NO. _____

IN THE

Supreme Court of the United States

JONATHAN LOPEZ,

Petitioner,

v.

KELLY G. CANDAELE, et al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Los Angeles Community College District prohibits students from engaging in speech deemed "offensive," "harassing," "degrading," and "sexist" as subjectively defined by listeners and administrators. The District further instructs students to self-censor their speech if they think it may "offend" a listener. The District threatens students with discipline for violating these prohibitions.

A clear circuit split exists regarding the following questions:

1. Whether an objectively reasonable chilling effect on student speech, caused by a speech code and related policies that apply to every human interaction on campus, suffices under Article III to give students standing to challenge the policies on their face.

2. Whether, in the alternative, a student so affected by the policies merits standing under the overbreadth doctrine to assert the rights of others not before the Court.

PARTIES TO THE PROCEEDING

Petitioner is Jonathan Lopez, a student at Los Angeles City College.

Respondents are current or former Los Angeles Community College District Board of Trustees members Kelly G. Candaele, Mona Field, Georgia L. Mercer, Nancy Pearlman, Angela J. Reddock (former member), Miguel Santiago, and Sylvia Scott-Hayes, in their individual and official capacities; Gene Little, in his individual and official capacities as Director of the Los Angeles Community College District Office of Diversity Programs; Jamillah Moore, in her individual and official capacities as President of Los Angeles City College; Allison Jones, in her individual and official capacities as Dean of Academic Affairs at Los Angeles City College; Christy Passman, in her individual and official capacities as Compliance Officer at Los Angeles City College.

Respondent, and Defaulting Defendant in the Court of Appeals, is John Matteson, in his individual and official capacities as Professor of Speech at Los Angeles City College.

CORPORATE DISCLOSURE STATEMENT

Petitioner Jonathan Lopez is an individual person.

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DECISIONS BELOW

The Ninth Circuit's Amended Opinion denying rehearing and rehearing en banc, and withdrawing and superseding the original Opinion, is reported at 630 F.3d 775 (9th Cir. 2010). Appendix ("App.") 1-36a. The Ninth Circuit's original opinion is reported at 622 F.3d 1112 (9th Cir. 2010). The order of the District Court granting Petitioner's motion for preliminary injunction is unreported. App. 69-89a. The order of the District Court denying Respondents' motion for reconsideration of the preliminary injunction is unreported. App. 55-68a. The order of the District Court granting in part and denying in part Respondents' motion to dismiss is unreported. App. 37-54a.

STATEMENT OF JURISDICTION

The Court of Appeals issued its original opinion on September 17, 2010, and denied a timely petition for rehearing and rehearing en banc on December 16, 2010. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

PERTINENT CONSTITUTIONAL PROVISIONS AND STATUTES

Article III, Section 2 of the United States Constitution provides:

> The judicial power shall extend to all cases, in law and equity, arising under this Constitution, ...

The First Amendment to the United States Constitution provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Section 1 of the Fourteenth Amendment to the United States Constitution provides:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The District and LACC policies governing sexual harassment are set forth at App. 116-26a.

STATEMENT OF THE CASE

A. Factual Background

This petition is one of two concurrently-filed petitions requesting that this Court resolve a stark circuit split regarding the Article III standing of students to mount facial challenges to university "speech codes." Students attending universities in states under the jurisdiction of the Third and Sixth Circuit Courts of Appeals unquestionably have Article III standing to challenge the speech code of the university they attend so long as they provide evidence that their speech is "chilled." By contrast, despite well-established principles from this Court's decisions favoring First Amendment challenges, students in the Fourth and Ninth Circuits who labor under a speech code may not challenge it until it has been formally enforced against them. Uncontradicted evidence of a chilling effect does not confer Article III standing, nor do explicit threats of enforcement. That mistaken doctrine blurs the line between facial and as-applied challenges, ignores precedents from this Court, and radically undervalues core protected speech.

In a campus environment rife with speech-restrictive policies, this split threatens to (further) stifle the marketplace of ideas on campus and cause college students to self-censor rather than risk punishment under various—and manifestly unconstitutional—speech policies. This Court should intervene to clear up the confusion and confirm a simple proposition: a student whose speech is chilled by the speech code of the university

he or she attends has standing to challenge it to vindicate the First Amendment.

1. The Los Angeles Community College District's Speech Code

Petitioner Jonathan Lopez is a student at Los Angeles City College ("LACC"), an institution of higher education in the Los Angeles Community College District ("District"). App. 6a. Respondents are District and LACC administrators and one LACC professor. App. 104-09a. The District maintains a speech code that requires students to comply with its terms at all times on campus. App. 6-9a, 119a ¶72. The speech code instructs students to self-censor their speech if they think it might "offend" someone, App. 121-22a ¶79, 123-24a ¶85, 126a ¶90, and allows administrators to punish speech based on the perceived motives of the speaker or the subjective reaction of listeners without any regard to the severity or pervasiveness of the allegedly offending speech, App. 118a ¶66. LACC personnel and students used the speech code to censor and inflict negative repercussions on Lopez for "offending" them by expressing religious viewpoints.

The District published its speech code in a series of "sexual harassment" policies contained in two Board Rules, the LACC Student Handbook, and four webpages. App. 6-9a, 117-18a ¶¶64-66, 119-26a ¶¶72-91. Although labeled as "sexual harassment" policies, the speech code prohibits much more than unlawful sexual harassment.

The speech code forbids "sexual harassment," which the District broadly defines as

> verbal, visual or physical conduct of a sexual nature, made by someone from or in . . . the educational setting, under any of the following conditions:
>
> . . .
>
> 3. The conduct has the *purpose or effect* of having a *negative impact* upon the individual's work or academic performance, or of *creating an intimidating, hostile or offensive work or educational environment.*

App. 7a, 118a ¶66 (emphasis added). The operative terms are undefined. App. 118a ¶67.

