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Jonathan A. Pearl, Esq.
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Re: Southwestern College Actions and Policies Infringing Free Speech

Dear Mr. Pearl:

I am writing in regard to the current and proposed free speech policies for Southwestern College ("SWC"). This letter incorporates all previous correspondence from ACLU and FIRE to both SWC and your office regarding those policies. As discussed in the previous correspondence, both the current and proposed policies violate applicable law. Unless the policies have been amended to comply with relevant law, litigation will be necessary to ensure compliance and protect freedom of speech.

Though you are probably familiar with the relevant correspondence, this letter provides a brief summary. On November 3, 2009, FIRE sent a letter to SWC challenging its "Freedom of Expression" policy (No. 5550). FIRE cited numerous constitutional problems with that policy's restrictions on speech, expression, and assembly by SWC's students and faculty. Among the problems was SWC's declaration that most of the campus was not a public forum and that assembly and expression were confined to a small "free speech patio." FIRE also criticized the dangerously vague language of the policy and its grant of excessive discretion to SWC's President in regulating speech. FIRE called on SWC to revise its Freedom of Expression policy, to stop declaring proper assembly unlawful, and to begin respecting the First Amendment rights of students and faculty.

In a letter dated November 9, 2009, the ACLU reiterated the concerns raised by FIRE and also indicated several additional problems in the policy. You responded by letter dated November 25, 2009, which stated SWC had been reviewing the policy since at least October and would continue to do so.

The ACLU did not hear from SWC again until a January 4, 2010 letter from Nicholas Alioto. Mr. Alioto, SWC's Vice President for Business & Financial Affairs, wrote that a committee had been formed to review the school's free speech policy, chaired by Dr. Viara Giraffe, who was out of town at that time.

On March 24, 2010, ACLU and FIRE wrote a joint letter to Dr. Giraffe responding to a draft of the proposed free speech policy. This letter pointed out several areas of First Amendment concern with the proposed policy, including vague language, a broad ban on commercial speech, and a provision allowing regulations on speech that interfered with the rights of others, which was readily susceptible to abuse.

SWC revised the proposed policy, and the ACLU again responded on May 7, 2010. In that letter, the ACLU recognized the revised proposal as a step forward, but still indicated serious concerns, especially with the policy's use of permits as a prior restraint on free speech.

FIRE sent a letter to President Chopra on May 12, 2010, charging SWC with knowingly maintaining an unconstitutional free speech policy. FIRE called for an immediate repeal of the unconstitutional policy, and indicated that the officials responsible for maintaining the unlawful policy might become personally liable in a future suit.

By letter dated May 25, 2010, you indicated that SWC continued to revise its free speech policies and would consider the suggestions offered by the ACLU and FIRE. However, since that time, I have not heard from you or SWC regarding the adoption of any revisions to SWC's policies. As far as I know, Policy No. 5550, which is clearly illegal, remains in effect.

For the past several months, I have been hoping to resolve these issues without litigation if possible. If the relevant policies have been formally revised, please let me know as soon as possible. But if SWC has not taken and does not immediately take sufficient action to comply with the relevant law protecting freedom of speech on campus, as discussed in previous correspondence, I will have no alternative but to initiate litigation.

This letter may not address every legal issue arising from the current or proposed policy and does not waive the right to raise any issue in future litigation. I welcome any discussions with you or SWC officials on how to resolve these issues and protect freedom of speech on the SWC campus. However, the problem has persisted for eight months without resolution, and if it is not resolved in the immediate future, litigation is likely to result.

Thank you for your time and attention to these matters. Please call me on my direct line at 619.398.4496 if you have any questions.

Sincerely,

David Blair-Loy
Legal Director