No. 18-1234

IN THE
SUPREME COURT OF THE UNITED STATES

VALENTINA MARIA VEGA,

Petitioner,

v.

JONATHAN JONES AND REGENTS OF THE UNIVERSITY OF ARIVADA,

Respondents.

On Writ of Certiorari to the
United States Court of Appeals
for the Fourteenth Circuit

BRIEF FOR RESPONDENTS

Team Number 5
Counsel for Respondents

January 31, 2019

QUESTIONS PRESENTED

1. Whether the doctrines of vagueness and overbreadth prohibit universities from enacting policies to protect students' First Amendment rights by regulating conduct that materially and substantially infringes upon the rights of others to engage in or listen to expressive activity.

2. Whether it is within a university's discretion under its free speech policy to discipline a student who interrupted an on-campus speaker by repeatedly chanting slogans while wearing a distracting costume and standing close to the event.

PARTIES TO THE PROCEEDING

Petitioner is Valentina Maria Vega. Ms. Vega was the plaintiff in the district court and appellee in the court of appeals.

Respondents are Jonathan Jones, in his capacity as President of the University of Arivada, and Regents of the University of Arivada. They were defendants in the district court and appellants in the court of appeals.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDING ii

TABLE OF AUTHORITIES v

OPINIONS BELOW 1

STATEMENT OF JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 1

INTRODUCTION 1

STATEMENT OF THE CASE 2

SUMMARY OF ARGUMENT 5

STANDARD OF REVIEW 7

ARGUMENT 7

I. The Policy is neither unconstitutionally vague nor overbroad 7

A. *Tinker*'s concern with protecting students from conduct that invades or collides with their rights is applicable to colleges and universities, and this Court should analyze the Policy in light of *Tinker* 8

B. The Policy gives a reasonable person fair notice of the conduct it prohibits and grants a permissible degree of discretion to campus security 9

C. The Policy does not prohibit a substantial amount of constitutionally protected conduct, and this Court should not apply the overbreadth doctrine when other remedies are available 13

II. As applied to Ms. Vega, the University's Policy is constitutional because Ms. Vega materially and substantially infringed upon the right of Mr. Drake to speak and the rights of students to hear him 16

A. School officials have the authority under *Tinker* to regulate speech that interferes with the rights of others to speak and receive information 16

B. Ms. Vega's speech materially and substantially interfered with Mr. Drake's ability to speak and with students' ability to listen 18

C. This Court ought to defer to the judgment of school officials in determining that Ms. Vega interfered with the rights of others 21

D. School officials have the authority to regulate Ms. Vega's speech because it occurred in an educational setting 23

CONCLUSION 25

CERTIFICATE

APPENDIX

TABLE OF AUTHORITIES

Cases

Bd. of Educ. v. Pico,
457 U.S. 853 (1982) 18, 23

Bethel Sch. Dist. No. 403 v. Fraser,
478 U.S. 675 (1986) 10, 23

Boos v. Barry,
485 U.S. 312 (1988) 10, 11

Broadrick v. Oklahoma,
413 U.S. 601 (1973) 14, 15, 16

Cameron v. Johnson,
390 U.S. 611 (1968) 10, 11

Coates v. City of Cincinati,
402 U.S. 611 (1971) 10, 11, 12, 13

Epperson v. Arkansas,
393 U.S. 97 (1968) 22

First Nat'l Bank of Bos. v. Bellotti,
435 U.S. 765 (1978) 18

Grayned v. City of Rockford,
408 U.S. 104 (1972) 10, 11, 12

Harper v. Poway Unified Sch. Dist.,
445 F.3d 1166 (9th Cir. 2006) 17

Healy v. James,
408 U.S. 169 (1972) 9

Keyishian v. Bd. Of Regents of Univ. of State of N.Y.,
385 U.S. 589 (1967) 18, 23, 25

Kleindienst v. Mandel,
408 U.S. 753 (1972) 18

L.A. Police Dept. v. United Reporting Publ'g Corp.,
528 U.S. 32 (1999) 15

Lamont v. Postmaster General,
381 U.S. 301 (1965) 17

Members of City Council of City of L.A. v. Taxpayers for Vincent,
466 U.S. 789 (1984) 14, 15

Meyer v. Nebraska,
262 U.S. 390 (1923) 22

New York v. Ferber,
458 U.S. 747 (1982) 15

Pierce v. Soc'y of Sisters,
268 U.S. 510 (1925) 22

Pierce v. Underwood,
487 U.S. 552 (1988) 7

Rosenberger v. Rector & Visitors of Univ. of Va.,
515 U.S. 819 (1995) 9, 24

Shelton v. Tucker,
364 U.S. 479 (1960) 9

Slotterback v. Interboro Sch. Dist.,
766 F. Supp. 280 (E.D. Pa. 1991) 17

Stanley v. Georgia,
394 U.S. 557 (1969) 18

Sweezy v. New Hampshire,
354 U.S. 234 (1957) 25

Sypniewski v. Warren Hills Reg'l Bd. of Ed.,
307 F.3d 243 (3d Cir. 2002) 10, 14, 15

Tinker v. Des Moines Indep. Cmty. Sch. Dist.,
393 U.S. 503 (1969) ..... *passim*

United States v. Stevens,
559 U.S. 460 (2010) 13, 14, 15, 16

United States v. Williams,
553 U.S. 285 (2008) 14

United States. v. Associated Press,
52 F. Supp. 362 (S.D.N.Y. 1943) 18

Wash. State Grange v. Wash. State Republican Party,
552 U.S. 442 (2008) 13

Other Authorities

Rita Braver, *A War of Words on College Campuses*,
CBS News (Jan. 21, 2018), https://cbsn.ws/2RscRK0 1

Jeffrey J. Selingo, *College Students Support Free Speech – Unless it Offends Them*,
Wash. Post (Mar. 12, 2018), https://wapo.st/2WwJWIp..... 1

Writings of James Madison (G. Hunt ed. 1910)..... 18

OPINIONS BELOW

The Fourteenth Circuit's opinion is unreported but reproduced in the record at pp. 42-53. The District Court's opinion is unreported but reproduced in the record at pp. 01-18.

STATEMENT OF JURISDICTION

The Court of Appeals for the Fourteenth Circuit issued its opinion on November 1, 2018, and a petition was timely filed. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Relevant constitutional and statutory provisions are reproduced in the appendix.

