

IN THE ALABAMA CIRCUIT COURT
FOR THE SIXTH JUDICIAL CIRCUIT

YOUNG AMERICANS FOR LIBERTY AT UNIVERSITY
OF ALABAMA, BRYANT GILSON, and MATTHEW
MCDAVID,

Plaintiffs,

v.

The Trustees of the University of Alabama
System—MIKE BROCK, KAREN BROOKS, JOHN
ENGLAND JR., RONALD GRAY, BARBARA
HUMPHREY, VANESSA LEONARD, W. DAVIS
MALONE III, EVELYN MAULDIN, HARRIS
MORRISSETTE, SCOTT PHELPS, WILLIAM SEXTON,
W. STANCIL STARNES, MARIETTA URQUHART, DR.
KENNETH VANDERVOORT, JAMES WILSON III, and
GOVERNOR KAY IVEY—in their official capacities as
members of the University of Alabama System
Board of Trustees, and

FINIS ST. JOHN, Chancellor of the University of
Alabama System; STUART R. BELL, President of the
University of Alabama; MATTHEW FAJACK, Vice
President for Finance and Operations at the
University; CHERYL MOWDY, Assistant Vice
President for Finance and Operations; DUANE
LAMB, Associate Vice President for Facilities and
Grounds; DONNA MCCRAY, Senior Director of
Facilities Operations and Grounds Use Permits; in
their official and individual capacities,

Defendants.

Civil Case No.:

VERIFIED COMPLAINT

Jury Trial Demanded

Verified Complaint

Plaintiffs Young Americans for Liberty at University of Alabama, Bryant Gilson, and Matthew McDavid, by and through counsel, and for their Complaint against Defendants, state as follows:

Introduction

1. The campus of a public university is supposed to be a “marketplace of ideas.” But the University of Alabama’s *Facilities and Grounds Use Policy* (the “Policy”) restricts students’ speech even in the generally accessible outdoor areas of campus.

2. At the core of the Policy is a simple yet sweeping categorical rule that requires students to receive official approval from the University five days before engaging in expressive activities on campus.

3. This prior approval requirement directly violates Alabama Act 2019-396 (“Campus Free Speech Act” or “Act”), which guarantees that every student at a public university can “spontaneously and contemporaneously assemble, speak, and distribute literature” in the common areas of campus, ALA. CODE § 16-68-3(a)(3), and the Alabama Constitution’s Free Speech Clause. ALA. CONST. art. I, § 4.

4. The University maintains an exception for students who plan to engage in “spontaneous” expression or distribute literature. But this very narrow exception is limited to expression relating to recent events (the “spontaneous speech exception”).

5. This exception directly violates the Campus Free Speech Act, ALA. CODE § 16-68-3(a)(7), and the Alabama Constitution’s Free Speech Clause, ALA. CONST. art. I, § 4, because it impermissibly favors expression based on its content.

6. The spontaneous speech exception also limits such speech to “defined areas” (*i.e.*, speech zones) that make up less than 1% of campus.

7. Even this exception is not “narrowly tailored to serve a significant institutional interest,” nor does it “provide for ample alternative means of expression.” ALA. CODE § 16-68-3(a)(7). For the same reasons, it also violates the Alabama Constitution’s Free Speech Clause. ALA. CONST. art. I, § 4.

8. These restrictions are preventing Plaintiffs from engaging in their desired speech on campus.

9. The Court should therefore strike down the University’s prior approval requirement, the spontaneous speech exception and related speech zones, and enjoin the University from enforcing these restrictions against Plaintiffs.

Jurisdiction and Venue

10. This is a civil rights action that raises questions of state law under the

Campus Free Speech Act, ALA. CODE § 16-68-1, *et seq.*, and Alabama’s free speech clause, ALA. CONST. art. I, § 4.

11. This Court has authority to award the requested damages and attorneys’ fees pursuant to ALA. CODE § 6-11-1; the requested declaratory relief pursuant to ALA. CODE § 6-6-222; and the requested injunctive relief pursuant to ALA. CODE § 6-6-500 and ALA. CODE § 16-68-7(2).

