No. 18-1234

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 OF RESPONDENT

TEAM 18

Counsel for Respondent

QUESTIONS PRESENTED

I. 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.

II. Whether, as applied to Ms. Vega, the Campus Free Speech Policy comports with the Free Speech Clause of the First Amendment.

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The opinion of the United States District Court for the District of Arivada appears in the Record at 1–18. The opinion of the United States Court of Appeals for the Fourteenth Circuit appears in the Record at 42-53. Both opinions are unreported.

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Fourteenth Circuit entered final judgement on this matter on November 1, 2018, R. at 42-53, reversing the January 17, 2018 decision of the United States District Court for the District of Arivada favor of the Petitioner. R. at 1-18. Petitioner timely filed a petition for writ of certiorari, which this Court then granted. R. at 54. This Court has jurisdiction over the matter pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. I:

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. XIV, § 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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.

Av. Gen. Stat. § 118-200:

Section 1:

The Legislature hereby finds and declares that episodes of shouting down invited speakers on college and university campuses are nation-wide phenomena that are becoming increasingly frequent. It is critical to ensure that the free speech rights of all persons lawfully present on college and university campuses in our state are fully protected.

Section 2:

The Regents of all state institutions of higher education in the State of Arivada shall develop and adopt policies designed to safeguard the freedom of expression on campus for all members of the campus community and all others lawfully present on college and university campuses in this state.

Section 3:

All public colleges and universities in Arivada are to promulgate a policy to protect free speech on campus within three months of the effective date of this statute.

STATEMENT OF THE CASE

Petitioner, Valentina Maria Vega ("Ms. Vega"), a sophomore at the University of Arivada's School of Arts and Sciences brought this action against Jonathan Jones, President of the University, and the University's Board of Regents (hereinafter the "University") on October 1, 2017. R. at 1. Two weeks prior to the suit being filed, Ms. Vega was suspended from the University for violating the University's Campus Free Speech Policy ("Policy") for the second time in two years after engaging in conduct that materially and substantially infringed upon the rights of her peers and of an invited guest to engage in and listen to expressive activity on campus. Ms. Vega alleged that the suspension violated her right to freedom of speech pursuant to the First Amendment to the United States Constitution, as incorporated and applied to the states through the Due Process Clause of the Fourteenth Amendment. *Id.* Ms. Vega sought a declaration that the First Amendment required the University to reverse her suspension immediately and remove any mention of the suspension and attendant disciplinary proceedings from her permanent undergraduate record. *Id.* The United States District Court for the District of Arivada concluded that the Policy unconstitutionally infringed on Ms. Vega's First Amendment rights both on its face and as applied. *Id.* at 17. It thereby granted her motion for summary judgement and denied the cross-motion for summary judgement filed by the University. *Id.* at 17-18.

Shortly thereafter the University submitted a timely appeal to the United States Court of Appeals for the Fourteenth Circuit, seeking reversal of the District Court's grant of summary judgement. *Id.* at 42. On December 1, 2018, the Fourteenth Circuit ruled that the Policy did not violate the Free Speech Clause of the First Amendment because the Policy was neither unconstitutionally vague or impermissibly overbroad on its ace nor unconstitutional as applied to Ms. Vega. *Id.* at 42, 53. The Court of Appeals thus reversed the District Court's decision and

remanded the case for entry of summary judgement in favor of the University. *Id.* at 53. Ms. Vega then filed a petition for writ of certiorari, which this Court has granted. *Id.* at 54.

STATEMENT OF THE FACTS

Prior to the beginning of the 2017-2018 school year the University notified student the Policy. R. at 3. Ms. Vega read and agreed to abide by the Policy, to not engage in expressive conduct that materially and substantially infringes on others ability to engage in or listen to expressive activity. *Id*. at 3, 23.

