UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

POLLY OLSEN

Plaintiff,

v. Case No. 18-cv-1366

NORTHEAST WISCONSIN TECHNICAL COLLEGE, et al.

Defendants.

PLAINTIFF, POLLY OLSEN'S REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

Nearly two weeks *after* Ms. Olsen filed her motion for summary judgment, NWTC repealed its Public Assembly Policy. (Defendant's Proposed Findings of Fact ("DPFF") ¶79.) NWTC has promised not to pass a policy "mirroring" the Public Assembly Policy in the future and argues that therefore this lawsuit must now be dismissed. (*Id.* at ¶81; Defs.' Br. 4-5.) Ms. Olsen is of course happy to see NWTC's unconstitutional Policy go. But NWTC is not telling the full the story.

Here is what it left out: **NWTC has already replaced its Public Assembly Policy with a new policy.** (Plaintiff's Additional Proposed Finding of Fact ("PAPFF") ¶103.) The Policy was not provided to the Court even though based on the information in the footer of the new Policy it was adopted in February 2019 (prior to NWTC submitting its brief and materials to the Court) and even though the new Policy suffers from nearly all of the flaws possessed by NWTC's previous policy. Applicable to both students and non-students, the new Policy restricts speech to just a few small free speech zones, in some cases implements a prior restraint, and continues to use vague

and overbroad language. (*See id.*) Consequently, and as case law makes clear, this case is not moot and Ms. Olsen is entitled to a ruling on her claims because NWTC has not halted its offensive conduct.

ARGUMENT

I. MS. OLSEN HAS STANDING

NWTC makes two standing-related arguments that it says taken together justify dismissal of this case. First, it argues that because it has repealed its Public Assembly Policy, Ms. Olsen's facial claims are moot. Second, it argues that Ms. Olsen lacks standing to assert those claims specific to the events of February 14, 2018 because she allegedly suffered no injury that a decision of this court would redress. Both arguments fail.

A. Ms. Olsen's Facial Challenges Are Not Moot

NWTC believes it has mooted Ms. Olsen's claims by repealing its Public Assembly Policy, because "voluntary cessation of a challenged practice" *can* moot a case if "subsequent events ma[ke] it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *Trinity Lutheran Church of Columbia, Inc. v. Comer*, ___ U.S. ___, 137 S. Ct. 2012, 2019 n.1 (2017) (alteration in original) (quoting *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 189 (2000)).

But it is a "well settled" rule that "a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice." *Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville, Fla.*, 508 U.S. 656, 662 (1993) (*quoting City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982)). And "[w]hen a challenged policy is repealed or amended mid-lawsuit—a 'recurring problem when injunctive relief is sought'—the case is not moot if a substantially similar policy has been instituted

or is likely to be instituted . . . Challenges based on the First Amendment are no exception." *Smith v. Exec. Dir. of Indiana War Memorials Comm'n*, 742 F.3d 282, 284 (7th Cir. 2014) (citation omitted) (quoting *ADT Security Services, Inc. v. Lisle-Woodridge Fire Protection Dist.*, 724 F.3d 854, 864 (7th Cir. 2013)). The reason for this critical qualification is fairly obvious: if "only the possibility that the *selfsame* statute [or policy] will be enacted . . . prevent[ed] a case from being moot . . . a defendant could moot a case by repealing the challenged statute and replacing it with one that differs only in some insignificant respect." *Ne. Fla.*, 455 U.S. at 662. In particular, when a new policy or law raises the same constitutional questions, a case is not moot even if the new policy "disadvantage[s]" the plaintiffs "to a lesser degree than the old one," so long as the new policy "disadvantages them in the same fundamental way." *Id.*

This rule against mootness applies here. NWTC repealed its old policy but has enacted a new one in its place which "disadvantages" Ms. Olsen and all NWTC students "in the same fundamental way." For example, Ms. Olsen's first facial claim is that NWTC may not declare all but a tiny area of campus to be a nonpublic forum. NWTC disagrees and maintains that its entire campus is a nonpublic forum and that it is "free to determine what, if any, portion of the Campus it will open to expressive activities." (Defs.' Br. 15.) NWTC's contention that it may prohibit speech throughout the campus is carried forward in its new Policy which limits free speech to a few small areas on campus.[1] The fact that NWTC has increased the number of free speech zones from one to a few does not bring its actions into First Amendment compliance and under NWTC's view it could easily reduce the number of free speech zones in the future whenever it saw fit.

