



Foundation for Individual Rights in Education

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April 25, 2007

Chancellor Rufus Glasper
Maricopa County Community College District
2411 West 14th Street
Tempe, Arizona 85281

Sent via U.S. Mail and Facsimile (480-731-8120)

Dear Chancellor Glasper:

As you can see from the list of our Directors and Board of Advisors, 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, and freedom of speech on America's college campuses. Our website, thefire.org, will give you a greater sense of our identity and activities.

FIRE is gravely concerned about the threat to free speech posed by the forced administrative leave and possible termination of Glendale Community College Professor Walter Kehowski. Maricopa County Community College District's (MCCCD's) charge that Professor Kehowski violated the Equal Employment Opportunity (EEO) policy and the Technology Resource Standards by sending a Thanksgiving greeting to the MCCCD community both chills expression on MCCCD campuses and ignores constitutional guarantees of free speech that MCCCD, as a public body, is obligated to protect.

This is our understanding of the facts. Please inform us if you believe we are in error. On November 22, 2006, Professor Kehowski, a tenured professor of mathematics at Glendale, sent an e-mail to all MCCCD employees using the DL-MARICOPA-ANNOUNCEMENTS@MEMO.MARICOPA.EDU listserv. The e-mail, which Professor Kehowski sent on the day before Thanksgiving, contained a transcript of George Washington's Thanksgiving Proclamation of 1789, which Professor Kehowski found on Pat Buchanan's blog. He also included a link to that source in the e-mail.

Between December 5 and December 14, five MCCCD employees filed complaints in response to Professor Kehowski's e-mail, most targeting the link to Pat Buchanan's blog as racist and offensive. An Administrative Review Committee deliberated on the complaints and on January 3, 2007, Chief Information Officer for Information Technology Services Darrel Huish sent a

letter to Margaret McConnell and Teresa Toney in the Office of General Counsel stating that Professor Kehowski had been found in violation of MCCC Technology Resources Standards. On March 9, you sent a “Notice of intent to dismiss” to Professor Kehowski, outlining the three policies that Kehowski supposedly violated.

First, Professor Kehowski was found guilty of violating MCCC EEO Policy Administrative Regulation 5.1.3, which states that “it is the policy of Maricopa to provide an environment for each Maricopa job applicant and employee that is free from sexual harassment, as well as harassment and intimidation on account of an individual’s race, color, religion, gender, sexual orientation, national origin, age, disabled, or veteran status.” While a college has the right to dismiss a professor for genuinely harassing or threatening expression, Professor Kehowski’s speech clearly does not fit into this category of unprotected speech.

The Supreme Court has held that for speech in the workplace to constitute harassment, it must be “severe or pervasive enough to create an objectively hostile or abusive work environment—an environment that a reasonable person would find hostile or abusive.” *Harris v. Forklift Systems*, 510 U.S. 17 (1993). Clearly, the speech in question here—the inclusion of a link to a website that voices conservative opinions, in the context of a holiday greeting—fails to meet the exacting demands of this precise and well-established legal standard. It is both wholly absurd and legally untenable to assert that Professor Kehowski’s e-mail was severe, persistent, or pervasive harassment that created an objectively hostile or abusive environment at Glendale Community College.

Second, you wrote that Professor Kehowski violated MCCC Administrative Regulation 4.3, Paragraphs A and D, Item 5, which limits e-mail usage to messages that “support education, research, scholarly communication, administration, and other MCCC business,” and prohibits “[m]ailings to large numbers of people that contain unwanted solicitations or information.” While Professor Kehowski’s Thanksgiving greeting was admittedly unsolicited, it was sent over the “announcements” e-mail list. By definition, announcements are usually unsolicited. Furthermore, Professor Kehowski reports that individuals routinely send unsolicited messages over this list—from March 10 to March 25 alone, Professor Kehowski reports that individuals used this list to send e-mails containing advertisements for purchasing goats for orphans in Uganda (sent March 21), quotes about Women’s History Month (sent March 10), and announcements about the health benefits of eating bananas (sent March 25). None of these e-mails was solicited, and to FIRE’s knowledge, none of the senders has been charged with violating any MCCC policies. If the college truly intends to apply this policy, it must do so equitably to every member of the MCCC community, not selectively and with viewpoint discrimination against Professor Kehowski only.

Finally, you explained that Professor Kehowski was found guilty of violating MCCC Technology Resource Standards Administrative Regulation 4.4, which again limits use of MCCC technology resources to “educational, research, service, operational, and management purposes.” Again, it seems that the “announcements” listserv lends itself readily to the violation of this policy, and unless this policy is applied equally to all members of the community, it cannot be used for the sole purpose of prosecuting and dismissing Professor Kehowski.

MCCCD must understand that its denial of free speech rights and its selective enforcement of technology use policies against Professor Kehowski have seriously infringed upon his constitutional rights, have placed his career and livelihood in jeopardy, and have chilled expression in the MCCCD community. The harassment charge implied through Kehowski's alleged EEO violation is wholly without merit, since his expressive actions meet none of the strict requirements necessary for expression to be considered "harassment." With that EEO violation discredited, the technology use violations do not warrant MCCCD's decision to pursue the most severe of possible sanctions.

It is both immoral and unjust that Professor Kehowski is on the brink of being dismissed because he sent a Thanksgiving greeting to the college community that contained a link to a website that some people found offensive. Neither FIRE nor the general public will allow MCCCD's actions to stand. We urge you to reverse the finding that Professor Kehowski violated any MCCCD policies and to immediately rescind the recommendation that he be dismissed.

FIRE hopes that this situation can be resolved thoroughly and swiftly; however, we are categorically committed to using all of our resources in support of Professor Kehowski's expressive rights and to seeing this process through to a just and moral conclusion. Please spare the Maricopa County Community College District the embarrassment of fighting against the Bill of Rights, by which it is legally and morally bound.

FIRE requests a response on this matter by Wednesday, May 3, 2007.

Sincerely,

Tara E. Sweeney
Senior Program Officer

cc:

Velvie Green, President, Glendale Community College
Jean Ann Abel, Vice President, Glendale Community College
Albert Crusoe, Vice President for Human Resources, MCCCD
Pete Kushibab, General Counsel, MCCCD
Margaret McConnell, Office of General Counsel, MCCCD
Teresa Toney, Office of General Counsel, MCCCD
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Walter Kehowski