

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

**UNIVERSITY OF CINCINNATI CHAPTER
OF YOUNG AMERICANS FOR LIBERTY,**

and

CHRISTOPHER MORBITZER,

Plaintiffs,

v.

UNIVERSITY OF CINCINNATI,

and

**GREGORY H. WILLIAMS, in his official
capacity as President, University of Cincinnati,**

and

**CORINN SHEMAK, in her official capacity as
Program Director, Conference & Event Services,
University of Cincinnati,**

and

**CATHY KRUMPELBECK, in her official
capacity as Public Safety Special Events
Coordinator, University of Cincinnati,**

and

**MICHAEL CURETON, in his official capacity
as Chief of Police, Director of Public Safety,
University of Cincinnati,**

and

Case No. 1:12-CV-155

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Judge _____

Magistrate Judge _____

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VERIFIED COMPLAINT

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JOHN DOE, in his official and individual capacity,	:
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	:
Defendants.	:

Now come Plaintiffs, UNIVERSITY OF CINCINNATI CHAPTER OF YOUNG AMERICANS FOR LIBERTY (“UC YAL”), and CHRISTOPHER MORBITZER (“Mr. Morbitzer”) (collectively, the “Plaintiffs”), and for their Complaint against the UNIVERSITY OF CINCINNATI (the “University”), GREGORY H. WILLIAMS (“Mr. Williams”), CORINN SHEMAK (“Ms. Shemak”), CATHY KRUMPELBECK (“Ms. Krumpelbeck”), MICHAEL CURETON (“Mr. Cureton”), and JOHN DOE (collectively, the “Defendants”), allege as follows:

INTRODUCTION

1. This is an action for declaratory judgment, temporary restraining order, preliminary and permanent injunction, and nominal damages under 42 U.S.C. §1983 arising from the unconstitutional policies and practices of Defendants. Due to Defendants’ policies, practices and custom, as well as certain conduct by one or more Defendant, Plaintiffs have suffered and will continue to suffer irreparable harm to their rights under the First Amendment to the United States Constitution and the Fourteenth Amendment to the United States Constitution. The harm may only be remedied by a ruling from this Court.

2. By maintaining, implementing and enforcing vague policies that, among other things, (i) restrict and prohibit students from engaging in expressive activity on the vast majority of the University of Cincinnati campus, (ii) restrict and prohibit

spontaneous student speech in response to recent or still-unfolding events, (iii) vest unfettered discretion in university administrators to restrict student speech, and (iv) threaten students with disciplinary or criminal charges for violation of such policies, Defendants have impeded and will continue to unconstitutionally impede Plaintiffs in their efforts to collect signatures for petitions for a state ballot initiative and advocate for its passage. Such expressive activity is a core concern of the First Amendment.

3. Additionally, Plaintiffs desire to engage in other activities consistent with the purpose and goals of the organization and, in so doing, to engage in activities protected by the First Amendment in and about the University of Cincinnati campus without being subjected to the threat of enforcement or the actual enforcement of a policy, practice or custom that fails to comply with the requirements of the United States Constitution.

4. As a result of the policy, practice and custom of the Defendants, as well as certain conduct by one or more Defendant, Plaintiffs have suffered and will continue to suffer irreparable harm unless the Defendants are immediately enjoined from restricting the Plaintiffs' (and others') protected speech in this manner.

PARTIES

5. Plaintiff University of Cincinnati Chapter of Young Americans for Liberty (“UC YAL”) is the local chapter of the national group Young Americans for Liberty, and is an unincorporated association of students at the University of Cincinnati. UC YAL is an officially recognized student organization at the University of Cincinnati. It consists solely of students at the University of Cincinnati and a faculty advisor. UC YAL seeks to

recruit, train, educate, and mobilize students on the ideals of liberty and the United States Constitution. UC YAL brings this action on behalf of itself and its members and supporters.

6. One of the activities in which UC YAL is involved includes efforts to advocate and advance the initiative petition process by gathering signatures to place freedom-oriented ballot initiatives before Ohio voters. At the present time and in support of this effort, UC YAL seeks to gather signatures on the University campus for the Ohio Workplace Freedom Amendment, for which the deadline to submit signatures is July 9, 2012, if it is to appear on the November 2012 ballot, or approximately the same date in 2013 if it is to appear on the November 2013 ballot. UC YAL anticipates working on similar ballot initiatives in the future, including those related to tax limitations and school choice.

