

**FOR PUBLICATION**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

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JONATHAN LOPEZ,  
Plaintiff-Appellee,

v.

KELLY G. CANDAELE, in his individual and official capacities as member of the Los Angeles Community College District Board of Trustees; MONA FIELD, in her individual and official capacities as member of the Los Angeles Community College District Board of Trustees; GEORGIA L. MERCER, in her individual and official capacities as member of the Los Angeles Community College District Board of Trustees; NANCY PEARLMAN, in her individual and official capacities as member of the Los Angeles Community College District Board of Trustees; ANGELA J. REDDOCK, in her individual and official capacities as member of the Los Angeles Community College District Board of Trustees; MIGUEL SANTIAGO, in his individual and official capacities as member of the Los Angeles Community College District Board of Trustees;

SYLVIA SCOTT-HAYES, in her  
individual and official capacities  
as member of the Los Angeles  
Community College District Board  
of Trustees; GENE LITTLE, in his  
individual and official capacities  
as Director of the Los Angeles  
Community College District Office  
of Diversity Programs; JAMILLAH  
MOORE, in her individual and  
official capacities as President of  
Los Angeles City College;  
ALLISON JONES, in her individual  
and official capacities as Dean of

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No. 09-56238

D.C. No.  
2:09-cv-00995-

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Before: Ronald M. Gould, Sandra S. Ikuta and  
N. Randy Smith, Circuit Judges.

Opinion by Judge Ikuta

### **COUNSEL**

Mary L. Dowell and David A. Urban, Liebert Cassidy Whitmore, P.C., Los Angeles, California, for the appellants.

David J. Hacker and Heather G. Hacker, Alliance Defense Fund, Folsom, California; David A. French, Alliance Defense Fund, Columbia, Tennessee, for the appellee.

Sam Kim and Michael L. Parker, Sam Kim and Associates,

dent failed to carry the burden of proving he suffered an injury in fact, he does not satisfy the <sup>a</sup>irreducible constitutional minimum of standing<sup>o</sup> necessary to challenge the policy. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

I

For the limited purpose of reviewing the preliminary injunction at issue, the salient facts are undisputed.

A

In the fall of 2008, plaintiff Jonathan Lopez was a student at Los Angeles City College (LACC), which is one of the public colleges within the Los Angeles Community College District (the District). At the time Lopez attended LACC, the District had promulgated a sexual harassment policy comprising a chapter of the District's <sup>a</sup>Board Rules and Administrative Regulations,<sup>o</sup> as authorized under state law. See Cal. Educ. Code §§ 66300, 70902. LACC is subject to the District's regulations, including its sexual harassment policy. Two sections of this sexual harassment policy are relevant here. Section 15001 sets forth the District's general policy on this issue, stating in relevant part:

The policy of the Los Angeles Community College District is to provide an educational, employment and business environment free from unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communications constituting sexual harassment. Employees, students, or other persons acting on behalf of the District who engage in sexual harassment as defined in this policy or by state or federal law shall be subject to discipline, up to and including discharge, expulsion or termination of contract.

Section 15003(A) defines <sup>a</sup>sexual harassment<sup>o</sup> as including:

Unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the workplace or in the educational setting, under any of the following conditions: . . . (3) The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile or offensive work or educational environment.<sup>1</sup>

According to the policy, the District's Director of Affirmative Action Programs oversees the implementation of the sexual harassment policy, but may delegate these duties to an individual Sexual Harassment Compliance Officer. District

