No. 1210309
IN THE SUPREME COURT OF ALABAMA

YOUNG AMERICANS FOR LIBERTY UNIVERSITY OF AL HSV, GREER JOSHUA,	)	
Appellants,	)	
	)	**On Appeal from**
v.	)	**Madison County Cir. Court**
	)	**Case No. 47-cv-21-900878.00**
BROCK MIKE, BROOKS KAREN, DAWSON DARREN, ENGLAND JOHN JR. ET AL,	)	
Appellee.	)	

BRIEF OF AMICUS CURIAE AMERICANS FOR PROSPERITY FOUNDATION IN SUPPORT OF APPELLANTS

JOHN J. PARK, JR.
Counsel of Record
P.O. BOX 3073
GAINESVILLE, GA 30503
(678) 608-1920
JACKPARKLAW@GMAIL.COM

CYNTHIA FLEMING CRAWFORD
CASEY MATTOX
Of Counsel
AMERICANS FOR PROSPERITY FOUNDATION
1310 N. Courthouse Road, Ste. 700
Arlington, VA 22201
(571) 329-2227
ccrawford@afphq.org

Counsel for Amicus Curiae

STATEMENT REGARDING ORAL ARGUMENT

Amicus Curiae defers to Appellant's judgment as to whether oral argument is necessary in this case. *Amicus Curiae* believes that it has sufficiently presented its case through its brief and therefore will not file the unusual motion for an *amicus curiae* to participate in oral argument. *See* Rule 29(f), Ala. R. App. P.

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IDENTITY AND INTEREST OF AMICUS CURIAE[1]

Americans for Prosperity Foundation ("AFPF") is a nonprofit organization committed to educating and training Americans to be courageous advocates for the ideas, principles, and policies of a free and open society. As part of this mission, it appears as *amicus curiae* before federal and state courts. AFPF is committed to ensuring the freedom of expression guaranteed by the First Amendment, particularly on college campuses where the marketplace of ideas is both nourished and nourishes developing minds. College campuses are not just a place where free expression should be protected; it is vital to their mission. And they are uniquely positioned to instill in the next generation an appreciation for free speech. This is why "[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967).

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[1] Appellant has consented to the filing of this brief; *Amicus* concurrently filed a motion with this brief rather than asking for consent from Appellee. *See* Ala. R. App. P. 29 and comments. Counsel for a party did not author this brief in whole or in part, and no such counsel or party made any monetary contribution to fund the preparation or submission of this brief. No person or entity other than *Amicus* and its counsel made a monetarycontribution to fund the preparation or submission of this brief.

SUMMARY OF THE ARGUMENT

Prior restraints, like the requirement that a speaker obtain a permit before speaking, are highly disfavored. *New York Times Co. v. United States*, 403 U.S. 713, 714 (1971) ("Any system of prior restraints … bear[s] a heavy presumption against its constitutional validity."). In fact, the United States Supreme Court has recognized that "in the context of everyday public discourse" it is "offensive" that a speaker must "first inform the government of her desire to speak to her neighbors and then obtain a permit to do so." *Watchtower Bible & Tract Soc'y of N.Y. Inc. v. Village of Stratton*, 536 U.S. 150, 165-66 (2002).

The University of Alabama's Facilities and Grounds Use Policy (the "Policy"), imposes a variety of restrictions that leave little student speech free from prior restraints of some kind. For example, the bulk of the campus, roughly 99% of its physical area,[2] is subject to a mandatory reservation policy for expressive activities. Section B of the Policy explicitly states "reservations must be made for activities that make use of space under the control of the University," even "including University sidewalks." Compl. ¶69, Ex. 7 at 2.

[2] Compl. at ¶ 6.

The remaining 1% may be used for "spontaneous" expression without advance approval if the speakers remain within one of seven "defined areas" on campus. Compl. ¶¶ 89–85, Ex. 7 at 6–7 (Sec. F.1.b); Ex. 9. Alternatively, "spontaneous" speech may be made elsewhere on campus with 24 hours advance application for permission. Ex. 7 at 6–7 (Sec. F.1.d).

Spontaneity thus requires pre-planning of at least 24 hours *and* permission if it takes place beyond the bounds of the 1% of campus designated for "spontaneous" speech.

