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December 29, 2016

VIA EMAIL

Professor Stanley Pogrow
San Francisco State University

Re: Meritless Legal Threats By Prof. Robert E. Slavin

Dear Prof. Pogrow:

As you know, you've retained this firm as First Amendment litigation counsel in response to vague and meritless defamation threats by Prof. Robert E. Slavin. At your request, I write to offer some thoughts that you can pass along to interested parties at Arizona State University ("the University") – an exception to our normal practice of keeping our communications confidential.

I have reviewed both the article that the University previously accepted and Professor Slavin's legal threat. As you know, I have extensive experience both representing defamation defendants and writing and speaking about defamation threats. Based on that experience, two things leap out at me about the threat. First, Professor Slavin – despite having very substantial resources – has chosen to send the threat himself, rather than arranging for a communication

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competition of other ideas.” *Gertz v. Robert Welch Inc.*, 418 U.S. 323, 339 (1974). Thus, “a statement on matters of public concern must be provable as false before there can be liability under state defamation law.” *Milkovich*, 497 U.S. at 19. Put another way, an opinion or conclusion cannot be defamatory unless it relies upon or implies provably false facts. *See, e.g., Moldea v. N.Y. Times Co.*, 22 F.3d 310, 313 (D.C. Cir. 1994).

Professor Slavin’s threat demonstrates that he is not focused on facts. He claims that the article is “not scholarly” and rejects “accepted standards of evidence,” but does not explain what allegedly false facts result from those claims. He complains that the article is “full of ad hominem attacks.” But he does not explain how any alleged ad hominem attacks are based on false *facts*. Even if his characterization were accurate – and it is not – it reveals that he’s complaining about opinions, not facts. Professor Slavin asserts that you imply that he profits personally, but does not cite any alleged false statement to that effect. He complains that you “pretend” that he had the power to change federal and state policy, but that’s a *conclusion* based on evidence you lay out in your article, and he doesn’t explain what part of that evidence is false.

In short, though your article offers opinions and conclusions about Professor Slavin’s program, it does so based on disclosed facts and sources. That is the epitome of a protected opinion, particularly in the scholarly context. I am frankly rather shocked that a reputable institution like ~~Arizona~~ ^{STATE UNIVERSITY} Arizona would yield to such a vague and transparently meritless legal threat, particularly when public funds are at issue and the issue is central to the education of impoverished students. I’m happy to speak with anyone at the University who has questions.

Sincerely,



—Kenneth P. White

for BROWN WHITE & OSBORN LLP