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July 15, 2010

Molly Dwyer, Clerk of the Court
U.S. Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, California 94103-1518

Re: *Lopez v. Candaele, et al., No. 09-56238*
Oral Argument: March 3, 2010 at 9:30 a.m., in Pasadena, California
Defendants' Citation of Supplemental Authority

Dear Ms. Dwyer:

Pursuant to Federal Rule of Appellate Procedure 28(j), Defendants Kelly Candaele *et al.* respectfully cite the following supplemental authority: *Christian Legal Soc. Chapter of the University of California, Hastings v. Martinez*, 2010 WL 2555187 (June 28, 2010) (“*Hastings*”). The Supreme Court held that a law school’s policy of withholding recognition to student groups that refuse to admit “all comers” complied with the First Amendment.

Two points from the case apply here. First, the Court rejected the argument that a policy can lack viewpoint-neutrality merely because it imposes an incidental burden on some speakers. *See Hastings*, 2010 WL 2555187, *18.

Second, the Court charged federal courts to defer to decisions of educational administrators, even in the free speech context and even in higher education. *See id.*, *14 (“[W]e have cautioned courts in various contexts to resist ‘substitut[ing] their own notions of sound educational policy for those of the school authorities which they review.’”) (quoting *Board of Educ. v. Rowley*, 458 U.S. 176, 206 (1982)). The Court concluded: “*Hastings*’ decisions about the character of its student-group program are due *decent respect*.” *Id.* (emphasis added); *see also id.*, *21 (Stevens, J., concurring) (“The campus is, in fact, a world apart from the public square in numerous respects [C]ourts should respect universities’ judgments and let them manage their own affairs.”). Here, this principle of deference confirms that the District acted appropriately in deciding to use the statutory language from the Education Code, section 212.5, in its own sexual harassment policy.

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The “decent respect” described in *Hastings* also informs the jurisdictional analysis. It confirms that, even in the free speech context, federal courts should not artificially dilute principles of Article III standing so as to gain further control over (and in future cases more vast responsibility for) the decisions of college educators. This consideration decisively applies here, where Plaintiff challenges a policy that was repealed before he even sued, that was never asserted against him, that he did not violate, and that does not apply to the speech he wishes to make. (*See* Appellant’s Brief at 15-23.)

Sincerely,

/s/ David A. Urban

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