Within the first week of classes, Ms. Vega attempted disrupt the event of a student group on-campus that she disagreed with, "Students for Defensible Borders" ("SDB"). *Id*. at 37. Ms. Vega was the president of a pro-immigrant group "Keep Families Together" ("KFT"). *Id*. On August 31, 2017 when the speaker took the auditorium stage at the SDB event Ms. Vega along with several other KFT members, including Teresa Smith and Ari Haddad, stood on their chairs to "shout [the speaker] down." *Id*. at 37. University Campus Security arrived and, determining that Ms. Vega, Ms. Smith, and Mr. Haddad were violating the Policy, issued a "first strike" warning. *Id*. at 3.

Ms. Vega disrupted the event of a second student group on September 5, 2017. *Id*. at 4. On that date a student group, "American Students for American," ("ASFA") invited Samuel Drake, an advocate for immigration restrictions, to speak at their event. *Id*. at 4. ASFA held the event in an on-campus outdoor venue called "Emerson Amphitheater." *Id*. at 4. ASFA notified the University of the event and the University agreed that would have the exclusive right to use the amphitheater for three hours. *Id*. at 4. Ms. Smith and Mr. Haddad decided to not protest the event after their previous Policy violation. *Id*. at 27, 31. However, Ms. Vega attended the event, dressed in a Statute of Liberty custom, and again began chanting. *Id*. at 5. Although there was other unrelated student activity occurring in the vicinity, yet further away from the amphitheater (such

as a playing intramural football, walking to class, or playing guitar), the attendants at AFSA event found Ms. Vega's chanting to acutely impinge on their ability to listen. *Id*. at 28. Mr. Drake found Ms. Vega's noisy protest to make it difficult to continue to speak. *Id*. at 25. Again, University Campus Security intervened and issued Ms. Vega a "second strike" for violating the policy. *Id*. at 6.

SUMMARY OF THE ARGUMENT

This Court should affirm the decision of the United States Court of Appeals for the Fourteenth Circuit and find that the Policy is consistent with the Free Speech Clause of the First Amendment because the Policy is neither unconstitutionally vague or impermissibly overbroad, nor unconstitutional as applied to Ms. Vega.

The Policy is not void for vagueness it contains sufficient limitations to make clear what conducted is prohibited. This negates any vagueness issues concerning notice or delegation of enforcement duties. *See Grayned v. Rockford*, 408 U.S. 104, 110 (1972).

The Policy is not overbroad because it primarily covers conduct that school administrators are specially authorized to regulated by *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 513 (1969) as the circuit court noted below. R. at 48. Even, if the court disagrees that *Tinker* should apply in this context, Ms. Vega has failed to show that the Policy meets the high standard of substantial overbreadth to justify finding the Policy unconstitutional. *Broadrick v. Okla.*, 413 U.S. 601, 615 (1973).

In addition to surviving facial scrutiny, the Policy, as applied to Ms. Vega, comports with the Free Speech Clause of the First Amendment for two reasons. First, the Policy's prohibition on expressive conduct that "materially and substantially infringes upon the rights of others to engage in and listen to expressive activity" passes constitutional muster as a content-neutral time, place, and manner regulation of speech as set out in cases such as *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). Second, the First Amendment does not protect Ms. Vega's right to substantially and materially infringe on the free speech rights of others, including the right to engage in and listen to expressive activities.

ARGUMENT

I. The University's Free Speech Policy is not facially unconstitutional because it is not vague or overboard.

Ms. Vega challenges the facially validity of the Policy as being void for vagueness and overbroad. First, the Policy is not vague because in constructing the policy, the University provided clear notice of the prohibited conduct and sufficient guidelines to prevent arbitrary or discriminatory enforcement. Second, the policy is not overbroad because public university administrators have additional leeway to regulate on-campus conduct in situations where the Policy applies, and regardless the Policy fails to reach protected speech in a substantial number of instances.

A. The free speech policy is not vague because it adequately defines the prohibited conduct for the purposes of notice and enforcement.

