

District email message and controversies about political signs and student forum raise concerns about our rights to free political expression

On October 31, the Friday before the November 4 election, Barbara Christensen, SMCCCD Director of Community/Government Relations, sent an email to all district staff claiming that, according to the Education Code, it was illegal to post political campaign materials on District property. AFT 1493 questioned this statement and their legal counsel, Robert Bezemek, wrote a response to Christensen's email which provided the legal basis for faculty members' right to post any political materials in their offices.

Since the District has historically allowed political signs and materials in faculty offices, many faculty wondered why Christensen's message was put out, especially since it was sent just two days before the election. It is striking that the timing of the email appears to coincide with events that were developing at Skyline College. In the days before the election, the Skyline administration apparently received complaints about "No on Proposition 8" signs in at least one faculty member's office window and also considered canceling, at the last minute, a campus Marriage Equality Forum being planned by a Skyline student group. The following article by Skyline professor A.J. Bates describes these developments at Skyline. On pages 4 and 5, we have reprinted Christensen's email message and Bezemek's response. We encourage other faculty to send us their opinions on these issues. -Ed.

By A.J. Bates, Professor of Chemistry & Gay-Straight Alliance Sponsor, Skyline College

This has been an unusually charged election season. As both the Gay-Straight Alliance (GSA) sponsor, and a faculty member who displayed political posters in my office window, I have found myself at the center of free speech issues on our campus. In both cases, the administrative

response and the implications for campus free speech are cause for concern.

Political Signs

For the seven years that I have worked at Skyline College, I have seen political posters and signs in faculty windows and on faculty doors before each election. In the past Spring, Proposition 92, the community college funding initiative, was on the ballot. Many of us felt very strongly that Prop. 92 was good for our students and for our colleges. Signs encouraging a "Yes" vote were pervasive on the Skyline campus. In the Gallery Room at CSM, a press conference was held in support of Proposition 92, at which faculty, students, and administration spoke out urging a "Yes" vote on the ballot measure.

In the Fall election, Proposition 8, the measure that has currently taken away the right of same-sex couples to marry, was on the ballot. As a gay man in a long-term relationship, this was a proposition that I also felt strongly

about. Consistent with the practices of faculty in past elections, I posted "Vote No on Prop. 8" signs in my office window. My window has a prominent location on the campus, and many people saw the signs. I was told by the campus administration that a few complaints were made about the posters in my window from faculty and students.



In the week before the election, the District Administration sent the first of two emails warning that faculty could not have political signs in our windows,

and that we could face serious consequences – fines or jail time – if we did. While the email was sent district-wide, it was clear from comments made to me that my window was what had prompted the email. Multiple faculty members also told me that they perceived the messages to clearly target me. And, a few days after the email was sent, a staff member, with whom I am not personally acquainted, slipped a printed copy of the email under my door. It would seem the staff mem-

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PRESIDENT'S LETTER

What difference does a strong labor movement make? Let's start with extensive sick leave, maternity leave, job security...

by Monica Malamud, AFT 1493 President

As you may know, my involvement in the union started very recently. And, to be perfectly honest, I got involved out of



pure curiosity and a desire to learn. I didn't have a clear idea of what unions do, and I'm always eager to learn something new. After

just a couple years of participation in the union, I think I have already learned a lot. What I did not anticipate was that I would value the work of unions as much as I do now.

Prior to working at SMCCCD, my work experience in the U.S. was in teaching jobs where there was no union. As soon as I started working in the U.S., I was shocked to discover dramatic differences between my rights and protections in Argentina, and those I had (or rather, did not have) in the U.S. Working conditions in Argentina are an example of what a strong labor movement can achieve and of the influential role that unions have historically played in the politics of the country.

3 weeks on the job, then sick for 5 weeks? Take paid sick leave

When I got my first full-time job as a systems engineer in Argentina (my home country), I got very sick in only my third week of employment: I had mononucleosis. I spent the next five weeks at home in bed. I still needed to complete my recovery, and for the next two weeks I worked part-time, and didn't even go to work every day. Even though there was no union, I was protected by the law: if you're sick, you take paid sick leave. Argentine law extends paid sick leave for

3 months if you have less than 5 years on the job, 6 months if you've been working for more than 5 years.

