



Foundation for Individual Rights in Education

210 West Washington Square, Suite 303 · Philadelphia, PA 19106

Tel: 215.717.3473 · Fax: 215.717.3440 · fire@thefire.org · www.thefire.org

David French
PRESIDENT

April 18, 2005

Greg Lukianoff
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President E. Ann McGee
Seminole Community College
100 Weldon Boulevard
Sanford, Florida 32773

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Sent by U.S. Mail and Facsimile (407-328-2011)

Dear President McGee:

As you can see from our Directors and Board of Advisors, the Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, freedom of religion, academic freedom, due process, and, in this case, freedom of speech and expression on America's college campuses. Our website, thefire.org, will give you a greater sense of our identity and activities.

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FIRE is deeply concerned by the refusal of Seminole Community College administrators to allow a student to pass out literature produced by People for the Ethical Treatment of Animals (PETA) on the college's Oveido campus. We are also disturbed to find that as an alternative, the college has suggested that the student be allowed to speak only within a "free speech zone" located in an out-of-the-way section of campus. The phenomenon of "free speech zones" is a perversion of constitutional law that should be an anathema to any institution committed to intellectual rigor, robust debate, and a free and vibrant community. We call on Seminole Community College to tear down its unconstitutional barriers to freedom of speech and declare *all* of SCC's campus a "free speech zone."

This is our understanding of the facts, based on SCC documents and e-mails involving SCC employees. Please inform us if you believe we are in error. On March 23, 2005, SCC student Eliana Campos went to Student Activities Specialist Gail Agor's office to get permission to use a table located near the Little Bean Café and student lounge in order to pass out literature produced by PETA that decries the treatment of animals in slaughterhouses. Agor immediately denied Campos permission to hold such an event, and Campos reports that Agor and others in the office literally laughed at her request. On the following day, Campos e-mailed Agor to ask her to explain the decision not to allow the tabling, emphasizing that she "did not want to table for PETA" per se, but that she wanted

to hold an individual protest against slaughterhouse brutality using literature supplied by PETA.

Agor responded by e-mail on March 25 explaining that her decision to forbid the protest was based on a disagreement with PETA's practices in her hometown of Norfolk, Virginia. She wrote, "Eliana, maybe you wouldn't insult or yell, but PETA instills a feeling in me that I can't, and won't, take a chance on campus. [sic] When we set up tables, it is in the area with the Little Bean [café] and students would be eating animal products in front of you...I feel this is a set up for conflict." (A full copy of this e-mail exchange between Campos and Agor is attached to this letter.)

Agor's e-mail also stated that rather than allowing Campos to set up a table and pass out literature in the café/lounge area, Campos would be allowed merely to "stand and speak" about her beliefs in SCC's "free speech zone." Agor wrote:

We DO however, have an area where groups or individuals can stand and talk or have speeches. By law, every campus must have an area like this. Ours is in front of the Clock Tower, and although you may not set up a table, you are welcome to stand and speak freely on animal atrocities as you see them, or in accordance with PETA's beliefs.

She concluded by saying "I, in no way wished you embarrassment, [sic] I just feel strongly about the negative effects that PETA has created in my home town, and elsewhere, and do not desire the controversy here on the Oviedo Campus."

SCC's actions and policies violate the First Amendment of the U.S. Constitution in a number of ways. First, Agor's e-mail to Campos indicates that the decision not to let Campos distribute her literature in the café was based on Campos' agreement on this issue with the PETA organization and Agor's personal opinion of that organization's beliefs and tactics. This decision constitutes viewpoint discrimination—which is unlawful at any state-supported institution. Agor's decision to prohibit Campos from distributing PETA literature based upon Agor's feelings about what a PETA protest might involve is no different from a decision to prohibit a chapter of the College Republicans or the Green Party on campus because of an administrator's feelings about that organization's beliefs.

