December 4, 2017

Dr. Judy Mitchell
President's Office
Joliet Junior College
1215 Houbolt Road
Joliet, Illinois 60431

URGENT

Sent via Certified Mail and Electronic Mail (president@jjc.edu)

Dear President Mitchell:

The Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

FIRE represents Joliet Junior College (JJC) student Ivette Salazar with respect to her detention by the JJC Police Department on November 28, 2017 following her distribution of political flyers on campus. Both Salazar's detention and JJC's policies restricting her ability to speak freely and distribute literature on campus violate the First Amendment.

I. FACTS

Ivette Salazar is a member of the Chicago chapter of the Party for Socialism and Liberation. At a recent meeting, Salazar obtained flyers reading "Shut Down Capitalism" and advertising a "workshop and discussion-based day of Marxism classes on December 16 in Chicago."[1] After witnessing members of conservative student group Turning Point USA distributing and posting anti-socialism materials on campus, she decided to distribute the Party for Socialism and Liberation flyers at JJC to provide an alternative viewpoint.

On November 28, 2017, Salazar distributed the flyers, placing them on several empty tables in publicly accessible areas throughout the JJC premises. A JJC police officer searching for

[1] Party for Socialism and Liberation Chicago, *Day of Marxism Classes: Shut Down Capitalism!*, FACEBOOK, https://www.facebook.com/events/1686465828051305. A photograph of the flyers is attached to this letter as Attachment A.

510 Walnut Street, Suite 1250 Philadelphia, PA 19106
phone: 215-717-3473 fax: 215-717-3440
thefire.org

the source of the flyers approached and informed her that she could not distribute the flyers on campus. During the conversation, Salazar was told that she could not distribute the flyers on campus because of the "political climate of the country." The officer then instructed Salazar to accompany her to the JJC Police Department office, where Salazar was placed in an interrogation room. When Salazar asked why she was being detained, the officer informed her that they wanted to question her about the flyers she was distributing.

The officer left the interrogation room and discussed the matter with three additional police officers, in Salazar's line of sight. One officer returned to the room and again asked Salazar if she was the person responsible for distributing the "Shut Down Capitalism" flyers. When Salazar replied affirmatively, the officer informed her that she could not distribute the flyers because they had not been approved by JJC. The officer asked Salazar for her identification card and telephone number. When Salazar asked why the officer needed her identification and telephone number, the officer replied that they were needed to file a report. Salazar produced the requested information, and the officer left the room. When the officer returned, Salazar asked how long she would be detained. The officer replied that the interrogation would take "as long as it needs to," and again left the room.

The officer re-entered the interrogation room with another officer, returned Salazar's identification, and informed her that the JJC Police Department would be keeping the remainder of the flyers to ensure that she did not distribute them on campus. Salazar explained that she did not understand why the police were seizing her belongings, and that she thought she had freedom of speech. One of the officers replied, "To put it bluntly, you have freedom of speech but only if we approve it." Salazar rebutted, "What is the point of freedom of speech if I don't have it?" The officer replied, "If you want to go ahead and post your flyers and burn your crosses, you have to get it approved by [the Director of Student Activities and Student Life]."

After being held for approximately 30 minutes, Salazar was released from custody.

II. ANALYSIS

Contrary to the assertions of the JJC Police Department, Salazar's First Amendment rights on campus are not contingent on the approval of any campus administrator or law enforcement officer. It is well-settled law that the First Amendment applies with full force on public college campuses. *See, e.g., 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."); *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 670 (1973) ("[T]he mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of 'conventions of decency.'"); *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 and quotation marks omitted).

A. Expression does not lose constitutional protection due to "political climate"

The JJC police officer's explanation to Salazar that she could not distribute her flyers because of the current "political climate" betrays a profound misunderstanding of the First Amendment and raises the specter of unconstitutional viewpoint discrimination.

A primary purpose of the First Amendment is "to protect the free discussion of governmental affairs . . . [including] discussions of candidates, structures and forms of government, the manner in which government is operated or should be operated, and all such matters relating to political processes." *Mills v. Alabama*, 384 U.S. 214, 218–19 (1966). *See also N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 296–97 (1964) (Black, J., concurring) ("[F]reedom to discuss public affairs and public officials is unquestionably, as the Court today holds, the kind of speech the First Amendment was primarily designed to keep within the area of free discussion."). Such core political speech is at the very heart of the First Amendment, where its protection is "at its zenith." *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 186–87 (1999) (quoting *Meyer v. Grant*, 486 U.S. 414 (1988)).

Debating the merits of economic and governmental systems is core political speech. The current "political climate" is not only an invalid justification for suppressing such expression, it is indeed precisely the reason such expression *must* be protected. Were tense political times a sufficient basis on which to restrict political speech, a core purpose of the First Amendment would be reduced to a nullity.

