Brief on the Merits

No. 18-1757

In the Supreme Court of the United States

VALENTINA MARIA VEGA

Petitioner,

v.

JONATHAN JONES AND REGENTS OF THE UNIVERSITY OF ARIVADA

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTEENTH CIRCUIT

BRIEF FOR PETITIONER

TEAM 14
Attorneys for Petitioner

QUESTIONS PRESENTED

1. Whether, as applied to Ms. Vega, the Campus Free Speech Policy violates the First Amendment?

2. Whether a university Campus Free Speech Policy imposing disciplinary sanctions on a student who "materially and substantially infringes upon the rights of others to engage in or listen to expressive activity" is unconstitutionally vague and substantially overbroad?

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The opinion of the United States Court of Appeals for the Fourteenth Circuit, reversing the decision of the lower court, is reported in Vega v. Jones, No. 18-1757 (14th Cir. 2018) and can be found in the Record at 42-53.

JURISDICTION

The United States Court of Appeals for the Fourteenth Circuit entered final judgement on this matter on November 1, 2018. Petitioner timely filed a petition for a writ of certiorari, which this Court granted. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS

The First Amendment to the United States Constitutions provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." U.S. Const. amend. I.

The Fourteenth Amendment to the United States Constitution provides, in relevant part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, § 1.

STATEMENT OF THE CASE AND FACTS

On August 1, 2017, the University of Arivada ("University"), a public university, adopted the Campus Free Speech Policy ("Policy"). [R. at 2.] The University adopted the Policy pursuant

to its obligation under the state of Arivada's Free Speech in Education Act of 2017 ("Act"), which requires public universities to adopt policies "to safeguard the freedom of expression on campus." [Id.] The Policy imposes escalating sanctions on students who "materially and substantially infringe upon the rights of others to engage in or listen to expressive activity." [R. at 23.] In August 2017, the University delivered an electronic copy of its updated Student Handbook, including the Policy, to its students. [R. at 20.] The University required all students to sign a Policy Statement confirming they had read and agreed to follow the Student Handbook and policies contained therein. [Id.] Ms. Vega signed the August 2017 Policy Statement. [R. at 30.]

Violations of the Policy result in "strikes." [R. at 23.] The "first strike" results in a warning to the student. [Id.] The "second strike" results in the student's suspension for the remainder of the semester. [Id.] Campus Security has the authority to issue citations for students' violations of the Policy. [Id.] Citations are sent to the University's Dean of Students, who investigates the incident. [Id.] If, after investigating, the Dean concludes that the issuance of a citation was appropriate, the Dean will issue the student a strike. [Id.] When a student receives a second strike for violating the Policy, she is entitled to a formal disciplinary hearing before the School Hearing Board. [Id.]

Ms. Vega is a student at the University. [R. at 3.] She is the President of "Keep Families Together" ("KFT"), a University student organization whose mission is "to advocate for immigrants' rights through on-campus and community advocacy events." [Id.] On August 31, 2017, Ms. Vega and nine other KFT members attended an anti-immigration rally hosted by "Students for Defensible Borders" ("SDB") at an indoor, on-campus auditorium. [Id.] Once the program had begun, Ms. Vega and the KFT members stood on their chairs and chanted pro-

immigration slogans, drowning out the event's speaker. [R. at 4.] SDB members called Campus Security to report them. [Id.] Campus Security Officer Michael Thomas responded to the call and cited all ten KFT members for violating the Policy. [Id.] Upon review, the University's Dean of Students, Louise Winters, issued each KFT member a first strike. [Id.]

Ms. Vega received her second strike on September 5, 2017, during an event that forms the basis for this action. [Id.] The University student organization "American Students for America" ("ASFA") invited Samuel Payne Drake, Executive Director of "Stop Immigration Now" ("SIN"), to deliver a speech on campus. [R. at 21.] ASFA's President, Theodore Hollingsworth Putnam, completed the University's Event and Space Reservation Application to reserve the Emerson Amphitheater ("Amphitheater") for Mr. Drake's speech. [Id.] The University's Campus Events Office granted the request, giving ASFA the exclusive use of the Amphitheater from noon to 3:00 P.M. on September 5, 2017. [Id.]

The Amphitheater is located on the University's "Quad," which is a large, open grass area at the center of campus. [Id.] On the Quad, University students study, play sports, talk, and listen to music near the Amphitheater. [Id.] There is no clear boundary marking where the Amphitheater ends and the rest of the Quad begins; however, there is a main walkway about ten feet behind the Amphitheater's last row of benches. [Id.]