Only three months later, I had final exams. Again, by law, I was allowed to take up to two days per final exam. Needless to say, students have to take finals whenever they are scheduled, so taking the two days off simply requires that the student bring a note from the college to the employer—no pre-approval of days is required.

Maternity leave? Here we call it summer vacation

Soon after I graduated with my Master's degree, I came to the U.S. to continue my education. A couple of years later, I finished a second Master's degree and I got married. While still working on my Ph.D., my first son was born: May 7th. Two years later, my second son was born: May 6th. Their dates of birth are no coincidence. At the time, I had part-time teaching jobs without benefits, so I calculated that the beginning of May was the optimum time to have a baby: the time that allowed me to hide my pregnancy in the fall semester so as to make sure I was offered a job and was able to work in the spring semester (which finished in late April), the time that allowed me to enjoy four months of summer with the newborn before going back to work in the fall. Had my sons been born at any other time, I would have had to not work and go without pay for a semester, or go back to work very soon after my sons were born.

When my sisters, who live in Argentina, had their babies, their situation was very different from mine. They had three months of maternity leave at full pay, which is what every pregnant woman gets according to the Labor Contract Law. In fact, a pregnant woman's job is

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College scholarships available from the CFT and AFT

Raoul Teilhet Scholarship Program

In 1997, delegates to the CFT Convention established the Raoul Teilhet Scholarship Program to help the children of members to achieve their higher education goals. The program was named after long-time CFT leader Raoul Teilhet. Teilhet served the organization as president from 1968 to 1985.

Students enrolled in four-year courses of study are eligible for \$3000 scholarships; those enrolled in two-year courses of study are eligible for \$1000. Award selection is based on academic achievement, special talents and skills, participation in extracurricular activities, community service, financial need, and a 500-word essay on a social issue of the applicant's choice.

In 2003 Convention delegates voted to extend scholarship eligibility to continuing college students who are dependents of CFT members, as

well as to dependents of deceased CFT members. Scholarships are awarded for any one year of higher education; those who received scholarships as high school seniors are not eligible for another scholarship.



Application deadlines for 2009 Raoul Teilhet Scholarships are:

- High school seniors: January 10, 2009
- Continuing college students: July 1, 2009

Applications are available from the

CFT website at: cft.org. For more information, call the AFT 1493 office at x6491 or the CFT at 818-843-8226.

Robert G. Porter Scholarship Program

The AFT awards four 4-year \$8000 scholarships to high school seniors who are dependents of AFT members, as well as 10 one-time continuing education grants of \$1000 to AFT members. To learn more, go to the AFT website at: aft.org.

Union Plus Scholarship Program

Union Plus and AFT offer scholarships of \$500 to \$4000 to union members (and their spouses and dependents) who have one year of continuous union membership. To learn more, go to the Union Plus website at: unionplus.org and click on Education Services.

President's Letter

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protected from the time she informs the employer of the pregnancy, for 7.5 months before her due date. This protection extends for another 7.5 months after the baby is born. If she were to be laid off during this time, she would receive a full year's pay. And that's on top of what any employee receives when laid off: one month's salary for every year of work in the company - also courtesy of the Labor Contract Law. So what if the company shuts down? The employee still receives severance pay, this time at half the rate.

U.S. unions work for better conditions

In Argentina, the Labor Contract

Law provides much more comprehensive protection than labor laws in the U.S. So, whether there is a union or not, sick leave is there when you need it, pregnant women do not have to go back to work as soon as they deliver a baby and students can study for finals. In contrast, in the U.S., since labor laws are not as comprehensive, we depend more on our unions to negotiate what, in more union-friendly countries, is considered "common sense" and has been legislated. Very often, legislation is the result of union advocacy. Needless to say, I don't intend to imply that U.S. laws should have exactly these protections, and I have presented just a few examples of the extensive array of workers' rights that are guaranteed by law in Argentina.

