



April 5th, 2012

SCCD Board of Trustees
Office of the Vice Chancellor, 1DO 100
1500 Harvard Ave
Seattle, WA 98122

Re: ACLU-WA Comments in Opposition to Proposed Changes to WAC 132F

Dear Chairperson Rice and distinguished members of the Board of Trustees,

The American Civil Liberties Union of Washington Foundation (ACLU) submits these comments in opposition to the proposed changes to WAC 132F. We are a statewide, non-partisan, non-profit organization with over 20,000 members, dedicated to the preservation and defense of constitutional rights.

Freedom of speech is a paramount value in American civil society. The ability to freely express one's thoughts and ideas is necessary to maintain a vibrant democracy.

The proposed changes to WAC 132F pose serious constitutional problems, unduly burden free speech, and would unnecessarily restrict the vital exchange of ideas on a public college campus. We have identified the following as key constitutional issues in these WACs:

The Proposed WACs Impose Impermissible Prior Restraints.

Proposed WAC 132F-142-040(3) requires all "noncollege groups" to provide notice to the campus public safety department 24 hours prior to engaging in protected speech. This requirement is a classic example of a prior restraint that violates Article I, Section 5 of the Washington State Constitution. A prior restraint is created when an individual is required to notify a government entity before the individual can engage in free speech activities. For years courts have held that the Washington Constitution bans all prior restraints under any circumstance.

The Proposed WACs Fail to Appropriately Construct Time, Place, and Manner Restrictions.

Washington state law allows government entities to impose time, place, and manner restrictions on speakers in limited circumstances. The government has to show that such restrictions on speech (1) do not rely on the content of the speaker's message, (2) are narrowly tailored, or closely fitted, to serve a *compelling* government interest, and (3) leave open ample alternative channels of

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communication.

- Proposed WAC 132F-142-030(2) demands that “no individual carry more than one sign,” no matter the size. The colleges have claimed that the government interest forwarded by this regulation is its interest in forwarding the educational mission of the schools. An arbitrary restriction on the number of signs a person can hold is not a targeted restriction that could be construed as narrowly tailored to serve a compelling government interest.
- Proposed WAC 132F-142-030(5), WAC 132-F-142-040(4), and WAC 132-F-142-030(1) limits the amount of time an individual may engage in expressive activity on campus. The WACs distinguish between students and non-students, and allow students to engage in expressive activities for 8 hours and non-students for 5 hours. Arbitrarily limiting the time of free speech activities is not a narrowly tailored restriction. Nor is the imposition of arbitrary time limits based on enrollment status a narrowly tailored restriction.
- Proposed WAC 132-F-142-010(3) seeks to limit non-student access to campus for expressive activities to small spaces on campus that are not centrally located. Restricting non-student speech activities to such limited locations fails to leave open sufficient alternative places for engaging in speech.

Distributing Materials that Advocate Unlawful Conduct is Protected Speech.

Proposed WAC 132F-142-050 bans the distribution of *all* material that advocates unlawful conduct. This WAC is constitutionally invalid because it bans protected speech and restricts speech based on its content. The First Amendment bars government entities from forbidding individuals to advocate unlawful conduct, except where such advocacy is meant to incite or producing *imminent* lawless action *and* is likely to incite or produce such action. Such a restriction, for example, would have unduly prevented Rev. Martin Luther King, Jr. from distributing materials on-campus urging a peaceful sit-in at the college.

The Trespass Regulation is Impermissibly Vague.

Proposed WAC 132F-142-080 allows administrators broad discretion to eject from campus an individual who engages in a free speech activity that “disrupts the orderly functioning of the college.” However, the proposed regulation does not define what constitutes disrupting orderly functioning, nor does it set any criteria to determine when expressive activity rises to that level of disruption. Instead, the regulation grants complete discretion to an administrator to make the determination, and further fails to give individuals any way to measure the disruptiveness of their actions. A regulation is impermissibly vague, and in violation of the First Amendment, when it fails to establish standards for the police and public that are sufficient to guard against the arbitrary deprivation of liberty interests.

Portions of the all Community College Campuses are Likely Traditional Public Forums under the First Amendment.

In considering the proposals restricting speech, it must be kept in mind that Seattle Central Community College's campus is a prime example of a location that could be found to be a traditional public forum for First Amendment purposes. Traditional public forums (sidewalks, streets, and parks, among others) are public places in which governments are allowed little latitude to restrict citizens from engaging in free speech activities. A substantial segment of the outdoor portion of the campus is used as a public thoroughfare. Much of the foot traffic in the area comprises non-students crossing the campus to get to the surrounding stores, restaurants, and the vibrant urban neighborhood in which the school is located. The area between the school property and public areas (e.g., sidewalks and public thoroughfares) is substantially void of clear boundaries, with the exception of the buildings themselves.

The ability to exercise the right to free speech and engage in expressive activities is the hallmark of an open and democratic society. These proposed WACs threaten basic constitutional rights and must be rejected.

Please do not hesitate to contact me if you have any questions about these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jennifer Shaw', with a stylized, flowing script.

Jennifer Shaw
Deputy Director