

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and between Merritt Burch and Anthony Vizzone ("Plaintiffs"), and the defendants (collectively the "Parties") in the case styled *Burch v. University of Hawaii System, et al.*, Case No. 1:14-cv-00200-HG-KSG, in the District of Hawaii ("Subject Lawsuit"), including the University of Hawaii System/University of Hawaii, David Lassner, Donald Straney, Ellen Kusano, and Leomi Bergknut ("Defendants").

Recitals

WHEREAS, Plaintiffs brought the Subject Lawsuit against Defendants because of the facts alleged in the Complaint filed in the Subject Lawsuit and to challenge policies, practices, and procedures of Defendants relative to free speech activities on properties owned and controlled by the Defendant University of Hawaii System/University of Hawaii ("University") (collectively, the "Old Procedures"); and

WHEREAS, Defendants, as an institution of higher education and officers and employees thereof, place great value on the free exchange of ideas; and

WHEREAS, prior to execution of this Settlement Agreement, the University enacted Executive Policy EP 10.206, "Free Expression on University Campuses," a copy of which is attached hereto as Exhibit "A" (the "New Policies and Procedures"); and

WHEREAS, the Parties desire to settle all claims set forth in the Subject Lawsuit;

NOW THEREFORE, the Parties agree to settle such claims on the following terms:

Obligations and Commitments

1. Within ten (10) business days of the execution of this Settlement Agreement, the University will pay \$50,000 (the "Settlement Payment") to Plaintiffs and their attorneys. Upon receipt, Plaintiffs acknowledge the sufficiency of these funds in settlement of all damages and attorney's fees.
2. Within five (5) business days of Plaintiffs' attorneys' receipt of the Settlement Payment, Plaintiffs shall file a stipulation of dismissal of the Subject Lawsuit which shall include a dismissal with prejudice of all their claims against Defendants, in the form attached hereto as Exhibit "B".
3. Defendants acknowledge that any amendment to the New Policies and Procedures, and/or the adoption of additional policies and procedures governing the same subject matter, must comply with applicable law, including the Constitution of the United States.
4. Plaintiffs, for themselves and all of their agents, legal and personal representatives, successors and assigns, past, present and future, fully release and forever discharge Defendants, and each of them, and each of their respective affiliates, members, officers, directors, employees, servants, agents, legal and personal representatives, insurers, bonding companies, sureties, successors and assigns, past, present and future ("Releasees"), from any and

all claims, rights, demands, actions, damages, and causes of action, whether in law or in equity, contract or tort, set forth in the Subject Lawsuit, or which could have been asserted in the Subject Lawsuit (the "Claims"). Plaintiffs are presently unaware of any claims of any kind they currently hold against Releasees.

5. Plaintiffs represent and warrant that they have not assigned or otherwise transferred, by way of subrogation, operation of law, or otherwise, any right to any other person or entity to assert any of the Claims against Defendants. Plaintiffs further represent and warrant that they have not initiated any proceeding or litigation against any Defendant other than the Subject Lawsuit and will not initiate any such proceeding or litigation in the future in regard to any claim released hereunder.

6. Plaintiffs acknowledge and represent that this Settlement Agreement and the release herein evidences the settlement of the Claims and that Defendants' enactment of the New Policies and Procedures, and the Settlement Payment is not and shall not be construed to be an admission of liability by Defendants. It is understood and agreed that the Settlement Payment is made for the purpose of avoiding any cost associated with litigation and to settle all of Plaintiffs' Claims against Defendants.

Additional Terms

7. This Settlement Agreement has been, and shall for all purposes be deemed to have been, executed and delivered within the state of Hawaii, and the rights and obligations of the Parties hereto shall be construed and enforced in accordance with and governed by the laws of the state of Hawaii.

8. This Settlement Agreement is the entire agreement with respect to the subject matter hereof. It supersedes all prior and contemporaneous and oral and written agreements and discussions. It may be modified or amended by the Parties only by an agreement in writing.

9. This Settlement Agreement may be executed in counterparts by any of the signatories hereto, including by facsimile or email transmission, and as so executed shall constitute one agreement.

11. The Parties represent that in executing this Agreement, the Party does not rely upon and has not relied upon any representation, promise, or statement not expressly contained herein and that the Party has conferred with his, her, or its own attorney, with regard to the basis or effect of this Agreement.

12. This Agreement constitutes an integration of the entire understanding and agreement by, between, and among the Parties hereto and supersedes and is in lieu of any and all other arrangements, statements or promises, written or oral, between and among the Parties. Any representations, warranties, promises, understandings, or conditions, whether written or oral, not specifically incorporated herein, shall not be binding upon any of the Parties hereto.

13. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected

thereby and the illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement.


14. This Agreement cannot be amended, modified, or supplemented in any respect except by written agreement entered into by the Parties hereto.

15. This Agreement shall not be construed against any one Party, but shall be construed as if jointly prepared by the Parties hereto. Any uncertainty or ambiguity shall not be interpreted against any one Party.

