

The College Accountability Case

Case Name: *Hoggard v. Rhodes*

Status: Filed a cert petition with the U.S. Supreme Court, January 28, 2021.

Significance: Whether qualified immunity prevents courts from holding university officials accountable when they violate their students' First Amendment rights.



Background: Ashlyn Hoggard, a student at Arkansas State University, set up a table to recruit students to join a new campus chapter of Turning Point USA. Arkansas State officials called the police and kicked Ashlyn and another individual off the patio in front of the Student Union and threatened her with a violation of the student code of conduct, citing the university's speech policy. This policy funneled student expression to tiny speech zones making up 1% of campus, required advance permission to speak anywhere on campus, and gave officials free rein to grant or deny requests to speak. In December 2017, ADF attorneys filed a lawsuit against Arkansas State officials on Ashlyn's behalf. The lawsuit prompted the State of Arkansas to enact campus free-speech legislation known as the FORUM Act, which prohibits restrictive speech policies. This forced Arkansas State to repeal the policies it used to censor Ashlyn. But the officials responsible for those policies have not faced any repercussions. And they still haven't acknowledged they were wrong. The U.S. Court of Appeals for the 8th Circuit ruled that the university officials had violated Ashlyn's First Amendment rights, but the court accepted the officials' qualified-immunity defense and let them off the hook, holding that they might not have realized their speech policies were unconstitutional. Alliance Defending Freedom has filed an appeal to the U.S. Supreme Court, asking the Court to clarify that qualified immunity doesn't prevent courts from holding university officials accountable for their unconstitutional policies.

Key Points

- Speech isn't free when students have to ask permission before they can speak anywhere on campus.
- Free speech on campus is a no brainer—and not just in tiny “speech zones,” but everywhere students gather in open, outdoor areas.
- A state shouldn't have to pass a law to force public-university officials to follow the Constitution. And university officials shouldn't wait to fix unconstitutional policies until after a court strikes down the exact same policies somewhere else.
- Public-university officials shouldn't get to hide behind qualified immunity when they blatantly violate their students' First Amendment rights.

Key Facts

- ASU officials threatened to punish Ashlyn simply for setting up a table to gather enough signatures to recruit students to join her group—which ASU required to form a registered student organization.
- ASU's unconstitutional speech policies funneled student speech deemed “offensive” to small areas on campus and required students to obtain the University's permission before speaking anywhere—even in the tiny “speech zones.”
- Under ASU's policies, officials were free to discriminate based on a viewpoint they didn't like and then make up neutral-sounding reasons after the fact.
- Although ASU changed its policies, other schools have not, and the way many courts apply qualified immunity allows universities to continue to violate their students' constitutional rights without any accountability.

The Bottom Line: The only permit students need to speak on campus is the First Amendment, and university officials should know that by now.