



Foundation for Individual Rights in Education

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May 22, 2013

President Judy Bonner
University of Alabama
Office of the President
P.O. Box 870100
Tuscaloosa, Alabama 35487

Sent via U.S. Mail and Facsimile (205-348-7238)

Dear President Bonner:

The Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, freedom of speech, and freedom of conscience on America's college campuses. Our website, thefire.org, will give you a greater sense of our identity and activities.

FIRE is deeply concerned about the threat to freedom of speech posed by the University of Alabama's (UA's) grounds use policy and by the university's improper enforcement of this policy against the Alabama Alliance for Sexual & Reproductive Justice (AASRJ) student group. In relying on this policy to deny AASRJ's right to distribute fliers as part of a campus counter-protest, UA has impermissibly chilled student expression and ignored the constitutional guarantees of freedom of speech it is legally and morally obligated to protect as a state-supported institution.

This is our understanding of the facts. Please inform us if you believe we are in error.

According to an April 17, 2013, article in *The Crimson White*, a recognized student group, Bama Students for Life (BSFL), held a "Genocide Awareness Project" (GAP) protest on UA's Quad on April 10 and April 11. GAP, a project of the national Center for Bioethical Reform, features graphic abortion-related images and is hosted on numerous college campuses each year. According to *The Crimson White*, BSFL applied for a permit under the university's "Use of University Space, Facilities & Grounds" policy on March 11 and received notification that their protest had been approved on April 1. Members of AASRJ, another recognized student group, reportedly learned of the protest on April 9 and decided to distribute their own fliers in response to BSFL's event.

(The vast majority of UA students did not learn of the event until April 9 either, when Dean of Students Tim Hebson sent a 4:59 p.m. email to the campus warning the community about GAP's graphic content.)

AASRJ did not submit a grounds use permit for its planned activity. According to the *Crimson White*, AASRJ members distributed fliers for approximately one hour on the Quad on April 10, near the BSFL event, without interference. Copies of the fliers are shown below:



The Crimson White reports, however, that a woman complained about AASRJ's fliers to the UA police, who then threatened to arrest the group's members and prohibited them from further leafleting without a permit:

"A woman received one of our fliers," [AASRJ member Samaria] Johnson said. "She then complained to a nearby officer that it was obscene, and our members passing out fliers were approached by an officer and told to stop under threat of arrest."

Johnson said more officers arrived and moved to arrest two AASRJ members, but after one of them explained the situation, both members were let go.

"We were then warned," Johnson said, "Without a grounds permit, any member distributing fliers as part of AARSJ would be arrested."

Having been forced to end their counter-protest, AASRJ submitted a grounds use permit that day to continue distributing its fliers the next day. A UA official notified them, however, that the permit would not be approved in time for the next day. AASRJ members did distribute fliers in the Quad in the vicinity of BSFL's event on April 11; however, group leaders cautioned members to do so only in their individual capacities and not as representatives of

AASRJ, in case police questioned members again. AASRJ reports no further incidents occurred on this day.

Regarding the use of UA campus grounds for expressive activity, UA's grounds use policy requires:

[A]pplicants for use of other campus grounds should request permission for such use 10 working days prior to the event. However, if an event does not involve factors that require multiple University department approvals, approval may be given in as few as 3 days, if the [Grounds Use Permit] form is filled out completely and accurately.

In censoring the AASRJ members' expression under threat of arrest, UA has violated the students' First Amendment rights. Further, UA's grounds use policy—both as written and as applied against AASRJ—is constitutionally deficient and requires reform to comply with the First Amendment.

As an initial matter, it has long been settled law that the First Amendment is binding on public universities such as UA. See *Widmar v. Vincent*, 454 U.S. 263, 268–69 (1981) (“With respect to persons entitled to be there, our cases leave no doubt that the First Amendment rights of speech and association extend to the campuses of state universities.”); *Healy v. James*, 408 U.S. 169, 180 (1972) (“[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, ‘the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.’”) (internal citation omitted). While public universities such as UA may establish reasonable “time, place and manner” restrictions on expression, they must be “narrowly tailored” to “serve a significant governmental interest” and must “leave open ample alternative channels for communication.” *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).

UA's grounds use policy fails to meet these requirements. There is nothing “reasonable” about requiring AASRJ, or any other group, to request permission to use UA's grounds three to ten business days in advance in order to peacefully distribute informational fliers. Further, prohibiting AASRJ from handing out fliers near BSFL's event effectively eliminated the group's ability to communicate its message to its target audience. The generalized concern for order that apparently underlies UA's policy is neither specific enough nor significant enough to justify the policy's restrictions, nor is the policy “narrowly tailored” in service of this vague, insufficiently important interest.