munity Colleges must conform to District and [LACC] rules and regulations,<sup>o</sup> and that violations will result in disciplinary action. In addition, the website of the District's Office of Diversity Programs contains relevant portions of Section 15003, and gives some examples of sexual harassment, including <sup>a</sup>[v]erbal harassment,<sup>o</sup> <sup>a</sup>[d]isparaging sexual remarks about your gender,<sup>o</sup> <sup>a</sup>[d]isplay of sexually suggestive objects, pictures, cartoons, posters, screen savers,<sup>o</sup> and <sup>a</sup>[m]aking unwelcome, unsolicited contact with sexual overtones (written, verbal, physical and/or visual contact).<sup>o</sup> The website also offers <sup>a</sup>[s]imple guidelines for avoiding sexual harassment,<sup>o</sup> which include the admonition, <sup>a</sup>lf [you are] unsure if certain comments or behavior are offensive do not do it, do not say it.<sup>o</sup> The LACC Compliance Office's website likewise includes the relevant portions of Section 15003, and defines one form of sexual harassment as <sup>a</sup>generalized sexist statements, actions and behavior that convey insulting, intrusive or degrading attitudes/comments about women or men. Examples include insulting remarks; intrusive comments about physical appearance; offensive written material such as graffiti, calendars, cartoons, emails; obscene gestures or sounds; sexual slurs, obscene jokes, humor about sex.<sup>o</sup>

## B

During the fall semester, Lopez was a student in Speech 101, taught by Professor John Matteson. For one assignment, Matteson directed his students to make an informative speech on a topic of their choosing. Lopez is a devout Christian who believes, as a tenet of his faith, that he must share his religious beliefs with others. For this assignment, Lopez chose to speak

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but while still in the middle of his speech, Matteson interrupted Lopez, called Lopez a "fascist bastard," and refused to allow Lopez to finish his speech. Matteson told the class that anyone who was offended could leave. When no one left, Matteson dismissed the class. In lieu of giving Lopez a grade, Matteson wrote on Lopez's speech evaluation form, "[a]sk God what your grade is" and "pros[elytising] is inappropriate in public school."

The day after this incident, Lopez met with Jones to complain about Matteson's actions. As Dean of Academic Affairs, Jones supervises the LACC faculty and oversees certain student matters and the policies and procedures that govern LACC. Jones told Lopez to put his complaint against Matteson in writing. When Lopez delivered his written complaint to Jones, Matteson observed this interaction. Matteson subsequently threatened Lopez, stating that he would make sure that Lopez was expelled from school.

On December 2, the day after this threat, Lopez turned in another Speech 101 assignment. Lopez's paper contained a list of proposed topics for a persuasive speech, including one on how to "exercise your freedom of speech right," which would include a discussion of how one should "[a]lways stand up for what you believe in." Matteson gave Lopez an "A" for this assignment, but wrote the following below the "free speech" proposed topic: "(Remember Ð you agree to Student Code of Conduct as a student at LACC)."

By this time, Lopez had obtained legal representation. On the same day that Lopez submitted his list of proposed topics,

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with your mouth, 'Jesus is Lord,' and believe in your heart that God raised Him from the dead, you will be saved;" and Matthew 22:37-38 ("Jesus said to him, 'You shall love the Lord your God with all your heart, with all your soul, and with all your mind.' This is the first and greatest commandment.").



Lopez's lawyer sent Jones and Jamillah Moore, the LACC President, a letter demanding that Lopez receive a fair grade on his informative speech, that LACC discipline Matteson and require him to make a public apology to Lopez, and that LACC and its faculty provide written assurance that they would respect Lopez and other students' First Amendment rights.

Jones responded by letter two days later. The letter stated that Jones had met with Lopez twice and had asked him to put his complaints in writing and submit written corroboration of his version of the informative speech incident from other students in the class. The letter also stated that Jones had started a "progressive discipline process" with respect to Matteson, but that both collective bargaining rules and LACC's restrictions on discussing personnel matters prevented her from disclosing details about any discipline that Matteson might receive. The letter made clear that "action is being taken, but specific details may not be shared with Mr. Lopez or [his lawyer]."

The same letter also reported that Jones had received statements from two students who were "deeply offended" by Lopez's informative speech. One student wrote that Lopez's speech "was not of the informative style that our assignment called for, but rather a preachy, persuasive speech that was completely inappropriate and deeply offensive." The student further stated that although she respected Lopez's right to free speech, "I also do not believe that our classroom is the proper platform for him to spout his hateful propaganda." The second student wrote that "I don't know what kind of actions can be taken in this situation, but I expect that this student should cond

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as is evidenced by the fact that even though many of the students were offended by Mr. Lopez'[s] speech, no action will be taken against any of them for expressing their opinions.

