



September 5, 2008

**Via U.S. Mail & facsimile (415-338-6210)**

Dr. Robert A. Corrigan  
President's Office  
San Francisco State University  
ADM #562  
1600 Holloway Avenue  
San Francisco, California 94132

**Via U.S. Mail & facsimile (415) 338-2172**

Mr. Joey Greenwell  
Office of Student Programs & Leadership  
Development  
San Francisco State University  
SSB #105  
1600 Holloway Avenue  
San Francisco, California 94132

***Re: Unconstitutional Suppression of Students' First Amendment Rights***

Dear Dr. Corrigan and Mr. Greenwell:

I write to you on behalf of College Republicans at San Francisco State University, a student organization at SFSU, in regard to SFSU suspending the outdoor reservation request process for the 2008–2009 academic year. The Alliance Defense Fund (ADF) is a legal alliance that defends America's first liberty, religious liberty. The ADF Center for Academic Freedom is dedicated to ensuring that religious and conservative students enjoy rights to speak, associate, and learn on an equal basis as all other students.

**Factual Background**

As we understand the situation, SFSU has suspended the Outdoor Reservation Request Process indefinitely until a new Time, Place and Manner policy is approved by the President's Cabinet. SFSU will not permit student groups to reserve or use outdoor space on campus for free speech activities until the new policy is promulgated. (See SFSU Outdoor Event Request Form, available at <http://www.sfsu.edu/~ospld/outdoor/index.html>.) The Outdoor Reservation Request Process previously allowed student groups at SFSU to reserve outdoor areas of campus, such as Malcolm X Plaza, lawn areas, and Centennial Walkway, for expressive activities. The policy ensured that two student groups did not plan and hold an event on the same day in the same place on campus, which could result in both groups demanding the space.

College Republicans intends to hold a 9/11 Memorial in Malcolm X Plaza next Thursday, September 11, 2008 between the hours of 12:00 p.m. and 2:00 p.m. The event will include a display of American flags, a stage for speakers, a few speeches about terrorism, and lists of names containing the victims of the September 11th attacks. Late last spring, a College Republicans officer attempted to reserve the Malcolm X Plaza for next week's event, but was told by the Office of Student Programs and Leadership Development (OSPLD) that he could not make a reservation. Earlier this week, a College Republicans officer again attempted to reserve the Malcolm X Plaza for the 9/11 Memorial next week, but was told by OSPLD that student

organizations could not reserve or use any outdoor space on campus until further notice. It is our understanding that not only College Republicans, but many student groups on campus are upset about the inability to reserve and use outdoor fora on campus for expressive activities.

### Legal Analysis

The Supreme Court has repeatedly recognized the importance of protecting the First Amendment rights of college students. "The college classroom with its surrounding environs is peculiarly the 'marketplace of ideas.'" *Healy v. James*, 408 U.S. 169, 180 (1972). Indeed, the Court has recognized that the "campus of a public university, at least for its students, possesses many of the characteristics of a public forum." *Widmar v. Vincent*, 454 U.S. 263, 268 n.5 (1981) (citing *Police Dept. of Chicago v. Mosley*, 408 U.S. 92 (1972); *Cox v. Louisiana*, 379 U.S. 536 (1965)). Student free speech is of "critical importance" at public universities because it is the "lifeblood of academic freedom" and campus debate. *DeJohn v. Temple Univ.*, \_\_\_ F.3d \_\_\_, 2008 WL 2952777, \*8 (3d Cir. Aug. 4, 2008).

The government's ability to restrict free speech in traditional and designated public fora is greatly limited. Traditional public fora, like SFSU's campus, are "those places which by long tradition or by government fiat have been devoted to assembly and debate." *Hopper v. City of Pasco*, 241 F.3d 1067, 1074 n.5 (9th Cir. 2001) (quoting *Cornelius v. NAACP Legal Defense & Educ. Fund, Inc.*, 473 U.S. 788, 802 (1985)). Because of their traditional status, a governmental entity's capacity to limit expressive activity in traditional and designated public fora is sharply circumscribed and subjected to strict scrutiny. *Id.* at 1074, 1081.

