



June 5, 2009

Chancellor Gene Block
University of California, Los Angeles
Chancellor's Office
2147 Murphy Hall
Los Angeles, CA 90095-1405

Via Facsimile at (310) 206-6030 and UPS Next Day Saver

Re: Unlawful Viewpoint Discrimination at the Department of Molecular Cell and Developmental Biology Commencement Ceremony

Dear Chancellor Block,

I write to you on behalf of Christina Popa, an undergraduate student who will shortly be graduating with a degree in Molecular Cell and Developmental Biology. By way of introduction, the Alliance Defense Fund (ADF) is a legal alliance that defends America's first liberty—religious liberty. The ADF Center for Academic Freedom is dedicated to ensuring that religious and conservative students enjoy rights to speak, associate, and learn on an equal basis as all other students. When necessary, we will litigate to secure our clients' rights.

FACTUAL BACKGROUND

On May 21, 2009, Dr. Pamela Hurley, the Student Affairs Advisor for the Department of Molecular Cell and Developmental Biology (MCDB), sent an e-mail to all graduating students containing information about the department commencement ceremony scheduled for June 13, 2009. Dr. Hurley informed the students of the department's standing practice of collecting personal statements from each student, which Dr. Hurley reads as the student crosses the stage to receive their degree at the commencement ceremony. Dr. Hurley describes this part of the ceremony as the "best part" and a "treasured memory," and states that it is done to "make it a more personalized and special experience" for the graduates.

She instructed each student to send her a short statement to read, which she states can be "almost anything," including to whom the student is grateful for their achievement, something they will remember about their UCLA experience, what it means to them or their family to graduate from college, a favorite quote, etc. Dr. Hurley told the students that the statement does not have to be profound and some of the most memorable have even involved personal ads or

have been “fanciful” or “outrageously wild.” She also adds, however, a “disclaimer” that it would be considerate to refrain from political, derogatory or “specific religious expression” so as not to offend anyone. The plain language of this so-called “disclaimer” is not mandatory.

Ms. Popa decided to use her statement to thank important people in her life. On June 1, she sent the following personal statement to Dr. Hurley as requested:

I want to thank my Lord and Savior Jesus Christ. I also want to thank my father who passed away 3 years ago, for teaching me to always do my best and thus motivating me to pursue the sciences. I want to thank my mother for supporting me in school as well as my sisters and brother for encouraging me and my friends for making college fun. I plan to work in a research lab or become a dietician.

Dr. Hurley responded on June 2 by stating:

UCLA is a public university where the doctrine of separation of church and state is observed, in order to respect the sheer diversity of religious beliefs among the people who come here. Since that is so, we do permit MCDB graduates to thank God in their words of wisdom, but we also ask that they refrain from making more specific religious references of any kind. In this setting, even I would not personally be comfortable reading:

"I want to thank my Lord and Savior Jesus Christ."

Therefore, I need to let you know that I will read your Words of Wisdom as follows:

First, I want to thank God. I also want to thank my father who passed away 3 years ago, for teaching me to always do my best and thus motivating me to pursue the sciences. I want to thank my mother for supporting me in school as well as my sisters and brother for encouraging me and my friends for making college fun.

Ms. Popa wrote back to Dr. Hurley on June 4 and expressed her displeasure at this censorship of her personal statement, which gives thanks to the most important people in her life. For her, that includes Jesus Christ. She rightfully pointed out that Dr. Hurley's edits were unlawful and discriminatory.

Dr. Hurley responded on June 4 by claiming that Ms. Popa's speech was not being censored because she was advised in advance of the disclaimer "policy," and stated that she was the one who would be reading Ms. Popa's statement and she objected to reading "specific religious references." She concluded by stating, "If you prefer, Christina, I can read none of what you wrote. I am very sorry that this is a problem for you."

LEGAL ANALYSIS

Dr. Hurley is mistaken about the so-called "separation of church and state" and what it means in the context of the First Amendment. The Establishment Clause of the First Amendment provides that "Congress shall make no law respecting an establishment of religion." It merely "requires the state to be a neutral in its relations with . . . religious believers and non believers; it does not require the state to be their adversary." *Everson v. Bd. of Educ.*, 330 U.S. 1, 18 (1947). And the Establishment Clause does not somehow exclude religious speech from full protection under the First Amendment. As the Supreme Court has stated:

Our precedent establishes that private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression . . . Indeed, in Anglo-American history, at least, government suppression of speech has so commonly been directed precisely at religious speech that a free-speech clause without religion would be *Hamlet* without the prince.

Capitol Square Rev. & Advisory Bd. v. Pinette, 515 U.S. 753, 760 (1995).