About thirty-five people attended ASFA's event on September 5th. [Id.] There were many other student activities taking place on the Quad during Mr. Drake's speech: students were playing an intramural football game, walking, eating lunch, studying, talking, and playing music. [Id.] During Mr. Drake's speech, Ms. Vega stood on the main walkway behind the Amphitheater's benches, wearing a Statue of Liberty costume, and shouted pro-immigration slogans. [R. at 5.] Ms. Vega had invited other KFT members to join her. [R. at 27, 31]. Although

they wished to join Ms. Vega, the other KFT members declined, because they feared their participation would earn them a second strike. [Id.] In particular, Ms. Smith refrained from participating because she was unsure what conduct the Policy prohibited or permitted. [R. at 27.]

Mr. Putnam immediately called Campus Security and reported Ms. Vega for disrupting ASFA's event. [R. at 5.] Officer Michael Thomas responded to the call and recognized Ms. Vega from the SDB event on August 31, where he had issued her a citation. [R. at 5-6.] After entering the Amphitheater, Officer Thomas determined that he could hear voices of other students from the Quad, as well as the noise from the football game. [R. at 6.] However, he claimed to have found Ms. Vega more distracting than the other noise from the Quad because she was facing the Amphitheater. [Id.] While Officer Thomas noted that Mr. Drake never stopped speaking and that the audience was still able to hear the speech during Ms. Vega's comments, he ultimately concluded that Ms. Vega had violated the Policy. [Id.] After observing that some members of Mr. Drake's audience turned to observe Ms. Vega's demonstration, Officer Thomas cited Ms. Vega for violating the Policy. [Id.]

After Dean Winters investigated the incident, Ms. Vega participated in a formal hearing in front of the School Hearing Board ("Board"). [Id.] The Board ultimately found that Ms. Vega intentionally disrupted Mr. Drake's speech and ASFA's event, materially and substantially infringing upon the right of Mr. Drake to speak and the rights of attendees to listen to his speech. [Id.] As a result of this finding, Dean Winters issued a "second strike" to Ms. Vega, who was then suspended from the University for the remainder of the semester. [Id.]

Ms. Vega unsuccessfully appealed the decision within the University. [Id.] On October 1, 2017, Ms. Vega filed a lawsuit in the United States District Court for the District of Arivada. [R. at 1.] In her complaint, Ms. Vega alleged two First Amendment claims. [R. at 1-2.] First, she

asserted that the University Policy, as applied to her, violated her First Amendment right to freedom of speech. [Id.] Second, she claimed the University Policy is unconstitutionally vague and overbroad. [Id.] On December 15, 2017, Ms. Vega and the University filed cross-motions for summary judgment pursuant to Rule 56(a) of the Federal Rules of Civil Procedure. [R. at 2.] The district court granted Ms. Vega's Motion for Summary Judgment, finding both that the University's Policy is unconstitutional as applied to Ms. Vega and that the Policy is unconstitutionally vague and substantially overbroad. [R. at 17.]

Thereafter, the University appealed the district court's decision to the United States Court of Appeals for the Fourteenth Circuit. [R. at 43.] On appeal, the Fourteenth Circuit found the University's Policy neither unconstitutional as applied to Ms. Vega nor unconstitutionally vague or overbroad. [R. at 53.] Accordingly, the Fourteenth Circuit reversed the district court's holding and remanded for entry of summary judgment in favor of the University. [Id.] This Court granted certiorari and directed that briefing and argument be limited to the issues noted above. [R. at 54.]

SUMMARY OF THE ARGUMENT

Ms. Vega's speech during the ASFA event was protected under the First Amendment. The University's Policy and the sanctions imposed under it infringed upon Ms. Vega's fundamental right of free speech. This Court has established that public school officials receive some discretion to regulate students' otherwise-protected speech while students are on school grounds. However, this Court has definitively approved such discretion only in cases involving public elementary and high schools, and only then, in situations when the students' speech interfered with the operation of the school. This Court has not extended the same discretion to officials on college campuses, where the educational environment is fundamentally different.

This difference in environment has led courts to conclude that public university officials receive significantly less discretion to regulate student speech on campus.

Ms. Vega exercised her freedom of speech on the sidewalks of the Quad, away from the classroom, and therefore did not interfere with the operation of the school. While her speech may have made it more difficult for Mr. Drake and ASFA to conduct their event, she did not materially and substantially infringe upon their rights. This is true because the speech and event continued while she spoke outside the perimeter of the Amphitheater. The only person whose First Amendment rights were infringed upon on September 5th was Ms. Vega. Ms. Vega was suspended because she protested peacefully against a group whose advocacy was repugnant to her deepest convictions. Therefore, the University's Policy was unconstitutional as applied to Ms. Vega.