12. Venue in this circuit is proper under ALA. CODE § 6-3-2(a)(3) and this circuit has jurisdiction under ALA. CODE §§ 12-11-30, 12-11-31 because Defendants reside in Tuscaloosa County and because all of the acts described in this Complaint occurred in Tuscaloosa County.

Plaintiffs

13. Plaintiff Young Americans for Liberty at the University of Alabama (“YAL”) is an unincorporated expressive association made up of University of Alabama students.

14. YAL is a non-partisan, student-led organization, and part of its mission is to be an expressive association at the University.

15. YAL has been a recognized student organization since 2013.

16. YAL is affiliated with Young Americans for Liberty, a non-partisan organization with nearly 500 chapters at public and private universities throughout the country.

17. YAL’s mission is to identify, educate, train, and mobilize students to promote the principles of the natural rights of life, liberty, and property.

18. Plaintiff Bryant Gilson is a senior at the University and the President of YAL.

19. Plaintiff Matthew McDavid is a junior at the University and Vice President of YAL.

20. Plaintiffs desire to express their message on the University 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.

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

Defendants

22. Defendants Mike Brock, Karen Brooks, John England Jr., Ronald Gray, Barbara Humphrey, Vanessa Leonard, W. Davis Malone III, Evelyn Mauldin, Harris Morrisette, Scott Phelps, William Sexton, W. Stancil Starnes, Marietta Urquhart, Dr. Kenneth Vandervoort, James Wilson III, and Governor Kay Ivey are, and were at all times relevant to this Complaint, members of the Board of Trustees of the University of Alabama System (collectively, “Trustee Defendants”), a public university system organized and existing under the laws of Alabama.

23. The Alabama Constitution states that the University “shall be under the management and control of a board of trustees.” ALA. CONST. art. XIV, § 264.

24. By virtue of her position as governor of Alabama, the Governor is a member of the board of trustees. *Id.*; *see also* ALA. CODE § 16-47-1.

25. The Alabama Code gives the Board of Trustees of the University of Alabama the power to “institute, regulate, alter or modify the government of the university, as it may deem advisable” and to “delegate to the faculty of the university, or other officers, such powers and functions in the government of the students and in the administration of the affairs of the university as it may deem proper.” ALA. CODE § 16-47-34.

26. Although Trustee Defendants have final policymaking authority concerning students that attend the University, they have not modified the policies, procedures, and practices governing student expression at the University that are

challenged here to comply with Alabama law.

27. In fact, Trustee Defendants passed a resolution in June 2020 reaffirming pre-existing speech zone policies that directly violate the Campus Free Speech Act. *See* Sec. II.B, *infra*.

28. Each Trustee Defendant is therefore responsible for promulgating and implementing the University policies, procedures, and practices that are depriving Plaintiffs and other students of their constitutional rights and that are challenged in this suit.

29. Trustee Defendants are sued in their official capacities.

30. Defendant Finis St. John IV is, and was at all times relevant to this Complaint, the Chancellor of the University of Alabama System. Ex. 1. The Board of Trustees has delegated to Defendant St. John IV the power to “be the chief executive officer of the University System and . . . exercise such executive powers as are necessary for its appropriate governance. In the exercise of such powers, the Chancellor is delegated full authority to formulate and issue regulations and orders not inconsistent with Board policy.” Ex. 2 at 2.

31. This includes the power not only to “[i]mplement Board policies” but also to “continuously review the administration and effect of these policies and recommend to the Board, for consideration, modifications of policies and new policies at both campus and System levels.” *Id.*

32. Defendant Stuart R. Bell is, and was at all times relevant to this Complaint, the President of the University. The Board of Trustees has delegated to Defendant Bell the power to “be chief executive officer [of the University] and . . . have full authority to administer campus affairs and to formulate and issue regulations and orders not inconsistent with the Bylaws, rules, policies and procedures of the Board and the Chancellor.” *Id.* at 4.

33. This includes “[p]rimary responsibility for all of the factors that contribute

to the quality of academic (teaching, research, and public service) and support programs of the campus. Such factors include the general supervision of all campus faculties, the allocation and utilization of available resources within the campus, and any and all matters related to the welfare of the campus.” *Id.*

34. Thus, Defendants St. John IV and Bell are responsible for promulgating, implementing, and enforcing the University policies, procedures, and practices that are depriving Plaintiffs and other students of their constitutional rights and that are challenged in this suit.

