



April 24, 2015

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*Via Facsimile to* [REDACTED]

Jeff Armstrong, Police Chief  
Borough of Plum  
4575 New Texas Road  
Pittsburgh, PA 15239

*Via Email to* [REDACTED]

Ryan Kociela, Principal  
Plum Senior High School  
900 Elicker Road  
Plum, PA 15239

**Re: Threats to Prosecute Plum Senior High School Students for  
Constitutionally Protected Speech**

Dear Chief Armstrong and Principal Kociela:

We understand that Plum Senior High School sponsored an assembly today purportedly to provide “guidance regarding responsible use of social media in light of ongoing police investigations” into allegations of criminal conduct by teachers at the high school. Unfortunately, a recording of the assembly revealed that instead of providing guidance, Chief Armstrong, Principal Kociela, and a school police officer threatened students with criminal prosecution for commenting about the investigation or related matters on social media or in school. Threats by police officers to arrest and prosecute students for commenting on a matter of public concern violate the First Amendment to the United States Constitution because they chill students from exercising their free-speech rights. Unless the comments made by students fall into the extremely limited number of exceptions to the First Amendment that have been recognized by the U.S. Supreme Court, they cannot be subject to criminal prosecution. Indeed, comments by students made outside of school cannot even be subject to discipline by school official because they are entitled to First Amendment protection.

We have serious concerns about the efforts by you and the school police officer to inhibit Plum Senior High School students' exercise of their free-speech rights. We ask that you immediately issue a statement clarifying that students will not be prosecuted for comments made on social media or in school about the investigation. We also ask that you hold another assembly with students as soon as possible to explain that they will not be prosecuted for constitutionally protected expression, which includes comments made on social media or in school about pending criminal investigations.

The statements at the assembly by Chief Armstrong, Principal Kociela, and the school police officer that students will be criminally prosecuted for commenting on social media or in school about the pending criminal investigation were so overbroad that they are very likely to chill students from engaging in any discussion of the investigation, thus preventing them from exercising their First Amendment rights.<sup>1</sup> Government officials cannot use threats of criminal prosecution to prevent individuals from engaging in constitutionally protected expression.<sup>2</sup> It is clear from the recording that the statements made at the assembly were not restricted to those limited categories of speech that are not entitled to First Amendment protection, such as true threats. Simply posting a comment on twitter or Facebook about a criminal investigation – even if it is false or disparages another person – does not render speech unprotected.<sup>3</sup>

Although we understand that the intent of the assembly may have been to prevent the victims of the alleged crimes from being further harmed by comments about them, threatening students with criminal prosecution for commenting in any way about the investigation was not the appropriate, or constitutional, response. While police and school officials can ask students to refrain from making hurtful comments or spreading rumors, the First Amendment prohibits

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<sup>1</sup> See, e.g., *United States v. Stevens*, 559 U.S. 460, 473 (2010) (in the First Amendment context, “a law may be invalidated as overbroad if a substantial number of its applications are unconstitutional, judged in relation to the statute’s plainly legitimate sweep”) (internal quotation marks omitted); *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 129 (1992) (“the very existence” of an overbroad law “has the potential to chill the expressive activity,” not only of the parties to the case, but also “of others not before the court”); *NAACP v. Button*, 371 U.S. 415, 433 (1963) (“[b]ecause First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity”); *Aiello v. City of Wilmington*, 623 F.2d 845, 857 (3d Cir. 1980) (“An impermissible chill is created when one is deterred from engaging in protected activity by the existence of a governmental regulation or the threat of prosecution thereunder.”).

<sup>2</sup> See, e.g., *Steffel v. Thompson*, 415 U.S. 452, 459 (1974) (“it is not necessary that petitioner first expose himself to actual arrest or prosecution to be entitled to challenge a statute that he claims deters the exercise of his constitutional rights”).

<sup>3</sup> See, e.g., *Virginia v. Black*, 538 U.S. 343, 358-59 (2003) (unless speech falls outside the protection of the First Amendment — e.g., because it is a true threat or obscene — the Constitution forbids the government to punish the speaker).

them from using the threat of arrest and criminal prosecution to intimidate students into compliance with those requests. Moreover, the comments at the assembly were not limited to discouraging speech that could be harmful to the victims, the criminal investigation, or the school environment, but instead indicated that *any* comment or conversation about the investigation would be illegal and subject to criminal prosecution.

For these reasons, we ask that you immediately issue a statement clarifying that students will not be arrested or prosecuted for commenting on social media or at school about matters related to the investigation and that they will be subject to school discipline only for comments made in school that create a significant risk of a material and substantial disruption of the school day. This statement should be posted on the school district website and sent out to parents of Plum Senior High School students via email or letter. We also ask that you hold another assembly with students to explain that they have a First Amendment right to comment on the investigation and that they will not be prosecuted or disciplined for speaking about the investigation unless their speech falls into one of the very narrow exceptions to the First Amendment or creates a significant risk of a material and substantial disruption of school.

Please respond to this letter by 12 p.m. on Monday, April 27, 2015. You can send your response via facsimile to [REDACTED] or via email to [REDACTED]. If we do not hear from you by the appointed time, or if you refuse to take the requested actions, we will seek an appropriate order from a federal judge on behalf of any students who contact us to complain that their speech has been chilled by the statements made at the assembly. If you have any questions, you can reach me by telephone at [REDACTED] or by email at [REDACTED]. Thank you for your attention to this matter.

Sincerely,



Sara J. Rose  
Staff Attorney

Witold Walczak  
Legal Director

cc: Lee Price (via facsimile to [REDACTED] and via email to [REDACTED])  
Stephen Zappala (via facsimile to [REDACTED])