



November 30, 2017

Office of the President
Dr. John Hitt
University of Central Florida
P.O. Box 160002
Orlando, FL 32816-0002
prescomments@mail.ucf.edu

SENT VIA U.S. MAIL AND E-MAIL

Re: University's Infringement on Mr. Donald De La Haye's Free Speech Rights

Dear Dr. Hitt:

The Goldwater Institute, the Texas Public Policy Foundation, and Roetzel & Andress, LPA represent Mr. Donald De La Haye, who is a former student and athlete at the University of Central Florida (the "University" or "UCF"). The University removed Mr. De La Haye from its football team and rescinded his athletics scholarship because he exercised his constitutional right to free speech under the First Amendment to the U.S. Constitution, applicable to state action under the Fourteenth Amendment, by posting videos to his social media platforms.

Mr. De La Haye was a model athlete and upstanding member of the University community. As an athlete, his football skills earned him an athletic scholarship with the University, which he relied as the sole means to finance his education. As a student, he maintained his grades, and contributed greatly to University and community life. He never received any adverse or disciplinary action of any kind during his time at the University. In short, he was a respected and valued member of the University and broader community.

Like most students, including other UCF football team members, Mr. De La Haye is an active social media user. His videos include a wide range of subjects—from popular culture to personal commentary on life as a college student. Because of his entertaining and insightful posts and comments, Mr. De La Haye has built a strong following on major social media sites, including Instagram and YouTube—both before and during his time as a University student. Consequently, Mr. De La Haye's broad following allows him to receive modest compensation from YouTube for his original content.

Mr. De La Haye uses his image, name, physical, and intellectual attributes to communicate truthfully about lawful activity on social media platforms. The University never deemed his truthful and lawful communications to be inappropriate or offensive. The University

never alleged that these communications disturbed University activities or brought disfavor to its reputation. Most importantly, his social media activities have never interfered with his academic life or the academic pursuits of any other student. On the contrary, as evinced by his large following, Mr. De La Haye's social media communications are light-hearted, entertaining, and enjoyed by significant portions of the community and broader social media world.

Unfortunately, on or about July 31, 2017, the University summarily removed Mr. De La Haye from its football team and rescinded his scholarship due to Mr. De La Haye's use of his own name and likeness on his social media accounts.

The University purports to have taken these actions to comply with various rules of the National Collegiate Athletics Association ("NCAA"), a voluntary association that provides overlapping governance of student athletics for member universities, including UCF. Specifically, the University determined that Mr. De La Haye's receipt of compensation from YouTube for his videos violated NCAA rules, and the University independently took the punitive actions described above.

Of course, the University is not forced to be a member of the NCAA, and it may withdraw from the NCAA at any time. Similarly, the NCAA has no authority over the University's decisions regarding student admission or scholarship determinations.

Thus, while the NCAA rules broadly limit student expression, including when a student receives compensation in connection with the use of a student's name, image, appearance, or physical attributes, *see* NCAA by-law 12.4.4, it was ultimately the University's decision to remove Mr. De La Haye and terminate his scholarship.

Disturbingly, the University never provided Mr. De La Haye written notice of his removal from the team or the rescission of his scholarship, or a hearing to contest the University's decision. Instead, the University inappropriately ordered Mr. De La Haye to remove all his possessions and vacate his student housing with less than 72 hours' notice. As a result, Mr. De La Haye was forced to find alternative housing. With such inadequate notice, he accepted the only choice then available—a friend's apartment, where he slept on the sofa.

This is an astonishing result, considering universities throughout the country impose far less severe punishments against students who commit actual misconduct. Indeed, criminal liability, unethical academic behavior, and even violent assaults are often met with milder punishment than that metted out because of Mr. De La Haye's social media posts, which are both harmless and enjoyed by tens of thousands of people.

It is, of course, axiomatic that Mr. De La Haye has broad free-expression rights both on and off campus. *See Shelton v. Tucker*, 364 U.S. 479, 487 (1960). Mr. De La Haye did not forfeit these rights by attending the University or by joining its football team. *See Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 509 (1969) ("It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."). And online speech is no different than other types of speech and equally entitled to constitutional protection. *See Reno v. ACLU*, 521 U.S. 844, 849 (1997).

Courts throughout the country, moreover, have held that a university violates a student's First Amendment rights when it punishes a student for speech solely because the University does not approve of its content. Additionally, universities may not deny a government benefit – such as a college scholarship – on a basis that violates a person's First Amendment rights. *See Perry v. Sindermann*, 408 U.S. 593, 597-98 (1972) (“[The government] may not deny a benefit to a person on a basis that infringes his constitutionally protected interests—especially, his interest in freedom of speech.”).

The University's decision to remove Mr. De La Haye from the football team and rescind his scholarship without any ability for him to contest that decision in response to his constitutionally protected speech did exactly this. The University's actions, therefore, plainly violate Mr. De La Haye's First Amendment rights. They likely also violate his procedural due process rights under the Fourteenth Amendment. Mr. De La Haye may seek injunctive relief under 42 U.S.C. § 1983 to enjoin the University's unlawful actions.

Mr. De La Haye is prepared to seek a court-imposed remedy in response to the University's actions. However, at this stage, he would like to provide the University an opportunity to rectify this matter. Mr. De La Haye, therefore, requests that the University immediately reinstate him to the football team and restore his scholarship.

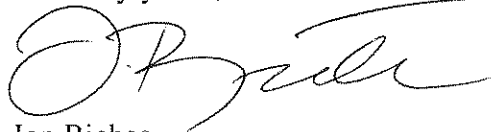
In light of the start date for the upcoming 2018 spring semester, we request that University take this action no later than **December 12, 2017**. If no action is taken by that date, Mr. De La Haye may commence legal process to protect his constitutional rights.

I appreciate your thoughtful review of this matter, and I am available at any time to discuss its resolution.

To that end, please send to my email address a written response to this letter within ten days of receipt so that we may immediately work toward its resolution.

Should you have any questions in the meantime, please do not hesitate to contact me directly at jriches@goldwaterinstitute.org or (602) 462-5000.

Sincerely yours,



Jon Riches
Director of National Litigation

cc. Mr. Marcos Marchena, Board Chairman
Mr. Scott Cole, General Counsel