

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA

YOUNG AMERICANS FOR LIBERTY AT THE UNIVERSITY OF GEORGIA, a recognized student organization at the University of Georgia; **AUDREY BRASUELL**; and **CECILIA KUEHNEL**,

Plaintiffs,

v.

JERE W. MOREHEAD, in his official capacity as President of the University of Georgia; **PAMELA WHITTEN**, in her official capacity as Senior Vice President for Academic Affairs and Provost at the University of Georgia; **VICTOR K. WILSON**, in his official capacity as Vice President for Student Affairs at the University of Georgia; **WILLIAM M. McDONALD**, in his individual and official capacities at Dean of Students at the University of Georgia; and **JANICE DAVIS BARHAM**, in her individual and official capacities as Associate Dean of Students at the University of Georgia,

Defendants.

Case No. 3:14-cv-39

COMPLAINT

Plaintiffs Young Americans for Liberty at the University of Georgia, Audrey Brasuell, and Cecilia Kuehnel, by and through counsel, and for their Complaint against the Defendants, hereby state as follows:

INTRODUCTION

1. The cornerstone of higher education is the ability of students to participate in the “marketplace of ideas” on campus. That marketplace depends on free and vigorous debate between students—debate that is spontaneous, ubiquitous, and often anonymous—and is carried out through spoken word, flyers, signs, and displays.

2. This case arises from policies and practices of the University of Georgia (“University”) and public officials employed by the University that restrict the expressive rights of students. The University claims to encourage free discourse and debate on campus, but its Policy on Freedom of Expression restricts all student speech to two small speech zones that occupy less than 0.08% of campus. Students may not speak spontaneously and anonymously anywhere on campus but the two crowded speech zones. If students want to speak—whether through oral or written communication—anywhere else on campus, then they must obtain a permit forty-eight hours in advance. Through the permitting process, the University retains unfettered discretion to determine whether students may speak at all. This University policy chills protected student speech and disables the ability of students to speak on campus about recent and unfolding events.

3. Plaintiffs Young Americans for Liberty, its members, and Audrey Brasuell and Cecilia Kuehnel (collectively, “Young Americans for Liberty”) want to engage in speech on campus outside the designated speech zones. They cannot speak on campus outside the designated speech zones without first obtaining a permit from the University forty-eight hours in advance. Even inside the designated speech zones, they must schedule their expression with University officials, who therefore retain complete discretion over whether they may speak. University officials, however, have allowed other students and organizations to speak freely without a permit outside the speech zones. For example, student government association candidates have distributed information about their candidacies outside of Park Hall, and an off-campus organization—the Gideons International—has distributed pocket Bibles at various locations on the north side of campus, including at campus bus stops and on Baldwin Street.

4. This action is premised on the United States Constitution concerning the denial of Plaintiffs’ fundamental rights to free speech, equal protection, and due

process.

5. The policies and actions detailed below are challenged on their face and as applied to Plaintiffs.

6. Defendants' policies and actions have deprived and will continue to deprive Plaintiffs of their paramount rights and guarantees under the United States Constitution.

7. Each and every act of Defendants alleged herein was committed by Defendants, each and every one of them, under the color of state law and authority.

JURISDICTION & VENUE

8. This civil rights action raises federal questions under the United States Constitution, particularly the First and Fourteenth Amendments, and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

9. This Court has original jurisdiction over these federal claims pursuant to 28 U.S.C. §§ 1331 and 1343.

10. This Court has authority to award the requested damages pursuant to 28 U.S.C. § 1343; the requested declaratory relief pursuant to 28 U.S.C. §§ 2201–02; the requested injunctive relief pursuant to 28 U.S.C. § 1343 and FED. R. CIV. P. 65; and costs and attorneys fees under 42 U.S.C. § 1988.

11. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because most of the Defendants reside in this district and/or all of the acts described in this Complaint occurred in this district.

PLAINTIFFS

12. Plaintiff Young Americans for Liberty at the University of Georgia is an unincorporated expressive student organization comprised of University of Georgia students.

13. Young Americans for Liberty was founded and recognized as an official stu-

dent organization at the University in 2010. Young Americans for Liberty is student-led and non-partisan.

14. Part of Young Americans for Liberty's mission is to be an expressive student organization at the University.

15. Plaintiff Audrey Brasuell is a resident of the State of Georgia and a student at the University.

16. Ms. Brasuell is politically active and holds various beliefs regarding religion, morality, politics, and society.

17. Because of these firmly-held beliefs, Ms. Brasuell wants to communicate her views to the general public and her fellow college students in the hope that people will change their beliefs. She looks for opportunities to share her beliefs with her fellow students and community members.

