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VIA FACSIMILE to 732-932-8473 and FIRST CLASS US MAIL

August 24, 2010

Sarah A. Luke, Assistant General Counsel  
Office of the Senior Vice President and General Counsel  
Winants Hall  
Rutgers University - New Brunswick  
7 College Avenue  
New Brunswick, NJ 08901

**RE: Protecting Student Speech at Rutgers University**

Dear Mrs. Luke:

In response to your letter of June 11, 2010, we are concerned that your review of your "Policy Against Verbal Assault, Defamation and Harassment" will not include consideration of the precedent of *DeJohn v. Temple*, 537 F.3d 301 (3rd Cir. 2008) and *Saxe v. State College Area School District*, 240 F. 3d 200, 216-17 (3rd Cir. 2001) in which the Court enjoined the overbroad university's sexual harassment policy that limited protected speech. As we stated earlier, your policy is unconstitutional for two reasons. First, the policy misstates the New Jersey statutory language. The statutory language requires a purpose to harass, not a purpose to make a communication. I understand you are addressing this with your revision. Second, *Saxe* and *DeJohn* require that the conduct "objectively and subjectively create[] a hostile environment or substantially interfere[] with an individual's work." *DeJohn*, 537 F.3d at 318. Policies that fail to do this provide "no shelter for core protected speech." *Id.* In the academic context, the New Jersey statutory language contained in your "Policy Against Verbal Assault, Defamation and Harassment" must be modified to conform to the mandates of *DeJohn* and *Saxe*.

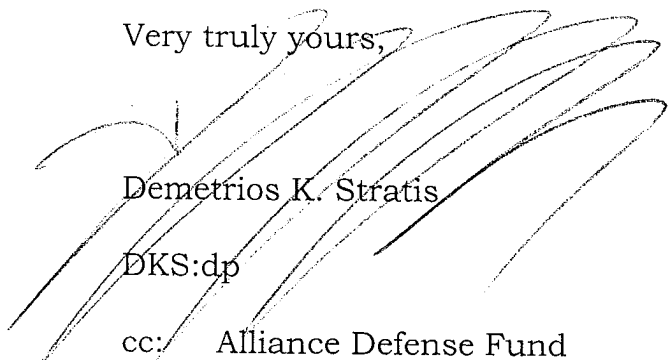
We hope to see prompt change to this policy and the "Bias Prevention Policy." Not only are students imminently returning, but the Third Circuit has once again, even last week, emphasized the need to strike down unconstitutional speech codes. *See McCauley v. University of the Virgin Islands*, \_\_\_ F.3d \_\_\_, No. 09-3735 (3d Cir., Aug. 18, 2010). The court reiterated the dangers with

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restrictions on speech at public universities, pointing out that public "universities have significantly less leeway in regulating student speech than public elementary or high schools." See id. at 31. It also found various prohibitions, including limitations on "offensive" or "unauthorized" signs, to be unconstitutional.

Recognizing that classes will begin shortly, I look forward to resolving this situation promptly. As you consider this information in your revision of these policies, I would be more than happy to speak with you and help you in the process.

Very truly yours,



Demetrios K. Stratis

DKS:dp

cc: Alliance Defense Fund  
Randall L. Wenger, Esq., Independence Law Center  
Leonard G. Brown, III, Esq., Clymer, Musser, Brown & Conrad, P.C.