[1] More specifically, NWTC has now designated a total of four internal and five external areas on NWTC's Green Bay Campus. (*See* PAPFF ¶103.) As shown on NWTC's campus maps, these tiny areas are dwarfed by the remainder of campus, which is off-limits for Expressive Activity. (*See id.*)

Ms. Olsen's third facial challenge attacked the vague and overbroad restrictions NWTC has imposed on its campus. As Ms. Olsen explained in her previous brief, "[w]hether the argument is styled as overbreadth or vagueness, the central question . . . is whether the provisions at issue potentially reach a 'substantial' amount of protected speech." *Center for Individual Freedom v. Madigan*, 697 F.3d 464, 479-480 (2012).[2] As discussed in further detail below, NWTC's new policy continues to meet this threshold. It restricts all "Expressive Activity" to the designated "Public Assembly Areas," with "Expressive Activity" meaning "demonstrations, picketing, vigils, rallies, performances, petitioning, gathering of signatures, *distribution of literature*, and other forms of *outward communication*" ((*See* PAPFF ¶103) emphases added). The new Policy still applies to the exact conduct at issue here, banishing any distribution of literature and (subject to an inapplicable exception discussed below) all "outward communication" to the free speech zones. But what type of speech is not an "outward communication"? Isn't asking someone if they want a Valentine "distribution of literature?" NWTC cannot moot an overbreadth and vagueness challenge against its restrictions simply by tinkering with the words it uses, or it could easily stay one step ahead of any aggrieved student. Ultimately NWTC has still all but banned a broad swath of speech protected by the First Amendment through the enactment of a vaguely-worded speech code.[3]

[2] Typographical errors appear in Ms. Olsen's initial summary judgment brief at page 18. All citations to "*id.*" on that page are to *Center for Individual Freedom v. Madigan*, 697 F.3d 464 (7th Cir. 2012), not to *Virginia v. Hicks*, 539 U.S. 113 (2003); the case name was inadvertently omitted in two locations.

[3] Ms. Olsen second facial claim was a challenge to the prior restraint that NWTC placed on its students under its old policy, requiring them to obtain permission before they could use the old Public Assembly Area. Ms. Olsen acknowledges that NWTC's new policy no longer requires students to submit a "*request to reserve*" the new Public Assembly Areas. However, the new Policy still acts as a prior restraint in circumstances where "the designated Public Assembly Areas are already occupied." (*See* PAPFF ¶103.) Then, "[i]ndividuals may request other areas" and NWTC "will consider any such requests on a case-by-case basis to determine whether another area is available and appropriate in light of all relevant considerations, including safety and security, educational activities, etc." (*Id.*) Once again, in other words, NWTC has granted itself complete discretion to approve or deny a student request to engage in protected speech on campus; "[a]ll relevant considerations" is not a meaningful restriction. For the reasons stated in Ms. Olsen's initial brief this is an unlawful prior restraint. *See* (Pl.'s Br. 15-18.) Consequently, the claim is not moot.

