



Foundation for Individual Rights in Education

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August 5, 2009

Chancellor Jack Scott
California Community Colleges
System Office
1102 Q Street, Fourth Floor
Sacramento, California 95811

Sent by U.S. Mail and Facsimile (916-327-8721)

RE: Unlawful Ban on Expression by Santa Rosa Junior College

Dear Chancellor Scott:

As you can see from the list of our Directors and Board of Advisors, FIRE unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, due process, freedom of association, religious liberty and, as in this case, freedom of speech on America's college campuses. Our website, www.thefire.org, will give you a greater sense of our identity and activities.

FIRE wrote Robert Agrella, President of Santa Rosa Junior College (SRJC), on July 1 regarding SRJC's unconstitutionally overbroad ban on the use of "SRJC" or other forms of the college's name in Internet domain names and private e-mail addresses. (Please see the enclosed letter.) To summarize FIRE's letter, SRJC went beyond the relevant section of the California Education Code with its ban. SRJC is justified in banning certain uses of its name in certain contexts, but not in banning all "unofficial" uses. We pointed out that President Agrella and other SRJC administrators have threatened legal action against dozens and perhaps hundreds of people who have violated this ban but are extremely unlikely to have acted unlawfully. We also raised concerns about the constitutionality of the relevant section of the California Education Code itself.

FIRE received an inadequate response from President Agrella on July 16 (also enclosed). He stated, in an even more unconstitutionally overbroad way, that SRJC was trying "to stop unofficial use of the college's name." His response offered no retraction of the ban and no promise to stop telling individuals that their perfectly lawful actions are illegal.

As we stated to President Agrella, please know that while you are not responsible for the existence of the California Education Code, you and other agents of the

California Community Colleges *may not* enforce it unconstitutionally. While FIRE does not directly engage in litigation, please be aware that any public university policy prohibiting constitutionally protected expression is an unlawful deprivation of constitutional rights under 42 U.S.C. § 1983 for which university administrators may be sued in their individual capacities. State officials and employees are offered only *qualified* immunity “insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Davis v. Scherer*, 468 U.S. 183, 191 (1984). This means that administrators may be held personally liable for maintaining regulations, such as the one at issue here, that violate student and faculty First Amendment rights. Having been warned about unconstitutional provisions and uses of the Code, in the future you might not be able to claim qualified immunity from personal legal liability for the kinds of First Amendment violations described in our letter to President Agrella.

We encourage you to help President Agrella understand the risks of not acting to protect himself and SRJC from future liability. We urge you and President Agrella to lift the ban and to clarify the First Amendment rights of members of the SRJC community by announcing that private, noncommercial use of SRJC’s name both is and must be permitted among SRJC students and faculty members.

FIRE hopes to resolve this situation amicably and swiftly; we are, however, prepared to pursue this matter through to a just and moral conclusion. We request a response to this letter by August 19, 2009.

Sincerely,

Adam Kissel
Director, Individual Rights Defense Program

cc:

Jack O’Connell, State Superintendent of Public Instruction, State of California
Kay L. Albiani, President, Board of Governors, California Community Colleges
Robert Agrella, President, Santa Rosa Junior College
Mary Kay Rudolph, Vice President of Academic Affairs, Santa Rosa Junior College

Encl.