United States Court of Appeals

for the

Fifth Circuit

Case No. 19-50529

SPEECH FIRST, INC.,

Plaintiff-Appellant,

– v. –

GREGORY L. FENVES, in his official capacity
as President of the University of Texas at Austin,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, AUSTIN, IN CASE NO. 1:18-CV-1078

BRIEF OF *AMICUS CURIAE* THE FOUNDATION FOR INDIVIDUAL RIGHTS IN EDUCATION IN SUPPORT OF PLAINTIFF-APPELLANT SPEECH FIRST, INC. AND REVERSAL

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STATEMENT OF CONSENT TO FILE AND TIMELINESS

Pursuant to Federal Rule of Appellate Procedure 29(a)(2), The Foundation for Individual Rights in Education files this *amicus curiae* brief with the consent of all parties.

Pursuant to Local Rule 29.1, this brief has been filed in a timely manner within seven days of the date Plaintiff-Appellant's principal brief was filed on August 9, 2019.

SUPPLEMENTAL STATEMENT OF INTERESTED PARTIES

Pursuant to Local Rule 29.2, the undersigned counsel of record for *amicus curiae* certifies that the following additional persons and entities have an interest in the outcome of this case:

1. The Foundation for Individual Rights in Education, *amicus curiae.* The Foundation for Individual Rights in Education is a nonprofit organization recognized as tax exempt under Internal Revenue Code § 501(c)(3). It does not have any parent corporations, and no publicly held companies hold 10% or more of its stock or other ownership interest.
2. JT Morris, counsel of record for *amicus curiae* The Foundation for Individual Rights in Education.

Dated: August 16, 2019

/s/ JT Morris
JT Morris

STATEMENT OF AUTHORSHIP AND FUNDING

Pursuant to Federal Rule of Appellate Procedure 29(a)(4), counsel for *amicus curiae* states that no party's counsel authored this brief in whole or in part; no party's counsel contributed money that was intended to fund preparing or submitting this brief; and no person other than *amicus curiae* or their counsel contributed money that was intended to fund preparing or submitting this brief.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases:

Statutes & Other Authorities:

INTEREST OF AMICUS CURIAE

The Foundation for Individual Rights in Education ("FIRE") is a nonpartisan, nonprofit organization dedicated to promoting and protecting civil liberties at our nation's institutions of higher education. Since 1999, FIRE has worked to protect student First Amendment rights at campuses nationwide. FIRE believes that to best prepare students for success in our democracy, the law must remain unequivocally on the side of robust free speech rights on campus.

FIRE coordinates and engages in targeted litigation and regularly files briefs as *amicus curiae* to ensure that student First Amendment rights are vindicated when violated at public institutions like the University of Texas at Austin. The students FIRE defends rely on access to federal courts to secure meaningful and lasting legal remedies to the irreparable harm of censorship. If allowed to stand, the lower court's ruling will hinder students at all educational levels from vindicating their First Amendment rights in court.

ARGUMENT

I. Introduction

Appellant Speech First, Inc. ("Speech First") has challenged overbroad and vague campus speech policies at the University of Texas at Austin (the "University") that chill and suppress protected student speech the university deems uncivil, harassing, disrespectful, or offensive. As part of its mission, FIRE has documented a long history of universities reneging on their stated commitments to the First Amendment and stifling student speech through the use of such overbroad and vague speech codes.

Yet despite the facial overbreadth and vagueness of the University's policies, the district court dismissed Speech First's Complaint pursuant to Fed. R. Civ. P. 12(h)(3) because it found that Speech First did not produce evidence of a "credible threat of prosecution or self-censorship that is objectively reasonable." *Speech First, Inc. v. Fenves*, No. 1:18-CV-1078-LY, 2019 U.S. Dist. LEXIS 93041, at *14, *22 (W.D. Tex. June 4, 2019). In doing so, the district court gave undue weight to university officials' assurances that they respect their students' constitutional rights and testimony from an official that the University has not disciplined students for the content of their speech. By declining to reach the constitutionality of these policies—relying in large part on assurances of good institutional behavior that FIRE's experience calls into doubt—the district court

has ensured that Speech First's student members at the University who are afraid to express their opinions for fear of sanction will remain silenced. Indeed, the courts are often the only place where students can protect their First Amendment rights against content-based, overbroad, and vague campus speech codes.

Amicus curiae FIRE asks that this Court review Speech First's allegations in the appropriate context and reverse the district court's order dismissing this matter for lack of standing.