I've come to appreciate how unions protect our rights

Having worked with and without a union both in Argentina and in the U.S., I now have a greater appreciation for unions. Unions not only negotiate our contracts, but together with other unions, they also fight to promote legislation on issues that should not have to be negotiated individually by different locals, so as to guarantee rights that can be enjoyed by all workers. There are union activists working at the legislative level. As for me, I'm doing what I can to make a contribution at the local level. I hope you too can be involved in union work at whatever level feels right for you. After all, we teachers have curious minds and enjoy learning, and that's all it took for me to get involved.

Concerns raised about freedom of political expression

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ber was providing an additional warning, as I had not taken down my “No on 8” signs.

I find it disturbing that when a proposition relating to the college itself is on the ballot, support of the measure by faculty is allowed without administrative interference or threat thereof, if not actually encouraged. With Proposition 8, however, a measure that specifically related to a sometimes-unpopular minority group, the administration targeted the faculty members expressing their opinions with harsh threats.

Gay-Straight Alliance & the Marriage Equality Forum

The Skyline Gay-Straight Alliance (GSA) has become active again this Fall with our largest membership ever. I am one of the club sponsors of the GSA, and was very pleased to see the students come to the club with great ideas and high energy. The students committed themselves to the club’s mission to: *work together with the college and the community in order to increase understanding and acceptance of gay, lesbian, bisexual, and transgender individuals in society.*

One of the first activities the GSA began planning was the Marriage Equality Forum. We discussed a variety of formats, but the students settled on the following program early in the semester:

- Brief History of Same-Sex Marriage
- Proposition 8: *What is it? What does your vote mean?*
- Personal Narratives
- Panel Discussion / Audience Questions

The students intended the focus of the Forum to be the opportunity for the Skyline community to hear the personal narratives of students and faculty in both same-sex and opposite-sex relationships. The speakers and panel members were all to be Skyline faculty or students.

The Forum was approved by the Student Activities Office in consultation with the Vice-President of Student Services. An announcement and flyer went out to the College through the Public Information Office, and personal invitations to the Forum were sent to faculty, staff, and administrators. The flyers and invitations clearly explained the event and included the program outlined above.

However, on the day prior to the event, the Student Activities Director informed the GSA that the Administration had received a complaint that the planned Forum was biased, and it was possible the Administration might cancel it. I met with the College President and the Vice President of Student Services. Three options were presented to the GSA to prevent cancellation: 1) the GSA could include a speaker from the “Yes on 8” campaign; 2) the Forum could be held outdoors in the designated free speech area; or 3) the GSA could pay for the use of the room as an outside organization. The adminis-

District email on “Posting of Information”

The following is the text of an October 31st email message sent to all District employees from Barbara Christensen, Director of Community and Government Relations. -Ed.

We are writing to remind you that under Education Code Section 7054 and Board Policy 2.30, District facilities cannot be used to urge the support or defeat of any ballot measure or candidate. This means campaign fliers, posters and other



similar materials cannot be posted in or on District buildings, windows and other District property. Violations of the Education Code can be punished by imprisonment in the county jail not exceeding one year or by a fine not exceeding one thousand

dollars (\$1,000), or by both, or imprisonment in a state prison for 16 months, or two or three years.

7054. (a) No school district or community college district funds, services, supplies, or equipment shall be used for the purpose of urging the support or defeat of any ballot measure or candidate, including, but not limited to, any candidate for election to the governing board of the district.

(b) Nothing in this section shall prohibit the use of any of the public resources described in subdivision (a) to provide information to the public about the possible effects of any bond issue or other ballot measure if both of the following conditions are met:

(1) The informational activities are otherwise authorized by the Constitution or laws of this state.

(2) The information provided constitutes a fair and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the bond issue or ballot measure.

(c) A violation of this section shall be a misdemeanor or felony punishable by imprisonment in the county jail not exceeding one year or by a fine not exceeding one thousand dollars (\$1,000), or by both, or imprisonment in a state prison for 16 months, or two or three years.

tration felt that these scenarios would provide legal protection for the College.