The Policy has been constructed in a manner that prevents it from being void for vagueness. *See F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012). First, the Policy provides notice of the prohibited conduct, so that those subject to it may conform their conduct to the proper standard. *See id*. Second, in delegating enforcement authority, the Policy provides sufficient guidance to prevent arbitrary or discriminatory enforcement. *See id*.

First, the Policy is not vague because the University provided Ms. Vega and others with clear notice of what conduct would be prohibited under the policy. *See id*.

The wording of the policy makes it clear what expression the policy applies to. The applicable analysis here is similar to that used in *Grayned v. City of Rockford*, 408 U.S. at 110 (1972) where the Supreme Court refused to find an ordinance, prohibiting noisy conduct that infringed on school operations, void for vagueness. Although, there can never be a mathematical certainty from words, it must be clear what the Policy prohibits. *Id.* When considering the Policy, the Court may "extrapolate its allowable meaning." *Id.* The Policy only prohibits conduct that

interferes with the rights of others to listen to or engage in expressive activity. *Id.*; R. at 49. As with the anti-noise ordinance in *Grayned* that sought to prevent expression that was deliberately disruptive to school operations, here it is clear "what the ordinance as a whole prohibits." 408 U.S. at 110. It is appropriate to look to the preamble or policy statement of a law to determine what it targets. *See id.* (looking to the preamble of the ordinance to shows its purpose was to protect school activity from disruption.) Here, the Policy was promulgated in accordance with a legislative directive to protect the freedom of expression for all on campus by preventing students from shouting down speakers. R. at 19. As noted in *Broadrick v. Oklahoma*, 413 U.S. 601, 608 (1973) in a void for vagueness challenge "even if the outermost boundaries of [a law] may be imprecise, any uncertainty has little relevance here, where [the challenger's] conduct falls squarely within the 'hard core of the statute's proscriptions . . . ." The Policy had the specific purpose of prohibiting the exact conduct Ms. Vega engaged in on August 31st at the SDB event, when she admittedly attempted to "shout [the speaker] down . . . by chanting and protesting . . ." preventing the speaker from communicating his views and the audience from hearing them. R. at 37. Likewise, Ms. Vega's conduct "f[e]ll squarely" within the Policy's proscription when she interfered with Mr. Drake's and ASFA students' rights to express and listen at the September 5th event. *See Broadrick*, 413 U.S. at 608; R. at 37-38. Thus, Ms. Vega's void for vagueness challenge is of little relevance here, especially where her conduct fell within the "hard core" of the Policy's prohibition. *See Broadrick*, 413 U.S. at 608.

Even in considering the vagueness of each of the limitations of the policy, it is clear that the components are not vague and as a whole serve as notice to those on campus of the conduct opposed by the Arivada Legislature in the "Free Speech in Education Act of 2017." *See Reno v. Am. Civ. Liberties Union*, 521 U.S. 844, 873 (1997); R. at 19. The plain language of the policy

states that it applies only to "expressive conduct" that "materially and substantially infringes" on the rights of others to engage or listen. R. at 23.

In the context of a regulation of speech, the choice of the language "expressive conduct" plainly means the Policy only applies to conduct that is undertaken with an intent to convey a "particularized message." *Jacobs & Meyers, L.L.P v. App. Div. of the Sup. Ct. of the State of N.Y.*, 118 F.Supp.3d 554, 570 (S.D.N.Y. 2015) (citing *Texas v. Johnson*, 491 U.S. 397, 404-406 (1989)). Thus, the term "expressive conduct" contains a requirement of intentionality. *See id*. In *Grayned*, the court noted that limiting the prohibition to deliberate conduct was an important specification to avoid vagueness. *See* 408 U.S. at 110. Moreover, the requirement that the conduct must be undertaken with the intent to convey a particular message plainly excludes conduct such as playing football from the possibility of enforcement. *See* R. at 8. Conversely, Ms. Vega's conduct, intentionally chanting slogans, in opposition to speech of Mr. Drake is the type of "expressive conduct," which the Policy provides notice that it applies to. *See* R. at 38.