7. Plaintiff Christopher Morbitzer is a student at the University of Cincinnati and President of UC YAL.

8. Defendant University of Cincinnati is a public university located in Cincinnati, Ohio. It is part of the university system of Ohio and is a “state university” organized pursuant to Section 3361.01 *et seq.* of the Ohio Revised Code.

9. Defendant Gregory H. Williams is, and has been at all times relevant to the facts at issue in this case, the President of the University of Cincinnati. As President of the University of Cincinnati, Mr. Williams is the university’s chief administrative and executive officer.

10. Pursuant to Ohio Administrative Code 3361:10-5-01(J), as President of the University of Cincinnati, Mr. Williams “shall have the authority to adopt necessary and

reasonable policies and procedures regarding the use of the facilities of the university, which amplify the university rules, and Ohio and federal law. [He] shall also have the authority to amend or rescind such policies and procedures.”

11. Pursuant to Ohio Administrative Code 3361:10-5-01(O), as President of the University of Cincinnati, Mr. Williams “shall have the authority to: (1) Adopt amendments to any university rule which: (a) Would clarify or correct the language of the rule but would not constitute a substantive change; or (b) Would conform the rule to applicable laws or regulations.”

12. Pursuant to Ohio Administrative Code 3361:10-1-09(B)(2)(a), as President of the University of Cincinnati, Mr. Williams “may amend any rule of the university . . . which . . . would conform the rule to applicable laws or regulations.”

13. Defendant Corinn Shemak is, and has been at all times relevant to the facts at issue in this case, the Program Director of Conference & Event Services at the University of Cincinnati. Based upon information and belief, Defendant Corinn Shemak, as part of her official duties and responsibilities with the University of Cincinnati, implements or enforces the unconstitutional restrictions accomplished through the University’s policies and practices (as described herein).

14. Defendant Cathy Krumpelbeck is, and has been at all times relevant to the facts at issue in this case, the Public Safety Special Events Coordinator at the University of Cincinnati. Based upon information and belief, Defendant Cathy Krumpelbeck, as part of her official duties and responsibilities with the University of Cincinnati, implements or enforces the unconstitutional restrictions accomplished through the University’s policies and practices (as described herein).

15. Defendant Michael Cureton is, and has been at all times relevant to the facts at issue in this case, the Director of Public Safety and Chief of Police at the University of Cincinnati Department of Public Safety. Based upon information and belief, Defendant Michael Cureton, as part of his official duties and responsibilities with the University of Cincinnati, implements or enforces the unconstitutional restrictions accomplished through the University's policies and practices (as described herein).

16. Defendant John Doe is a University of Cincinnati official or employee who had the authority to – and in fact did – deny Plaintiffs' attempted to engage in expressive activities delineated in this Complaint. Defendant John Doe's identity is unknown at this time, and he or she is named in his/her official and individual capacity. Based upon information and belief, one of the named Defendants may be Defendant John Doe.

17. All actions by the Defendants described herein were undertaken under color of state law which caused the deprivation of Plaintiffs' rights protected by the United States Constitution.

JURISDICTION AND VENUE

18. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331, as this action arises under the First and Fourteenth Amendments to the United States Constitution; under 28 U.S.C. § 1343(a)(3), in that it is brought to redress deprivations, under color of state law, of rights, privileges, and immunities secured by the United States Constitution; under 28 U.S.C. § 1343(a)(4), in that it seeks to recover damages and secure equitable relief under an Act of Congress, specifically, 42 U.S.C. §

1983, which provides a cause of action for the protection of civil and constitutional rights; under 28 U.S.C. § 2201(a), to secure declaratory relief; under 28 U.S.C. § 2202, to secure preliminary and injunctive relief and damages; and under 42 U.S.C. § 1988, to award attorneys fees.

19. Venue is proper within this judicial district and division pursuant to 28 U.S.C. § 1391(b) and Local Rule 82.1, as (i) the Defendants are situated within this judicial district and division; and (ii) all of the claims asserted by Plaintiffs arose within this judicial district and division.

FACTUAL ALLEGATIONS

The University's Policy

20. The University of Cincinnati has an enrollment of over 41,000 students, including 3,861 on-campus residents. It has an annual budget of \$1.05 billion.

21. In Ohio Administrative Code 3361:10-17-01, the board of trustees of the University of Cincinnati declared that:

(A) The university of Cincinnati, a public institution dedicated to providing an environment conducive to teaching, learning, research, and a continuing search for truth, will not take a position on any matter of political or public controversy.