I emphasized that the Forum was not in any way a political rally, and that the panel would not be advocating for a specific position on any ballot measure. We did not have

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Legal basis for faculty's right to free political expression on campus

The following is a response by AFT 1493's legal counsel to the District's message on the "Posting of Information" (see page 4) - Ed.

by Robert Bezemek, AFT 1493 legal counsel

The freedom to engage in political speech lies at the core of the First Amendment to the U.S. Constitution and the freedom of expression clause of the California Constitution because of the profound national and state commitment that "debate on public issues should be uninhibited, robust and wide-open." *Boos v. Barry*, 485 U.S. 312, 318 (1988). When a faculty member displays a sign s/he employs a venerable means of communication that is "both unique and important."

A faculty member's office has historically been a place where one may express his or her interests, beliefs, ideas, and aspirations, without censorship. Indeed, it has long been recognized that faculty have such an interest. *Burnham v. Ianni*, 119 F. 3d 688 (8th Cir. 1007) (en banc). At the District's three colleges, faculty members, for decades, have, without restriction, posted political literature such as signs, bumper stickers, newspaper opinion, literature, cartoons, and the like. Recently, when the voters were considering Proposition 92, faculty, staff and administrators prominently displayed literature supporting passage of the proposition. I have personally observed this expression when I have visited the campus and faculty offices.

Thus, both the means of communication and the subject matter are integral components of a faculty member's freedoms. The First Amendment's hostility to content-based regulation extends to prohibiting entire categories of speech. *Consolidated Edison Co. v. Public Service Comm.*, 447 U.S. 530, 537 (1980)

The District tolerates, indeed allows, the posting of all sorts of messages, political and non-political, on faculty office walls, windows, doors and in other locations. Many of those posted documents contain issue-oriented messages, political criticism, and political appeals. For instance, a handbill which urges people to "just be green," or "support the right to life" has always been allowed. This wide-ranging approach

to speech is consistent with the norm that our colleges are a special marketplace of ideas, where competing viewpoints are subject to discussion and challenge. Such a marketplace of ideas has been recognized by the Supreme Court as essential to the fundamental freedoms of our Nation. If the District now claims that it may prohibit the posting of handbills or posters which contain certain political content, as opposed to all other content, it is engaged in content-based discrimination, which violates the State (and Federal) constitution.

By forbidding political signs, but allowing others, the District is engaged in content-based discrimination. *Rappa v. New Castle County*, 18 F. 3d 1043, 1065 (3d Cir. 1994); *R.A.V. v. St.Paul*, 505 U.S. 377.

This unconstitutional action is not saved by the District's reliance on Education Code section 7050 et seq. Section 7054, which the District apparently cites, is part of a larger statute, which affirms that the law does not intrude on constitutionally-protected speech. The sole case cited by the District, *San Leandro Teachers Assn. v. San Leandro Unified School District*, has been vacated when the Supreme Court granted review. Thus, it is no longer a precedent. But even in *San Leandro*, placing signs and flyers on district-owned tables was held to be constitutional, and not subject to restriction by application of section 7054.

The District may regulate the time, place and manner of some political speech, as long as the restrictions are content-neutral, and are narrowly tailored to serve a legitimate governmental interest. *Burson v. Freeman*, 504 U.S. 191, 197 (1992) Here, the banning of this category of literature is not a reasonable regulation, it is an outright prohibition. An absolute prohibition on a category of speech is not a permissible time, place and manner rule. *Board of Airport Commissioners v. Jews for Jesus, Inc.*, 482 U.S. 569 (1987)

A faculty member posting a photograph, endorsement, slate, opinion piece, sign, etc. is not expending District resources. Accordingly, the District is out-of-line in trying to restrict such activities.

a speaker from the no "No on 8"; therefore, it would be inappropriate to invite a "Yes on 8" speaker. Furthermore, our event had been properly approved, and it would be unfair to now cancel it, change the format, or require us to pay.

The administration answered that because a student complaint was received, they chose to scrutinize the event more closely. I believe that resorting to policy setting by complaint is inappropriate. I feel that the responsibility of the adminis-

tration to protect the rights of a student organization to sponsor an educational forum – even one on a controversial issue – was being ignored, in favor of protecting the college from any complaint. Other civil rights presentations and forums have taken place on the campus without interference; but in this case, the GSA was being singled out for having a message that some people were uncomfortable with.

