



Foundation for Individual Rights in Education

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PRESIDENT

March 23, 2011

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Sinclair Community College
444 West Third Street
Dayton, Ohio 45402

William Creeley
DIRECTOR OF LEGAL AND
PUBLIC ADVOCACY

Sent via U.S. Mail and Facsimile (937-512-5252)

Alan Charles Kors
CO-FOUNDER AND
CHAIRMAN EMERITUS

Dear President Johnson:

BOARD OF DIRECTORS

Harvey A. Silverglate
CO-FOUNDER AND
CHAIRMAN

FIRE is in receipt of General Counsel Lauren Ross' March 16 response to our letter of February 22, 2011 (both enclosed), regarding free speech at Sinclair Community College (SCC). Unfortunately, FIRE's concerns about violations of free speech at SCC remain.

Barbara Bishop
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Daniel Shuchman

Ross cites SCC's Campus Access Policy, Section IV, which states in relevant part that "[l]iterature may not be distributed in working areas, including: classrooms ...". Ross implies that it is permissible to ban a student from distributing literature to classmates after class, which is the expression at issue in Ethel Borel-Donohue's case. While it might be constitutional to ban distribution of materials by students in a classroom during class time, it is not constitutionally permissible to ban such distribution after class. Ross states that the Campus Access Policy "ensur[es] that instruction is not disrupted," but that point is irrelevant to Borel-Donohue's case and to the concerns FIRE has raised. After class, instruction has ended.

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Again, free speech remains chilled at SCC so long as the Student Code of Conduct impermissibly bans "distribution ... of materials on Sinclair owned or controlled property." SCC's Campus Access Policy further chills expression if it is interpreted, as Ross has done, to ban expression such as Borel-Donohue's distribution of literature to classmates after class. SCC's restrictions fail the First Amendment standard of reasonable, narrowly tailored "time, place and manner" restrictions set by the Supreme Court in *Ward v. Rock Against Racism*, 491 U.S. 781 (1989).

FIRE again asks that SCC spare itself the embarrassment of fighting against the Bill of Rights. SCC must acknowledge Borel-Donohue's right to distribute literature to classmates after class, and SCC must revise both its Student Code of Conduct and its Campus Access Policy to bring them in line with the First Amendment.

We appreciate your attention to this matter. We respectfully ask for a response to this letter by March 30, 2011.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Kissel". The signature is fluid and cursive, with the first name "Adam" written in a larger, more prominent script than the last name "Kissel".

Adam Kissel

Vice President of Programs

Enclosures

cc:

Lauren M. Ross, General Counsel, Sinclair Community College and Assistant Attorney General,
State of Ohio

Judge Michael Brigner, Chair, Paralegal Program, Sinclair Community College

Helen Grove, Senior Vice President and Provost, Sinclair Community College

John R. Kasich, Governor, State of Ohio

Mike DeWine, Attorney General, State of Ohio