(B) Any individual member or group of members of the university community, like any other citizen or group of citizens, is free to debate and take a position on any matter of public controversy. But, since the collective reputation of the university cannot be abrogated by an individual or group as a means of supporting his/her or its position, any such activity must be taken in a way to make clear that it is not being carried on by or in the name of the university.

22. Thus, pursuant to the declaration of the board of trustees of the University of Cincinnati, the campus of the University of Cincinnati is dedicated to “providing an environment conducive to teaching, learning, research, and a continuing search for truth.”

23. However, despite making the lofty declaration that “[a]ny individual member or group of members of the university community, like any other citizen or group of citizens, is free to debate and take a position on any matter of public controversy,” the University of Cincinnati, through the actions of the Defendants, has adopted and regularly enforces a policy, practice and custom that does not provide or allow the university campus to be used as an “environment conducive to teaching, learning, research, and a continuing search for truth.”

24. Despite making the declaration that “[a]ny individual member or group of members of the university community, like any other citizen or group of citizens, is free to debate and take a position on any matter of public controversy,” the University of Cincinnati, through the actions of the Defendants, has adopted and regularly enforces a policy, practice and custom that severely restricts and burdens the free speech rights of individual students or groups of students, including the free speech rights of the Plaintiffs.

25. The University of Cincinnati has a published policy for scheduling use of campus facilities and spaces for expressive activities. The Use of Facilities Policy Manual (the “Policy Manual”) is available at <http://www.uc.edu/content/dam/common/docs/policies/UseFacilitiesManual.pdf>. A true and accurate copy of the Policy Manual is attached as Exhibit A.

26. The Policy Manual states that:

Demonstrations, Picketing and Rallies

Groups planning a demonstration, picket or rally should contact the Campus Scheduling Office or the appropriate scheduling office to familiarize themselves with University policies governing the activity. Demonstrations, picketing or rallies must be scheduled in the appropriate scheduling office and may only take place on the northwest corner of McMicken Commons. Anyone requesting to demonstrate, picket or rally must give prior notice of ten (10) working days to the University Police. Such activities are not permitted inside any campus building. Bonfires require additional clearance from the scheduling office, the Department of Facilities Management, the Department of Public Safety, and the Cincinnati Fire Department.

(see Exhibit A, Policy Manual, at 15). The Uptown West Campus Map shows this area of McMicken Commons. It is indicated by the green shaded area (see Exhibit B, Uptown West Campus Map, modified with color).

27. The terms “demonstration,” “picket,” and “rally” are not defined in the Policy Manual, and no examples are given of what activities any of these terms encompass or exclude.

28. Thus, the failure of the Policy Manual to clearly define the terms “demonstration,” “picket,” or “rally” means that a person of ordinary intelligence is not afforded the ability to readily identify the applicable standard for inclusion and exclusion within the requirements of the foregoing policy.

29. Furthermore, the failure of the Policy Manual to provide clear standards to guide the discretion of the public officials of the University of Cincinnati as to what activities are included within the terms “demonstration,” “picket,” or “rally” results in enabling such public officials to administer the foregoing policy on the basis of impermissible factors or through arbitrary application.

30. Because the foregoing policy functions as a licensing scheme with which students must comply prior to engaging in the exercise of their free speech rights

(notwithstanding that the University of Cincinnati, by the board of trustees' own declaration, is dedicated "to providing an environment conducive to teaching, learning, research, and a continuing search for truth"), the foregoing policy constitutes a prior restraint on speech, resulting in censorship.

31. Because the foregoing policy requires ten working days' advance notice before any planned "demonstration," "picket," or "rally," a student request for use of the "Free Speech Area," *i.e.*, the northwest corner of McMicken Commons, must be at least fourteen calendar days in advance due to intervening weekends not being counted toward the requirement (and even longer if holidays are within the notification period).

32. Because the foregoing policy requires ten working days' advance notice before any planned "demonstration," "picket," or "rally," the policy unconstitutionally prevents spontaneous student expressive activity in response to recent or still-unfolding events, as well as events of a time-sensitive or continuous and ongoing nature.

33. On December 8, 2008, the Foundation for Individual Rights in Education ("FIRE"), a non-partisan, non-profit 501(c)(3) educational foundation dedicated to defending and sustaining freedom of speech at our nation's colleges and universities, wrote a letter to the then-president of the University of Cincinnati expressing its concern about the Free Speech Area, the notice requirement, and the threat made in the Policy Manual that "anyone violating this policy may be charged with trespassing" (attached as Exhibit C). FIRE argued that the University's restrictions were unconstitutionally vague and unreasonably restricted student speech in violation of the First Amendment.

