

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

DEC 13 2017

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS**

JAMES W. McCORMACK, CLERK
By: *Jane Hoggard*
D.P. CLERK

**TURNING POINT USA AT ARKANSAS
STATE UNIVERSITY, and ASHLYN
HOGGARD,**

Plaintiffs,

v.

The Trustees of Arkansas State University—
**RON RHODES, DR. TIM LANGFORD,
NIEL CROWSON, STACY CRAWFORD,**
and **PRICE GARDNER**—all individually
and all in their official capacities as members
of the Board of Trustees of the Arkansas State
University System; **CHARLES L. WELCH,**
President of the Arkansas State University
System, in his official and individual
capacities; **KELLY DAMPHOUSSE,**
Chancellor of Arkansas State University, in
his official and individual capacities;
WILLIAM STRIPLING, Vice Chancellor
for Student Affairs of Arkansas State
University, in his official and individual
capacities; **MARTHA SPACK,** Director of
Student Development and Leadership for
Arkansas State University, in her official and
individual capacities,

Defendants.

Case No. *3:17-cv-00327 JLH*

VERIFIED COMPLAINT

JURY TRIAL REQUESTED

This case assigned to District Judge *Holmes*
and to Magistrate Judge *RAY*

Plaintiffs Turning Point USA at Arkansas State University and Ashlyn Hoggard, by and through counsel, and for their Complaint against the Defendants, hereby state as follows:

INTRODUCTION

1. The campus of a public university has been called a “marketplace of ideas.” That marketplace depends on free expression by students.

2. This case arises from policies and practices of Arkansas State University (“ASU” or the “University”) and public officials employed by the University that restrict the expressive rights of students.

3. The University's Freedom of Expression Policy (the "ASU Speech Zone Policy"), which regulates expressive activity on campus, limits expressive activity to several small areas on campus and requires students to obtain the prior permission of the University before engaging in speech in the speech zones.

4. The Speech Zone Policy also grants University officials unbridled discretion to restrict the content and viewpoint of student speech.

5. Plaintiff Ashlyn Hoggard is a student at ASU and is interested in speaking with other students at ASU regarding important issues including the students' constitutional rights of speech and assembly.

6. In furtherance of this desire, Ashlyn began the process of forming Plaintiff Turning Point USA at Arkansas State University ("TPUSA") as a student group at ASU.

7. On October 11, 2017, Ashlyn, and another individual, set up a table on the edge of a large, open walkway in front of the Reng Student Union on ASU's campus and began talking with students about their First Amendment rights under the United States Constitution and asking them to support the formation of TPUSA as an officially recognized student group.

8. Ashlyn and the other individual were not blocking access to buildings or pedestrian traffic.

9. While engaged in these activities, an ASU administrator and campus security approached Ashlyn and the other individual and informed them that they were violating the Speech Zone Policy and they were not allowed to speak with other students outside the speech zones on campus.

10. The ASU administrator and campus security instructed Plaintiffs and the other individual that they must immediately stop speaking with other students and leave the area or they would be subject to punishment and potential arrest.

11. This action is premised on the United States Constitution concerning the denial of Plaintiffs' fundamental rights to freedom of speech and due process of law.

JURISDICTION AND VENUE

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

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

14. This Court has authority to award the requested damages pursuant to 28 U.S.C. §1343; the requested declaratory relief pursuant to 28 U.S.C. §§ 2201-02; the requested injunctive relief pursuant to 28 U.S.C. § 1343 and Fed. R. Civ. P. 65; and costs and attorneys' fees under 42 U.S.C. § 1988.

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

PLAINTIFFS

16. Plaintiff Turning Point USA at Arkansas State University ("TPUSA") is an unincorporated expressive association comprised of Arkansas State University students.

17. TPUSA is a national, non-partisan organization with chapters at public and private universities throughout the country.

18. TPUSA's mission is to educate students about the importance of fiscal responsibility, free markets, and limited government.

19. Part of TPUSA's mission is to advocate for the free speech and other constitutional rights of its members and all students at ASU.

20. Plaintiff Ashlyn Hoggard is a student at ASU.

21. Ashlyn is the founding member of the TPUSA student club at ASU.

22. Plaintiffs desire to express their message on ASU's campus through a variety of means including flyers, signs, peaceful demonstrations, hosting tables with information, inviting speakers to campus, and talking with fellow students about the natural rights of life, liberty, and property, among other things.