In addition, the prohibition is limited to conduct that "materially and substantially infringes" on the rights of others to listen and engage in expressive activity. R. at 23. In *Grayned*, the Court noted that the anti-noise ordinance was more specific than prohibiting a mere "disturbance." 408 U.S. at 112. Specifically, the anti-noise ordinance was not void for vagueness because it prohibited only actual or imminent interference with school sessions. *Id.* at 112-113. The "material and substantial" requirement imposes a similar limitation, requiring there to be an actual infringement of such a manner and degree that others cannot properly engage or listen to the targeted expressive conduct. *Id.* at 113; R. 23. As in *Grayned*, even though there is not a specified "quantum of disturbance," this is not a "vague, general 'breach of peace'" policy. 408 U.S. at 113; R. 23. The conduct is only prohibited where tolerating it would necessarily deprive others of their rights to engage in expressive activity. R. at 23. This is similar to the requirement

of incompatibility and causality that the Court found survived a void for vagueness attack in *Grayned*. 408 U.S. at 113. This additional limitation would prevent other "expressive conduct," such as the students playing guitar or talking in a manner undirected towards Mr. Drake and AFSA, from falling within the prohibition of the Policy. R. at 8. Thus, pursuant to the directives of the Arivada legislature, the University crafted a policy that gave notice of what conduct would be prohibited.

In addition to constructing a policy that gave notice of the type of behavior that would be prohibited, the University took steps to assure that all students, including Ms. Vega, received notice of the Policy prior to having to comply with it. The Policy provided for notice to the students. R. at 23. Vega signed the Student Handbook, indicating that she read and agreed to abide by the University policies including the Policy. R. at 3.

Second, the Policy is not vague because it does not create the risk for arbitrary or discriminatory enforcement. *See Fox Television Station.*, 567 U.S. at 253. The regulation itself is content-neutral. *See* R. at 23. Similar to the anti-noise ordinance at issue in *Grayned*, the Policy does not permit punishment on the basis of a particular point of view. *See* 408 U.S. at 113. Although, as with the ordinance in *Grayned*, there may be some level of "police judgment" required in enforcing the Policy, the Policy does not mean any expressive conduct only occurs "at the whim" of University Campus Security. 408 U.S. at 113-114.

In conclusion, the Policy is not vague because it provides a "person of ordinary intelligence reasonable opportunity to know what is prohibited" and is specific enough to prevent "arbitrary and discriminatory" enforcement. *Grayned*, 408 U.S. at 108-109.

B. The Policy is not overbroad because it only reaches conduct university administrators are specially permitted to regulate and does not otherwise reach a substantial amount of protected conduct.

In order to be invalidated under the overbreadth doctrine, there must be a realistic danger that the Policy will significantly compromise the First Amendment protections of those subject to it. *Members of City Council of L.A. v. Taxpayers for Vincent*, 466 U.S. 789, 801 (1984). Generally, courts have recognized that the sweep of a law must be substantial to justify invoking the "strong medicine" of the overbreadth doctrine. *U.S. v. Williams*, 553 U.S. 285, 293 (2008); *Broadrick*, 413 U.S. at 615. Here, the overbreadth doctrine is applied less rigidly against the Policy because it is neutral and noncensorial, not directed at particular groups or viewpoints. *Broadrick*, 413 U.S. at 615-616. Not only is the Policy of a type that is of least concern to an overbreadth challenge, but sweep the Policy primarily reaches only speech that the University is empowered to regulate. In *Tinker*, the Court held that school administrators may regulate speech where it collides with the rights of others or interferes with the institutions purpose. *Tinker*, 393 U.S. at 513. As the circuit court held below, while *Tinker* was developed for public elementary schools, this standard remains a useful tool to strike a proper balance between speech and regulation in the context of public universities. *See Am. Civ. Liberties Union v. Radford College*, 315 F. Supp. 893, 896 (W.D. Va. 1970); R. at 48. While public universities must operate in accordance to First Amendment principles, college officials have a "wide discretion" in operating the school in a manner compatible with the university's objectives. *Id.* (citing *Norton v. Discipline Committee of E. Tenn. State*, 419 F.2d 195 (6th Cir. 1969); *Esteban v. Central Mo. State Coll.*, 515 F.2d 1077 (8th Cir. 1969) (Blackmun, J.)). Even if some variant of the *Tinker* standard does not apply, the Policy may not be invalidated because Ms. Vega has failed to establish that the policy is substantially overbroad. *See Broadrick*, 413 U.S. at 616.