District and LACC websites further define "sexual harassment."[1] The District's website defines harassment as "verbal harassment," "disparaging sexual remarks about your gender," and "[m]aking unwelcome, unsolicited contact with sexual overtones (written, verbal, physical and/or visual contact)." App. 8a, 120-21a ¶78. LACC's website lists "common" types of sexual harassment as "generalized sexist statements," and "insulting, intrusive or degrading attitudes/comments about

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[1] The District's Office of Diversity Programs and LACC's Compliance Office each publish "Sexual Harassment" and "Overview" websites that define "sexual harassment." App. 8-9a, 120-26a ¶¶76-91.

women or men." App. 9a, 123a ¶84. At LACC "[h]ostile environment harassment" occurs "when an individual or group's conduct has a negative impact on you, thus creating a hostile or intimidating work and/or academic environment." App. 125a ¶89. These forms of "harassment" "can be intentional or unintentional." App. 120a ¶77, 122-23a ¶83.

The websites instruct students to self-censor their speech if they believe it may "offend" someone: "If unsure if certain comments or behavior are offensive do not do it, do not say it. . . . Ask if something you do or say is being perceived as offensive or unwelcome. If the answer is yes, stop the behavior."[2] App. 122-23a ¶79; *see* App. 8-9a. In fact, a "victim does not have to be the person directly harassed but could be anyone affected by the offensive conduct." App. 122a ¶80. Anyone who "believes, perceives or actually experienced conduct" that may violate the speech code may file a complaint. Ct. of Appeals Excerpts of Record ("ER") p. 396, 402. Failure to comply with the speech code can result in punishment up to and including expulsion.[3]

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[2] The District's Sexual Harassment webpage, as well as LACC's Sexual Harassment and Overview webpages each contain a version of this policy. App. 122-23a ¶79, 123-24a ¶85, 126a ¶90

[3] Board Rule 9803 and the Rules for Student Conduct require students to conform their conduct and speech to District and LACC rules and regulations. App. 116-17a ¶63, 119a ¶72.

2. Actual and Threatened Enforcement of the Speech Code to Silence Lopez

In the fall of 2008, Lopez was a student in Speech 101: Introduction to Public Speaking. App. 9a. Respondent and Defaulting Defendant Matteson taught the class. App. 9a, 13a n.4. During this same period, voters in California considered and voted in favor of Proposition 8, a ballot initiative to amend the California Constitution to define marriage as the union of one man and one woman. App. 112a ¶43. The social and political debate over Proposition 8 elicited strong feelings on both sides. Indeed, during the first class after the November 2008 election, Matteson told the class that Californians who voted in favor of Proposition 8 were "fascist bastards." App. 112a ¶42.

Following the November elections Matteson asked the students to present an informative speech on any topic. App. 9a. Lopez is a Christian who holds sincerely-held religious beliefs and opinions about social, moral, religious, and political issues, like the definition of marriage. App. 9a, 109-10a-¶¶25-26. Lopez decided to discuss the tenets of Christianity and miracles he had seen in his life because of his faith. App. 9a; 111a ¶33.

On November 24, 2008, Lopez presented his speech. App. 110a ¶32. During a broad presentation of various Christian beliefs, he addressed marriage by reading the dictionary's definition of marriage as the union of a man and woman. App. 9-10a. When Lopez spoke these words, Matteson interrupted him and called him a "fascist bastard." *Id.* Invoking the

terms of the speech code, Matteson then turned to the other students in the class and said they could leave the class if they were "offended" by what Lopez said. App. 10a. None of the students left, so Matteson dismissed the class and refused to allow Lopez to finish his speech. *Id.*

When Lopez returned to his seat to collect his belongings, he found Matteson's evaluation of his speech lying on his backpack. App. 10a, 111-12a ¶39. The evaluation contained no grade. Instead, Matteson wrote, "Ask God what your grade is," and "[p]ros[elytizing] is not allowed in public schools." App. 10a. Lopez never received a grade for the assignment, which constituted twenty percent of his final grade in the class. App. 12a; ER 314.

Alarmed by his treatment, Lopez met the next day with the Dean of Academic Affairs, Respondent Allison Jones. App. 10a. Jones requested, and Lopez soon provided, a written description of Matteson's actions. App. 10a, 113-14a ¶49. But Matteson happened to see Lopez give Jones the description, and shortly thereafter confronted Lopez, saying that he was going to get Lopez "expelled from school." App. 10a. Expulsion is one possible punishment for violating the speech code. App. 8a.

Matteson's threats continued on December 2, 2008, when Lopez turned in an assignment outlining several proposed speech topics for his upcoming persuasive speech in Speech 101: global warming, protected sex, exercising your free speech, driving safely, and staying physically fit. App. 10a, 126-27a

¶93. Lopez's "free speech" topic proposed that "everyone has the right to their own opinion, beliefs and to be who they are to satisfy themselves, and not others." ER 454. On the graded assignment, directly under this statement, Matteson wrote: "Remember – you agree to student code of conduct at LACC." App. 10-11a. The LACC Rules for Student Conduct, to which Matteson referred, require students to comply with the "sexual harassment" policies at all times on campus. App. 8a.

The same day, Lopez sent a letter to Jones, through counsel, expressing his concerns about Matteson's behavior and his refusal to grade Lopez's speech. App. 11a.

Jones responded to Lopez's letter on December 4, 2008, warning Lopez that his speech offended his peers and that several filed complaints asking for his punishment. App. 11-12a. Jones wrote that she took the matter seriously and that Lopez would receive a fair grade in Speech 101. App. 12a. But Jones also wrote that several students in Speech 101 found Lopez's speech "deeply offensive," labeled it "hateful propaganda," and asked Jones to make Lopez "pay some price for preaching hate in the classroom." App. 11-12a. Lopez eventually received an "A" in Speech 101, but he never received a grade for his informative speech nor was he allowed to finish presenting it. App. 12a.

As a Christian who desires to share his beliefs and contribute to the marketplace of ideas on campus, Lopez used to discuss his beliefs on social,

cultural, and political issues, like the definition of marriage in California. App. 9a, 109-10a ¶¶25-26, 126a ¶92. Especially in the wake of his experience in Matteson's classroom, Lopez's speech on issues of marriage, gender, and sex has been "chilled" by the speech code. App. 113a ¶¶44-45, 116a ¶58, 127-28a ¶¶94-97. Lopez wishes to discuss these topics as he used to, but has refrained from doing so because of the speech code and Respondents' actions. App. 127-28a ¶94-97.

