



January 4, 2017

Dr. Robin E. Bowen
President, Arkansas Tech University
Office of the President
1509 N. Boulder Ave
Administration Building, Suite 210
Russellville, Arkansas 72801

Sent via U.S. Mail and Electronic Mail (rbowen@atu.edu)

Dear President Bowen:

The Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses. Our website, thefire.org, will give you a more complete sense of our identity and activities.

FIRE is concerned about the threat to free expression presented by Arkansas Tech University's (ATU's) refusal to allow students to engage in expressive activity on campus outside of a small "free speech area." This limitation infringes on students' First Amendment rights, which ATU is legally and morally bound to honor.

The following is our understanding of the facts. Please inform us if you believe we are in error.

On September 20, 2016, approximately five members of the recognized student organization Young Americans for Liberty (YAL) held an outdoor event to raise awareness about campus free speech rights. They intended to engage with other students and gather petition signatures while inviting their peers to write messages on a large, inflated "free speech ball." The YAL members began their event around 11:00 a.m. at Hindsman Tower, an area designated for demonstration and expression in ATU's Student Handbook. There, they inflated the free speech ball and began collecting signatures and speaking with fellow students.

The YAL members remained by the tower for about 30 minutes, and then decided to move to areas of campus with higher foot traffic. They rolled the free speech ball to an outdoor location near Chambers Cafeteria and the Doc Bryan Student Services Center. After approximately 15 minutes, a campus public safety officer approached them and asked if they had permission from Student Services to be in that location. When he learned that they did not, the officer informed the YAL members that they must remain in the "free

speech area” if they wished to continue their expressive activity.¹ The YAL members complied and returned to Hindsman Tower to continue petitioning.

The officer’s actions appear to be consistent with the “Speech and Demonstration Regulations” outlined in ATU’s Student Handbook. The regulations specify that ATU “recognizes and supports the rights of students, employees of all categories, and visitors to speak in public and to demonstrate in a lawful manner *in designated areas of the campus and at designated times.*” (Emphasis added.) The regulations identify one interior location, available for expressive activity for two hours on one day per week, and two outdoor locations, available daily from 8:00 a.m. to midnight. The first designated outdoor location is the West Courtyard of the Doc Bryan Student Services Center, defined as “the entire grass plot located behind the building marquee and includ[ing] the cement stage/platform located in front of the windows on the west side of the building.” Hindsman Tower is the second designated outdoor location, defined to include “all space located under the tower roof and an area of five (5) feet surrounding the brick base in a circular fashion, not to impede walkways or sidewalks.”

Even a cursory inspection of ATU’s main campus map makes clear that the outdoor locations designated for community members to freely “speak in public and to demonstrate” constitute a tiny percentage of the available open space on campus. Limiting expressive activity on campus to small “free speech areas,” which may be far removed from a speaker’s intended audience, cannot be squared with ATU students’ speech rights under the First Amendment. ATU must revise its policies to ensure that students are free to exercise their constitutionally guaranteed rights.

It has long been settled law that the First Amendment is fully binding on public institutions like ATU. *See Widmar v. Vincent*, 454 U.S. 263, 268–69 (1981) (“With respect to persons entitled to be there, our cases leave no doubt that the First Amendment rights of speech and association extend to the campuses of state universities.”); *Healy v. James*, 408 U.S. 169, 180 (1972) (internal citation omitted) (“[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, ‘the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.’”).

A college may establish “reasonable time, place and manner” restrictions on speech and expressive activity. *Ward v. Rock Against Racism*, 491 U.S. 781 (1989). But there is nothing reasonable about isolating ATU community members’ expression to two small areas of campus. Any restrictions on student speech in open, outdoor areas of a public campus like ATU must be viewpoint- and content-neutral, and narrowly tailored to serve a significant government interest, leaving open ample alternative channels for communication. *Id.* at 791. Requiring a small group of students to limit their petitioning—an expressive activity at

¹ FIRE has on file a video of the students’ exchange with the officer, which we are happy to provide to ATU upon request.

the core of First Amendment protection—to the tiny area underneath and within five feet of Hindsman Tower cannot meet these stringent requirements.

Indeed, courts have repeatedly held that similar restrictions on student expression cannot withstand constitutional scrutiny. In *University of Cincinnati Chapter of Young Americans for Liberty v. Williams*, No. 1:12-cv-155, 2012 U.S. Dist. LEXIS 80967, at *29–30 (S.D. Ohio June 12, 2012), a case with facts similar to the present matter, a federal district court enjoined the University of Cincinnati from, *inter alia*, limiting all “demonstrations, picketing, or rallies” to a small “free speech area.” The court rejected the university’s argument that all areas outside the free speech area were limited public forums. Instead, the court held that all open, outside areas of campus such as sidewalks and plazas were, as applied to students, designated public forums—wherein “time, place, and manner” restrictions on speech must be narrowly drawn to serve a compelling government interest—and that the university “has simply offered no explanation of its compelling interest in restricting all demonstrations, rallies, and protests from all but one designated public forum on campus.” *Id.* at *19–25; *see also Roberts v. Haragan*, 346 F. Supp. 2d 853, 861 (N.D. Tex. 2004) (finding that “park areas, sidewalks, streets, or other similar common areas” are public forums for students, and that Texas Tech University’s requirement that students obtain permission before conducting expressive activities outside designated free speech areas was not narrowly tailored to serve the university’s interests).