23. When engaging in these expressive activities, Plaintiffs will discuss political, religious, social, cultural, and moral issues and ideas.

DEFENDANTS

24. Defendants Ron Rhodes, Dr. Tim Langford, Niel Crowson, Stacy Crawford, and Price Gardner (hereinafter collectively, "Trustee Defendants") are, and were at all times relevant to this Complaint, members of the Board of Trustees of the Arkansas State University System (the "ASU System"), a public University system organized and existing under the laws of Arkansas, and are responsible for, among other things, the adoption and authorization of policies that govern students that attend the ASU System, including the ASU System Speech Zone Policy.

25. As members of the Board of Trustees, the Trustee Defendants have the responsibility for final policymaking authority concerning students that attend the ASU System.

26. Each of the Trustee Defendants is responsible for the enactment, amendment, and repeal of the Board of Trustees' policies, including the ASU System Speech Zone Policy challenged herein, and their application to students in restricting their ability to speak freely and without a permit on campus.

27. As members of the Board of Trustees, the Trustee Defendants possess the authority to change and enforce the policies challenged herein.

28. The Trustee Defendants have not modified the policies governing student expression on campus, including the ASU System Speech Zone Policy and practices challenged herein, to comply with the United States Constitution.

29. Each of the Trustee Defendants acquiesces in, sanctions, and supports the actions of the other Defendants in enforcing the policies and procedures regarding students' speech activities on campus.

30. Each of the Trustee Defendants are sued in their official capacity for injunctive and declaratory relief and in their individual capacity for damages resulting from the Speech Zone Policy.

31. Defendant Charles L. Welch is, and was at all times relevant to this Complaint, the President of the ASU System.

32. The Board of Trustees has delegated to the President of the ASU System powers to exercise discretionary authority and to perform duties vested in the Board of Trustees related to the operation, control, and management of the University System.

33. Defendant Welch is the chief executive officer of the ASU System.

34. Defendant Welch is responsible for the enforcement of ASU System policies, including the Speech Zone Policy challenged herein, and their application to Plaintiffs' speech.

35. Defendant Welch has not instructed ASU System personnel, including the other defendants, to change or alter the policies and practices governing student expression on campus, including the Speech Zone Policy and practices challenged herein, to comply with constitutional mandates.

36. Defendant Welch is sued in his official capacity for injunctive and declaratory relief and in his individual capacity for damages resulting from the Speech Zone Policy.

37. Defendant Kelly Damphousse is, and was at all times relevant to this Complaint, the Chancellor of Arkansas State University.

38. The Board of Trustees has delegated to the Chancellor of the University powers to exercise discretionary authority and to perform duties vested in the Board of Trustees related to the operation, control, and management of the University.

39. Defendant Damphousse is the chief executive officer of the University.

40. Defendant Damphousse has the authority to delegate authority among subordinates.

41. Defendant Damphousse is responsible for the enforcement of University policies, including the Speech Zone Policy challenged herein, and their application to Plaintiffs' speech.

42. Defendant Damphousse possesses the authority and responsibility for coordination and approval of expression by students, employees, and third parties on campus.

43. Defendant Damphousse has not instructed ASU personnel, including the other defendants, to change or alter the policies and practices governing student expression on campus,

including the ASU Speech Zone Policy and practices challenged herein, to comply with constitutional mandates.

44. As Chancellor, Defendant Damphousse has the authority to review, approve, or reject the decisions of other University officials and the other Defendants regarding the ASU Speech Zone Policy challenged herein.

45. Defendant Damphousse failed to stop any ASU officials from applying the ASU Speech Zone Policy to restrict Plaintiffs' expression.

46. Defendant Damphousse is sued in his official capacity for injunctive and declaratory relief and in his individual capacity for damages resulting from the ASU Speech Zone Policy.

47. Defendant William Stripling is, and was at all times relevant to this Complaint, the Vice Chancellor for Student Affairs of Arkansas State University.

48. Defendant Stripling is responsible for the enforcement of the ASU Speech Zone Policy and its application to Plaintiffs' speech.

49. Defendant Stripling possesses the authority and responsibility for regulation of campus expression by students.

50. Defendant Stripling has authority under the ASU Speech Zone Policy to review, approve, modify, or reject requests by students to use campus facilities and grounds.