B. Procedural Background

1. The District Court's Decisions

Lopez filed a verified complaint in the District Court, bringing both as-applied and facial challenges to the speech code, and moved for a preliminary injunction against the speech code. App. 13-14a, 99-151a. Respondents, except Matteson, moved to dismiss. App. 14a, 37a. Respondent Matteson failed to answer or otherwise plead, so the District Court defaulted him.[4] App. 13a n.4; ER 465, ECF No. 10.

The District Court granted Lopez's motion for preliminary injunction. App. 89a. The District Court held Lopez demonstrated Article III standing to challenge the speech code on its face because the District's speech code, and Lopez's experience in Speech 101, had led Lopez to self-censor his speech for fear of punishment, thereby chilling speech

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[4] The District Court reserved entry of a default judgment against Matteson until Lopez's claims against the other Respondents are resolved.

protected by the First Amendment. App 71-72a. The District Court found that Lopez's intended speech on issues of "religion, homosexual relations and marriage, sexual morality and freedom, polygamy, or even gender politics and policies" was "arguably reach[ed]" by the speech code. App. 80a. The court also determined Lopez's claims were ripe and not moot. App. 72-74a.

On the merits, the District Court held the speech code unconstitutionally overbroad on its face. App. 78-81a. Relying upon reams of precedent striking down similar speech codes, the court found the District's code prohibits a substantial amount of protected speech. App. 78-79a. The court found that the code's application to speech that has the "purpose or effect" of creating an "offensive" environment impermissibly depended on the speaker's motives. *Id.* (citing *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 509 (1969); *DeJohn v. Temple Univ.*, 537 F.3d 301, 317 (3d Cir. 2008); *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 216-17 (3d Cir. 2001) (Alito, J.)).

Referencing this Court's ruling in *Davis v. Monroe County Board of Education*, 526 U.S. 629, 652 (1999), the District Court also found the speech code's terms subjective, broad, and lacking any objective component to their enforcement. App. 80a. Because the District's code defined sexual harassment as "sexist statements . . . or degrading attitudes/comments about women or men," the court found that this could prohibit student views on the "proper role of the genders." App. 80a. The

District's prohibition on speaking "offensive" words also restricted the ability of students to discuss issues of "religion, homosexual relations and marriage, sexual morality and freedom, polygamy, or even gender politics and policies."[5] App. 80a.

The District Court denied Respondents' motion to reconsider the injunction, App. 57-67a, and Respondents appealed,[6] ER 475, ECF No. 67.

2. The Ninth Circuit's Decisions

The Ninth Circuit reversed and vacated the preliminary injunction based on its conclusion that Lopez lacked standing to challenge the speech code. The Ninth Circuit issued its original opinion on September 17, 2010. Lopez timely petitioned for panel rehearing and rehearing en banc, based, in part, on the conflict the panel's opinion created with the Third and Sixth Circuits. The Ninth Circuit denied the petition, filed an Amended Opinion, and withdrew the original opinion. App. 3-5a, 90-92a.

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[5] After the preliminary injunction hearing, Respondents moved to supplement the evidence by arguing that the speech code had changed. The District Court found Respondents were still enforcing the code against students, denied their motion, and excluded the evidence. App. 95-97a.

[6] While the appeal was pending, the District Court granted in part and denied in part Respondents' motion to dismiss. It dismissed some of Lopez's claims and awarded Respondents qualified immunity from Lopez's damages claims. App. 37-54a. However, it did not dismiss Lopez's facial or as-applied claims against the speech code.

The Amended Opinion held that Lopez lacked Article III standing to challenge the speech code on its face because he did not show the requisite injury-in-fact. App. 31-32a. The Ninth Circuit determined that Lopez did not show a credible threat of enforcement by Respondents and that his allegations that the speech code chilled his speech were insufficient. *Id.*

The Ninth Circuit concluded that Lopez did not show a credible threat of enforcement by Respondents. Despite Matteson censoring Lopez's informative speech and refusing to grade his assignment pursuant to the exact terms of the speech code ("offensive"), the panel found that this was neither actual enforcement nor a credible threat of enforcement. App. 24a. Nor did the panel find that Matteson's threat concerning compliance with the LACC student code of conduct sufficed as an injury. App. 24-25a. The panel also found that Jones' letter reciting the actual complaints by Lopez's peers was not a credible threat under the speech code—even though the students and Jones used the operative words of the code to register their complaints. App. 25-26a. In so concluding, the court determined that it was unlikely the District or LACC would enforce the speech code against Lopez. App. 30-31a.

Ultimately, the Ninth Circuit concluded that Lopez's allegations that the speech code chilled his speech were insufficient to merit standing to challenge the policy on its face. App. 31-32a. The court found Lopez did not adequately prove his

intent to violate the speech code because he did not show that the code arguably applies to his past or future speech. App. 26-29a. The District Court accepted that Lopez's intent to discuss his Christian views *on politics, morality, social issues, religion,* and other topics may constitute "verbal . . . conduct of a sexual nature" under the speech code, but the Ninth Circuit failed to accept this factual finding. App. 27a. The panel even mistakenly concluded that Lopez did not explain how his speech violates the District's official interpretations of the speech code. App. 27-28a. It also faulted Lopez for failing to point out anyone who believed the speech code could restrict Lopez's viewpoints on "homosexuality or gay marriage"—in spite of the uncontradicted evidence that Matteson censored his speech and fellow students made complaints using language from the speech code. App. 28a.

The court noted the conflicting decision of the Third Circuit in *McCauley v. University of the Virgin Islands*, 618 F.3d 232, 238-39 (3d Cir. 2010), which held that a student had standing to facially challenge a policy that chilled his speech, and declined to follow it. App. 32-34a.

REASONS FOR GRANTING THE WRIT

At present, college students live under two—and possibly three—distinctly different standing regimes. Students in the Third and Sixth Circuits enjoy the normal First Amendment rule that an objectively reasonable allegation of a chill is sufficient to allow a student to challenge his or her university's speech code.

In the Fourth and Ninth Circuits, however, students can provide uncontradicted evidence of chill and even evidence of threatened and actual enforcement and *still* not have Article III standing to challenge manifestly unconstitutional policies. Indeed, a credible as-applied case based on the invocation, but not ultimate enforcement, of the policy in response to particular speech seems to count against standing in those Circuits, rather than confirming the seriousness of the chill.

