



## Foundation for Individual Rights in Education

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September 19, 2013

President Jill Stearns  
Modesto Junior College  
Office of the President  
Morris Administration Building 201A  
East Campus  
Modesto, California 95350

### URGENT

*Sent via U.S. Mail and Facsimile (209-575-6630)*

Dear President Stearns:

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, academic freedom, due process, freedom of speech, and freedom of conscience on America's college campuses. Our website, thefire.org, will give you a greater sense of our identity and activities.

FIRE is gravely concerned by the threat to free speech presented by Modesto Junior College's (MJC's) repeated violations of the First Amendment rights of students attempting to distribute copies of the United States Constitution on campus. FIRE possesses video evidence of multiple MJC employees informing the students that they were prohibited from distributing copies of the Constitution unless they applied for a permit to do so, and that they were only allowed to distribute them in a small campus "free speech area." MJC must immediately reject its shockingly unconstitutional censorship and reform its policies in compliance with its First Amendment obligations.

The following is our understanding of the facts. Please inform us if you believe we are in error. On September 13, 2013, MJC student Robert Van Tuinen emailed MJC Administrative Specialist Christine Serrano concerning use of MJC's East Campus "free speech area." Serrano responded to Van Tuinen on the morning of September 17, attaching a copy of MJC's Limited Public Forum Request Form, which requires five business days for processing. As Van Tuinen had wanted to distribute copies of the United States Constitution on campus that day in observance of Constitution Day (which occurs every year on the anniversary of

the signing of the U.S. Constitution), he did not fill out a request form. That day Van Tuinen and another MJC student, Megan Rainwater, distributed copies of the Constitution in a public area near MJC's Student Center, joined by a third student.

After roughly 10 minutes, according to Van Tuinen, the students were approached by officers with MJC's campus safety division, who informed them that they were prohibited from distributing copies of the Constitution (or, indeed, any materials) without first obtaining permission from MJC's Office of Student Development & Campus Life. An officer escorted Van Tuinen and Rainwater into the Student Center, informing Van Tuinen at one point that "as a student on campus passing out anything whatsoever you have to have permission through the Student Development Office."

Van Tuinen then spoke to Serrano, who likewise informed him that he was required to receive MJC permission to distribute materials on campus, stating, as recorded by Van Tuinen:

We have a time, place, manner. It's a time, place, and manner; that's what it's called. And that's the free speech area, and the free speech area is over there in front of the student center, in that little cement area. That's the time, place, and manner free speech area for anybody that's going to be on campus, which comes through my office and they would need to fill out an application. And I would need to have a photo of your ID. You can read these guidelines and procedures. No problem. We're not telling you you can't, you just need to follow the guidelines.

Serrano gave Van Tuinen another copy of MJC's Limited Public Forum Request Form, and referred him to the office of the Vice President for Student Services, supposedly for further explanation of the policy. She also informed Van Tuinen that the free speech area was in use that day and that "you would have to wait until either the 20th, the 27th, or you can go into October."

That students at MJC, a public institution bound by the First Amendment, were prohibited from distributing copies of the Constitution on campus—on a day created to celebrate the Constitution, no less—is profoundly offensive to the First Amendment and shocking to the conscience.

It has long been settled law that the First Amendment is fully binding on public institutions like MJC. *See Widmar v. Vincent*, 454 U.S. 263, 268–69 (1981) ("With respect to persons entitled to be there, our cases leave no doubt that the First Amendment rights of speech and association extend to the campuses of state universities."); *Healy v. James*, 408 U.S. 169, 180 (1972) (internal citation omitted) ("[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.'").

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 whatsoever

“reasonable” about demanding that students obtain administrative permission simply to distribute materials on a public area of the MJC campus, making students wait a minimum of five business days to be granted the right to speak, and then isolating their expression to a single small area of campus. *See, e.g., Jones v. Board of Regents of University of Arizona*, 436 F. 2d 618 (9th Cir. 1970). Time and again, courts have determined that to be considered legal, “time, place and manner” restrictions must be “narrowly tailored” to serve a significant governmental interest, leaving open ample alternative channels for communication. MJC’s censorship of Van Tuinen’s expression fails to meet each of these requirements—and by a huge margin. Further, the bureaucratic processes MJC students must endure to exercise their First Amendment rights offend our fundamental free speech traditions. As the Supreme Court declared in *Watchtower Bible and Tract Society of NY, Inc. v. Village of Stratton*, “It is offensive—not only to the values protected by the First Amendment, but to the very notion of a free society—that in the context of everyday public discourse a citizen must first inform the government of her desire to speak to her neighbors and then obtain a permit to do so.” 536 U.S. 150, 165–66 (2002).

MJC appears to be relying upon its Guidelines and Procedure for Requesting College Facilities for Free Speech—the document it provided to Van Tuinen—to justify its censorship. We note in particular its opening statement:

The Yosemite Community College District (“YCCD”) Board policy 5550, in furtherance of and consistent with California Education Code § 76120, provides the Colleges of the District are non-public forums, except for those areas on each campus designated as “free speech areas,” which are deemed limited public forums.

YCCD’s Time, Place & Manner policy, formerly identified as YCCD Board policy 5550, is now listed as Administrative Procedure 3900, and states, “The Colleges of the District are non-public forums, except for designated areas generally available to students and the community.”<sup>1</sup> The procedure identifies “the stage area Northeast section of the Quad” as the sole free speech area on MJC’s East Campus.

In fact, California Education Code § 76120 appears to contradict MJC’s and YCCD’s unconstitutional policies. Not only does that section of the Code *not* declare that campuses are non-public forums, it *does* state that “[s]uch rules and regulations shall not prohibit the right of students to exercise free expression,” including “the distribution of printed materials or petitions.”<sup>2</sup> Far from supporting MJC’s limiting of First Amendment rights, the California Education Code overrides it.

To be clear: MJC’s requirement that students request permission to distribute printed materials on campus is unconstitutional. Its requirement that such requests be submitted a minimum of five business days in advance is unconstitutional. Finally, its exile of all approved campus expression to a single small area of the campus is unconstitutional.

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<sup>1</sup> *See*

<http://www.yosemite.edu/Trustees/newpolicyandprocedures/3900%20Time,%20Place%20and%20Manner.pdf>.

<sup>2</sup> *See* <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=edc&group=76001-77000&file=76120-76121>.

MJC cannot, consistent with its moral and legal obligations under the First Amendment, continue enforcing such policies. FIRE asks that Modesto Junior College immediately rescind its Guidelines and Procedure for Requesting College Facilities for Free Speech and replace the policy with one that is acceptable under the First Amendment and applicable legal precedent. FIRE is willing and able to aid MJC in this effort.

Due to the serious nature of this issue, and the fact that every day that the campus is not made available to the campus community for free expression constitutes an irreparable injury to MJC's students, we request an immediate response to our letter.

Sincerely,



Peter Bonilla

Director, Individual Rights Defense Program

cc:

Brenda Thames, Vice President of Student Services, Modesto Junior College

Christine Serrano, Administrative Specialist, Modesto Junior College

Joan E. Smith, Chancellor, Yosemite Community College District