



Foundation for Individual Rights in Education

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April 24, 2008

Ernest L. Thomas
South Campus President
Tarrant County College
5301 Campus Drive
Fort Worth, Texas 76119

URGENT

Sent by U.S. Mail and Facsimile (817-515-4500)

Dear President Thomas:

As you can see from our list of 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 expression on America's college campuses. Our website, thefire.org, will give you a greater sense of our identity and activities.

FIRE is deeply concerned about the restrictions on students' free expression and free assembly that Tarrant County College (TCC) has applied to the "Empty Holster Protest." TCC has refused to recognize the constitutional rights of Brett Poulos and his fellow students to wear empty holsters in protest of policies that prohibit students with concealed carry licenses from carrying concealed handguns on campus. TCC also has insisted that any activity during this protest be conducted in the school's so-called Free Speech Zone—an unconstitutional policy that seeks to segregate free expression by confining it to a specific part of campus.

This is our understanding of the facts; please inform us if you believe we are in error. On March 28, 2008, TCC student Brett Poulos e-mailed you to inform you of an event entitled "Empty Holster Protest," which he was organizing in cooperation with Students for Concealed Carry on Campus (SCCC), a national organization that "supports the legalization of concealed carry by licensed individuals on college campuses." The national event has been taking place this week, April 21–25, 2008, and it generally involves students across the country attending class and otherwise going about their business while wearing empty holsters. In his e-mail to you, Poulos described the purpose of the event:

The symbolic point of the Empty Holster Protest is to represent that students, faculty, and guests on college campuses are left defenseless (with nothing but *empty holsters*) by state laws and school policies that refuse to afford concealed handgun license holders the same rights on college campuses that they are afforded virtually everywhere else. [Emphasis in original.]

In an April 10 response, Juan Garcia, Vice President for Student Development, e-mailed Poulos, supposedly granting his request to stage the “empty holster protest” on the South Campus. However, Garcia’s “approval” changed the entire nature of the protest:

[Y]ou and other protestors may not wear empty gun holsters on campus, including the Free Speech Zone during the protest, or at any other time.

(Emphasis in original.) The South Campus Free Speech Zone is an area located in front of the library.

Poulos further reports that in a meeting with Garcia on April 18, he was told that TCC would take adverse action if SCCC members strayed beyond the Free Speech Zone, wore empty holsters anywhere, or even wore t-shirts containing “violence” or “offensive” material. According to Poulos, Garcia refused to define “violence” or “offensive” and would not tell Poulos what “action” would be taken by TCC if SCCC members did violate any of the restrictions.

FIRE is deeply concerned by these unconstitutional restrictions on expression at TCC, a public institution bound by the First Amendment. TCC has threatened to turn Poulos and every other protesting student into campus criminals if they exercise their fundamental right to free expression simply by wearing an empty holster, leaving TCC’s “Free Speech Zone” during their protest, or even wearing t-shirts advocating their position in a manner that campus officials deem “offensive” or “violent.”

TCC has both moral and legal obligations not to restrict expression to such specific areas as Free Speech Zones. FIRE recognizes the threat to liberty represented by Free Speech Zones on public college or university campuses, which is why we have challenged the establishment of free speech zones at universities across the nation, including at the University of North Carolina at Greensboro, West Virginia University, Seminole Community College in Florida, Citrus College in California, and Texas Tech University. In all of these cases, the challenged institutions have either decided on their own to open their campuses to expressive activities or have been forced by a court to do so. For instance, after FIRE intervened at Texas Tech, a federal court determined that Texas Tech’s policy must be interpreted to allow free speech for students on “park areas, sidewalks, streets, or other similar common areas...irrespective of whether the University has so designated them or not.” See *Roberts v. Haragan*, 346 F. Supp. 2d 853 (N.D. Tex. 2004). TCC would be well advised to take such a nearby and on-point precedent into account in considering its own policies.

TCC’s establishment of any Free Speech Zone that restricts expression to a fraction of the campus is thus legally insupportable. While a college may establish 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 at all “reasonable” about transforming the vast majority of the university’s property—indeed, *public* property—into a “censorship area.” Federal case law regarding freedom of expression simply does not support the transformation of public institutions of higher education into places where constitutional protections are the exception rather than the rule. Time and again, courts have determined that to be considered legal, “time, place and manner” restrictions must be “narrowly tailored” to serve substantial governmental interests. The generalized concern for order that underlies the establishment of free speech zone policies is neither specific enough nor substantial enough to justify such restrictions.

Moreover, as TCC’s own policies affirm, the Court in *Tinker v. Des Moines Independent Community School District* (1969) held that “Student expression that is protected by the First Amendment may not be prohibited absent a showing that the expression will materially and substantially interfere with the operation of the school or the rights of others.” (See [http://www.tasb.org/policy/pol/private/220502/pol.cfm?DisplayPage=FLAA\(LEGAL\).pdf&QueryText=CONSTITUTIONAL](http://www.tasb.org/policy/pol/private/220502/pol.cfm?DisplayPage=FLAA(LEGAL).pdf&QueryText=CONSTITUTIONAL) for TCC’s invocation of this binding principle.)

Let us be clear: wearing an empty holster on the TCC campus is clearly a constitutionally protected act of symbolic expression tantamount to the black armbands students wore when they protested the Vietnam War—acts explicitly protected in *Tinker*.

From a moral perspective, one of the central functions of institutions of higher learning, particularly in a free society, is to serve as the ultimate “free speech area.” A college serious about the search for truth should be seeking at all times to expand open discourse, to develop intellectual inquiry, and to engage and challenge the way people think. A college that refuses to tolerate sincere discussion of matters of public interest is a college incapable of teaching students to live as free citizens. By limiting free speech to a small fraction of its campus, TCC 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 central 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...*** 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.]

TCC’s actions in regulating free expression create the very “atmosphere of suspicion and distrust” against which the justices warned.

Please spare TCC the embarrassment of fighting against the Bill of Rights—a statement of both law and principle by which the university is legally and morally bound. We urge TCC to act

immediately by rescinding the restrictions on the “Empty Holster Protest,” namely the prohibition against wearing empty holsters, the prohibition against protesting outside of the unconstitutional Free Speech Zone, and the vague restriction against wearing t-shirts in support of the cause.

We ask that TCC immediately inform Brett Poulos that these unconstitutional restrictions have been lifted so that for the rest of this week of protest, he and his fellow protesters may exercise their constitutional rights at TCC. The TCC community and the nation should hear that free speech at TCC is celebrated and honored as a principle—not feared, restrained, and hidden. Let your students exercise their basic legal, moral, and human rights; let them speak, assemble, and protest as their consciences dictate.

FIRE is committed to using all of its resources to abolish the unconstitutional limits on freedom of expression that have been set at TCC. Because the protest is ongoing this week, we request an immediate response directly to Brett Poulos and a response to FIRE by May 1, 2008.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Kissel". The signature is fluid and cursive, with the first name "Adam" being more prominent than the last name "Kissel".

Adam Kissel
Director, Individual Rights Defense Program

cc:

Juan Garcia, Vice President of Student Development and Educational Services
Zeb Strong, Director of Student Activities
Brett Poulos