



December 2, 2008

Via U.S. Mail & E-mail at jonesa@lacitycollege.edu

Ms. Allison Jones
Dean of Academic Affairs
Los Angeles City College
855 N. Vermont Avenue
Los Angeles, California 90029

Re: *Unconstitutional Discrimination & Retaliation against Jonathan Lopez*

Dear Ms. Jones:

Jonathan Lopez, a student at Los Angeles City College (LACC), recently contacted the ADF Center for Academic Freedom regarding LACC's violation of his First Amendment rights to free speech and religious liberty. By way of introduction, the Alliance Defense Fund (ADF) is a legal alliance that defends both the traditional definition of marriage and America's first liberty—religious freedom. The ADF Center for Academic Freedom is dedicated to ensuring that religious students enjoy rights to speak, associate, and learn on an equal basis as students of different faiths or of no faith at all.

According to our information, John Matteson, a professor in the Speech Department, refuses to grade Mr. Lopez's speech and has singled him out for discrimination due to his religious beliefs. As a result, Mr. Lopez currently lacks a grade for his presentation and fears attending further classes taught by Mr. Matteson. Although Mr. Lopez notified LACC of this untenable situation, these violations have gone uncorrected. Mr. Lopez now seeks immediate relief.

FACTUAL BACKGROUND

Mr. Lopez is a student in Speech I at LACC, taught by Mr. Matteson. Mr. Matteson recently assigned his students to give an informative speech. It could cover any topic, could last six to eight minutes, and could include any poster board presentation aids (as long as the student used them properly). During the November 24, 2008 class, Mr. Lopez delivered an informative speech on God and the ways in which Mr. Lopez has seen God act both in his life and in the lives of others through miracles. In the middle of the speech, he addressed the issues of God and morality; thus, he referred to the dictionary definition of marriage as being between a man and a woman and also read a passage from the Bible discussing marriage. When Mr. Lopez said this, Mr. Matteson interrupted him and refused to allow him to finish his speech. Mr. Matteson then called Mr. Lopez a "fascist bastard," refused to allow him to finish the speech, and dismissed the class.

Mr. Matteson left an evaluation form on Mr. Lopez's backpack that specified no grade for the informative speech and instead instructed Mr. Lopez to "[a]sk God what your grade is." This form also states "proselytizing is inappropriate in public school." Yet, several weeks earlier, after the November presidential election, Mr. Matteson had announced to the class that

he was upset because he thought our society cared more about animals than people. He then said that “if you voted yes on Proposition 8, you are a fascist bastard.”

On December 1, 2008, Mr. Lopez arrived at Mr. Matteson’s class a few minutes late. Mr. Matteson’s class policy requires students to wait outside the classroom if someone is giving a speech until they hear applause to avoid interrupting speakers. When Mr. Lopez approached the open classroom door, he did not hear anyone speaking, and so he and another student entered. Someone was speaking, so Mr. Lopez apologized to the class. However, Mr. Matteson confronted Mr. Lopez in front of the class, saying that it was “not very Christian of you” to enter when someone was speaking.

After class, Mr. Lopez delivered a written description of these events to you outside your office. Mr. Matteson saw Mr. Lopez do this and confronted him about it. During this confrontation, Mr. Matteson said that he would make sure Mr. Lopez was expelled from school.

Mr. Lopez has not received a grade for his speech about God. Mr. Matteson’s actions constitute unconstitutional viewpoint discrimination and retaliation against Mr. Lopez because of his religious beliefs and protected speech. These actions violate Mr. Lopez’s First Amendment rights and must be remedied immediately.

LEGAL ANALYSIS

I. The First Amendment Protects Religious Speech.

It is a fundamental principle of constitutional law that the First Amendment protects religious speech, even if it concerns controversial topics.¹ First Amendment protections do not hinge on the popularity of the speech in question.² “The fact that society may find speech offensive is not sufficient reason for suppressing it. Indeed, if it is the speaker’s opinion that gives offense, that consequence is the reason for according it constitutional protection.”³ Mr. Lopez’s informative speech about God’s love and the ways He can change lives falls squarely within the protection of the First Amendment, like any other topic. His topic also falls within Mr. Matteson’s guidelines for the assignment, which allowed students to choose any topic for their speech. Thus, Mr. Lopez’s choice to address God’s ability to change lives comes under these broad guidelines and is protected by the First Amendment.