18. Plaintiff Cecilia Kuehnel is a resident of the State of Georgia and a student at the University.

19. Ms. Kuehnel is politically active and holds various beliefs regarding religion, morality, politics, and society.

20. Because of these firmly-held beliefs, Ms. Kuehnel wants to communicate her views to the general public and her fellow college students in the hope that people will change their beliefs. She looks for opportunities to share her beliefs with her fellow students and community members.

DEFENDANTS

21. Defendant Jere W. Morehead is, and was at all times relevant to this Complaint, the President of the University of Georgia, a public university organized and existing under the laws of the State of Georgia.

22. Defendant Morehead is responsible for enactment and enforcement of University policies, including the Policy on Freedom of Expression challenged herein,

and their application to Young Americans for Liberty in restricting its ability to speak freely and without a permit on campus.

23. As president of the University, Defendant Morehead possesses the authority to change and enforce the Policy on Freedom of Expression challenged herein.

24. Defendant Morehead has not instructed University officials or the other defendants to change or alter the Policy on Freedom of Expression to comply with constitutional mandates.

25. As president of the University, Defendant Morehead has the authority to review, approve, or reject the decisions of University officials and the other defendants concerning the Policy on Freedom of Expression.

26. Defendant Morehead has failed to stop University officials, including the other defendants, from applying the Policy on Freedom of Expression to recognized student organizations, including Young Americans for Liberty.

27. Defendant Morehead is sued in his official capacity.

28. Defendant Pamela Whitten is, and was at all times relevant to this Complaint, Senior Vice President for Academic Affairs and Provost at the University of Georgia, a public university organized and existing under the laws of the State of Georgia.

29. Defendant Whitten is responsible for administration and policymaking for the University, including the Policy on Freedom of Expression challenged herein.

30. Defendant Whitten is responsible for enactment and enforcement of University policies, including the Policy on Freedom of Expression challenged herein that restrict the ability of Young Americans for Liberty to speak freely on campus without a permit.

31. Defendant Whitten is responsible for overseeing the University's Division of Student Affairs and Defendant Victor K. Wilson, and for creating, reviewing, changing, authorizing, and enforcing the policies of that office, including the Policy

on Freedom of Expression.

32. Defendant Whitten has failed to stop University officials, including the other defendants, from applying the Policy on Freedom of Expression to recognized student organizations, including Young Americans for Liberty.

33. Defendant Whitten possesses the authority to change and enforce the Policy on Freedom of Expression challenged herein.

34. Defendant Whitten is sued in her official capacity.

35. Defendant Victor K. Wilson is, and was at all times relevant to this Complaint, Vice President for Student Affairs at the University of Georgia, a public university organized and existing under the laws of the State of Georgia.

36. Defendant Wilson is responsible for administration and policymaking for the University, including the Policy on Freedom of Expression challenged herein.

37. Defendant Wilson is responsible for enactment and enforcement of University policies, including the Policy on Freedom of Expression challenged herein that restrict the ability of Young Americans for Liberty to speak freely on campus without a permit.

38. Defendant Wilson, under the direction of Defendants Morehead and Whitten, instructs the Division of Student Affairs when to create, review, change, authorize, and enforce student speech policies and procedures.

39. Defendant Wilson has failed to stop University officials, including the other defendants, from applying the Policy on Freedom of Expression to recognized student organizations, including Young Americans for Liberty.

40. Defendant Wilson possesses the authority to change and enforce the Policy on Freedom of Expression challenged herein.

41. Defendant Wilson is sued in his official capacity.

42. Defendant William M. McDonald is, and was at all times relevant to this Complaint, Dean of Students at the University of Georgia, a public university orga-

nized and existing under the laws of the State of Georgia.

43. Defendant McDonald is responsible for administration and policymaking for the University, including the Policy on Freedom of Expression challenged herein.

44. Defendant McDonald is responsible for enactment and enforcement of University policies, including the Policy on Freedom of Expression challenged herein that restrict the ability of Young Americans for Liberty to speak freely on campus without a permit.

45. Defendant McDonald, under the direction of Defendants Morehead, Whitten, and Wilson, leads the Office of the Dean of Students and directs it when to create, review, change, authorize, and enforce student speech policies and procedures.