Even if the University's Policy is not unconstitutional as applied to Ms. Vega, the Policy is facially unconstitutional because it is impermissibly vague and substantially overbroad. First, the Policy is impermissibly vague because it fails to give adequate notice of what constitutes prohibited conduct, fails to provide clear guidelines for officials enforcing the Policy, and deters individuals from exercising fundamental rights of expression. The Policy's language does not delineate what conduct is considered "materially and substantially infringing," and therefore, students who wish to engage in expressive activity must risk their education to discover what conduct is prohibited. The lack of clear and definite guidelines allows University officials to arbitrarily decide what conduct violates the Policy, thereby enabling discriminatory enforcement of the Policy against students. The threat of sanctions coupled with a lack of guidelines significantly deters students from engaging in constitutionally protected expression. In fact, other

KFT members declined to join Ms. Vega at the ASFA protest because they feared being suspended.

The Policy is facially unconstitutional because it is substantially overbroad. A law is substantially overbroad if it meets the following criteria. First, it is not narrowly limited to prohibit specifically defined conduct. Second, it prohibits a substantial amount of constitutionally protected conduct. Third, it cannot be applied in a neutral, even-handed manner. The Policy does not define the types of specific conduct which are prohibited, nor does it limit its application to certain individuals. Under the Policy, Ms. Vega, and other University students, are not able to conform their conduct because they are not given guidance as to what is prohibited. The Policy will result in sanctioning individuals who are engaging in constitutionally protected free speech. Ms. Vega is the first victim of this facially unconstitutional Policy, and unless this Court reverses, she will not be the last.

ARGUMENT

I. THE UNIVERSITY'S POLICY, AS APPLIED TO MS. VEGA, VIOLATES HER FIRST AMENDMENT RIGHT TO FREEDOM OF SPEECH.

The Fourteenth Circuit erred in holding that the University had the power to regulate Ms. Vega's speech and impose disciplinary sanctions upon her. Ms. Vega's speech was pure speech, entitled to comprehensive protection under the First Amendment. See Cox v. Louisiana, 379 US 536, 555 (1965). While her conduct occurred on a school campus, where school officials have discretion to regulate students' otherwise-protected speech, there is a significant difference in the "extent that a school may regulate student speech in a public university setting as opposed to that of a public elementary or high school." McCauley v. Univ. of the Virgin Islands, 618 F.3d 232, 242 (3d. Cir. 2010) (quoting DeJohn v. Temple Univ., 537 F.3d 301, 315 (3d Cir. 2008)). There should not be less First Amendment protection on a college campus than in the general

community. Healy v. James, 408 U.S. 169, 180 (1972). Therefore, the Policy, as applied to Ms. Vega for her speech on the day of the ASFA event, violated her First Amendment right to freedom of expression.

A. Tinker v. Des Moines Indep. Cmt. Sch. Dist. and its progeny did not give the University authority to regulate Ms. Vega's otherwise protected speech on the day of the ASFA event.

The University did not have the power to regulate Ms. Vega's speech on the day of the ASFA event. Public universities are marketplaces of ideas, and the "First Amendment guarantees wide freedom in matters of adult public discourse." DeJohn, 537 F.3d at 315. "The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." Shelton v. Tucker, 364 U.S. 479, 487 (1960).

Students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 506 (1968). In Tinker, high school students were suspended for violating a school policy prohibiting the wearing of black armbands in protest of the Vietnam War. Id. at 504-505. This Court held that in order for a school to restrict a student's freedom of expression, the school must show that its action was fueled by more than a desire to avoid the "discomfort and unpleasantness that always accompany an unpopular viewpoint." Id. at 509. "Where there is no finding and no showing that engaging in the forbidden conduct would materially and substantially interfere with the requirements of appropriate discipline in the operation of the school, the prohibition cannot be sustained." Id. at 509 (quoting Burnside v. Byars, 363 F.2d 744, 749 (1966)). Accordingly, this Court found that the school district violated the students' First Amendment protections. Absent a showing of valid reasons for regulating speech, students are entitled to freely express their views. Id. This Court determined that when a student is on a public school campus, she may exercise her freedom of expression so long as she does so without "materially and substantially

interfering with the requirements of appropriate discipline in the operation of the school and without colliding with the rights of others." Id. at 513 (quoting Burnside, 363 F.2d at 749).