II. The Government May Not Suppress Speech on Public University Campuses.

Students do not lose the protection of the First Amendment by attending public college. For over three decades, the Supreme Court has stated “that state colleges and universities are not enclaves immune from the sweep of the First Amendment.”⁴ Instead, the First Amendment applies with at least the same force on campus as in society at large.⁵ Indeed, because colleges represent the “marketplace of ideas,”⁶ “[t]he vigilant protection of constitutional freedoms is

¹ *Widmar v. Vincent*, 454 U.S. 263 (1981).

² *See, e.g., United States v. Eichman*, 496 U.S. 310, 319 (1990) (flag burning is protected expression).

³ *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 118 (1991) (citations omitted).

⁴ *Healy v. James*, 408 U.S. 169, 180 (1972).

⁵ *Id.*

⁶ *Keyishian v. Bd. of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 603 (1967).

nowhere more vital than in the community of American schools.”⁷

Thus, students “are entitled to freedom of expression of their views It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”⁸ As the *Tinker* Court put it:

In our system, state operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are “persons” under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State. In our system, students may not be regarded as closed circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved. *In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views.*⁹

In 1995, the Supreme Court specifically rejected attempts to suppress religious speech on a university campus.¹⁰ In response to a policy that excluded religious speech from school supported publications, the Supreme Court stated that such a speech code forces school officials:

[T]o scrutinize the content of student speech, lest the expression in question—speech otherwise protected by the Constitution—contain too great a religious content . . . That eventually raises the specter of government censorship, to ensure that all student writings and publications meet some baseline standard of secular orthodoxy. To impose that standard on student speech . . . is to imperil the very sources of free speech and expression.¹¹

As college campuses are the “marketplace of ideas,”¹² they should allow students to explore different opinions, not force them to conform to the popular ideas of the day or the personal beliefs of their professors. To prevent schools from becoming “enclaves of totalitarianism,”¹³ the First Amendment must be diligently applied to protect students from forced “secular orthodoxy.”¹⁴

III. The Professor’s Failure to Grade Mr. Lopez’s Speech due to Its Religious Content Is Unconstitutional Viewpoint Discrimination.

As shown above, the First Amendment applies to religious speech on college campuses. When the government suppresses speech based on the speaker’s viewpoint, it is exercising

⁷ *Shelton v. Tucker*, 364 U.S. 479, 487 (1960).

⁸ *Tinker v. Des Moines Indep. Sch. Dist.*, 393 U.S. 503, 506 (1969).

⁹ *Id.* at 511 (emphasis added).

¹⁰ *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819 (1995).

¹¹ *Id.* at 844–45 (emphasis added).

¹² *Keyishian*, 385 U.S. at 603.

¹³ *Tinker*, 393 U.S. at 511

¹⁴ *Rosenberger*, 515 U.S. at 845.

textbook viewpoint discrimination, which is a “blatant” violation of the First Amendment.¹⁵ Viewpoint discrimination is especially pernicious as it threatens to chill “individual thought and expression,” a “danger [that] is especially real in the University setting, where the State acts against a background and tradition of thought and experiment that is the center of our intellectual and philosophic tradition.”¹⁶ In short, government officials—including Mr. Matteson—cannot regulate speech “in ways that favor some viewpoints or ideas at the expense of others.”¹⁷

Mr. Matteson allowed students to choose any topic for their informative speeches. He then singled out Mr. Lopez’s speech because it included a religious viewpoint on marriage and society. If Mr. Lopez had selected a secular topic or a different definition of marriage, Mr. Matteson would not have interrupted, objected, and called him a “fascist bastard.” Thus, “[t]he prohibited perspective, not the general subject matter, resulted in the [Mr. Matteson’s conduct], for the subjects discussed were otherwise within the approved category of [topics].”¹⁸ This is viewpoint discrimination, and is presumptively unconstitutional.¹⁹ To be clear, Mr. Matteson is free to disagree with students’ religious viewpoints. But he cannot “express that hostility . . . through the means of imposing unique limitations upon speakers who . . . disagree.”²⁰

Mr. Matteson then intimidated Mr. Lopez by failing to grade his presentation, demeaning his religious beliefs, and threatening his status as a student. As a result, Mr. Lopez is concerned about his ultimate grade in the class and further discriminatory treatment by Mr. Matteson, which has chilled his speech that the First Amendment is designed to protect.