PLEASE READ CAREFULLY AND DISCUSS WITH YOUR REPRESENTATIVE. THIS AGREEMENT AND GENERAL RELEASE INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

IN WITNESS WHEREOF, the Settling Parties and their respective counsel have executed this Agreement as of the Effective Date.

Date: November 25, 2014


Merritt Burch

Date: _____, 2014

Anthony Vizzone

Date: _____, 2014

University of Hawaii

By: _____

Its: _____

Date: _____, 2014

David Lassner

Date: _____, 2014

Donald Strancy

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Ellen Kusano

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Leomi Bergknut.

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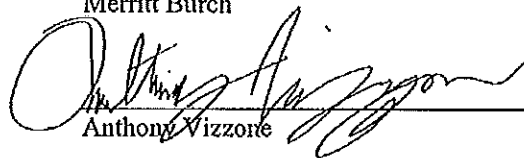
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Date: _____, 2014

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Date: _____, 2014

Anthony Vizzone

Date: December 1, 2014

University of Hawaii

By: 

David Lassner

Its: _____

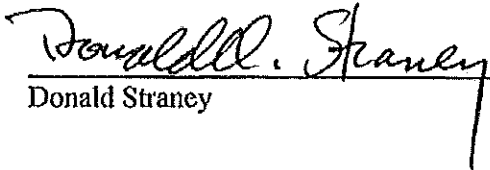
President

Date: December 1, 2014



David Lassner

Date: December 1, 2014



Donald Straney

Date: _____, 2014

Ellen Kusano

Date: _____, 2014

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Date: _____, 2014

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Date: _____, 2014

University of Hawaii

By: _____

Its: _____

Date: _____, 2014

David Lassner

Date: _____, 2014

Donald Straney

Date: Nov 26, 2014

Ellen Kusano

Ellen Kusano

Date: November 26, 2014

Leomi Bergknut

Leomi Bergknut



Executive Policy Chapter 10, Land and Physical Facilities
Executive Policy EP 10.206, Free Expression on University Campuses
Effective Date: December 1, 2014
Prior Dates Amended: July, 1983 and November, 2012
Responsible Office: Office of the Associate Vice President for Student Affairs
Governing Board of Regents Policy: RP 10.205
Review Date: August 2019

I. Purpose

To set forth policies regarding speech and other expressive activity on University of Hawai'i campuses.

II. Definitions

No policy specific or unique definitions apply.

III. Executive Policy

A. Introduction

This Executive Policy establishes the policies and guidelines to implement Administrative Rule, Title 20, Chapter 13, and specifically sections § 20-13-6 and § 20-13-7 regarding speech, assembly, and solicitation, or other expressive activity on University campuses. The free exercise of these expressive activities is guaranteed by the Federal and State Constitution. The Board of Regents has delegated authority to the President to promulgate practice and procedure relating to use of university-owned or operated facilities under Board of Regents Policy RP 10.205 (formerly Section 10-5). This Executive Policy supersedes sections of former Executive Policy E10.201 concerning the same topic.

B. Commitment to Free Expression

The University of Hawai'i is committed to the free and open exchange of ideas and affirms the rights of members of the university community to engage in speech and other expressive activity guaranteed by the First Amendment to the U.S. Constitution and by Article I, Section 4 of the Constitution of the State of Hawai'i. These activities may be conducted at such times and places and in such a manner to assure the orderly conduct and least interference with the University responsibilities as a public institution for higher education and scholarly inquiry.

1. Campuses will implement Section 20-13-6 of the Administrative Rules for the University of Hawai'i in a manner to permit non-commercial student speech and assembly in all areas generally available to students and the community without first having to apply for or obtain permission from the Chancellor. These generally available areas include open areas, sidewalks, walkways or internal streets, or other similar common areas.
2. Persons speaking, assembling, and/or distributing non-commercial material shall not physically impede the progress of passersby.
3. No event, speech, demonstration or other expressive activity on campus shall interfere with or disrupt the education process or other scheduled activities of the campus or its facilities. This includes the use of any means of amplification that creates noise or diversion that substantially disrupt the orderly conduct of the campus or classes taking place at the time.
4. The Chancellors of each campus may, but are not required to, designate one or more appropriate "forum" areas on their respective campuses where individuals or groups may also assemble and engage in public speech activities. These forum areas shall be in addition to, and not in lieu of, the generally available areas identified in subsection 1. Potential users are encouraged, but are not required, to give advance notice of their intended use of the forum area to the Chancellor or the Chancellor's designee for the purposes of avoiding scheduling conflicts and assuring the equal access to all potential users. Nothing in this section shall be interpreted as a limit on student expression.
5. Individuals utilizing a designated public forum area on campus or using generally available open areas must comply with University and campus rules and policies.

C. Solicitation.

Campuses will implement the solicitation policy as set forth in Section 20-13-7 of the Administrative Rules for the University of Hawai'i in a manner to permit students to approach others on campus and to distribute non-commercial literature such as petitions, circulars, leaflets, newspapers in all areas generally available to students and the community.