State colleges and universities are not "immune from the sweep of the First Amendment." Healy, 408 U.S. at 180. In Healy, students of a state college were denied official recognition to form a chapter of a student organization because the school's president was concerned that the group would be a "disruptive influence." Id. at 172, 179. This Court held that there should not be less First Amendment protection on a college campus than in the general community. Id. at 180.

"Discussion by adult students in a college classroom should not be restricted." DeJohn, 537 F.3d at 315. In DeJohn, a university student filed a complaint alleging violations of his First Amendment freedom of speech and expression because of a university sexual harassment policy. Id. at 305. The Court held that university administrators receive less discretion to regulate student speech than do public elementary or high school administrators. Id. at 316 (citing Sypniewski v. Warren Hills Reg'l Bd. of Educ., 307 F.3d 243, 260 (3d Cir. 2002)). The Court, noting that there is a "difference between the extent that a school may regulate speech in a public university setting as opposed to that of a public elementary or high school," stated that "certain speech…which cannot be prohibited to adults may be prohibited to public elementary and high school students." Id. at 315.

The differing environments of public schools and public universities lead to differences in administrators' power to regulate student speech. McCauley, 618 F.3d at 242-243. In McCauley, the university charged a student with violating provisions of its Student Code of Conduct because he repeatedly attempted to contact a student who had accused his friend of rape. Id. at 236. The Third Circuit held that differences in the "pedagogical goals of each institution, the *in loco parentis* role of public elementary and high school administrators, the special needs of

school discipline in public elementary and high schools, the maturity of the students, and…many university students reside on campus," led to the conclusion that there is a difference in the "extent that a school may regulate student speech in a public university setting as opposed to that of a public elementary or high school." Id. at 242 (quoting DeJohn, 537 F.3d at 315). The Court noted that public universities encourage students to discuss all kinds of ideas, and there is an "atmosphere of speculation, experiment, and creation," whereas public elementary and high schools are about "learning how to be a good citizen." Id. at 243. The Court determined that public university officials do not have the same authority over students as elementary and high school officials. Id. at 244. "At a minimum, the teachings of Tinker…and other decisions involving speech in public elementary and high schools, cannot be taken as gospel in cases involving public universities." Id. at 247.

Public school officials have discretion to regulate speech at a school-sponsored event. Bethel Sch. Dist. v. Fraser, 478 U.S. 675, 681 (1986). In Bethel, a high school student was suspended for delivering a speech containing obscene and profane language at a school-sponsored event, in violation of a rule prohibiting the use of obscene language in school. Id. at 677-678. This Court held that the school's actions did not violate the First Amendment, stating that fundamental values of "habits and manners of civility" must consider the "sensibilities of others, and…of fellow students." Id. at 681. This Court reasoned that use of offensive expression permissible to adults engaged in political discussion does not also have to be permissible to students in a public school while at a school-sponsored event. Id. at 682.

Evaluating Ms. Vega's conduct under the standard of Tinker, there is no showing that Ms. Vega's speech materially and substantially interfered with the operation of the school's learning environment or collided with the rights of others because she was not in a classroom setting. This

case does not meet the Tinker standard because Ms. Vega's speech occurred outside of a classroom, and the event that she is alleged to have disrupted was not a school-sponsored event, as was the case in Bethel School District. The University has not shown a valid reason for regulating students' speech outside of the classroom environment because DeJohn and McCauley determined that public universities are marketplaces of ideas. Ms. Vega's speech on the Quad injected ideas into that marketplace, and, therefore, she was participating in the atmosphere that McCauley found inherent in the institution of a public university. Tinker points out that there is discomfort and unpleasantness anytime there is an unpopular viewpoint, as was the case between Ms. Vega and ASFA. However, this discomfort does not give Mr. Putnam or the University the right to restrict Ms. Vega's free speech.

The ASFA event occurred at the Amphitheater next to the campus quad, where many other student activities were occurring. [R. at 21.] Ms. Vega's chanting was not the only background noise during the event. [R. at 21.] While affidavits from students who attended the ASFA event and from Mr. Drake note that Ms. Vega was the loudest noise in the area, her speech was not enough to cause a significant fear of disruption to the learning environment. This is true because she was not in a classroom, and this was not a school-sponsored event. Mr. Drake's ability to continue speaking during Ms. Vega's demonstration also exemplifies that this was not a significant enough disruption to constitute a collision with others' rights. Mr. Drake and ASFA were still able to introduce their opinions into the University's marketplace of ideas, and Ms. Vega's counter-speech added another viewpoint to that marketplace.