i. The Policy is not overbroad because *Tinker* empowers school administrators to regulation otherwise protected speech to protect the rights of others.

Tinker does not protect speech from school regulation where it collides with the rights of others. 393 U.S. at 513. The Policy subjects to regulation speech that collides with "the rights of others to engage or listen to expressive activity." *Id.*; R. at 23. The Court has noted that the Constitution protects the right to receive information "in a variety of contexts." *Bd. Of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 867 (1982). As noted by James Madison protection of the acquisition of information is necessary for the free expression protections of the First Amendment to be meaningful. *Id.* Here, the Policy is not overbroad because it primarily targets expression that is not privileged from regulation by the university, expression that infringes on the rights of others to receive information. *See Tinker*, 393 U.S. at 513; R. at 23.

Here, for example, Mr. Putnam and the students of SIN invited Mr. Drake to campus to learn Mr. Drake's perspective about the state of immigration in the United States. R. at 28. While Ms. Vega claims she sought to "tailor" her protest to "not . . . shout down the speaker," she admittedly calibrated her chant in relation to Mr. Drake's speech "to balance out (his) vile and untruthful words . . ." R. at 38. Consequently, her protest "inhibit(ed) spectators' ability to listen" to Mr. Drake's views on immigration. R. at 36. The targeted nature of Ms. Vega's speech meant that it directly collided with students' right to receive information from Mr. Drake. R. at 36. By choosing to engage in conduct that collides with the rights of other to receive information, Ms. Vega engaged in expression that could be subjected to regulation by the University. *See Tinker*, 393 U.S. at 513.

Ms. Vega may argue that the right to receive information is typically protected from invasion against government, not other speakers. However, although typically the right to receive information is applied to protect expression from government interference, in *Stacy v. Williams*

the court held that students' right to receive information on campus is protected against popular dislike by other students. 306 F.Supp. 963, 977 (N.D. Miss. 1969). In *Stacy*, a public university enacted a regulation that barred speakers from campus who constituted a clear and present danger of inciting a riot. *Id.* at 976. The court noted that university must protect students' right to hear an unpopular speaker even if he held views disliked on campus. The court noted that any riot prevention must do done by enforcement against the "mob" not the speaker. *Id.*

ii. The Policy is not overbroad because *Tinker* empowers school administrators to regulate speech in support of institutional objectives.

Second, *Tinker* empowers schools to regulate speech in consideration of the mission of public schools. 393 U.S. at 513. Relatedly, cases show an additional importance to the "marketplace of ideas" on college campuses, more so than other areas of life, that justify additional intervention by the University. See *McCauley v. U. of the Virgin Is.*, 618 F.3d 232, 244 (3rd Cir. 2010). In *McCauley*, the 3rd Circuit compared universities with public elementary and high schools to noting how public schools have more leeway to regulate speech based on their in loco parentis role, the special needs of school discipline, maturity or students, the fact that students did not reside at school, and the pedagogical goals of public schools. *Id.* at 243. In particular, the court noted that greater regulation of speech is tolerated because an important purpose of public schools is to indoctrinate and socialize children with American values and being a citizen. *Id.* In contrast, speech can be less inhibited at universities because they exist for the purpose of challenging a priori assumptions and launching new inquiries. *Id.* To that end teachers and students at university must have particular freedom to inquire, study, and evaluate. *Id.* Indeed, courts have noted that the modern university is uniquely supposed to function as a marketplace of ideas where students grow as they exchange and engage with new ideas. *Id.* at 243 (citing *Healy v. James*, 408 U.S. 169, 197 (Douglas, J., concurring)). At times, protection for the marketplace of ideas on campus may have required less regulation of expression where the university was suppressing speech or regulating

