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April 28, 2009

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

Re: *Churchill v. University of Colorado*

Dear Judge Naves:

Three years ago, the Society of American Law Teachers (SALT), since 1972 an independent membership organization of law professors and administrators, issued a statement calling for the University of Colorado not to fire Ward Churchill and warning that his firing would undermine academic freedom and have a chilling effect on professors engaging in politically unpopular speech. We write to you today to explain how the concerns we initially raised are equally applicable to the issue currently before this court, and to urge you to order the University to reinstate Professor Churchill.

In its 2006 statement, SALT argued that the circumstances surrounding the University's investigation of Professor Churchill made it clear that the University process, while "ostensibly ... about academic misconduct," was in reality "a politically motivated process" prompted by the controversy surrounding Professor Churchill's writings on the attacks of September 11, 2001. The verdict in this case confirms that the claim of academic misconduct was merely a pretext. The jury's finding that Professor Churchill would not have been fired but for his writing of the 9-11 essay clearly establishes that the University's conduct constituted retaliation for Professor Churchill's exercise of his constitutionally protected First Amendment rights.

As SALT noted in its 2006 statement, "If the University succeeds in its quest to fire Professor Churchill, any other university professor tempted to ... engage in controversial, constitutionally-protected speech about current affairs will think twice before doing so in the future." The potential chilling effect of such politically-motivated firings is *exactly* why reinstatement in cases like this one is crucially important, and why many courts view it as the preferred remedy. "The prospect of money damages will not be sufficient for many employees to overcome the otherwise chilling effect that accompanies the threat of termination."

Banks v. Durkich, 788 F.2d 1161, 1164 (6th Cir.1986) (cited in *Squires v. Bonser*, 54 F.3d 168, 173 (3d Cir. 1995) and *Allen v. Autauga County Board of Education*, 685 F.2d 1302, 1306 (11th Cir.1982). And if faculty members are afraid to speak their views, the essential role of academic freedom in preserving our democracy is undermined.

[A]cademic freedom ... is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom. "The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." The classroom is peculiarly the "marketplace of ideas." The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth "out of a multitude of tongues, (rather) than through any kind of authoritative selection." *Keyishian v. Board of Regents of University of State of N.Y.*, 385 U.S. 589, 603 (1967) (citations omitted).

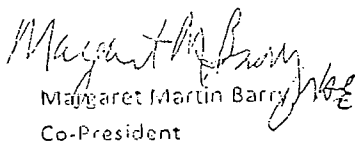
Thus, courts should be especially concerned to protect employees who are teachers from the threat of losing their jobs when they take controversial positions.

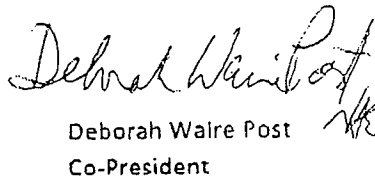
Not only is reinstatement essential in order to assure American academics that they can freely express unpopular views, but it is also essential to make clear to universities that they cannot coercively "buy out" the tenure contracts of controversial professors by firing them and then paying damages. As the 11th Circuit noted in *Allen v. Autauga County Board of Education*, 685 F.2d at 1306,

[R]einstatement 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.

As the chilling effect and deterrence concerns summarized here indicate, this case is much larger than the individual actors involved. It is a highly visible test of the courts' ability to protect our society both from those who would compromise academic freedom in order to purge critical thinkers from our educational institutions, and from universities that are more committed to bowing to political and financial pressure than to preserving the Constitution. For these reasons, SALT respectfully urges you to order the University of Colorado to reinstate Professor Churchill.

Sincerely yours,


Margaret Martin Barry
Co-President


Deborah Walre Post
Co-President