NWTC clearly intends to continue the illegal behavior that gave rise to this suit. This is not "voluntary cessation of a challenged practice," *Trinity Lutheran*, 137 S. Ct. at 2019 n.1, and this case is therefore not moot. Forcing Ms. Olsen to file a new lawsuit would simply be a wasteful exercise. [4]

B. Ms. Olsen Has Standing to Argue that NWTC Violated Her First Amendment Rights on February 14, 2018

NWTC argues that Ms. Olsen lacks standing to assert her fourth and fifth claims, claims pertaining to the specific events of February 14, 2018, because the repeal of its old policy means Ms. Olsen has allegedly suffered no injury that would be redressable by a decision of this Court. More specifically, NWTC argues that the Court could award only nominal damages and that that is insufficient to sustain the suit.

Ms. Olsen disputes that a claim for nominal damages alone is not justiciable. Most of the federal courts of appeals which have examined this question have ruled otherwise. *See Flanigan's Enterprises, Inc. of Georgia v. City of Sandy Springs, Georgia*, 868 F.3d 1248, 1259 (11th Cir. 2017) (en banc) (collecting cases, though disagreeing with them). "Nominal damages provide a useful mechanism for redressing infringements that cause no actual damages." *Id.* at 1271 (Wilson, J., dissenting). "A judgment for damages in any amount, whether compensatory or nominal, modifies the defendant's behavior for the plaintiff's benefit by forcing the defendant to pay an amount of money he otherwise would not pay." *Id.* at 1274 n.4 (quoting *Farrar v. Hobby*, 506 U.S. 103, 113 (1992)).

A finding against NWTC on these claims and an award of nominal damages would be particularly appropriate here. Although NWTC has repealed its original Policy, Ms. Olsen was

[4] To the extent this Court believes it is necessary, Ms. Olsen seeks the Court's leave to amend its complaint to reflect the developments in this case. *See* Fed. R. Civ. P. 15(a)(2).

prevented from speaking and still does not know whether she can hand out religiously-themed Valentines on campus under the new Policy, and NWTC clearly believes it retains the power to stop her from doing so. A ruling that NWTC deprived Ms. Olsen of her constitutional rights by stopping her from handing out Valentines will make clear that the college cannot enforce a policy that would stop her from doing so, whether characterized as a claim for a declaration and injunction or as a claim for nominal damages.

Freedom From Religion Found., Inc. v. City of Green Bay, 581 F. Supp. 2d 1019 (E.D. Wis. 2008), and *Reyes v. City of Lynchburg*, 300 F.3d 449 (4th Cir. 2002), cases cited by NWTC in support of its position, are distinguishable. In *FFRF* and *Reyes*, the government completely ceased its conduct but the plaintiffs tried to maintain their suits in order to obtain nominal damages for constitutional wrongs inflicted under the defunct regulatory schemes. *FFRF*, 581 F. Supp. at 1029; *Reyes*, 300 F.3d at 455. Both courts dismissed the suits. *FFRF*, 581 F. Supp. at 1022; *Reyes*, 300 F.3d at 451. But NWTC has not completely ceased its conduct. Consequently, whether these claims are premised on a declaration and injunction or on nominal damages, a decision in this case will remedy Ms. Olsen's injuries.

II. NWTC'S NEW POLICY IS FACIALLY UNCONSTITUTIONAL

A. The New Policy's Limitation of Student Speech to Just a Few Tiny Areas of Campus is Unconstitutional

The undisputed facts establish that there are a variety of areas of NWTC's campus where NWTC students frequently congregate, socialize, talk, and debate. (PPFF ¶¶ 67-71.)[5] As shown in Ms. Olsen's principal brief these areas are properly characterized as public forums, either traditional or designated. (Pl.'s Br. 10-12.) These areas are akin to the public square for NWTC

[5] In some cases, NWTC says that it disputes some of these facts, but contrary to Civil L.R. 56(b)(2)(B)(i) NWTC does not include "specific references to the affidavits, declarations, parts of the record, and other supporting materials relied upon."

students, or at the very least have been opened up for that purpose. *See Choose Life Illinois, Inc. v. White*, 547 F.3d 853, 864 (7th Cir. 2008).