46. Under Defendant McDonald's leadership, the Office of the Dean of Students created the Policy on Freedom of Expression.

47. Defendant McDonald has failed to stop University officials, including the other defendants, from applying the Policy on Freedom of Expression to recognized student organizations, including Young Americans for Liberty.

48. Defendant McDonald possesses the authority to change and enforce the Policy on Freedom of Expression challenged herein.

49. Defendant McDonald is sued both in his individual and official capacities.

50. Defendant Janice Davis Barham is, and was at all times relevant to this Complaint, Associate Dean of Students at the University of Georgia, a public university organized and existing under the laws of the State of Georgia.

51. Defendant Barham is responsible for administration and policymaking for the University, including the Policy on Freedom of Expression challenged herein.

52. Defendant Barham is responsible for enactment and enforcement of University policies, including the Policy on Freedom of Expression challenged herein that restrict the ability of Young Americans for Liberty to speak freely on campus with-

out a permit.

53. Defendant Barham, under the direction of Defendant McDonald, is responsible for applying and interpreting the Policy on Freedom of Expression, including requests by student organizations for permits under the policy.

54. Defendant Barham continues to enforce the Policy on Freedom of Expression to recognized student organizations, including Young Americans for Liberty.

55. Defendant Barham is sued both in her individual and official capacities.

FACTUAL BACKGROUND

I. THE UNIVERSITY'S UNCONSTITUTIONAL SPEECH ZONE POLICY

56. The University of Georgia is a public university organized and existing under the laws of the State of Georgia and receives funding from the State of Georgia in order to operate.

57. The University's main campus in Athens, Georgia is composed of various publicly-accessible buildings and outdoor areas, including streets, sidewalks, open-air quadrangles, and park-like lawns. A copy of the University's campus map is attached as Exhibit 1 to this Complaint. A Google Maps satellite view of the University's campus is attached as Exhibit 2 to this Complaint.

58. The University's main campus is located on more than 759 acres, which is approximately 33,062,040 square feet.

59. The University's campus has many suitable streets, sidewalks, open-air quadrangles, and park-like lawns where expressive activity will not interfere with or disturb the University's educational environment or access to buildings or sidewalks.

60. Many of the University's students live on campus, and, for them, the University's campus is their town square where they socialize and engage in a variety of expressive activities.

61. The University regulates student expressive activity on campus through the Policy on Freedom of Expression (“Policy”). A copy of the Policy on Freedom of Expression is attached as Exhibit 3 to this Complaint.

62. Although the Policy says that “[n]o rights are more highly regarded at the University of Georgia than the first amendment guarantees of freedom of speech, freedom of expression, and the right to assembly peaceably,” it says that the objective of the policy is “insuring that the University fulfills its educational mission.” Ex. 3.

63. The Policy designates two areas as “Free Expression Areas”: the Tate Student Center Plaza and the Memorial Hall Plaza. These areas “are generally available for [speech] between 8:00 am and 9:00 pm, Monday through Friday.” Ex. 3.

64. To use the “free expression areas,” students must schedule their activities and expression with University officials, including Defendant Barham.

65. The Policy specifies that “[u]se of these areas for speaking, demonstrating and other forms of expression will be scheduled through the Associate Dean of Students to best accommodate all interested users.” Ex. 3.

66. The Policy provides no timetables or guidelines on when students must submit scheduling requests to utilize the “free expression areas.”

67. Students who wish to gather in the “free expression areas” at other times “must obtain approval from the Associate Dean of Students at least 48 hours in advance and receive a permit for gathering.” Ex. 3.

68. Tate Student Center Plaza is a small open-air outdoor area to the north of the Tate Student Center, bordered by administrative and academic buildings and Sanford Drive. A Google Maps satellite view of the Tate Student Center Plaza is attached as Exhibit 4 to this Complaint.

69. The Tate Student Center Plaza is approximately 20,000 square feet.

70. The Tate Student Center Plaza occupies approximately 0.06% of the Uni-

versity's campus.

71. Memorial Hall Plaza is the paved triangular open-air outdoor area to the north of Memorial Hall, between Memorial Hall and Hooper Street. A Google Maps satellite view of the Memorial Hall Plaza is attached as Exhibit 5 to this Complaint.

72. The Memorial Hall Plaza is approximately 4,000 square feet.

73. The Memorial Hall Plaza occupies approximately 0.01% of the University's campus.

74. Altogether, the "free expression areas" set forth in Defendants' Policy comprise less than 0.08% of the University's campus.

