

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

RUTH DEDDENS, : Case No. 3:12-CV-222
: :
and : Judge _____
: :
ETHEL BOREL-DONOHUE, : Magistrate Judge _____
: :
and : :
: :
BRYAN KEMPER, : :
: :
Plaintiffs, : :
: :
v. : :
: :
WARREN COUNTY MONTGOMERY COUNTY : COMPLAINT
COMMUNITY COLLEGE DISTRICT, : :
formerly known as : :
MONTGOMERY COUNTY COMMUNITY : :
COLLEGE DISTRICT, : :
and also known as : :
SINCLAIR COMMUNITY COLLEGE DISTRICT, : :
and doing business as : :
SINCLAIR COMMUNITY COLLEGE, : :
: :
and : :
: :
BOARD OF TRUSTEES OF THE WARREN : :
COUNTY MONTGOMERY COUNTY : :
COMMUNITY COLLEGE DISTRICT, : :
: :
and : :
: :
STEVEN LEE JOHNSON, in his official capacity : :
as President of Sinclair Community College, : :
: :
and : :
: :

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CHARLES J. GIFT, in his official capacity :
as the Director of Public Safety, Sinclair :
Community College :
 :
and :
 :
JOHN DOE Nos. 1-10, in their official and :
individual capacities, :
 :
Defendants. :

Now come Plaintiffs Ruth Deddens (“Deddens”), Ethel Borel-Donohue (“Borel-Donohue”) and Bryan Kemper (“Kemper”) (collectively, the “Plaintiffs”) and for their Complaint against the Defendants named herein hereby allege as follows:

INTRODUCTION

1. This is an action for declaratory judgment, permanent injunction, and nominal damages under 42 U.S.C. §1983 arising from the unconstitutional actions, as well as policies, practices and customs, of the Defendants that have resulted in the violation of the constitutional rights of the Plaintiffs. Due to Defendants’ policies, practices and customs, as well as certain conduct by one or more Defendant, Plaintiffs have suffered and will continue to suffer irreparable harm to their rights under the First Amendment to the United States Constitution and the Fourteenth Amendment to the United States Constitution.

2. By maintaining, implementing, and enforcing vague policies that (i) restrict and prohibit students and invited speakers from engaging in expressive activity at Sinclair, (ii) restrict and prohibit spontaneous speech by students and invited speakers in response to recent or still-unfolding events, (iii) vest unfettered discretion in university administrators to restrict speech of students and invited speakers, (iv) vest unfettered discretion in officials and employees of Sinclair Community College, including officials and employees of the Department of Public

Safety of Sinclair Community College/Sinclair Police Department, to restrict the speech of students and invited speakers, and (v) threaten students and invited speakers with disciplinary or criminal charges for violation of such policies, Defendants have impeded and will continue to unconstitutionally impede Plaintiffs in their effort to distribute literature, host and participate in political rallies, and display political messages at Sinclair advocating for the adoption of, or prevention of, certain political measures. Such expressive activity is protected by and at the core of the First Amendment.

3. Additionally, Plaintiffs desire to engage in other activities consistent with their purpose and goals as more particularly described herein and, in so doing, to engage in activities protected by the First Amendment in and about the Sinclair campus without being subjected to the threat of enforcement or the actual enforcement of a policy, practice or custom that fails to comply with the requirements of the United States Constitution.

4. As a result of the policy, practice and custom of the Defendants, as well as certain conduct by one or more Defendant, Plaintiffs have suffered and will continue to suffer irreparable harm unless the Defendants are enjoined from restricting their protected speech in this manner.

PARTIES

5. Plaintiff RUTH DEDDENS (“Ms. Deddens”) is enrolled as a student of Sinclair, and is a member of the Sinclair Traditional Values Club (“TVC”), an unincorporated association of students at Sinclair, and an officially recognized student organization.

6. Plaintiff ETHEL BOREL-DONOHUE (“Ms. Borel-Donohue”) is enrolled as a student of Sinclair, and is the president and co-founder of the TVC.

7. Plaintiff BRYAN KEMPER (“Mr. Kemper”) is a Youth Outreach Coordinator for Priests for Life, and is the founder of both Rock for Life and Stand True Pro-Life Outreach, which are faith-based organizations that advocate various political ideals consistent with a conservative, Christian message. As a member of these organizations, Mr. Kemper is often invited to speak at various gatherings to advocate for such political ideals.

8. Defendant WARREN COUNTY MONTGOMERY COUNTY COMMUNITY COLLEGE DISTRICT is a public community college district with its main campus located in Dayton, Ohio, and additional learning center locations located elsewhere in Montgomery County, Ohio, and also in Warren County, Ohio

9. Defendant WARREN COUNTY MONTGOMERY COUNTY COMMUNITY COLLEGE DISTRICT is part of the community college system existing and organized pursuant to Chapter 3354 of the Ohio Revised Code and, in particular, is a body politic and corporate existing and organized pursuant to Section 3354.25 of the Ohio Revised Code.

