



May 9, 2011

***VIA EMAIL & U.S. MAIL***

Daniel Herbst  
Dean of Student Affairs  
Phoenix College  
1202 W. Thomas Road  
Phoenix, Arizona 85013  
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**Re: *Unconstitutional Speech Restriction***

Dear Mr. Herbst:

This letter is sent on behalf of our clients, Mr. Jason Walsh and the Center for Bio-Ethical Reform, Inc. ("CBR"). CBR is a social reform organization whose main purpose is to promote prenatal justice and the right to life for the unborn. Mr. Walsh is the Director for the South West Regional Operations of CBR. One way in which CBR achieves its purpose is by distributing anti-abortion literature on college campuses throughout the United States. CBR's literature does not contain solicitations. Samples are enclosed with this letter.

On April 1, 2011, government officials at Phoenix College impermissibly prohibited Mr. Walsh and three of his associates from peacefully distributing their literature on the sidewalks, streets, and other public areas of the campus.

The U.S. Supreme Court has long held that the First Amendment protects a private citizen's right to distribute literature in public places. *See Lovell v. City of Griffin*, 303 U.S. 444, 452 (1938); *Jamison v. Texas*, 318 U.S. 413, 416 (1943) ("[O]ne who is rightfully on a street which the state has left open to the public carries with him there as elsewhere the constitutional right to express his views in an orderly fashion. This right extends to the communication of ideas by handbills and literature as well as by the spoken word."); *Martin v. City of Struthers*, 319 U.S. 141, 145-49 (1943) ("Freedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society that . . . it must be fully preserved.").

It is axiomatic that a private citizen's speech cannot be restricted because it might be offensive to some. *See Terminiello v. City of Chicago*, 337 U.S. 1 (1949) ("[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger."); *Simon & Schuster, Inc. v. Members of N.Y. Crime Victims Bd.*, 502 U.S. 105, 118 (1991) ("The fact that society may find speech offensive is not a sufficient reason for suppressing it. Indeed, if it is the speaker's opinion that gives offense, that consequence is a reason for according it constitutional protection."); *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 210 (1975) ("[T]he Constitution does not permit government to decide which types of otherwise protected speech are sufficiently offensive to require protection for the unwilling listener or viewer.").

While a college campus is “peculiarly the ‘marketplace of ideas,’” *Healy v. James*, 408 U.S. 169, 180 (1972), we acknowledge that the U.S. Supreme Court has held that First Amendment rights on a campus must be analyzed in light of the special characteristics of the school environment. *Widmar v. Vincent*, 454 U.S. 263 (1981). To that end, the Court noted that college officials may impose “reasonable regulations compatible with [the college’s education] mission upon the use of its campus and facilities.” *Id.* at 268 n.5 (emphasis added). A viewpoint-based restriction on speech, however, is not “reasonable” as a matter of law. *Perry Educ. Ass’n v. Perry Local Educators*, 460 U.S. 37, 46 (1983) (holding that even in a nonpublic forum, a restriction on speech must be “reasonable and not an effort to suppress expression merely because public officials oppose the speaker’s view”).

On April 1, 2011, Mr. Walsh and his associates were peacefully distributing their anti-abortion literature in the public areas adjacent to the Hannelly Center when they were stopped by a campus security guard. The security guard told Mr. Walsh that he needed permission from the Dean of Students to distribute his literature on campus. Mr. Walsh complied with the security guard and proceeded to speak with Ms. Genesis Toole, an assistant to the Dean of Students. Ms. Toole examined the content of the literature, realized that it expressed a viewpoint in opposition to abortion, and told Mr. Walsh that the literature would not “benefit” the students, noting that some students and faculty have had abortions. Permission was therefore denied. As a result, Mr. Walsh and his associates promptly departed the campus.

It is evident that the speech restriction imposed by Ms. Toole was viewpoint based and therefore unconstitutional, even on a college campus. Consequently, we request your assurance that this speech restriction was improper and will not be imposed against our clients in the future. If you decide to continue to enforce your viewpoint-based restriction on our clients’ speech, we request that you provide us with a copy of the written guidelines and/or policy setting forth the details of the restriction.

We request a response to this letter by May 20, 2011, so that we can advise our clients as to their legal rights, including the right to seek injunctive relief in federal court. If you decide to ignore this letter, we will assume that you intend to continue to enforce your unconstitutional, viewpoint-based restriction on our clients’ speech.

Thank you for your prompt attention to this important matter.

Sincerely,

THOMAS MORE LAW CENTER



Robert J. Muise  
*Senior Trial Counsel*

LAW OFFICES OF DAVID YERUSHALMI, P.C.  
David Yerushalmi, Esq.  
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Encls.

cc: Jason Walsh  
Gregg Cunningham, Executive Director, CBR