INTRODUCTION

There are few settings in which the freedom of speech is more essential than the American university. The university campus is the archetypal "marketplace of ideas," and the "Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 512 (1969). Through open debate and consideration of different viewpoints, college students refine their own ideas, practice civic engagement, and begin to "discover[] truth out of a multitude of tongues [rather] than through any kind of authoritative selection." *Id.* But in order for that valuable learning process to occur, students must be free to express their thoughts, and equally as important, must have the freedom to listen to the thoughts of others.

In recent years, college and universities have experienced increasingly frequent incidents of students shouting down invited speakers in order to prevent them from expressing controversial or minority viewpoints.[1] This behavior enables small groups of students to dictate

[1] *See* Rita Braver, *A War of Words on College Campuses,* CBS News (Jan. 21, 2018), https://cbsn.ws/2RscRK0; Jeffrey J. Selingo, *College Students Support Free Speech – Unless it Offends Them,* Wash. Post (Mar. 12, 2018), https://wapo.st/2WwJWIp.

what sorts of speech and ideas are available on campus, thereby transforming the open marketplace of ideas into one of a selective few. This not only endangers the principle and practice of free speech; it also deprives students of the holistic education that is exemplified on college campuses. Through the Free Speech in Education Act of 2017 and the Campus Free Speech Policy, the State and the University of Arivada have sought to prevent this sort of student-dictated authoritative selection in order to protect the rights of every student to speak freely. The University's goal is to ensure that all persons lawfully present on campus enjoy the equal opportunity to engage in and listen to expressive conduct.

STATEMENT OF THE CASE

In response to the growing, nationwide phenomenon of students shouting down invited speakers on college campuses, the state of Arivada enacted the Free Speech in Education Act of 2017. The Act provides that "[a]ll public colleges and universities in Arivada are to promulgate a policy to protect free speech on campus." R. at 19. Pursuant to this statute, the University of Arivada adopted the Campus Free Speech Policy. The Policy provides for sanctions against students who are determined to have "materially and substantially infringed upon the rights of others to engage in or listen to expressive activity." R. at 23. Disciplinary measures are imposed on students in a "three strike range," and include a warning for the first strike, suspension for the second strike, and expulsion for the third strike. R. at 23. No punishment is imposed without review by at least two school officials. R. at 23. If a member of the University Campus Security determines that a student has violated the policy, the officer may issue a citation to the student; the officer must then transmit that citation to the University's Dean of Students for review and investigation. R. at 23. Students receiving their first citation are entitled to an informal disciplinary hearing, after which a warning, known as a "first strike," is issued. R. at 23. If a student receives a second or third citation in violation of the Policy, she is entitled to a formal

disciplinary hearing before the School Hearing Board. That hearing includes numerous procedural safeguards, including written notice of the charges, right to counsel, right to review the evidence in support of the charges, right to confront witnesses, right to present a defense, right to call witnesses, a decision by an impartial arbiter, and the right of appeal. R. at 23.

In the fall of 2017, Mr. Theodore Hollingsworth Putnam, a junior at the University and the president of a student political organization, R. at 21, invited Samuel Drake, the executive director of a well-known lobbying group, to give a speech sharing his ideas with students. R. at 28. In preparation for Mr. Drake's speech, Mr. Putnam reserved the University's Emerson Amphitheater by submitting an "Event and Space Reservation Application" to the University's Campus Events Office. This application allows recognized student organizations to reserve spaces for events, and once Mr. Putnam's application was granted, he had the exclusive right to use the amphitheater on September 5, 2017. R. at 21. Mr. Putnam chose the amphitheater with the hopes of encouraging student attendance, since the venue is in the middle of campus and is very accessible to students. R. at 28. The amphitheater is located on the "Quad," a large green space where students frequently gather to study, play sports, converse, and listen to music. R. at 21. On the day of the speech, approximately thirty-five people assembled in the amphitheater to listen to Mr. Drake. R. at 21. One of those students, Ms. Meghan Taylor, had been studying on the Quad when she noticed the speech and decided to attend to see what was going on, affirming Mr. Putnam's choice of venue as one that would attract students to the event. R. at 32.

Shortly after Mr. Drake began speaking, he became distracted by a nearby, unavoidable spectacle. R. at 10. Ms. Valentina Maria Vega, a sophomore at the University, stood on the periphery of the amphitheater just behind the audience's seats, clothed in a Statue of Liberty costume. R. at 25, 28. Ms. Vega loudly and repeatedly shouted chants adverse to Mr. Drake's

speech, which were directed at the spectators, hosts, and Mr. Drake himself. R. at 35. Although there were other events going on nearby, including a flag football game, a frisbee game, and students playing music, Mr. Drake, Mr. Putnam, and Ms. Taylor all stated that Ms. Vega's chanting was significantly more distracting than the other noises. R. at 25, 28, 32. Mr. Drake testified that he had a hard time thinking, speaking, and remaining focused due to Ms. Vega's shouts, and he noted that audience members were frequently turning around to look at the protestor rather than focusing on his speech. R. at 25.

Because of Ms. Vega's disturbance, Mr. Putnam called campus security to report the disruption. R. at 29. Michael Thomas, Campus Security Officer, arrived on the scene and entered the amphitheater to investigate the disruption. R. at 36. He listened and compared Ms. Vega's shouts to the ongoing background noise and determined that Ms. Vega was more distracting than the random noise coming from other parts of the Quad. R. at 36. After observing the situation, he concluded that students were having difficulty focusing on the speech due to the disruption. R. at 36. On the basis of this investigation, Officer Thomas decided that Ms. Vega was materially and substantially infringing upon the rights of others to engage in or listen to expressive activity, and as a result, he issued a citation to Ms. Vega. R. at 36. Louise Winters, Dean of Students for the University of Arivada, received Officer Thomas' report and immediately began investigating the citation. R. at 41. Pursuant to the Policy, and because it was Ms. Vega's second citation, Dean Winters initiated a disciplinary hearing before the School Hearing Board. R. at 41. During this hearing, the school ensured that Ms. Vega received all of the procedural safeguards stipulated by the Policy, including the right to counsel, the right to present a defense, the right to review the evidence, and the right to appeal. R. at 41. The Hearing Board found that Ms. Vega materially and substantially infringed upon the rights of Mr. Drake to speak and the rights of others to

listen. R. at 41. As a result of this finding, and pursuant to the Policy, Dean Winters issued Ms. Vega a second strike and notified her on September 12, 2017 that she was suspended for the remainder of the semester. R. at 41. On October 1, 2017, Ms. Vega filed suit against Jonathan Jones, President of the University, and the University's Board of Regents; she alleges that the Policy and her suspension violated her right to freedom of speech pursuant to the First Amendment of the United States Constitution, as incorporated and applied to the states through the Due Process Clause of the Fourteenth Amendment. R. at 43. The district court granted Ms. Vega's Motion for Summary Judgment. On appeal, the circuit court reversed and remanded for entry of summary judgment in favor of the University.