NWTC disagrees, claiming that its *entire campus is a nonpublic forum* (apart from the Public Assembly Areas) and that its own students are mere licensees on that property. (Defs.' Br. 12, 15 n.3.) Rather than address any of the cases Ms. Olsen cited in support of her claim, *see, e.g.*, *Univ. of Cincinnati Chapter of Young Americans for Liberty v. Williams* No. 1:12-CV-155, 2012 WL 2160969, at *5 (S.D. Ohio June 12, 2012) (calling the argument made by NWTC "anathema to the nature of a university"), NWTC advances two principal arguments. First, it incorrectly suggests that Ms. Olsen is claiming an "absolute constitutional right to use all parts of a school building or its immediate environs for . . . unlimited expressive purposes." (Defs. Br. 12 (quoting *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 42 (1983)). She is not. Ironically, it is NWTC which is taking the absolutist position of declaring its *entire* campus a nonpublic forum (unless it chooses to open any portion of it up). Ms. Olsen's position is simply that there are many areas of campus that are *not* nonpublic forums, and that regulations of these areas must constitute reasonable time, place, or manner restrictions. She agrees that there are areas of campus that are nonpublic forums; she disagrees that these areas may constitute almost the entire campus.

Second, NWTC relies extensively on *Gilles v. Blanchard*, 477 F.3d 466 (7th Cir. 2007), which is readily distinguishable. In *Gilles*, "Brother Jim," a *non-student*, argued he had the constitutional right to preach on a lawn outside the library on the campus of Vincennes University despite a prohibition by a "formal policy governing access to the campus by outsiders to the university community." *Gilles*, 477 F.3d at 467-69. In an opinion authored by Judge Posner, the Seventh Circuit declined to utilize forum analysis given the unique features of the case, instead explaining that "[t]he issue more simply posed is whether a university should be able to bar

uninvited speakers under a policy that by decentralizing the invitation process assures nondiscrimination, and a reasonable diversity of viewpoints consistent with the university's autonomy and right of self-governance." *Id.* at 473-74. The court concluded that it could do so. *Id.* at 474.

Gilles is distinguishable because NWTC's new Policy applies to its own students, not merely to outsiders. The Supreme Court has "indicated . . . [that] a given forum may be designated for one class of speaker or speech, and still 'limited' with respect to others." *Justice For All v. Faulkner*, 410 F.3d 760, 767 (5th Cir. 2005) (citing *Arkansas Educational Television Comm. v. Forbes*, 523 U.S. 666, 677–81 (1998) ("If the government excludes a speaker *who falls within the class to which a designated public forum is made generally available*, its action is subject to strict scrutiny." (emphasis added))).[6] This Court is not being asked to decide the extent to which NWTC may bar non-student solicitors from its campus. It is being asked to decide whether NWTC may prevent its own students from freely speaking in the many common areas they frequent. Even if these are designated and not traditional public forums, "[t]o destroy the designation of a public forum," NWTC "must *consistently apply* a policy specifically designed to maintain a forum as non-public." *OSU Student All. v. Ray*, 699 F.3d 1053, 1063 (9th Cir. 2012) (emphasis added). But the record evidence shows NWTC treats much of its campus as a public forum for its students.

Assuming this Court agrees that various areas of NWTC's campus are public forums, NWTC may still place reasonable time, place, and manner restrictions on them. *Minnesota Voters All. v. Mansky*, ___ U.S. ___, 138 S. Ct. 1876, 1885 (2018). But such restrictions must be "narrowly tailored to serve a significant governmental interest," and must "leave open ample

[6] The Seventh Circuit has referred to the lawn in *Gilles* as belonging to a "fourth category" of forum, a "variant of the [designated public forum], variously called a 'limited designated public forum' . . . , a 'limited public forum,' or a 'limited forum.'" *E.g., Illinois Dunesland Pres. Soc'y v. Illinois Dep't of Nat. Res.*, 584 F.3d 719, 723 (7th Cir. 2009).

alternative channels for communication of the information." *Clark v. Cmty for Creative Non-Violence*, 468 U.S. 288, 293 (1984). NWTC's policy of restricting free speech to a few tiny areas of campus is not "narrowly tailored to serve a significant governmental interest" and does not "leave open ample alternative channels for communication of the information." (Pl.'s Br. 9, 14-15 (quoting *Clark v. Cmty for Creative Non-Violence*, 468 U.S. 288, 293 (1984)).