Mr. Matteson’s conduct embodies the dangers associated with viewpoint discrimination. By labeling students who disagreed with his position on marriage as “fascist bastards,” he “cast a pall of orthodoxy over the classroom,” which the First Amendment “does not tolerate.”²¹ By penalizing Mr. Lopez for the religious content his speech, he put Mr. Lopez in an academic “strait jacket” and limited his freedom “to inquire, to study and to evaluate, to gain new maturity and understanding.”²² In sum, he excluded views he disfavors from his corner of the “marketplace of ideas,” and thus, he denied his students the opportunity to be “trained through wide exposure to that robust exchange of ideas which discovers truth out of a multitude of tongues,” preferring instead his own “authoritative selection.”²³

IV. The Professor’s Refusal to Grade Mr. Lopez’s Speech, Discriminatory Comments, and Threats Constitute Classic First Amendment Retaliation.

Public colleges cannot retaliate against students for expressing ideas.²⁴ Retaliation occurs

¹⁵ *Id.* at 829; *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 394 (1993).

¹⁶ *Rosenberger*, 515 U.S. at 835 (citations omitted).

¹⁷ *Members of City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 804 (1984); *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 46 (1983).

¹⁸ *Rosenberger*, 515 U.S. at 831.

¹⁹ *Id.* at 828.

²⁰ *R.A.V. v. City of St. Paul*, 505 U.S. 377, 396 (1992).

²¹ *Keyishian*, 385 U.S. at 603.

²² *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957).

²³ *Keyishian*, 385 U.S. at 603.

²⁴ *Papish v. Bd. of Curators of Univ. of Mo.*, 410 U.S. 667 (1973).

when the government inflicts injury on the speaker because of his expressive conduct.²⁵ Here, Mr. Matteson has retaliated against Mr. Lopez due to his expression and threatens to continue to do so.

Mr. Lopez presented an informational speech about how he has seen God change people's lives and guide social morality. When Mr. Lopez mentioned a traditional definition of marriage—as being between one man and one woman—Mr. Matteson called him a “fascist bastard” and refused to allow him to finish his presentation, evincing clear hostility toward the viewpoint. Mr. Lopez simply wanted a fair chance to complete his presentation and receive an objective evaluation of his speech skills. Instead, Mr. Matteson has exhibited pervasive hostility toward Mr. Lopez because of his Christian beliefs and speech.

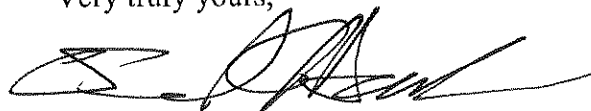
Consequently, Mr. Lopez described these events to you in an effort to protect his rights, but when Mr. Matteson saw him talking with you, he threatened to have Mr. Lopez expelled. Thus, not only is Mr. Matteson refusing to grade Mr. Lopez's presentation, but he is also singling out Mr. Lopez for discriminatory treatment because of his beliefs and proactively working to deny him educational benefits. Mr. Matteson's response embodies classic First Amendment retaliation.

DEMAND

The violation of an individual's First Amendment rights, even for a moment, results in “irreparable injury.”²⁶ Thus, the unconstitutional retaliation and discrimination against Mr. Lopez must cease immediately. Mr. Lopez respectfully requests that his speech presentation be graded immediately and fairly. He further requests that you take immediate action to discipline Mr. Matteson and order him to issue a public apology to Mr. Lopez. Mr. Lopez also seeks written assurance from LACC that the faculty will respect his First Amendment rights and those of other students on its campus from this point forward.

Please respond in writing to this letter by close of business Monday, **December 8, 2008**. If these issues are not resolved, I will advise my client of his rights to seek redress in federal court.

Very truly yours,



David J. Hacker
Litigation Staff Counsel
ADF CENTER FOR ACADEMIC FREEDOM

cc: Mr. Jonathan Lopez
Dr. Jamillah Moore, President, Los Angeles City College: moorej@lacitycollege.edu

²⁵ *Smith v. Marasco*, 318 F.3d 497 (3d Cir. 2003).

²⁶ *Elrod v. Burns*, 427 U.S. 347, 373 (1976).