



# FIRE

Foundation for Individual  
Rights and Expression

December 13, 2022

Annebelle Nery  
c/o Leisa Schumacher  
Office of the President  
Santa Ana College  
1530 W. 17th Street  
Santa Ana, California 92706-3398

**URGENT**

*Sent via U.S. Mail and Electronic Mail (schumacher\_leisa@sac.edu)*

Dear President Nery:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,<sup>1</sup> is concerned by Santa Ana College's requirement that journalists speak only to the college's public information officer for college-related questions. According to *el Don News*, journalists (including student journalists) seeking information on campus-related issues are required to speak only with the college's public information officer.<sup>2</sup> If this is substantially accurate, this practice violates the First Amendment rights of not only student journalists but also students and faculty wishing to speak to the media. Under binding and long-settled constitutional obligations,<sup>3</sup> SAC must end this practice and allow student journalists to speak directly with student and faculty sources.

Supreme Court jurisprudence "leave[s] no room for the view that . . . 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

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<sup>1</sup> For more than 20 years, FIRE has defended freedom of expression, conscience, and religion, and other individual rights on America's college campuses. You can learn more about our recently expanded mission and activities at [thefire.org](http://thefire.org).

<sup>2</sup> This correspondence reflects our understanding of the pertinent facts based on public reporting. We appreciate that you may have additional information to offer and invite you to share it with us. *How Media Policy Silences Students and Faculty— a Danger to Free Speech*, EL DON NEWS (Oct. 24, 2022), <https://eldonnews.org/views/2022/10/24/how-media-policy-silences-students-and-faculty-a-danger-to-free-speech>.

<sup>3</sup> *Healy v. James*, 408 U.S. 169 (1972) (internal citation omitted); see also *DeJohn v. Temple Univ.*, 537 F.3d 301, 314 (3d Cir. 2008) (on public campuses, "free speech is of critical importance because it is the lifeblood of academic freedom").

than in the community of American schools.”<sup>4</sup> By requiring journalists to speak only to the public information officer about campus-related matters, SAC not only censors its student press, but also infringes the expressive rights of its faculty and staff who may wish to speak with the media.

The First Amendment bars government employers from preventing faculty and staff from speaking on matters of public concern in their capacity as private citizens so long as they do not purport to speak on the institution’s behalf.<sup>5</sup> A state educational institution may not punish employee expression, including media interviews, unless the institution shows, among other things, the employee’s speech had a substantial and material negative impact on the college’s “regular operation.”<sup>6</sup> If the college cannot show this, “the interest of the school administration in limiting teachers’ opportunities to contribute to public debate is not significantly greater than its interest in limiting a similar contribution by any member of the general public,” and the employee’s speech is constitutionally protected.<sup>7</sup>

Even if SAC could prevent faculty or staff from speaking with journalists, its practices do not pass constitutional muster *vis a vis* the rights of student journalists. Requiring student media to seek administrative approval prior to speaking with college faculty or staff constitutes an unconstitutional prior restraint on the free expression of the journalists themselves. Prior restraints are “the most serious and the least tolerable infringement on First Amendment rights.”<sup>8</sup> Practices requiring individuals to seek approval from officials before speaking (or for a journalist to speak to a source, and vice versa) are “offensive . . . to the values protected by the First Amendment [and] to the very notion of a free society.”<sup>9</sup>

Accordingly, SAC’s policies “also impose[] a significant burden on the public’s right to read and hear what Government employees would otherwise have written and said.”<sup>10</sup> The press, including the student press, is an important conduit for the public’s right to know, acting as “surrogates for the public” in keeping a watchful eye on the operations of government.<sup>11</sup> Obstructing journalists’ access to SAC personnel also violates the public’s right to know about SAC’s operations, a process which often occurs solely through the press. Uniquely positioned to cover campus news, student journalists inform the public about the undertakings of government officials at public colleges and universities and ensure transparency.

SAC may require that official statements published on behalf of *the institution itself* come only through its public information officer, and it may offer to field requests from journalists on

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<sup>4</sup> *Healy v. James*, 408 U.S. at 180 (citing *Shelton v. Tucker*, 364 U.S. 479, 487 (1960)); see also *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967) (holding that, with regard to faculty expression, academic freedom “is of transcendent value to all of us and not merely to the teachers concerned” and therefore is a “special concern of the First Amendment”).

<sup>5</sup> *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968).

<sup>6</sup> *Id.* at 568, 573.

<sup>7</sup> *Id.*

<sup>8</sup> *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976).

<sup>9</sup> *Watchtower Bible & Tract Soc’y of N.Y., Inc. v. Village of Stratton*, 536 U.S. 150, 165–66 (2002).

<sup>10</sup> *NTEU*, 513 U.S. 454, 470 (1995).

<sup>11</sup> *Richmond Newspapers v. Virginia*, 448 U.S. 555, 573 (1980).

behalf of willing employees. It cannot, however, effect a prior restraint on employees' interactions with student journalists and other reporters without violating the First Amendment.

The unique role of public colleges as “peculiarly the ‘marketplace of ideas,’” cannot be squared with burdens on journalists’ right to seek information from or about SAC and employees’ right to share that information.<sup>12</sup> SAC must make clear that members of the press are free to speak with college personnel in their capacity as individual citizens without a requirement that college officials review these exchanges.

We request a substantive response to this letter no later than the close of business on Thursday, December 22, 2022, confirming that SAC will allow journalists to speak with the college-related sources of their choice.

Sincerely,



Sabrina Conza  
Program Officer, Campus Rights Advocacy

Cc: Dalilah Davaloz, Public Information Officer

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<sup>12</sup> *Keyishian v. Board of Regents*, 385 U.S. at 603.