NWTC does not attempt to refute Ms. Olsen's claim that this approach is not narrowly tailored, instead stating that her argument is not developed. (Defs.' Br. 16.) But the contrary is true. Ms. Olsen spent substantial time detailing the many areas of campus where students regularly carry on free speech activities (the outdoor courtyard, the back patio, the Commons, the entire Student Center). (Pl.'s Br. 11-12.) Ms. Olsen then explained that because "expressive activity can and does occur on NWTC's campus without disrupting the learning environment," its approach clearly is not "'narrowly tailored' to the attainment" of its ostensible "mission of educating its students." (Pl.'s Br. 14.) That is not an undeveloped argument. NWTC neither disputed these facts nor attempted to show how substantial expressive activities in these areas by students interfered with any part of NWTC's mission. Its new policy does not open all of the areas that Ms. Olsen described. Because NWTC is prohibiting a large amount of speech that has no negative effect on the education of its students, its primary interest, the new Policy is not narrowly tailored. *See, e.g.*, *Kissick v. Huebsch*, 956 F. Supp. 2d 981 (W.D. Wis. 2013) (enjoining permit requirement in the Wisconsin State Capitol for events or demonstrations, even those involving only one person, because the permitting scheme was "not narrowly tailored to serve a significant governmental interest," and barring enforcement of the policy for events of 20 persons or less).

With respect to Ms. Olsen's claim that its old Assembly Area did not provide for "ample alternative channels of communication, NWTC argues: (1) case law does not set a "minimum

dimension" for such channels; (2) individuals are able to reach "students, staff and visitors alike" from the areas; (3) students "are free to communicate their preferred messages in other ways" such as by wearing shirts with messages on them; and (4) the Area must be adequate because NWTC rarely receives requests for their use. (Defs.' Br. 16-18.)

The first three arguments can be answered in the same way: NWTC is misapprehending the relevant test, which is not whether *some* students, staff, and visitors are reachable from the areas, or whether *some* other channel of communication is available. The question is the presence of *adequate* alternative channels. As Ms. Olsen previously explained, "an alternative is not adequate if it 'foreclose[s] a speaker's ability to reach one audience even if it allows the speaker to reach other groups.'" *Weinberg v. City of Chicago*, 310 F.3d 1029, 1041 (7th Cir. 2002) (quoting *Gresham v. Peterson*, 225 F.3d 899, 906 (7th Cir. 2000)). And "[t]he mere existence of an alternative method of communication cannot be the end of the analysis"; courts also consider whether "the intended message is rendered useless or is seriously burdened." *Id.* None of NWTC's reasoning addresses Ms. Olsen's contention that students need to engage in expressive activity beyond the confines of a miniscule slice – or miniscule slices – of campus, such as in areas of high traffic, in campus buildings, and in common areas. By forcing students to refrain from free speech in its public forums until they have arrived at a designated zone, NWTC is seriously burdening student speech.

Lastly, the fact that NWTC's prior free speech zone is little-utilized proves one of two things: either NWTC has been successful in squelching the First Amendment rights of its students, or its Policy was seldom and only selectively enforced, meaning that NWTC treats its campus as a public forum until it encounters a message it does not like. (*See* (PPFF ¶72 ("NWTC has

admitted in discovery that the only violation of the Public Assembly Policy that they investigated from January 1, 2017 to the present is the complaint against Ms. Olsen.")).