AASRJ's inability to distribute fliers in response to BSFL's own expressive activity highlights the impracticality and unconstitutionality of a regulation that makes no allowance for spontaneous expression or demonstration by students on the UA campus. Rallies and demonstrations—not to mention AASRJ's simple act of distributing informational literature—are often timely responses to recent or still-unfolding events; to prohibit all such events on campus is to suppress free and open discourse. Given the current debate in the state

of Alabama over the passage of a bill placing new regulations on clinics providing abortions, there is perhaps no better time for students on both sides of this debate to express their opinions. Rather than stifling and discouraging expression, UA should be *encouraging* its students to engage in the social and political issues of the day and to learn from each other by participating in a free exchange of ideas. As the Supreme Court long ago said, “[s]peech concerning public affairs is more than self-expression; it is the essence of self-government,” reflecting “our profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.” *Garrison v. Louisiana*, 379 U.S. 64, 74–75 (1964) (internal quotations omitted).

To be clear: UA’s grounds use policy has been unconstitutionally applied against AASRJ. Further, AASRJ should not have been required to request permission to distribute its fliers at all. Universities may in some instances have a legitimate educational interest in placing narrow constraints and prior notice and approval requirements on some forms of campus expression, such as demonstrations involving large displays, temporary structures, or the use of amplified sound. But they may not require that individual students or student organizations obtain a permit for basic acts of expression. On a college campus, there is hardly a more fundamental exercise of First Amendment rights than the act of peacefully distributing literature to students in public, open spaces. Students and student organizations must be able to engage in free expression without prior constraints, including requirements of notice and approval. As the Supreme Court has declared, “It is offensive—not only to the values protected by the First Amendment, but to the very notion of a free society—that in the context of everyday public discourse a citizen must first inform the government of her desire to speak to her neighbors and then obtain a permit to do so.” *Watchtower Bible and Tract Society of NY, Inc. v. Village of Stratton*, 536 U.S. 150, 165–66 (2002).

The vagueness in UA’s grounds use policy raises significant First Amendment concerns. As the Supreme Court has held, laws must “give a person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.” *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972). UA’s grounds use policy is impermissibly vague about the types of expression and events that may fall under its scope. For instance, it does not provide a definition of what constitutes an “event,” while a separate document on UA’s facilities website defines “event” only as “[a] permissive use of UA Premises.” This, however, does not distinguish large-scale campus events or activities requiring amplified sound, which may reasonably require clearance, from the simple act of distributing fliers on campus. UA may not, consistent with its obligations to uphold the First Amendment, place prior approval requirements on this latter, entirely non-disruptive form of expression. The failure of UA’s grounds use policy to make this distinction could cause not only significant confusion among UA’s students, but also improper enforcement by UA officials, including the UA Police Department. Indeed, many UA students likely witnessed AASRJ’s members being threatened with arrest if they continued to distribute fliers without a permit. Such spectacles dramatically chill student expression and mislead students about the extent of their First Amendment rights.

Exacerbating this problem is the fact that the grounds use policy contains contradictions as to who may use campus grounds for expressive events. Section A of the policy states, for example:

University buildings or grounds, with the exception of the Ferguson Center and certain other facilities, may not be scheduled for use by individuals or organizations that are not part of the University or that are not sponsored by or affiliated with a University academic or administrative department or registered student organization.

This statement suggests that, in addition to student organizations, individual students unaffiliated with a student organization or without the sponsorship of an academic or administrative unit can reserve space on the UA campus for expressive activity. The “Frequently Asked Questions” section of UA’s facilities website contradicts this statement, however:

6. Is it absolutely necessary to have a University of Alabama sponsor for an event?

Yes, each request for Grounds Use has to be sponsored by a University Department, or a Certified Student Organization. Without this information, we are unable to process your request and the timetable for approval is extended.

This policy conflict suggests that it is at best difficult and highly inconvenient, and at worst impossible, for a student to reserve grounds on the UA campus for expressive activity without the sponsorship of a student organization or academic or administrative department. Such inconsistencies further confuse students and UA administrators alike, leading to baffling outcomes. As we noted earlier, despite being denied a grounds use permit to distribute fliers as an organization, AASRJ members engaged in the same activity on April 11 in their individual capacities. Such illogical results are completely at odds with UA’s duties as a public university to consistently uphold its students’ First Amendment rights.

FIRE asks that the University of Alabama make clear to the campus community that students and student organizations engaging in protected expressive activity on campus, such as distributing fliers, as AASRJ peacefully attempted to do in this case, will never be censored or threatened with arrest for exercising their First Amendment rights. We further ask that UA remove the contradictions from its Use of University Space, Facilities & Grounds policy so that students are not prevented from engaging in spontaneous expression and demonstrations and so that all UA students, regardless of affiliations and sponsorships, are treated equally when expressing themselves on campus.

Please spare the University of Alabama the embarrassment of fighting against the Bill of Rights—a statement of both law and principle by which the university is legally and morally bound. While FIRE has much experience with challenging restrictive university policies, we also have a strong track record of working proactively with university administrators to bring

their policies in line with the First Amendment. We are happy to offer our assistance to UA in this matter.

We request a response to this letter by June 12, 2013.

Sincerely,



Peter Bonilla

Associate Director, Individual Rights Defense Program

cc:

Mark Nelson, Vice President for Student Affairs

Tim Hebson, Dean of Students

Tim Summerlin, Chief of Police