The letter also stated that Lopez would receive a <sup>3</sup>fair grade<sup>0</sup> for both his informative speech and for the entire class.

Lopez eventually received an <sup>3</sup>A<sup>0</sup> in the class, though he alleged he never received a grade for his informative speech. In a subsequent affidavit, Jones disavowed Matteson's actions, declaring that Matteson's behavior was spontaneous and not in accordance with any LACC or District <sup>3</sup>handbooks, regulations[,] and codes.<sup>0</sup> The affidavit also confirmed that <sup>3</sup>Matteson was disciplined for [his] conduct.<sup>0</sup> Lopez had no subsequent interactions with Matteson, and the record contains no other complaints or other allegations of enforcement actions taken against Lopez due to his speech. Nor did the District or LACC take any enforcement action against Lopez under the sexual harassment policy.

### C

Lopez ultimately filed suit against Matteson, Jones and other District and college officials.<sup>3</sup> Lopez brought four causes of action against the Defendants under 42 U.S.C. § 1983. The first three causes of action alleged that Matteson's conduct violated Lopez's First Amendment and equal protection rights. In his fourth cause of action, the only one relevant here, Lopez claimed that the District's sexual harass-

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<sup>3</sup>In addition to Matteson and Jones, Lopez sued Moore, the president of LACC, Cristy Passman, the LACC Compliance Officer, Gene Little, Director of the District's Office of Diversity Programs, and the District's Board of Trustees (Kelly G. Candaele, Mona Field, Georgia L. Mercer, Nancy Pearlman, Angela J. Reddock, Miguel Santiago, and Sylvia Scott-Hayes.) Except for Matteson, who is not a named defendant in this appeal, we refer to the defendants by name or collectively as Defendants.

ment policy violated the First Amendment because it was unconstitutionally overbroad and vague.<sup>4</sup>

Lopez moved for a preliminary injunction to enjoin the Defendants from enforcing the sexual harassment policy. In entertaining this motion, the district court first concluded that Lopez had standing to bring a facial challenge to the policy because it applied to Lopez by virtue of his enrollment at LACC, the policy likely reached the speech in which Lopez wanted to engage, and Lopez has censored himself for fear of discipline under the policy.<sup>5</sup> The district court then concluded that the policy was unconstitutionally overbroad and could not be narrowed, and granted Lopez's motion to enjoin the District from enforcing the policy. While this appeal of the court's preliminary injunction was pending, the district court granted the Defendants' previously filed motion to dismiss the remaining causes of action, with limited leave for Lopez to amend.

## II

We review de novo the district court's determination that Lopez has standing. *Am.-Arab Anti-Discrimination Comm. v. Thornburgh*, 970 F.2d 501, 506 (9th Cir. 1992). Lopez bears the burden of establishing standing because he is the partwa/o Tw otandi 1992m

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A

[1] In order to invoke the jurisdiction of the federal courts, a plaintiff must establish <sup>a</sup>the irreducible constitutional minimum of standing,<sup>o</sup> consisting of three elements: injury in fact, causation, and a likelihood that a favorable decision will redress the plaintiff's alleged injury. Lujan, 504 U.S. at 560-61; see Cal. Pro-Life Council, Inc. v. Getman, 328 F.3d 1088, 1093 (9th Cir. 2003). The injury in fact must constitute <sup>a</sup>an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical.<sup>o</sup> Lujan, 504 U.S. at 560 (internal citations and quotations omitted). The plaintiff must prove injury in fact <sup>a</sup>in the same way as any other matter on which the plaintiff bears the burden of proof, i.e., with the manner and degree of evidence required at the successive stages of the litigation.<sup>o</sup> Id. at 561. Therefore, at the preliminary injunction stage, a plaintiff must make a <sup>a</sup>clear showing<sup>o</sup> of his injury in fact. Winter v. Natural Resources Def. Council, Inc., 129 S. Ct. 365, 376 (2008).

