



FIRE

Foundation for Individual
Rights and Expression

November 1, 2023

Robert M. Myers
Campus Counsel
Santa Monica College
1900 Pico Boulevard
Santa Monica, California 90405

Sent via U.S. Mail and Electronic Mail (Myers_Robert@smc.edu)

Dear Mr. Myers:

We appreciate your October 23 reply to our October 20 letter regarding the cancelation of the Santa Monica College Theatre Arts Department course production of *By the River Rivanna*. We are constrained, however, to write again to share our unresolved concerns about the undue pressure administrators reportedly exerted on some students to back out of the performance, and the threat to academic freedom posed by administrators subjecting a faculty member's choice of course assignment to a student vote. SMC must immediately recommit to honoring faculty's First Amendment right to academic freedom, ensure administrators are trained on their legal obligation to respect student and faculty expressive rights on campus, and ensure the students can perform the play, if they so choose.

As we understand the relevant facts, Professor Perviz Sawoski selected *By the River Rivanna* as the play to be performed by students in her "TH ARTS 55 Advanced Theatre Production-Small Theatre Venue" class, which the course catalogue describes in relevant part as follows:¹

This course includes rehearsals and performances of a theatrical production designed for performances in a small theatrical venue. It explores acting skills through the application and development of progressive performance techniques. Emphasis is placed on the cooperative blending of all theatre activities into a finished public performance. Students will rehearse and prepare material and learn about the processes of performing for the live theatre.

By the River Rivanna was set to open October 20. On October 18, university administrators attended rehearsal and privately interviewed each student in the class about rumored concerns with the play's content. The next day, on the eve of the show's opening, administrators

¹ *Academics: Theatre Arts Classes*, SANTA MONICA COLLEGE, <https://www.smc.edu/academics/academic-departments/theatre-arts/classes.php> [<https://perma.cc/B94B-P54S>].

attended an evening rehearsal and asked the students to vote, on the spot, in the administrators' presence, on whether the play should be cancelled, go on as planned, or be delayed a week. A majority of students voted to either go on with the show as planned or perform it after a week delay. A discussion then ensued between cast members, Theatre Arts faculty, and crew members, after which time faculty, students, and crew members called for a second vote. This time, the students' options were to perform the play but as an invite-only performance, rather than open to the public as originally planned, or cancel the play entirely. Again, a majority voted the play should go on—but because most of the students felt it would be impossible to continue without some cast members, the students ultimately decided collectively to cancel the show.

Public college administrators may not put faculty members' constitutionally protected exercises of academic freedom to a vote in this manner. As our first letter noted, it is settled law that the First Amendment binds public colleges like SMC,² and the Supreme Court has recognized academic freedom as “a special concern to the First Amendment,” “of transcendent value to all,”³ in which “government should be extremely reticent to tread.”⁴

Academic freedom affords faculty substantial breathing room to determine whether, when, and how to approach material germane to the topic of their course, even if some, or many, find the material upsetting or offensive. The American Association of University Professors (AAUP), whose gold-standard statements on faculty rights have been cited for nearly a century, defines freedom in teaching as:⁵

[T]he right of the faculty to select the materials, determine the approach to the subject, make the assignments, and assess student academic performance in teaching activities for which faculty members are individually responsible, without having their decisions subject to the veto of a department chair, dean, or other administrative officer.

And courts side time and again with faculty even where they elect, for example, to teach material related to race or gender issues that may be highly offensive to some students.

For example, in *Hardy v. Jefferson Community College*, the U.S. Court of Appeals for the Sixth Circuit rejected as “totally unpersuasive” any “argument that teachers have no First Amendment rights when teaching, or that [college authorities] can censor teacher speech

² *Healy v. James*, 408 U.S. 169, 180 (1972) (“[T]he 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.’”) (internal citation omitted).

³ *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967).

⁴ *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957).

⁵ *Statement on the Freedom to Teach*, AAUP (Nov. 7, 2013), https://www.aaup.org/file/2013-Freedom_to_Teach.pdf [<https://perma.cc/WWB8-37B3>].

without restriction.”⁶ In *Hardy*, a white adjunct instructor teaching “Introduction to Interpersonal Communication” lectured students about “language and social constructivism,” discussing how “language is used to marginalize minorities and other oppressed groups in society.”⁷ Students, solicited by the instructor for examples, suggested “lady,” “girl,” “faggot,” “nigger,” and “bitch.”⁸ The use of those words as “illustrations of highly offensive, powerful language” was “clearly” relevant to the instructor’s lecture on the “social and political impact of certain words,” and was not “gratuitously used.”⁹ Holding the First Amendment protected the instructor’s speech, the court explained that expression, “however repugnant,” if “germane to the classroom subject matter,” is speech on “matters of overwhelming public concern—race, gender, and power conflicts in our society.”¹⁰

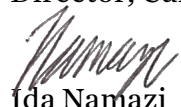
Professor Sawoski similarly enjoys full academic freedom to select the course material she feels will best educate her theater course students. To the extent some students may have concerns about the course material, they are free to raise those issues with Professor Sawoski herself or other administrators. A faculty member can, for example, choose to offer an alternate assignment or elect to make other accommodations. Administrators, for their part, can offer information about academic freedom to students upset with course material, including setting expectations that they will no doubt encounter challenging material as part of a college education. Administrators can also offer other forms of support to students raising concerns, but the First Amendment bars administrators from infringing on faculty rights as a means to such an end.

FIRE requests a substantive response to this letter no later than the close of business on November 13, 2023, confirming SMC will not unduly interfere with faculty’s academic freedom rights in the future. Additionally, to the extent possible, we ask SMC to take the steps necessary to ensure the play can open at a later date this semester and to assure students they will not face disciplinary action for participating.

Sincerely,



Alex Morey
Director, Campus Rights Advocacy



Ida Namazi
Program Officer, Campus Rights Advocacy

CC: Jason Beardsley, Interim Vice President of Academic Affairs

⁶ 260 F.3d 671, 680 (6th Cir. 2001).

⁷ *Id.* at 674.

⁸ *Id.* at 675.

⁹ *Id.* at 675, 679.

¹⁰ *Id.* at 679.