34. On December 22, 2008, the general counsel of the University of Cincinnati responded to FIRE's comments with a letter defending the Free Speech Area

(attached as Exhibit D), asserting that the foregoing policy of the University of Cincinnati meets constitutional standards.

The Fora at Issue

35. The “northwest corner of McMicken Commons” referenced in the foregoing policy of the University of Cincinnati on “Demonstrations, Picketing and Rallies” is demarcated in the Policy Manual and referred to as the “Free Speech Area”:

Free Speech Area

The northwest section (see diagram) of McMicken Commons immediately east of McMicken Hall on the West Campus is designated as the main free speech area. Individuals or groups wanting to use these areas must schedule the activity in the Campus Scheduling Office. Anyone violating this policy may be charged with trespassing. No more than one musical or speaking activity is permitted at the same time.

(see Exhibit A, Policy Manual, at 14). The Free Speech Area is the area immediately east of McMicken Hall. It is indicated by the green shaded area on Exhibit B, the Uptown West Campus Map). Exhibit E is a photograph of McMicken Commons modified to show the Free Speech Area colored red.

36. At its longest points, Plaintiffs estimate that the Free Speech Area is 82 feet east-west and 124 feet north-south. The Free Speech Area is approximately 10,000 square feet. The West Campus of the University is 137 acres, or approximately 8,506,833 square feet. The Free Speech Area is therefore approximately 0.1% of the total area of West Campus.

37. The West Campus area has many suitable open areas and sidewalks beyond the Free Speech Area where student expressive activity, including petition gathering and political discussion, will not interfere with or disturb access to UC

buildings or sidewalks, impede vehicular or pedestrian traffic, or in any way substantially disrupt the operations of campus or the University's educational functions.

The Expressive Conduct at Issue

38. On February 9, 2012, the Ohio Ballot Board approved language for a ballot measure proposing an amendment to the Ohio Constitution titled "To guarantee the freedom of Ohioans to choose whether to participate in a labor organization as a condition of employment" ("the Ohio Workplace Freedom Amendment").

39. The approval by the Ohio Ballot Board thus cleared the way for signatures to be gathered to place the Ohio Workplace Freedom Amendment on the ballot to be voted on by the voters of Ohio.

40. On Monday, February 13, 2012, backers of the Ohio Workplace Freedom Amendment finalized the petition and made it available for download and circulation.

41. Plaintiffs desire to gather signatures to place the Ohio Workplace Freedom Amendment on the ballot, and in the process, to discuss the initiative with their classmates on campus and to advocate for the passage of the initiative itself. Doing so would be consistent with the University of Cincinnati's designation of its campus as an "environment conducive to teaching, learning, research, and a continuing search for truth."

42. To qualify for placement on the November 2012 ballot, supporters of the Ohio Workplace Freedom Amendment need to obtain over 385,000 valid signatures on petitions no later than July 9, 2012 (120 days prior to the November 2012 elections).

Accordingly, at this time, there are less than five months left to gather these signatures from registered Ohio voters.

43. Due to invalid signatures that inevitably occur during an initiative petition effort (due to various reasons), significantly more than 385,000 signatures will be necessary in order to meet the requisite number of valid signatures. By way of example, the recently successful Ohio Health Care Freedom Amendment that passed in November 2011 was also put on the ballot via initiative petition; supporters of that initiative submitted 546,074 signatures to the Ohio Secretary of State of which only 426,998 signatures were verified as valid.

44. Given the deadline for the petition, on each occasion when Plaintiffs are unlawfully and unconstitutionally prevented from collecting signatures and advocating for the passage of the initiative, not only does a violation of their constitutional rights take place, but the likelihood that the Ohio Workplace Freedom Amendment will be on the November 2012 ballot is reduced.

45. The notice requirement of ten working days means that each scheduled instance of gathering to collect signatures on the Free Speech Area faces a potential delay of up to fourteen calendar days (or more if there are intervening holidays during the notification period).

46. Furthermore, the notice requirement prohibits spontaneous speech in response to the actions of the Ballot Board, which substantially burdens the Plaintiffs' First Amendment rights and leads to a delay in petition gathering and advocacy for the issue. The requirement continues to prohibit spontaneous speech, preventing UC YAL

from gathering signatures when a conversation evokes the interest of a fellow student who may wish to sign a petition.