Further, other Circuits have differing approaches that only add to the confusion. The divergence in the opinions creates conflicting student rights, undermines student free speech, and casts doubt on long-held Article III standing rules applicable to facial challenges.

This case is of exceptional constitutional importance. College students depend on free and open inquiry to fully enjoy the "marketplace of ideas" on campus. The widespread adoption of speech codes—enacted as overbroad anti-harassment, nondiscrimination, or even civility policies—threaten to skew that marketplace. These codes are unquestionably unconstitutional (indeed, they have *never* survived federal court review on the merits), but overly-restrictive Article III standing rules leave students with a terrible choice: comply and consent to censorship or defy and risk their academic careers. The Court's intervention is urgently needed to resolve the Circuit split and to reaffirm a simple and straightforward rule: a student whose speech is objectively chilled by the speech code of the

university he or she attends has standing to challenge it to vindicate the First Amendment.

I. This Court's Review Is Necessary to Resolve a Circuit Split of Exceptional National Importance.

To invoke the jurisdiction of the federal courts, a plaintiff must establish Article III standing to sue, which consists of an injury-in-fact, causation, and the likelihood that a decision will redress his injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). While in some contexts there are additional prudential obstacles to standing, in the First Amendment context, prudential principles and the values underlying the First Amendment itself all favor finding standing for someone whose speech is objectively chilled. Thus, the general standing principle in the First Amendment context is clear: When a law is aimed at restricting the speech of the plaintiff and he suffers a chill as a result, he has suffered an injury sufficient to merit standing. *Virginia v. Am. Booksellers Ass'n*, 484 U.S. 383, 392-93 (1988); *see id.* at 393 ("the alleged danger of this statute is, in large measure, one of self-censorship; a harm that can be realized even without an actual prosecution."). Thus, for Article III standing purposes, an injury can be established by the desire to speak and the potential for punishment. *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 299-301 (1979). While "subjective 'chill'" alone does not suffice to confer standing to bring a facial challenge against policies that burden expressive freedoms, an objectively reasonable chill – viz, a credible statement by the plaintiff of the intent to

commit a prohibited act and the "conventional background expectation" that the government will enforce the law—does suffice. *See Act Now to Stop War & End Racism Coal. v. District of Columbia*, 589 F.3d 433, 435-36 (D.C. Cir. 2009).

Moreover, in the context of speech codes, the identity of the proper plaintiff is obvious—a student whose speech is chilled by the code. In that context, it is particularly reasonable for students to rely on the conventional background expectation that a university takes it speech code seriously and intends to enforce it. Despite the clear answer provided by this Court's precedents a circuit split has developed, in which some courts, exemplified by the decision below, have erected artificial barriers to standing that preclude a student chilled by his own school's speech code from raising a challenge.

A. The Ninth Circuit's Decision Squarely Conflicts with the Third Circuit's Decision in *McCauley v. University of Virgin Islands*, 618 F.3d 232 (3d Cir. 2010).

The Third Circuit applies the straightforward rule suggested by this Court's cases: a student subject to a college policy that restricts his speech on campus has Article III standing to challenge that policy on its face. Three decisions of the Third Circuit have reached this conclusion, including one written by then-Judge Alito.

Most recently, in *McCauley*, 618 F.3d at 238-39, the Third Circuit held that a student had standing to

facially challenge certain provisions of the university's speech code because those provisions had "the potential to chill protected speech." Importantly, McCauley testified that he had never suffered a deprivation based on those provisions of the policy, had never been charged with their violation, but that the policies "chilled" his speech.

After receiving notice that the University of the Virgin Islands was charging him with violating Paragraph E of the Student Code of Conduct, which prohibited causing "physical or mental harm" to another person, McCauley filed a lawsuit against the university, challenging not only Paragraph E of the Code, but also Paragraphs B, H, and R, which prohibited, respectively, "lewd or indecent conduct"; conduct that caused "emotional distress"; and the "display of unauthorized or offensive signs" at sports events, concerts, and social-cultural events. *Id.*

The Third Circuit held McCauley had Article III standing to challenge Paragraphs B, H, and R on their face, despite McCauley's concessions that he suffered no deprivations from these policies and despite the fact that he had not been charged with their violation. *Id.* "Paragraphs B, H, and R," the Third Circuit held, "all have the potential to chill protected speech." *Id.* "As such, under the 'relaxed' rules of standing for First Amendment overbreadth claims, McCauley has standing to assert facial challenges to those paragraphs." *Id.* (citation omitted).

In reaching its conclusion, the Third Circuit found that standing was conferred by the "judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression," *id.* (citing *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973)), and recognized the "critical importance" of free speech in public universities, *id.* at 242 (citing *Healy v. James*, 408 U.S. 169, 180 (1972); *DeJohn*, 537 F.3d at 314); *see also id.* at 247 (University students often "remain subject to university rules at almost all hours of the day"). Thus, even though McCauley was never threatened with punishment under the policies, never specifically articulated how they chilled his speech, and even testified that he had not self-censored, the Third Circuit still found he had standing to challenge the policies on their face. *Id.* at 239.

By contrast, Lopez not only presented evidence that the very existence of the speech code chilled his speech, he also repeatedly experienced actual and threatened censorship by LACC officials. When Lopez gave his informative speech about Christianity and marriage, reading the definition of marriage as the union of one man and one woman, he had a legitimate fear that some people would consider this a "sexist statement" prohibited by the vague terms of the District's speech code. App. 123a ¶84. The meaning of marriage and traditional gender roles in California (and elsewhere) were and still are subjects of contentious debates, eliciting strong feelings on either side. Matteson certainly seemed to believe that Lopez's speech created an

"offensive environment" under the speech code, and indeed that anyone who espoused Lopez's views was a "fascist bastard." App. 110-13a ¶¶32-45; 118a ¶66; 127a ¶¶94-96.