Both the officer's explanation that the "political climate" justified Salazar's detention and the confiscation of her flyers and another officer's later statement that administrative permission would be required "if you want to go ahead and post your flyers and burn your crosses" strongly indicate that the JJC Police Department's actions were motivated by disagreement with the flyer's message. Such targeted censorship is flatly unacceptable at a public institution legally bound by the First Amendment. "Viewpoint discrimination is censorship in its purest form and requires particular scrutiny, in part because such regulation often indicates . . . [an] effort to skew public debate on an issue." *R.A.V. v. St. Paul*, 505 U.S. 377, 430 (1992) (internal citations and quotation marks omitted).

Salazar's expression is undoubtedly protected by the First Amendment, no matter the political climate, and in fact is entitled to such heightened protection *because* of the importance of public discussion and debate of contemporary political issues. That JJC police officers would attempt to stifle such expression—and worse yet, because of specific disagreement with the views expressed—is an affront to all JJC students' First Amendment rights and must be immediately remedied.

Be advised that any law enforcement officer or public college administrator who violates clearly established law will not be afforded the defense of qualified immunity and, for

violating First Amendment rights, may be held personally liable for monetary damages and attorneys fees under 42 U.S.C. § 1983 and 42 U.S.C. § 1988. *See Harlow v. Fitzgerald*, 457 U.S. 800, 815 (1982) (holding that qualified immunity is "defeated if an official 'knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the [plaintiff]'") (quoting *Wood v. Strickland*, 420 U.S. 308, 322 (1975)). Any reasonable law enforcement officer or public college administrator must know that censoring a student's expression on the basis of her viewpoint is impermissible and violates a clearly established constitutional right. Indeed, earlier this year, the United States Court of Appeals for the Eighth Circuit denied qualified immunity to Iowa State University officials who had censored the university's chapter of the National Organization to Reform Marijuana Laws. *Gerlich v. Leath*, 861 F.3d 697 (8th Cir. 2017). The Eighth Circuit held that the "plaintiffs' right not to be subjected to viewpoint discrimination while speaking in a university's limited public forum" was "clearly established" and had "long been recognized" by courts. *Id.* at 709. Given the unmistakable clarity of this and similar rulings dating back decades, JJC administrators and officers plainly risk personal liability for censoring students like Salazar in contravention of the First Amendment.

B. JJC's "Free Speech Area" policy violates students' First Amendment rights

JJC Board Policy 3.11 provides that student expression on JJC's main campus is limited to a "Free Speech Area" (FSA) located "at the middle of the concourse area located in the Main Campus 'D' Building in front of the Student Center."[2] Use of the FSA is limited in several ways: A request to use the FSA must be made five business days in advance, only two individuals may be in the FSA at one time, and anyone utilizing the FSA must remain behind a table.

A government entity like JJC may establish "reasonable time, place and manner" restrictions on speech and expressive activity on its property, but any such restrictions must be viewpoint- and content-neutral, must be narrowly tailored to serve a significant government interest, and must leave open ample alternative channels for communication. *See Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989); *OSU Student All. v. Ray*, 699 F.3d 1053, 1062–63 (9th Cir. 2012) (applying forum analysis to public college campus). JJC's policy fails to meet these standards.

i. JJC may not restrict student expression to a small area of campus to the exclusion of all other places

Put simply, there is nothing reasonable or narrowly tailored about quarantining student expression to a small area in a concourse inside one campus building. Rather, students must be able to engage their peers in public, generally accessible spaces on campus.

---

[2] Policy on Freedom of Expression and Campus Demonstrations, JOLIET JUNIOR COLLEGE, http://www.jjc.edu/board-of-trustees/Documents/division-iii/board-policy-3-11.pdf.

Protected expressive activity, such as Salazar's literature distribution, poses no risk to JJC's functions and operations.

Indeed, courts have repeatedly held that similar restrictions on student expression cannot withstand constitutional scrutiny. In *University of Cincinnati Chapter of Young Americans for Liberty v. Williams*, No. 1:12-cv-155, 2012 U.S. Dist. LEXIS 80967, at *29–30 (S.D. Ohio June 12, 2012), a federal district court enjoined the University of Cincinnati from, *inter alia*, limiting all "demonstrations, picketing, or rallies" to a small "free speech area." The court rejected the university's argument that all areas outside the free speech area were limited public forums, noting that the university "has simply offered no explanation of its compelling interest in restricting all demonstrations, rallies, and protests from all but one designated public forum on campus." *Id.* at *19–25. Moreover, in asserting a government interest, the court reasoned that "[m]ere speculation that speech would disrupt campus activities is insufficient because 'undifferentiated fear or apprehension of a disturbance is not enough to overcome the right to freedom of expression on a college campus.'" *Id.* (quoting *Healy*, 408 U.S. at 191). *See also Roberts v. Haragan*, 346 F. Supp. 2d 853, 861 (N.D. Tex. 2004) (finding that "park areas, sidewalks, streets, or other similar common areas" are public forums for students, and that Texas Tech University's requirement that students obtain permission before conducting expressive activities outside designated free speech areas was not narrowly tailored to serve the university's interests).