D. Providing Community Bulletin Boards for Posting of Materials.

Each Chancellor shall make available one or several community bulletin boards at campus convenient locations for use in posting non-commercial student

materials. To ensure equal access and maximum use of these community bulletin boards, all materials displayed on a bulletin board will be dated and removed from the board after a reasonable period of time determined by the Chancellor.

E. Practices and Procedures Covering Time, Place, and Manner of Public Speech Activities

The university administration may establish campus specific guidelines governing time, place, and manner of expressive activities, as long as those guidelines do not conflict with the provisions in this executive policy and are viewpoint neutral.

In creating these guidelines, Chancellors may recognize that some campus buildings or areas warrant special restrictions.

These time, place, and manner guidelines must not distinguish between permissible and impermissible subjects of speech (i.e., these regulations must be "content-neutral"). These restrictions must be neutral as to particular viewpoint expressed and applied even handedly to all similarly situated parties. These guidelines must be narrowly tailored and not substantially burden the expressive activity more than reasonably necessary to further the Campus interest in the orderly function as an educational and research public institution. These guidelines must leave open ample alternative channels of communication.

The Chancellor should encourage speakers to be respectful and recognize and the rights of all students to effectively use campus facilities and property to obtain an education.

F. Dispute Resolution

The Chancellor shall establish a voluntary dispute resolution process whereby members of the campus community who believe their free speech rights are threatened may immediately communicate their concerns to designated campus administrators. This dispute resolution process shall engage the parties in good faith discussions for the purpose of devising campus-level resolutions acceptable to the campus community.

IV. Delegation of Authority

- A. Campus Chancellors are delegated authority to develop and implement campus-specific guidelines concerning the time, place, and manner for free speech and other constitutionally guaranteed expressive activities on their respective campus only to the extent consistent with this Executive Policy.
- B. Chancellors are encouraged to seek the inputs from campus organizations and other members of the campus community, including faculty and administrative staff, in formulating and implementing free speech guidelines. Where a Chancellor is responsible for multiple campuses, the Chancellor shall coordinate procedure among the campuses and have them applied uniformly.

V. Contact Information

Office of the Associate Vice President for Student Affairs at telephone number 956-8753 or by email at javinar@hawaii.edu

VI. References

- A. Link to superseded Executive Policies in old format:
<https://www.hawaii.edu/policy/archives/ep/>
- B. Link to Administrative Procedures in old format:
<https://www.hawaii.edu/policy/archives/apm/sysap.php>

Approved:

Signed
David Lassner
President

December 1, 2014

Date

STARN • O'TOOLE • MARCUS & FISHER
A Law Corporation

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Attorneys for Defendants
UNIVERSITY OF HAWAII SYSTEM, DAVID
LASSNER, DONALD STRANEY, ELLEN
KUSANO, and LEOMI BERGKNUT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

MERRITT BURCH and ANTHONY
VIZZONE,

Plaintiffs,

vs.

UNIVERSITY OF HAWAII SYSTEM,
DAVID LASSNER, DONALD
STRANEY, ELLEN KUSANO, and
LEOMI BERGKNUT,

Defendants.

CIVIL NO. 14-00200 HG-KSC

**STIPULATION FOR DISMISSAL
WITH PREJUDICE OF ALL
CLAIMS AND PARTIES**

(No Trial Date Set)

EXHIBIT B

**STIPULATION FOR DISMISSAL WITH PREJUDICE
OF ALL CLAIMS AND PARTIES**

IT IS HEREBY STIPULATED pursuant to Federal Rules of Civil Procedure Rule 41(a)(1)(A)(ii) and Local Rules of Practice for the United States District Court for District of Hawaii Rule 10.4, by and between Plaintiffs MERRITT BURCH and ANTHONY VIZZONE and Defendants UNIVERSITY OF HAWAII SYSTEM, DAVID LASSNER, DONALD STRANEY, ELLEN KUSANO, and LEOMI BERGKNUT, by and through their undersigned counsel, that this action is hereby dismissed with prejudice as to all claims and all parties. Each party will bear its own costs, fees and expenses. There are no remaining parties and/or issues.

DATED: Honolulu, Hawaii, December ____, 2014.

/s/

MARK J. BENNETT
MATEO CABALLERO

Attorneys for Defendants
UNIVERSITY OF HAWAII SYSTEM,
DAVID LASSNER, DONALD STRANEY,
ELLEN KUSANO, and LEOMI
BERGKNUT

DATED: Honolulu, Hawaii, December ____, 2014.

/s/

DAVID B. ROSEN
ROBERT CORN-REVERE (*Pro Hac Vice*)
RONALD G. LONDON (*Pro Hac Vice*)
LISA B. ZYCHERMAN (*Pro Hac Vice*)
Attorneys for Plaintiffs
Merritt Burch and Anthony Vizzone

APPROVED AS TO FORM:

Civil No. 14-00200 HG-KSC; *Merritt Burch and Anthony Vizzone v. University of Hawaii System, David Lassner, Donald Straney, Ellen Kusano and Leomi Bergknut*; In the United States District Court, District of Hawaii;
STIPULATION FOR DISMISSAL WITH PREJUDICE OF ALL CLAIMS AND PARTIES