Oddly, the Policy's definition of "spontaneous" is not, as one might expect, based on the temporal relationship between the thought and the expression, nor on the lack of external impetus.[3] Indeed, it is the opposite. The Policy describes "spontaneous" speech in terms of the content of the speech and predicates it on the time third parties—not the speaker—take action. Thus, "spontaneous" speech allowed within the speech zones is defined as "generally prompted by news or affairs coming into public

[3] Common dictionary definitions of "Spontaneous" include: "arising from a momentary impulse;" "developing or occurring without apparent external influence, force, cause, or treatment;" *Merriam-Webster Dictionary*, available at: https://www.merriam-webster.com/dictionary/spontaneous; and "coming or resulting from a natural impulse or tendency; without effort or premeditation," *Dictionary.com*, available at: https://www.dictionary.com/browse/spontaneous.

knowledge less than forty-eight (48) hours prior to the Event." Compl. ¶¶ 83–85, Ex. 7 at 6 (Sec. F.1.a). This definition of "spontaneous" is curious in light of the Policy requirement that 24-hour notice be provided for speech made outside the speech zones, and sheds no light on what protection, if any, is extended to truly spontaneous, *i.e.* "arising from a momentary impulse," speech that may "develop[e] or occur[] without apparent external influence, force, cause, or treatment." Speech, not predicated on a news story apparently has no protection at all. Nor is there any protection for speech that arises abruptly but relates to a triggering event that occurred more than 48 hours previously. For a speaker, like Young Americans for Liberty at the University of Alabama, whose speech centers on promoting timeless principles like the natural rights of life, liberty, and property, requiring such time-bound content essentially ensures their speech cannot be spontaneous and is thus subject to prior restraint.

Moreover, divergent views on whether certain speech satisfies the Policy's unconventional definition of spontaneous can be a punishable offense. University officials "may consider any relevant evidence" to determine whether the content of a student's speech is "spontaneous" and may take disciplinary action against any individual or group who plans to

speak but attempts to "circumvent this policy by claiming to be spontaneous." Compl. ¶¶ 87–88, Ex 7. at 7 (Sec. F.1.e). Thus, any speaker with an impulse toward spontaneous expression must stop and consider whether the content of the expression somehow relates to news reports of the past 48 hours—and such pondering cannot take too long, lest the 48 hours elapse in the meantime.

Those policies violate the plain text of Alabama Act 2019-396 ("Campus Free Speech Act" or "Act"), which forbids the creation of free speech zones or other designated outdoor areas of campus to limit or prohibit protected expressive activities. The Act also allows only narrowly tailored time, place, and manner restrictions for outdoor areas of campus. It does not allow for blanket speech restrictions on the better part of campus that may only be avoided by satisfying content-based criteria or prophesying 24 hours ahead of time when "spontaneous" speech may occur.

The court below erred in holding that limiting spontaneous speech to the news of the day (or two days, as the case may be) was not content-based and erroneously conflated the temporal definition of spontaneous speech with temporal restrictions on content, conflating "newsworthy speech" with speech on "newsworthy" topics. Order at 6.

Moreover, at this juncture, the circuit court plainly erred by dismissing the suit because, without any evidentiary record on which to rely, in order to conduct its scrutiny analysis, it had to assume facts not in evidence. This is the exact opposite treatment of factual assertions required by the Alabama Rules of Civil Procedure on a motion to dismiss.

ARGUMENT

I. The Policy Expressly Contradicts the Act by Imposing Speech Zones and Restricting Expression in Outdoor Areas of Campus.

The Campus Free Speech Act is structured to protect expressive activity on campus by prohibiting speech zones and ensuring nearly unlimited access to outdoor areas of campus for spontaneous assembly, speech, and distribution of literature. Restrictions on time, place, or manner may be imposed—but only if they are narrow and allow all members of the university to engage in expression.

The Act defines a "Free Speech Zone" as an "area on campus of a public institution of higher education that is designated for the purpose of engaging in a protected expressive activity." Ala. Code § 16-68-2(3).

