



October 23, 2015

The Honorable Butch Otter
Office of the Governor
State Capitol: West Wing, 2nd Floor
P.O. Box 83720
Boise, Idaho 83720-0034

Sent via U.S. Mail and Electronic Mail (governor@gov.idaho.gov)

Dear Governor Otter,

My name is Will Creeley. I am the Vice President of Legal and Public Advocacy for the Foundation for Individual Rights in Education (FIRE), a nonpartisan, nonprofit organization dedicated to defending the core constitutional rights of students and faculty members at our nation's colleges and universities. Our website, thefire.org, will provide you with a greater sense of our identity and activities.

I write you today to express FIRE's concern about the policies restricting student and faculty speech maintained by Idaho's public colleges and universities, and to offer our assistance in remedying the constitutional problems they present.

Like public institutions of higher learning nationwide, Idaho's colleges and universities are legally required to honor the First Amendment rights of their students and faculty members. Indeed, it has long been settled law that the First Amendment is fully binding on public university campuses. *See, e.g., Widmar v. Vincent*, 454 U.S. 263, 268–69 (1981) ("With respect to persons entitled to be there, our cases leave no doubt that the First Amendment rights of speech and association extend to the campuses of state universities.").

Accordingly, campus speech codes—university regulations prohibiting expression that would be constitutionally protected in society at large—have been consistently struck down on First Amendment grounds by federal and state courts in a virtually unbroken series of decisions dating back more than 25 years.¹ These courtroom defeats demonstrate

¹ *See McCauley v. University of the Virgin Islands*, 618 F.3d 232 (3d Cir. 2010); *DeJohn v. Temple University*, 537 F.3d 301 (3d Cir. 2008); *Dambrot v. Central Michigan University*, 55 F.3d 1177 (6th Cir. 1995); *University of Cincinnati Chapter of Young Americans for Liberty v. Williams*, 2012 U.S. Dist. LEXIS 80967 (S.D. Ohio Jun. 12, 2012); *Smith v. Tarrant County College District*, 694 F. Supp. 2d 610 (N.D. Tex. 2010); *College Republicans at San Francisco State University v. Reed*, 523 F. Supp. 2d 1005 (N.D. Cal. 2007); *Roberts v. Haragan*, 346 F.

conclusively that the First Amendment does not tolerate the threat of censorship on campus.

But despite the unanimity of this precedent, research conducted by FIRE attorneys indicates that a majority of public colleges and universities nevertheless maintain policies that threaten First Amendment rights. For example, in 2014, FIRE reviewed policies governing student and faculty expression at 333 public institutions. Shockingly, 54.1% of

proper role of the University to attempt to shield individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive.”

We are proud of the progress we have made towards ending campus censorship by working directly with colleges and universities. But given the depressing pervasiveness of campus speech codes, we have also begun aggressive new initiatives in recent years to achieve First Amendment compliance. For example, in July 2014, we launched our Stand Up For Speech Litigation Project, a national effort to eliminate unconstitutional speech codes through targeted First Amendment lawsuits. To date, we have filed 10 lawsuits, three of which remain ongoing. The seven suits completed thus far have resulted in successful settlements and policy revisions restoring the free speech rights of almost 200,000 students and securing over \$350,000 in damages and attorney’s fees. FIRE will continue to file lawsuits against public institutions that shirk their constitutional obligations to their students and faculty until full First Amendment compliance is achieved.

Of course, were public colleges and universities to voluntarily reform their speech-related policies in favor of freedom of expression, the need for litigation would be obviated. Your leadership on this issue would be welcome. Not only would eliminating speech codes at Idaho’s public colleges and universities benefit the students and faculty who study and work at thoseies benefitfoi(ag would se)TjIdaho’s publclNneeaculty y y nt puj10oem witfoi(ag would se)