However, similarly to McCauley, Tinker cannot be taken as gospel in this case because this case involves a public university. In Healy, this Court held that public universities, such as the University, are not immune from the protections of the First Amendment. The Tinker standard

would not give the University discretion to regulate student speech in this case because public universities receive less discretion to regulate student speech, as determined by the courts in DeJohn and McCauley. As in DeJohn, the University's administrators have less discretion to regulate student speech such as Ms. Vega's because college students are adults whose discussion should generally not be restricted. Additionally, as stated in Healy, Ms. Vega should not have fewer First Amendment protections on the University's campus than in the general community; her speech is protected speech within the general community and should therefore be afforded that same protection at the University.

While the University may allege that the Tinker standard applies to this case, and more specifically, the standards of Bethel School District, such an assertion is misguided. First, Bethel School District involved a high school, whereas this case involves a public university. As established in DeJohn and McCauley, the extent of authority granted to public universities to regulate student speech is different than that granted to public high schools. While Bethel School District involved conduct outside the classroom, it involved a school-sponsored event, and the event at issue in the present case was not a school-sponsored event. Therefore, the ASFA event in this case was outside the traditional scope of the University's learning environment. Finally, while civility and conscientiousness are important, they apply most directly to the goals of a public elementary or high school, and less so to the goals of a public university, as noted in McCauley. Therefore, the University did not have the power to regulate Ms. Vega's speech on the Quad during the ASFA event.

B. The Policy is unconstitutional as applied to Ms. Vega because the imposition of sanctions against her violated her First Amendment right to freedom of speech.

The University's Policy is unconstitutional as applied to Ms. Vega because it violated her First Amendment right to freedom of speech. While Tinker and its progeny have held that

schools may regulate student speech and sanction students who materially and substantially disrupt the operation of the school, these cases are limited in application to the contexts of the classroom or school-sponsored events. See Tinker, 393 U.S. at 513; see also Bethel Sch. Dist., 478 U.S. at 678.

In this case, Ms. Vega's speech did not occur within the classroom or at a school-sponsored event. [R. at 21.] The ASFA event was simply a student organization event with no official ties to the University other than the use of its facility. [Id.] Since this event occurred outside, in what is arguably the most public area of the University's campus, Ms. Vega's speech was part of the marketplace of ideas present on a college campus, consistent with the findings of DeJohn.

Ms. Vega did not participate in the ASFA event; instead, she stood outside of the Amphitheater's limits. [R. at 5.] The fact that Mr. Drake and ASFA conducted their event in an open-air venue, adjoined to the busiest and likely loudest area of the University campus, meant that they should have been reasonably aware of the risk of distractions and noise coming from the Quad during the event. The fact that Ms. Vega could be heard by Mr. Drake and the students in attendance at the ASFA event was not enough to justify silencing her. If Mr. Drake and ASFA wanted a quiet, distraction-free environment, they should have explored other options for a venue than one that was open to the Quad and sidewalks, and therefore, open to the whole University. Personal preferences on decorum should not outweigh an individual's constitutional right to freedom of expression.

While Mr. Drake and his audience could hear Ms. Vega during his speech, there is no evidence that students were unable to hear what Mr. Drake was saying or that he was unable to continue delivering his speech at any point. [R. at 5-6.] In fact, an attendee of the event stated in

her affidavit that all of the noises of the Quad combined made it difficult to hear Mr. Drake, but she made no mention of being completely unable to do so. [R. at 32.] Difficulty in being able to speak or to listen because of Ms. Vega's counter-speech, even if her speech was loud and distracting, does not mean that Mr. Drake's or the audience's rights were materially and substantially infringed. Difficulty in communicating or consuming information does not constitute inability to do so. Mr. Drake was still able to speak, and his audience was still able to listen to it while Ms. Vega expressed her views in the Quad. [R. at 5-6.] The First Amendment protects a person's freedom of expression, including the right to receive information. However, that is not an absolute right. Nor does the First Amendment guarantee a distraction-free environment for the communication of a message. The fact that Mr. Drake had to talk over Ms. Vega, who was standing beyond the limits of the venue, does not diminish the fact that Mr. Drake and his audience were still able to exercise their First Amendment rights to communicate and receive information.

The football game on the Quad also caused a distraction at the event, but the only distraction that ASFA and the University cared to remove was Ms. Vega, presumably because the views she was expressing were antithetical to the ones the event promoted. [R. at 5-6.] However, opposing views are the cornerstone of the marketplace of ideas present on a college campus, and Tinker determined that the University cannot restrict Ms. Vega's freedom of expression simply because she shares an opposing viewpoint to that of Mr. Drake. There must be a disruption of the learning environment, which was not present here, since the conduct occurred outside of the classroom and not at a school-sponsored event.

