



February 23, 2024

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 SMC's production of documents responsive to FIRE's public records request. Those documents have allowed us to better understand the nature and scope of the pressure administrators exerted on faculty members and students to cancel Professor Perviz Sawoski's Theatre Arts class's October 20, 2023, production of *On the River Rivanna* the night before its planned premiere. As we understand rescheduling the play is no longer feasible, we ask SMC to prevent such serious free expression and academic freedom violations in the future by training its administrators on their legal obligations regarding student and faculty First Amendment rights.

As evidenced in documentation we received, the violations included messages from Vice President of Academic Affairs Jason Beardsley to Sawoski and students pressuring them to cancel the play. One email sent to students reads, "many in the SMC community feel this play should not be produced. I am one of those people."¹ Another email from Beardsley to Sawoski says, "it doesn't seem like a stretch to make the further assumption that you would *not* want to be involved in a theatrical production that undermines the struggle to undo the legacy of slavery."² And SMC President Kathryn Jeffery exerted similar pressure when she attended a rehearsal in person the night before opening and asked students to "consider pausing the opening by one weekend."³

The play was canceled shortly thereafter.

¹ Email from Jason Beardsley, Vice President Academic Affairs, to Perviz Sawoski, professor (Oct. 15, 2023, 10:28 AM) (on file with author).

² Email from Beardsley to Sawoski (Oct. 16, 2023, 2:00 PM) (on file with author) (emphasis in original).


³ Email from Kathryn Jeffery, President, to Senior Admin Staff Listserv, et al. (Oct. 20, 2023, 5:51 AM) (on file with author).

This pattern of behavior offends the First Amendment by chilling the speech of an ordinary, reasonable person.⁴ By repeatedly stressing their displeasure with the play’s subject matter, administrators improperly wielded the authority of their office to silence students and faculty members who will, moving forward, reasonably self-censor to avoid potential administrative retaliation. Even where formal punishment never follows, exerting an undue burden on protected expression—including thorough “coercion, persuasion, and intimidation”—can violate the First Amendment due to the chilling effect such pressure produces.⁵

Here, the students receiving emails from Beardsley and hearing the college president urge cancellation of the play would understandably wish to distance themselves from material deemed controversial by administrators with disciplinary authority. And Beardsley’s urging Sawoski to cancel the play she selected for her course represents similar undue pressure and a violation of her academic freedom. As explained in our attached previous letters, the Supreme Court has held that 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—including high-level college administrators—find the material objectionable.⁶

FIRE requests a substantive response to this letter no later than the close of business on March 8, 2024, confirming SMC will, in the future, uphold its constitutional obligation to respect faculty and students’ free expression rights.

Sincerely,



Ida Namazi
Program Officer, Campus Rights Advocacy

CC: Barry Snell, Board of Trustees
Dr. Margaret Quiñones-Perez, Chair of Board of Trustees
Susan Aminoff, Board of Trustees
Nancy Greenstein, Vice-Chair of Board of Trustees
Dr. Tom Peters, Board of Trustees
Rob Rader, Board of Trustees
Dr. Sion Roy, Board of Trustees
Kathryn E. Jeffrey, President

Enc.

⁴ *Mendocino Env'tl. Ctr. v. Mendocino Cty.*, 192 F.3d 1283, 1300 (9th Cir. 1999) (the question is not whether formal punishment is meted out, but whether the institution’s actions in response “would chill or silence a person of ordinary firmness from future First Amendment activities”), *citing Crawford-El v. Britton*, 93 F.3d 813, 826 (D.C. 1996).

⁵ *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67 (1963).

⁶ Letter from FIRE to Robert Myers, General Counsel (Nov. 1, 2023) (on file with author).



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).

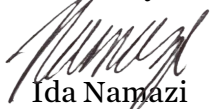
speech may not be curtailed simply because some find it upsetting, or even hateful, holding that “[a]s a Nation we have chosen . . . to protect even hurtful speech on public issues to ensure that we do not stifle public debate.”⁵

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

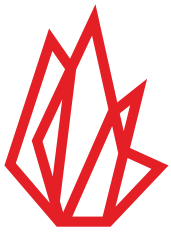
⁵ *Snyder v. Phelps*, 562 U.S. 443, 448, 461 (2011).

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.



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

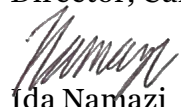
Professor Sawoski similarly enjoys full academic freedom to select the course material she feels will best educate her theater course students. To the extent some students may have concerns about the course material, they are free to raise those issues with Professor Sawoski herself or other administrators. 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.