SUMMARY OF ARGUMENT

Tinker and its progeny protect the rights of students to engage in expressive conduct at school, unless that conduct "involves substantial disorder or invasion of the rights of others." 393 U.S. at 513. While affirming that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate," *id.* at 506, the Court simultaneously maintained that students' expressive conduct may not "impinge upon the rights of other students." *Id.* at 509. The Campus Free Speech Policy seeks to carry out the promise of *Tinker*—that students have the right to speak out, but no person has the right to prevent others from doing the same.

The Policy provides fair notice of the conduct it prohibits, because a reasonable person is able to understand when his actions impair the rights of another to engage in or listen to expressive conduct. The Policy prohibits "[e]xpressive conduct that materially and substantially infringes upon the rights of others to engage in or listen to expressive activity." R. at 23. Its statement of purpose also notes that it was enacted in response to the Free Speech in Education Act, which sought to curtail "episodes of shouting down" speakers on campus. R. at 19. The Policy's text and the context in which it was enacted give the reasonable person an opportunity

to know what is prohibited.

Enforcement of any statute or regulation necessitates some degree of police judgment, but the discretion granted here is confined by both the text and purpose of the Policy. The textual directive that infringement must be material and substantial prevents campus security from issuing citations to students whose speech only minimally affects the rights of others, and the statement of purpose further limits discretion by pointing specifically to incidents involving shouting down speakers. As such, the Policy only encompasses speech that is intended to have some effect on the rights of another to speak or to listen. As the Court of Appeals noted, targeted chants are "qualitatively different" from other kinds of student speech. R. at 50.

The Policy is not overbroad because it reaches little, if any, constitutionally protected expression, and in order to strike down a statute as impermissibly overbroad, the Court must find that the overbreadth is substantial in relation to the conduct the Policy legitimately covers. As this Court held in *Tinker*, student conduct which involves "invasion of the rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech." 393 U.S. at 513. That is precisely the kind of speech the Policy is designed to prohibit.

Even if the Court finds that the Policy is overbroad in a small number of its applications, striking down the Policy as facially overbroad would be an inappropriate remedy here. This Court has repeatedly held that the overbreadth doctrine should be used only as a last resort. If the Court does find overbreadth here, it should be cured on an as-applied basis, instead of by striking down the Policy in its entirety.

As applied to Ms. Vega, the University's Policy is constitutional because Ms. Vega materially and substantially infringed the right of Mr. Drake to speak and the rights of students to hear him. The Supreme Court provided in *Tinker* that school officials may restrict student speech

if it collides with the rights of others, including the right to receive information. This right is a necessary corollary to the First Amendment, for the right to self-expression would be meaningless if others were not free to listen. The character of Ms. Vega's speech, the nature of her costume, her proximity to the amphitheater, and the relative noise of her performance when compared to other sources of background noise all created a substantial distraction that Mr. Drake and his spectators were unable to avoid. This interfered with both the students' rights to listen and Mr. Drake's right to speak, thereby materially and substantially infringing upon their First Amendment rights. Furthermore, multiple levels of school officials and procedures were involved in determining Ms. Vega's punishment. This Court's precedent clearly indicates that school officials have wide discretion in school affairs because they better understand the unique circumstances of the school. Here, the Court ought to defer to the judgment of the school officials. Finally, because of the style of learning that occurs on campuses, Ms. Vega acted in an educational setting, thereby giving school officials the authority to regulate her speech.

STANDARD OF REVIEW

Both questions presented are reviewable *de novo*. *See Pierce v. Underwood*, 487 U.S. 552, 558 (1988).

ARGUMENT

I. The Policy is neither unconstitutionally vague nor overbroad.

This Court recognized in *Tinker* that conduct that invades the rights of others is not protected in the school setting, and that reasoning extends to the higher education context. Therefore, this Court should analyze the Policy in light of *Tinker*. The Policy is not unconstitutionally vague because it provides fair notice of the conduct it prohibits and grants a permissible level of discretion to campus security. The Policy is also not impermissibly overbroad because it does not prohibit a substantial amount of constitutionally protected

expression, and under this Court's precedents, it is not appropriate to strike down a regulation as facially overbroad when a more modest remedy is available.[2]

A. *Tinker*'s concern with protecting students from conduct that invades or collides with their rights is applicable to colleges and universities, and this Court should analyze the Policy in light of *Tinker*.

This Court affirmed in *Tinker* that students have the right to engage in expressive conduct at school, but *Tinker* also held that expression which "impinge[s] upon the rights of other students" is not protected. 393 U.S. at 509. The District Court characterized *Tinker* as holding that "public school authorities may restrict student expression, but only on the basis of an express finding of a material and substantial disruption of the learning environment." R. at 12. But this characterization excises an important part of *Tinker*, in which the Court held that material and substantial disruption of the learning environment was one of two reasons granting schools the authority to regulate student speech. A school may also regulate student speech that constitutes an "invasion of the rights of others." *Tinker*, 393 U.S. at 513. Indeed, throughout the majority opinion in *Tinker*, the Court repeatedly referred to both reasons—as two sides of the same coin.[3] Contrary to the District Court's mistaken textual analysis, this language from *Tinker* demonstrates that the Court's standard has two independent prongs: (1) material and substantial disruption and (2) invasion of the rights of others. In order to give *Tinker* its full effect and protect the rights of all students to engage in and listen to expressive conduct, the Court must

---

[2] Numerous cases have litigated whether university campuses are limited, public, or designated fora. However, neither party raised this issue in the proceedings below, and this Court need not engage in a forum analysis. *See* R. at 08, n.9.

[3] *See, e.g.*, *Tinker*, 393 U.S. at 508 ("speech or action that intrudes upon the work of the schools or the rights of other students); *id.* at 509 (finding no "reason to anticipate that the [speech] would substantially interfere with the work of the school or impinge upon the rights of other students"); *id.* at 513 (student may speak "without materially and substantially interfering…and without colliding with the rights of others"); *id.* at 513 (conduct which "materially disrupts classwork or involves substantial disorder or *invasion* of the rights of others" is not protected).

affirm schools' authority to regulate speech that creates a material and substantial disruption as well as speech that "collid[es] with the rights of others." *Tinker*, 393 U.S. at 513.