Matteson punished Lopez by refusing to allow him to speak and refusing to grade his assignment because his speech was "offensive"—the policy language of the speech code challenged by Lopez. App. 111a ¶¶35-36; 118a ¶66. Matteson also threatened Lopez with expulsion if he complained further of his discriminatory actions, and explicitly admonished Lopez to speak in compliance with LACC's student code of conduct—which includes the speech code—when presenting his persuasive speech. App. 113-14a ¶49; 119a ¶72; 126-27a ¶93; ER 411, 424, 454.

Unlike *McCauley*, where the plaintiff alleged no specific injury from Paragraphs B, H, and R, Lopez's Verified Complaint states that Matteson undertook his actions pursuant to the speech code, which caused Lopez to refrain from discussing similar topics in the future for fear of punishment. App. 127a ¶¶94-96; 129a ¶104. Lopez also refrained from speaking due to the complaints filed by his peers, who also used the exact language of the speech code—"offensive"—to complain about Lopez's speech. App. 11-12a, 114-15a ¶52.

Rather than view this incident as powerful confirmation that his professed chill was real, the Ninth Circuit concluded that these accumulated actions did not amount to credible threats of

enforcement, despite the fact that each reference to Lopez's speech on Christianity and marriage labeled his speech as "offensive." App. 111a ¶36; 114-15a ¶¶52, 127a. But that conflates as-applied and facial challenges. Indeed, it is as if the Ninth Circuit viewed the fact that Lopez was threatened with application of the speech code as a reason to deny him an ability to mount a facial attack. That approach completely undermines the more permissive First Amendment rules for facial challenges. It is also wholly irreconcilable with *McCauley*.

In *McCauley*, the student was not threatened with enforcement of the challenged policies, nor did he express what he wanted to say that would violate the policies. Instead, he admitted he suffered no specific deprivation. Nevertheless, the university required him to comply with the policies at all times on campus. The "chill" was an objective reality not a subjective experience. But here, the Ninth Circuit did not grant Lopez similar standing, even though LACC officials and his peers actually enforced and threatened enforcement of the speech code. In doing so the lower court misapplied the doctrine of facial overbreadth standing and created a circuit split with *McCauley*.

Moreover, *McCauley* is not an outlier in the Third Circuit. On at least two previous occasions the Third Circuit granted students Article III standing to facially challenge college and secondary school harassment policies that chilled their speech. In *DeJohn v. Temple University*, the Third Circuit held

a student had standing to facially challenge the overbreadth of a sexual harassment policy, nearly identical to the one in this case, by pleading that "he felt inhibited in expressing his opinions in class concerning women in combat and women in the military," which he "believed were implicated by the policy," and "might be sanctionable by the University." 537 F.3d at 305. The Third Circuit concluded that the student had standing because the "policy had a chilling effect on his ability to exercise his constitutionally protected rights." *Id.* at 305, 313-14.

Further, in *Saxe v. State College Area School District*, the Third Circuit, in an opinion written by then-Judge Alito, held that two high school students had Article III standing to facially challenge a sexual harassment policy—nearly identical to the one here—merely by showing it chilled their speech. 240 F.3d at 203. The students had standing simply because they "identif[ied] themselves as Christians," believed "they ha[d] a right to speak out about the sinful nature and harmful effects of homosexuality," and "feared that they were likely to be punished under the Policy for speaking out about their religious beliefs." *Id.* *See also Saxe v. State Coll. Area Sch. Dist.*, 77 F. Supp. 2d 621, 625 (M.D. Pa. 1999) (conferring standing); *Sypniewski v. Warren Hills Reg'l Bd. of Educ.*, 307 F.3d 243, 251 (3d Cir. 2002) (finding Article III standing to challenge harassment policy as overbroad even though student was threatened with enforcement under a different policy); *Trotman v. Bd. of Trustees of Lincoln Univ.*, 635 F.2d 216, 228-29 (3d Cir. 1980) (finding

professors who received letters implicitly, but not overtly, threatening discipline had Article III standing to sue university for chilling speech).

Lopez pleaded uncontroverted facts similar to those in *DeJohn* and *Saxe*. Lopez "shares his beliefs about Christianity with others, particularly, his fellow students." App. 109a ¶25. He "often discusses his faith and how it applies to guide his views on political, social, and cultural issues and events." *Id.* He "looks for opportunities" to do this "between classes among friends and fellow students, and sometimes during appropriate class opportunities." App. 109-10a ¶26. Lopez "finds himself consistently engaged in conversations on campus regarding issues implicated by the speech code, including his speech during Speech 101." App. 126a ¶92. But Lopez "fears that the discussion of his religious, political, social and/or cultural views regarding these issues may be sanctionable under the speech code." *Id.* Indeed, Lopez states that Matteson's actions and the speech code chilled his expression, App. 127a ¶94, which "caused him to refrain from discussing his beliefs with respect to political, social, and cultural issues and events," App. 127a ¶95.

Lopez would have Article III standing in the Third Circuit. In the Ninth Circuit, he does not.

B. The Ninth Circuit's Decision Conflicts with the Sixth Circuit's Decision in *Dambrot v. Central Michigan University*, 55 F.3d 1177 (6th Cir. 1995).

In *Dambrot v. Central Michigan University*, student members of the basketball team challenged the facial overbreadth of the university's policy on racial and ethnic harassment after the university fired their coach for using a racial slur in the locker room. 55 F.3d at 1182. The policy contained language similar to the speech code in this case. *See id.* (defining harassment as "any intentional, unintentional, physical, verbal, or nonverbal behavior that subjects an individual to an intimidating, hostile or offensive educational, employment or living environment"). The university never threatened enforcement of the policy against the students, nor did the students plead that they intended to violate the policy. *Id.* at 1182-83. They only pleaded that they occasionally used the same word that resulted in the coach's dismissal and feared similar punishment. *Id.* at 1180.

The Sixth Circuit affirmed the district court's finding that the students had Article III standing facially to challenge the harassment policy because the "overbreadth doctrine . . . allows parties not yet affected by a statute to bring actions under the First Amendment based on a belief that a certain statute is so broad as to 'chill' the exercise of free speech and expression." *Id.* at 1182; *see Dambrot v. Cent. Mich. Univ.*, 839 F. Supp. 477, 480 (E.D. Mich. 1993) (finding students have standing to challenge policy because they "might be subjected to it"); *see also G &*

V Lounge, Inc. v. Mich. Liquor Control Comm'n, 23 F.3d 1071, 1076 (6th Cir. 1994) ("It is well-settled that a chilling effect on one's constitutional rights constitutes a present injury in fact.").