[2] Because <sup>a</sup>[c]onstitutional challenges based on the First Amendment present unique standing considerations,<sup>o</sup> plaintiffs may establish an injury in fact without first suffering a direct injury from the challenged restriction. Bayless, 320 F.3d at 1006. <sup>a</sup>In an effort to avoid the chilling effect of sweeping restrictions, the Supreme Court has endorsed what might be called a 'hold your tongue and challenge now' approach rather than requiring litigants to speak first and take their chances with the consequences.<sup>o</sup> Id.; Getman, 328 F.3d at 1094. In such pre-enforcement cases, the plaintiff may meet constitutional standing requirements by <sup>a</sup>demonstrat[ing] a realistic danger of sustaining a direct injury as a result of the statute's operation or enforcement.<sup>o</sup> Babbitt v. United Farm Workers Nat'l Union, 442 U.S. 289, 298 (1979); see LSO, 205 F.3d at 1154. To show such a <sup>a</sup>realistic danger,<sup>o</sup> a plaintiff must <sup>a</sup>allege[ ] an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed

by a statute, and . . . a credible threat of prosecution thereunder.<sup>o</sup> *Babbitt*, 442 U.S. at 298; see *Bayless*, 320 F.3d at 1006; *LSO*, 205 F.3d at 1154-55.

[3] Despite this <sup>a</sup>relaxed standing analysis<sup>o</sup> for pre-enforcement challenges, *Canatella v. California*, 304 F.3d 843, 853 n.11 (9th Cir. 2002), plaintiffs must still show an actual or imminent injury to a legally protected interest. See *Lujan*, 504 U.S. at 560. Even when plaintiffs bring an overbreadth challenge to a speech restriction, i.e., when plaintiffs challenge the constitutionality of a restriction on the ground that it may unconstitutionally chill the First Amendment rights of parties not before the court, they must still satisfy <sup>a</sup>the rigid constitutional requirement that plaintiffs must demonstrate an injury in fact to invoke a federal court's jurisdiction.<sup>o</sup> *Dream Palace v. Cnty. of Maricopa*, 384 F.3d 990, 999 (9th Cir. 2004) (quoting *4805 Convoy, Inc. v. City of San Diego*, 183 F.3d 1108, 1112 (9th Cir. 1999)); see also *Sec'y of State v. Joseph H. Munson Co.*, 467 U.S. 947, 958 (1984). The touchstone for determining injury in fact is whether the plaintiff has suffered an injury or threat of injury that is credible, not <sup>a</sup>imaginary or speculative.<sup>o</sup> *Babbitt*, 442 U.S. at 298 (quoting *Younger v. Harris*, 401 U.S. 37, 42 (1971)).

We look at a number of factors to determine whether plaintiffs who bring suit prior to violating a statute, so-called <sup>a</sup>pre-enforcement plaintiffs,<sup>o</sup> have failed to show that they face a credible threat of adverse state action sufficient to establish standing. As discussed in more detail below, in this context we have conducted three related inquiries. First, we have considered whether pre-enforcement plaintiffs have failed to show a reasonable likelihood that the government will enforce the challenged law against them. Second, we have considered

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bility weighs against both the plaintiffs' claims that they intend to violate the law, and also their claims that the government intends to enforce the law against them.

## B

Beginning with the first factor, we have considered a government's preliminary efforts to enforce a speech restriction or its past enforcement of a restriction to be strong evidence (although not dispositive, LSO, 205 F.3d at 1155) that pre-enforcement plaintiffs face a credible threat of adverse state action. For example, a threat of government prosecution is credible if the government has indicted or arrested the plaintiffs, *Younger*, 401 U.S. at 41-42, if <sup>a</sup>prosecuting authorities have communicated a specific warning or threat to initiate proceedings<sup>o</sup> under the challenged speech restriction, or if there is a <sup>a</sup>history of past prosecution or enforcement under the challenged statute.<sup>o</sup> *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1139 (9th Cir. 2000) (en banc). See, e.g., *Steffel v. Thompson*, 415 U.S. 452, 459 (1974) (plaintiff established injury in fact where the government twice warned him to stop distributing handbills and threatened him with prosecution under a Georgia statute if he continued to distribute the handbills); *Culinary Workers Union v. Del Papa*, 200 F.3d 614, 616, 618 (9th Cir. 1999) (per curiam) (plaintiff had established injury in fact under a Nevada statute when the attorney general wrote a <sup>a</sup>precise and exact<sup>o</sup> letter to the union which quoted the statute in full and threatened to refer the prosecution to <sup>a</sup>local criminal authorities<sup>o</sup>).