Although this Court has never expressly held that *Tinker* applies in the higher education context, the "invasion of the rights of others" prong of the analysis is applicable to the university setting.[4] This Court has held that "the vigilant protection" of First Amendment rights "is nowhere more vital than" in colleges and universities. *Healy v. James*, 408 U.S. 169, 180 (1972) (quoting *Shelton v. Tucker*, 364 U.S. 479, 487 (1960)). Writing for the Court, Justice Kennedy has stated that the "University setting" forms a "tradition of thought and experiment that is at the center of our intellectual and philosophic tradition." *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 835 (1995). Given this Court's recognition of the importance of fostering free and open debate on college campuses, it follows that universities are authorized to act in a manner that facilitates such debate. Specifically, universities may follow the directive from *Tinker* and regulate speech that "impinge[s] upon the rights of other students," 393 U.S. at 509, to ensure that each student has an equal opportunity to engage in and listen to expressive activity.

B. The Policy gives a reasonable person fair notice of the conduct it prohibits and grants a permissible degree of discretion to campus security.

Laws must provide fair notice such that a reasonable person can understand what is prohibited. Whether a statute provides fair notice is a question answered by the statute's text and the context in which it was enacted. Even if every word is not expressly "defined or limited," a statute will generally withstand a vagueness challenge as long as it "communicates its reach in words of common understanding." *Boos v. Barry*, 485 U.S. 312, 332 (1988). The Court has

[4] In order to resolve this case, the Court need not reach the question whether the "material and substantial disruption" prong of the *Tinker* analysis applies to higher education. Concerns about "invasion of the rights of others" are relevant to the fundamental principle that schools should facilitate free discussion and debate, which applies with equal force in the university context.

recognized that "[c]ondemned to the use of words, we can never expect mathematical certainty" or "meticulous specificity" in statutory text.[5] *Grayned v. City of Rockford*, 408 U.S. 104, 110 (1972). Where text alone does not provide adequate guidance, courts have also looked to context. *See, e.g.*, *id.* at 112 (statute's meaning was "apparent from [its] announced purpose"). To assess whether the statute provides adequate notice, this Court applies an objective test, asking whether a "reasonable person" can determine what the statute prohibits. A law must "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited," *id.* at 108, and it may be struck down as vague only if "men of common intelligence must…guess at [its] meaning." *Coates v. City of Cincinati*, 402 U.S. 611, 614 (1971) (holding that an ordinance was vague because it "subject[ed] the exercise of [a] right…to an unascertainable standard"). The key question is whether people "of common intelligence" can understand what is and is not prohibited, instead of resorting to merely "guess[ing]." *Cameron v. Johnson*, 390 U.S. 611, 616 (1968).

The Policy provides fair notice of the conduct it prohibits, because a reasonable person is able to understand when his actions impair the rights of another to engage in or listen to expressive conduct. The text of the Policy states that "[e]xpressive conduct that materially and substantially infringes upon the rights of others to engage in or listen to expressive activity" is prohibited. R. at 23. In a statement of purpose, the Policy also notes that it was "adopted to fulfill the University's obligations under the Arivada 'Free Speech in Education Act of 2017.'" R. at 23. The Legislature adopted that measure in response to "episodes of shouting down invited

[5] In the school context in particular, courts have noted that "it is inappropriate to expect the same level of precision in drafting school disciplinary policies as is expected of legislative bodies crafting criminal restrictions." *Sypniewski v. Warren Hills Reg'l Bd. of Ed.*, 307 F.3d 243, 260 (3d Cir. 2002); *see also Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 686 (1986) (noting that "school disciplinary rules need not be as detailed as a criminal code.").

speakers on college and university campuses." R. at 19. The text of the Policy, along with the context provided by the Act, "give[s] the person of ordinary intelligence a reasonable opportunity to know what is prohibited," *Grayned*, 408 U.S. at 108. Specifically, it tells the reasonable person that although he has the right to speak, he does not have the right to shout down an invited speaker or engage in similar conduct targeted at drowning out someone else's speech. Evaluating the Policy objectively, the Court of Appeals correctly held that "a reasonable person should be able to understand when his or her conduct infringes upon the rights of others to engage in or listen to expressive activity." R. at 49.[6]

The Policy is specific enough to provide an ascertainable standard of conduct. *Cf. Coates*, 402 U.S at 614. The District Court faulted the Policy because "it does not define the meaning of materially or substantially infringe[] upon the rights of others[]." R. at 08 (alterations in original). But "we can never expect mathematical certainty." *Grayned*, 408 U.S. at 110. And the text of the Policy contains "words of common understanding," *Boos*, 459 U.S. at 332; *Cameron*, 390 U.S. at 616, which, together with the "particular context" in which the Policy was enacted, provides an ascertainable standard of conduct. *Boos*, 459 U.S. at 332. Like the statute at issue in *Grayned*, the standard of conduct the Policy requires is "apparent from the statute's announced purpose," *Grayned*, 408 U.S. at 112. As indicated by the Act and the Policy's purpose statement, the Policy prohibits expressive activity that amounts to "shouting down invited speakers," R. at 19, and that prevents others from "engag[ing] in or listen[ing] to expressive activity." R. at 23.

Enforcement of any statute or regulation necessitates "some degree of police judgment."

[6] In concluding that the Policy is vague, the District Court improperly employed a subjective analysis. It relied in part on students' statements that they "could not reasonably determine what speech the Policy…prohibited," R. at 08. Instead of looking to students' subjective judgments, the Policy must be evaluated objectively from the perspective of a reasonable person. *See Coates*, 402 U.S. at 614.

Grayned, 408 U.S. at 114. The relevant question for the vagueness analysis is whether the "degree of judgment [granted to police] is permissible." *Id.* In *Grayned*, for example, the Court held that because the statute gave "fair warning as to what is prohibited," it was not impermissibly vague, even though it did provide some discretion to the police officers. *Id.* By contrast, in *Coates*, the Court considered an ordinance making it a crime for three or more people to assemble on a public sidewalk and "conduct themselves in a manner annoying to persons passing by." *Coates*, 402 U.S. at 611. The Court held that the ordinance was unconstitutionally vague because it included an "unascertainable" standard: whether something is "annoying" is a wholly subjective question, and the text of the ordinance therefore failed to provide notice regarding what conduct was prohibited. *Id.* at 614. The Court further concluded that the subjective inquiry into whether conduct "annoy[ed]" passersby "contain[ed] an obvious invitation to discriminatory enforcement against those whose association together is 'annoying' because their ideas…[are] resented by the majority of their fellow citizens." *Id.* at 616.

