



FIRE

Foundation for Individual
Rights and Expression

October 20, 2023

Kathryn E. Jeffery
President
Santa Monica College
1900 Pico Boulevard
Santa Monica, California 90405

URGENT

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

Dear President Jeffery:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is deeply concerned by Santa Monica College's cancellation of the Theatre Arts Department performance of *By the River Rivanna* over community concerns about the play's themes.² While the play's nature may have offended some, the First Amendment protects the faculty's academic freedom to assign students pedagogically relevant material. Administrators must not unduly interfere with matters in the purview of SMC faculty and must therefore permit the play to go on as planned—so long as the students want to put it on. As a public college bound by the First Amendment,³ SMC may not restrict expression solely because others find it offensive.⁴ The Supreme Court has also held

¹ 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.

² The recitation here reflects our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us. Cebelihle Hlatshwayo, Renee Barlett-Webber, Samayia Kirby, and Victor Chambers, *SMC "By The River Rivanna" Production Is Cancelled*, CORSAIR (Oct. 20, 2023) <https://www.thecorsaironline.com/corsair/2023/10/20/smc-by-the-river-rivanna-production-is-cancelled>.

³ *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).

⁴ *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (holding the First Amendment protects burning the American flag, based on the “bedrock principle” that the government “may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable”). See also *Cohen v. California*, 403 U.S. 15, 25 (1971); *Hustler Mag., Inc. v. Falwell*, 485 U.S. 46, 50 (1988); *Cox v. Louisiana*, 379 U.S. 536, 557 (1965).

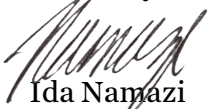
speech may not be curtailed simply because some find it upsetting, or even hateful, holding that “[a]s a Nation we have chosen . . . to protect even hurtful speech on public issues to ensure that we do not stifle public debate.”⁵

This is especially true when expression is protected by the basic tenets of academic freedom on a public college campus. The performance of *By the River Rivanna* is part of an in-class assignment, a pedagogical choice that Theatre Arts Department Professor Perviz Sawoski is entitled to make given the play is germane to the subject matter of the course. The Supreme Court has made clear that academic freedom is a “special concern of the First Amendment,” and “of transcendent value to all of us and not merely to the teachers concerned.”⁶

Nor does freedom of expression “end at the spoken or written word.”⁷ The act of putting on a theatrical performance—that is, acting in, producing, or otherwise participating in a play—is as protected by the First Amendment the same as pure speech,⁸ as the performance is clearly “intend[ed] to convey a particularized message” likely to “be understood [as expressive] by those who viewed it.”⁹

To meet its binding First Amendment obligations as a public college, SMC must immediately permit the play to proceed – so long as the students would like to do so. Given the urgent nature of this issue, we request a substantive response to this letter no later than the close of business on Monday, October 23, 2023.

Sincerely,



Ida Namazi
Program Officer, Campus Rights Advocacy

Cc: Jason Beardsley, Interim Vice President of Academic Affairs

⁵ *Snyder v. Phelps*, 562 U.S. 443, 448, 461 (2011).

⁶ *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967).

⁷ *Johnson*, 491 U.S. at 404.

⁸ *Schad v. Mt. Ephraim*, 452 U.S. 61, 65 (1981) (“Entertainment, as well as political and ideological speech, is protected; motion pictures, programs broadcast by radio and television, and *live entertainment*, such as musical and dramatic works fall within the First Amendment guarantee.”) (emphasis added).

⁹ *Texas*, 491 U.S. at 404, 406.