The threatened state action need not necessarily be a prosecution. See, e.g., *Meese v. Keene*, 481 U.S. 465, 472-73 (1987) (holding that the plaintiff established standing by proving harms flowing from the government's designation of three films as <sup>a</sup>political propaganda<sup>o</sup>); *Canatella*, 304 F.3d at 852-53 (holding that the plaintiff had standing to challenge state bar statutes and professional rules where he had previously been subject to state bar disciplinary proceedings and

could be subject to them in the future). Moreover, the plaintiffs themselves need not be the direct target of government enforcement. A history of past enforcement against parties similarly situated to the plaintiffs cuts in favor of a conclusion that a threat is specific and credible. See *Adult Video Ass'n v. Barr*, 960 F.2d 781, 785 (9th Cir. 1992), vacated sub nom. *Reno v. Adult Video Ass'n*, 509 U.S. 917 (1993), reinstated in relevant part, 41 F.3d 503 (9th Cir. 1994).

[4] But <sup>a</sup>general threat[s] by officials to enforce those laws which they are charged to administer<sup>o</sup> do not create the necessary injury in fact. *United Pub. Workers of Am. v. Mitchell*, 330 U.S. 75, 88 (1947); see *Rincon Band of Mission Indians v. San Diego Cnty.*, 495 F.2d 1, 4 (9th Cir. 1974) (concluding that the sheriff's statement that <sup>a</sup>all of the laws of San Diego, State, Federal and County, will be enforced within our jurisdiction<sup>o</sup> was insufficient to create a justiciable case (citing, among other cases, *Poe v. Ullman*, 367 U.S. 497, 501 (1961))). Thus, where multiple plaintiffs challenged a California law that criminalized teaching communism, the Supreme Court concluded that three of the plaintiffs, who had not alleged that <sup>a</sup>they have ever been threatened with prosecution, that a prosecution is likely, or even that a prosecution is remotely possible,<sup>o</sup> but merely that they felt <sup>a</sup>inhibited<sup>o</sup> in advocating political ideas or in teaching about communism, did not have standing. *Younger*, 401 U.S. at 42. Mere <sup>a</sup>[a]llegations of a subjective `chill' are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm.<sup>o</sup> *Laird v. Tatum*, 408 U.S. 1, 13-14 (1972).

Turning to the second factor, we have concluded that pre-enforcement plaintiffs who failed to allege a concrete intent to violate the challenged law could not establish a credible threat of enforcement. Because <sup>a</sup>the Constitution requires something more than a hypothetical intent to violate the law,<sup>o</sup> plaintiffs must <sup>a</sup>articulate[ ] a `concrete plan' to violate the law in question<sup>o</sup> by giving details about their future speech

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such as <sup>a</sup>when, to whom, where, or under what circumstances.<sup>o</sup> Thomas, 220 F.3d at 1139. The plaintiffs' allegations must be specific enough so that a court need not <sup>a</sup>speculate as to the kinds of political activity the [plaintiffs] desire to engage in or as to the contents of their proposed public statements or the circumstances of their publication.<sup>o</sup> Mitchell, 330 U.S. at 90. For example, a plaintiff challenging the licensing provisions of a state regulatory regime failed the injury in fact requirement because the plaintiff <sup>a</sup>ha[d] never indicated that it intends to pursue another license,<sup>o</sup> and therefore could not <sup>a</sup>assert that it will ever again be subject to the licensing provisions.<sup>o</sup> 4805 Convoy, 183 F.3d at 1112-13; see also, e.g., Thornburgh, 970 F.2d at 510 (organization does not have standing when the only evidence that it would be subject to a law penalizing membership in an alleged terrorist group was that its members received two publications which espoused the terrorist group's views). By contrast, plaintiffs may carry their burden of establishing injury in fact when they provide adequate details about their intended speech. See, e.g., ACLU v. Heller, 378 F.3d 979, 984 (9th Cir. 2004) (holding that a group had standing when an individual member alleged he desired to produce and distribute flyers regarding a specific ballot initiative); Getman, 328 F.3d at 1093 (holding that a group had standing when the group showed, among other things, that it had planned to spend over \$1000 to defeat a specific California proposition in the November 2000 election). Without these kinds of details, a court is left with mere <sup>a</sup>'some day' intentions,<sup>o</sup> which <sup>a</sup>do not support a finding of the 'actual or imminent' injury that our cases require.<sup>o</sup> Thomas, 220 F.3d at 1140 (quoting San Diego Cnty. Gun Rights Comm. v. Reno, 98 F.3d 1121, 1127 (9th Cir. 1996)).