In *Williams*, the university allowed expressive activity in certain areas of campus outside the free speech area with at least five days’ notice to the school. The court enjoined this notice requirement as well, reasoning that “while the ‘breadth and unprecedented nature of this regulation does not alone render [it] invalid,’ it is indicative of the University’s failure to narrowly tailor the regulation to serve a compelling interest.” *Id.* at *21 (quoting *Watchtower Bible and Tract Soc’y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150, 166 (2002)). Moreover, in asserting a government interest, the court reasoned that “[m]ere speculation that speech would disrupt campus activities is insufficient because ‘undifferentiated fear or apprehension of a disturbance is not enough to overcome the right to freedom of expression on a college campus.’” *Id.* (quoting *Healy*, 408 U.S. at 191).

Here, ATU’s policies regarding demonstration and expressive activity appear even more restrictive than the tiny free speech area and five-day notice requirement enjoined by the *Williams* court. ATU’s “Speech and Demonstration Regulations” allow community members to speak and demonstrate without prior approval only in the designated free speech areas at designated times. While ATU’s registered student organizations (RSOs) may reserve certain designated outdoor event and tabling locations elsewhere on campus,² such reservations must be approved by Campus Life, a department of Student Services, and registered seven business days in advance.³ Such broad restrictions on speech, particularly

² ARKANSAS TECH UNIVERSITY, CAMPUS LIFE, *Event Planning Guide 2016-2017*, at pp. 3–6, available <http://www.atu.edu/rso/docs/EventPlanningGuide.pdf> (last visited Dec. 27, 2016).

³ ARKANSAS TECH UNIVERSITY, CAMPUS LIFE, *Registered Student Organizations Handbook 2016-2017*, at p. 15, available <http://www.atu.edu/rso/docs/RSOHandbook.pdf> (last visited Dec. 27, 2016).

spontaneous speech, are not narrowly tailored to further specific and significant institutional concerns. *See Roberts*, 346 F. Supp. 2d at 870 (holding that Texas Tech’s requirement that students acquire a permit at least two days before engaging in expressive activity outside designated free speech areas “sweeps too broadly in imposing a burden on a substantial amount of expression that does not interfere with any significant interests of the University”).

Due to the prevalence of unconstitutional “free speech zone” policies on college campuses, FIRE’s Stand Up For Speech Litigation Project has coordinated a number of successful First Amendment lawsuits challenging similar policies limiting demonstration and expressive activity to small areas of campus. The vast majority of these cases settled quickly and the defendant institutions revised their policies and paid substantial sums in damages and attorney’s fees, as described below.⁴

- At Modesto Junior College in California, a student was prevented from distributing copies of the U.S. Constitution on September 17, 2013—Constitution Day. FIRE coordinated a lawsuit to vindicate the student’s First Amendment rights, resulting in a settlement in which the college agreed to pay \$50,000 and dismantle its unconstitutional free speech zone policy.
- FIRE coordinated a lawsuit against the University of Hawaii at Hilo on behalf of two students prevented from handing out copies of the Constitution and told to confine their protest against National Security Agency spying to the university’s small, isolated free speech zone. The case settled in December 2014, resulting in policy reform throughout the entire University of Hawaii system and a payment of \$50,000.
- At Citrus College in California in 2013, FIRE helped a student challenge three unconstitutional speech codes, including a free speech zone policy, a burdensome approval process for expressive activity, and a harassment policy. Citrus College ultimately agreed to revise all three policies and paid \$110,000 in damages and attorney’s fees.
- In March 2015, a California State Polytechnic University, Pomona student was stopped from handing out flyers advocating for animal rights. With FIRE’s help, he filed a lawsuit challenging the school’s policies limiting speech and material distribution to a free speech zone and requiring advance registration and approval. The case was settled four months after filing with revision of the challenged policies and an agreement to pay \$35,000 in damages and fees.
- In March 2015, FIRE coordinated a First Amendment lawsuit against Dixie State University in Utah after a student organization was told that its request to stage a “free speech wall” event could be accommodated only in the school’s free speech zone. That

⁴ For more information on these and other Stand Up For Speech cases, please visit our website at <http://www.standupforspeech.com>.

case also settled within months, in September 2015, with revision of the challenged policies and the payment of \$50,000 in damages and fees.

- FIRE assisted a student in challenging several unconstitutional restrictions on free speech at Blinn College in Texas including its policy restricting speech to a tiny free speech zone. The Board of Trustees agreed to settle the case in May 2016, revise its policies to comply with the First Amendment, and pay \$50,0000 in damages and fees.

FIRE requests that ATU reform its “Speech and Demonstration Regulations” to ensure compliance with the First Amendment, by which ATU is both legally and morally bound. Failure to do so betrays ATU’s mission as a public institution of higher learning and violates the expressive rights of your community members.

FIRE has worked amicably and effectively with many schools to revise similar policies designating limited areas for demonstration and expressive activity in order to eliminate constitutional concerns, and we would be happy to work alongside ATU to do the same. We are committed to using all of the resources at our disposal to see this matter through to a just conclusion.

We thank you for your attention to our concerns and request a response to this letter by January 18, 2017.

Sincerely,



Marieke Tuthill Beck-Coon
Director of Litigation
Foundation for Individual Rights in Education

cc:

Amy Pennington, Vice President for Student Services and Dean of Students
Kevin Solomon, Associate Dean for Campus Life
Thomas Pennington, University Counsel