Thankfully, however, freedom of expression at public institutions is not at the mercy of the feelings of would-be censors. At a state-supported institution such as SCC, even extremely controversial political statements are protected by the First Amendment. The Supreme Court has determined that the Constitution protects even highly offensive forms of expression. In *Terminiello v. Chicago*, 337 U.S. 1 (1949), for instance, the Court reversed a disturbing-the-peace conviction of a notorious racist. Justice Douglas wrote in that case that speech is protected even when its purpose is to "induce a condition of unrest, create dissatisfaction with conditions as they are, or even stir people to anger." In *Gooding v. Wilson*, 405 U.S. 518 (1972), the Court reversed the conviction of a citizen who called a police officer a "white son of a bitch" and added, "I'll kill you." In *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667 (1973), the Court ordered the reinstatement of a journalism student who had distributed a cartoon depicting policemen raping the Statue of Liberty and the Goddess of Justice. The Court

held that “conventions of decency” did not dictate what speech was protected on a public college campus.

The desire to avoid controversy is also not a constitutionally permissible reason to deny a student’s right to protest. In the case of *Tinker v. Des Moines Independent School District*, 393 U.S. 503 (1969), the Supreme Court determined that, even in high schools, “undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression.” Adult students at a community college would, naturally, enjoy even greater freedoms than high-school students. Agor’s refusal to allow any PETA-related activity to take place on campus because of PETA’s tactics in other locales is unconstitutional as well. In *Healy v. James*, 408 U.S. 169, 186 (1972), a case that dealt with a college student organization, the Court found that “it has been established that ‘guilt by association alone, without [establishing] that an individual’s association poses the threat feared by the Government,’ is an impermissible basis upon which to deny First Amendment rights.” Agor’s e-mail indicates that “guilt by association” is precisely the reason that Campos’ protest was forbidden.

SCC’s enactment of a “free speech zone” on its Oviedo campus is also a special cause for concern. Neal Graham, dean of SCC’s Oviedo campus, noted in a March 28 e-mail to Campos that “[t]he use of college property for this purpose has been codified in formal policies and procedures approved by the SCC District Board of Trustees,” and goes on to cite SCC Procedure 6.0700, which provides that “Seminole Community College grounds may be available for student exercise of free speech and assembly only in areas specifically identified for that purpose by the President or designee,” and that “[t]he designated area on the Oviedo campus will be adjacent to the clock tower at the center of campus.”

However, neither the U.S. Constitution nor the courts require that free speech be restricted to one tiny, out-of-the-way, and ill-defined area of campus. Indeed, the only possible defense of SCC’s “free speech zone” policy is that it is a “reasonable time, place and manner” restriction as allowed by cases like *Ward v. Rock Against Racism*, 491 U.S. 781 (1989). There is nothing “reasonable,” however, about transforming the vast majority of SCC’s property—indeed, *public* property—into a “censorship area.” There is no basis in federal law that provides for the transformation of public institutions into places where constitutional protections are the exception rather than the rule. To be considered legal, “time, place, and manner” restrictions must be “narrowly tailored” to substantial governmental interests. A generalized concern about safety and order is neither specific enough nor substantial enough to justify SCC’s overbroad rule.

It is essential to remember that the special function of a college or university as a whole, in any free society, is to serve as the ultimate “free speech zone.” A college that is serious about providing its students with a true education should be seeking at all times to expand open discourse, to develop intellectual inquiry, and to engage and challenge the way people think. By limiting free speech to a small fraction of the campus, SCC sends the message that speech is to be feared, restrained, and monitored. This message is completely incompatible with a free society and stands in stark opposition to the ideals of higher education. As the Supreme Court wrote in *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957):

The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. *To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation.* No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made.... Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die. [Emphasis added.]

SCC's actions in regulating free expression create the very "atmosphere of suspicion and distrust" against which the Justices warned. The fact that SCC officials would see fit to banish a lone student who wishes to sit at a table and distribute literature to a small, poorly-located "free speech zone" indicates a highly disturbing mistrust of both SCC students and our nation's fundamental freedoms.

FIRE is categorically committed to seeing this situation through to a just and moral conclusion. To this end, we request that your administration reverse its decision to prohibit Eliana Campos from expressing her viewpoint on equal terms with other students. We further request that you ensure that no college policy or contrivance is used to infringe upon the free speech of students at SCC.