[5] Finally, we have indicated that plaintiffs' claims of future harm lack credibility when the challenged speech restriction by its terms is not applicable to the plaintiffs, or the enforcing authority has disavowed the applicability of the challenged law to the plaintiffs. In the First Amendment con-



text, <sup>a</sup>a fear of prosecution will only inure if the plaintiff's intended speech arguably falls within the statute's reach.<sup>o</sup> Getman, 328 F.3d at 1095 (citing *Virginia v. Am. Booksellers Ass'n*, 484 U.S. 383, 392 (1988)). Thus, in *Leonard v. Clark*, we held that individual firemen did not have standing to challenge a portion of their union's collective bargaining agreement because the provision at issue <sup>a</sup>by its plain language applie[d] only to the Union and not to its individual members.<sup>o</sup> 12 F.3d 885, 888-89 (9th Cir. 1994); see also Getman, 328 F.3d at 1095 (indicating that a plaintiff has not established an injury in fact where the statute <sup>a</sup>clearly fails to cover [the plaintiff's] conduct<sup>o</sup> (quoting *Majors v. Abell*, 317 F.3d 719, 721 (7th Cir. 2003))).

Likewise, we have held that plaintiffs did not demonstrate the necessary injury in fact where the enforcing authority expressly interpreted the challenged law as not applying to the plaintiffs' activities. Thus, a group of school teachers did not have standing to challenge an Oregon textbook selection statute when both the Oregon Attorney General and the school district's lawyer <sup>a</sup>disavowed any interpretation of [the statute] that would make it applicable in any way to teachers.<sup>o</sup> *Johnson v. Stuart*, 702 F.2d 193, 195 (9th Cir. 1983); cf. *LSO*, 205 F.3d at 1155 (collecting cases where the government failed to affirmatively disavow an intent to enforce a challenged statute). Of course, the government's disavowal must be more than a mere litigation position. See *Thornburgh*, 970 F.2d at 508 (holding that aliens had standing to challenge speech restriction statutes, even though the government dropped charges based on those statutes four days before the district court hearing, because, among other things, the government could easily reinstate those charges and was bringing similar charges against other aliens).

### III

We apply these principles to the facts of this case to determine whether Lopez has cardtgatiosc 2.1 .1 Td .6 Tw (mine whether Le84sfWrgther

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showing of injury in fact. See *Winter*, 129 S. Ct. at 376; *Lujan*, 504 U.S. at 560. Lopez claims he suffered such an injury because he faced a specific, credible threat of adverse state action under the District's sexual harassment policy.

## A

Lopez identifies three actions on the part of LACC employees that, he claims, constitute a credible threat. According to Lopez, Matteson threatened to enforce the sexual harassment policy against him first on November 24, when Matteson interrupted Lopez's informative speech and told the class that they could leave if they were "offended," and second on December 2, when Matteson wrote on Lopez's assignment that Lopez had agreed to the "Student Code of Conduct" as a student at LACC. Third, Lopez claims that Jones's letter constituted a threat to enforce the policy because it informed Lopez that his speech had offended other students. We consider each incident in turn.