II. FIRE Has Nearly Two Decades of Experience Demonstrating That Despite Public Promises, Public Universities Often Fail to Protect Speech Rights in Practice.

Universities across the country express their unwavering commitment to their students' right to free speech. In FIRE's experience, however, students have good reason to be skeptical of universities' faithfulness to the First Amendment. For this reason, FIRE believes that the district court gave too much weight to the university's assurance that it would not enforce its speech code to inhibit protected speech. *Id.* at *21–22.

Universities often use vague policies prohibiting "disparaging," "harassing," or "demeaning" speech to stifle protected speech. For example, in March 2015, in coordination with FIRE, students at Dixie State University filed a First Amendment lawsuit against their university after Dixie State refused to approve promotional flyers produced by a student group that featured images negatively

portraying George W. Bush, Barack Obama, and Che Guevara. Complaint, *Jergins, et al. v. Williams, et al.*, No. 2:15-cv-00144 (D. Utah filed Mar. 4, 2014). Administrators refused to approve the flyers unless and until the student group removed references to the political figures, because school policy did not permit students to "disparage" or "mock[] individuals." *Id.* In September 2015, Dixie State settled the lawsuit and revised its policies restricting student speech.[1]

In July 2014, an Ohio University student member of Students Defending Students ("SDS"), an organization that provides free assistance to students accused of campus misconduct, filed a lawsuit—again coordinated by FIRE—after he was ordered by administrators not to wear an SDS shirt that featured the slogan "We get you off for free." Complaint, *Smith v. McDavis, et.al.*, No. 2:14-cv-670 (S.D. Ohio filed July 1, 2014). The administrators claimed that the slogan "objectified women" and "promoted prostitution." *Id.* The student challenged the constitutionality of a provision of the university's Student Code of Conduct prohibiting any "act that degrades, demeans, or disgraces" another student. *Id.* In

[1] Press Release, Found. for Indiv. Rights in Educ., VICTORY: Lawsuit Settlement Restores Free Speech Rights at Dixie State U. After Censorship of Bush, Obama, Che Flyers (Sept. 17, 2015), https://www.thefire.org/victory-lawsuit-settlement-restores-free-speech-rights-at-dixie-state-u-after-censorship-of-bush-obama-che-flyers/.

February 2015, Ohio University settled the lawsuit and revised its policies restricting student speech.[2]

As with the policies in the two cases discussed above, the University's policies in the instant case provide that students may be punished or otherwise face repercussions for engaging in "offensive" or "harassing" speech, using "insults, epithets, ridicule, [or] personal attacks," or failing to adhere to "standards of civility and good taste." *Fenves*, 2019 U.S. Dist. LEXIS 93041 at *5–10. By finding that the Speech First lacked standing because its members' concerns about punishment were "'imaginary or wholly speculative,'" the district court failed to appreciate that universities routinely punish students under speech codes banning speech that may be offensive. *Id.* at *22. The problematic speech codes identified above are not outliers.

Each year, FIRE reviews the speech codes of more than 400 of the largest universities and colleges in the country.[3] In 2019, FIRE found that nearly 30 percent of the universities and colleges surveyed maintain speech codes that severely limit student speech. *Id.* Indeed, over the past two decades, students have

[2] Press Release, Found. for Indiv. Rights in Educ., Students, FIRE Go Four–for–Four as Ohio U. Settles Speech Code Lawsuit (Feb. 2, 2015), https://www.thefire.org/students-fire-go-four-four-ohio-u-settles-speech-code-lawsuit/.

[3] *See* FOUND. FOR INDIV. RIGHTS IN EDUC., SPOTLIGHT ON SPEECH CODES 2018: THE STATE OF FREE SPEECH ON OUR NATION'S CAMPUSES, *available at* https://www.thefire.org/resources/spotlight/reports/.

successfully raised facial challenges to speech codes time and time again to protect their First Amendment rights.[4]

Universities have a demonstrated tendency to enforce speech codes in a manner that stifles student speech, and federal courts have played a vital role in crafting the permissible bounds of campus speech policies. By finding that Speech First lacked standing, the district court failed to appreciate the well-established history of universities proclaiming their commitment to the First Amendment—and