10. Defendant WARREN COUNTY MONTGOMERY COUNTY COMMUNITY COLLEGE DISTRICT was formerly known as the MONTGOMERY COUNTY COMMUNITY COLLEGE DISTRICT.

11. Pursuant to Section 3354.25(B)(1) of the Ohio Revised Code, Defendant WARREN COUNTY MONTGOMERY COUNTY COMMUNITY COLLEGE DISTRICT may be known as and operate under the name of the SINCLAIR COMMUNITY COLLEGE DISTRICT.

12. Defendant WARREN COUNTY MONTGOMERY COUNTY COMMUNITY COLLEGE DISTRICT operates the community college known as SINCLAIR COMMUNITY COLLEGE.

13. Pursuant to Section 3354.03, SINCLAIR COMMUNITY COLLEGE is a political subdivision of the State of Ohio.

14. Thus, SINCLAIR COMMUNITY COLLEGE is not an arm of the State of Ohio. *Farra v. Sinclair Community College*, 2006-Ohio-1019.

15. Defendant BOARD OF TRUSTEES OF THE WARREN COUNTY MONTGOMERY COUNTY COMMUNITY COLLEGE DISTRICT (the “Board of Trustees”) is an eleven member board formed and existing pursuant to Section 3354.25(C) of the Ohio Revised Code.

16. Pursuant to Section 3354.25(C) of the Ohio Revised Code, the BOARD OF TRUSTEES OF THE WARREN COUNTY MONTGOMERY COUNTY COMMUNITY COLLEGE DISTRICT has the power to make final decisions about matters of educational policy, financial management, personnel appointments, and physical facilities development for Sinclair Community College.

17. The BOARD OF TRUSTEES OF THE WARREN COUNTY MONTGOMERY COUNTY COMMUNITY COLLEGE DISTRICT adopted the unconstitutional Campus Access Policy described and at issue in this Complaint.

18. References herein to “Sinclair Community College” shall include, collectively and individually, the Warren County Montgomery County Community College District and the Board of Trustees of the Warren County Montgomery County Community College District.

19. Defendant STEVEN LEE JOHNSON (“Mr. Johnson”) is, and has been at all times relevant herein, the President of Sinclair Community College.

20. As President of Sinclair, Mr. Johnson is the university’s chief administrative and executive officer.

21. Pursuant to the Campus Access Policy described and at issue in this Complaint, the Board of Trustees has authorized and empowered Mr. Johnson, either directly or through a designee, to address situations not specifically addressed in the Campus Access Policy, including the power to develop and implement procedures that he deems necessary to give full effect to the Campus Access Policy.

22. Defendant CHALRES J. GIFT (“Mr. Gift”) is, and has been at all times relevant herein, the Director of the Department of Public Safety of Sinclair Community College/Sinclair Police Department.

23. Based upon information and belief, Mr. Gift has directed and implemented certain aspects of the Campus Access Policy and has done so in an unconstitutional manner, including doing so vis-à-vis the Plaintiffs.

24. Defendants JOHN DOE Nos. 1-10 are officers and employees of Sinclair Community College and believed, in particular, to be employed in the Department of Public Safety of Sinclair Community College/Sinclair Police Department, though their specific identity is presently unknown.

25. Said John Doe Defendants personally engaged in the conduct described herein that violated the Plaintiffs’ constitutional rights.

26. All actions by the Defendants described herein were undertaken under the color of state law which caused, and continued to threaten, the deprivation of Plaintiffs’ rights protected by the United States Constitution.

JURISDICTION AND VENUE

27. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331, as this action arises under the First and Fourteenth Amendments to the United States

Constitution; under 28 U.S.C. § 1343(a)(3), in that it is brought to redress deprivations, under color of state law, of rights, privileges, and immunities secured by the United States Constitution; under 28 U.S.C. § 1343(a)(4), in that it seeks to recover damages and secure equitable relief under an Act of Congress, specifically, 42 U.S.C. § 1983, which provides a cause of action for the protection of civil and constitutional rights; under 28 U.S.C. § 2201(a), to secure declaratory relief; and under 42 U.S.C. § 1988, to award attorneys fees.

28. Venue is proper within this judicial district and division pursuant to 28 U.S.C. § 1391(b) and Local Rule 82.1, as (i) the Defendants are situated within this judicial district and division; and (ii) all of the claims asserted by Plaintiffs arose within this judicial district and division.

FACTUAL ALLEGATIONS

Sinclair's Unconstitutional Policies

29. Sinclair Community College has an enrollment of over 20,000 students, and offers five learning center locations in Southwest Ohio, in addition to its main 55-acre campus located in Dayton, Ohio.