47. Limiting petition gathering and advocacy by preventing students from using the overwhelming majority of campus grounds for expressive activity substantially burdens the Plaintiffs' First Amendment rights and significantly restricts the number of signatures that may be gathered to place the Ohio Workplace Freedom Amendment on the November 2012 ballot.

48. In reaction to the news of the Ballot Board's approval to begin collecting signatures, Mr. Morbitzer immediately sent an email on February 9, 2012, to the relevant authorities at the University of Cincinnati (via the email address "campusscheduling@uc.edu") requesting permission to collect signatures and asking for clarification of the University's policies classifying expressive activity as a "demonstration, picket, or rally" and therefore limited to the Free Speech Area (attached as Exhibit F).

49. At 8:05 a.m. on the next day, February 10, 2012, Mr. Morbitzer received an unsigned email response from "Conference & Event Services" via the email address "campusscheduling@uc.edu." The response failed to expressly clarify the University policy regarding the definitions of a "demonstration, picket, or rally"; told Mr. Morbitzer to "use the online form to request use of McMicken Commons Northwest Corner"; and threatened police action if the Plaintiffs were seen merely "walk[ing] around campus" engaging in expressive activity outside of the Free Speech Area (attached as Exhibit G).

50. The response from “Conference & Event Services” to Mr. Morbitzer on February 10, 2012, was sent by Defendant John Doe who, as noted above, is believed to be one of the named Defendants.

51. The response from “Conference & Event Services” to Mr. Morbitzer on February 10, 2012, implied that Plaintiffs’ desired expressive activity, *i.e.*, petition circulating, was within the scope of the term “demonstration, picket, or rally.”

52. In response, Mr. Morbitzer requested permission via the online form on February 10, 2012. However, the form failed to provide Mr. Morbitzer and UC YAL with the option of requesting permission to engage in their desired expressive activity on campus immediately.

53. Contrary to the University’s Policy Manual, which requires “prior notice of ten (10) working days” before engaging in expressive activity deemed a “demonstration, picket, or rally” in the Free Speech Area, the online form stated that “[o]utdoor spaces must be requested at least 15 days in advance of the event” (attached as Exhibit H). No explanation of this discrepancy is given in the Policy Manual.

54. In an email response from “Conference & Event Services” on Friday, February 10 (a copy of which is attached as Exhibit I), Mr. Morbitzer’s request was approved only to the extent Plaintiffs remained at all times in the Free Speech Area:

Hello Christopher,

Please see your event confirmation below. You have been assigned the North-West corner of McMicken Commons, however you are not permitted to walk around.

Also note, that your event was approved despite our 5 Day Business Policy. In the future, this will not be allowed. Therefore, make sure you put your event request in 5 Business Days before your desired date.

Review the Event Guide and Policies link below for important policies and processes involved with your scheduled space.

<http://www.uc.edu/content/dam/uc/eventservices/docs/Confirmation%20Notice.Policy%20and%20Process.pdf>

If you have any questions please contact Conference & Event Services at 556-2442.

Thank you,
Conference & Event Services

55. The approval restricted Plaintiffs' expressive activity to the Free Speech Area ("the North-West corner of McMicken Commons") and once again noted Plaintiffs "are not permitted to walk around." This response indicated that Defendants construed the terms "demonstration, picket, or rally" to include expressive activity like the signature gathering, advocacy, and discussion in which Plaintiffs sought to engage.

56. Based on information and belief, the e-mail from "Conference & Event Services" was sent by Defendant John Doe, who, as noted above, is believed to be one of the named Defendants.

57. This email response refers to a notification period of five business days, while the Use of Facilities Policy Manual refers to ten working days, and the online form refers to fifteen days. No explanation of this discrepancy is given in the Policy Manual.

58. The requirement of five, ten, or fifteen days notice unreasonably prevents spontaneous expressive activities in response to recent or still-unfolding events, as well as those of a time-sensitive nature. For example, it would have been impossible for University students to gather spontaneously to demonstrate their shock and sadness following the tragic events of September 11, 2011, or their support of the United States'

successful military operation in killing Osama Bin Laden, without violating University policy.

59. Furthermore, the lack of clarity with regard to which of the three notice periods is applicable breeds confusion and uncertainty amongst would-be student speakers, resulting in an impermissible chilling effect on campus and the arbitrary and capricious enforcement of the policy.