51. Defendant Stripling has failed to stop University officials, including the other Defendants, from applying the ASU Speech Zone Policy challenged herein to students, including Plaintiffs.

52. Defendant Stripling possesses the authority to enforce the ASU Speech Zone Policy challenged herein.

53. Defendant Stripling has failed to recommend any changes to the ASU Speech Zone Policy challenged herein to bring it into compliance with constitutional mandates.

54. Defendant Stripling is sued in his official capacity for injunctive and declaratory relief and in his individual capacity for damages resulting from the ASU Speech Zone Policy.

55. Defendant Martha Spack is, and was at all times relevant to this Complaint, Director of Student Development and Leadership of Arkansas State University.

56. Defendant Spack has authority under the ASU Speech Zone Policy to review, approve, modify, or reject requests by students to use campus facilities and grounds.

57. Defendant Spack has failed to stop University officials, including the other Defendants, from applying the ASU Speech Zone Policy challenged herein to students, including Plaintiffs.

58. Defendant Spack possesses the authority to enforce the ASU Speech Zone Policy challenged herein.

59. Defendant Spack has failed to recommend any changes to the ASU Speech Zone Policy challenged herein to bring it into compliance with constitutional mandates.

60. Defendant Spack is sued in her official capacity for injunctive and declaratory relief and in her individual capacity for damages resulting from the ASU Speech Zone Policy.

FACTUAL BACKGROUND

61. The ASU System is a public university system organized and existing under the laws of the State of Arkansas and receives funding from the State of Arkansas to operate.

62. The ASU System is composed of five separate campuses: Arkansas State University, ASU-Beebe, ASU-Newport, ASU-Mountain Home, and ASU Mid-South.

63. Arkansas State University is a four-year research institution located in Jonesboro, Arkansas.

64. The University's campus is composed of various publicly-accessible buildings and outdoor areas, including public streets, sidewalks, open-air quadrangles, and parks. A copy of the University's campus map is attached as Exhibit 1 to this Complaint.

65. The outdoor areas of the University's campus are open to the public and there are no gates or barriers to pedestrian entry.

66. The campus is maintained like a park with large cultivated grass areas, trees, benches, and sidewalks.

67. The University's campus is approximately 1,376 acres.

68. The University's campus has many suitable streets, sidewalks, open-air quadrangles, parks, and open spaces where expressive activity will not interfere with or disturb the University's activities or impede access to buildings and sidewalks.

69. The University recognizes that organized student groups are a valuable part of the student educational environment because they further the University's educational mission.

70. More than 150 student organizations are recognized by the University.

71. Student organizations provide opportunities for learning outside the classroom; for meeting other people with similar interests; for developing life, work, and leadership skills; for gaining a broader experience and a greater perspective; and for engaging students as citizens of the campus community.

72. The University requires all recognized student organizations to adhere to its policies and procedures.

The Speech Zone Policy

73. The ASU System regulates student oral, written, and visual speech at all of its campuses through its Freedom of Expression Policy (the "ASU System Speech Zone Policy"). A copy of the ASU System Speech Zone Policy is attached as Exhibit 2 to this Complaint.

74. The ASU System Speech Zone Policy mandates that "[e]ach campus shall designate (1) Free Expression Areas for speeches and demonstrations, (2) times available for use of the Free Expression Areas, and (3) the method for scheduling use of the Free Expression Areas." Ex. 2 § 3.A.

75. The ASU System Speech Zone Policy further provides that if students want to engage in expressive activity outside of the speech zones they must obtain permission from the vice chancellor for student affairs at least 72 hours in advance of the event. *Id.*

76. The ASU System Speech Zone Policy further mandates that "[e]ach campus shall designate (1) areas where non-commercial pamphlets, handbills, circulars, newspaper, magazines and other written materials may be distributed on a person-to-person basis; (2) times available for

distribution of non-commercial materials; and (3) the method for scheduling use of areas for distribution of non-commercial materials.” Ex. 2 § 3.B.

77. As mandated by the ASU System Speech Zone Policy, the University enacted its Freedom of Expression Policy to regulate student oral, written, and visual speech (the “ASU Speech Zone Policy”) (the ASU System Speech Zone Policy and the ASU Speech Zone Policy are collectively referred to as the “Speech Zone Policy”). A copy of the ASU Speech Zone Policy is attached as Exhibit 3 to this Complaint.

