



Foundation for Individual Rights in Education

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June 15, 2012

President Steven Lee Johnson
Sinclair Community College
444 West Third Street
Dayton, Ohio 45402

Sent via U.S. Mail and Facsimile (937-512-4596)

Dear President Johnson:

The Foundation for Individual Rights in Education (FIRE) is disappointed to be writing to Sinclair Community College (SCC) regarding yet another threat to First Amendment rights at SCC. In this most recent incident, attendees at a rally organized by a recognized SCC student organization were inexplicably forbidden from holding up handheld signs and banners. SCC must immediately disavow this profoundly unconstitutional order and make clear that such action will never be taken at SCC again.

This is our understanding of the facts. Please inform us if you believe we are in error.

On May 24, 2012, after following all necessary application procedures for registering an on-campus event, the Traditional Values Club (TVC), a recognized student organization at SCC, was granted permission to host a “Stand Up for Religious Freedom” rally in SCC’s Building 7 plaza on June 8. TVC’s rally was one of more than 160 such rallies being held nationwide that day to protest new health care mandates from the U.S. Department of Health and Human Services. As part of the event, organizers distributed handheld signs promoting the event to many in attendance. Some other attendees of the event brought their own signs as well, with statements of core political speech such as “Religious Freedom for All Americans,” “Individual freedom comes from God, not the State,” and “HHS Mandate = Evil; WWJD [What Would Jesus Do]?” Other attendees held American flags.

During the event, officers with the Sinclair Police Department told attendees that they were required to put their signs on the ground and were not allowed to hold them up at any time. Two supporters were also forced to put down a large banner carrying the name of the event. Photographs taken at the event show a police officer enforcing the ban on signs; a Sinclair Police Department officer is also

recorded on video saying that “no signage whatsoever” was allowed at the event and saying, “The banner can’t go up. The signs can’t go up.”

The censorship of the expression of the event’s attendees is not just profoundly unconstitutional, but it also makes a mockery of the enduring American tradition of free speech, open inquiry, and lively debate with regard to political matters, as well as the United States Supreme Court’s longstanding conception of the American college campus as being “peculiarly the ‘marketplace of ideas.’” *Healy v. James*, 408 U.S. 169, 180 (1972) (internal citation omitted). Indeed, in *Healy*, the Court eloquently opined that “the 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.’” *Id.* (internal citation omitted).

It is settled law that the First Amendment is fully binding on public colleges like SCC. See *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”). It is further settled that speech may not be censored on the ground that some might find it offensive. See *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (“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.”); *Papish v. Board of Curators of the University of Missouri*, 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.’”); *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949) (“[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.”).

Prohibiting event attendees at a rally held on one of SCC’s main outdoor public areas from holding signs is indefensible and vastly exceeds the bounds of SCC’s limited authority to regulate the flow of campus discourse. The Supreme Court made clear in *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (internal quotation marks omitted) that reasonable “time, place, and manner” restrictions on freedom of expression must be “narrowly tailored” to “serve a significant governmental interest” and must “leave open ample alternative channels for communication.” Such a manifestly unreasonable and broad restriction on expression as SCC has enforced here most certainly fails such a test. **There is simply no governmental interest significant enough to deny the right to carry signs in support or protest of certain causes.** Furthermore, prior notice to a government entity such as SCC is not required for citizens to engage in such peaceful expressive activity as holding signs and American flags.

According to a March 13, 2012, article in *The Clarion*, SCC’s campus newspaper, the Sinclair Police Department derives its alleged authority to ban signs at public events on the SCC campus from an incredibly expansive reading of SCC’s Campus Access Policy. The article reported:

According to Chief of Police Charles Gift, Sinclair has enforced a no-sign policy since 1990. The rule is covered by Sinclair’s Campus Access Policy, which sets parameters for the use of campus facilities.

“The policy is not all inclusive,” Gift said. “There are numerous situations that could arise that are not specifically addressed in the policy itself. [The police] retain full discretion to deal with these situations as they come up.”

Signs are not specifically mentioned in the policy, but are forbidden because they can be disruptive, said Gift.

SCC’s argument dramatically overstates SCC’s ability to regulate campus expression and substantially chills protected expression at SCC, a result not permitted by the First Amendment. While SCC may use its discretion in certain instances to regulate expression in service of significant government interests—ensuring that the teaching or other essential administrative functions of the college are not substantially disrupted by amplified student expression, for example—it may not preemptively outlaw broad swaths of expression, such as signage at rallies. The Supreme Court made clear in *Healy* that the “undifferentiated fear or apprehension of disturbance [] is not enough to overcome the right to freedom of expression” on a public college campus. *Healy*, 408 U.S. at 191 (quoting *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 508 (1969)). As SCC’s handling of the Stand Up for Religious Freedom rally shows, SCC’s vague and overbroad policy leads to preposterous outcomes. Indeed, SCC’s position permits students on the SCC campus fewer rights than in the community at large, defying the Supreme Court’s clear guidance that “state colleges and universities are not enclaves immune from the sweep of the First Amendment.” *Id.* at 180.

According to this same March 13 article, this reading of the policy was enforced against two students who peacefully protested another TVC event by bringing posters criticizing the invited speaker’s views on homosexuality. According to the article, “[a]t one point, two students walked to the back with homemade signs” and “were immediately confronted by Sinclair police officers,” who ordered them to put the signs away. If these students were posing no serious disruption to TVC’s event, it seems likely from this description that SCC again violated its own students’ First Amendment right to peaceful protest.

If SCC has indeed been enforcing a “no-sign” policy since 1990, then there is every reason to believe that it has been used to suppress the free speech of hundreds, if not thousands, of students and faculty members throughout the years. By enforcing an across-the-board ban on signs, SCC students at on-campus rallies will be nearly alone among their peers—both at public and at private colleges—in being unable to so much as hold a sign supporting the 2012 candidacy of President Barack Obama or Governor Mitt Romney. The effects of such a ban go far deeper than merely impoverishing dialogue on campus. As the Supreme Court has stated, “speech concerning public affairs is more than self-expression; it is the essence of self government,” reflecting “our profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.” *Garrison v. Louisiana*, 379 U.S. 64, 74–75 (1964) (internal quotations omitted).

Further, in the likely event that this official, yet unwritten policy has not been evenly applied at all times, students with especially unpopular or controversial messages will have been subject to viewpoint-based discrimination. Indeed, even at the TVC event, the police officers chose to let people hold American flags while forcing all other signs to stay on the ground. Such outcomes are entirely incompatible with SCC's moral and legal duty to uphold the First Amendment.

FIRE asks that Sinclair Community College immediately disavow the actions of the Sinclair Police Department in censoring the June 8 Stand Up for Religious Freedom rally's attendees and participants. We further ask that SCC make clear to every member of the SCC community that their right to peacefully and unobtrusively carry signs—whether in support of their own causes or in opposition to others'—will never be suppressed by further unconstitutional application of SCC's Campus Access Policy. We are prepared to use all resources at our disposal to achieve a just resolution in this case. Please spare SCC the embarrassment of another public fight against the Bill of Rights.

We request a response to this letter by June 22, 2012.

Sincerely,



Robert Shibley
Senior Vice President

cc:

Kenneth Moore, Senior Vice President
Madeline Iseli, Vice President of Advancement
Charles J. Gift, Director of Public Safety