60. Plaintiffs desire to engage in expressive activities beyond gathering signatures on behalf of the Ohio Workplace Freedom Amendment. In addition to seeking to gather signatures for this initiative until July of 2012, and possibly July 2013, Plaintiffs have concrete plans to work on future signature-gathering campaigns.

61. On Wednesday, February 15, Plaintiffs – consisting of three members of UC YAL – engaged in signature gathering, advocacy, and discussion in the Free Speech Area as limited by Defendants. Plaintiffs managed to gather only one signature and were only able to interact with six students as a result of the low pedestrian traffic in and adjacent to the Free Speech Area. Plaintiffs witnessed that the overwhelming majority of pedestrian traffic on McMicken Commons going to and coming from the surrounding buildings occurred on sidewalks not adjacent to the Free Speech Area, and thus these students were inaccessible to UC YAL signature gatherers limited to the confines of the Free Speech Area.

62. As a direct and proximate result of the denial by John Doe of their request to immediately gather signatures, to advocate for the Ohio Workplace Freedom Amendment, and to discuss the initiative's merits with their fellow students, Plaintiffs' constitutional rights have been violated and Plaintiffs have suffered injury and damages.

63. The actions of John Doe in denying Plaintiffs' request to immediately gather signatures, to advocate for the Ohio Workplace Freedom Amendment, and to discuss the initiative's merits with their fellow students was the direct and proximate result of the policy, practice and custom of the University of Cincinnati as adopted and implemented by Defendants.

64. As a direct and proximate result of John Doe restricting and confining the Plaintiffs only within the Free Speech Area in order to engage in the initiative petition effort, Plaintiffs' constitutional rights have been violated and Plaintiffs have suffered injury and damages.

65. The actions of John Doe in restricting and confining the Plaintiffs only within the Free Speech Area in order to engage in the initiative petition effort was the direct and proximate result of the policy, practice and custom of the University of Cincinnati as adopted and implemented by one or more of the Defendants.

66. As a direct and proximate result of the policy, practice and custom of the University of Cincinnati as adopted and implemented by one or more of the Defendants, Plaintiffs' constitutional rights have been violated and Plaintiffs have suffered injury and damages.

Defendants' Inconsistent Application of the Policy at Issue

67. As mentioned above, Defendants inconsistently apply the notification period for expressive activities, seemingly confused about whether the required notification period is five, ten, or fifteen days.

68. Defendants have also been inconsistent in how they define an expressive activity as a “demonstration, picket or rally” that is therefore limited to the Free Speech Area only.

69. For example, in October 2011 and the autumn of 2008, Mr. Morbitzer witnessed individuals engaged in voter registration throughout the grounds of West Campus. They were not limited to the Free Speech Area.

70. Similarly, in the spring of 2009, Mr. Morbitzer witnessed individuals gathering signatures throughout the grounds of West Campus for a proposed amendment to the Ohio Constitution to legalize casino gambling. They were not limited to the Free Speech Area.

71. On information and belief, these signature gathering, advocacy, and discussion activities were not classified as a “demonstration, picket, or rally,” while Plaintiffs’ identical activity was so classified and was therefore restricted to the Free Speech Area.

72. Based upon information and belief, officials within the University of Cincinnati were aware of such First Amendment activities freely taking place outside the Free Speech Area, yet no action was taken to confine such activities within the Free Speech Area.

73. In fact, based upon information and belief, officials within the University of Cincinnati actively supported or condoned such First Amendment activities freely taking place outside the Free Speech Area.

74. To the extent officials within the University of Cincinnati actively supported or condoned such First Amendment activities freely taking place outside the

Free Speech Area, the restriction of the Plaintiffs to the Free Speech Area for their initiative petition effort constituted unconstitutional discrimination based upon the content or viewpoint of the speaker.

STATEMENT OF LAW

75. Defendant University of Cincinnati is a state actor. *See Thomson v. Harmony*, 65 F.3d 1314, 1319 (6th Cir. 1995) (“The University of Cincinnati is a state instrumentality”); *Hall v. Medical College of Ohio*, 742 F.2d 299, 303–04 (6th Cir. 1984) (discussing how state universities in Ohio, including University of Cincinnati, are considered “arms of the state”).

76. At all times relevant to the allegations in this Complaint, each and all of the acts alleged herein were attributed to one or more of the Defendants acting under the color, authority, and pretense of state law, statutes, ordinances, regulations, customs, usages, and policies of the University of Cincinnati.