35. Defendants St. John IV and Bell also have the authority to review, approve, or reject the decisions of other University officials and the other non-Trustee Defendants regarding the policies, procedures, and practices challenged in this suit.

36. Defendant Matthew Fajack is, and was at all times relevant to this Complaint, Vice President for Finance and Operations at the University. Ex. 3.

37. Defendant Fajack oversees the Facilities and Grounds Department responsible for enforcing the policies, procedures, and practices challenged in this suit. Ex. 4.

38. Defendant Cheryl Mowdy is, and was at all times relevant to this Complaint, Assistant Vice President for Finance and Operations at the University.

39. Upon information and belief, Defendant Mowdy also oversees the Facilities and Grounds Department responsible for enforcing the policies, procedures, and practices challenged in this suit.

40. Defendant Mowdy signed the Facilities and Ground Use Policy challenged in this lawsuit.

41. Defendant Duane Lamb is, and was at all times relevant to this Complaint, Associate Vice President for Facilities and Grounds at the University. Ex. 5.

42. Defendant Lamb oversees the Facilities and Grounds Department responsible for enforcing the policies, procedures, and practices challenged in this

suit. Ex. 4.

43. Defendant Donna McCray is, and was at all times relevant to this Complaint, Senior Director of Facilities Operations and Grounds Use Permits at the University. Ex. 5.

44. Defendant McCray oversees the Facilities and Grounds Department responsible for enforcing the policies, procedures, and practices challenged in this suit. Ex. 4.

45. Upon information and belief, Defendants Fajack, Lamb, and McCray authorized, approved, or implemented the policies, procedures, and practices challenged herein.

46. Defendants St. John IV, Bell, Fajack, Lamb, and McCray are sued in both their individual and official capacities.

Facts

I. The Campus Free Speech Act guarantees all students at public universities in Alabama the right to speak freely in any outdoor area of campus without prior approval.

47. Finding that “[f]reedom of expression is critically important during the education experience of students, and each public institution of higher education should ensure free, robust, and uninhibited debate and deliberation by students,” Alabama passed the Campus Free Speech Act in June 2019, and it became effective July 2020. ALA. CODE § 16-68-1 *et seq.*

48. The Act provides that “the outdoor areas of a public institution of higher education shall be deemed to be a forum for members of the campus community, and the institution shall not create free speech zones or other designated outdoor areas of campus in order to limit or prohibit protected expressive activities.” ALA. CODE § 16-68-3(a)(4).

49. The Act defines “protected expressive activities” broadly: “[s]peech and other conduct protected by the First Amendment to the United States Constitution,

to the extent that the activity is lawful and does not significantly and substantially disrupt the functioning of the institution or materially and substantially disrupt the rights of others to engage in or listen to the expressive activity.” ALA. CODE § 16-68-2(7).

50. Protected expressive activities include: “Communication through any lawful verbal, written, or electronic means; Participating in peaceful assembly; Protesting; Making speeches; Distributing literature; Making comments to the media; Carrying signs or hanging posters; [and] Circulating petitions.” ALA. CODE § 16-68-2(7)(a)–(h).

51. The Act requires that “[o]n or before January 1, 2021,” all public institutions of higher education in the state must have adopted a policy that protects students’ right to engage in “protected expressive activities.” ALA. CODE § 16-68-3(a)(3).

52. The Act requires public universities to protect students’ right to “spontaneously and contemporaneously assemble, speak, and distribute literature.” ALA. CODE § 16-68-3(a)(3).

53. The Act also provides that public universities “may maintain and enforce constitutional time, place, and manner restrictions for outdoor areas of campus only when they are narrowly tailored to serve a significant institutional interest and when the restrictions employ clear, published, content-neutral, and viewpoint-neutral criteria, and provide for ample alternative means of expression.” ALA. CODE § 16-68-3(a)(7).

II. Defendants unlawfully and unconstitutionally suppress student speech.

54. The University’s current *Facilities and Grounds Use Policy* establishes a simple yet sweeping categorical rule: before students engage in expressive activity on campus—even outdoors—they must first receive permission from the University five business days in advance. The University grants exemptions to this rule based on an

expressive activity's content (recent news or events) or its manner (distributing print literature). There is no logic to these exemptions. And it recently quarantined student expression to small speech zones. The prior permission requirement, the exemptions to it, and the speech zones are an affront to the Campus Free Speech Act and the Alabama Constitution.

