ALLIANCE DEFENDING
FREEDOM
FOR FAITH. FOR JUSTICE

26 September 2012

Via U.S. Mail & Electronic Mail at Scott@Wyatt@snow.edu
Dr. Scott L. Wyatt
Office of the President
Snow College
150 East College Avenue
Ephraim, Utah 84627

Via U.S. Mail & Electronic Mail at Craig.Mathie@snow.edu
Dr. Craig Mathie
Vice President for Student Success
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Via U.S. Mail & Electronic Mail at Michelle.Brown@snow.edu
Ms. Michelle Brown
Director of Student Life and Leadership
Snow College
150 East College Avenue
Ephraim, Utah 84627

Re: First Amendment Violations During Homecoming at Snow College

Dear Dr. Wyatt, Dr. Mathie, and Ms. Brown:

Several of your students recently contacted us with concerns that Snow College had violated—and continues to violate—their First Amendment rights by preventing them from displaying religious symbols during your homecoming festivities. Specifically, Ms. Brown prohibited members of Solid Rock Christian Club ("Solid Rock") from displaying religious symbols during the "Paint the Town" event this week. We write to inform you that her actions violate decades of clearly established Supreme Court precedent and to insist that she cease and desist immediately.

By way of introduction, the Alliance Defending Freedom is an alliance-building legal ministry that defends and advocates for religious freedom and other fundamental rights. Our Center for Academic Freedom is dedicated to ensuring that religious and conservative students and faculty may exercise their rights to speak, associate, and learn on an equal basis with all other students and faculty.

FACTUAL BACKGROUND

As you know, Snow College's homecoming festivities include an event called "Paint the Town," in which student groups decorate the street front windows of willing businesses. According to the event's rules, its purpose "is to promote school spirit through the community by advertising the upcoming Homecoming," but those

rules place no restrictions whatsoever on what students may depict in the process.

On September 14, 2012, Dr. Rachel Keller, Solid Rock's advisor, turned in its form to register for Paint the Town, but Office of Student Life (OSL) personnel told her that Solid Rock was the first to register and that the list of businesses was not yet ready. On September 24th, OSL assigned Solid Rock to paint the window of Los Amigos, a local Mexican restaurant, and supplied its students with paint and supplies.

Shortly thereafter, Solid Rock began decorating the Los Amigos window with homecoming design that featured a cross as its focal point, along with the message, "The cross covers sin now, then, and forever." As this incorporates the theme of homecoming—"now, then, and forever"—it more than amply comports with the purpose of Paint the Town.

But before Solid Rock had even finished outlining the cross, Ms. Brown accosted Katelynn Arthur, announcing: "You can't paint any religious symbols or anything related with religion. We are a state school, and that isn't allowed." When Ms. Arthur explained how the display aligned with the homecoming theme, Ms. Brown repeated: "No, that isn't allowed." When Solid Rock's president, Kelsey Reed, arrived, Ms. Brown not only said that the club was "not allowed to paint any religious symbols" but also threatened to have someone return and wash away the display if Solid Rock did not do so voluntarily.

In addition, another private property owner in town had invited Solid Rock to decorate his window, and the students did so using a similar design. As she noted in an e-mail to Dr. Keller, Ms. Brown admitted that she instructed students to remove that display also and explained her reasoning:

> [W]e are a public institution and when you are participating in activities tied to the school, you must [f]ollow the rules and set the example for the students. . . . If you would like to paint a religious message, please do not come to Student Life, use our supplies, and the school [c]olors or our Homecoming Logo. This is in poor taste and does not support the event.

LEGAL ANALYSIS

I. Ms. Brown's actions, which silence student speech with a religious viewpoint, constitute content and viewpoint discrimination, violating clearly established law.

"Paint the Town" allows any interested student organization to decorate a business' window and advertise homecoming with the message of its choice. Thus, Snow College created a forum for student speech, and the Constitution forbids it from excluding speech from a religious perspective from that forum.

The Supreme Court has repeatedly rejected university efforts to discriminate against religious speech. Though student organizations regularly reserved space in campus buildings, the University of Missouri refused to let a Christian group do so

because it engaged in "worship [and] religious teaching."[1] The Supreme Court recognized that the First Amendment protects "religious worship and discussion," and it held that the university's policy constituted unconstitutional content discrimination.[2] Similarly, the University of Virginia refused to fund a Christian student newspaper because it was a "religious activity."[3] To the Supreme Court, this constituted viewpoint discrimination,[4] which is "an egregious form of content discrimination" and which poses "danger[s] [that are] especially real in the University setting, where the State acts against a background and tradition of thought and experiment that is at the center of our intellectual and philosophic tradition."[5]

By banning religious symbols and speech, Ms. Brown has not just targeted the subject matter of student speech but "particular views taken by speakers on a subject," and thus, her "violation of the First Amendment is all the more blatant."[6]

II. The Supreme Court has repeatedly held that allowing religious speakers to access a forum does not violate the Establishment Clause.