77. Soliciting and gathering signatures on a petition is core political speech protected by the First and Fourteenth Amendments to the Constitution. *Meyer v. Grant*, 486 U.S. 414, 422 n.5, 425 (1988).

78. The First and Fourteenth Amendments extend to campuses of state universities. *Healy v. James*, 408 U.S. 169, 180 (1972).

79. Due process requires that a state enactment be held void for vagueness if the prohibitive terms are not clearly defined such that a person of ordinary intelligence can readily identify the applicable standard for inclusion and exclusion. *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

80. The absence of clear standards guiding the discretion of the public official vested with the authority to enforce the enactment invites abuse by enabling the official to administer the policy on the basis of impermissible factors. *Leonardson v. City of East Lansing*, 896 F.2d 190, 198 (6th Cir. 1990).

81. The vagueness doctrine “requires that the limits the [government] claims are implicit in its law be made explicit by textual incorporation, binding judicial or administrative construction, or well-established practice.” *City of Lakewood v. Plain Dealer Publ’g Co.*, 486 U.S. 750, 770 (1988).

82. A traditional public forum like a park or public sidewalk is subject to reasonable “time, place and manner” restrictions that are narrowly tailored to serve a significant government interest and leave open ample alternative channels of communication. *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45 (1983).

83. A designated public forum is a forum the government intentionally opens to expressive activity to the public at large. *Miller v. City of Cincinnati*, 622 F.3d 524, 534 (6th Cir. 2010). The standards under the First Amendment are the same as a traditional public forum. *Pleasant Grove v. Summum*, 555 U.S. 460, 469–70 (2009).

84. “The campus of a public university, at least for its students, possesses many of the characteristics of a public forum.” *Widmar v. Vincent*, 454 U.S. 263, 267 n.5 (1981).

85. As noted above, the board of trustees of the University of Cincinnati has declared that the university is “dedicated to providing an environment conducive to teaching, learning, research, and a continuing search for truth.”

86. Thus, the campus of the University of Cincinnati (or, at least, areas other than the Free Speech Area) constitute dedicated public fora in which students, including Plaintiffs, are entitled to engage in speech protected under the First Amendment. And some areas of the campus of the University of Cincinnati (including the public sidewalks adjacent to various streets) constitute traditional public fora.

COUNT I

**VIOLATION OF RIGHT TO FREE SPEECH UNDER
THE FIRST AND FOURTEENTH AMENDMENTS
TO THE UNITED STATES CONSTITUTION
(42 U.S.C. § 1983)**

87. Plaintiffs hereby incorporate by reference the allegations in the foregoing paragraphs as if set forth fully herein.

88. The policies and actions of Defendants vest unfettered discretion in the Defendants to restrict constitutionally protected expression.

89. The policies and actions of Defendants are prior restraints and restrictions on speech in campus areas that are commonly considered traditional or designated public fora.

90. The Defendants' purported "time, place and manner" restrictions are unreasonable in light of the purpose of the forum, overly broad, not content-neutral, are not narrowly tailored to serve significant government interests, and do not leave open ample alternative channels of communication.

91. As a proximate result of Defendants' actions, Plaintiffs have been irreparably injured, and will continue in the future to be irreparably injured, in that they

have been and will be deprived of their right to free speech under the First and Fourteenth Amendments to the Constitution.

92. As a direct result of the Defendants' violation of the Plaintiffs' constitutional rights and the continued maintenance of the Use of Facilities Policy, Plaintiffs continue to be prohibited from engaging their fellow students in discussion, advocating on behalf of their political beliefs, and collecting sufficient signatures to successfully place the Ohio Workplace Freedom Amendment on the November 2012 ballot.

93. As a legal consequence of the Defendants' violation of Plaintiffs' First and Fourteenth Amendment rights, as alleged above, Plaintiffs are entitled to injunctive relief and, from John Doe, to recover nominal damages.

COUNT II

**VIOLATION OF THE RIGHT TO DUE PROCESS
UNDER THE FIRST AND FOURTEENTH AMENDMENTS
TO THE UNITED STATES CONSTITUTION
(42 U.S.C. § 1983)**

94. Plaintiffs hereby incorporate by reference the allegations in the foregoing paragraphs as if set forth fully herein.

95. The policies and conduct of Defendants are unconstitutionally vague on their face. They fail to adequately advise, notify, or inform students threatened with disciplinary action and criminal prosecution for violation, and thus have a chilling effect on speech.