B. The New Policy's Lack of Definitions and Criteria for Important Terms Render the Policy as Unconstitutionally Overbroad and Vague as the Policy It Replaced

The new Policy's vague and overbroad prohibitions continue to "potentially reach a 'substantial' amount of protected speech." *Ctr. for Individual Freedom*, 697 F.3d at 479-480. The new Policy prohibits "Expressive Activity" outside of the free speech zones, with "Expressive Activity" defined to mean "demonstrations, picketing, vigils, rallies, performances, petitioning, gathering of signatures, distribution of literature, and other forms of outward communication." (*See* PAPFF ¶103.) That definition prohibits a huge amount of protected speech. Under NWTC's new Policy, if not within a free speech zone, a demonstration outside of the school's central building is prohibited. An attempt by a student to get signatures from classmates passing by in the hallway is prohibited. An outdoor vigil to mark a somber occasion is prohibited.

All speech is a form of "outward communication." The Policy exempts from its definition of "Expressive Activity" "social, random, or other everyday communications," (*id.*), which is a phrase so vague as to "fail[] to provide a person of ordinary intelligence fair notice of what is prohibited." *Ctr. for Individual Freedom*, 697 F.3d at 478–79 (quoting *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012)). Are social, random or other everyday communications only those that are uninvited, sporadic or sufficiently innocuous and uncontroversial? Who could know? Who can tell?

Is handing out Valentines some "other form[] of outward communication" and prohibited or is it a "social . . . communication[]" and allowed? Even if could be the latter, is it banned because it involves the "distribution of literature?" Does a "demonstration[]" or "performance[]"

outside of a free speech zone violate the Policy unless it is spontaneous ("random")? Must its content be analyzed to determine if it is "everyday?" NWTC has drafted a definition of expressive activity so broad as to include everything but then drafted an exception so broad that the definition might apply to nothing. This clever maneuver allows NWTC to pick and choose, after the fact, what types of speech violates the Policy. It leaves speakers unable to know what they can and cannot do.

With respect to the continued prohibition of the "distribution of literature," "literature" is still undefined. It is unclear whether the prohibition includes Valentine's Day cards with religiously-themed messages, business cards, party invitations, or a Shakespearean sonnet. NWTC's brief might be read to suggest that *Anderson v. Milwaukee Cty.*, 433 F.3d 975 (7th Cir. 2006), controls here, but it clearly does not. First, *Anderson* involved the distribution of literature on a public bus; not a public college. Specifically, the plaintiff handed out multiple copies of a religious book to passengers on the bus. The Seventh Circuit concluded that because the riders on the bus were a captive audience and that because it was undisputed that a public bus was a nonpublic forum, the County's prohibition on the distribution of literature on a bus was constitutional. *Id.* at 979-980. The instant case does not involve a captive audience and does not involve a nonpublic forum.

Second, *Anderson* was not a dispute about what constitutes "literature" but was instead a dispute about what constitutes "distribution." *Anderson*, 433, F.3d at 977-78, 980. The Seventh Circuit held that the word "distribution" was not unconstitutionally vague and readily included handing out multiple copies of a book. That is simply not the issue here and that holding is not relevant to this case. Here, the meaning of "literature" is at issue and the word is not at all definite. Ms. Olsen's examples are not far-fetched but instead include the type of conduct that occurs at

schools every day including the precise conduct Ms. Olsen was involved in when she was stopped on Valentine's Day of 2018.