"Protected expressive activity" is:

> Speech and other conduct protected by the First Amendment to the United States Constitution,. . .,

> including all of the following:
>
> a. Communication through any lawful verbal, written, or electronic means.
>
> b. Participating in peaceful assembly.
>
> c. Protesting.
>
> d. Making speeches.
>
> e. Distributing literature.
>
> f. Making comments to the media.
>
> g. Carrying signs or hanging posters.
>
> h. Circulating petitions.

Ala. Code § 16-68-2(7).

"Outdoor areas of campus" are defined as. "The generally accessible outside areas of the campus of a public institution of higher education where members of the campus community are commonly allowed including, without limitation, grassy areas, walkways, and other similar common areas." Ala. Code § 16-68-2(6).

The Act requires the board of trustees of public institutions of higher education to adopt a free expression policy with certain minimum protections, including:

> - That students, administrators, faculty, and staff are free to . . . engage in protected expressive activity in outdoor areas of the campus, and to spontaneously and contemporaneously assemble, speak, and

distribute literature. Ala. Code § 16-68-3(a)(3)

- That the outdoor areas of a campus of a public institution of higher education shall be deemed to be a forum for members of the campus community, and the institution shall not create free speech zones or other designated outdoor areas of the campus in order to limit or prohibit protected expressive activities. Ala. Code § 16-68-3(a)(4)

However,

> the public institution of higher education may maintain and enforce constitutional time, place, and manner restrictions for outdoor areas of campus only when they are narrowly tailored to serve a significant institutional interest and when the restrictions employ clear, published, content-neutral, and viewpoint-neutral criteria, and provide for ample alternative means of expression. All restrictions shall allow for members of the university community to spontaneously and contemporaneously assemble and distribute literature. Ala. Code § 16-68-3(a)(7)

The prohibition on speech zones and mandate to preserve open areas of campus for expression create a floor for the protections that must be included in university free expression policies and not an aspirational goal that can be abandoned in favor of other objectives. Moreover, the plain terms of the statute must be "given their natural, plain, ordinary, and commonly understood meaning." *Simcala, Inc. v. Am. Coal Trade, Inc.*, 821 So. 2d 197, 199 (Ala. 2001). For "[w]hile other courts may be willing to look

beyond the language chosen by their legislatures, [this Court has] repeatedly reaffirmed the fundamental principle of statutory construction that, where possible, words must be given their plain meaning." *Id*. at 202. Thus, when the Act plainly states that "the institution shall not create free speech zones," and extends the protection for spontaneous activity to speech and assembly as well as to distribution of literature, those plain commands cannot be interpreted to mean something else.

The Policy offends the Act in three ways. *First*, it ignores the prohibition against speech zones by limiting spontaneous speech to seven areas of campus. *Second*, it violates the spirit and letter of the command to protect spontaneous expression in the outdoor areas of campus by imposing a blanket reservation program on the bulk of the outdoor areas with the threat of discipline against those who are incorrectly "spontaneous." *Third*, it eschews the requirement that any time, place, or manner restriction be narrowly-tailored and content-neutral. Moreover, the Act's framing[4] of its protection of expression as consistent with the First Amendment, as well as the First Amendment itself, render the Policy's content-based definition of spontaneous speech and prior restraints on all other speech,

[4] Ala. Code § 16-68-2(5) & (7); § 16-68-3(a)(2)

constitutionally infirm.

Finally, through the policy's regulation of speech on sidewalks and other public ways, it runs afoul of the First Amendment because those areas "occupy a 'special position in terms of First Amendment protection' because of their historic roles as sites for discussion and debate." *McCullen v. Coakley*, 134 S. Ct. 2518, 2529 (2014)(quoting *United States v. Grace*, 461 U.S. 171, 180 (1983)); *see also Pleasant Grove City v. Summum*, 555 U.S. 460, 469 (2009). As the United States Supreme Court explained, "Even today, [public streets and sidewalks] remain one of the few places where a speaker can be confident that he is not simply preaching to the choir. With respect to other means of communication, an individual confronted with an uncomfortable message can always turn the page, change the channel, or leave the web site. Not so on public streets and sidewalks." *McCullen*, 134 S. Ct. at 2529.

