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October 3, 2022

Robert Ethington
Dean of Students
Santa Rosa Junior College
rethington@santarosa.edu

Re: Unconstitutional First Amendment Policy on Campus: Inter-Club Council Grant Application

Dear Mr. Ethington:

We are writing to you regarding Santa Rosa Junior College's Inter-Club Council Grant Application. We are concerned that the form infringes on students' First Amendment rights because it allows student leaders to consider the content and viewpoint of their peers' speech before approving or denying their event. Such unfettered discretion is a prior restraint, opens the door to discrimination, and unconstitutionally chills freedom of expression. As such, we demand that the University revise this unconstitutional policy.

Southeastern Legal Foundation is a national, nonprofit legal organization dedicated to defending liberty and Rebuilding the American Republic[®]. Through our 1A Project, we educate the public about students' First Amendment rights on college campuses and take legal action on behalf of students whose rights are violated. This letter seeks to inform Santa Rosa Junior College that this grant application stifles free expression.

Factual Background

The Inter-Club Council (ICC) at Santa Rosa Junior College "is a collection of student led clubs responsible for governing, promoting and encouraging participation in clubs at Santa Rosa JC."¹ As part of its mission, the ICC offers grants to student organizations.² Through the grant application, the ICC asks student organizations to provide various information, including the amount of money they are requesting and the amount of money ICC has provided those

¹ <https://studentlife.santarosa.edu/student-clubs>.

² <https://studentlife.santarosa.edu/sites/studentlife.santarosa.edu/files/ICC%20Grant%20Application%20Updated%20090519.pdf>.

organizations in the past. Finally, the application asks student organizations to describe how the grant will align with their mission and how the grant will “benefit students.”³

Analysis

It is well-settled that a college campus is the “marketplace of ideas” where students are exposed “to that robust exchange of ideas which discovers truth.”⁴ Indeed, freedom of speech and academic inquiry are “vital” on college campuses, because only through thoughtful debate and discourse can real education occur.⁵ The ICC grant application undermines this bedrock principle and raises serious First Amendment concerns because it allows student leaders to assess whether speech “benefits” the student body before funding that speech.

I. The ICC grant application is a prior restraint.

Since 1724, freedom of speech has famously been called the “great Bulwark of liberty,”⁶ intended as “a response to the repression of speech and the press that had existed in England.”⁷ Our Founding Fathers intended to protect the unfettered discussion on matters of public concern. “Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law—the argument of force in its worst form.”⁸

The U.S. Supreme Court has long embraced the Framers’ hatred of censorship.⁹ Thus, courts consistently strike down any action that allows the government to stop a citizen’s expression before the citizen is even able to speak.¹⁰ “At the root of this long line of precedent is the time-tested knowledge that in the area of free expression a licensing statute placing unbridled discretion in the hands of a government official or agency constitutes a prior restraint and may result in censorship.”¹¹ This principle applies just as strongly to university officials, including college students acting in an official capacity on campus.¹²

The ICC grant application is a prior restraint because it gives student leaders the authority to review, then approve or deny, an event based on whether it “benefits” the student body. This gives only a few individuals unbridled discretion to assess planned speech activities, which opens the door to unconstitutional content and viewpoint discrimination.

³ *Id.*

⁴ *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967).

⁵ *Healy v. James*, 408 U.S. 169, 180 (1972).

⁶ 1 John Trenchard & William Gordon, *Cato’s Letters: Essays on Liberty, Civil and Religious* 99 (1724), reprinted in Jeffrey A. Smith, *Printers and Press Freedom* 25 (Oxford Univ. Press 1988).

⁷ *Citizens United v. FEC*, 558 U.S. 310, 353 (2010).

⁸ *Whitney v. California*, 274 U.S. 357, 376 (1927) (Brandeis, J., concurring).

⁹ *See Meyer v. Grant*, 486 U.S. 414, 421 (1988).

¹⁰ *Near v. Minn.*, 283 U.S. 697 (1931); *New York Times Co. v. United States*, 403 U.S. 713 (1971); *Superior Films v. Dep’t of Educ.*, 246 U.S. 587 (1954); *Carroll v. President and Comm’rs of Princess Anne*, 393 U.S. 175 (1968).

¹¹ *Lakewood v. Plain Dealer Pub. Co.*, 486 U.S. 750, 757 (1988).

¹² *Healy*, 408 U.S. at 180; *Widmar v. Vincent*, 454 U.S. 263, 267 n.5 (1982).

II. The ICC grant application opens the door to viewpoint and content discrimination.

The ICC grant application allows student leaders to engage in viewpoint and content-based discrimination. When a university promotes or discourages speech based on “the speaker’s specific motivating ideology, opinion, or perspective,” it has engaged in viewpoint discrimination.¹³ Viewpoint-based restrictions are never constitutional.¹⁴ When a public university bans discussion of certain topics, the restriction is considered content-based.¹⁵ Unless a university can demonstrate a compelling government interest, and that its policy is narrowly tailored to achieve that interest, content-based restrictions cannot survive judicial review.¹⁶

Policies that give student leaders unfettered discretion to approve or deny speech activities are presumptively unconstitutional because they pave the way for viewpoint and content discrimination. When a few individuals have authority to assess speech activities, there is a real risk that they will rely on their own views and biases to determine whether to approve an event.¹⁷

Here, the ICC grant application gives student leaders broad authority to approve or deny funding to student groups based on whether the ICC believes it will benefit the student body. While members of the ICC may be allowed to assess the time, place, and manner in which the speech is set to occur,¹⁸ the application goes beyond any reasonable limits by allowing students to assess the actual content and views of their peers. In this way, the grant application is presumptively unconstitutional because it allows members of the ICC to weigh the purpose of the speech activities and the views being expressed. This is a blatant violation of the First Amendment.

Demand

“[C]olleges and universities are not enclaves immune from the sweep of the First Amendment.”¹⁹ It is the duty of the ICC to promote and encourage participation in clubs and activities on campus. But through this grant application, student leaders are emboldened to discriminate against their peers based on the content of their speech and the views they express. The door is open to censorship and prior restraint, particularly because the policy offers no limits to curb the ICC’s discretion.

Santa Rosa Junior College can only impose reasonable, content-neutral restrictions on the time, place, and manner of speech. The ICC must therefore remove any questions on its grant application that get to the content of a speech activity or the views of a student organization. This includes asking whether a planned activity will benefit the student body.

¹³ *Rosenberger v. Rector & Visitors of U. of Va.*, 515 U.S. 819, 820 (1995).

¹⁴ *Id.*

¹⁵ *See Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37 (1983); *Boos v. Barry*, 485 U.S. 312, 319 (1988).

¹⁶ *See, e.g., Papish v. Board of Curators of Univ. of Mo.*, 410 U.S. 667, 670 (1973).

¹⁷ *See Lakewood*, 486 U.S. at 757.

¹⁸ *Perry Educ. Ass’n*, 460 U.S. at 45.

¹⁹ *Healy*, 408 U.S. at 180.

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Open discourse is critical to both a functioning democracy and a well-rounded college experience. College students are in the unique position of being surrounded by true diversity: diversity of thought, race, religion, and culture. For many, this is the first—and perhaps only—time they will be exposed to a “marketplace of ideas” that differ from their own. The college experience can have a significant impact on the leaders of tomorrow. Santa Rosa Junior College must do its part to ensure this freedom for *all* its students.

Yours in Freedom,

s/ Cece O’Leary

Cece O’Leary

Director of 1A Project

Southeastern Legal Foundation

CC: Santa Rosa Junior College Board of Trustees (dbattenfeld@santarosa.edu)
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