In *Dambrot*, the students speech was chilled because a *non-student* (who, as a university employee, enjoyed *fewer* free speech protections) was punished under the university policy. In this case, Lopez's speech was not only chilled by the policy, but he also *personally* suffered actual censorship and threatened enforcement of the speech code.

In *Dambrot*, the Sixth Circuit found the lack of actual enforcement against the plaintiff students to be irrelevant. The students had Article III standing because the "text of the policy" stated that "language or writing, intentional or unintentional, regardless of political value, can be prohibited upon the initiative of the university." 55 F.3d at 1183. The mere existence of such language presented a "realistic danger" of enforcement. *Id.*; *see Act Now to Stop War & End Racism Coal.*, 589 F.3d at 435-36 (objective chill evidenced by the "conventional background expectation that the government will enforce the law").

In square conflict with *Dambrot*, the Ninth Circuit concluded that Jones (the Dean of Academic Affairs) dispelled the speech code's threat of punishment by opining that "First Amendment rights will not be violated." App. 25a. The *Dambrot* court, in contrast, held that a college's professed intent not to enforce a harassment policy is

insufficient to cure an injury, where the plain language of the policy shows that the college can enforce it at any time. *See* 55 F.3d at 1183 (refusing to deny Article III standing because the policy promised to respect First Amendment rights); *see also United States v. Stevens*, 130 S. Ct. 1577, 1591 (2010) ("[T]he First Amendment protects against the Government; it does not leave us at the mercy of noblesse oblige. We would not uphold an unconstitutional statute merely because the Government promised to use it responsibly.").

Lopez would have Article III standing in the Sixth Circuit. In the Ninth Circuit, he does not.

C. The Ninth Circuit's Decision Conflicts with the Seventh Circuit's Decision in *Zamecnik v. Indian Prairie School District #204*, — F.3d —, 2011 WL 692059 (7th Cir. Mar. 1, 2011)

Just days ago, the Seventh Circuit issued a decision that also conflicts with the Ninth Circuit's decision below. Like the Third and Sixth Circuits, the Seventh Circuit recognizes that students—even in high school—have standing to facially challenge applicable school policies that objectively chill their speech.

In *Zamecnik v. Indian Prairie Sch. Dist. #204*, --- F.3d ---, 2011 WL 692059 (7th Cir. Mar. 1, 2011) (Posner, J.), the Seventh Circuit held Andrew Nuxoll had Article III standing to challenge his high school's speech code—even though it had never been enforced against him. A different student, Heidi

Zamecnik, wore a T-shirt to the school in 2006 that said, "Be Happy, Not Gay." School officials inked out "not gay" because it violated the school's policy prohibiting "derogatory comments" that refer to, *inter alia*, "sexual orientation." *Id.* at *1; *Nuxoll v. Indian Prairie Sch. Dist. #204*, 523 F.3d 668, 670 (7th Cir. 2008). Nuxoll testified that, despite his desire to wear a similar T-shirt during the 2007 school year, he never "wore a shirt that contained the phrase, or otherwise tried to counter the [a gay rights event], for fear of being disciplined." *Nuxoll*, 523 F.3d at 670.

Despite the fact that school officials never sought to enforce the "derogatory comments" policy against Nuxoll or even threatened to do so, *Zamecnik*, 2011 WL 692059, *1–4; *Nuxoll*, 523 F.3d at 669–70, the Seventh Circuit not only entertained Nuxoll's facial challenge, *Nuxoll*, 523 F.3d at 670, but granted him a preliminary injunction,[7] *id.* at 675, and upheld a permanent injunction and damages award, *Zamecnik*, 2011 WL 692059, *4, 8. And what was the injury that merited not just standing, but extraordinary judicial relief on the merits? "Nuxoll's desire to wear the T-shirt on multiple occasions in 2007 was thwarted by fear of punishment." *Id.* at *8; *see also Majors v. Abell*, 317 F.3d 719, 721 (7th

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[7] Like the Third Circuit, the Seventh recognized implicitly that the First Amendment affords universities less leeway to restrict the speech of their adult students than it affords high schools for their minor students. *See Nuxoll*, 523 F.3d. at 647-75 ("This particular restriction, it is true, would not wash if it were being imposed on adults. . . ." (citing *R.A.V. v. City of St. Paul*, 505 U.S. 377, 390 (1992); *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995))).

Cir. 2003) (finding standing when no threat of prosecution because the "threat is latent in the existence of the statute").

The Seventh Circuit, consistent with this Court's precedents, required not some very specific "credible threat of enforcement" against Nuxoll, for the school never threatened him, but only the classic First Amendment injury of an objectively reasonable chill. *Cf.* App. 23-26a. It was enough that Nuxoll knew about policy, realized that it governed him and barred his speech, and self-censored his speech as a result.

Lopez is in the same position as Nuxoll, except that he provided even more evidence to merit Article III standing—uncontradicted threats of enforcement by District officials and students. Matteson used the exact terms of the speech code to shutdown Lopez's speech, withhold a grade, and threaten future punishment. App. 9-10a. Jones repeated the actual complaints of Lopez's fellow students and never assured Lopez would not be punished. App. 11-12a, 114-15a ¶ 51-53.

Lopez would have Article III standing in the Seventh Circuit. In the Ninth Circuit he does not.

D. The Fourth Circuit's Decision in *Rock for Life-UMBC v. Hrabowski*, No. 09-1892, 2010 WL 5189456 (4th Cir. Dec. 16, 2010) Aligns with the Ninth Circuit's Decision in this Case and Creates a Square 2-3 Split.

In *Rock for Life-UMBC v. Hrabowski*, No. 09-1892, 2010 WL 5189456, *6 (4th Cir. Dec. 16, 2010), the Fourth Circuit aligned itself with the Ninth Circuit and held that a registered student organization and two students lacked Article III standing to facially challenge University of Maryland, Baltimore County's sexual harassment policy despite being told their speech would violate the policy and despite testimony from the university's chief of police that he would enforce claims by "offended" students.