[6] In the November 24 incident, Matteson aggressively abused Lopez for his statements regarding marriage, prevented Lopez from speaking, asked whether other students were offended, and warned Lopez against proselytizing in school. However, Matteson did not threaten to enforce the sexual harassment policy against Lopez or even suggest that Lopez was violating the policy. Therefore the November 24 incident, while raising serious concerns, does not help Lopez carry his burden of clearly showing he suffered an injury in fact from the sexual harassment policy. Lopez argues that because Matteson told students they could leave if they were "offended," and Section 15003(A) defines "sexual harassment" as including conduct that has the purpose or effect of creating an "offensive work or educational environment," Matteson was implicitly invoking the District's sexual harassment policy. We conclude that any link between Matteson's use of the word "offended" and the sexual harassment policy's use of the word "offensive" in this context is too attenu-

ated and remote to rise to the level of <sup>a</sup>a threat of specific future harm<sup>o</sup> required to show an injury in fact arising from the policy. Cf. Laird, 408 U.S. at 14 (requiring such a threat in order to avoid advisory opinions); Del Papa, 200 F.3d at 616, 618 (holding that a <sup>a</sup>precise and exact<sup>o</sup> threat of prosecution was more than adequate to establish injury in fact).

[7] The December 2 incident involved a different assignment Lopez had written for Speech 101. It is plausible to read Matteson's comment on the paper, namely that Lopez had agreed to abide by the Student Code of Conduct,<sup>6</sup> as an implicit threat that Lopez should take care not to raise certain topics (such as those relating to marriage as being between a man and a woman, which had elicited Matteson's ire previously), and that such topics could violate the school's policies. Again, however, such an implied threat does not meet the standard necessary to show injury in fact. This assignment did not mention Lopez's religious beliefs or discuss the nature of marriage, and on its face, Matteson's comment does not indicate that Lopez's speech on marriage or religion would constitute sexual harassment or otherwise violate the sexual harassment policy. Nor does Matteson's comment constitute a threat to initiate proceedings if Lopez made such remarks on marriage or religion. Rather, in the context in which this remark appeared, Matteson's comment is, at most, a <sup>a</sup>general threat<sup>o</sup> to enforce the Student Code of Conduct, rather than a <sup>a</sup>direct threat of punishment.<sup>o</sup> Mitchell, 330 U.S. at 88. Such general threats are insufficient to establish an injury in fact.

[8] Finally, Lopez argues that Jones's December 4 letter is a threat to enforce the sexual harassment policy by taking action against him. Lopez points to the letter's statement that

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<sup>6</sup>Although there is no document entitled <sup>a</sup>Student Code of Conduct<sup>o</sup> in the record, we assume for purposes of this analysis that the comment refers to the <sup>a</sup>Rules for Student Conduct<sup>o</sup> section of the LACC student handbook, which also contains Section 15001 of the sexual harassment policy.

two students were offended by Lopez's speech, and one student wrote that the speech was "hateful propaganda." Read in context, however, Jones's letter does not constitute a threat of enforcement action. The letter makes clear that Matteson, not Lopez, is the target of the LACC's disciplinary actions, and states that LACC will not take action against any students, impliedly including Lopez, for exercise of their First Amendment rights. Moreover, while Jones makes the rejoinder to Lopez's attorney that two other students were offended by Lopez's speech, the students she quotes do not complain about statements of a sexual nature or suggest they regarded Lopez's speech as constituting sexual harassment; rather, they complained that Lopez's informative speech was "hateful" or "preached hate." We therefore agree with the district court's later conclusion that "the content of [Jones's] letter cannot reasonably be characterized as threatening future punishment on the basis of such [student] complaints."

[9] Even when we view Jones's letter and the two Speech 101 incidents collectively, they do not constitute a credible threat to discipline Lopez under the sexual harassment policy.

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[11] Even if we assume (though Lopez does not argue) that Lopez intends to express religious opposition to homosexuality or same sex marriages, and even if we also assume (which again, Lopez does not argue) that college officials, teachers or students could adopt a strained construction of the sexual harassment policy that would make it applicable to religious speech opposing homosexuality or gay marriage, Lopez does not claim that anyone has done so or may do so in the future. In the absence of any argument by Lopez urging this point, we decline to give the policy such an interpretation on our own accord. Moreover, nothing in the record suggests that the District or LACC has adopted an expansive reading of the policy. Rather, Jones's uncontroverted statement that the District or LACC have never charged any teacher, student, or employee with sexual harassment under the policy points in the opposite direction. In the absence of any showing that the sexual harassment policy even arguably applies or may apply to Lopez's past or intended future speech, Lopez cannot show a concrete intent to violate the policy, and therefore cannot show a credible threat that the Defendants will enforce the policy against him.