30. Sinclair Community College has adopted a Code of Student Conduct (the "Student Code") which governs its students, including Plaintiffs Deddens and Borel-Donohue. A true and accurate copy of the Student Code is attached hereto and incorporated by reference as **Exhibit A**.

31. In addition to the Student Code, the Board of Trustees of Sinclair Community College has adopted a Campus Access Policy to regulate access to the buildings, grounds, and facilities of Sinclair Community College by students and members of the general public. A true

and accurate copy of the Campus Access Policy is attached hereto and incorporated by reference as **Exhibit B**.

32. Within the Campus Access Policy, the Board of Trustees of Sinclair Community College have declared that “[t]he freedoms of speech and assembly guaranteed by the United States and State of Ohio Constitutions shall be enjoyed by the students, faculty and staff of Sinclair Community College, as well as members of the community in the use of facilities on campus. Free discussion of subjects of either controversial or noncontroversial nature shall not be curtailed.”

33. However and notwithstanding such high-sounding ideas, Defendants have, in fact and in interpreting and enforcing the Student Code and the Campus Access Policy, adopted and regularly enforce a policy, practice and custom that severely restricts the free speech rights of individual students, student organizations, invited speakers, and members of the general public, including the free speech rights of the Plaintiffs.

34. For instance, among other provisions, the Student Code bans the “distribution . . . of materials on Sinclair owned or controlled property,” while providing for only one exception: “recognized student organizations after registering with the appropriate college official.” *See* Prohibited Behavior A.5 in the Student Code, at page 4.

35. Because the foregoing provision functions as a licensing scheme with which students must comply prior to engaging in the exercise of their free speech rights through the distribution of materials, the Student Code constitutes a prior restraint on speech, resulting in censorship.

36. In addition, the Campus Access Policy independently purports to govern the distribution of materials, providing that “[l]iterature may not be distributed in working areas,

including: classrooms, laboratories, lecture halls, gymnasiums, libraries, offices, work stations, conference rooms, and corridors leading directly thereto which are an integral part of the work areas.” See Section IV(3) of the Campus Access Policy. Violation of this provision subjects students to discipline under the Student Code.

37. Because the foregoing Campus Access Policy functions to prevent the distribution of all “literature,” which could conceivably include the Declaration of Independence, an invitation to a party, a course syllabus, a copy of Ernest Hemingway’s *The Old Man and the Sea*, political pamphleteering advocating for the election or defeat of a candidate, or any other written material, the prohibition functions as an overbroad, unconstitutional restriction on speech.

38. And, although a student group could apply for and be granted permission to host an event in a gymnasium, the clear terms of the overbroad, unconstitutional ban described above would prohibit the distribution of any literature, *e.g.*, a menu, program, schedule, speaker biography, *etc.*, during such an event.

39. Because the foregoing Campus Access Policy functions to prevent the distribution of all “literature” including core political materials in all “working areas” *at all times*, the Campus Access Policy unconstitutionally infringes on protected speech.

40. The Campus Access Policy further regulates a variety of other expressive activities. The Access Policy states, among other things, that:

- a. “There are numerous situations which will arise that are not specifically addressed in these policies. Sinclair Community College reserves the right to handle such situations as the circumstances warrant and the President retains full discretion to deal with said situations as he/she deems fit.” See Introductory Declarations of the Campus Access Policy.
- b. “Speaker Requests shall be made in writing by the group, person, or organization desiring to sponsor the speaker at least three (3) weeks prior to the date of the proposed speaking engagement.” See Section II(4) of the Campus Access Policy.

- c. “Any unauthorized use of, or access to, Sinclair Community College facilities and/or grounds may result in immediate eviction and/or criminal or civil prosecution.” *See* Section I of the Campus Access Policy. *See* Section I of the Campus Access Policy.
- d. “In the event a Speaker Request is granted, the sponsoring group, person, or organization shall: . . . Comply with applicable rules, regulations, and laws for such assemblies, including reasonable requests of the President (or designee) as to the conduct of the assembly.” *See* Section II(8)(c) of the Campus Access Policy.

41. By permitting the President to retain full discretion to control any matter not specifically addressed by the Campus Access Policy “as he/she deems fit,” the foregoing policy enables affords the President or his designee unfettered discretion in controlling and regulating such access in violation of the Constitution.

42. Because the foregoing Campus Access Policy functions as a licensing scheme with which students must comply *prior* to engaging in the exercise of their free speech rights (notwithstanding the declaration in the Campus Access Policy that “[f]ree discussion of subjects of either controversial or noncontroversial nature shall not be curtailed”), the foregoing Campus Access Policy constitutes an unconstitutional prior restraint on the exercise of constitutionally protected speech.