[4] *See, e.g., McCauley v. Univ. of the V.I.*, 618 F.3d 232 (3d Cir. 2010) (invalidating university speech policies, including harassment policy); *DeJohn v. Temple Univ.*, 537 F.3d 301 (3d Cir. 2008) (striking down sexual harassment policy); *Dambrot v. Cent. Mich. Univ.*, 55 F.3d 1177 (6th Cir. 1995) (declaring university discriminatory harassment policy facially unconstitutional); *Shaw v. Burke*, No. 2:17-cv-02386, 2018 U.S. Dist. LEXIS 7584 (C.D. Cal. Jan. 17, 2018) (facial challenge to "free speech zone" policy properly alleged violation of student speech rights); *Univ. of Cincinnati Chapter of Young Ams. for Liberty v. Williams*, No. 1:12-cv-155, 2012 U.S. Dist. LEXIS 80967 (S.D. Ohio June 12, 2012) (invalidating "free speech zone" policy); *Smith v. Tarrant Cty. Coll. Dist.*, 694 F. Supp. 2d 610 (N.D. Tex. 2010) (finding university "cosponsorship" policy to be overbroad); *Coll. Republicans at S.F. State Univ. v. Reed*, 523 F. Supp. 2d 1005 (N.D. Cal. 2007) (enjoining enforcement of university civility policy); *Roberts v. Haragan*, 346 F. Supp. 2d 853 (N.D. Tex. 2004) (finding university sexual harassment policy unconstitutionally overbroad); *Pro-Life Cougars v. Univ. of Houston*, 259 F. Supp. 2d 575 (S.D. Tex. 2003) (declaring university policy regulating "potentially disruptive" events unconstitutional); *Booher v. Bd. of Regents, N. Ky. Univ.*, No. 2:96-cv-135, 1998 U.S. Dist. LEXIS 11404 (E.D. Ky. July 22, 1998) (finding university sexual harassment policy void for vagueness and overbreadth); *UWM Post, Inc. v. Bd. of Regents of Univ. of Wis. Sys.*, 774 F. Supp. 1163 (E.D. Wis. 1991) (declaring university racial and discriminatory harassment policy facially unconstitutional); *Doe v. Univ. of Mich.*, 721 F. Supp. 852 (E.D. Mich. 1989) (enjoining enforcement of university discriminatory harassment policy).

then punishing students for expressing an unpopular opinion. To preserve students' First Amendment rights, this Court should reverse the district court's order dismissing the Complaint.

III. Judicial Precedent is the Best Mechanism to Ensure that Universities Will Not Stifle Student Speech.

It is imperative that students retain the ability to challenge overbroad and vague speech codes in federal court because universities continue to restrict student speech under such policies. For nearly twenty years, FIRE has worked to coordinate litigation aimed at securing the binding commitments necessary to prevent schools from using overbroad and vague policies to violate student First Amendment rights. As FIRE has learned, judicial intervention is often the only means of truly binding an institution to act in conformity with its constitutional obligations over the long term. Judicial precedent that addresses the unconstitutionality of such speech codes is a crucial aspect of guaranteeing that student speech is protected on campuses nationwide.

Indeed, the need for judicial relief and precedent is magnified given that universities have demonstrated that they will implement unconstitutional speech codes even after agreeing to revise them. For example, in 2003, a student at California's Citrus College challenged a policy that limited students' expressive activities to three small "free speech areas" and required students to provide advance notice of their intent to use those areas. Complaint, *Stevens v. Citrus*

Comty. Coll. Dist., No. 2:03-cv-03539 (C.D. Cal. filed May 20, 2003). On June 5, 2003, the Citrus College Board of Trustees unanimously adopted a resolution revoking the policies, and the lawsuit was settled.[5]

Yet in 2013, the Citrus College Board of Trustees adopted a new "Time, Place, and Manner" regulation, once again limiting students' expressive activities to a designated free speech area—and prompting another lawsuit, coordinated by FIRE. Complaint, *Sinapi–Riddle v. Citrus Comm. Coll. Dist.*, No. 14-cv-05104 (C.D. Cal. filed Jul. 1, 2014). Under this new policy, a student was threatened with removal from campus for soliciting signatures for a petition against spying by the National Security Agency ("NSA") outside of Citrus' small free speech area, which comprised just 1.37 percent of the college's campus. Citrus settled with Sinapi-Riddle, once again agreeing to revise its policies.[6]

In 2003, two students at Shippensburg University of Pennsylvania brought a federal lawsuit alleging that several of the university's speech codes violated their First Amendment rights. *Bair v. Shippensburg Univ.*, 280 F. Supp. 2d 357 (M.D. Pa. 2003). After a judge issued a preliminary injunction against Shippensburg, the

[5] Press Release, Found. for Indiv. Rights in Educ., Victory: Speech Code Falls at Citrus College (June 11, 2003), https://www.thefire.org/victory-speech-code-falls-at-citrus-college/.