Though the Policy certainly (and necessarily) grants some discretion to campus security, it is appropriately limited by text and context; the "degree of judgment" the Policy grants to campus security here "is permissible." *Grayned*, 408 U.S. at 114. The textual directive that infringement must be "material[] and substantial[]" prevents campus security from issuing citations to students whose speech only minimally affects the rights of others. And the Policy's statement of purpose provides a further limitation on police discretion, by stating that the goal is to prohibit "episodes of shouting down" speakers. R. at 19. As such, the Policy encompasses speech that is intended to have some effect on the rights of another to speak or to listen. As the Court of Appeals noted, "targeted chants during an event featuring an invited speaker" are "qualitatively different" from other kinds of student speech, R. at 50, and as a result of this

distinction, campus security officers are appropriately limited in enforcing the Policy.

The Policy does not invite arbitrary or discriminatory enforcement. Unlike the ordinance at issue in *Coates*, which employed an unascertainable standard based on whether conduct was "annoying," *Coates*, 402 U.S. at 615, the Policy directs campus security officers to make a much less abstract inquiry. Whereas the question whether speech is "annoying" depends wholly on the tastes of the listeners, the question whether speech "materially and substantially infringes upon the rights of others to engage in or listen to expressive activity," R. at 23, is a question that can be answered by investigating the situation and determining the effect of the speech on others. The Court has held void for vagueness statutes that "contain[ed] an obvious invitation to discriminatory enforcement against those whose … ideas … [are] resented by … their fellow citizens." *Coates*, 402 U.S. at 616. But enforcement of this Policy does not turn on the ideas expressed or the people expressing them. The Policy is enforced, and speech is curtailed, only when a speaker "infringes upon the rights of others." R. at 23. The content of any particular speaker's expression has no bearing on whether the Policy will be enforced against him—the inquiry looks only to the effects that expression has on others.

C. The Policy does not prohibit a substantial amount of constitutionally protected conduct, and this Court should not apply the overbreadth doctrine when other remedies are available.

A law may only be struck down as impermissibly overbroad if "a substantial number of its applications are unconstitutional." *United States v. Stevens*, 559 U.S. 460, 473 (2010) (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449, n.6 (2008)). "A regulation of speech may be struck down on its face if its prohibitions are sufficiently overbroad—that is, if it reaches too much expression that is protected by the Constitution." *Sypniewski*, 307 F.3d at 258 (footnote omitted). In order to strike down a statute as impermissibly overbroad, a court must find "that the overbreadth of the statute [is] not

only … real, but substantial as well, judged in relation to the statute's plainly legitimate sweep." *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973). The Court has "vigorously enforced the requirement that a statute's overbreadth be substantial." *United States v. Williams*, 553 U.S. 285, 292 (2008).

In considering whether a statute is impermissibly overbroad, this Court looks at the statute and all of its potential applications, and asks how many—if any—of those potential applications cover constitutionally protected expression. The word "substantial" in these cases does not refer to the severity of the statute's effect on any one instance of speech. Instead, it refers to the whole universe of speech that falls within the scope of the statute, and directs courts to ask whether a "substantial number" of the statute's applications reach constitutionally protected speech. *Stevens*, 559 U.S. at 473. "[T]he mere fact that one can conceive of some impermissible applications of a statute is not sufficient to render it susceptible to an overbreadth challenge." *Members of City Council of City of L.A. v. Taxpayers for Vincent*, 466 U.S. 789, 800 (1984). For this Court to strike down a statute on overbreadth grounds, "there must be a realistic danger that the statute itself will significantly compromise recognized First Amendment protections of parties not before the Court." *Id.* at 801.

Applying this Court's overbreadth doctrine, the Policy is not substantially overbroad. It prohibits "[e]xpressive conduct that materially and substantially infringes upon the right of others to engage in or listen to expressive activity." R. at 23. The Policy promotes and supports free expression on campus by protecting speakers' right to be heard and listeners' right to hear, and its prohibitions apply only to expression which contravenes that purpose. Considering the entire universe of expression captured by the Policy, the Court must determine if the Policy "reaches too much expression that is protected by the Constitution." *Sypniewski*, 307 F.3d at 258

(footnote omitted). Petitioner submits that the Policy could be readily employed to quash a whole host of protected expressive activities, including "speech of casual passersby, flag football players, students listening to music in dormitory rooms, or even students calling out to one another on campus." R. at 50. But such expression is not covered by the Policy, because it does not involve material and substantial infringement—and unlike the speech at issue here, such activities are not targeted or intended to affect other students' rights. Even if Petitioner can conceive of some possible—albeit highly unlikely—impermissible application of the Policy, it is unrealistic to suggest that the Policy will "significantly compromise the First Amendment rights of others who are not party to this case." *Taxpayers for Vincent*, 488 U.S. at 801.

This Court has repeatedly held that courts should only strike down statutes on overbreadth grounds when no other options are available. The Court has long referred to application of the overbreadth doctrine as "strong medicine," *Broadrick*, 413 U.S. at 613, and precedent instructs lower courts to be especially circumspect in addressing facial overbreadth.[7] The overbreadth doctrine should not be "casually employed," and it should be used only as a "last resort." *L.A. Police Dept. v. United Reporting Publ'g Corp.*, 528 U.S. 32, 39 (1999); *see also Stevens*, 559 U.S. at 484 (Alito, J., dissenting) (noting that the "preferred procedure" is to "consider[] the question of overbreadth only as a last resort"). If a statute is not substantially overbroad, "whatever overbreadth may exist should be cured through case-by-case analysis of the fact situations to which its sanctions…may not be applied." *Broadrick*, 413 U.S. at 615-16.

The Court may only strike down the Policy on overbreadth grounds as a last resort—and

[7] *See also New York v. Ferber*, 458 U.S. 747, 769 (1982) ("Because of the wide-reaching effects of striking down a statute on its face at the request of one whose own conduct may be punished despite the First Amendment, we have recognized that the overbreadth doctrine is 'strong medicine' and have employed it with hesitation, and then 'only as a last resort.'" (citing *Broadrick*, 413 U.S. at 613); *United Reporting*, 528 U.S. at 39 (same).

here, there are other, more appropriate courses of action. If one of Petitioner's far-fetched hypotheticals were to materialize and the University in fact sought to enforce the Policy against "students listening to music in dormitory rooms," R. at 50, a court could easily remedy that violation on an as-applied basis. This is exactly the sort of situation contemplated in *Broadrick*, which directed that such insubstantial overbreadth "should be cured" on a case-by-case basis, instead of by striking down an entire statute as facially overbroad. *Broadrick*, 413 U.S. at 615-16. In this case, even if the Court does find—contrary to our submission—that the Policy violates the First Amendment as applied to Petitioner, precedent provides that the Court may not strike down the Policy on its face unless and until it has exhausted every other remedial option. *Stevens*, 559 U.S. at 484.

