



**Foundation for Individual Rights in Education**

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May 2, 2011

Lawrence Porter, Chair  
Board of Trustees  
Sinclair Community College  
c/o LPA, Inc.  
5286 Torch Lane  
Dayton, Ohio 45427

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

Dear President Johnson:

The Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals from across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, freedom of speech, and freedom of conscience on America's college campuses. Our website, [thefire.org](http://thefire.org), will give you a greater sense of our identity and activities.

FIRE is concerned about the threat to freedom of expression posed by Sinclair Community College's (SCC's) ban on constitutionally protected distribution of literature on campus. SCC maintains two conflicting policies regarding distribution of literature, both of which are unconstitutional. Additionally, SCC has employed them against an SCC student in violation of her right to free speech under the First Amendment, which SCC, a public college, is bound to uphold.

FIRE wrote SCC President Steven Lee Johnson on February 22 and March 23, 2011, outlining the facts of this case. FIRE received no response to our second letter. Our correspondence with SCC is enclosed.

SCC's policies violate student First Amendment rights, both as written and as applied in the present situation.

First, SCC's Student Code of Conduct very broadly bans "distribution ... of materials on Sinclair owned or controlled property." The policy lists only one exception: "recognized student organizations after registering with the appropriate college official." This ban violates SCC's legal and moral obligation to uphold the First Amendment rights of its students.

Second, this ban conflicts with SCC's Campus Access Policy, Section IV(3), which is almost as overly broad. This policy states in relevant part that "[l]iterature may not be distributed in working areas, including: classrooms, laboratories, lecture halls, gymnasiums, libraries, offices, work stations, conference rooms, and corridors leading directly thereto which are an integral part of the work areas." Not only does this policy unconstitutionally ban First Amendment activity far beyond any reasonable restriction needed to accomplish SCC's educational mission, but this policy actively interferes with SCC's primary mission, which is "the educational enrichment of the community" (Campus Access Policy, Section III) through a marketplace of ideas.

To see an example of how the Campus Access Policy impermissibly restricts students' rights, please refer to the enclosed correspondence. 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. Indeed, such locations are exactly where the marketplace of ideas should be at its most robust. The Supreme Court has repeatedly emphasized the primacy of the First Amendment on public college campuses, noting 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.'" *Healy v. James*, 408 U.S. 169, 180 (1972) (internal citation omitted). See also *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").

SCC's policy as applied to a college classroom when no class is occurring is not reasonable in light of the school's interest in the effectiveness of the campus as a place of educational enrichment, and in fact thwarts that interest.

To take a second example, the Campus Access Policy, as written, bans distribution of literature to a group of people assembled in a conference room, even if they have assembled for a meeting where the agenda of the conference is to be distributed. (The policy distinguishes "distribution" from "solicitation" but provides no definition of either term.) This result is plainly untenable and defeats the very purpose of utilizing a conference room. If SCC intends to ban only the unsolicited distribution of literature according to constitutionally permissible restrictions, we ask you to clarify this policy accordingly.

Section 3354.09 of the Ohio Revised Code grants the Board of Trustees the power and authority to "[p]rescribe rules for the effective operation of a community college and exercise such other powers as are necessary for the efficient management of such college." So that speech is not unconstitutionally chilled at SCC, FIRE asks you to resolve the inconsistency between SCC's two conflicting policies and to revise them so as to maximize, not minimize, the free interplay of ideas on campus in accordance with SCC's educational mission.

FIRE respectfully asks for a response to this letter by May 23, 2011.

Sincerely,



Adam Kissel

Vice President of Programs

Enclosures

cc:

Steven Lee Johnson, President, Sinclair Community College

Mary Boosalis, Member, Board of Trustees, Sinclair Community College

Robert Connelly, Member, Board of Trustees, Sinclair Community College

Robert L. Corbin, Member, Board of Trustees, Sinclair Community College

Marva Cosby, Member, Board of Trustees, Sinclair Community College

Greg Edwards, Member, Board of Trustees, Sinclair Community College

Laurence Harkness, Member, Board of Trustees, Sinclair Community College

Paula MacIlwaine, Member, Board of Trustees, Sinclair Community College

Beth Melhberth Whelley, Member, Board of Trustees, Sinclair Community College

Bernard Wright, Member, Board of Trustees, Sinclair Community College

James M. Tuschman, Chair, Ohio Board of Regents

John R. Kasich, Governor, State of Ohio