75. Students may use all other areas of campus for speech activities, but they must obtain a permit from Defendant Barham at least forty-eight hours in advance.

76. According to the Policy, "[a]ll other areas of campus may be used for speeches and demonstrations. Groups that wish to gather for speeches and demonstrations in a location(s) other than the 'Free Expression Areas' must be approved by the Associate Dean of Students at least 48 hours in advance and receive a permit for the gathering." Ex. 3.

77. Under the Policy, Defendant Barham may impose other restrictions on and provisions for student speech from time to time by giving forty-eight hours notice.

78. The Policy directs individuals with questions to contact Defendant Barham.

79. The Policy was issued by Defendants McDonald and Barham.

80. Defendant Barham has the authority to interpret the Policy.

81. Defendants Morehead, Whitten, Wilson, McDonald, and Barham all have the authority to change the policy and bring it into compliance with constitutional mandates.

82. The Policy contains no guidelines or standards to limit the discretion of University officials in granting, denying, scheduling, relocating, or restricting requests by students to engage in expressive activity—both inside and outside the

“free expression areas.”

83. The Policy contains no deadlines or timetables in which University officials must respond to a permit request (for outside the “free expression areas”) or a scheduling request (for inside the “free expression areas”).

84. The Policy contains no options for University officials to waive the forty-eight hour notice requirement when students want to speak spontaneously in response to recent or unfolding events.

85. If students do not comply with Defendants’ Policy, then they can be disciplined under the University’s *Code of Conduct*. A copy of the *University of Georgia Code of Conduct* for 2013–2014 is attached as Exhibit 6 to this Complaint.

86. The University’s *Code of Conduct* prohibits “disorderly conduct,” which is defined to include “[p]articipation in a campus demonstration that violates the University’s Policy on Freedom of Expression.” Ex. 6.

II. BACKGROUND ON YOUNG AMERICANS FOR LIBERTY

87. Young Americans for Liberty is a non-partisan organization with a libertarian philosophical viewpoint that promotes freedom in society and the economy at the University. Young Americans for Liberty promotes the intellectual development of students who share an interest in liberty through activism and academics.

88. Young Americans for Liberty expresses its message on the University’s campus through a variety of means including flyers, signs, peaceful demonstrations, hosting tables with information, inviting speakers to campus, and talking with fellow students about libertarian ideas, among other things.

89. When engaging in these expressive activities, Young Americans for Liberty discusses political, religious, social, cultural, and moral issues and ideas.

90. Young Americans for Liberty has extensive experience hosting successful speakers and events on campus.

91. On November 6, 2013, Young Americans for Liberty hosted Future of Freedom Foundation President Jacob Hornberger to discuss libertarianism in the context of both foreign and domestic policy.

92. On March 18, 2013, Young Americans for Liberty hosted Chuck Donovan and John Monds, libertarian candidates for U.S. Senate and Governor.

93. On February 24, 2012, Young Americans for Liberty hosted former governor of New Mexico Gary Johnson.

94. On November 26, 2011, Young Americans for Liberty hosted University political science professor Carlo Pelanda, who spoke about worldwide libertarianism.

95. Young Americans for Liberty intends to continue to engage in these types of expressive activities during the 2013–2014 academic year and subsequent years thereafter.

III. THE POLICY PREVENTS YOUNG AMERICANS FOR LIBERTY FROM SPEAKING

96. Young Americans for Liberty would like to speak freely in outdoor areas of campus outside the designated speech zones, and would do so immediately, but fears punishment by campus administrators, including Defendants McDonald and Barham.

97. Specifically, Young Americans for Liberty would like to share its libertarian message outside the speech zones by hosting tables; demonstrating on political issues; protesting local, state, and national issues; collecting petition signatures; and distributing literature.

98. On March 31, 2011, members of Young Americans for Liberty conducted a “debt clock” display along Lumpkin Street near its intersection with Baxter Street.

99. This “debt clock” display drew attention to the mounting national debt and other matters of fiscal policy of concern to Young Americans for Liberty.

100. This “debt clock” display did not block the entrances or exits of any build-

ings and did not obstruct vehicular or pedestrian traffic.

101. Within about an hour after members of Young Americans for Liberty started their “debt clock” display, a University official from campus reservations or CSO ordered Young Americans for Liberty to cease its activities.