II. As applied to Ms. Vega, the University's Policy is constitutional because Ms. Vega materially and substantially infringed upon the right of Mr. Drake to speak and the rights of students to hear him.

The University acted within its discretion when it punished Ms. Vega because her loud antics created a substantial and unavoidable distraction which infringed upon the right of Mr. Drake to speak and the rights of other students to listen. The First Amendment protects both of these rights, and school officials have the authority to regulate speech that interferes with them under *Tinker*. The University officials were in the best position to determine the level to which Ms. Vega's speech interfered with those rights, and this Court ought to defer to their judgments. Finally, because of the nature of higher education and the holistic style of learning that occurs on college campuses, Ms. Vega acted in an educational setting when she interrupted the event, giving University officials the authority to regulate her speech.

A. School officials have the authority under *Tinker* to regulate speech that interferes with the rights of others to speak and receive information.

Tinker provides that schools may restrict student speech if it interferes with either the

requirements of appropriate discipline or if it "collid[es] with the rights of others." *Tinker*, 393 U.S. at 513. Neither party contends that Ms. Vega disrupted classroom discipline with her speech. Rather, the principal issue is whether Ms. Vega's speech "collid[ed] with the rights of others," thereby rendering it subject to school regulation under *Tinker* and the University policy. *Id.* The Supreme Court has never defined the precise scope of *Tinker's* "colliding with the rights of others" language, and lower courts vary in their interpretation of the phrase. Some courts have held that offensive speech targeting a core identifying characteristic such as race, religion, or sexual orientation impinges on the rights of other students, even if the speaker does not directly accost individual students with his remarks. *See Harper v. Poway Unified Sch. Dist.*, 445 F.3d 1166, 1178 (9th Cir. 2006), *vacated as moot*, 549 U.S. 1262 (2007). Other courts have ruled that *Tinker's* "interference with the rights of others" language covers only independently tortious speech like libel, intentional infliction of emotional distress, or physical assault. *See Slotterback v. Interboro Sch. Dist.*, 766 F. Supp. 280, 289 (E.D. Pa. 1991). Both of these interpretations fail to capture the full extent of what it means to interfere with the rights of others. If freedom of speech is to be safeguarded on college campuses, "interference with the rights of others" must be read to include a right that is inherent in the First Amendment: the right to receive information.

The right to express oneself would be meaningless if others were not free to listen. As Justice Brennan stated in *Lamont v. Postmaster General*, "[t]he dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them. It would be a barren marketplace for ideas that had only sellers and no buyers." 381 U.S. 301, 308 (1965) (Brennan, J., concurring). This right is tantamount in an educational context, for without it, students would not be able to pursue knowledge through exposure to diverse ideas and viewpoints. Failing to safeguard this right would be devastating not only to the educational

process, but also to American democracy. As James Madison cautioned: "A popular government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy." *Bd. of Educ. v. Pico,* 457 U.S. 853, 867 (1982) (quoting 9 Writings of James Madison 103 (G. Hunt ed. 1910)). The Supreme Court has held in a variety of contexts that the First Amendment not only fosters self-expression, but also plays a role in affording the public access to discussion, debate, and the dissemination of information and ideas.[8] Indeed, in *Stanley v. Georgia*, the Court explicitly stated that "the Constitution protects the right to receive information and ideas." 394 U.S. 557, 564 (1969). In order for universities to remain places where leaders are trained through a "wide exposure to that robust exchange of ideas which discovers truth 'out of a multitude of tongues,'" school officials must have the authority to safeguard both students' rights to speak and their rights to listen. *Keyishian v. Bd. Of Regents of Univ. of State of N.Y.,* 385 U.S. 589, 603 (1967) (quoting *United States. v. Associated Press*, 52 F. Supp. 362, 372 (S.D.N.Y. 1943)). When a student impedes the right of another to receive information, she has "collide[d] with the rights of others," and efforts by school officials to regulate her speech are therefore constitutional. *Tinker*, 393 U.S. at 513.

B. Ms. Vega's speech materially and substantially interfered with Mr. Drake's ability to speak and with students' ability to listen.

Ms. Vega's chanting, which was intentionally targeted at Mr. Drake and his listeners, interfered with Mr. Drake's right to speak and the students' right to listen by creating a substantial, unavoidable distraction. Although Ms. Vega herself did not enter the boundaries of the amphitheater, she ensured that her voice did by standing only ten feet away, targeting the speaker, and chanting loudly while wearing a Statue of Liberty costume. R. at 32. Combined,

[8] *See, e.g.*, *Pico*, 457 U.S. at 867; *First Nat'l Bank of Bos. v. Bellotti*, 435 U.S. 765, 783 (1978); *Stanley*, 394 U.S. at 564; *Kleindienst v. Mandel*, 408 U.S. 753, 762-763 (1972).

these actions created a spectacle that anyone would have had trouble ignoring. Students watching Mr. Drake's speech, Mr. Drake himself, and an impartial observer who was neither attending the speech nor supporting Ms. Vega all said that Ms. Vega's actions created a disturbance that was hard to ignore. R. at 25, 28, 32. Mr. Drake stated that Ms. Vega's loud chants made it "extremely hard for [him] to speak, think, and remain focused." R. at 25. Mr. Putnam, an attendee of the event, said that he "found the student's chants extremely distracting." R. at 28. Similarly, Ms. Taylor, a student who decided to attend the event while studying on the Quad, testified that because of Ms. Vega, it was "difficult to hear Mr. Drake speak." R. at 32.

It is true that Ms. Vega was not the only person creating noise on the Quad, but Ms. Vega's antics were significantly more distracting than the sounds from students playing football, conversing, and listening to music. Anyone using an outdoor venue like the amphitheater should expect and plan for background noise, but targeted chanting is, as the Circuit Court put it, "qualitatively different in character and capacity for disruption than random noise coming from a variety of directions." R. at 52. Mr. Putnam and Mr. Drake both expressed that they could hear other sources of random background noise, but that it was "nowhere as distracting as Ms. Vega's protests were." R. at 28. Similarly, Ms. Taylor found that "the student's chanting was significantly more distracting than the other noises." R. at 32. Shouts from games of football and frisbee, noise from contained conversations, and distant music easily meld together to create the typical sort of noise expected on any college campus. In contrast, loud, persistent, and targeted chants shouted while wearing a costume create an attention-grabbing performance that makes it difficult, and perhaps impossible, to listen and comprehend the words of an ongoing speech.