The plaintiffs in *Rock for Life* requested permission to erect a pro-life display on campus. *Id.* at *1. A university official told them they could not host the event because students might feel "emotionally harassed." *Id.* at *2. The sexual harassment policy was nearly identical to the one in this case. *See id.* (prohibiting "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: (1) Such conduct has the purpose or effect of unreasonably interfering with an individual's academic or work performance, or of creating an intimidating, hostile, or offensive educational or working environment . . ."). The plaintiffs alleged that the official's enforcement of the sexual harassment policy and the policy itself chilled their

ability to speak freely on pro-life issues that affect the sexes. The Fourth Circuit, in conflict with the Third, Sixth, and Seventh Circuits, held the plaintiffs lacked standing to challenge the harassment policy on its face because a chill upon student speech did not amount to injury-in-fact. *Id.* at *6. *But see Newsom v. Albemarle Cnty. Sch. Bd.*, 354 F.3d 249, 257 (4th Cir. 2003) (holding middle school student had standing to facially challenge dress code that was never applied to him because he was subject to it at all times on campus).

E. The Ninth Circuit's Decision Conflicts with Similar Decisions in the First, Second, Fifth, Eleventh, and District of Columbia Circuits.

If one broadens the analysis beyond the university campus, it is plain that the Ninth Circuit's decision is a doctrinal outlier. Indeed, the decision below conflicts with the decisions of the First, Second, Fifth, Eleventh, and District of Columbia Circuits that a litigant has Article III standing to challenge a law on its face by alleging that the law restricts his speech and has objectively chilled his speech.

In *New Hampshire Right to Life PAC v. Gardner*, 99 F.3d 8, 17 (1st Cir. 1996), the First Circuit held that a political action committee suffered an injury-in-fact sufficient to confer Article III standing to facially challenge a law that capped political campaign expenditures. The PAC had standing because the law restricted "expressive activity by the class to which the plaintiff belongs." *Id.* at 15. In

that circumstance, the First Circuit determined "courts will assume a credible threat of prosecution in the absence of compelling contrary evidence." *Id.*

In *Levin v. Harleston*, 966 F.2d 85, 89 (2d Cir. 1992), the City College of the City University of New York created an ad hoc committee to study how much free speech professors should have in and outside the classroom after a professor wrote two letters and a book review containing racist comments. The committee had no power to punish the professor, but the university president did. *Id.* The Second Circuit held that the professor had Article III standing to challenge the committee's actions because they were implied threats and chilled the professor's speech. *Id.* It was not fatal to the professor's standing that no formal threats were ever issued because "[i]t is the chilling effect on free speech that violates the First Amendment, and it is plain that an implicit threat can chill as forcibly as an explicit threat." *Id.* at 89-90. *See also Green Party of Conn. v. Garfield*, 616 F.3d 213, 242-43 (2d Cir. 2010) (holding that a minority political party had Article III standing to challenge campaign finance laws because some of the laws might apply to the political party if it ever raised enough funds).

In *Fairchild v. Liberty Independent School District*, 597 F.3d 747, 755 (5th Cir. 2010), the Fifth Circuit held a discharged teacher's aide had Article III standing to facially challenge the school district's policy of disallowing public comment about specific employees during governing board meetings because the policy chilled the plaintiff's speech. *See id.* at

754-55 ("Chilling a plaintiff's speech is a constitutional harm adequate to satisfy the injury-in-fact requirement.").

In *Pittman v. Cole*, 267 F.3d 1269, 1282-84 (11th Cir. 2001), an Alabama regulatory commission issued an opinion stating that candidates for judicial office would violate the canons of ethics if they answered candidate questionnaires with any answer other than "decline." The Christian Coalition, which submitted questionnaires to all judicial candidates, and three candidates who wanted to answer the questions, challenged the opinion on its face. *Id.* at 1276. The Eleventh Circuit found that the plaintiffs suffered an injury because their First Amendment rights were chilled by the potential for them to be punished for violating the opinion. *Id.* at 1284.

In *Chamber of Commerce v. FEC*, 69 F.3d 600, 601 (D.C. Cir. 1995), the plaintiffs facially challenged a Federal Election Commission rule that limited who organizations can communicate with concerning political messages and solicitations. Plaintiffs argued they altered their actions and speech because of the rule's chilling effect. *Id.* at 603. The District of Columbia Circuit held the plaintiffs had suffered an injury-in-fact because the mandatory nature of the rule bound their actions, resulting in a chill upon their speech. *Id.* at 603-04.

In short, there is a square 2-3 split on the precise question presented here—whether a student whose speech is objectively chilled by the speech code of the university he or she attends has standing to

challenge it under the First Amendment. What is more, many cases from other contexts confirm that—the Ninth and Fourth Circuits' are the doctrinal outliers. This disagreement can only be resolved through the intervention of this Court. This Court should grant review to clarify the confusion.

II. This Case Is an Ideal Vehicle Through Which this Court Can Address an Issue of Exceptional National Importance.

This Court's jurisprudence recognizes the public university as a "marketplace of ideas." *Keyishian v. Bd. of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 603 (1967). Yet overbroad and vague restrictions on student speech at public colleges and universities are a nationwide epidemic that threatens debate and discourse in our most vital educational institutions. Federal courts across the country have responded to the threat by *uniformly* striking down college speech codes on their face and as-applied. Pre-enforcement overbreadth challenges, as in this case, are essential to protecting the free speech of students. Indeed, the vigorous preservation of the "marketplace of ideas" depends on the First Amendment's permissive Article III standing doctrine. However, the conflict among the circuits, demonstrated by the split between the Ninth and Fourth Circuits on one side, and the Third, Sixth, and Seventh Circuits on the other side, means that some college students are more free to speak than others, based merely on the geographic location of their institutions.

A. Public University Speech Codes Are a National Epidemic that Threaten the American University's Unique Status as the "Marketplace of Ideas."