Be advised that FIRE's Stand Up For Speech Litigation Project has coordinated a number of successful First Amendment lawsuits nationwide challenging similar "free speech zone" policies limiting demonstration and expressive activity to small areas of campus. The majority of these cases settled quickly and the defendant institutions revised their policies and paid substantial sums in damages and attorney's fees, as described below.[3]

- At Modesto Junior College in California, a student was prevented from distributing copies of the U.S. Constitution on September 17, 2013—Constitution Day. FIRE coordinated a lawsuit to vindicate the student's First Amendment rights, resulting in a settlement in which the college agreed to pay $50,000 and dismantle its unconstitutional free speech zone policy.

- FIRE coordinated a lawsuit against the University of Hawaii at Hilo on behalf of two students prevented from handing out copies of the Constitution and told to confine their protest against National Security Agency spying to the university's small, isolated free speech zone. The case settled in December 2014, resulting in policy reform throughout the entire University of Hawaii system and a payment of $50,000.

- At Citrus College in California in 2013, FIRE helped a student challenge three unconstitutional speech codes, including a free speech zone policy and a burdensome

[3] For more information on these and other Stand Up For Speech cases, please visit http://www.standupforspeech.com.

approval process for expressive activity. Citrus College ultimately agreed to revise all three policies and paid $110,000 in damages and attorney's fees.

- In March 2015, a California State Polytechnic University, Pomona student was stopped from handing out flyers advocating for animal rights. With FIRE's help, he filed a lawsuit challenging the school's policies limiting speech and material distribution to a free speech zone and requiring advance registration and approval. The case was settled four months after filing with revision of the challenged policies and an agreement to pay $35,000 in damages and fees.
- In March 2015, FIRE coordinated a First Amendment lawsuit against Dixie State University in Utah after a student organization was told that its request to stage a "free speech wall" event could be accommodated only in the school's free speech zone. That case also settled within months, in September 2015, with revision of the challenged policies and the payment of $50,000 in damages and fees.
- FIRE assisted a student in challenging several unconstitutional restrictions on free speech at Blinn College in Texas including its policy restricting speech to a tiny free speech zone. The Board of Trustees agreed to settle the case in May 2016, revise its policies to comply with the First Amendment, and pay $50,0000 in damages and fees.

Additionally, FIRE is currently representing a student in connection with a lawsuit against Los Angeles Pierce College and the Los Angeles Community College District for its similarly restrictive free speech zone policy.[4]

The United States Attorney General and the Department of Justice have condemned and taken action against campus free speech zones in recent months. In a September speech, Attorney General Jeff Sessions stated that he considers the creation of free speech zones to be "eerily similar to what the Supreme Court warned against in the seminal 1969 *Tinker v. Des Moines* case about student speech: 'Freedom of expression would not truly exist if the right could be exercised only in an area that a benevolent government has provided as a safe haven.'"[5] Later that day, the Department of Justice filed a Statement of Interest in *Uzuegbunam v. Preczewski*, 1:16-cv-4658 (N.D. Ga. Sept. 26, 2017), a student First Amendment challenge, and Attorney General Sessions announced that the Department of Justice would "be filing more [Statements of Interest] in the weeks and months to come."[6] On October 24, the Department of Justice filed a Statement of Interest in the above-

---

[4] *See* The Times Editorial Board, *Editorial: Don't squeeze free speech on college campuses*, L.A. TIMES (Apr. 5, 2017) http://www.latimes.com/opinion/editorials/la-ed-college-freespeech-20170405-story.html.
[5] Jeff Sessions, Attorney General of the United States, Address on the Importance of Free Speech on College Campuses (Sept. 26, 2017), *available at* https://www.justice.gov/opa/speech/attorney-general-sessions-gives-address-importance-free-speech-college-campuses (remarks as prepared for delivery).
[6] *Id.*

mentioned FIRE lawsuit against Los Angeles Pierce College, arguing that the student plaintiff pled violations of his First Amendment rights on campus.[7]

ii. JJC's requirements that students register use of the FSA in advance and obtain pre-approval of all distributed materials similarly fails constitutional scrutiny

In addition to requiring that students request use of the FSA at least five business days in advance, Policy 3.11 notes that upon requesting to use the FSA, any student wishing to distribute literature must submit a "Distribution of Printed Materials Request Form" and an exact copy of all materials. The policy further notes: "Literature/material for display purposes must have the approval of the Office of Student Services and Activities prior to posting."