Please spare Seminole Community College the embarrassment of fighting against the Bill of Rights, by which it is legally and morally bound. We urge SCC to show the courage necessary to admit its error, undo its unjust decision and policy, and demonstrate to the world that free speech is to be celebrated, honored, and broadened—not feared, restrained, and hidden. Let your students exercise their basic legal, moral, and human rights; let them protest as their consciences dictate.

Sincerely,



Robert L. Shibley
Program Manager

cc:

Carol Hawkins, Vice President of Institutional Effectiveness, Seminole Community College
Jim Henningsen, Vice President for Student Success, Seminole Community College
Suzanne Tesinsky, Interim Vice President, Educational Programs, Seminole Community College
Neal Graham, Dean of the Oviedo Campus, Seminole Community College
Gail Agor, Student Activities Specialist, Seminole Community College
Eliana Campos

Encl.

From: "Gail Agor" <AgorG@scc-fl.edu>
To: Eliana Campos <e-mail address redacted>
Subject: Re: Quick Question
Date: Fri, 25 Mar 2005 08:30:10 -0500

Eliana:

I would be glad to answer your question. First of all, I can understand your embarrassment, but I did not laugh, in fact, if I even smiled, it was probably an attempt not to over-react to your organization. I too, abhor the abuse suffered by numerous animals, whether it is at the hands of individuals who own or just "come across" them or industries such as cosmetic companies like Loreal (whose cosmetics I will not wear because of abuses;) HOWEVER, PETA has a negative way of putting information out to consumers and ends up, quite often, alienating those of us with similar beliefs due to their marketing strategies. I mentioned Norfolk, since I am from there and when PETA first arrived, most of us in Hampton Roads were happy to see them, my sister even paid money to PETA and had bumper stickers on her car. Very quickly the offensiveness of the PETA campaign began to make headlines and most of us who first saw PETA as a GOOD thing, began to be horrified, not only by the atrocities being committed on animals, but the abrupt, defensive and OFFENSIVE way PETA representatives were conducting themselves. In THEORY PETA has good intents and ideas...it is STRATEGICALLY that I believe it to have a difficulty. Due to exceptional controversy, I still believe that the PETA materials should not be allowed a table on campus.

I have attended Harbor Fest (again, Norfolk, VA) and seen individuals at the PETA table insulting and yelling at festival goers who voiced a differing view. I even saw one man and his daughter accosted because they were eating a grilled sausage sandwich, bought at a vendor.) Eliana, maybe you wouldn't insult or yell, but PETA instills a feeling in me that I can't, and won't, take a chance on campus.

When we set up tables, it is in the area with the Little Bean and students would be eating animal products in front of you...I feel this is a set up for conflict. We DO however, have an area where groups or individuals can stand and talk or have speeches. By law, every campus must have an area like this. Ours is in front of the Clock Tower, and although you may not set up a table, you are welcome to stand and speak freely on animal atrocities as you see them, or in accordance with PETA's beliefs.

I hope this clarifies my decision yesterday. I, in no way wished you embarrassment, I just feel strongly about the negative effects that PETA has created in my home town, and elsewhere, and do not desire the controversy here on the Oviedo Campus.

Gail

Gail Agor
Student Activities/Career Resource Specialist Seminole Community
College Oviedo Campus
407-971-5033

> >>> From "Eliana Campos" <e-mail address redacted> 3/24/2005 6:08:46 PM

> >>> >>>

>Mrs. Agor

>

>Yesterday, March 23rd I came to your office with one of the counselors
>to ask you if I would be able to set up a table in the cafe. You asked
>me what organization and I told you PETA. Right away with no hesitation
>you laughed and said no. There were two other girls in there at that
>time and they began to laugh as well. You again laughed and stated that
>you lived or are from Norfolk, VA, then said no again to my request.

>

>My problem is not so much the fact that you said no, but that I feel
>you went about it the wrong way. At no time did you ask me what my
>literature would be about nor did you explain to me exactly why it was
>that I could not table in the first place. I did not ask you why
>because I felt embarrassed about how everyone in the room was laughing
>at me, as if what I was saying was a joke.

>

>I would like to know what the guidelines for tabling are, not what you
>interpret it as, but what the school requires. I do not want to table
>for PETA per say, I want to table about the brutality suffered by
>animals in slaughterhouses. My literature will be supplied by PETA.

>

>

> Eliana Campos