The record does not support a finding that Ms. Vega "materially and substantially infringed upon the rights" of Mr. Drake to speak or of his audience to listen. Accordingly, the

University's application of the Policy against Ms. Vega restricted her constitutionally protected speech on campus. Such a restriction was a violation of Ms. Vega's constitutional right to freedom of speech, and thus, the University's Policy was unconstitutional as applied to Ms. Vega.

II. EVEN IF THE POLICY IS NOT UNCONSTITUTIONAL AS APPLIED TO MS. VEGA, THE POLICY IS FACIALLY UNCONSTITUTIONAL BECAUSE IT IS IMPERMISSIBLY VAGUE AND SUBSTANTIALLY OVERBROAD.

The Fourteenth Circuit erred in holding that the Policy is neither impermissibly vague nor substantially overbroad. While the doctrine of standing, in most circumstances, precludes an individual from litigating the rights of others, this Court has recognized some limited exceptions, such as for the First Amendment. Broadrick v. Oklahoma, 413 U.S. 601, 611 (1973). In regard to the First Amendment, this Court has held that "Litigants...are permitted to challenge a statute...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 612. A law is facially unconstitutional if it is impermissibly vague or substantially overbroad. Gooding v. Wilson, 405 U.S. 518, 521 (1972). A law is impermissibly vague when it does not provide adequate notice of what constitutes prohibited conduct, fails to establish clear and definite guidelines for enforcement, and deters individuals from exercising constitutional freedoms. City of Chi. v. Morales, 527 U.S. 41, 56 (1999); Grayned v. City of Rockford, 408 U.S. 104, 108 (1972); NAACP v. Button, 371 U.S. 415, 433 (1963). A law is substantially overbroad when it is not limited to define and punish specific conduct, prohibits a substantial amount of constitutionally protected conduct, and cannot be applied in an even-handed, neutral manner. Broadrick, 413 U.S. at 616-17; Houston v. Hill, 482 U.S. 451, 466-67 (1987).

A. The Policy is facially unconstitutional because it is impermissibly vague.

A policy is impermissibly vague when it does not provide adequate notice of what constitutes prohibited conduct and fails to establish clear and definite guidelines for those enforcing the policy. Morales, 527 U.S. at 56. Impermissibly vague laws result in arbitrary and discriminatory enforcement. Id. In Morales, the city enacted an ordinance that prohibited criminal street gang members from loitering in any public place. Id. at 45-46. The ordinance defined "loiter" to mean "to remain in any one place with no apparent purpose." Id. at 56. The ordinance directed police officers to issue an order to persons with no apparent purpose who are in the presence of a gang member. Id. at 60. This Court held that the ordinance was impermissibly vague because it did not give individuals sufficient notice as to what conduct was prohibited. Id. at 64. This Court reasoned that the ordinance did not distinguish between innocent and harmful conduct, thereby failing to provide citizens with adequate notice regarding what conduct was considered loitering. Id. at 57. This Court also held that the ordinance did not meet constitutional standards for definiteness and clarity in establishing guidelines for enforcement. Id. at 64. On this point, this Court reasoned that the ordinance gave law enforcement too much discretion in determining which citizens' actions were within the prohibitions of the ordinance. Id.

A policy is impermissibly vague when it deters individuals from exercising constitutional freedoms. Button, 371 U.S. at 433. The statute at issue in Button banned the "improper" solicitation of legal business by an agent "for an individual or organization which retains a lawyer in connection with an action to which it is not a party…" Id. at 423. The NAACP, which employed a program of assisting in litigation that furthers the organization's purposes, claimed the statute violated their First Amendment right to associate. Id. at 420. In determining a statute's inhibitory effect on the exercise of First Amendment freedoms, this Court may consider possible

applications of the statute. Id. at 432. The statute in Button presented the danger of stifling discussion and litigation to preserve the rights of members of an organization. Id. at 434. Lawyers and supporters of the organization would likely refrain from advising individuals on matters related to litigation to avoid disbarment or criminal prosecution. Id. at 434-45. Therefore, this Court held that the statute was impermissibly vague. Id. at 444.