The Supreme Court has held for many years that private religious speech, even in public settings, does not implicate the Establishment Clause, which applies only to *government speech*. There is a "crucial difference between *government* speech endorsing religion, which the Establishment Clause forbids, and *private* speech endorsing religion, which the Free Speech and Free Exercise Clauses protect." *Bd. of Educ. of the Westside Cmty. Schs. v. Mergens*, 496 U.S. 226, 250 (1990) (emphasis in original). While private religious expression may be regulated in certain limited contexts where there is a real danger of the appearance of government endorsement, or coercion of a captive audience to participate in or be present for devotional activities, those circumstances do not exist here.

Allowing individual students to express themselves through their "Words of Wisdom" read as they receive their degree, even where some students choose to acknowledge their religious beliefs in those statements, can only be said to convey a message of governmental neutrality toward religion, which is what the Establishment Clause requires. And certainly no danger of perceived endorsement can be said to exist, even if Dr. Hurley reads the statements in

the first person, since no reasonable person would attribute those statements to anyone except the graduate crossing the stage. Indeed, given the “fanciful” and “outrageously wild” statements of the past, it is doubtful that the department views itself as endorsing the content of the statements either.

Quite simply, Dr. Hurley is mistaken about the meaning of the Establishment Clause. It in no way prevents Ms. Popa from expressing herself on an equal basis with other students during the commencement ceremony, even if she chooses to express a religious viewpoint.

Moreover, not only is Dr. Hurley’s exclusion of Ms. Popa’s religious viewpoint not required by the Establishment Clause, it actually violates the Free Speech Clause of the First Amendment. It is well-established that government discrimination against certain viewpoints, religious ones included, is unconstitutional. *Rosenberger v. Rector & Visitors of the Univ. of Virginia*, 515 U.S. 819, 829 (1995). Here, the department has certainly opened the ceremony for personal expression, and Ms. Popa has the right to express her gratitude to important people in her life just like any other student. It is blatant viewpoint discrimination for the department to allow students to thank God (or their mom or professors or Diddy Riese cookies, as has been done in the past) but not Jesus. It is viewpoint discrimination for the department to allow quotes from poets and philosophers (again, as has been done in the past) without permitting a brief declaration of faith in Jesus Christ. The Supreme Court has held on three separate occasions that “speech discussing otherwise permissible subjects cannot be excluded from a limited public forum on the ground that the subject is discussed from a religious viewpoint.” *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 112 (2001) (referring to holdings in *Rosenberger*, 515 U.S. 819, and *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993)).

Ms. Popa is not asking Dr. Hurley or anyone in the audience to pray or convert to her religious beliefs. She simply wants to thank Jesus as she graduates from college, which will certainly be among the greatest accomplishments in her life, just as the other graduates will thank people that are important in their lives. If Dr. Hurley objects to saying the words, “I want to thank Jesus Christ, my Lord and Savior,” even though it will be clear to everyone in the room that those words are Ms. Popa’s and not hers or UCLA’s, then Dr. Hurley does not have to read the statement in the first person tense. What she cannot do, however, is favor some viewpoints over others and censor speech she disagrees with, and that is what she has done here. This is a violation of Ms. Popa’s First Amendment rights.

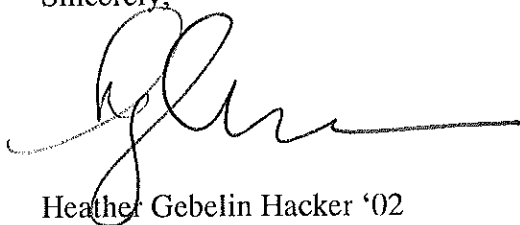
DEMAND

Deprivation of First Amendment rights, even for a moment, causes irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Ms. Popa will suffer irreparable injury to her constitutional rights if her personal statement is censored to remove her religious viewpoint.

Because the MCDB commencement is scheduled for June 13, 2009, please respond in writing no later than the close of business, Tuesday, June 9, 2009, verifying that Ms. Popa's personal statement thanking Jesus will be read along with her classmates'. If we do not receive such assurance, we will advise Ms. Popa of her right to seek emergency redress in federal court.

On a more personal note, as a graduate of UCLA and lifetime member of the UCLA Alumni Association, I am shocked and dismayed at the disrespectful way Dr. Hurley treated Ms. Popa. That is not a reflection of the UCLA I know and love, and that is no way for a member of the Bruin family to be treated. Graduation from UCLA should be one of the proudest moments of Ms. Popa's life—I know it was one of the proudest moments in mine. Please do not let Ms. Popa's final days at UCLA be tainted by unconstitutional discrimination—instead, I urge you to do all that is in your power to ensure that they will be days she will always remember fondly.

Sincerely,



Heather Gebelin Hacker '02
Litigation Staff Counsel
ADF Center for Academic Freedom

- cc: Christina Popa
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