II. The Circuit Court Improperly Assumed Facts When Conducting a Scrutiny Analysis on a Motion to Dismiss.

This Court recently reiterated that "[a]s a general rule, 'summary judgment is particularly inappropriate in [F]irst [A]mendment cases.'" *Ex parte Hugine*, 256 So. 3d 30, 45 (Ala. 2017) (quoting *Hatcher v. Bd. of Pub. Educ. & Orphanage for Bibb Cty.*, 809 F.2d 1546, 1558 (11th Cir. 1987)).

This case falls at the bullseye of that general rule, which is equally—if not more—applicable at the motion to dismiss stage. This is so because at the motion to dismiss stage, "the allegations of the complaint are viewed most strongly in the pleader's favor" and "dismissal is proper only when it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief." *Nance By & Through Nance v. Matthews*, 622 So. 2d 297, 299 (Ala. 1993). Thus, the warning against rendering judgment in First Amendment cases "involving delicate constitutional rights, complex fact situations, disputed testimony, and questionable credibilities" *Porter v. Califano*, 592 F.2d 770, 778 (5th Cir. 1979), rings more strongly in the plaintiff's favor when factual support for the claimed violation must be eliminated "beyond doubt." Here, the lower court did not simply bypass such a finding, but actively presumed facts not in evidence to support dismissal.

Speech that takes place in a traditional public forum is subject to heightened constitutional protection under the First Amendment. The Supreme Court has long made clear that time, place, and manner restrictions may only be imposed when the restrictions (1) "are justified without reference to the content of the regulated speech," (2) are "narrowly

tailored to serve a significant governmental interest," and (3) "leave open ample alternative channels for communication of the information." *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). Moreover, when "the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions." *United States v. Playboy Entm't Grp., Inc.*, 529 U.S. 803, 816 (2000).

Typically, whether a requirement is a "reasonable time, place, and manner restriction" is a "question [that] should [go] to the jury." *Pouillon v. City of Owosso*, 206 F.3d 711, 717-18 (6th Cir. 2000). Whether a restriction is content-neutral, narrowly tailored, and leaves ample alternatives for communication of information raises fact issues that should not be construed against a plaintiff.at the motion to dismiss stage. *McTernan v. City of York*, 564 F.3d 636, 646 (3d Cir. 2009). *See also Davison v. Loudon Cty. Bd. of Supervisors*, 227 F. Supp. 3d 605 611-12, n.2 (E.D. Va. 2017) (denying motion to dismiss and emphasizing lack of record evidence where plaintiff adequately pleaded a government official improperly restricted speech on a Facebook page open for general comments); *Kyriacou v. Peralta Community College Dist.*, 2009 WL 890887 at *5 (N.D. Cal. Mar. 31, 2009) (denying respondents' motion to dismiss in

relevant part because "at this stage in the litigation … the Court must agree with plaintiffs that respondents have imposed a content-specific restriction" on expression).

The same is true here. Plaintiffs have asserted a "desire to express their message on the University 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 the natural rights of life, liberty, and property, among other things." Compl. ¶ 20. They claim a desire "to express themselves on gun control . . . in the common outdoor areas of campus," by standing in the outdoor areas of campus and hold up signs saying gun control laws and gun-free zones do not stop criminals. Likewise, they "want to talk in a similar manner about important issues of public policy like the powers of the federal government" and "to discuss how the size of government bureaucracy relates to other issues like federalism and fiscal responsibility." "Plaintiffs also desire to recruit members for their organization by gathering and walking around campus with signs promoting Young Americans for Liberty." Compl. ¶¶ 105–07. Plaintiffs want to engage in these expressive activities throughout the open, generally accessible outdoor areas of campus, spontaneously

without prior permission from the University. Compl. ¶ 108. But they allege the Policy's prior approval requirement and speech zones provision prevent them from doing so. Compl. ¶ 109. And they credibly fear punishment if they violate the Policy. Compl. ¶ 110. Plaintiffs have asserted these factual allegations support their claims that the Policy violates their speech rights under the Act, the Alabama Constitution, and the First Amendment. Compl. ¶¶ 128–140.