Administrative procedures requiring a speaker to obtain a license, permit, or to register before engaging in expression are highly disfavored under long-established law and difficult to justify. *See N.Y. Times v. United States*, 403 U.S. 713, 714 (1971) ("Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity.") (internal quotation marks omitted). The First Amendment does not allow—and courts will not uphold—broad permitting schemes that place a significant burden on speech and are not sufficiently tailored to serve an important government interest. In *Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton*, 536 U.S. 150 (2002), the Court struck down a village ordinance prohibiting all door-to-door canvassing without a permit, reasoning that the ordinance was not sufficiently tailored to meet the government's interests in preventing fraud and crime and protecting privacy. *Id.* at 168–69. *See also Weinberg v. City of Chi.*, 310 F.3d 1029, 1039–40 (7th Cir. 2002) (citing *Watchtower* and finding that permit requirement for peddling on public sidewalk did not further significant government interest). At the same time, the village's permitting scheme placed a substantial burden on citizens' First Amendment rights by entirely preventing anonymous and spontaneous speech and by deterring speakers who do not wish to seek a license. *Watchtower,* 536 U.S. at 166–68. The *Watchtower* Court observed:

> 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.

Id. at 165–66.

Moreover, courts will strike down permitting systems "without narrow, objective, and definite standards to guide the licensing authority." *Shuttlesworth v. Birmingham*, 394 U.S. 147, 151 (1969). *See also City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 770 (1988) (permit requirements must have clearly delineated standards). The *Shuttlesworth* Court

[7] U.S. Statement of Interest, Shaw v. Burke, No. 17-cv-02386 (C.D. Cal. Oct. 24, 2017), ECF No. 39.

struck down an ordinance requiring a permit for parades and demonstrations where it vested "virtually unbridled" authority on government actors to decide what permits to grant or deny. 394 U.S. at 150. *See also Weinberg,* 310 F.3d at 1045–46 (peddling permit requirement granting unbridled discretions held to be unconstitutional prior restraint).

Under these and other rulings, Policy 3.11 is an unconstitutional prior restraint on speech. Like the *Watchtower* ordinance, this policy prevents JJC students from engaging in spontaneous speech on campus, and as the *Watchtower* court noted, "The mere fact that the [government rule] covers so much speech raises constitutional concerns." 536 U.S. at 165. *See also Williams*, 2012 U.S. Dist. LEXIS 80967, at *20 (S.D. Ohio June 12, 2012) (declaring that similar policy "violates the First Amendment and cannot stand" and noting that "the mere fact that the notice requirement applies to all student speech raises constitutional concerns."). Moreover, Policy 3.11 contains no "narrow, objective, and definite standards" to guide the Office of Student Services and Activities in its decision-making authority. *See Shuttlesworth*, 394 U.S. at 150. Instead, JJC's policy permits students to exercise their First Amendment rights only at the discretion of an administrator possessing broad, subjective power to censor. This is unacceptable and violates the rights of Salazar and her fellow JJC students.

III. CONCLUSION

The Joliet Junior College Police Department's harsh and punitive treatment of Salazar for engaging in core political speech on campus is a shocking affront to the First Amendment rights that the college is legally bound to uphold. Joliet Junior College's unconstitutional speech codes present an equally clear threat to student expressive rights and are impermissible under the First Amendment.

In order to remedy this wrong and comply with its legal obligations as a public institution bound by the Constitution, Joliet Junior College must immediately:

- Apologize to Ivette Salazar;
- Provide appropriate compensation;
- Confirm that she will face no disciplinary or criminal charges for distributing flyers on November 28;
- Revise its unconstitutional policies;
- Conduct First Amendment training for its staff and police department; and
- Make clear to the campus community that students will never again face detention for exercising their constitutional rights.

FIRE is committed to using all the resources at its disposal to see this matter through to a just conclusion.

The demands made herein shall not prejudice or waive any rights or remedies that Salazar may have with respect to this matter, all of which are expressly reserved. We have enclosed

with this letter a signed FERPA waiver from Ivette Salazar as Attachment B, permitting you to fully discuss this case with FIRE.

Due to the urgency of this matter, we request a response to this letter by no later than 5:00 p.m. Eastern Time on December 11, 2017.

Sincerely,

Ari Z. Cohn, Esq.
Director, Individual Rights Defense Program

Marieke Tuthill Beck-Coon, Esq.
Director of Litigation

Encls.

cc:
Dr. Yolanda Isaacs, Vice President of Student Development
Pam Dilday, Director, Student Activities and Student Life
Robert J. Wunderlich, Chairman, Board of Trustees