



April 27, 2012

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**Re: Protecting Students' Free Speech Rights at University of California, Los Angeles**

Dear Mr. Cohn and Dr. Seplow:

It has recently come to our attention that the University of California, Los Angeles maintains a policy that endangers the First Amendment freedoms of its students. The University's Center for Student Programming (CSP) has a posting policy that is overbroad and vague, as well as a prior restraint on speech, leaving it open to discriminate against religious groups and viewpoints. We write to inform you of this constitutional infirmity with the University's policy and to urge you to rectify it as soon as possible.

By way of introduction, the Alliance Defense Fund (ADF) is a legal alliance that defends religious liberty and other fundamental rights. ADF is dedicated to ensuring that religious and conservative students and faculty may exercise their rights to speak, associate, and learn on an equal basis with all other students and faculty.

### **I. University Policies Regulating Student Speech Must Not Be Overbroad**

"A regulation of speech may be struck down on its face if its prohibitions are sufficiently overbroad -- that is, if it reaches too much expression that is protected by the Constitution." *DeJohn v. Temple Univ.*, 537 F.3d 301, 314 (3d Cir. 2008).

The University's posting policy states that "[p]osted materials not be presented in any manner which *tends to promote demeaning social stereotypes based on race, ethnicity, culture, gender or sexual orientation.*"<sup>1</sup> However, courts around the country have struck down similar policies that contain such overbroad language. The Third Circuit struck down Temple University's anti-harassment policy due to the policy's overbreadth finding that

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<sup>1</sup> UCLA CSP Flyer Posting Procedures and Policies ¶4, *available at* <http://www.studentactivities.ucla.edu/flyers.html> (last visited Apr. 27, 2012).

the policy's use of "hostile," "offensive," and "gender-motivated" is, on its face, sufficiently broad and subjective that they "could conceivably be applied to cover any speech" of a "gender-motivated" nature "the content of which offends someone." This could include "core" political and religious speech, such as gender politics and sexual morality.

*DeJohn*, 537 F.3d at 317. And, here in the Ninth Circuit, San Francisco State University's requirement that students "be civil to one another" was struck down by a federal court because the university could not "proscribe speech or conduct that is 'merely offensive to good taste.'" *Coll. Republicans at S.F. State Univ. v. Reed*, 523 F. Supp. 2d 1005, 1010, 1013-21 (N.D. Cal. 2007) (quoting *Papish v. Bd. of Curator of Univ. of Mo.*, 410 U.S. 667, 670-71 (1973)).

The University's ban on "[p]osted materials . . . that *tend to promote demeaning social stereotypes based on race, ethnicity, culture, gender or sexual orientation*" is unconstitutional because, as the Supreme Court reiterated, "much political and religious speech might be perceived as offensive to some," *Morse v. Frederick*, 551 U.S. 393, 409 (2007), but it is still protected speech.

## II. University Policies Regulating Student Speech Must Not Be Vague

A university policy is unconstitutionally vague when "men of common intelligence must necessarily guess at its meaning." *Broadrick v. Oklahoma*, 413 U.S. 601, 607 (1973). The First Amendment requires that the government (including university) policies be written with enough clarity so that citizens have *fair warning* about what is prohibited and what is permitted conduct. *Nunez v. City of San Diego*, 114 F.3d 935, 940 (9th Cir. 1997). Policies that lack such clarity have been routinely struck down by courts, because what is "offensive" may vary from one person to another. *See, e.g., Dambrot v. Cent. Mich. Univ.*, 55 F.3d 1177, 1184 (6th Cir. 1995) ("Though some statements might be seen as universally offensive, different people find different things offensive. The facts of this case demonstrate the necessity of subjective reference in identifying prohibited speech under the policy.").

To avoid being void for vagueness, university policies must contain precise definitions of what speech is prohibited so that students have sufficient notice of what expression is subject to the policies.

## III. Conclusion

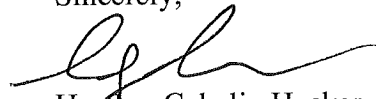
Public universities are the quintessential "marketplace of ideas," *Healy v. James*, 408 U.S. 169, 180 (1972), and are "one of the vital centers for the Nation's intellectual life," *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 836 (1995). A public university should invite robust debate and dialogue on every conceivable issue, be open to the widest possible array of ideas and views, and adopt policies that encourage the fullest possible exercise of First Amendment freedoms.

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UCLA's CSP Flyer Posting Procedures and Policies, which bans "[p]osted materials . . . which tend to promote demeaning social stereotypes based on race, ethnicity, culture, gender or sexual orientation," is inimical to these goals. The University can resolve the constitutional problems with this policy by simply removing the overbroad and vague language from the posting policy, or utilizing precise definitions therein. Failing to take these actions would unnecessarily make the University vulnerable to a federal lawsuit and an award of costs and attorneys' fees under 42 U.S.C. § 1988.

I hope this information has been helpful to you. Please notify my office by **May 25, 2012**, that UCLA will be enacting the above policy revisions. ADF attorneys are available to assist with these revisions, if such assistance is needed. If we do not hear from you by that time, we will begin the process of seeking judicial review of the policy.

Sincerely,



Heather Gebelin Hacker, Class of 2002  
ADF Legal Counsel