Thus, although there may be a rare case that alleges speech-restriction that may be disposed of at the pleadings stage—this is not that case. And it cannot be converted into such a case through the adoption of strawman factual assertions; *e.g.*, Order at 11 ("A single person could disrupt the expressive activities at a location that was previously reserved by someone else"); or by relying on factual findings from other cases, *e.g.*, *Id*. ("[t]he three-day requirement, however, is in line with the advance notice requirements upheld by other courts."). The rule that "dismissal is proper only when it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief" simply cannot be overcome by positing hypothetical scenarios to displace well-pled facts that, if proven, would merit relief. Viewing the allegations

of the Complaint most strongly in the pleader's favor, as the court must, the motion to dismiss should have been denied.

CONCLUSION

For these reasons, *amicus* respectfully requests that this Court reverse the opinion of the circuit court and remand for further proceedings.

Respectfully submitted this 29th day of March, 2022,

JOHN J. PARK, JR.
Counsel of Record
ALA. BAR NO. XXXX-P62J
P.O. BOX 3073
GAINESVILLE, GA 30503
(678) 608-1920
JACKPARKLAW@GMAIL.COM

CYNTHIA FLEMING CRAWFORD
CASEY MATTOX
Of Counsel
AMERICANS FOR PROSPERITY FOUNDATION
1310 N. Courthouse Road, Ste. 700
Arlington, VA 22201
(571) 329-2227
ccrawford@afphq.org

Counsel for Amicus Curiae

CERTIFICATE OF COMPLIANCE

Pursuant to Rules 28(a)(12) and 29(c), Ala. R. App. P., I hereby certify that this brief complies with the font and word limits as required by Rule 32(d), Ala. R. App. P. This brief was written in 14-point Century Schoolbook font, and the text is fully justified. Not counting the portions exempted by Rules 28(j)(1) and Rule 29(c), this brief contains 2,944 words.

/s/ John J. Park, Jr.
John J. Park, Jr.

Counsel for Amicus Curiae

CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2022, I caused to be sent by third party commercial carrier for delivery within three calendar days a hard copy of the foregoing to the following counsel for Respondents:

Jay M. Ezelle
Cole R. Gresham
Michael R. Lasserre
Starnes Davis Florie LLP
100 Brookwood Place, 7th Floor
P. O. Box 598512
Birmingham, AL 35259-8512
jme@starneslaw.com
crg@starneslaw.com
mrl@starneslaw.com

/s/ John J. Park, Jr
John J. Park, Jr.

Counsel for *Amicus Curiae*

Appendix

Alabama Code §§ 16-68-1–3

Code of Alabama
Title 16. Education. (Refs & Annos)
Chapter 68. Free Speech Rights for Students, Faculty, and Staff. (Refs & Annos)

Ala.Code 1975 § 16-68-1

§ 16-68-1. Legislative findings.

Effective: July 1, 2020
Currentness

The Legislature makes the following findings:

(1) Article I, Section 4 of the Constitution of Alabama of 1901, recognizes that all persons may speak, write, and publish their sentiments on all subjects, and that "no law shall ever be passed to curtail or restrain the liberty of speech...."

(2) Alabama's public institutions of higher education have historically embraced a commitment to freedom of speech and expression.

(3) The United States Supreme Court has called public universities "peculiarly the marketplace of ideas," Healy v. James, 408 U.S. 169, 180 (1972), where young adults learn to exercise those constitutional rights necessary to participate in our system of government and to tolerate the exercise of those rights by others, and there is "no room for the view that First Amendment protections should apply with less force on college campuses than in the community at large." Healy, 408 U.S. at 180.

(4) The United States Supreme Court has warned that if state-supported institutions of higher education stifle student speech and prevent the open exchange of ideas on campus, "our civilization will stagnate and die." Sweezy v. New Hampshire, 354 U.S. 234, 250 (1957).

(5) A significant amount of taxpayer dollars is appropriated to public institutions of higher education each year, and all public institutions of higher education should strive to ensure the fullest degree of intellectual and academic freedom and free expression and recognize that it is not their proper role to shield individuals from speech that is protected by the First Amendment to the United States Constitution, including ideas and opinions the individuals may find unwelcome, disagreeable, or offensive.

