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Mr. Peter Bonilla
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Foundation for Individual Rights in Education
601 Walnut Street, Suite 510
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Dear Mr. Bonilla,

I write in response to your June 1, 2011 letter to Chancellor Thorp. Thank you for the opportunity to review the facts and share the University's position on the issues you raise relating to Elliott Cramer, Ph.D.

The University of North Carolina at Chapel Hill (the "University") has a long history of fostering free speech. We take seriously our obligations under the First Amendment to the U.S. Constitution and Article I, Section 14, of the North Carolina State Constitution. We also take seriously our obligation, as a State agency, to serve as a responsible steward of the resources entrusted to us by our State legislature and the citizens of North Carolina.

The University's electronic communications systems and equipment (the "University Network") is a State resource. As stated in the UNC-Chapel Hill Network Acceptable Use Policy (<https://help.unc.edu/1672>), the University Network is provided "to support the University and its mission of education, service, and research." Penalties for violating University Policy explicitly include "restricted access or loss of access to the University Network."

Use of the University Network is a revocable privilege. The University's Personal Use Policy (<http://www.unc.edu/finance/busman/act/actpol26.html>) provides that the use of University resources and services for non-official purposes is permitted only in compliance with the following conditions:

- The cost to the University must be negligible.
- The use must not interfere with a University employee's obligation to carry out University duties in a timely and effective manner.

- The use must in no way undermine the use of University resources and services for official purposes.
- Users should be aware that internal or external audit or other needs may require examination of uses of University resources or services and should not expect such uses to be free from inspection.

As you acknowledged in your letter, Dr. Cramer retired from the University in 1994. He is not an employee of the University and has not been an employee for more than 15 years. As a result, Dr. Cramer currently has no official business to conduct using the University Network. Access to the Network for his personal, non-official purposes was provided to him solely as a courtesy.

Dr. Cramer has recently been involved in a private dispute with Joseph Villarosa, also noted in your letter. The nature of that dispute is of no interest to the University. However, the University was first drawn into the dispute because Dr. Cramer used his "unc.edu" email account to correspond with Mr. Villarosa, who subsequently complained to the University, and Dr. Cramer also established and used alias accounts, such as focas@unc.edu, to conduct business for an organization with no University affiliation.

The University tried for five months to steer a neutral course and leave Dr. Cramer and Mr. Villarosa to their personal feud. In April, Mr. Villarosa contacted the University again to complain that statements about Mr. Villarosa were posted on a website (www.ourpaws.info) that was linked to Dr. Cramer's unc.edu webpage. Dr. Cramer had previously advised me that he, personally, had posted information about Mr. Villarosa on www.ourpaws.info.

Over the ensuing ten days, Dr. Cramer and Mr. Villarosa drew multiple University employees into their dispute. As noted above, the University's Personal Use Policy provides that personal use of the Network must in no way undermine the use of University resources and services for official purposes. Yet, Dr. Cramer's personal use was doing exactly that. Hours and hours of senior administrator time were diverted to a cascade of email correspondence from both individuals. Accordingly, the University disabled Dr. Cramer's University Network privileges.

In response to the First Amendment issues you raised on Dr. Cramer's behalf, case law discussing the concept of a "heckler's veto" is not relevant. First, the disabling of Dr. Cramer's University Network privileges in no way curtailed Dr. Cramer's speech about Mr. Villarosa, as it still allowed for the dissemination of his message using www.ourpaws.info, the vehicle chosen by Dr. Cramer

to publicize his dispute with Mr. Villarosa. See Berger v. Battaglia, 779 F.2d 992 (4th Cir. 1985). Second, the University's actions in this matter were taken exclusively as a result of the adverse effect Dr. Cramer's Network use had on University resources, and failed to constitute a content-based restriction on speech, essential to a heckler's veto claim. See, e.g., Rock For Life - UMBC v. Hrabowski, 643 F. Supp. 2d 729, 746 (D. Md. 2009).

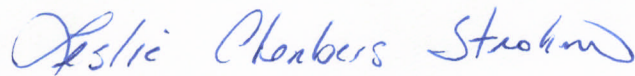
Moreover, since the University's decision to disable the University Network privileges of Dr. Cramer was not a response to the content of Dr. Cramer's speech, the alleged First Amendment free speech violation is inapplicable.

Dr. Cramer's Network privileges were disabled solely because of the disruption that attended his continued use of such privileges. These steps were undertaken by the University in accordance with stated policy, which serves the purpose of preserving University resources for official academic, service, and research-related matters. The University's response in disabling Dr. Cramer's account was pursuant to reasonable and view-point neutral restrictions established by the University, and permissible under the First Amendment. See Good News Club v. Milford Cent. Sch., 533 U.S. 98, 106-07 (2001); Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 46 (1983). Courts have consistently acknowledged this authority, in which the State may "draw distinctions which relate to the special purpose for which the property is used." Perry, 460 U.S. at 55. In addition, other University policies that impose reasonable restrictions on University e-mail and Internet use have specifically been upheld in court against free speech challenges. See, e.g., Faculty Rights Coalition v. Shahrokhi, 204 Fed. Appx. 416 (5th Cir. 2006); Yohn v. Coleman, 639 F. Supp. 2d 776 (E.D. Mich. 2009).

To summarize, Dr. Cramer is a former University employee who was granted rights to the University Network as a courtesy when he retired in 1994. These rights are privileges, conditional upon compliance with reasonable and content-neutral University policies, which Dr. Cramer has since violated. The University's decision to disable Dr. Cramer's Network privileges was not a response to the content or viewpoint of Dr. Cramer's speech, but a reasonable response to the actual and significant disruption experienced by the University as a result of Dr. Cramer's use of a University resource.

The University's actions in this matter are fully consistent with the First Amendment and Dr. Cramer has not suffered a deprivation of his constitutional rights. The University respectfully declines to reinstate Dr. Cramer's Network privileges.

Very truly yours,



Leslie Chambers Strohm
Vice Chancellor and General Counsel

cc:

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