on the basis of content. *See Healy*, 408 U.S. at 197 (Douglas, J., concurring). However, in order to protect the health of the marketplace of ideas, some minimal regulation is be required. Just as economic markets require some government regulation to ensure they are not dominated by one entity, the marketplace of ideas particularly on college campuses requires minimal regulation to ensure they are not subjected to the tyranny of the "mob." *See Stacy*, 306 F.Supp. at 976 As noted by the *McCauley* court, a robust exchange of diverse viewpoints is the defining characteristic of the pedagogical purpose of universities. *McCauley*, 618 F.at 243. Just as *Tinker* grants public schools additional leeway to regulate speech in the interest of educating children so to universities should be able to protect the exchange of ideas on campus by protecting the rights of those on campus to listen and express. *See* 393 U.S. at 513.

iii. Ms. Vega has failed to show the policy is substantially overbroad.

Even if the university does not have any additional authority to regulate speech, the Policy cannot be applied to constitutionally protected expression in a substantial number of instances. *See Taxpayers*, 466 U.S. at 801. As noted above, an overbreadth challenge may only be employed sparingly because it constitutes an exception to the traditional rule of standing, allowing a litigant to challenge the impact of a law even on behavior that she did not engage in. *Broadrick*, 413 U.S. at 613. The rationale behind this doctrine is to prevent chilling of protected speech. *Id.* at 612-613. As noted below, Ms. Vega cannot meet her burden of showing substantial overbreadth merely by showing the possibility of some unconstitutional applications of the policy. *See Taxpayers*, 466 U.S. at 801; R. at 51. Ms. Vega must show that there are that there is a realistic danger that the supposedly substantially overbroad Policy will significantly compromise First Amendment protections. *See Taxpayers*, 466 U.S. at 801.

As discussed in Part I.A. above and by the circuit court, the "material[] and substantial[] infringe[ment]" limitation will exclude many exchanges from the prohibition. R. at 51. Ms. Vega

may raise that because Mr. Haddad and Ms. Smith were deterred from accompanying her to protest Mr. Drake's speech the Policy has a chilling effect. R. 27, 31. However, that effect is not due to the breadth of the statute, but rather the preferences of these protesters. Plainly, this policy would not have prohibited the members of KFT from protesting at a different time or in a different manner that did not materially and substantially infringe on the right of Mr. Drake to speak or the students of SIN to listen to him. Just as the political campaigners in *Taxpayers* tried to characterize attack on the city's removal of their signs from their preferred locations an overbreadth challenge, Ms. Vega attempts to characterize her preference for a particular form of protest as an overbreadth challenge. *See* 466 U.S. at 801-802. Even if the Policy goes too far in reaching Ms. Vega's conduct, it is does not meet the standard of substantially overbroad. *Broadrick*, 413 U.S. at 615-616. As in Broadrick, "whatever overbreadth may exist should be cured through case-by-case analysis of the facts to which its sanctions . . . may not be applied . . ." *See id*. Thus, Ms. Vega's objection is more properly characterized as an as-applied challenge though, as noted below, she also fails on that assertion. *See Taxpayers*, 466 U.S. at 802-803.

II. The Policy serves as a reasonable time, place and manner regulation of speech that comports with the free speech clause of the First Amendment as applied to Ms. Vega.