102. This University official told members of Young Americans for Liberty that they had to cease their expressive activities because they were outside the speech zone.

103. Young Americans for Liberty has witnessed members of the Gideons International, an off-campus organization, distributing Bibles at the bus stop outside Tate Student Center Plaza and the Memorial Hall Plaza.

104. Young Americans for Liberty has witnessed members of the Gideons International distributing Bibles along the sidewalks in front of Joe E. Brown Hall (at the intersection of Lumpkin and Baldwin Streets).

105. Young Americans for Liberty has witnessed members of the Gideons International distributing Bibles along the sidewalks in front of LeConte Hall (at the intersection of Baldwin and Jackson Streets).

106. Young Americans for Liberty has witnessed members of the Gideons International distributing Bibles along the sidewalks at the intersection of Baldwin Street and South Herty Drive.

107. Young Americans for Liberty has witnessed members of the Gideons International distributing Bibles along along the sidewalks and in the paved area between Memorial Hall and Sanford Stadium.

108. Each of the locations where Young Americans for Liberty has witnessed members of the Gideons International distributing Bibles is outside the “free expression areas” set forth in Defendants’ Policy.

109. On information and belief, the University, including Defendants Morehead, Whitten, Wilson, McDonald, and Barham, knew about the Gideons International

distributing Bibles outside the speech zones, approved the Gideon International's actions, and did not take any action to enforce the Policy against the members of the Gideons International.

110. The University's enforcement of the Policy against Young Americans for Liberty burdens its speech for multiple reasons.

111. Young Americans for Liberty would like to engage in oral and written speech, including leafleting, in other outdoor campus locations that are generally open to passersby, but cannot do so without obtaining a permit forty-eight hours in advance.

112. One of the most effective means of speech is hand-to-hand distribution of leaflets while walking across University property. The Policy requires Young Americans for Liberty to get a permit forty-eight hours in advance to conduct such activity because it occurs outside the designated "free expression areas."

113. Young Americans for Liberty desires to engage in peaceful expressive activities on campus—including oral communication and literature distribution—in areas outside the designated speech zones, but has not done so for fear of punishment, including punishment under the University's *Code of Conduct*.

114. Young Americans for Liberty wants to distribute flyers containing religious, political, and social messages while its members stand on public ways and open areas on campus. Specifically, Young Americans for Liberty wants to distribute flyers informing fellow students about issues of freedom and liberty, particularly the national debt, the entitlement state, the nanny state, foreign policy, and war, just to name a few.

115. The Tate Student Center Plaza and Memorial Hall Plaza are inadequate for Young Americans for Liberty's speech because it wants to reach a wider audience and there is greater foot traffic in other areas of campus.

116. The Tate Student Center Plaza and Memorial Hall Plaza are inadequate for

Young Americans for Liberty's speech because it wants to reach demographic groups within the University student body who do not frequent those two locations.

117. Specifically, Young Americans for Liberty wants to give flyers about freedom and liberty—particularly the national debt, the entitlement state, the nanny state, foreign policy, and war—to fellow students outside of classroom buildings and common areas where students congregate on campus.

118. For example, Young Americans for Liberty would like to reach the more politically and economically minded students by distributing flyers in the open, outdoor areas outside the following buildings on campus:

- Caldwell Hall;
- Brooks Hall;
- The Law School;
- The Main Library;
- Park Hall;
- Peabody Hall; and
- Baldwin Hall.

119. Each of these locations is outside the “free expression area” set forth in Defendants' Policy.

120. Young Americans for Liberty's speech is further frustrated because it cannot engage in any speech at the University outside the speech zones until it first obtains a permit from the University, and it may only access the speech zones if they are not already reserved by someone else.

121. The permit requirement, in and of itself, is unduly burdensome as it requires forty-eight hours advanced notice for processing.

122. The permit requirement means that Young Americans for Liberty may not engage in spontaneous or anonymous speech on campus.

123. If Young Americans for Liberty learns of breaking news and wants to edu-

cating fellow students on campus by speaking spontaneously outside the designated speech zones, the Policy prohibits it from doing so.

124. It is repugnant to Young Americans for Liberty that it, as a recognized student organization at a public university, must secure governmental permission to speak or distribute flyers, when its members feel convicted by their political beliefs to speak on campus.

125. Young Americans for Liberty also likes to spread its message about religion and politics in reaction to current events.