78. The ASU Speech Zone Policy restricts student speech and other expressive activity to the following small areas on the ASU campus: (1) Lawn near the arch located between Wilson Hall and Computer Science and Math Building; (2) Amphitheatre located near the Lab Sciences Building, Education Communication Building, Library and Computer Science and Math Building; (3) Heritage Plaza east of Reng Student Union at Caraway Road; (4) Lawn at University Loop and Cooper Alumni Center next to the Convocation Center; (5) Lawn at the east side of Olympic Drive near Tomlinson Stadium/Kell Field; (6) Lawn at the east side of Olympic Drive at the Alumni Boulevard Intersection; and (7) Lawn at the west side of Intersection of A Street and Johnson Avenue across from Soccer Complex. Ex. 3.

79. Upon information and belief, the speech zones comprise a total area of approximately 1% of the ASU campus.

80. Students may only use the speech zones between 8:00 a.m. and 9:00 p.m. Monday through Friday. Ex. 3.

81. The ASU Speech Zone Policy requires students to obtain prior permission from Defendant Spack, the Director of Student Development and Leadership, before using the speech zones. Ex. 3.

82. The ASU Speech Zone Policy grants unbridled discretion to Defendant Spack, as the Director of Student Development and Leadership, to grant students permission to use the speech zones. Ex. 3.

83. If students wish to engage in expressive activity in any other area of campus, they must obtain permission at least 72 hours in advance from Defendant Stripling, the Vice Chancellor for Student Affairs, his designee, or Defendant Spack, the Director of Student Development and Leadership. Ex. 3.

84. The ASU Speech Zone Policy grants unbridled discretion to Defendant Stripling, as the Vice Chancellor of Student Affairs, to grant students permission to use other areas of campus for expressive activity. Ex. 3.

85. The ASU Speech Zone Policy restricts students from distributing literature or handing out written materials anywhere on campus except in the following small areas: (1) between International English Studies Building and Nursing Building—East of Caraway Road; (2) between Computer Science and Fine Arts Building—Bookout Plaza; (3) Outside front entrance of Lab Science East—Bookout Plaza; (4) Plaza between Dean B. Ellis Library and Education Building; (5) Campus Mall between Ellis Library and Administration Building—near emergency phone; (6) North of Business Building; (7) East of Physical Education Building; (8) Freedom of Expression Areas; and (9) Heritage Plaza east of Reng Student Union at Caraway Road. Ex. 3.

86. The ASU Speech Zone Policy thus outlines different areas for speech and literature distribution, meaning that in some areas of the campus students may distribute literature but they may not engage in verbal expression while doing so.

87. Students are not allowed to set up a stand, table, or booth to distribute materials without prior permission from Defendant Spack, the Director of Student Development and Leadership and can only do so in the Freedom of Expression Areas. Ex. 3.

88. The ASU Speech Zone Policy grants unbridled discretion to Defendant Spack, as the Director of Student Development and Leadership, to grant students permission to set up a stand, table, or booth in the Freedom of Expression Areas.

89. The ASU Speech Zone Policy governs all forms of expressive activity wherever they may occur on campus.

90. The ASU Speech Zone Policy provides no deadlines or timetables by which University officials must respond to a request for a permit, meaning a student's request for a speech permit could remain pending indefinitely.

91. The ASU Speech Zone Policy does not provide any criteria for Defendants to use when deciding whether to approve or reject a speech zone reservation request.

92. The ASU Speech Zone Policy does not limit the discretion of Defendants when deciding whether to approve or reject a speech zone reservation request.

93. The ASU Speech Zone Policy does not provide a means for students to speak spontaneously on campus for any purpose.

94. The penalties for students and groups that speak without a speech permit can be severe. ASU's Standards of Student Conduct ("Student Conduct Code") provides that any student that violates the ASU Speech Zone Policy is subject to sanctions ranging from a written warning to suspension to even expulsion from ASU. A copy of the applicable portions of the Student Conduct Code is attached as Exhibit 4 to the Complaint.

95. Defendants implement and enforce their Speech Zone Policy in part through the Student Conduct Code.

96. It is ASU's policy that any student who fails to comply with its regulations and guidelines regarding student expression violates the Student Conduct Code.