43. Because the foregoing Campus Access Policy requires three weeks advance notice and approval by the President before any “outside speaker” can address a student assembly, rally, demonstration, and/or any other event at Sinclair Community College, the Campus Access Policy unconstitutionally prevents spontaneous student expressive activity in response to recent or still-unfolding events, as well as events of a time-sensitive or continuous and ongoing nature.

44. In addition, Sinclair Community College prohibits any student-recognized club, such as the TVC, *i.e.*, the Sinclair Traditional Values Club (“TVC”), from hosting more than two events per month. This prohibition unconstitutionally prevents spontaneous student expressive

activity and arbitrarily restricts the number of events at which students and invited speakers can engage in core political speech protected by the First Amendment. A true and accurate copy of the email announcing this policy is attached hereto as **Exhibit C**.

45. In addition, Sinclair Community College has used the Campus Access Policy as a conduit to further infringe on the First Amendment rights of students since at least 1990. For even though the Policy makes no references to the use of signage at otherwise approved campus rallies, Defendants have repeatedly refused to allow students and invited speakers to engage in protected political speech by way of displaying messages on signage.

46. For instance, on February 23, 2012, the TVC hosted in the library lobby at Sinclair Community College a discussion by Mr. Elton Moose, whose talk was entitled “A Scientific Overview of Homosexuality.”

47. In opposition to or in protest of the discussion by Mr. Moose, two students stood in the back of the area with homemade signs stating: “You can’t pray away the gay,” and “love gay, cure bacon.”

48. These two students which were demonstrating their opposition to Mr. Moose did not interrupt the presentation; TVC did not object to the presence of the protesting students; and TVC did not oppose the display the signs by the protesting students, recognizing, instead, that such action were a respectful contribution to the marketplace of ideas.

49. Nevertheless, officers or employees with the Department of Public Safety of Sinclair Community College/Sinclair Police Department demanded and required the protesting students to put down their signs or else risk the possibility of arrest and prosecution under the Campus Access Policy.

50. According to an article published on March 28, 2012, in *The Clarion*, the campus newspaper for Sinclair Community College, the Department of Public Safety of Sinclair Community College/Sinclair Police Department claims that it derives its alleged authority to ban signs at public events at Sinclair Community College from an incredibly expansive reading of the Campus Access Policy. The article reported:

According to Chief of Police Charles Gift, Sinclair has enforced a no-sign policy since 1990. The rule is covered by Sinclair's Campus Access Policy, which sets parameters for the use of campus facilities.

"The policy is not all inclusive," Gift said. "There are numerous situations that could arise that are not specifically addressed in the policy itself. [The police] retain full discretion with these situations as they come up."

Signs are not specifically mentioned in the policy, but are forbidden because they can be disruptive, said Gift.

51. Based upon information and belief, the quotes attributed to Mr. Gift in the foregoing paragraph accurately quote statements made by Mr. Gift.

52. Based upon information and belief, Mr. Gift did declare that, even though signs are not mentioned in the Campus Access Policy, signs may be forbidden because they can be disruptive.

53. The policy, practice and custom of the administration of Sinclair Community College, as well as officials and employees in the Department of Public Safety of Sinclair Community College/Sinclair Police Department, to prohibit students and invited speakers from peacefully displaying political signage is not narrowly tailored to any sufficiently important interest, nor does it leave open ample alternative means of communication.

54. As a result, the policy, practice and custom of Sinclair Community College, including officials and employees in the Department of Public Safety of Sinclair Community

College/Sinclair Police Department to impose an blanket prohibition on the display of any signs while students, student organizations or their guest are engaged in speech and speech-related activities violates and infringes upon the rights, privilege and immunities guaranteed to the students of Sinclair Community College by the First and Fourteenth Amendments to the Constitution.

The Expressive Conduct at Issue

55. Plaintiffs Deddens and Borel-Donohue, both independently and through their affiliation with the TVC, often engage in political discourse with other people associated with Sinclair Community College, including fellow students.

56. Ms. Borel-Donohue and Ms. Deddens are pro-life advocates and support legislation and reforms consistent with that ideology.

57. On or about October 19, 2010, and in furtherance of her political beliefs, Ms. Borel-Donohue distributed flyers to her fellow students that contained information relating to National Breast Cancer Awareness Month, including the scientific studies linking breast cancer to the use of oral contraceptives and abortions.

58. Ms. Borel-Donohue distributed the foregoing flyers to her fellow students in a classroom at Sinclair Community College, but only after the day's lecture had concluded and the class had been dismissed.

59. On or about November 2, 2011, Ms. Borel-Donohue was summoned to meet with Associate Professor Michael Brigner, the chairman of the Paralegal Department at Sinclair Community College.