"'The essentiality of freedom in the community of American universities is almost self-evident. . . . Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.'" *Keyishian*, 385 U.S. at 603 (quoting *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957)). For that reason, the First Amendment "does not tolerate laws that cast a pall of orthodoxy over the classroom." *Id.*

Written over forty years ago, these words remain a clarion call for a particular vision of the American public university—as a "marketplace of ideas," *Healy*, 408 U.S. at 180, a place where students learn not what to think, but how to think, a place where our civilization transmits the essential values of liberty and free inquiry. Unfortunately, this vision of liberty has been under sustained assault.

For more than twenty years, universities have too often attempted to marginalize and exclude students that are outside the political mainstream of campus. Alan Charles Kors & Harvey Silverglate, *The Shadow University: The Betrayal of Liberty on America's Campuses* (Harper, 1999). Perhaps the most pernicious and persistent of the various methods of campus censorship is the speech code. Designed to broadly prohibit so-called "offensive" or "harassing" communications, these codes have

chilled free speech at campuses from coast to coast. *See* Azhar Majeed, *The Misapplication of Peer Harassment Law on College and University Campuses and the Loss of Student Speech Rights*, 35 J.C. & U.L. 385, 390-405 (2009); Kelly Sarabyn, *The Twenty-Sixth Amendment: Resolving the Federal Circuit Split Over College Students' First Amendment Rights*, 14 TEX. J. C.L. & C.R. 27, 33-35 (2008). Facially vague and overbroad, they deter untold thousands of students from speaking freely on critical issues of race, gender, sexuality, and religion. Arbitrarily enforced, they tend to become weapons of the dominant political culture, wielded against dissenters in an effort to replace the "marketplace of ideas" with an ideological monopoly.

According to the non-partisan Foundation for Individual Rights in Education, which conducts the leading annual study on university speech policies, nearly seventy percent of public colleges and universities enforce an unconstitutional speech code against their students. *Spotlight on Speech Codes 2011: The State of Free Speech on Our Nation's Campuses* 6 (2011), *available at* http://thefire.org/public/pdfs/312bde37d07b913b47b63e275a5713f4.pdf?direct (last visited Mar. 15, 2011). The unique nature of the public university campus, where students often live on campus or spend most of their time there, means that students are often subject to these policies virtually every moment of their waking lives. *McCauley*, 618 F.3d at 247. Every on-campus human interaction is regulated. And colleges are expanding the scope of these

policies to restrict even off-campus and internet speech.[8]

Universities often argue that their speech codes are nothing more than legislatively and judicially approved harassment policies, as Respondents argued below. But the terms of these policies are much broader and enable colleges to restrict much more than sexual or racial harassment. The subjectivity built into these codes allows colleges to punish speech based on the motivations of the speaker or the subjective reaction of listeners. Most college harassment policies violate this Court's holding in *Davis v. Monroe County Board of Education*, 526 U.S. at 651, by allowing colleges to restrict harassment that is not severe, pervasive, or objectively offensive.

Left in place, these speech codes allow colleges to selectively prohibit unpopular speech, like that of Lopez, based on the subjective whims of listeners or administrators. The District's speech code is one of the most egregious forms of the speech code, as it instructs students to self-censor their speech if they think it *might* "offend" someone. Thus, students are left in free speech limbo as they question whether their speech will result in punishment, and the "marketplace of ideas" disintegrates.

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[8] *See* Darryn Cathryn Beckstrom, Comment, *Who's Looking at Your Facebook Profile? The Use of Student Conduct Codes to Censor College Students' Online Speech*, 45 WILLAMETTE L. REV. 261 (2008) (discussing the rise of public university student conduct codes that regulate student speech off-campus and on the internet).

B. Courts Uniformly Strike Down University Speech Codes When They Are Able to Reach the Merits.

From the inception of speech codes in the 1980s, courts have uniformly struck them down as unconstitutional. *See McCauley*, 618 F.3d at 250, 252; *DeJohn*, 537 F.3d 301; *Saxe*, 240 F.3d at 217; *Dambrot*, 55 F.3d at 1185; *Iota Xi Chapter of Sigma Chi Fraternity v. George Mason Univ.*, 993 F.2d 386 (4th Cir. 1993); *Coll. Republicans at S.F. State Univ.*, 523 F. Supp. 2d 1005, 1021 (N.D. Cal. 2007); *Roberts v. Haragan*, 346 F. Supp. 2d 853, 872 (N.D. Tex. 2004); *Bair v. Shippensburg Univ.*, 280 F. Supp. 2d 357 (M.D. Pa. 2003); *Pro-Life Cougars v. Univ. of Houston*, 259 F. Supp. 2d 575, 584 (S.D. Tex. 2003); *UWM Post, Inc. v. Bd. of Regents of Univ. of Wis. Sys.*, 774 F. Supp. 1163 (E.D. Wis. 1991); *Doe v. Univ. of Mich.*, 721 F. Supp. 852 (E.D. Mich. 1989); *Booher v. Bd. of Regents, N. Ky. Univ.*, No. 96-135, 1998 U.S. Dist. LEXIS 11404 (E.D. Ky. July 22, 1998); *Corry v. Leland Stanford Junior Univ.*, No. 740309 (Cal. Super. Ct. Feb. 27, 1995) (slip op.).

This combination of circuit and district precedent should have ended speech codes at universities across the nation, yet they persist. Until the District Court entered an injunction in this case, the District and LACC maintained a sexual harassment policy that used language nearly identical to that struck down in *DeJohn*, *Saxe*, *Dambrot*, and other cases. But the Ninth Circuit's requirement that students demonstrate actual enforcement of the policy to establish an injury-in-fact sufficient for a facial

challenge effectively bars courts from confronting the merits of these unconstitutional policies, unless the rare student risks punishment (academic career) to raise a challenge.

III. The Court Should Grant the Petitions in Both This Case and in *Rock for Life v. Hrabowski* (filed March 16, 2011).

The student organization in *Rock for Life* also filed a petition for writ of certiorari in this Court today. The complementary facts in *Rock for Life* and this case militate in favor of granting both petitions so that this Court can fully resolve the problem and provide guidance to the lower federal courts.

CONCLUSION

Students should not enjoy different constitutional rights based solely on the location of their college. Jonathan Lopez's petition for writ of certiorari should be granted, and this Court should intervene to establish uniform Article III standing guidelines that afford maximum protection for the marketplace of ideas on campus.

Respectfully submitted,

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