97. When enforcing these provisions of the Student Conduct Code, Defendants do not exempt expression protected by the First Amendment from disciplinary action.

98. The Student Conduct Code requires students to "comply with directions . . . of university officials." Ex. 4 § 10.

99. It is ASU's policy—as expressed in the Student Conduct Code—that students who engage in expressive activities anywhere on ASU's campus outside of the small speech zones have violated the Student Conduct Code if a University official asks that the students stop such activity and the students do not comply with such request.

Defendants' Violation of Plaintiffs' Freedom of Speech

100. In the Fall 2017 semester, Ashlyn decided to form the TPUSA student group at ASU.

101. Pursuant to University policy, five members are required to become a registered student organization. A copy of the Student Organization Registration is attached as Exhibit 5 to the Complaint.

102. On October 10, 2017, Ashlyn inquired with ASU's Leadership Center whether she could reserve a table in the Student Union to talk with other students about becoming a member of TPUSA so that she could satisfy the minimum five member requirement to become a recognized student organization.

103. A University administrator denied the request because only registered student organizations are allowed to reserve a table in the Student Union.

104. On October 11, 2017, Ashlyn set up a table on the edge of a large walkway outside the Reng Student Union to talk with students about TPUSA, encourage them to become members, and talk about their constitutional rights.

105. Ashlyn attached two poster boards to the table promoting the TPUSA group along with a bowl of candy to hand out to students.

106. Emily Parry, an employee of Turning Point USA, accompanied Ashlyn to assist with the promotion of the new group.

107. As they were talking with students, Ashlyn and Emily were not blocking any entrance or exit to any buildings, impeding access to the buildings or parking lots, or blocking the free flow of traffic on the sidewalks.

108. When engaging students in conversation, Ashlyn and Emily did not force anyone to participate in a conversation, berate those who were not interested in conversing, or denigrate those who disagreed with them.

109. Yet, within five minutes of setting up the table, Elizabeth Rouse, the Reng Student Union Events Coordinator, and a campus police officer informed Ashlyn and Emily that they were

in violation of the Speech Zone Policy because they were talking with students outside of the speech zones.

110. Ashlyn informed Ms. Rouse that she was a student and that she invited Emily as her guest to assist with promoting her TPUSA group. Yet, Ms. Rouse and the police officer ordered Ashlyn and Emily to stop speaking with students and immediately leave the area.

111. The police officer informed Ashlyn that she had violated the Student Conduct Code by engaging in speech outside of the speech zones.

112. The police officer issued Emily a Criminal Trespass Warning immediately banning her from the entire ASU campus for an indefinite period of time because of her participation in peaceful free speech as an invited guest of Ashlyn outside of the speech zones. A copy of the Criminal Trespass Warning is attached as Exhibit 6 to the Complaint.

113. Although Plaintiffs disagreed with the unconstitutional order, they complied with the order and immediately left the area.

114. Plaintiffs did not continue their speech activities because of Defendants' unlawful order.

The Effect of Defendants' Speech Zone Policy on Plaintiffs' Speech

115. Plaintiffs desire to engage in protected expression on campus—including oral communication and literature distribution—outside of the speech zones without obtaining prior permission of the University, but have refrained from doing so for fear of arrest and punishment.

116. ASU's enforcement of the Speech Zone Policy against Plaintiffs burdens their speech in multiple ways.

117. Plaintiffs want to engage in speech in the open, outdoor, generally accessible areas on campus without obtaining prior permission of the University and without being limited to the specific areas designated by the school.

118. The Speech Zone Policy does not provide a means for students to speak or hand out written material spontaneously on campus.

119. The Speech Zone Policy does not provide any objective criteria for Defendants to use when deciding whether to approve or reject a student's request to speak on campus.

120. The Speech Zone Policy does not limit the discretion of Defendants when deciding whether to approve or reject a student's request to speak on campus or in deciding which location a student is allowed to speak.

121. As shown by Defendants' actions, students or student organizations that violate the Speech Zone Policy are subject to disciplinary action under University policies and state criminal trespass laws.

122. Plaintiffs are not engaging in certain oral and written speech with other students on campus due to the Speech Zone Policy.

123. Plaintiffs are chilled in their ability to promote TPUSA and discuss various TPUSA topics on campus due to the Speech Zone Policy.