A law is not impermissibly vague when it provides adequate notice of what constitutes prohibited conduct and establishes clear guidelines for those enforcing the policy. Grayned, 408 U.S. at 108-09. In Grayned, a student was convicted for participating in a demonstration near the school grounds. Id. at 105. The ordinance under which the student was convicted stated that "[n]o person, while on public or private grounds adjacent to any building in which a school or any class thereof is in session, shall willfully make or assist in the making of any noise or diversion which disturbs or tends to disturb the peace or good order of such school session or class thereof…" Id. at 107-08. The ordinance did not allow law enforcement the broad discretion to punish all noises and diversions. Instead, it limited prohibited conduct only to that which was willfully disruptive to normal school activity. Id. at 113-14. Further, the ordinance required that there be a demonstrated interference with school activities. Id. at 114. This Court held that the ordinance was not impermissibly vague because it gave adequate notice of prohibited conduct and established clear guidelines for law enforcement. Id. The Court reasoned that the ordinance gave adequate notice by forbidding willful, disruptive activity at fixed times and at a fixed place, while limiting the discretion of law enforcement. Id. at 110-11, 114.

Like the anti-loitering ordinance in Morales, the Policy here is impermissibly vague because it fails to provide adequate notice of what constitutes prohibited conduct. Just as the ordinance in Morales did not explain what constituted prohibited loitering, the Policy in this case

does not clarify what type of expressive conduct "materially and substantially infringes upon the rights of others to engage in or listen to expressive activity." In Morales, this Court determined that the definition of "loiter" was vague because it did not specify what conduct was considered to be "for no apparent purpose." The Policy in our case fails to provide any definition explaining what constitutes material and substantial infringement. [R. at 23.] Unlike the ordinance in Grayned, which proscribed disruptive conduct at a specified time and place, the Policy here is not narrowly drawn. While the Policy does apply "on campus," it does not indicate which areas of campus, at what times, and what the objective effect must be. [R. at 23.] In Grayned, the objective effect allowing the ordinance to withstand a facial challenge was the disruption of classroom activities. Here, "materially and substantially infringes upon the rights of others" requires a subjective assessment. Subjective assessments will result in a violation of fundamental rights, as in Ms. Vega's case.

Just as the ordinance in Morales was likely to result in arbitrary and discriminatory enforcement, the Policy in this case will result in arbitrary and discriminatory enforcement. In Morales, the Court identified innocent conduct that law enforcement could arbitrarily punish because the statute's vagueness gave them the discretion to do so. Similarly, there are many possible types of protected conduct that authorities may punish on a university campus under the Policy because University officials have broad discretion to determine what constitutes material and substantial infringement. [R. at 23.] In both instances, there is a lack of guidelines for officials to determine what conduct is prohibited by vague language within the policies. Just as the ordinance in Morales did not provide law enforcement with guidelines to conclude when one is in the presence of a gang member with no apparent purpose, the Policy here does not give officials standards by which to determine what is material and substantial infringement. There

were other noise-generating activities competing with Mr. Drake's speech, yet Officer Thomas only targeted Ms. Vega's. [R. at 22.] The affidavit of Michael Thomas demonstrates that he arbitrarily determined that Ms. Vega was materially and substantially infringing upon the rights of others as it lacks further indication of how he arrived at that standard. [R. at 34-35.]

Furthermore, like the statute in Button, the Policy is impermissibly vague because it deters individuals from participating in constitutionally protected conduct. Like the potential effect in Button of stifling civil rights litigation, the Policy will likely result in a lack of expression of free speech by students. This Court in Button made clear that a showing of potential application of the statute with inhibitory effects is sufficient to challenge the facial constitutionality of a statute. In the present case, we have actual examples of the Policy's deterrent effects. [R. at 27, 31.] According to Teresa Smith's affidavit, the threat of further sanctions under the Policy deterred her from exercising her fundamental rights. [R. at 31.] Ms. Vega's case is distinguishable from Grayned because the ordinance in Grayned did not deter individuals from demonstrating within 150 feet of the school zone while school was in session and one-half hour before and after the school session was concluded. The Policy here does not provide such limitations, therefore potentially deterring all future expressive activity for fear of sanctions.

This Court should reverse the decision of the United States Court of Appeals for the Fourteenth Circuit and find that the Policy is impermissibly vague, and therefore facially unconstitutional. The Policy does not provide adequate notice of what constitutes prohibited conduct, fails to establish clear and definite guidelines for enforcement, and deters individuals from exercising constitutional freedoms.