A. Before the Campus Free Speech Act, Defendants maintained prior permission requirements but no speech zones.

55. The University's former *Facilities and Grounds Use Policy* required students to seek permission in advance before engaging in any expressive activity.

56. The University's former policy maintained no speech zones or areas designated for speech.

B. In June 2020, the Trustee Defendants passed a resolution ignoring the Campus Free Speech Act.

57. In response to and as required by the Campus Free Speech Act, the Trustee Defendants passed a resolution that purports to protect free speech. But the resolution ignores the Act and its substantive requirements.

58. The Trustee Defendants' resolution states that the University System "is committed to free and open inquiry and expression for members of its campus communities Except as limitations on that freedom are appropriate to the functioning of the campuses and permissible under the First Amendment to the Constitution of the United States." Ex. 6 at 1.

59. The Trustee Defendants' resolution also states that "the Board and each of its campuses may reasonably regulate the time, place, and manner of expression in a viewpoint-neutral manner to ensure that [the University System's] interests are protected and that expression does not disrupt the ordinary activities of the institution." Ex. 6 at 1–2.

60. The Trustee Defendants' resolution ends with the assertion "that the Board of Trustees of the University of Alabama will continue to exercise its broad power,

granted by the Constitution of Alabama, to manage and control the institution's activities, affairs, operations, business, and property." Ex. 6 at 2.

61. The Trustee Defendants' resolution does not prohibit speech zones or protect students' right to "spontaneously and contemporaneously assemble, speak, and distribute literature," as the Act requires. ALA. CODE § 16-68-3(a)(3).

62. The Trustee Defendants' resolution does not change any pre-existing policies, procedures, or practices at the University to comply with the Act.

63. In fact, the resolution does not even mention the Act.

C. In July 2020, Defendants retained their prior permission requirement and *added* the prohibited speech zones to their Policy.

64. On July 1, 2020, shortly after Trustee Defendants passed their resolution, the University updated its *Facilities and Ground Use Policy*.

65. Instead of removing the prior permission requirements as the Act requires, Defendants retained them.

66. Although Defendants exempt from this prior permission requirement any type of speech prompted by news within the last two days, they restrict this expression to seven speech zones on campus.

67. To summarize, in response to an Act prohibiting prior permission requirements and speech zones, the University reaffirmed its prior permission requirements and *added* speech zones.

1. Defendants' Policy requires students to obtain approval five business days in advance before speaking and allows officials unbridled discretion to withhold approval.

68. Under Defendants' current Policy, the general rule is that students must receive prior approval from the University before engaging in expressive activities anywhere on campus.

69. Section B of Defendants' Policy explicitly states that "reservations must be made for activities that make use of space under the control of the University," even

“including University sidewalks.” Ex. 7 at 2.

70. Defendants’ Policy nowhere defines “expressive activities.”

71. Thus, on its face, the prior approval requirement encompasses any student speech—from one student speaking alone to one hundred students gathered for a protest.

72. To make a reservation, students must submit a “Grounds Use Permit Form,” which requires students to disclose, among other things, the “campus grounds requested,” “number of persons expected to attend,” “date of use,” “time,” and the “purpose” of the activity. Ex. 7 at 5 (Sec. E.2); Ex. 8.

73. Students must submit the form a minimum of five University business days ahead of the event to be considered for approval. Ex. 7 at 5 (Sec. E.3).

74. The Policy places no limitations on Defendants’ discretion to grant or deny the permit.

75. Defendants also have unbridled discretion to “specify the boundaries of the area to be used, the date for which the use is approved, the time at which the reservation for the use expires, and any special provision(s) concerning the use of the space.” *Id.* at 5 (Sec. E.4).

76. Defendants’ Policy states that University officials “will approve an application properly made” so long as there are not “reasonable grounds to believe that” certain conditions are present. *Id.* at 8 (Sec. G).