(6) Freedom of expression is critically important during the education experience of students, and each public institution of higher education should ensure free, robust, and uninhibited debate and deliberation by students.

(7) The 1974 Woodward Report, published by the Committee on Free Expression at Yale, the 2015 report issued by the Committee on Freedom of Expression at the University of Chicago, and the 1967 Kalven Committee Report of the University of Chicago articulate well the essential role of free expression and the importance of neutrality at public institutions of higher education to preserve freedom of thought, speech, and expression on campus.

(8) It is a matter of statewide concern that all public institutions of higher education provide adequate safeguards for the First Amendment rights of students, and promote, protect, and uphold these important constitutional freedoms through the re-examination, clarification, and re-publication of their policies to ensure the fullest degree possible of intellectual and academic freedom and free expression.

Credits

(Act 2019-396, § 1.)

Ala. Code 1975 § 16-68-1, AL ST § 16-68-1

Current through Act 2022-144 of the 2022 Regular and First Special Sessions. Some provisions may be more current; see credits for details.

End of Document

Code of Alabama
Title 16. Education. (Refs & Annos)
Chapter 68. Free Speech Rights for Students, Faculty, and Staff. (Refs & Annos)

Ala.Code 1975 § 16-68-2

§ 16-68-2. Definitions.

Effective: July 1, 2020
Currentness

For the purposes of this chapter, the following words have the following meanings:

(1) Benefit. Recognition, registration, the use of facilities of a public institution of higher education for meetings or speaking purposes, the use of channels of communications, and funding sources that are available to student organizations at the public institution of higher education.

(2) Campus community. A public institution of higher education's students, administrators, faculty, and staff, as well as the invited guests of the institution and the institution's student organizations, administrators, faculty, and staff.

(3) Free speech zone. An area on campus of a public institution of higher education that is designated for the purpose of engaging in a protected expressive activity.

(4) Harassment. Expression that is so severe, pervasive, and objectively offensive that it effectively denies access to an educational opportunity or benefit provided by the public institution of higher education.

(5) Materially and substantially disrupts. A disruption that occurs when a person: a. Significantly hinders the protected expressive activity of another person or group, prevents the communication of a message of another person or group, or prevents the transaction of the business of a lawful meeting, gathering, or procession by engaging in fighting, violence, or other unlawful behavior; or b. Physically blocks or uses threats of violence to prevent any person from attending, listening to, viewing, or otherwise participating in a protected expressive activity. Conduct that materially and substantially disrupts does not include conduct that is protected under the First Amendment to the United States Constitution or Article I, Section 4 of the Constitution of Alabama of 1901. Protected conduct includes, but is not limited to, lawful protests and counter-protests in the outdoor areas of campus generally accessible to members of the public, except during times when those areas have been reserved in advance for other events, or minor, brief, or fleeting nonviolent disruptions of events that are isolated and short in duration.

(6) Outdoor areas of campus. The generally accessible outside areas of the campus of a public institution of higher education where members of the campus community are commonly allowed including, without limitation, grassy areas, walkways, and other similar common areas.

(7) Protected expressive activity. Speech and other conduct protected by the First Amendment to the United States Constitution, to the extent that the activity is lawful and does not significantly and substantially disrupt the functioning of the institution or materially and substantially disrupt the rights of others to engage in or listen to the expressive activity, including all of the following:

a. Communication through any lawful verbal, written, or electronic means.

b. Participating in peaceful assembly.

c. Protesting.

d. Making speeches.

e. Distributing literature.

f. Making comments to the media.

g. Carrying signs or hanging posters.

h. Circulating petitions.

For purposes of this chapter, the term does not include expression that relates solely to the economic interests of the speaker and its audience and proposes an economic transaction.

(8) Public institutions of higher education. As defined in Section 16-5-1.

(9) Student. Any person who is enrolled in a class at a public institution of higher education.

(10) Student organization. An officially recognized group at a public institution of higher education or a group seeking official recognition, composed of admitted students that receive or are seeking to receive benefits through the institution.

Credits
(Act 2019-396, § 2.)

Ala. Code 1975 § 16-68-2, AL ST § 16-68-2
Current through Act 2022-144 of the 2022 Regular and First Special Sessions. Some provisions may be more current; see credits for details.