126. Young Americans for Liberty and all University students require the ability to speak spontaneously in reaction to news. And yet, the University's Policy prohibits such spontaneous speech because it forces Young Americans for Liberty to obtain a permit prior to speaking anywhere but the speech zones.

127. Young Americans for Liberty is bound to comply with the terms of the University's Policy at all times on campus, in part because it is incorporated into the University's *Code of Conduct*.

128. Young Americans for Liberty is not distributing flyers about its political beliefs on campus due to the University's Policy and the accompanying threat of punishment under the University's *Code of Conduct*.

129. Young Americans for Liberty is chilled in its ability to discuss its political beliefs on campus due to the University's Policy and the accompanying threat of punishment under the University's *Code of Conduct*.

130. If not for the University's Policy, the accompanying threat of punishment under the University's *Code of Conduct*, and the actions of Defendants, Young Americans for Liberty would immediately return to the open areas of the University's campus and distribute flyers that convey its messages about religion, politics, and social issues.

131. Specifically, Young Americans for Liberty would distribute its flyers on is-

sues that affect freedom and liberty, especially those issues that should be important to young people, but often are not. For example, Young Americans for Liberty would like to distribute flyers about the national debt, the entitlement state, the nanny state, U.S. foreign policy, drones, National Security Administration spying, the war on drugs, presidential power, and the two party system, and its members would like to discuss these issues with their peers and fellow students. Young Americans for Liberty refrains for fear of arrest or punishment under the University's Policy.

132. The fear of arrest or punishment severely limits Young Americans for Liberty's constitutionally-protected expression on campus.

ALLEGATIONS OF LAW

133. At all times relevant to this Complaint, each and all of the acts alleged herein were attributed to the Defendants who acted under color of a statute, regulation, custom, or usage of the State of Georgia.

134. Defendants knew or should have known that by disallowing Plaintiffs the freedom to speak on campus without having to obtain prior permission the University is violating Plaintiffs' constitutional rights.

135. Plaintiffs are suffering irreparable harm from the conduct of Defendants.

136. Plaintiffs have no adequate or speedy remedy at law to correct or redress the deprivation of their rights by Defendants.

137. Unless the conduct of Defendants is enjoined, Plaintiffs will continue to suffer irreparable injury.

FIRST CAUSE OF ACTION

Violation of Plaintiffs' First Amendment Right to Freedom of Speech **(42 U.S.C. § 1983)**

138. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–137 of this Complaint.

139. Speech, including written expression, is entitled to comprehensive protection under the First Amendment.

140. Religious and political speech is also fully protected by the First Amendment.

141. The First Amendment rights of free speech and press extend to campuses of state universities.

142. The sidewalks and open spaces of the University campus are designated public fora—if not traditional public fora—for speech and expressive activities by students enrolled at the University.

143. The First Amendment's Free Speech Clause, incorporated and made applicable to the states by the Fourteenth Amendment to the United States Constitution, prohibits content and viewpoint discrimination in the public forums for student speech and expression on the campus of a public university.

144. A public university's ability to restrict speech—particularly student speech—in a public forum is limited.

145. The First Amendment's Free Speech Clause prohibits censorship of religious and political expression.

146. Under the First Amendment's Free Speech Clause, a prior restraint on citizens' expression is presumptively unconstitutional, unless it (1) does not delegate overly broad licensing discretion to a government official, (2) contains only content and viewpoint neutral reasonable time, place, and manner restrictions, (3) is narrowly tailored to serve a significant governmental interest, and (4) leaves open ample alternative means for communication.

147. Unbridled discretion to discriminate against speech based on its content or viewpoint violates the First Amendment regardless of whether that discretion has ever been unconstitutionally applied in practice.

148. The First Amendment's Free Speech Clause guarantees a citizen the right

to express his views anonymously and spontaneously in public forums.

149. Defendants' Policy on Freedom of Expression and their practice of restricting student speech and literature distribution to the speech zones violate the First Amendment facially and as applied because they are prior restraints on speech in areas of campus that are traditional or designated public fora for University students.

150. Defendants' Policy on Freedom of Expression and their practice of restricting student speech and literature distribution to the speech zones violate the First Amendment facially and as applied because they grant University officials unbridled discretion to discriminate against speech based on its content or viewpoint.

151. Defendants' Policy on Freedom of Expression and associated practices that require students to submit an application for approval at least forty-eight hours in advance of a proposed expressive activity outside the speech zones are unconstitutional "time," "place," and "manner" restrictions that violate Plaintiffs' and other students' right to freedom of speech and expression.