III. NWTC VIOLATED MS. OLSEN'S FIRST AMENDMENT RIGHTS ON FEBRUARY 14, 2018

A. NWTC Lacked Authority to Prohibit Ms. Olsen From Handing Out Valentines

NWTC now seems to concede that Ms. Olsen was not soliciting and was not disturbing a learning environment when she handed out Valentines. (Defs. Br. 26-27.) But it continues to claim that she was prohibited from doing what she did. In doing so, NWTC does not appear to rely on the text of its previous policy at all. Instead, it simply asserts that Ms. Olsen "had no right to distribute Valentines on Campus in the manner she chose," and focuses solely on Ms. Olsen's entry into the General Studies Office. (*Id.* (emphasis removed).) This is a red herring. Ms. Olsen does not dispute that NWTC may prevent students, including her, from accessing areas within the General Studies Office if it chooses to do so. But it has not done so, either by policy or by practice. And in fact Ms. Olsen has submitted evidence (which evidence is undisputed by NWTC) showing that NWTC allows students to access the General Studies Office and permitted her to access the office that day in order to visit her friend. (PPFF ¶¶24-31.) Even NWTC reluctantly concludes that Ms. Olsen had a license to be in the office. (Defs.' Br. 28.)

This dispute is not about the General Studies Office. NWTC's position is that Ms. Olsen may not hand out Valentines *anywhere* outside of the free speech zones. She was told both by campus security and by counsel for NWTC that in doing so she violated the Public Assembly Policy. (PPFF ¶¶41; 55.) As explained in detail in her initial brief, stopping Ms. Olsen from handing out Valentines violated her First Amendment rights.

B. NWTC's Employees Restricted Ms. Olsen's Speech and Expression on the Basis of Its Content

Ms. Olsen provided the following evidence to support her claim that NWTC restricted her speech on the basis of its content: (1) Ms. Olsen was handing out Valentines with biblical references (PPFF ¶9); (2) the Security Report completed by NWTC Security expressly states that the complaint to which they responded was of a female student "passing out Valentine's Day cards *with bible references on the cards*" which it characterized as "[s]uspicious." (PPFF ¶38) (emphasis added)); (3) Mr. Jandrin instructed Mr. Hagel to attempt to locate the student handing out the religiously-themed Valentines and if he located her "that he should bring her to the security office." (Id.); (4) Mr. Jandrin told Ms. Olsen that "some people" may "*find the message written on the card offensive*" (*id.* at ¶46 (emphasis added.)); (5) NWTC has admitted that the *only* violation of the Public Assembly Policy that they investigated from January 1, 2017 to the present is the complaint against Ms. Olsen. (PPFF ¶72).

It is undisputed that the only fact that Mr. Jandrin had in his possession when he sent Mr. Hagel to intercept Ms. Olsen and bring her to the Security Office was that someone complained about "a female student distributing Valentines in the NWTC General Studies Office." (Jandrin Decl. ¶7.) Mr. Jandrin has not yet seen the video and knew nothing about whether Ms. Olsen had gone into any private office or allegedly disturbed any learning environment. He did not view the video until *after* he dispatched Mr. Hagel to intercept Ms. Olsen and bring her back to the Security Office. (Jandrin Decl. ¶8.) It was the religious content of the Valentines (and nothing else) that caused the complaint and which caused Ms. Olsen to be intercepted and brought to the Security Office. NWTC cites no evidentiary facts to the contrary. Mr. Jandrin does not actually swear that there were other reasons for intercepting Ms. Olsen and having her brought to the Security Office, only that he told Ms. Olsen that there were other reasons. NWTC does not submit evidence from whomever made the complaint in the first instance; it does not submit evidence that Ms. Olsen

went into anyone's office without consent; it does not submit evidence from anyone that says that Ms. Olsen disturbed their learning environment; it does not submit evidence from anyone that found her Valentines to be offensive. NWTC says that Ms. Olsen "has provided no . . . evidence that someone else was treated more favorably," (Defs.' Br. 26), but as shown above despite the flurry of activity that occurs on NWTC's campus every day Ms. Olsen is the only person since January 1, 2017 to have been investigated for a Policy violation.

The undisputed evidence establishes that Ms. Olsen's speech was restricted because of its religious nature.

CONCLUSION

For the foregoing reasons, Ms. Olsen respectfully requests that the Court enter summary judgment in her favor.

Submitted this 28th day of March, 2019.

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