



# FIRE

Foundation for Individual  
Rights and Expression

September 29, 2022

Ashanti Hands  
Office of the President  
San Diego Mesa College  
7250 Mesa College Drive  
San Diego, California 92111-4998

*Sent via U.S. Mail and Electronic Mail (ahands@sdccd.edu)*

Dear President Hands:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,<sup>1</sup> is concerned that San Diego Mesa College investigated a professor for using an example thesis statement during a lesson on argumentative writing in which the professor called the Republican party a fascist organization. While some may have objected to that particular example or the overall lesson, it remains pedagogically relevant to the English course. It is therefore protected by the freedom of expression promised by the First Amendment, which includes the academic freedom of public college faculty to determine the content of classroom instruction. This renders SDMC's investigation contrary to its binding legal obligations to respect expressive faculty rights, and requires that it immediately abandon the inquiry, reverse any punishment arising from it, and clarify to faculty that SDMC respects their scholarly autonomy.

According to a local media report,<sup>2</sup> "English 101 – Reading and Composition" is an SDMC course taught to seniors at Madison High School in which students "read, analyze, discuss and think critically using a variety of works and sources[.]" and "[b]ased on these activities, students write essays, fully documented research projects, and other types of texts for various

---

<sup>1</sup> For more than 20 years, FIRE has defended freedom of expression, conscience, and religion, and other individual rights on America's college campuses. You can learn more about our recently expanded mission and activities at [thefire.org](http://thefire.org).

<sup>2</sup> FIRE's account of the facts is based on public reporting, though we appreciate that you may have additional information to offer and invite you to share it with us. Alec Schemmel, *Professor teaches class being white, Christian and heterosexual are signs of fascism*, Fox 42 (Sept. 13, 2022), <https://fox42kptm.com/news/nation-world/professor-teaches-class-being-white-christian-and-heterosexual-are-signs-of-fascists>.

purposes and audiences.”<sup>3</sup> Per the report, an unnamed San Diego Mesa College professor created a lesson plan including a persuasive essay prompt reading: “As it is currently constituted, the Republican Party is now a fascist organization that no longer fits the category of a conventional Democratic Party.”<sup>4</sup> In doing so, the professor used the terms “authoritarian,” “Trump,” “heterosexual,” “in group — white, christian,” and “hatred of foreigners/immigrants/minorities” to support the thesis.<sup>5</sup> After the social media account Libs of TikTok posted the course material,<sup>6</sup> both Madison High and SDMC faced criticism, with the latter announcing it was “looking into the matter,”<sup>7</sup> while otherwise saying it could not comment further because the situation involved a “personnel matter.”<sup>8</sup>

SDMC’s investigation into both the professor and his course material violates his academic freedom to select course content and both the professor’s and the students’ right to engage in pedagogically relevant classroom discussions. While allowing high schoolers to enroll in college courses provides a valuable opportunity to engage with advanced material, discussion, and subjects their participation cannot justify diluting or childproofing college-level material.

As a public institution of higher education, SDMC is bound by the First Amendment.<sup>9</sup> Even K-12 school boards, which have broad leeway to formulate curricular content, are barred by the First Amendment from prohibiting students’ voluntary access to materials that some may find objectionable, as “such access prepares students for active and effective participation in the pluralistic, often contentious society in which they will soon be adult members.”<sup>10</sup>

Here, SDMC’s latitude to restrict faculty’s curricular choices is even more circumscribed. While high school students may enroll in it, the class at issue remains a college-level course for which the students receive college credit. As the Supreme Court has held in no uncertain terms, college classrooms are “peculiarly the ‘marketplace of ideas.’”<sup>11</sup> The “[n]ation’s future depends on” the ability of students to gain “wide exposure to that robust exchange of ideas which discovers truth out of a multitude of tongues, rather than through any kind of authoritative

---

<sup>3</sup> *Course Catalog and Educational Planning Guide*, MADISON HIGH SCH. at 14, [https://cdn5-ss18.sharpschool.com/UserFiles/Servers/Server\\_27925982/File/Counseling/Course%20Catalog%202022-2023.pdf](https://cdn5-ss18.sharpschool.com/UserFiles/Servers/Server_27925982/File/Counseling/Course%20Catalog%202022-2023.pdf) (last visited Sept. 26, 2022).

<sup>4</sup> Alec Schemmel, *supra* note 2.

<sup>5</sup> *Id.*

<sup>6</sup> Libs of TikTok (@libsoftiktok), Twitter (Sept. 9, 2022, 12:23 PM), <https://twitter.com/libsoftiktok/status/1568273984285728768>.

<sup>7</sup> Alec Schemmel, *supra* note 2.

<sup>8</sup> *Id.*

<sup>9</sup> *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969) (“First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students”); *Healy v. James*, 408 U.S. 169, 180 (1972) (“[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools”) (quoting *Shelton v. Tucker*, 364 U.S. 479, 487 (1960)).

<sup>10</sup> *Bd. of Educ. v. Pico*, 457 U.S. 853, 868 (1982); *see also id.* at 861 (First Amendment limits the “power of the State to control even the curriculum and classroom”). Indeed, some high school seniors may *already* have reached the age of majority—which carries with it the right to vote and renders them eligible to be drafted into the armed services—and diminishes any interest in regulating the material they may read.