152. Defendants' Policy on Freedom of Expression and associated practices provide no guidelines or standards to limit the discretion of University officials in granting, denying, scheduling, relocating, or restricting requests by students to engage in expressive activity outside the speech zones.

153. Defendants' Policy on Freedom of Expression and associated practices require students to obtain a permit to speak outside the speech zones and delegate authority to Defendants to determine whether and where students may speak, thus giving Defendants unbridled discretionary power to limit student speech in advance of such expression on campus and to do so based on the content and viewpoint of the speech.

154. These grants of unbridled discretion to University officials violate the First Amendment because they create a system in which speech is reviewed without any

standards, thus giving students no way to prove that a denial, restriction, or relocation of their speech was based on unconstitutional considerations.

155. The First Amendment's prohibition against content and viewpoint discrimination requires Defendants to provide adequate safeguards to protect against the improper exclusion, restriction, or relocation of student speech based on its content or viewpoint.

156. Because Defendants have failed to establish neutral criteria governing the granting, denial, or relocation of student speech applications (including requests to use campus facilities), there is a substantial risk that University officials will engage in content and viewpoint discrimination when addressing those applications.

157. Defendants exercise the unbridled discretion granted them under the Policy on Freedom of Expression when they require students, including Plaintiffs, everyday to use one of two speech zones for expressive activities.

158. Defendants' Policy on Freedom of Expression and associated practices do not contain any definite time period in which University officials must grant or deny students' requests to speak outside the speech zones.

159. Defendants' Policy on Freedom of Expression and associated practices that require prior approval to speak prohibit students from anonymously communicating with passersby via oral or written communication.

160. Defendants' Policy on Freedom of Expression and associated practices that require forty-eight hours advanced notice to speak prohibit spontaneous expression in areas of campus outside the speech zones.

161. Defendants' Policy on Freedom of Expression and associated practices are neither reasonable nor valid time, place, and manner restrictions on speech because they are not content-neutral, they are not narrowly tailored to serve a significant government interest, and they do not leave open ample alternative channels of communication.

162. Defendants' Policy on Freedom of Expression and associated practices are also overbroad because they prohibit and restrict protected expression.

163. Defendants' Policy on Freedom of Expression and associated practices unconstitutionally censor or restrict all private speech that occurs outside the speech zones, and they require students and non-students to register all expressive activities with Defendants in advance if they might occur outside those speech zones.

164. The overbreadth of Defendants' Policy on Freedom of Expression and related practices chills the speech of students and non-students not before the Court who seek to engage in private expression in the open, outdoor area of campus.

165. Defendants' Policy on Freedom of Expression and associated practices chill, deter, and restrict Plaintiffs from freely expressing their religious and political beliefs.

166. Defendants' Policy on Freedom of Expression and associated practices violate Plaintiffs' right to free speech as guaranteed by the First Amendment to the United States Constitution.

167. Because of Defendants' actions, Plaintiffs have suffered, and continue to suffer, economic injury and irreparable harm. They are entitled to an award of monetary damages and equitable relief.

168. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to a declaration that Defendants violated their First Amendment right to freedom of speech and an injunction against Defendants' policy and actions. Additionally, Plaintiffs are entitled to damages in an amount to be determined by the evidence and this Court and the reasonable costs of this lawsuit, including their reasonable attorneys' fees.

SECOND CAUSE OF ACTION
Violation of Plaintiffs' Fourteenth Amendment Right to
Due Process of Law
(42 U.S.C. § 1983)

169. Plaintiffs repeat and reallege each of the allegations contained in para-

graphs 1–137 of this Complaint.

170. The Fourteenth Amendment to the United States Constitution guarantees Plaintiffs the right to due process of law and prohibits Defendants from promulgating and employing vague standards that allow for viewpoint discrimination in Defendants’ handling of Plaintiffs’ expressive activities.

171. The government may not regulate speech based on policies that permit arbitrary, discriminatory, and overzealous enforcement.

172. The government may not regulate speech based on policies that cause persons of common intelligence to guess at their meaning and differ as to their application.

173. Defendants’ Policy on Freedom of Expression and associated practices contain no criteria to guide administrators when deciding whether to grant, deny, schedule, relocate, or restrict student speech on campus.

174. Defendants’ Policy on Freedom of Expression and associated practices are impermissibly vague and ambiguous and are thus incapable of providing meaningful guidance to Defendants.