77. These include broadly-worded conditions like “[t]he proposed date, time, or requested space is unreasonable given the nature of the Event and the impact it would have on University resources” and “[t]he Event would reasonably constitute an immediate and actual danger to the health or safety of University students, faculty, or staff, or to the peace or security of the University that available law enforcement officials could not control with reasonable effort.” *Id.* at 8.

78. Defendants may also deny an event if it “would not comply with the

provisions of Section D.” *Id.* at 8.

79. Section D allows the University to consider whether a student’s desired expressive activity would jeopardize the “well-being of members of the campus community collectively and individually, as well as the educational experience.” *Id.* at 4 (Sec. D.9).

80. This provision does not define “well-being” or “educational experience” or list any factors that University officials must use to implement and enforce these terms.

81. Nor does this provision explain how University officials distinguish between the “well-being of members of the campus community collectively” versus the well-being of community members “individually” or the factors they use to assess either one.

82. Further, this provision requires University officials to consider whether the viewpoint or content of a student’s expressive activity furthers the “educational experience” of the University or whether it serves the “well-being” of the University’s members.

2. The Policy waives the prior permission requirement if the content of student speech relates to recent news or events and students speak in speech zones.

83. Section F.1.b of Defendants’ Policy provides that “[s]pontaneous activities of expression” may be held “without advance approval.” Ex. 7 at 6.

84. Defendants’ Policy does not define “spontaneous” speech as speech that students engage in spontaneously.

85. Rather, Defendants’ Policy defines “spontaneous” speech as speech that is “generally prompted by news or affairs coming into public knowledge less than forty-eight (48) hours prior to the Event.” *Id.* at 6 (Sec. F.1.a).

86. This definition fails to explain what types of expression are “prompted by news or affairs” or what kind of news is important or widespread enough to rise to

“public knowledge,” thus giving University officials unbridled discretion to restrict speech.

87. Worse still, University officials have unfettered discretion because they “may consider any relevant evidence” to determine whether the content of a student’s speech is sufficiently “spontaneous.” *Id.* at 7 (Sec. F.1.e).

88. Defendants even threaten disciplinary action for any student who attempts to “circumvent this policy by claiming to be spontaneous.” *Id.*

89. Further, even if students engage in spontaneous expression, they must remain within one of seven “defined areas” on campus. *Id.* at 6–7 (Sec. F.1.b).

90. The seven “defined areas,” or, more accurately, “speech zones,” make up less than one percent of campus combined. *Id.*; Ex. 9.

91. Defendants’ Policy claims that these areas are not “free speech zones” because “[t]hese areas are designed to further promote activities of expression.” Ex. 7 at 6 n.11 (Sec. F.1.b).

92. Each of these areas, however, represents what the Act defines as a “free speech zone”: an “area on campus of a public institution of higher learning that is designated for the purposes of engaging in a protected expressive activity.” ALA. CODE § 16-68-2(3). Thus, these designated areas function and qualify under the Act as prohibited speech zones.

93. These speech zones for specific content also skew the discourse on campus toward emergent and well-covered news topics in a manner directly contrary to the University’s purpose to facilitate discourse on a wide variety of topics from diverse perspectives.

94. For example, a student could talk about gun control only if there was a recent shooting or other relevant news story. And even then, the student could talk only in one of the speech zones.

95. On the other hand, if a student wants to talk about a shooting that the

University does not deem “newsworthy,” Defendants could deny that student’s ability to speak by subjecting it to their prior permission requirement.

96. The carveout for “spontaneous expression” therefore does not encourage discourse from a variety of viewpoints on issues of public importance, but instead skews speech on campus toward attention-grabbing news headlines.

97. In addition, this carveout for “spontaneous expression” discourages students from speaking, as they must guess in advance—on pain of punishment—whether University officials will later deem their speech to be sufficiently newsworthy or related to a sufficiently recent news item to qualify for this exemption.

3. The Policy also exempts literature distribution, but still prohibits all other manners and content of speech.

98. The Policy does not require students to receive prior approval before distributing literature, even though handing out pamphlets often involves engaging in verbal communication. Ex. 7 at 7 (Sec. F.2.a).

99. Therefore, under the Policy, a student may hand out pamphlets about gun control without receiving advanced permission from the University.

