



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

June 7, 2005

Greg Lukianoff
DIRECTOR OF LEGAL AND
PUBLIC ADVOCACY

James D. Henningsen
Vice President for Student Success
Seminole Community College
100 Weldon Boulevard
Sanford, Florida 32773

BOARD OF DIRECTORS

Alan Charles Kors
CHAIRMAN

Harvey A. Silverglate
VICE CHAIRMAN

Sent by U.S. Mail and Facsimile (407-328-2331)

William J. Hume
Joseph M. Maline
Michael Meyers
Marlene Mieske
Daphne Patai
Virginia Postrel
Ed Snider
James E. Wiggins
Kenneth J. Williams (d. 2003)

Dear Vice President Henningsen:

Thank you for your response to FIRE's April 18, 2005, letter to Seminole Community College President E. Ann McGee. While we appreciate your attempt to explain Seminole Community College's (SCC's) refusal to allow student Eliana Campos to distribute literature at a table in the Little Bean Café on SCC's Oviedo campus, SCC's continuing insistence that Ms. Campos distribute literature only in the campus's "free speech zone" constitutes a violation of Ms. Campos' rights under the First Amendment to the U.S. Constitution.

BOARD OF ADVISORS

David Brudnoy (d. 2004)
Lloyd Buchanan
T. Kenneth Cribb, Jr.
Candace de Russy
William A. Dunn
Benjamin F. Hammond
Nat Hentoff
Roy Innis
Wendy Kaminer
Woody Kaplan
Leonard Liggio
Herbert London
Peter L. Malkin
Milton Rosenberg
John R. Searle
Ricky Silberman
Christina Hoff Sommers

First, we are gratified to hear that SCC has determined that Student Activities Specialist Gail Agor's views on the People for Ethical Treatment of Animals (PETA) do not represent the college's official view of the organization. Your comments make it clear to FIRE that you are aware that discrimination against certain student viewpoints is unacceptable at a public community college. However, FIRE still has two major areas of concern with SCC's free speech policies and the application of those policies.

SCC's "Free Speech Zone" Policy Violates the First Amendment to the U.S. Constitution

As we discussed in our April 18 letter to President McGee, "free speech zone" regulations on public college campuses are contrary to the First Amendment's guarantee of freedom of speech. In a June 2 e-mail to Ms. Campos, which lists you as a recipient, SCC Director of Student Life Randall Pawlowski quoted

SCC Procedure 6.07 regarding the “Use of College Grounds for Free Speech and Assembly.” In pertinent part, that policy states:

1. 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.

...

3. The designated area for free speech and assembly...on the Oviedo campus will be adjacent to the clock tower at the center of campus.

A look at a map of SCC’s campus and at photos of the clock tower area illustrates that SCC Oviedo’s free speech zone is both small and removed from the bulk of campus foot traffic. Indeed, Ms. Campos reports to FIRE that she did not once pass by the clock tower during an entire semester at SCC. As FIRE informed President McGee:

[T]he 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.

In addition, SCC’s definition of the area comprising its free speech zone is unconstitutionally vague. The term “adjacent to the clock tower” could include a number of different areas, including the area under the concrete tables alone, the sidewalks leading to the clock tower, the grassy area adjacent to and in front of the clock tower, the wooded area adjacent to and behind the clock tower, or any combination of the foregoing. Such a vaguely worded regulation has no chance of surviving a legal challenge.

FIRE urges you to read the decision in another FIRE case, *Roberts v. Haragan*, 346 F. Supp. 2d 853 (N.D.Tex. 2004) (attached to mailed version of this letter). In that case, a federal judge struck down as too limiting a “free speech zone” at Texas Tech University that totaled several acres of space—far more room for free speech than even an expansive interpretation of SCC’s vague policy would provide. While this case does not serve as binding precedent in Florida, it is

an excellent indication of how federal courts would be likely to resolve such a question in a similar situation—such as that of SCC.

SCC’s Application of Unwritten Restrictions to Ms. Campos’ Expression Constitutes Unconstitutional Viewpoint Discrimination

Not only does SCC maintain a facially unconstitutional “free speech zone” policy, but the evidence indicates that SCC administrators are applying a nonexistent speech regulation in order to prevent Ms. Campos from engaging in expressive activities in the place of her choice. Ms. Campos’ desire to distribute literature in the public area of the Little Bean Café stems from her observation that other students and groups have engaged in similar activities in that area on several occasions.

SCC administrators have confirmed in writing that tables for expressive activities are set up in the Little Bean Café. For instance, in her March 25 e-mail to Ms. Campos, Gail Agor stated, “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.” Likewise, in an April 8 e-mail to Ms. Campos (Attachment C to your May 18 letter to FIRE), Director of Student Life Randall Pawlowski wrote that “[f]or groups or people who are not registered student organizations, the free speech [*sic*] zone is the only place according to SCC policy that you can promote PETA.”

However, when Ms. Campos repeatedly requested that Director Pawlowski send her a copy of the SCC policy that allows only registered student organizations to set up tables in the Little Bean Café, Mr. Pawlowski was unable to do so. Ms. Campos’ first e-mail requesting a copy of the policy was met with a request by Mr. Pawlowski to call him. Ms. Campos, who is currently traveling, was unavailable to make a call and repeated her request over e-mail. In response, Mr. Pawlowski merely sent Ms. Campos another copy of SCC Procedure 6.07, the college’s free speech zone policy. A search of SCC’s website by FIRE also failed to produce any policy that regulates tabling in the Little Bean Café.

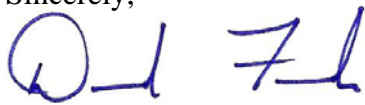
SCC’s apparent lack of any actual policy that limits tabling in the Little Bean Café, coupled with the college’s admission that students do in fact set up tables in the area, eliminates any possible justification for preventing Ms. Campos from setting up a table and distributing literature in that space. SCC’s continued refusal to allow Ms. Campos access to the area on an equal basis with other students and organizations can therefore only be explained by either an arbitrary desire to continue limiting her freedom of expression or by personal animus against Ms. Campos—neither of which are acceptable at a state-supported institution such as SCC.

By continuing to unconstitutionally restrict Ms. Campos’ expression, SCC runs an extreme risk of public embarrassment and adverse legal action. Seminole Community College must

immediately reverse its decision to unconstitutionally restrict speech and allow Eliana Campos to exercise her expressive rights on an equal basis with other students, unencumbered by arbitrary and/or nonexistent restrictions. As we did in our first letter, FIRE asks that Seminole Community College spare itself the embarrassment of fighting against the Bill of Rights, by which it is legally and morally bound. We again ask you to let your students exercise their basic legal, moral, and human rights and let them protest as their consciences dictate. FIRE, of course, remains absolutely committed to seeing this situation through to a just and moral conclusion.

Because of the serious and ongoing nature of this infringement on Ms. Campos' rights, FIRE requests a reply to this letter via fax or mail by Monday, June 13, 2005, at 5 p.m. EDT.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D French', is written over a horizontal line.

David French
President

cc:

E. Ann McGee, President, Seminole Community College

Carol Hawkins, Vice President of Institutional Effectiveness, 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

Charlie Crist, Attorney General, State of Florida

Eliana Campos

Encl. (via USPS)