96. The Defendants' policy, practice, and custom of limiting the expressive activities on campus it defines as constituting a "demonstration, picket, or rally" to the

Free Speech Area is unconstitutional and violates the First and Fourteenth Amendments to the United States Constitution.

97. The Defendants' policy, practice and custom of allowing its agents or other authorized individuals unbridled discretion in determining which expressive activities constitute a "demonstration, picket, or rally" – and thus are subject to the notification requirement of ten working days and limited to the Free Speech Area – violates Plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution.

98. As a proximate result of Defendants' actions, Plaintiffs have been irreparably injured, and will continue in the future to be irreparably injured, in that they have been and will be deprived of their right to free speech and due process of law under the First and Fourteenth Amendments to the Constitution.

99. As a direct result of the Defendants' violation of the Plaintiffs' constitutional rights, Plaintiffs are at continued risk of being unable to engage their fellow students in discussion, advocate on behalf of their political beliefs, and collect sufficient signatures to successfully place the Ohio Workplace Freedom Amendment on the November 2012 ballot.

100. As a legal consequence of the Defendants' violation of Plaintiffs' First and Fourteenth Amendment rights, as alleged above, Plaintiffs are entitled to injunctive relief and to recover nominal damages.

COUNT III

DECLARATORY JUDGMENT AND INJUNCTION
(28 U.S.C. § 2201, *et seq.*)

101. Plaintiffs hereby incorporate by reference the allegations in the foregoing paragraphs as if set forth fully herein.

102. An actual controversy has arisen and now exists between Plaintiffs and Defendants concerning Plaintiffs' rights under the United States Constitution. A judicial declaration is necessary and appropriate at this time as to Counts I through II above.

103. Plaintiffs desire a judicial determination of their rights against Defendants as they pertain to Plaintiffs' right to speak, assemble, and gather signatures on petitions on the outdoor areas campus of the University of Cincinnati without being subjected to a prior restraint or "time, place, and manner" regulations which are unreasonable, not content neutral, not narrowly tailored to serve a substantial government interest, and do not leave open ample alternative channels of communication.

104. In order to prevent further violation of Plaintiffs' constitutional rights by Defendants, it is appropriate and proper that a declaratory judgment be issued, pursuant to 28 U.S.C. § 2201 and FED. R. CIV. P. 57, declaring unconstitutional the University's policies.

105. Furthermore, pursuant to 28 U.S.C. § 2202 and FED. R. CIV. P. 65, it is appropriate and hereby requested that this Court issue a temporary restraining order and preliminary and permanent injunctions prohibiting the Defendants from enforcing their restrictions on Plaintiffs' expressive activities to the extent they are unconstitutional, in order to prevent the ongoing violation of Plaintiffs' constitutional rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants and that the Court:

- A. Declare that the notice and forum provisions of the University's Use of Facilities Policy Manual described above are unconstitutional on their face because they violate the rights to freedom of speech and due process of law guaranteed under the First and Fourteenth Amendments to the Constitution;
- B. Declare that the notice and forum provisions of the University's Use of Facilities Policy Manual are unconstitutional as applied or threatened to be applied to the activities of Plaintiffs, because they violate Plaintiffs' right to freedom of speech and due process of law guaranteed under the First and Fourteenth Amendments to the Constitution;
- C. Declare that restricting students' expressive activities to the Free Speech Area violates the First and Fourteenth Amendments to the Constitution;
- D. Issue a temporary restraining order, preliminary injunction, and permanent injunction against the Defendants and all agents, administrators, employees, or other persons acting on behalf of the University, from enforcing said policies against Plaintiffs and others who seek to participate in expressive activities both within the Free Speech Area and on sidewalks and outdoor open areas such as those described in this Complaint;
- E. Award nominal damages against Defendant John Doe;

- F. Pursuant to 42 U.S.C. §1988 and other applicable law, award Plaintiffs their costs and expenses incurred in bringing this action, including their reasonable attorneys' fees; and
- G. Grant such other and further relief as the Court deems equitable, just, and proper.

Respectfully submitted,

/s/ Ryan D. Walters

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VERIFICATION

Pursuant to 28 U.S.C. § 1746, I, Christopher Morbitzer, declare the following:

1. I have personal knowledge of the matters alleged in the Complaint.
2. The allegations contained herein are true and accurate.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21st day of February, 2012.



Christopher Morbitzer