For this reason, Lopez's reliance on Santa Monica Food

marches and demonstrations had standing to challenge a Santa Monica ordinance that required it to obtain a permit before engaging in marches or demonstrations);

burgh, 970 F.2d at 508)). Nor is this a situation like Thornburgh, in which the government dropped charges <sup>a</sup>not because [the charges] were considered inapplicable, but for tactical reasons,<sup>o</sup> 970 F.2d at 508, because here LACC had not taken any steps to enforce the sexual harassment policy against Lopez, either before or after Lopez's threat to sue the school.

Although Lopez alleges that his speech was chilled by the existence of the sexual harassment policy, self-censorship alone is insufficient to show injury. See, e.g., Laird, 408 U.S. at 13-14 (<sup>a</sup>Allegations of a subjective 'chill' are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm . . . .<sup>o</sup>); Getman, 328 F.3d at 1095 (<sup>a</sup>We do not mean to suggest that any plaintiff may challenge the constitutionality of a statute on First Amendment grounds by nakedly asserting that his or her speech was chilled by the statute. The self-censorship door to standing does not open for every plaintiff.<sup>o</sup>). Nor does Lopez have standing merely because, as the district court concluded, he may have <sup>a</sup>more than a general interest shared with the student body at large<sup>o</sup> in challenging the policy because he is a devout Christian. Leaving aside the question whether the sexual harassment policy has special applicability to Christians, the district court's conclusion is misguided: our inquiry into injury-in-fact does not turn on the strength of plaintiffs' concerns about a law, but rather on the credibility of the threat



future. Under these circumstances, we must conclude that Lopez fails to meet the standard required of a pre-enforcement plaintiff to prove injury in fact, because he has not met the low threshold of clearly showing that he faces a specific, credible threat of adverse government action based on a violation of the sexual harassment policy.

### C

[13] Lopez also argues that the overbreadth doctrine allows him to assert the rights of his fellow students who are not before the court. However, Lopez properly recognized that he may only assert the rights of others <sup>a</sup>[s]o long as [he] satisfies the injury in fact requirement.<sup>o</sup> Plaintiffs who have suffered no injury themselves cannot invoke federal jurisdiction by pointing to an injury incurred only by third parties. See *Munson*, 467 U.S. at 958 (noting that *Munson* could not assert the rights of third parties unless *Munson* itself had suffered an injury in fact). Because Lopez fails to establish the necessary injury in fact, he cannot raise the claims of third parties as part of an overbreadth challenge.

### IV

Formal and informal enforcement of policies that regulate speech on college campuses raises issues of profound concern. As we have noted in *Rodriguez v. Maricopa County Community College District*,

If colleges are forced to act as the hall monitors of academia, subject to constant threats of litigation both from [those] who wish to speak and listeners who wish to have them silenced, <sup>a</sup>many school districts would undoubtedly prefer to `steer far' from any controversial [speaker] and instead substitute `safe' ones in order to reduce the possibility of civil liability and the expensive and time-consuming burdens of a lawsuit.<sup>o</sup>

605 F.3d 703, 709 (9th Cir. 2010) (brackets omitted) (quoting *Monteiro v. Tempe Union High Sch. Dist.*, 158 F.3d 1022, 1030 (9th Cir. 1998)). Such policies, well intentioned though they may be, carry significant risks of suppressing speech. <sup>a</sup>Because some people take umbrage at a great many ideas, very soon no one would be able to say much of anything at all,<sup>o</sup> *id.* at 711, an outcome that would be anathema for universities, our nation's <sup>a</sup>marketplace of ideas.<sup>o</sup> *Healy v. James*,

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lenge the District's sexual harassment policy. Therefore, the order granting the preliminary injunction is **REVERSED**, the preliminary injunction is **VACATED**, and we **REMAND** for further proceedings consistent with this opinion.