[6] *Settlement Agreement in Sinapi-Riddle v. Citrus Community College District*, FOUND. FOR INDIV. RIGHTS IN EDUC. (Dec. 3, 2014), https://www.thefire.org/settlement-agreement-sinapi-riddle-v-citrus-college.

university settled with the students, agreeing to repeal the challenged policies as part of the settlement.[7]

But the university did not comply with the terms of the settlement. According to a 2008 complaint filed by a student group, administrators "failed and/or refused to rewrite the [previously challenged policy], and instead reenacted the stricken policy verbatim in the Code of Conduct." Complaint, *Christian Fellowship of Shippensburg Univ. of Pa. v. Ruud, et al.*, No. 4:08- cv-00898 (M.D. Pa. filed May 7, 2008). In October 2008, Shippensburg settled this second lawsuit as well and agreed—for the second time—to revise its speech codes.[8]

As these cases demonstrate, universities have a tendency to renege on their commitments to student speech. It is not difficult to see how the promises of current administrators and governing boards can later be dispensed with as inconvenient to a new set. As such, it is vital that student groups are able to challenge overbroad and vague speech codes in court because judicial precedent is key to binding future actors. Courts should give meaningful consideration to the

[7] Press Release, Found. for Indiv. Rights in Educ., A Great Victory for Free Speech at Shippensburg (Feb. 24, 2004), https://www.thefire.org/a-great-victoryfor-free-speech-at-shippensburg.

[8] Will Creeley, *Victory for Free Speech at Shippensburg: After Violating Terms of 2004 Settlement, University Once Again Dismantles Unconstitutional Speech Code*, NEWSDESK (Oct. 24, 2008), https://www.thefire.org/victory-for-free-speech-at-shippensburg-after-violating-terms-of-2004-settlement-university-once-again-dismantles-unconstitutional-speech-code/.

hurdles faced by students attempting to bring such challenges to unconstitutional speech codes. If the district court's erroneous dismissal is not reversed, the resulting precedent will make it more difficult for students to protect their right to free speech by allowing schools to avoid speech code challenges at the outset by asserting that facially vulnerable policies are not abused by the current administrators.

IV. Speech First and its Members Have Standing to Challenge Overbroad and Vague Speech Codes that Chill Protected Speech, Regardless of the University's Stated Assurances.

In FIRE's experience, many universities' professed commitment to the First Amendment is easily eroded when students begin to speak about difficult topics that may annoy, anger, or simply inconvenience their fellow students or administrators. Because of this tendency, courts have recognized the power of overbroad and vague speech codes to significantly chill student speech, even if a student has not been formally punished under the policies or the university proffers that its policies are merely aspirational.

Thus, the district court erred in heavily relying upon an affidavit from Dean of Students Dr. Soncia Reagins-Lilly to support its conclusion that Speech First lacked standing. In her affidavit, Dr. Reagins-Lilly testified that the University has not disciplined students for the content of their speech and that "… although the University desires civility on campus, the rules make clear that aspirations of

civility are community norms that cannot be enforced by disciplinary rules." *Fenves*, 2019 U.S. Dist. LEXIS 93041 at *21. Instead, the chilling effects of the University's overbroad and vague speech codes should have controlled the district court's standing analysis, instead of assurances from University officials. *See Bair*, 280 F. Supp. 2d at 367 ("Certainly … the Speech Code has not been used, and likely will not ever be used, to punish students for exercising their First Amendment rights. However, … our inquiry must assume not the best of intentions, but the worst.").

a. Students Have Standing to Challenge Speech Codes Even if They Have Not Been Formally Punished Under The Code.

The district court emphasized that the Speech First failed to produce evidence that its student members have been "disciplined, sanctioned, or investigated for their speech." *Fenves*, 2019 U.S. Dist. LEXIS 93041 at *22. However, it is well-established that plaintiffs who have not yet been disciplined or sanctioned may assert a facial challenge to the constitutionality of an overbroad and vague policy whose very existence chills speech. As explained by this Court, "[i]n First Amendment facial challenges, federal courts relax the prudential limitations and allow yet-unharmed litigants to attack potentially overbroad statutes—'to prevent the statute from chilling the First Amendment rights of other parties not before the court.'" *Fairchild v. Liberty Indep. Sch. Dist.*, 597 F.3d 747,

754 (5th Cir. 2010) (citing *Secretary of Md. v. Joseph H. Munson Co.*, 467 U.S. 947, 956–958 (1984)).