124. If not for the Speech Zone Policy, Plaintiffs would immediately engage in discussions and pass out material about liberty and freedom to other students on campus.

125. Plaintiffs refrain from doing so for fear of punishment under the University's Speech Zone Policy and state criminal trespass laws.

126. The fear of punishment severely limits Plaintiffs' constitutionally-protected expression on campus.

ALLEGATIONS OF LAW

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

128. Defendants knew or should have known that by limiting Plaintiffs' speech to several small areas on campus and requiring Plaintiffs to obtain permission prior to engaging in speech with other students on campus, the University violated Plaintiffs' constitutional rights.

129. The aforementioned policy and practices are challenged on their face and as applied to Plaintiffs.

130. Defendants' policy and practices have deprived and will continue to deprive Plaintiffs of their paramount rights and guarantees under the United States Constitution.

131. Each and every act of Defendants alleged herein was committed under the color of state law as each Defendant exercised power possessed by virtue of state law and each act was made possible only because the Defendant was clothed with the authority of state law.

132. Plaintiffs are suffering irreparable harm from the policy and practice of Defendants.

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

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

FIRST CAUSE OF ACTION

Violation of Plaintiffs' First Amendment Right to Freedom of Speech Prior Restraint, Content and Viewpoint Discrimination, and Overbreadth

135. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–134 of this Complaint.

136. Speech is entitled to protection under the First Amendment.

137. Political speech is fully protected by the First Amendment.

138. The First Amendment also protects citizens' right to engage in spontaneous speech.

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

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

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

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

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

144. Defendants' Speech Zone Policy and their practice of limiting students and student organizations' expressive activities to speech zones violates the First Amendment facially and as applied because it prohibits students and student organizations from engaging in speech in public areas of the campus other than the limited area of the speech zones.

145. Defendants' Speech Zone Policy and their practice of forbidding students and student organizations from engaging in speech activities without express consent violates the First Amendment facially and as applied because it prohibits students and student organizations from engaging in speech in public areas of the campus without prior permission.

146. Defendants' Speech Zone Policy and their practice of requiring students and student organizations to obtain permission in order to engage in speech at the University violates the First Amendment facially and as applied because it prohibits students and student organizations from engaging in spontaneous speech.

147. Defendants' Speech Zone Policy and their practice of requiring students and student organizations to obtain permission in order to engage in speech at the University violates the First Amendment facially and as applied because it is a prior restraint on speech in areas of campus that are traditional or designated public forums for University students.

148. Defendants' Speech Zone Policy and their practice of requiring students and student organizations to obtain permission in order to engage in speech at the University violates the First Amendment facially because it contains no time frame in which the University administrators must

rule on a student's request for permission to speak. The Policy's failure to ensure a prompt decision creates the risk that ASU will delay a permit request indefinitely.

149. Defendants' Speech Zone Policy and associated practices are unconstitutional "time, place, and manner" restrictions that violate Plaintiffs' and other students' right to freedom of speech and expression.

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

151. Defendants' Speech Zone Policy and associated practices are also overbroad because they prohibit and restrict protected expression.

152. Defendants' Speech Zone Policy and associated practices unconstitutionally censor or restrict all private speech that occurs outside the speech zones, and require students to obtain a permit for all expressive activities from Defendants in advance.

153. The government may not regulate speech based on overbroad policies that encompass a substantial amount of constitutionally protected speech.

154. Defendants' Speech Zone Policy and associated practices are overbroad because they prohibit a substantial amount of constitutionally protected speech in that they prohibit students from engaging in expressive activities in the public fora of campus outside the speech zones, they require students to seek a permit from University officials for prior permission at least 72 hours in advance, and they require students to confine their expressive activities to the speech zones.

155. The overbreadth of Defendants' Speech Zone Policy and associated practices chills the speech of Plaintiffs and students not before the Court who seek to engage in private expression (including public speaking, marches, conversations, and literature distribution) in the open, outdoor areas of campus.

156. While Defendants have an interest in maintaining a safe campus, requiring advance approval in order to engage in speech in public areas of the University campus is not narrowly

tailored to Defendants' interest.

157. Defendants violated Plaintiffs' First Amendment right to freedom of speech by ordering them to stop engaging in non-disruptive speech activities and telling them that they would not be allowed to engage in any such speech activities on campus without first obtaining Defendants' permission and such activities must be limited to the small speech zones on campus.