Ms. Vega claims her intention was not to "shout down" the speaker, but rather to "balance out" the words of Mr. Drake and "provid[e] support to those passing through the

community." R. at 38. The nature of her performance suggests otherwise. Ms. Vega directed her chants immediately towards Mr. Drake and the listeners, not the other students on the Quad. R. at 35. Furthermore, her actions can hardly be said to have provided the "opposing view" to listeners. While Mr. Drake gave a prepared speech, Ms. Vega shouted chants. R. at 25. It is hard to imagine that a student genuinely hoping to foster debate by contributing alterative ideas would choose to speak only in chanted slogans, rather than carefully planned, substantive arguments. Ms. Vega's stated intentions are noble: fostering debate by providing additional viewpoints is crucial to the functioning of democracy and conducive to education on college campuses. But on September 5, 2017, Ms. Vega's chosen form of expression neither contributed to the marketplace of ideas nor engaged students in debate. Instead, her speech functioned to distract the speaker and his listeners. Unlike the background noise, Ms. Vega's form of expression created a cacophony of competing sound, limiting the ability of other students to listen and violating their constitutionally protected right to acquire new ideas.

The obstructing effects of Ms. Vega's speech are nowhere better exemplified than in the case of Ms. Taylor, whose efforts to engage in the kind of spontaneous, experiential learning typified by college campuses were thwarted by Ms. Vega's spectacle. Ms. Taylor, a senior at the University, was studying on the Quad when she noticed Mr. Drake's speech and spontaneously decided to attend in order to "see what was going on." R. at 32. Ms. Taylor, like the other students, had the opportunity to expose herself to new viewpoints that day. But because of Ms. Vega's actions, Ms. Taylor was deprived of the chance to confront new ideas, participate in open debate, and become a better-informed member of society. As the Circuit Court aptly stated, "there is a right to speak and a right to be heard, but shouting matches often leave no room for speech at all." R. at 52.

While there are only a handful of cases involving schools regulating expression based on *Tinker's* "interference with the rights of others" language, the University's actions regulating Ms. Vega's speech bears resemblance to university regulations on student speech in *Barker v. Hardway*, 283 F. Supp. 228 (S.D.W.Va. 1968), *aff'd*, 399 F.2d 638 (1968), *cert. denied*, 394 U.S. 905 (1969). There, college students protested during half-time of a school football game and moved their protests into the stands once the game resumed. *Id.* at 238. They deliberately obscured audience-members' view of the game by holding up signs in the stand and continuing to chant and demonstrate after half-time ended. *Id.* The court upheld university sanctions against the students, ruling that the students deprived the football fans of the "right to see and enjoy the game in peace." *Id*. The court held that the First Amendment does not give students on college campuses the "license to trample upon the rights of others" and that the right of free speech does not carry with it the right to "deprive [another] of his right to enjoy his lawful pursuits." *Id.* at 238-239. Like the students at the football game, Ms. Vega deliberately distracted others engaged in a lawful pursuit. Although she did not obscure the view of the amphitheater, her costume and shouts created a similarly distracting spectacle. And like the students in *Barker,* Ms. Vega intentionally targeted audience-members with her actions. In both cases, the students engaged in acts of expression that were intended to interfere with the ability of others to listen and observe, thereby violating the constitutionally-protected rights of others to receive information. For that reason, university actions to regulate the speech in both instances were justified.

C. This Court ought to defer to the judgment of school officials in determining that Ms. Vega interfered with the rights of others.

As is stipulated in the University of Arivada Campus Free Speech Policy, numerous school officials on various levels of administration took part in the determination that Ms. Vega interfered with the rights of Mr. Drake and other students. First, Officer Michael Thomas

"investigat[ed] the disruption" by "enter[ing] the amphitheater to determine whether the protests were inhibiting spectators' ability to listen." R. at 36. Second, Louise Winters, Dean of Students for the University, conducted an investigation of the citation. R. at 41. She then initiated a disciplinary hearing before the School Hearing Board, which included written notice of the charges, the right to counsel, a right to review the evidence in support of the charges, the right to confront witnesses, the right to present a defense, the right to call witnesses, a decision by an impartial arbiter, and the right to appeal. R. at 41. Finally, the School Hearing Board considered the charge and upheld it. R. at 41. It is clear that the University took careful precautions in determining that Ms. Vega violated the Policy, including review by multiple levels of officials and procedural safeguards during the hearing. In situations such as this, where it is not apparent that the school has exceeded the bounds of the First Amendment, precedent indicates that the Court should defer to the school's discretion.

The Court has long recognized that local school officials have broad discretion in the management of school affairs. *See, e.g.*, *Meyer v. Nebraska*, 262 U.S. 390*,* 402 (1923); *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534 (1925). In *Epperson v. Arkansas*, this Court held that "public education in our Nation is committed to the control of state and local authorities," and that federal courts should not ordinarily "intervene in the resolution of conflicts which arise in the daily operations of school systems." 393 U.S. 97, 104 (1968). Similarly, in *Tinker,* the Court noted that it has "repeatedly emphasized…the comprehensive authority of the States and of school officials…to prescribe and control conduct in the schools." 393 U.S. at 507. Unless basic constitutional values are "directly and sharply implicated," decisions by local officials deserve a high level of deference. *Pico,* 457 U.S. at 866. Officer Thomas, not the federal courts, was the official present at the incident and was able to carefully investigate the disruption before

deciding to take action. Furthermore, the Court held in *Tinker* that First Amendment rights must be construed "in light of the special characteristics of the school environment," and Dean Winters and the members of the School Hearing Board are in the best position to understand the specific educational demands of the University. 393 U.S. at 506. As this Court held in *Fraser,* the determination of what manner of speech is inappropriate for the educational setting "properly rests with the school board." 478 U.S. at 682. After careful investigation and review, school officials determined that Ms. Vega's speech interfered with the rights of others. Precedent clearly indicates that this Court owes deference to that determination.