In *McCauley v. University of the Virgin Islands*, for example, a student at the University of the Virgin Islands ("UVI") challenged provisions of UVI's student code of conduct after being charged with harassing an individual. 618 F.3d 232, 236 (3d Cir. 2010). After a bench trial, the trial court dismissed all of the student's claims, and the student appealed to the Third Circuit. The Third Circuit, *sua sponte*, addressed whether the student had standing to facially challenge provisions of UVI's code of conduct. *Id.* at 238.

The Third Circuit concluded that the student had standing to challenge certain provisions of UVI's code of conduct that "have the potential to chill protected speech"— even though the plaintiff testified that his speech was never chilled by those provisions. *Id.* at 238–240. The Third Circuit noted that "[l]itigants asserting facial challenges involving overbreadth under the First Amendment have standing where 'their own rights of free expression are [not] violated' because 'of a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression.'" *Id.* at 238 (quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973)). After finding that the plaintiff had standing, the Third Circuit ultimately

held that because challenged provisions had the potential to chill protected speech, they violated the First Amendment. *Id.* at 250–253.

Moreover, promises from universities to rescind overbroad and vague policies do not deprive the court of subject matter jurisdiction because there is often "no assurance that [the university] will not reimplement its [overbroad and vague] policy, absent an injunction, after this litigation has concluded." *DeJohn v. Temple Univ.*, 537 F.3d 301, 309 (3d Cir. 2008). As observed by the Third Circuit, courts should be hesitant to dismiss cases due to lack of standing based upon assurances from the defendants that they will not implement their overbroad and vague policies to inhibit free speech because there is simply no way for the court to police the defendants' behavior once the litigation is over. *Id.*

Here, Speech First has standing to challenge the University's overbroad and vague policies, even if its members have not been formally disciplined under the University's policies. Just as the challenged speech policies in *McCauley* were unconstitutional because they had "the potential to chill protected speech," the University's policies have the potential to chill the protected speech of all its students. Indeed, Speech First's members provided specific examples to the district court of the topics they are afraid to speak out on for "fear that their speech may violate University policies." *Fenves*, 2019 U.S. Dist. LEXIS 93041 at *19–20; Appellant Opening Br. 26–27. Thus, the University's attempt to assure the district

court that Speech First's members have no cause for worry based on its past performance was beside the point. Speech First has standing to ask a federal court to review the constitutionality of overbroad and vague policies that on their face chill its members' protected speech as well as that of students not before the court.

b. Students Have Standing to Challenge "Aspirational" Speech Codes that Nonetheless Chill Student Speech.

The district court also relied heavily on the University's assurance that its civility rules are merely aspirational in ruling that "the students' self-censorship is not based on a well-founded threat of punishment under the University policies…." *Fenves*, 2019 U.S. Dist. LEXIS 93041 at *22. In doing so, the district court did not give sufficient consideration to both (1) contrary language in the University's policies and (2) the severe chilling effect that a broadly-worded civility policy has on any controversial student speech.

First, the express language of the University's Residence Hall Manual (the "Manual"), refutes its assurance that its civility rules are not enforced. The Manual instructs that "'[m]embers of an educational community should adhere to standards of civility and good taste that reflect mutual respect.'" *Id.* at *8. Though the Manual uses the words "'should adhere'" to refer to its standards of civility, good taste, and mutual respect, it goes on to explain that Residence Life staff and the Residence Hall Council will "'decide … appropriate steps that need to be taken'" to address incidents of "'racism, sexism, hetero sexism, cissexism, ageism,

ableism, and any other force that seeks to suppress another individual or group of individuals.'" *Id*. at *9. The latter gives teeth and context to the Manual's behavioral standards.

The U.S. District Court for the Northern District of California granted a preliminary injunction against a similar policy in *College Republicans at San Francisco State University v. Reed*, 523 F. Supp. 2d 1005 (N.D. Cal. 2007). In *Reed*, the SFSU College Republicans sought to prohibit SFSU from enforcing provisions of its handbook because they were unconstitutionally overbroad and vague, including the provision that "[s]tudents are expected … to be civil to one another and to others in the campus community … ." *Id*. at 1010–1011. This provision was contained under the "Standards for Student Conduct," which also stated that "'Student behavior *that is not consistent with the Student Conduct Code* is addressed through an educational process that is designed to promote safety and good citizenship and, *when necessary, impose appropriate consequences*.'" *Id.* (emphasis in original).