175. The lack of criteria, factors, or standards in Defendants’ Policy on Freedom of Expression and associated practices renders this policy unconstitutionally vague and in violation of Plaintiffs’ right to due process of law under the Fourteenth Amendment.

176. Because of Defendants’ actions, Plaintiffs have suffered, and continue to suffer, economic injury and irreparable harm. They are entitled to an award of monetary damages and equitable relief.

177. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to a declaration that Defendants violated their Fourteenth Amendment right to due process of law and an injunction against Defendants’ policy and actions. Additionally, Plaintiffs are entitled to damages in an amount to be determined by the evidence and

this Court and the reasonable costs of this lawsuit, including their reasonable attorneys' fees.

THIRD CAUSE OF ACTION
Violation of Plaintiffs' Fourteenth Amendment Right to
Equal Protection of the Law
(42 U.S.C. § 1983)

178. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–137 of this Complaint.

179. The Fourteenth Amendment to the United States Constitution guarantees Plaintiffs the equal protection of the laws, which prohibits Defendants from treating Plaintiffs differently than similarly situated students.

180. The government may not treat someone disparately as compared to similarly situated persons when such disparate treatment burdens a fundamental right, targets a suspect class, or has no rational basis.

181. Plaintiffs are similarly situated to other students and student organizations at the University.

182. Defendants allowed other students and student organizations to engage in speech and distribute literature, but denied the same to Plaintiffs.

183. Defendants treated Plaintiffs disparately when compared to similarly situated organizations by denying Plaintiffs the ability to speak outside the speech zones without a permit.

184. Defendants' Policy on Freedom of Expression and associated practices violate various fundamental rights of Plaintiffs, such as its freedom of speech and due process of law.

185. When government regulations, like Defendants' Policy on Freedom of Expression and associated practices challenged herein, infringe on fundamental rights, discriminatory intent is presumed.

186. Defendants' Policy on Freedom of Expression and associated practices have

also been applied to discriminate intentionally against Plaintiffs' rights to freedom of speech and due process of law.

187. Defendants lack a rational or compelling state interest for such disparate treatment of Plaintiffs.

188. Defendants' Policy on Freedom of Expression and associated practices are not narrowly tailored as applied to Plaintiffs because Plaintiffs' speech does not implicate any of the interests Defendants' might have.

189. Defendants have applied the Policy on Freedom of Expression and associated practices to Plaintiffs in a discriminatory and unequal manner, allowing other students to speak freely and distribute literature outside the speech zones without a permit when Defendants say Plaintiffs cannot do the same, in violation of Plaintiffs' right to equal protection of the laws under the Fourteenth Amendment.

190. Defendants knew about the people associated with the student government association elections, and allowed them to speak and distribute literature outside the speech zones without a permit.

191. Because of Defendants' actions, Plaintiffs have suffered, and continue to suffer, economic injury and irreparable harm. They are entitled to an award of monetary damages and equitable relief.

192. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to a declaration that Defendants violated their Fourteenth Amendment right to equal protection of law and an injunction against Defendants' policy and actions. Additionally, Plaintiffs are entitled to damages in an amount to be determined by the evidence and this Court and the reasonable costs of this lawsuit, including their reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment

against Defendants and provide Plaintiffs with the following relief:

- A. A declaratory judgment that the Policy on Freedom of Expression and associated practices, facially and as-applied, violate Plaintiffs' rights under the First Amendment;
- B. A declaratory judgment that the Policy on Freedom of Expression and associated practices, facially and as-applied, violate Plaintiffs' rights under the Fourteenth Amendment;
- C. A declaratory judgment that the Defendants' restriction of Plaintiffs' speech on campus violated Plaintiffs' rights under the First and Fourteenth Amendments;
- D. A preliminary and permanent injunction prohibiting the Defendants, their agents, officials, servants, employees, and any other persons acting on their behalf from enforcing the Policy on Freedom of Expression;
- E. Compensatory damages for the violation of Plaintiffs' First and Fourteenth Amendment rights;
- F. Nominal damages for the violation of Plaintiffs' First and Fourteenth Amendment rights;
- G. Plaintiffs' reasonable attorneys' fees, costs, and other costs and disbursements in this action pursuant to 42 U.S.C. § 1988; and
- H. All other further relief to which Plaintiffs may be entitled.

Respectfully submitted this 1st day of May, 2014,

/s/ Kevin H. Theriot

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** Motion for *pro hac vice* admission to be filed.

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