100. But the student may not hand out a pamphlet to another student and then discuss that pamphlet with the student without receiving Defendants’ permission five days in advance.

101. Nor may a student hold a sign showing the same information as the pamphlet without the same advance permission.

III. The Policy currently is preventing Plaintiffs from speaking.

102. Plaintiffs desire to speak about a number of topics while on campus.

103. For example, Plaintiffs desire to promote free speech as a fundamental constitutional right and to exercise that right by handing out pamphlets and holding up signs, even though some increasingly criticize free speech as “dangerous” and “biased” against certain groups.

104. Plaintiffs also want to talk about important issues of public policy like gun control. For example, in the Fall of 2018, YAL hosted a “Four Corners” debate during which four speakers from different sides of the political spectrum discussed the impact of gun control legislation on local communities.

105. Plaintiffs desire to express themselves on gun control in a similar manner in the common outdoor areas of campus. For example, Plaintiffs desire to stand in the outdoor areas of campus and hold up signs saying that gun control laws and gun-free zones do not stop criminals.

106. Plaintiffs also want to talk in a similar manner about important issues of public policy like the powers of the federal government. In particular, Plaintiffs want to discuss how the size of government bureaucracy relates to other issues like federalism and fiscal responsibility.

107. Plaintiffs also desire to recruit members for their organization by gathering and walking around campus with signs promoting Young Americans for Liberty as well as the previously mentioned causes.

108. Plaintiffs desire to engage in expressive activities on these topics, as well as many others, throughout various open, generally accessible outdoor areas of campus, and to do so spontaneously without prior permission from the University.

109. Defendants’ prior approval requirement and speech zones provision prevent Plaintiffs from engaging in expressive activities in the manner of their choosing even on property that the state legislature has declared to be open to students as a public forum.

110. Plaintiffs credibly fear that Defendants will discipline or punish them if they violate the Policy. Section K of Defendants’ Policy explicitly states that “[p]ersons who violate these guidelines may be subject to disciplinary action according to the Code of Student Conduct,” which can include anything from a written warning to expulsion. Ex. 7 at 11; Ex. 10 at 12–13 (art. V, Sec. D.1).

111. Section K also states that University affiliates may be held responsible as a group for violating the Policy. For instance, “[a] University affiliate who invites a non-University individual or group onto campus for an Event may be held responsible for that individual or group’s compliance with this and other University policies.” Ex. 7 at 11.

112. University affiliates include “students and registered student organizations.” *Id.* at 2 & n.2 (Sec. A).

113. According to Defendants’ *Code of Student Conduct*, disciplinary action for University affiliates or other student organizations can include a written warning up to loss of official recognition. Ex. 10 at 13–14 (art. V, Sec. D.2).

114. Because they fear being disciplined both individually and as an organization, Plaintiffs have refrained from engaging in their desired expressive activity as described above.

115. As a result of this self-censorship, Plaintiffs have not been able to recruit as effectively.

116. This has resulted in lower attendance and less visibility for their organization.

117. This has also led to fewer donations and less funding for their organization.

Allegations of Law

118. At all times relevant to this Complaint, each and all of the acts and policies alleged herein were attributed to the Defendants who acted under color of a statute, regulation, custom, or usage of the State of Alabama (*i.e.*, under color of state law and authority).

119. Defendants knew or should have known that by preventing individual students from spontaneously speaking and gathering in the outdoor areas of campus, they are violating the statutory and constitutional rights of all University of Alabama students, including Mr. Gilson and Mr. McDavid and Young Americans for Liberty.

120. The Policy’s categorical reservation requirement, content-based exception, and designated speech zones are all at odds with the Campus Free Speech Act and the Alabama Constitution.

121. The policies and practices that led to the violation of Plaintiffs’ rights remain in full force and effect.

122. Plaintiffs are suffering irreparable harm from Defendants’ Policy and related policies and practices.

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

124. Defendants’ actions and policies, as set forth above, do not serve any legitimate or compelling state interest.

125. Defendants have deprived, and continue to deprive, Plaintiffs of their clearly established rights under Alabama law and the Alabama Constitution, as set forth in the counts below.

