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Linda Katehi, Chancellor
University of California, Davis
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Rahim Reed
Associate Executive Vice-Chancellor
University of California, Davis
Office of Campus Community Relations
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RE: UC Davis's Discriminatory "Non-Discrimination" Policy

Dear Chancellor Katehi and Vice-Chancellor Reed:

I write on behalf of over twenty-five students in the engineering, medicine, law, chemistry and other departments and schools, undergraduate and graduate at UC Davis concerning the school's policy prohibiting discrimination against all other religious faiths, while explicitly authorizing it against Christians. I am also an allied attorney with the Alliance Defense Fund, a legal organization dedicated to defending the First Amendment rights of students and faculty on university campuses. Because the UC Davis policy explicitly permits invidious discrimination against them, my clients wish to remain anonymous at this time. I ask that you immediately correct this unconstitutional policy, extending to Christian students the same treatment received by adherents of other religious beliefs at UC Davis.

UC Davis prohibits discrimination on the basis of, *inter alia*, religion. See <http://www.ucop.edu/ucophome/coordrev/ucpolicies/aos/ucappc.html> and <http://occr.ucdavis.edu/poc/index.html>. However, it also defines "religious discrimination" as follows:

Religious/Spiritual Discrimination - The loss of power and privilege **to those who do not practice the dominant culture's religion**. In the United States, this is institutionalized oppressions **toward those who are not Christian**.

(emphasis added). <http://occr.ucdavis.edu/poc/glossary.html>.

As such, UC Davis policy, while purporting to prohibit religious discrimination broadly, actually exempts Christians from its coverage. Under this definition it would be an affirmative defense to a charge of religious discrimination for the perpetrator to demonstrate that the victim was a Christian. Students have recently been asked to reaffirm their commitment to the “Principles of Community,” which includes in its Glossary the definition “Religious/Spiritual Discrimination” noted above. Thus, in reaffirming their commitment to the “Principles of Community, U.C. Davis students have agreed to discriminate *only against Christians*.

It is patently clear that UC Davis’s definition of religious discrimination is blatantly unconstitutional under both the Federal and California State Constitutions. The policy singles out certain faiths for official school protection from discrimination while denying the same protection to others solely on the basis of their particular religious views. This official U.C.D. policy violates the Establishment, Free Speech, Free Exercise, and Equal Protection Clauses of the United States Constitution. *Larsen v. Valente*, 456 U.S. 228, 245-46 (1982) (denominational preferences violate the Establishment and Free Exercise Clauses); *R.A.V. v. City of St. Paul*, 505 U.S. 377, 391-92 (1992) (government engages in viewpoint discrimination where it “license[s] one side of a debate to fight freestyle, while requiring the other to follow Marquis of Queensberry rules.”); *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 540-47 (1993) (law that prohibited activity by one religion but permitted similar activity by others for secular and other religious reasons violated the Free Exercise and Equal Protection Clauses).

This policy also violates Article 1, Section 4 of the California Constitution, which guarantees the “Free exercise and enjoyment of religion without discrimination or preference.” In addition, this policy violates the 1959 Unruh Civil Rights Act that specifically outlaws [discrimination](#) based on age, sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation. The Unruh Civil Rights Act is codified at California Civil Code section 51.

Moreover, the UC Davis policy is simply nonsensical given the environment on most University campuses where Christian students, if anything, are among the most likely to be subjected to discrimination because of their faith. A recent study of over 1200 faculty showed that professors admitted to having a significant bias against Christian students, particularly evangelicals. In fact, 53% admitted to having negative feelings about evangelical students solely because of their religious beliefs. <http://www.jewishresearch.org/PDFs2/FacultyReligion07.pdf> (see pages 79-81). And Mormon and Catholic students did not fare much better.

It is in contradiction to established fact to suggest, as this definition does, that Christianity is “the dominant culture’s religion” at any public university or here at UC Davis. Then candidate Obama asserted that [“Whatever we once were, we’re no longer a Christian nation.”](#) Whatever the merit of this claim, it is nonsense to think that Christianity is “dominant” on any public university campus – UC Davis included. Indeed, a [2004 Harvard Institute of](#)

[Politics poll](#) indicated that only 35% of college students call themselves “born again,” and 22% identify as evangelical Christians. A 2000 study of teens by the Barna Research Group found that only one out of four (26%) claim to be “committed to the Christian faith.” Barna Research Group, Ltd., *Teenagers Embrace Religion but Are Not Excited About Christianity*, January 10, 2000, www.barna.org. These are not statistics of dominance.

As Mr. Reed is aware, this is not the first time that a Christian student has written to him about the climate of discrimination at U.C. Davis and requesting that his office work to provide protections for Christian students of the kind that the OCCR provides to others. It appears that Mr. Reed not only failed to take these concerns seriously, but even approved a U.C. Davis-wide policy of sanctioning discrimination against Christian students as evidenced by the definition of “religious/spiritual discrimination” on his own Office’s website.

The purpose of a nondiscrimination rule is to prevent irrelevant factors from being used to punish or exclude persons from certain privileges. And specifically, religious nondiscrimination rules ensure that religious students will be protected in the often hostile university environment. Certainly, there are situations in which the application of the nondiscrimination rule might injure the First Amendment rights of others. For example, there will certainly be times when an atheist or Muslim student organization’s expression would be negatively impacted if they were required to permit a Christian student to serve in a leadership position, vote to determine the group’s position on an issue, etc. An atheist student group led by one of my clients would clearly cease to be the same organization. Nondiscrimination policies, like any other policies, should be applied rationally and taking into account the unintended consequences that might flow from an overly literal and rigid application of the text. UC Davis clearly understands this as it permits fraternities and sororities, club sports, and single sex singing groups to discriminate on the basis of gender and other groups to exclude persons from leadership or membership if they do not share the organization’s political or ideological views. So should UC Davis permit groups to deny certain privileges or posts to Christian students in order to protect those groups’ First Amendment rights.

However, the outright exclusion of Christian students from UC Davis’s policy is unconstitutional. Therefore, I ask that you immediately revise the definition of “religious/spiritual discrimination” so that UC Davis’s protections also apply to Christian students. As my clients are presently exposed to invidious discrimination at UC Davis solely because of their religious beliefs, I ask that no later than Wednesday, February 23 you confirm this change and undertake appropriate educational efforts to ensure that UC Davis faculty and staff are informed that the school’s policies also protect Christian students from discrimination.

Sincerely,

A handwritten signature in blue ink, appearing to read "Timothy J. Swickard".

Timothy J. Swickard, Esq.

cc: M. Casey Mattox, Senior Legal Counsel, Alliance Defense Fund