60. During this meeting on or above November 2, 2011, Associate Professor Brigner informed Ms. Borel-Donohue that she had no right to distribute flyers in a classroom and, that by doing so, she had violated the Student Code.

61. Rather than face disciplinary measures and possible expulsion from Sinclair Community College, Ms. Borel-Donohue ceased distributing political literature to her fellow students in any classrooms even after the day's lecture had concluded and the class had been dismissed.

62. Plaintiffs desire in the future to distribute literature to their fellow students even in a classroom (after the day's lecture had concluded and the class had been dismissed), "work places" and in other locations on campus, without registering for prior approval, but are prevented from doing so by the overbroad, unconstitutional restraints on distribution imposed by the Student Code and the Campus Access Policy.

63. In addition to its unconstitutional ban on literature distribution, Sinclair Community College has used its Campus Access Policy to squelch other efforts by Plaintiffs to exercise their First Amendment Rights.

64. For instance, Plaintiffs are involved in efforts to repeal the United States Department of Health and Human Services' policy of requiring nearly all private health insurance plans to include coverage for certain contraceptive drugs, which is being referred to as the "HHS Mandate."

65. The HHS Mandate has been a very important and contentious political issue since its adoption and in the wake of the Supreme Court's recent ruling on the constitutionality of certain aspects of ObamaCare. Plaintiffs view the HHS Mandate as an attack on religious liberty, freedom of conscience and the sanctity of life.

66. In an effort to express their views on the HHS Mandate as described above, Plaintiffs helped organize and participated in a grassroots effort known as the “Rally for Religious Freedom,” which has also been known as the “Stand Up Rally.”

67. Such rallies were organized across the country on June 8, 2012, with the purpose being to educate the general public about the HHS Mandate and to advocate for its repeal.

68. Ms. Borel-Donohue and Ms. Deddens, through their affiliation with the TVC, planned to organize and host a Stand Up Rally at Sinclair Community College.

69. Ms. Borel-Donohue submitted an application to the administration of Sinclair Community College, seeking to host the rally at the Building 7 Plaza on June 8, 2012.

70. Ms. Deddens arranged for various speakers for the rally, including Bryan Kemper.

71. On May 24, 2012, after following all necessary application procedures for registering an on-campus event, the TVC was granted permission to host the Stand Up Rally in Sinclair’s Building 7 Plaza on June 8, 2012.

72. The Stand Up Rally at Sinclair Community College was one of more than 160 such rallies being held nationwide that day to protest the HHS Mandate.

73. On June 8, 2012, Plaintiffs and other supporters of the cause to repeal the HHS Mandate, as well as protestors in opposition thereto, gathered in Sinclair’s Building 7 Plaza where several speakers, including Mr. Kemper, addressed the crowd.

74. Those who attended the Stand Up Rally at Sinclair Community College included members of the student body, faculty, staff of Sinclair Community College, as well as members of the general public.

75. As part of the Stand Up Rally at Sinclair Community College, organizers distributed handheld signs promoting the event to many of those in attendance. Some other

attendees brought their own signs as well, bearing statements of core political speech such as “Religious Freedom for All Americans,” “Individual Freedom Comes From God, Not the State,” and “HHS Mandate = Evil; WWJD [What Would Jesus Do]?”

76. Other individuals attending the Stand Up Rally at Sinclair Community College held American flags.

77. Also as part of the Stand Up Rally at Sinclair Community College, the TVC displayed a banner with the message “STAND UP FOR RELIGIOUS FREEDOM, STOP PRESIDENT OBAMA’S HHS MANDATE” which notified attendees of the central message of the rally.

78. In order to promote the message of the Stand Up Rally at Sinclair Community College and to aid in effectuating a meaningful rally, Ms. Deddens personally brought approximately 100 signs to the Rally and had encouraged others to bring homemade signs as well.

79. Each of the Plaintiffs desired to display signs supporting the Rally’s message, however each of the Plaintiffs, as well as other the student body, faculty, staff of Sinclair Community College, and the members of the general public also in attendance, were prohibited from displaying any signs by employees or officers the Department of Public Safety of Sinclair Community College/Sinclair Police Department.

80. Specifically, Defendants John Doe Nos. 1-10 told Plaintiffs and other in attendance at the Stand Up Rally at Sinclair Community College that that they were required to put their signs on the ground and were not allowed to hold them up at any time.

81. One or more of the Defendants John Doe Nos. 1-10 also compelled TVC to take down the banner carrying the name of the event.

82. One or more of the Defendants John Doe Nos. 1-10 were recorded declaring “no signage whatsoever” was allowed at the event, as well as mandating that “The banner can’t go up. The signs can’t go up.”