158. Defendants' Speech Zone Policy and associated practices grant University administrators unbridled discretion to regulate speech based on content or viewpoint and are not narrowly tailored to a compelling state interest.

159. By granting unbridled discretion to discriminate against speech based on its content or viewpoint, the Speech Zone Policy violates the First Amendment regardless of whether that discretion has ever been unconstitutionally applied in practice.

160. Defendants exercised their unbridled discretion granted under the Speech Zone Policy when they informed Plaintiffs that they were required to obtain a permit prior to engaging in discussions with other students on the ASU campus and must conduct those discussions in the small speech zones.

161. Defendants' Speech Zone Policy provides no guidelines or standards to limit the discretion of University officials in deciding when or whether to grant or deny a student's request to speak.

162. Defendants' Speech Zone Policy and associated practices give Defendants unbridled discretionary power to limit student speech in advance of such expression on campus and to do so based on the content and viewpoint of the speech.

163. These grants of unbridled discretion to University officials violate the First Amendment because they create a system in which the permissibility of speech is judged without any standards, thus giving students no way to prove that a denial, restriction, or relocation of their speech was based on unconstitutional considerations.

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

165. Because Defendants have failed to establish neutral criteria governing the decision whether to allow students to speak, there is a substantial risk that University officials will engage in content and viewpoint discrimination.

166. Defendants' Speech Zone Policy and associated practices violate Plaintiffs' right to free speech as guaranteed by the First Amendment to the United States Constitution.

167. Because of Defendants' actions, Plaintiffs have suffered, and continue to suffer, irreparable harm. Plaintiffs are entitled to equitable relief.

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

SECOND CAUSE OF ACTION

Violation of Plaintiffs' Fourteenth Amendment Right to Due Process of Law

169. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–134 of this Complaint.

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

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

172. The government may not regulate speech based on policies that differ as to their application and do not provide any way for students to determine what protected speech will be allowed and what protected speech will be banned.

173. Defendants' Speech Zone Policy and associated practices contain no criteria to guide administrators when deciding whether to grant, deny, relocate, or restrict student speech on campus.

174. Defendants' Speech Zone Policy and associated practices are impermissibly vague and ambiguous and are thus incapable of providing meaningful guidance to Defendants because the terms "speaking, demonstrating, and other forms of expression" are vague and undefined.

175. Because of Defendants' actions, Plaintiffs have suffered, and continue to suffer irreparable harm. They are entitled to equitable relief.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment against Defendants and provide Plaintiffs with the following relief:

- (A) A declaratory judgment that Defendants' Speech Zone Policy and associated practices, facially and as applied, violate Plaintiffs' rights under the First and Fourteenth Amendments;
- (B) A preliminary and permanent injunction prohibiting Defendants, their agents, officials, servants, employees, and any other persons acting on their behalf from enforcing the Speech Zone Policy and associated practices challenged in this Complaint;

- (C) Compensatory and nominal damages for the violation of Plaintiffs' First and Fourteenth Amendment rights from the Defendants sued in their individual capacities;
- (D) Plaintiffs' reasonable attorneys' fees and expenses in this action pursuant to 42 U.S.C. § 1988; and
- (E) All other further relief to which Plaintiffs may be entitled.

Respectfully submitted this 12th day of December, 2017,

By: /s/Ethan C. Nobles

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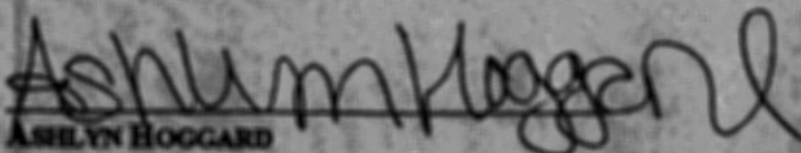
ATTORNEYS FOR PLAINTIFFS

*Application for *Pro Hac Vice* Admission
Forthcoming

DECLARATION UNDER PENALTY OF PERJURY

I, ASHLYN HOGGARD, individually and as President of Turning Point USA at Arkansas State University, a citizen of the United States and a resident of the State of Arkansas, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Executed this 6 day of December, 2017, at Jonesboro, Arkansas.


ASHLYN HOGGARD