126. Unless the policies and conduct of Defendants are enjoined, Plaintiffs will continue to suffer irreparable injury.

127. Plaintiffs are entitled to appropriate relief invalidating Defendants’ challenged policies and related conduct.

**Count I:
The Policy contravenes the Campus Free Speech Act.**

128. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–127 of this Complaint.

129. Defendants’ Policy violates the Campus Free Speech Act in several ways, including by requiring every student who wants to engage in expressive activities on campus to receive prior approval from Defendants, carving out a content-based exception for spontaneous expression, and confining speech to defined areas.

130. The Act states that “students, administrators, faculty, and staff are free . . .

to engage in protected expressive activity in outdoor areas of the campus, and to spontaneously and contemporaneously assemble, speak, and distribute literature.” ALA. CODE § 16-68-3(a)(3).

131. This provision unambiguously prohibits Defendants from requiring prior approval before engaging in expressive activities in outdoor areas on campus.

132. But Sections B and E.3 of Defendants’ Policy categorically require approval five business days in advance for expressive activities, even those held on outdoor areas like sidewalks. Ex. 7 at 2, 5.

133. The Act states that “the public institution of higher education may maintain and enforce constitutional time, place, and manner restrictions for outdoor areas of campus only when they are narrowly tailored to serve a significant institutional interest and when the restrictions employ clear, published, content-neutral, and viewpoint-neutral criteria, and provide for ample alternative means of expression.” ALA. CODE § 16-68-3(a)(7).

134. The Act’s content-neutral requirement clearly and expressly prohibits the University from discriminating against speech based on its content.

135. But Section F.1 of the Policy makes unclear distinctions based on content, exempting speech “generally prompted by news or affairs coming into public knowledge less than forty-eight (48) hours prior to the Event” from the categorical reservation requirement. Ex. 7 at 6.

136. Sections D and G of Defendants’ Policy also allows administrators to deny an application for various unclear reasons that confer unbridled discretion, such as for being “unreasonable,” Sec. G.3, for not serving the University’s “educational experience” or the University members’ “well-being,” Sec. D.9, or if it “would reasonably constitute an immediate and actual danger” based on the viewpoint or content of the student’s desired speech, Sec. G.5. Ex. 7 at 4, 8.

137. The requirement in Section G.5 also allows officials to punish speech based

on an audience's reaction, which is not a viewpoint-neutral or content-neutral reason for regulating speech.

138. The literature distribution exception in Section F.2 of Defendants' Policy also violates the Act. Ex. 7 at 7–8. Allowing students to distribute literature spontaneously but not to engage in other manners of expression spontaneously in the outdoor areas of campus is underinclusive and thus not narrowly tailored to serve a significant institutional interest.

139. Finally, the Act states that “the outdoor areas of a public institution of higher education shall be deemed to be a forum for members of the campus community, and the institution shall not create free speech zones or other designated outdoor areas of campus in order to limit or prohibit protected expressive activities.” Ala. Code § 16-68-3(a)(4).

140. Yet, Section F.1.b of Defendants' Policy confines spontaneous expressive activities to several small designated areas. Ex. 7 at 6; Ex. 9.

**Count II:
The Policy violates Plaintiffs' right to free speech under Article I, Section 4
of the Alabama Constitution.**

141. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–127 of this Complaint.

142. The Alabama Constitution states, “no law shall ever be passed to curtail or restrain the liberty of speech or of the press; and any person may speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that liberty.” ALA. CONST. art. I, § 4.

143. Outdoor areas of campus are, at least for students, designated public fora open for expressive activity. ALA. CODE § 16-68-3(a)(4).

144. Defendants' Policy offends the Alabama Constitution's free speech provision in three ways.

145. First, the Policy's categorical reservation requirement in Sections B and E.3

is an unconstitutional prior restraint on students' expression. Ex. 7 at 2, 5.

146. Defendants' Policy does not clearly define what "expressive activities" means.

147. Defendants' Policy fails to ensure prompt decision-making because it contains no timeframe in which university administrators must rule on a student's request for permission to speak.

148. Defendants' Policy's guidelines for reviewing applications are not narrow, objective, or definite, and therefore allow for viewpoint-based and content-based discrimination.