B. The Policy is facially unconstitutional because it is substantially overbroad.

A policy is substantially overbroad when it is not limited to define and punish specific conduct and when it prohibits a substantial amount of constitutionally protected conduct. Houston, 482 U.S. at 466-67. In Houston, the challenged statute criminalized "interrupt[ing] any policeman in the execution of his duty…" Id. at 455. An individual was convicted under the statute for shouting at a police officer while the officer was investigating someone else. Id. at 453-54. The Court noted that the First Amendment protects a significant amount of criticism and challenge directed at police officers. Id. at 461. The statute in Houston did not limit prohibited speech to that which presented a clear and present danger, but prohibited speech that interrupted an officer in any manner. Id. at 462. Therefore, in addition to punishing unprotected speech, the statute unconstitutionally prohibited individuals from opposing or challenging police action in any way. Id. at 462-63. This Court noted that "the First Amendment protects a significant amount of verbal criticism directed at police officers." Id. at 461. Finding the statute was not narrowly tailored to define and punish specific conduct, this Court held that the statute was substantially overbroad. Id. at 465.

A law is not substantially overbroad when it is limited to prohibit specific conduct and can be applied in a neutral, even-handed manner. Broadrick, 413 U.S. at 616-17. The challenged law in Broadrick prohibited the State's classified civil servants from engaging in partisan political activity. Id. at 602. The State Personnel Board provided guidance on the interpretation of the law and construed it to allow "virtually any expression not within the context of active partisan political campaigning." Id. at 617. This Court held that the law was not substantially overbroad. Id. at 618. This Court reasoned that the fact that some persons' protected conduct might fall under the statute did not make the law substantially overbroad. Id. This Court further reasoned that the law was not substantially overbroad because state authorities narrowly

construed it to regulate partisan political activity by certain state employees in a neutral manner. Id. at 616-17.

Like the statute in Houston, the Policy is substantially overbroad because it is not limited to define specific conduct. Therefore, it unconstitutionally prohibits a substantial amount of protected conduct. Just as the ordinance in Houston did not limit the prohibition against interrupting a police officer to specific conduct, the Policy does not limit "material and substantial" infringement to specific conduct. In Houston, this Court determined that the statute's prohibitions encompassed constitutionally protected conduct of criticizing or challenging a police officer. Similarly, the Policy, by its broad limitation on free speech, will sweep in expression that the Constitution protects. The Policy, as it stands, has the potential to restrict any free speech that an official, by his or her own discretion, determines is "material and substantial." The Policy is distinguishable from the law in Broadrick because it does not proscribe specific activities applicable to a defined group. The law at issue in Broadrick applied only to civil servants engaging in partisan political activity, whereas in Ms. Vega's case, the Policy neither specifies the type of conduct that is proscribed, nor internally limits its application to particular individuals. The Policy may have a broader than intended scope—it could apply to football games, students' cheering, or any other common campus activities. [R. at 22.] In addition, the law in Broadrick was construed by the State Personnel Board, an authoritative body that clarified the law's limitations. In Ms. Vega's case, the Policy has been neither construed nor limited by an authoritative body of the University. This Court has made clear that a law "must be carefully drawn or be authoritatively construed to punish only unprotected speech…" Gooding, 405 U.S. at 522.

Furthermore, unlike the law in Broadrick, the Policy cannot be applied in a neutral, even-handed manner. While the law in Broadrick applied to all classified civil servants engaging in partisan political activity, the only limitation in the Policy applies to "on campus" expressive conduct. [R. at 23.] University officials have far more discretion as to what conduct to prohibit under the Policy than authorities did under the law in Broadrick. The lack of guidelines for enforcement under the Policy make it difficult, if not impossible, for officials to apply the Policy in a neutral, even-handed manner. Though Officer Thomas heard other distracting noises at the ASFA event, the Policy gave him discretion in concluding which noises constituted a violation. [R. at 6.]

This Court should reverse the decision of the United States Court of Appeals for the Fourteenth Circuit and find that the Policy is substantially overbroad, and therefore facially unconstitutional. The Policy is not limited to define and punish specific conduct, prohibits a substantial amount of constitutionally protected conduct, and cannot be applied in a neutral, even-handed manner.

CONCLUSION

For the foregoing reasons, Ms. Vega respectfully asks this Court to reverse the decision of the United States Court of Appeals for the Fourteenth Circuit. Ms. Vega respectfully asks this Court to find that the Policy, as applied to Ms. Vega, violated her First Amendment right to free speech, and declare the University's Policy facially unconstitutional for impermissible vagueness and substantial overbreadth.

CERTIFICATE OF COMPLIANCE

1. The work product contained in all copies of Team 14's brief is in fact the work product of the team members.
2. Team 14 has complied fully with its school's governing honor code.
3. Team 14 has complied with all Rules of the Competition.

Respectfully submitted,

Team 14

Attorneys for Petitioner