Ms. Brown apparently believes that she has an obligation to purge religious speech from all campus events. But she overlooks a critical distinction the Supreme Court reiterated in 1995: "There is a crucial difference between *government* speech endorsing religion, which the Establishment Clause forbids, and *private* speech endorsing religion, which the Free Speech and Free Exercise clause protect."[7] The expression of student groups—even if they are using school-supplied resources—constitutes private expression. Indeed when a Christian newspaper sought funding, the Court noted that the "distinction between the University's own favored message and the private speech of students is evident in the case before us."[8] And like the University of Virginia, Snow College takes pains to separate itself from the expression of student groups.[9] Hence, it cannot now pretend that any speech its officials disapprove is school speech. Besides, the Supreme Court has ruled no less than seven times that the government does not violate the Establishment Clause when it provides access or funding on a viewpoint neutral basis to private speakers.[10] Thus, Ms. Brown is simply wrong to say that religious speech is not allowed at school events.

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1 *Widmar v. Vincent*, 454 U.S. 263, 265 (1981).
2 *Id.* at 269–70.
3 *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 827 (1995).
4 *Id.* at 830–31.
5 *Id.* at 835.
6 *Id.* at 829.
7 *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 756 (1995) (quoting *Bd. of Educ. of Westside Cmty. Schs. v. Mergens*, 496 U.S. 226, 250 (1990)).
8 *Rosenberger*, 515 U.S. at 834–35.
9 *Compare id. with* Snow College, *Handbook for Clubs and Affiliated Organizations* at 3, *available at* http://www.snow.edu/studentlife/images/policies.pdf (last visited Sept. 26, 2012).
10 *Zelman v. Simmons-Harris*, 536 U.S. 639, 662–63 (2002); *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 119 (2001); *Bd. of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 233 (2000); *Rosenberger*, 515 U.S. at 842; *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 395 (1993); *Mergens*, 496 U.S. at 253; *Widmar*, 454 U.S. at 276.

III. The First Amendment prohibits Ms. Brown from restricting student speech because she finds it to be in "poor taste."

Ms. Brown may find Solid Rock's display "in poor taste," but the First Amendment bars her from restricting its speech for this reason. After all, the "bedrock principle underlying the First Amendment . . . is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."[11] If she finds it offensive, the First Amendment solution is simple: she can avert her eyes.[12] But government cannot cleanse public discourse until it is "palatable to the most squeamish among us,"[13] and this bedrock principle applies with full force to universities for "the First Amendment leaves no room for the operation of a dual standard in the academic community with respect to the content of speech."[14]

DEMAND

As homecoming festivities are underway, we are gravely concerned at this blatant violation of our clients' constitutional rights. However, we would also like to resolve this matter amicably. Accordingly, we request that you inform our office in writing by **noon tomorrow** that Solid Rock will be allowed to participate in Paint the Town, that no Snow College official will restrict the content of its speech in any way, and that Ms. Brown will apologize in writing to all students and staff she confronted. If you are unwilling to do so, we will have no choice but to advise our clients of other methods for vindicating their First Amendment freedoms.

Please be advised that if Snow College employees harass or take any adverse action against anyone connected with Solid Rock on account of this letter, it will serve as separate and further grounds for litigation.

Last, by virtue of this letter, you are now on notice that this matter may lead to litigation. Accordingly, please cease and desist all activities that may destroy tangible or electronic evidence that may be relevant to this matter. This includes, but is not limited to, all documents and electronically stored information (including e-mails), discussing or referencing in any way Solid Rock or Paint the Town.

Sincerely,

Travis Christopher Barham
Litigation Staff Counsel
ALLIANCE DEFENDING FREEDOM

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[11] *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (citing cases upholding this principle).
[12] *See Cohen v. California*, 403 U.S. 15, 21–22 (1971).
[13] *Id.* at 25.
[14] *Papish v. Bd. of Curators of Univ. of Mo.*, 410 U.S. 667, 671 (1973).