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District retirees to meet on Dec. 12; health care is on the agenda

The DART (District Association of Retired Teachers) chapter is alive and well and celebrating the holidays with a party extravaganza, with food, booze, and a featured speaker, Minoo Aram, previously a District employee in Human Resources, to discuss the subtleties of health care for retired

teachers. Please RSVP to John Searle at: Searle@smccd.edu, or phone at 650-595-4426 or 650-574-6607 to confirm attendance to allow sufficient victuals to be on hand.

The event will take place at **3:00 p.m. on Friday, December 12** at the Clubhouse, in the new Faculty/Staff

housing complex behind the District building.

**AFT 1493 Exec. Committee
/ General Membership
Meeting:
Wed., Dec. 10, 2:15 p.m.
CSM, Bldg. 12, Rm. 170**

Concerns raised about freedom of political expression

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In the end, the Marriage Equality Forum did proceed as planned. However, the administration continues to maintain that because the Gay-Straight Alliance was presenting the Forum, and because many of the students and faculty speaking about their relationships were gay or lesbian, that the panel was inherently partisan, and therefore, the student organization should not be allowed to use the Student and Community Center. This extreme limitation on free speech would seem to far exceed even the interpretations of the education code emailed to all district employees by the Vice-Chancellor's office.

The students in the Gay-Straight Alliance believe that they have been specifically targeted in this situation based on the club's identity and its mission of advocacy for civil rights. I fear that because the GSA engaged in their protected right to campaign at a free speech table, the administration and some other campus members could not separate the Marriage Equality Forum and our other activities from the intent of our table.

Civil Rights Song and Proposition 8 Demonstrations

On the day before the election, the GSA sponsored the singing of the civil rights anthem, "We Shall Overcome" in the quad area. The students of the GSA were restricted by the administration to our separate "No on 8" table to distribute flyers promoting the event. We received multiple warnings to keep our

noise level down even before the singing began, including an interruption at the start of the event by a staff member sent by the administration. Our noise level was never close to the volume of other student-sponsored events, including recent ones that have had large speaker systems playing music in the quad during classes. Yet, because the GSA message had proven unpopular to a handful of people who had complained to the administration, the club was again singled out.

The same day, outside community members and Skyline students hosted a "Yes on 8" table. Eventually, the "Yes on 8" and "No on 8" groups engaged in chants back and forth. The demonstrations culminated with 5-minute impromptu speeches from both sides, organized by the student representative to the Board of Trustees. It was very exciting and refreshing to see students with strong convictions speaking out and having their voices heard.

However, the protesting did not start peacefully. The GSA was respectful of the "Yes" contingent when they arrived on campus, and kept our campaigning to the table. Shortly after arriving, the "Yes" group began taunting the GSA members and yelling slogans, including "Yes on 8" and "No on Gay". The few students present at the "No" table (it was during class time) were hesitant to respond because of the repeated warnings about noise and staying at the table from the administration. They feared that action might be taken against them if they yelled or chanted back. Soon, however, additional members of the GSA, other students, and faculty joined them at the

"No" table, took up signs, and began chanting "No on Hate, No on 8".

I believe that the fear of administrative reprisal was based on a consistent message from the administration that the GSA was being treated differently from other clubs, and that a different standard was being applied to our programs.

Conclusion

My discussions with the administration with regard to the Marriage Equality Forum are ongoing. They have agreed to review the policies regarding the approval of student events, in the hope that a situation similar to the threatened cancellation of the Forum will not happen again.

The administration has also agreed to meet with the GSA to address the members' questions and concerns about how the Forum was handled and the students' perception of being singled out by the administration.

However, we do continue to disagree strongly on the nature of permissible speech by student groups on the campus. The Marriage Equality Forum was an educational Forum that included a segment for audience members to ask questions and voice opinions. It did not advocate a specific position on Proposition 8. As such, I believe that it was in line with Education Code and the District and College policies. I believe that the GSA and other student groups should continue to enjoy the opportunity to design programs and to use college facilities, including the Student & Community Center, even when the subject is controversial.