83. Rather than risk disciplinary action by Sinclair Community College (including the potential of arrest and the immediate termination of the rally), Plaintiffs complied with the demands of the Defendants John Doe Nos. 1-10 and refrained from displaying signage and the banner bearing core political speech.

84. As a direct and proximate cause of the denial by the employees or officers the Department of Public Safety of Sinclair Community College/Sinclair Police Department, including Defendants John Doe Nos. 1-10, of Plaintiffs’ request to display signs and a banner during the Stand Up Rally at Sinclair Community College, Plaintiffs’ constitutional rights have been violated and they have suffered injury and damages.

85. The actions of the employees or officers the Department of Public Safety of Sinclair Community College/Sinclair Police Department, including Defendants John Doe Nos. 1-10, in denying Plaintiffs’ request to display signs and a banner at the Stand Up Rally at Sinclair Community College was the direct and proximate result of the policy, practice and custom of Sinclair as adopted and implemented by one or more of the Defendants.

86. As a direct and proximate cause of the policy, practice and custom of Sinclair Community College as adopted and implemented by one or more of the Defendants, Plaintiffs’ constitutional rights have been violated and Plaintiffs have suffered injury and damages.

87. In addition to the unconstitutional infringements on Plaintiffs’ ability to display political messages on signage during rallies, Plaintiffs’ First Amendment rights are also chilled

by the express terms of the Access Policy which impose a minimum twenty-one day waiting period before any outside speakers may participate in such a rally.

88. For instance, on June 28, 2012, the Supreme Court of the United States upheld the controversial health care bill commonly known as ObamaCare. In light of the timing of the Supreme Court's decision, Plaintiffs desired to immediately hold another rally to express their concerns with ObamaCare and the HHS Mandate.

89. However, the Campus Access Policy's notice requirement of three weeks means that each scheduled instance of a gathering to hold such a rally faces a potential delay of at least twenty-one days, effectively barring Plaintiffs from engaging in core political speech at the most effective and relevant time.

90. Thus, the requirement of twenty-one days notice unreasonably prevents spontaneous expressive activities in response to recent or still-unfolding events, as well as those of a time-sensitive nature. For example, it would have been impossible for students of Sinclair Community College to host a speaker to address their shock and sadness following the tragic events of September 11, 2011, or their support of the United States' successful military operation in killing Osama Bin Laden, without violating the Campus Access Policy.

91. The notice requirement has indeed prevented spontaneous speech in response to the HHS Mandate and the Supreme Court's recent decision, and is likely to prevent other such speech in the future, the need for which is extremely likely to arise in the six months leading up to the forthcoming presidential election (as well as future elections), which substantially burdens the Plaintiffs' First Amendment rights and leads to a delay in advocacy for important issues.

92. Plaintiffs desire to engage in expressive activities in the future with signs and banners and, among other things, desire to have future rallies and assemblies featuring outside speakers.

93. Plaintiffs also desire to engage in spontaneous expressive activity in response to recent or still-unfolding events, as well as events of a time-sensitive or continuous and ongoing nature, without risking the threat of arrest and prosecution.

94. In addition, Plaintiffs desire to engage in political discourse at Sinclair Community College on a weekly basis in response to recent or still-unfolding events, to advocate for political measures appearing on the ballot (in 2012 and in subsequent elections) and to generally advance their political beliefs without risking the threat of arrest and prosecution, or disciplinary proceedings by Sinclair Community College. The policy of Sinclair Community College of limiting the number of events a student club or organization may hold to a maximum of two per month will prevent Plaintiffs from engaging in weekly political discourse and unconstitutionally infringes on the rights guaranteed to Plaintiffs by the First and Fourteenth Amendments to the Constitution.

APPLICABLE LEGAL PRINCIPLES

95. At all times relevant herein, each and all of the acts alleged herein were attributed to one or more of the Defendants acting under the color, authority, and pretense of state law, statutes, ordinances, regulations, customs, usages, and policies of Sinclair.

96. The distribution of literature on a public university campus is protected by the First Amendment. Absent “material disruption” or “substantial disorder,” the distribution of literature on campus is student expression protected by the First Amendment. *Solid Rock Foundation v. Ohio State University*, 478 F. Supp. 96, 102 (S.D. Ohio 1979).

97. The discussion of political ideas, and the displaying of political signage, is core political speech whose protection is at its zenith under the First and Fourteenth Amendments to the Constitution.

98. The First and Fourteenth Amendments extend to political subdivisions of the State of Ohio, such as Sinclair Community College. *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 301 (2000) (“[t]he Fourteenth Amendment imposes [the First Amendment’s] substantive limitations on the legislative power of the States and their political subdivisions”).

99. The absence of clear standards guiding the discretion of the public official vested with the authority to enforce the enactment invites abuse by enabling the official to administer the policy on the basis of impermissible factors. *Leonardson v. City of East Lansing*, 896 F.2d 190, 198 (6th Cir. 1990).

