

April 2009

Chief Judge Larry Naves
Denver District Court
1437 Bannock St.
Denver, CO 80202

cc: David Lane, Esq.

Re: *Churchill v. University of Colorado*

Dear Judge Naves:

We, the undersigned professors and attorneys, urge you to grant Professor Ward Churchill's motion for reinstatement at the University of Colorado.

On April 2, 2009 the jury in this case found that Ward Churchill's exercise of freedom of speech was a substantial or motivating factor in his dismissal. Furthermore, the jury found that had it not been for Professor Churchill's controversial essay, which is clearly protected by the First Amendment, the Regents of the University of Colorado (CU) would not have fired him for research misconduct.

Under these circumstances, allowing the University to preclude Professor Churchill's return to campus would send the message that the First Amendment and academic tenure can be abridged at will by public employers.

Reinstatement is the usual, or "preferred," remedy in cases such as this. As federal courts of appeal have noted,

When a person loses his job, it is at best disingenuous to say that money damages can suffice to make that person whole.... We also note that reinstatement is an effective deterrent in preventing employer retaliation against employees who exercise their constitutional rights. If an employer's best efforts to remove an employee for unconstitutional reasons are presumptively unlikely to succeed, there is, of course, less incentive to use employment decisions to chill the exercise of constitutional rights.

Squires v. Bonser, 54 F.3d 168, 173 (3rd Cir. 1995), quoting *Allen v. Autauga County Board of Education*, 685 F.2d 1302, 1306 (11th Cir. 1982), and also citing *Banks v. Burkich*, 788 F.2d 1161, 1164 (6th Cir.1986) ("The prospect of money damages will not be sufficient for many employees to overcome the otherwise chilling effect that accompanies the threat of termination.").

In this case, the American Association of University Professors (AAUP)'s national council has passed a resolution which states, "We believe the disputes over Ward Churchill's publications should have been allowed to work themselves out in traditional scholarly venues, not referred to disciplinary hearings. We believe Churchill should be reinstated to his faculty position at the University of Colorado."

In opposing reinstatement, University of Colorado officials continue to rely upon the conclusions of their investigative committee, whose report has been discredited not only by the evidence introduced at trial and the jury's findings, but by numerous charges of research misconduct against its authors.

The University also claims that returning Professor Churchill to his job will cause excessive disruption on campus, a prediction that seems more smokescreen than actuality. Professors work relatively independently and students are free to take or refuse to take particular classes. In his nearly 30 years of service to CU, Professor Churchill received numerous awards for both teaching and service to the University. He continued to teach during the height of the controversy in 2005 and, at the students' request, taught a successful voluntary class in 2007-2008.

Speculative allegations of disruption should not be a means by which the University can continue to retaliate against Professor Churchill for his protected speech. Invoking similar claims in February 2005, CU administrators attempted to cancel a speech by Professor Churchill, yet the event took place without incident. To the extent that any disruptions are anticipated, it is the University's responsibility to minimize those disruptions and ensure a smooth transition back to the workplace for Professor Churchill.

In sum, we believe that the chilling effect of the actions of the University of Colorado can only be effectively deterred by granting reinstatement to Professor Churchill, and hope that you will reinforce the importance of the First Amendment in academia by so ordering.

Signed:

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