<sup>11</sup> *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967) (cleaned up).

selection.”<sup>12</sup> Likewise, the United States Court of Appeals for the Ninth Circuit—the decisions of which are binding on SDMC—has held that teaching and academic writing are protected by the First Amendment.<sup>13</sup> Here, while some may object—reasonably or not—to the professor’s chosen example thesis, it remains pedagogically relevant, advancing an “academic message” on college-level writing.

Absent the protections afforded by the First Amendment, college courses open to high school students or young college students would be subject to paternalistic censorship, chilling faculty members’ ability to select materials and tailor discussions to best serve their pedagogical interests. If left to stand, such restrictions could easily be abused, chilling the ability of college instructors to discuss any divisive topic, including race, sex, and gender. FIRE has already seen states attempt to erode such protections by passing “divisive concepts laws,”<sup>14</sup> threatening faculty’s ability to teach certain topics, as well as critically acclaimed, core K-12 texts like “To Kill a Mockingbird,” “Catch 22,” and “The Things They Carried,” to name just a few.<sup>15</sup>

Even if SDMC ultimately metes out no punishment, its investigation into the course material itself violates the First Amendment. The question is whether the institution’s actions “would chill or silence a person of ordinary firmness from future First Amendment activities[.]”<sup>16</sup> Investigations into protected expression often meet this standard.<sup>17</sup>

For example, a public university launched an investigation into a tenured faculty member’s offensive writings on race and intelligence, announcing an *ad hoc* committee to review whether the professor’s expression—which the university’s leadership said “ha[d] no place at” the college—constituted “conduct unbecoming of a member of the faculty.”<sup>18</sup> This investigation

---

<sup>12</sup> *Id.*

<sup>13</sup> *Demers v. Austin*, 729 F.3d 1011, 1020 (9<sup>th</sup> Cir. 2013). On top of the Ninth Circuit, the Sixth Circuit has additionally flatly rejected as “totally unpersuasive” the “argument that teachers have no First Amendment rights when teaching, or that the government can censor teacher speech without restriction[.]” *Hardy v. Jefferson Cmty. Coll.*, 260 F.3d 671, 680 (6<sup>th</sup> Cir. 2001).

<sup>14</sup> See *Press Release, LAWSUIT: FIRE challenges Stop WOKE Act’s limits on how Florida professors can teach about race, sex*, FIRE (Sept. 6, 2022), <https://www.thefire.org/lawsuit-fire-challenges-stop-woke-acts-limits-on-how-florida-professors-can-teach-about-race-sex>; Greg Gonzalez, *FIRE continues to oppose curricular bans in race and sex stereotyping bills*, FIRE (July 11, 2022), <https://www.thefire.org/fire-continues-to-oppose-curricular-bans-in-race-and-sex-stereotyping-bills>; Graham Piro, *Chilling effect remains as Oklahoma’s ‘divisive concepts’ law becomes effective*, FIRE (July 2, 2021), <https://www.thefire.org/chilling-effect-remains-as-oklahomas-divisive-concepts-law-becomes-effective>.

<sup>15</sup> See, e.g., *Open Letter: Authors Demand Texas School District Reinstate Their Books*, PEN AMERICA (Apr. 21, 2021), <https://pen.org/authors-demand-texas-district-reinstate-books>; Evan McMorris-Santoro, et. al., *Students fight back against a book ban that has a Pennsylvania community divided*, CNN (Sept. 16, 2021), <https://www.cnn.com/2021/09/15/us/book-ban-controversy-pennsylvania/index.html> (limits on a book “about Rosa Parks, Malala Yousafzai’s autobiography and CNN’s Sesame Street town hall on racism”); Alison Flood, *Alaskan school board lifts ban on Gatsby and Catch-22 after protests*, GUARDIAN (May 22, 2020), <https://www.theguardian.com/books/2020/may/22/alaskan-school-board-lifts-ban-on-gatsby-and-catch-22-after-protests>.

<sup>16</sup> *Mendocino Envtl. Ctr. v. Mendocino Cty.*, 192 F.3d 1283, 1300 (9<sup>th</sup> Cir. 1999).

<sup>17</sup> See, e.g., *White v. Lee*, 227 F.3d 1214, 1228 (9<sup>th</sup> Cir. 2000).

<sup>18</sup> *Levin v. Harleston*, 966 F.2d 85, 89 (2<sup>d</sup> Cir. 1992).

itself constituted an implicit threat of discipline, and the resulting chilling effect constituted a cognizable First Amendment harm.<sup>19</sup> Similarly, SDMC’s threat of discipline in investigating the professor and course material—making clear that its investigation is a “personnel matter”—sends the message that similar speech may be punished in the future, enough to chill any and all faculty at SDMC who wish to teach potentially controversial material.<sup>20</sup>

In sum, having made the decision to partner with Madison High to provide its students college-level educational opportunities, SDMC officials’ ability to police course content is restricted by the First Amendment’s stringent academic freedom protections of course content. Parents nonetheless aggrieved may choose not to enroll their high schoolers in the college-level courses, but SDMC cannot prevent faculty and students in college courses from engaging with pedagogically relevant material.

We request receipt of a substantive response to this letter no later than the close of business on Thursday, October 13, 2022, confirming that SDMC will end its investigation into the professor and course.

Sincerely,



Sabrina Conza  
Program Officer, Campus Rights Advocacy

---

<sup>19</sup> *Id.* at 89–90.

<sup>20</sup> *Speech First, Inc. v. Fenves*, No. 19-50529, 2020 U.S. App. LEXIS 34087, at \*28–30 (5th Cir. Oct. 28, 2020).