100. A traditional public forum like a park or public sidewalk is subject to reasonable “time, place and manner” restrictions that are narrowly tailored to serve a significant government interest and leave open ample alternative channels of communication. *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).

101. A designated public forum is a forum the government intentionally opens to expressive activity to the public at large. *Miller v. City of Cincinnati*, 622 F.3d 524, 534 (6th Cir. 2010). The standards under the First Amendment are the same as a traditional public forum. *Pleasant Grove v. Summum*, 555 U.S. 460, 469–70 (2009).

102. “The campus of a public university, at least for its students, possesses many of the characteristics of a public forum.” *Widmar v. Vincent*, 454 U.S. 263, 267 n.5 (1981).

103. In fact, as noted above, the board of trustees of Sinclair designed their Policy with the purposes of “[s]afe guarding civil liberties guaranteed by the United States and Ohio

Constitutions, including freedoms of speech, press, and assembly” which “shall be enjoyed by the students, faculty and staff of Sinclair Community College, as well as members of the community in the use of facilities on campus.”

104. Thus, the Campus of Sinclair Community College is a designated public forum for student speech and related activities. *See McGlone v. Bell*, ___ F.3d ___, 2012 WL 1403233, at *11 (6th Cir. Apr. 23, 2012) (holding that the open areas of Tennessee Technical University’s campus are designated public fora); *University of Cincinnati Chapter of Young Americans for Liberty v. Williams*, ___ F.Supp.2d ___, 2012 LEXIS 80967 at *18 (S.D. Ohio June 12, 2012) (Black, J.)(declaring that sidewalks and public exterior spaces within the campus of the University of Cincinnati constitute “designated public fora as to students”).

COUNT I

VIOLATION OF RIGHT TO FREE SPEECH UNDER THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION (42 U.S.C. § 1983)

105. Plaintiffs hereby incorporate by reference the allegations in the foregoing paragraphs as if set forth fully herein.

106. The policies and actions of Defendants vest unfettered discretion in the Defendants to restrict constitutionally protected expression.

107. The policies and actions of Defendants are prior restraints and restrictions on speech in campus areas that are designated public fora.

108. The Defendants’ supposed “time, place and manner” restrictions are unreasonable, are not content-neutral, are not narrowly tailored to serve significant government interests, and do not leave open ample alternative channels of communication.

109. As a direct and proximate result of the Defendants' violation of the Plaintiffs' constitutional rights, as well as the continued maintenance and enforcement of the Student Code and the Campus Access Policy, Plaintiffs continue to be prohibited from engaging their fellow students in discussion and advocating on behalf of their political beliefs.

110. As a legal consequence of the Defendants' violation of Plaintiffs' First and Fourteenth Amendment rights, as alleged above, Plaintiffs are entitled to recover nominal damages.

COUNT II

VIOLATION OF THE RIGHT TO DUE PROCESS UNDER THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION (42 U.S.C. § 1983)

111. Plaintiffs hereby incorporate by reference the allegations in the foregoing paragraphs as if fully set forth fully herein.

112. The policies and conduct of Defendants are unconstitutionally overbroad on their face, and have a chilling effect on speech.

113. The Defendants' policy, practice, and custom of prohibiting expressive activities on campus, such as the distribution of literature in classrooms and other "work places" is unconstitutional and violates the First and Fourteenth Amendments to the United States Constitution.

114. The Defendants' policy, practice and custom of requiring students to affiliate with a student organization and register with an appropriate college official unconstitutionally prevents spontaneous student expressive activity in response to recent or still-unfolding events, as well as events of a time-sensitive or continuous and ongoing nature.

115. The Defendants' policy, practice, and custom of prohibiting expressive activities on campus, such as displaying political messages on signs during permitted rallies, assemblies, and/or other events is unconstitutional and violates the First and Fourteenth Amendments to the United States Constitution.

116. The Defendants' policy, practice and custom of allowing its agents or other authorized individuals unbridled discretion in determining when to exclude signage, and whether to permit an outside speaker violates Plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution.

117. The Defendants' policy, practice and custom of requiring three weeks advance notice, and approval by the President, before any "outside speaker" can address a student assembly, rally, demonstration, and/or any other event at Sinclair unconstitutionally prevents spontaneous student expressive activity in response to recent or still-unfolding events, as well as events of a time-sensitive or continuous and ongoing nature.

118. The Defendants' policy, practice and custom of prohibiting student groups from holding more than two on-campus events per month unconstitutionally prevents spontaneous student expressive activity in response to recent or still-unfolding events, as well as events of a time-sensitive or continuous and on-going nature.

