphasized, JCJC can and must draft more carefully tailored regulations of the time, place, and manner of student speech, as many institutions big and small across the country do.[7] Its current policies, covering even the most basic exercises of peaceful, protected expression on campus, "burden substantially more speech than is necessary to further the government's legitimate interests." *Ward*, 491 U.S. at 798–99; *see also Hays County Guardian*, 969 F.2d at 118 ("Even a legitimate government interest cannot justify a restriction if the restriction accomplishes that goal at an inordinate cost to speech."). A policy that punishes "such a broad range of expressive and legitimate conduct . . . is hardly tailored at all, much less narrowly tailored. . . ." *Knowles*, 462 F.3d at 435.

b. JCJC's policies and practices grant unbridled discretion to administrators

JCJC's policies also violate student First Amendment rights on the separate and independent ground that they vest unchecked discretion in the President or Vice President of Student Affairs to approve or deny permission for expressive activity on campus.

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[7] FIRE conducts an annual review of speech codes at over 450 of the country's top colleges and universities and documents numerous examples of campus free speech policies that are appropriately permissive of peaceful student protest and demonstration. *See Spotlight Database*, FOUND. FOR INDIVIDUAL RIGHTS IN EDUC., https://www.thefire.org/spotlight (last visited May 7, 2019). In Mississippi alone, FIRE rates demonstration policies at five public institutions as "green light"—meaning they do not seriously imperil student speech on their face—including at Alcorn State University, Delta State University, Jackson State University, Mississippi State University, and University of Southern Mississippi. Within the Fifth Circuit, 18 public colleges and universities have "green light" demonstration policies.

Courts strike down permitting schemes as unconstitutional where they are "contingent upon the uncontrolled will of an official—as by requiring a permit or license which may be granted or withheld in the discretion of such official." *Shuttlesworth v. Birmingham*, 394 U.S. 147, 151 (1969) (quoting *Staub v. City of Baxley*, 355 U.S. 313, 322 (1958)). To pass constitutional muster, permitting schemes must have "narrow, objective, and definite standards to guide the licensing authority." *Id.*; *see also City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 770 (1988) (holding that permit requirements must have clearly delineated standards). The Supreme Court has required that limitations on a permitting authority's discretion "be made explicit by textual incorporation, binding judicial or administrative construction, or well-established practice." *Id.* "A licensing statute lacking such controls constitutes an impermissible prior restraint because of its potential to sanction the refusal of a permit to those seeking to engage in constitutionally protected activity." *Beckerman v. Tupelo*, 664 F.2d 502, 509 (5th Cir. 1981).

Well-defined, objective limitations on a decision-maker's discretion are necessary because a standardless permitting scheme lends itself to viewpoint discrimination. "Without these guideposts, post hoc rationalizations by the licensing official and the use of shifting or illegitimate criteria are far too easy, making it difficult for courts to determine in any particular case whether the licensor is permitting favorable, and suppressing unfavorable, expression." *Lakewood*, 486 U.S. at 758.

The policies cited above, published in JCJC's Student Handbook, do not include any standards to guide or limit administrative discretion to approve or deny permission for expression on campus. They merely prohibit "unauthorized" events or activities and refer students to the President or Vice President of Student Affairs to "schedule" any "parade, serenade, demonstration, rally, and/or other meeting or gathering for any purpose." This is unacceptable.

While it is possible JCJC has published, objective standards governing its permit process that are not publicly accessible, Brown's interactions with campus police and administrators strongly suggest that the college's practices are rife with unchecked administrative discretion that appears to be vested in one person. Livingston and Easley repeatedly directed Brown to go see Vice President Magee who they said is responsible for approving any and all "activity" on campus. Brown was told he must sit down with Magee and explain the "agenda" and goal of his expressive activity. However, on that particular occasion, he was told to come back another time because Magee was not on campus that day.

JCJC cannot lawfully maintain opaque and undefined policies and practices that direct all students to Magee's office—inaccessible on days she is not present—to seek her approval for even simple, non-disruptive expressive activities protected by the First Amendment, such as holding up a sign. Procedures lacking objective, content-neutral criteria guiding administrative discretion invite a designee such as Magee to consider the content of

speech, an impermissible result that is nonetheless likely where a student is required to meet with Magee to evaluate the purpose of his speech in order to gain her permission.

c. JCJC cannot prohibit profanity in public forums

Finally, JCJC cannot punish the display of profanity in a public forum like the generally accessible outdoor areas of campus where Brown displayed his free speech ball. "If 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." *Texas v. Johnson*, 491 U.S. 397, 414 (1989). This is no less true on a public college campus. *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.'").

Profanity is protected expression under long-settled and well-established First Amendment law. *See Cohen v. California*, 403 U.S. 15 (1971) (reversing the conviction of a man wearing a jacket bearing the slogan "Fuck the Draft" in a courthouse because message was protected under First Amendment); *Swartz v. Insogna*, 704 F.3d 105, 111 (2d Cir. 2013) (giving "the finger" is pure speech that cannot be penalized as disorderly conduct). While some may find the use of profanity juvenile or distasteful, decades of case law holds that government actors may not censor speech simply because it is offensive or vulgar. "[B]ecause governmental officials cannot make principled decisions" concerning distasteful or impolite speech, "the Constitution leaves matters of taste and style . . . largely to the individual." *Cohen*, 403 U.S. at 25. "[O]ne man's vulgarity is another's lyric." *Id.*

In February, Easley noted that Brown's free speech ball had profanity written on it when he called Livingston to report the incident. He presumably had in mind the conduct code's prohibition against "public profanity." That provision is flatly unconstitutional, however, to the extent it polices "profane" language used or visible in public campus spaces. If Brown brings a free speech ball to campus again, it is almost inevitable that some passerby, invited to write their message of choice, will choose to write something profane. To ensure this type of expression, including its display by Brown, is not punished, JCJC must revise the conduct code to remove reference to "public profanity."

IV. Conclusion

Based on the foregoing, JCJC must immediately suspend enforcement of its unconstitutional policies and practices on student speech and revise the policies to bring them in line with the institution's obligations under the First Amendment. The college must also ensure that campus police and administrators responsible for enforcing policy are aware of any reforms and their ongoing obligation to uphold student First Amendment rights on campus.

FIRE has worked amicably with many colleges in the past to provide resources and assistance in the process of policy reform. We would be happy to do so again to help JCJC put in place constitutionally compliant policies.

Please be advised, however, that a public college administrator who violates clearly established law will not retain qualified immunity and can be held personally responsible for monetary damages for violating First Amendment rights under 42 U.S.C. § 1983. *See Harlow v. Fitzgerald*, 457 U.S. 800 (1982); *see also* Azhar Majeed, *Putting Their Money Where Their Mouth Is: The Case for Denying Qualified Immunity to University Administrators for Violating Students' Speech Rights*, 8 Cardozo Pub. Law, Policy & Ethics J. 515 (2010). There is no doubt that Brown's expressive activity was protected by the First Amendment. Be further advised that FIRE is committed to using all of the resources at its disposal to see this matter through to a just conclusion.

We respectfully request a response to this letter by the close of business on May 30, 2019.

Sincerely,

Marieke Tuthill Beck-Coon
Director of Litigation
Foundation for Individual Rights in Education

Encl.

Cc (via email only):
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