149. For example, Defendants' Policy allows officials to deny an application to speak if "[t]he proposed date, time, or requested space is unreasonable given the nature of the Event and the impact it would have on University resources" or if the speech would not serve the University's "educational experience" or the University members' "well-being." Ex. 7 at 4 (Sec. D.9), 8 (Secs. G.3, G.7).

150. University officials have wide discretion to determine what is "unreasonable" or what "would reasonably constitute an immediate and actual danger" based on the viewpoint or content of a student's desired speech.

151. Defendants' Policy also allows officials to deny an application when an official thinks that the speech "would reasonably constitute an immediate and actual danger to the health or safety of University students, faculty, or staff, or to the peace or security of the University that available law enforcement officials could not control with reasonable effort." *Id.* at 8 (Sec. G.5).

152. This allows officials to punish speech based on an audience's reaction, which is not a viewpoint-neutral or content-neutral reason for regulating speech.

153. Second, the Policy's spontaneous speech exception in section F.1 is an unjustified content-based regulation of speech. *Id.* at 6.

154. Content-based regulations are constitutional only if they are the least

restrictive means to advancing a compelling state interest.

155. There is no compelling interest served by treating speech triggered by recent news differently from other speech. Even still, Defendants' Policy is not the least restrictive means because it swallows too much speech by confining even spontaneous expression to designated areas.

156. Similarly, treating literature distribution more favorably than other types of speech does not serve a compelling interest and is not the least restrictive means of serving any such interest.

157. Even if the five-business-day reservation requirement were content-neutral (which it is not), it still fails intermediate scrutiny because it is not narrowly tailored to serve a significant governmental interest and does not leave open ample alternative channels of communication.

158. Treating other types of expression less favorably than literature distribution in Section F.2 also fails to serve any significant government interest and is not narrowly tailored to that interest. *Id.* at 6–7.

Prayer for Relief

Wherefore, Plaintiffs respectfully request that this Court enter judgment against Defendants and grant Plaintiffs the following relief:

- A. A declaratory judgment that the prior approval requirement, spontaneous expression exception, speech zones, and associated policies and practices violate Plaintiffs' rights under the Campus Free Speech Act and Article I, Section 4 of the Alabama Constitution;
- B. A preliminary and permanent injunction prohibiting Defendants, their agents, officials, servants, employees, and any other persons acting on their behalf from enforcing the prior approval requirement, spontaneous expression exception, speech zones, and associated policies and practices challenged in this Complaint;

- C. Compensatory and nominal damages for the violation of Plaintiffs' statutory and constitutional rights from the Defendants sued in their individual capacities;
- D. Plaintiffs' reasonable attorneys' fees, costs, and other costs and disbursements in this action; and
- E. All other further relief to which Plaintiffs may be entitled.

Respectfully submitted on the 20th day of May, 2021,

s/ W. Brent Woodall

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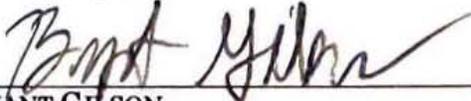
**Pro hac vice applications forthcoming.*

Counsel for Plaintiffs

DECLARATION UNDER PENALTY OF PERJURY

I, BRYANT GILSON, a citizen of the United States and a resident of the State of Alabama, hereby declare under penalty of perjury pursuant to ____ that the foregoing is true and correct to the best of my knowledge.

Executed this 20th day of May, 2021, at Birmingham, Alabama.

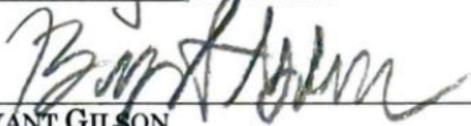


BRYANT GILSON

DECLARATION UNDER PENALTY OF PERJURY

I, BRYANT GILSON, a citizen of the United States and a resident of the State of Alabama, hereby declare under penalty of perjury pursuant to ____ that the foregoing is true and correct to the best of my knowledge.

Executed this 20th day of May, 2021, at Birmingham, Alabama.



BRYANT GILSON
PRESIDENT
YOUNG AMERICANS FOR LIBERTY AT UA

DECLARATION UNDER PENALTY OF PERJURY

I, MATTHEW MCDAVID, a citizen of the United States and a resident of the State of Alabama, hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 20th day of May, 2021, at Tuscaloosa, Alabama.


MATTHEW MCDAVID