119. As a proximate result of Defendants' actions, Plaintiffs' constitutional rights have been violated, and Plaintiffs will continue in the future to be irreparably injured, in that they have been and will be deprived of their rights to free speech and due process of law under the First and Fourteenth Amendments to the Constitution.

120. As a direct result of the Defendants' violation of the Plaintiffs' constitutional rights, Plaintiffs are entitled to recover nominal damages.

COUNT III

**DECLARATORY JUDGMENT AND INJUNCTION
(U.S.C. § 2201, *et seq.*)**

121. Plaintiffs hereby incorporate by reference the allegations in the foregoing paragraphs as if set forth fully herein.

122. An actual controversy has arisen and now exists between Plaintiffs and Defendants concerning Plaintiffs' rights under the United States Constitution. A judicial declaration is necessary and appropriate at this time as to Counts I through II above.

123. Plaintiffs desire a judicial determination of their rights against Defendants as they pertain to Plaintiffs' right to speak, assemble, and invite outside speakers to engage in political discourse and display political messages on signs without being subjected to a prior restraint or "time, place, and manner" regulations which are unreasonable, not content neutral, not narrowly tailored to serve a substantial government interest, and do not leave open ample alternative channels of communication.

124. Plaintiffs desire a judicial determination of their rights against Defendants as they pertain to Plaintiffs' right to engage their fellow students in a classroom or other venues at Sinclair Community College, but only after the day's lecture had concluded and the class had been dismissed or the purpose of the forum is no longer being utilized for such purpose

125. In order to prevent further violation of Plaintiffs' constitutional rights by Defendants, it is appropriate and proper that a declaratory judgment be issued, pursuant to 28 U.S.C. § 2201 and FED. R. CIV. P. 57, declaring unconstitutional Sinclair's policies.

126. Furthermore, pursuant to 28 U.S.C. § 2202 and FED. R. CIV. P. 65, it is appropriate and hereby requested that this Court issue a permanent injunction prohibiting the

Defendants from enforcing their restrictions on Plaintiffs' expressive activities to the extent they are unconstitutional, in order to prevent the ongoing violation of Plaintiffs' constitutional rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants and that the Court:

A. Declare that the notice provisions of the Campus Access Policy described above are unconstitutional on their face because they violate the rights to freedom of speech and due process of law guaranteed under the First and Fourteenth Amendments to the Constitution;

B. Declare that the notice provisions of the Campus Access Policy are unconstitutional as applied or threatened to be applied to the activities of Plaintiffs, because they violate Plaintiffs' right to freedom of speech and due process of law guaranteed under the First and Fourteenth Amendments to the Constitution;

C. Declare that the distribution of literature provisions of the Campus Access Policy are unconstitutional on their face because they violate the rights to freedom of speech and due process of law guaranteed under the First and Fourteenth Amendments to the Constitution;

D. Declare that the distribution of literature provisions of the Campus Access Policy are unconstitutional as applied or threatened to be applied to the activities of Plaintiffs, because they violate Plaintiffs' right to freedom of speech and due process of law guaranteed under the First and Fourteenth Amendments to the Constitution.

E. Declare that the distribution of literature provisions of the Student Code of Conduct are unconstitutional on their face because they violate the rights to freedom of speech and due process of law guaranteed under the First and Fourteenth Amendments to the Constitution;

D. Declare that the distribution of literature provisions of the Student Code of Conduct are unconstitutional as applied or threatened to be applied to the activities of Plaintiffs, because they violate Plaintiffs' right to freedom of speech and due process of law guaranteed under the First and Fourteenth Amendments to the Constitution.

E. Declare that the policy of Sinclair Community College of prohibiting student groups from holding more than two on-campus events per month is unconstitutional on its face because it violates the rights to freedom of speech and due process of law guaranteed under the First and Fourteenth Amendments to the Constitution;

F. Declare that the policy of Sinclair Community College of prohibiting student groups from holding more than two on-campus events per month is unconstitutional as applied to the activities of Plaintiffs, because it violates Plaintiffs' rights to freedom of speech and due process of law guaranteed under the First and Fourteenth Amendments to the Constitution;

G. Declare that restricting students' expressive activities by preventing them from displaying signage bearing political messages violates the First and Fourteenth Amendments to the Constitution;

H. Issue a permanent injunction against the Defendants and all agents, administrators, employees, or other persons acting on behalf of Sinclair Community College, from enforcing said policies against Plaintiffs and others who seek to participate in expressive activities as described in this Complaint;

I. Award Plaintiffs nominal damages;

J. Pursuant to 42 U.S.C. §1988 and other applicable law, award Plaintiffs their costs and expenses incurred in bringing this action, including their reasonable attorneys' fees; and

K. Grant such other and further relief as the Court deems equitable, just, and proper.

Respectfully submitted,

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¹ *Pro hac vice* application to be forthcoming.