SFSU argued that its civility provision did not violate the First Amendment because it "is merely a declaration of aspiration, merely hortatory, not a command whose violation could support imposition of discipline." *Id.* at 1011. In concluding that the provision was unconstitutional, the court in *Reed* rejected this assertion because the student conduct standards stated that SFSU could "'impose appropriate

consequences'" when students engaged in behavior that was "'not consistent with the student conduct code' … ." *Id.* at 1016. The court concluded that reasonable students would infer that they would face "appropriate consequences" — i.e., discipline or other sanction — if they did not follow the student conduct code's "civility" mandate. *Id.*

Similarly here, a straightforward reading of the University's Manual would lead a reasonable student to understand that being uncivil to another individual or group of individuals will lead to consequences imposed by Residence Life staff. Though *Reed* court reached the merits of the plaintiff's overbreadth challenge, its reasoning is persuasive in determining whether Speech First's members have reasonable grounds to self-censor in order to avoid institutional repercussion. In finding SFSU's civility policy facially overbroad, the *Reed* court explained the innate chilling effect of such a malleable restriction imposed on *any* controversial speech or expressive conduct:

> In the context of these findings, have plaintiffs persuaded us that there is a real likelihood that leaving the civility requirement intact would 'chill' to a substantial degree expression, or expressive activity, that the First Amendment protects from governmental regulation? The answer is yes. As plaintiffs point out, the word 'civil' is broad and elastic — and its reach is unpredictably variable in the eyes of different speakers. Given the fact that this term is both opaque and malleable, the University's failure even to try to define it intensifies the risk that students will be deterred from engaging in controversial but fully protected activity out of fear of being disciplined for so doing.

> It is important to emphasize here that it is controversial expression that it is the First Amendment's highest duty to protect. By political definition, popular views need no protection. It is unpopular notions that are in the greatest peril — and it was primarily to protect their expression that the First Amendment was adopted.
>
> […]
>
> This is a significant point because there is a much greater risk that expressing new, unpopular or controversial ideas will trigger retaliatory action than expressing popular ideas would. Understanding that greater risk, it is the people who want to express unpopular, controversial ideas who are more likely to be deterred by the possibility of punishment. It follows that the First Amendment must be less tolerant of restrictive intrusions into spheres of unpopular thought than into spheres of popular thought.

Id. at 1017-1018.

This speaks directly to the dilemma facing Speech First's members. They believe their views are unwelcome to many in the University community. Because of the University's broad and subjective policy language, they have no reasonable basis to understand when causing offense will trigger negative consequences. In short, the district court erred by accepting the University's assurance that its civility policy is merely "aspirational" and could not be used to stifle student speech. Even though Speech First's members have not yet been disciplined by this civility policy, the organization has standing to challenge the policy because it is likely to and has chilled protected student speech.

CONCLUSION

Hundreds of thousands of students across the country attend a university or college with restrictive speech codes. Like many before, Appellee assured the district court that its own facially restrictive policies are either "aspirational" or safe in the hands of responsible actors. As discussed above, however, universities' assurances of commitment to free speech often quickly erode when a student expresses an unpopular or controversial opinion. Against this backdrop, it is clear that the concerns of Speech First's student members are not "imaginary." Without a judicial determination about the constitutionality of the challenged policies, the University's students are forced to self-censor or face potential discipline or other institutional consequences for expressing their views.

Accordingly, *amicus curiae* FIRE urges this Court to protect students' free speech rights by reversing the district court's order of dismissal for lack of standing.

Dated: August 16, 2019

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2019, a true and correct copy of the foregoing Brief of Amicus Curiae the Foundation for Individual Right in Education in Support of Plaintiff-Appellant Speech First, Inc. and Reversal were served via electronic filing with the Clerk of Court and all registered ECF users.

Dated: August 16, 2019

/s/ JT Morris
JT Morris

CERTIFICATE OF COMPLIANCE

This brief has been prepared using 14-point, proportionately spaced, serif typeface, in Microsoft Word. Excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), this brief contains 4,075 words.

/s/ JT Morris
JT Morris