SFSU's campus, particularly Malcolm X Plaza with its namesake and history of free speech events, is a public forum. For years students and non-students alike have expressed their ideas in this central plaza of the University. It is a hub of activity on campus and the first place many students turn to when an important social or political issue needs to be discussed. The same is true of the other outdoor areas of SFSU, many of which resemble public sidewalks and parks. These characteristics compel the conclusion that these outdoor areas of SFSU's campus are public fora. *See Souders v. Lucero*, 196 F.3d 1040, 1044 (9th Cir. 1999) (suggesting the campus of Oregon State University is a public forum); *Khademi v. South Orange County Cmty. Coll. Dist.*, 194 F. Supp. 2d 1011, 1024 (C.D. Cal. 2002) (finding the generally available areas of a community college campus are public fora because they are open to the public); *Burbridge v. Sampson*, 74 F. Supp. 2d 940 (C.D. Cal. 1999) (finding a community college campus to be a public forum because it is open to the public).

The government "may not by its own *ipse dixit* destroy the 'public forum' status of streets and parks which have historically been public forums." *U.S. Postal Serv. v. Council of Greenburgh Civic Ass'ns*, 453 U.S. 114, 133 (1981). While it is theoretically possible for a public forum to lose its status as such, "the destruction of public forum status . . . is at least presumptively impermissible." *ACLU of Nevada v. City of Las Vegas*, 333 F.3d 1092, 1105 (9th Cir. 2003) (quoting *United States v. Grace*, 461 U.S. 171, 180 (1983)). To change a property's public forum status, the state "must alter the objective physical character or uses of the property." *Id.* (quoting *Int'l Soc'y for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 700 (1992) (ISKON) (Kennedy, J., concurring)); *see also Venetian Casino Resort, L.L.C. v. Local*

*Joint Executive Bd. of Las Vegas*, 257 F.3d 937, 944 (9th Cir. 2001) (rejecting the idea that merely relocating the sidewalk would change its character or use such that it would result in a change to its public forum status); *cf. Hale v. Dep't of Energy*, 806 F.2d 910, 915 (9th Cir. 1986) (holding that roadway was no longer a public forum because the land containing the roadway had been withdrawn from public use for the purpose of conducting nuclear testing).

By closing the Outdoor Reservation Request Process, SFSU closed a public forum for students. Regulation of speech in a traditional or even designated public forum is permissible "only if . . . narrowly drawn to achieve a compelling state interest." *ISKON*, 505 U.S. at 678. SFSU's complete closure of the Outdoor Reservation Request Process cannot meet this stringent standard. While it is completely appropriate for the University to revise its time, place and manner policies, it is not appropriate to close all outdoor fora to expressive activities. Complete closure is not narrowly tailored to any SFSU interest, especially because the Malcolm X Plaza and other areas have historically been routinely used by students to express their ideas. Complete closure leaves students with zero ability to speak on campus. Thus, SFSU's complete closure policy is not narrowly tailored and violates the First Amendment.

### **Demand**

We are gravely concerned about these serious constitutional violations. College Republicans respectfully requests that you provide the following written assurance: (1) that you will respect College Republicans First Amendment rights, (2) that College Republicans may conduct its 9/11 Memorial on Thursday, September 11, 2008 in Malcolm X Plaza, and (3) that SFSU has re-implemented the Outdoor Reservation Request Process and will permit all student groups on campus to reserve outdoor space for their activities.

Please respond in writing to this letter by **5:00 p.m. on Monday, September 8, 2008**. Otherwise, we will advise College Republicans of its legal rights to seek immediate redress of these grievances in federal court.

Very truly yours,



David J. Hacker  
Litigation Staff Counsel  
ADF Center for Academic Freedom

cc: College Republicans at SFSU