D. School officials have the authority to regulate Ms. Vega's speech because it occurred in an educational setting.

Finally, because of the distinct style of learning that occurs on college campuses, Ms. Vega's speech occurred in an educational setting, thereby rendering it subject to University regulation. The District Court found that school officials could not regulate Ms. Vega's speech because the event was "more akin to a gathering in a park or on a sidewalk than to an academic setting," R. at 17, but this is not the case. Unlike primary and secondary schools, who are tasked with keeping students safe and cultivating their civic character, the university serves as an open marketplace of ideas where students learn through exposure to diverse viewpoints. The Supreme Court has characterized this unique function that universities possess as playing a "vital role in democracy," for it trains the Nation's future leaders to think critically for themselves. *Keyishian*, 385 U.S. at 603. This broad style of learning that characterizes the university setting occurs both in the classroom and outside of it. Through conversations with peers, extracurricular activities, and events like Mr. Drake's speech, university students build on what they learn in the classroom, gain exposure to new ideas, and engage in the all-important civic discourse that trains them to be effective leaders. Unlike an elementary school, the educational setting of a university

cannot be said to end at the limits of the classroom walls. Rather, universities serve as grounds for "spontaneous assemblages…for students to speak and to write and to learn." *Rosenberger*, 515 U.S. at 836.

The policies surrounding space reservation on Arivada University's campus reaffirm the notion of the campus as a space permeated by educational opportunities. At Arivada University, "recognized student organizations" can gain the right to use spaces like the amphitheater by filling out the "Event and Registration Application." R. at 21. After filling out the form, the organization has the "exclusive right" to use the space during the reserved time. R. at 21. If the gathering was, as the District Court characterized it, more akin to a get-together in a park, why would the University create a system through which students could reserve the right to use the space? Furthermore, the fact that only "recognized student organizations," and not any member of the public, can reserve spaces on the University campus indicates that the University prioritizes the use of its spaces for student growth, not mere social gatherings. Mr. Putnam reserved the use of the amphitheater during Mr. Drake's speech, thereby designating the space as one in which the sort of educational opportunities that the school tries to protect were occurring. R. at 21. When Ms. Vega interfered with Mr. Putnam's right to use the space exclusively by creating an unavoidable distraction for listeners, she acted in an educational environment, thereby rendering her speech subject to University regulation.

Ms. Vega's behavior is part of a larger, problematic trend of students taking it upon themselves to limit the diversity of viewpoints on campus. This trend jeopardizes the unique function of the university by thwarting efforts to expose students to viewpoints with which they disagree. It also poses a grave threat to the First Amendment rights of students to receive and listen to information. If the university is to remain the training-grounds for the Nation's leaders

where students are exposed to a broad exchange of ideas, college administrators must have the ability to regulate speech that infringes on others' rights. Unless school officials are able to use their discretion to stop student shout-downs, small groups of students like Ms. Vega will have the power to dictate what information can be received on campus. The consequences of this sort of authoritative selection of ideas on college campuses would be dire. As Justice Brennan warned, "teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die." *Keyishian*, 385 U.S. at 603 (quoting *Sweezy v. New Hampshire,* 354 U.S. 234, 250 (1957)). If our universities are to continue to promote intellectual growth and prepare the Nation's future leaders, we must heed his warning.

CONCLUSION

For the foregoing reasons, this Court should affirm the Court of Appeals' ruling and hold that the University Policy is neither unconstitutionally vague nor overbroad, and that the Policy does not violate the First Amendment as applied to Petitioner.

CERTIFICATE

As required by Official Rule III(C)(3), Counsel of Record certifies the following:

1. The work product contained in all copies of the team's brief is in fact the work product of the team members.
2. The team has complied fully with its school's governing honor code; and
3. The team has complied with all Rules of the Competition.

s/_____
Team Number 5
Counsel for Respondents

APPENDIX

TABLE OF CONTENTS

U.S. Const. amend. I 1a

U.S. Const. amend. XIV, § 1 ..... 2a

Arivada Free Speech in Education Act of 2017 ..... 3a

University of Arivada Campus Free Speech Policy 4a

U.S. Const. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

U.S. Const. amend. XIV, § 1

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Free Speech in Education Act of 2017

Effective: June 1, 2017

Av. Gen. Stat. § 118-200

Section 1:

The Legislature hereby finds and declares that episodes of shouting down invited speakers on college and university campuses are nation-wide phenomena that are becoming increasingly frequent. It is critical to ensure that the free speech rights of all persons lawfully present on college and university campuses in our state are fully protected.

Section 2:

The Regents of all state institutions of higher education in the State of Arivada shall develop and adopt policies designed to safeguard the freedom of expression on campus for all members of the campus community and all others lawfully present on college and university campuses in this state.

Section 3:

All public colleges and universities in Arivada are to promulgate a policy to protect free speech on campus within three months of the effective date of this statute.

University of Arivada Campus Free Speech Policy

Enacted: August 1, 2017

Scope

This policy applies to all University of Arivada students.

Purpose

This policy is adopted to fulfull the University's obligations under the Arivada "Free Speech in Education Act of 2017."

Policy Statement

The Board of Regents of the University of Arivada hereby reaffirms the University's commitment to the principle of freedom of expression.

Free Expression Standard

1. Expressive conduct that materially and substantially infringes upon the rights of others to engage in or listen to expressive activity shall not be permitted on campus and shall be subject to sanction.

Disciplinary Procedures

1. This Policy includes a three strike range of disciplinary sanctions for a University of Arivada student who infringes upon the free expression of others on campus.
2. Any student who violates this Policy shall be subject to a citation by University Campus Security.
3. Campus Security shall transmit citations for violation of this Policy to the University's Dean of Students for review and investigation. The Dean of Students shall determine whether a student has materially and substantially infringed upon the rights of others to engage in or listen to expressive activity on the basis of the Dean's review and investigation.

4. Any student who receives a first citation pursuant to the Policy is entitled to an informal disciplinary hearing before the Dean of Students.
5. If the Dean of Students determines that the citation is appropriate, the Dean shall issue a warning to the student to be known as a first strike.
6. The review and investigation procedures described above, in three and four, apply to citations for second and third citations in violation of the Policy.
7. A student who receives a second or third citation is entitled to a formal disciplinary hearing before the School Hearing Board.
8. The School Hearing Board shall determine whether the behavior constitutes a violation of the Policy and therefore merits and second or third strike.
9. A formal disciplinary hearing includes written notice of the charges, right to counsel, right to review the evidence in support of the charges, right to confront witnesses, right to present a defense, right to call witnesses, a decision by an impartial arbiter, and the right of appeal.
10. The sanction for a second strike shall be suspension for the remainder of the semester.
11. The sanction for a third strike shall be expulsion from the University.
12. Any strike issued under this Policy shall be placed on the student's record.

Notice

The University of Arivada shall provide notice of this Policy to all enrolled students.