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Code of Alabama
Title 16. Education. (Refs & Annos)
Chapter 68. Free Speech Rights for Students, Faculty, and Staff. (Refs & Annos)

Ala.Code 1975 § 16-68-3

§ 16-68-3. Adoption of free expression policy.

Effective: July 1, 2020
Currentness

(a) On or before January 1, 2021, the board of trustees of each public institution of higher education shall adopt a policy on free expression that is consistent with this chapter. The policy, at a minimum, shall adhere to all of the following provisions:

(1) That the primary function of the public institution of higher education is the discovery, improvement, transmission, and dissemination of knowledge by means of research, teaching, discussion, and debate, and that, to fulfill that function, the institution will strive to ensure the fullest degree possible of intellectual freedom and free expression.

(2) That it is not the proper role of the institution to shield individuals from speech protected by the First Amendment to the United States Constitution and Article I, Section 4 of the Constitution of Alabama of 1901, including without limitation, ideas and opinions they find unwelcome, disagreeable, or offensive.

(3) That students, administrators, faculty, and staff are free to take positions on public controversies and to engage in protected expressive activity in outdoor areas of the campus, and to spontaneously and contemporaneously assemble, speak, and distribute literature.

(4) That the outdoor areas of a campus of a public institution of higher education shall be deemed to be a forum for members of the campus community, and the institution shall not create free speech zones or other designated outdoor areas of the campus in order to limit or prohibit protected expressive activities.

(5) That the campus of the public institution of higher education shall be open to any speaker whom the institution's student organizations or faculty have invited, and the institution will make all reasonable efforts to make available all reasonable resources to ensure the safety of the campus community, and that the institution will not charge security fees based on the protected expressive activity of the member of the campus community or the member's organization, or the content of the invited guest's speech, or the anticipated reaction or opposition of the listeners to the speech.

(6) That the public institution of higher education shall not permit members of the campus community to engage in conduct that materially and substantially disrupts another person's protected expressive activity or infringes on the rights of others to engage in or listen to a protected expressive activity that is occurring in a location that has been reserved for that protected expressive activity and shall adopt a range of disciplinary sanctions for anyone under the jurisdiction of the institution who materially and substantially disrupts the free expression of others.

(7) That the public institution of higher education may maintain and enforce constitutional time, place, and manner restrictions for outdoor areas of campus only when they are narrowly tailored to serve a significant institutional interest and when the restrictions employ clear, published, content-neutral, and viewpoint-neutral criteria, and provide for ample alternative means of expression. All restrictions shall allow for members of the university community to spontaneously and contemporaneously assemble and distribute literature.

(8) That the public institution of higher education shall support free association and shall not deny a student organization any benefit or privilege available to any other student organization or otherwise discriminate against an organization based on the expression of the organization, including any requirement of the organization that the leaders or members of the organization affirm and adhere to an organization's sincerely held beliefs or statement of principles, comply with the organization's standard of conduct, or further the organization's mission or purpose, as defined by the student organization.

(9) That the institution should strive to remain neutral, as an institution, on the public policy controversies of the day, except as far as administrative decisions on the issues that are essential to the day-to-day functioning of the university, and that the institution will not require students, faculty, or staff to publicly express a given view of a public controversy.

(10) That the public institution of higher education shall prohibit harassment in a manner consistent with the definition provided in this chapter, and no more expansively than provided herein.

(b) The policy developed pursuant to this section shall supersede and nullify any prior provisions in the policies of the institution that restrict speech on campus and are, therefore, inconsistent with this policy. The institution shall remove or revise any of these provisions in its policies to ensure compatibility with this policy.

(c) Public institutions of higher education shall include in the new student, new faculty, and new staff orientation programs a section describing to all members of the campus community the policy developed pursuant to this section. In addition, public institutions of higher education shall disseminate the policy to all members of the campus community and make the policy available in their handbooks and on the institutions' websites.

Credits
(Act 2019-396, § 3.)

Ala. Code 1975 § 16-68-3, AL ST § 16-68-3
Current through Act 2022-144 of the 2022 Regular and First Special Sessions. Some provisions may be more current; see credits for details.

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