The Policy strikes a constitutionally appropriate balance between protecting the rights of all campus community members and invited guests to engage in and listen to expressive activity, without sacrificing the First Amendment rights of dissatisfied students to express opposition to such speech. R. at 23. Specifically, the Policy, as applied to Ms. Vega, serves as a reasonable time, place and manner regulation because it is neutral with regard to the message presented, focuses narrowly on serving the University's substantial interest, and leaves open ample alternative channels of communication. R. at 23; *see Ward*, 491 U.S. at 791; *see Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293 (1984); *Heffron v. Int'l Soc. for Krishna Consciousness, Inc.*, 452 U.S. 640, 648 (1981). In addition, the Policy, as applied to Ms. Vega, is constitutional because

the Free Speech Clause of the First Amendment does not protect Ms. Vega's right to substantially and materially infringe on the free speech rights of others, including the well-established right to receive information and ideas. *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 866–67 (1982); *Am. Civil Liberties Union of Virginia, Inc. v. Radford Coll.*, 315 F. Supp. 893, 896 (W.D. Va. 1970);

A. The Policy is a reasonable time, place, and manner restriction on speech that comports with First Amendment protections.

This Court has upheld reasonable time, place and manner regulations against First Amendment challenges so long as the following three-part test is satisfied: (1) the regulation is content neutral; (2) the regulation is narrowly tailored to serve significant government interests; and (3) the regulation leaves open ample alternative channels of communication. *Ward*, 491 U.S. at 791.

Here, the Policy is content neutral. The Policy advances the University's compelling interest in safeguarding the free speech rights of all members of the campus community and any outside guests invited to speak on campus. And is narrowly tailored to regulate only material and substantial disruptions of speech such as intrusions on the rights of others to engage in and listen to expressive conduct. Finally, while the Policy prohibits Ms. Vega from deliberately disrupting an ongoing campus event, it leaves open numerous alternative channels of communication. Thus, the statute passes constitutional muster as a content-neutral regulation of speech, consistent with First Amendment guarantees. *See Ward*, 491 U.S. at 791; *see also Clark*, 468 U.S. at 293; *Heffron*, 452 U.S. at 648.

i. The Policy is content neutral because it does not restrict speech based on its message.

This Court emphasized in *Ward* that the controlling consideration in assessing the content neutrality of a regulation is the government's purpose in enacting the regulation. 491 U.S. at 791. Thus, the principle inquiry in a neutrality analysis is whether the government has adopted a regulation of speech because of disagreement with the message it conveys. *Id.* (citing *Clark*, 468 U.S. at 295**).** Because the "government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views," a regulation that limits speech based on its message is unconstitutional. *Police Dep't of City of Chicago v. Mosley*, 408 U.S. 92, 96 (1972). Conversely, "a regulation that serves purposes unrelated to the content of expression is content neutral, even if it has an incidental effect on some speakers or messages but not others." *See Ward*, 491 U.S. at 791 (citing See *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 47–48 (1986)). Here, the Policy is constitutional because its justifications relate not to the content of the speech but to the potential "secondary effects" created by such speech, specifically material and substantial infringements on the rights of others to listen to and engage in expressive activities. *See City of Renton*, 475 U.S. at 47.

In *City of Renton*, this Court held that a zoning ordinance which prohibited adult motion picture theaters from locating within 1,000 feet of any residential zone, single or multiple-family dwelling, church, park or school was consistent with its definition of content-neutral speech regulations because it could be "justified without reference to the content of the regulated speech." 475 U.S. at 48. The Court reasoned that it was the "secondary effect of adult theaters on the surrounding community" that the zoning ordinance was attempting to avoid, not the dissemination of speech that some residents found offensive. *Id.* Therefore, the Court held that while the ordinance did limit certain kinds of speech it did not contravene the fundamental principle that

underlay the Court's concerns about "content-based" speech regulations. *Id.* (citing *Mosley*, 408 U.S. at 95–96).

Likewise, the University adopted the Policy in an effort to comply with the State of Arivada's "Free Speech in Education Act of 2017," which was enacted in response to the "nation-wide phenomena" "of shouting down invited speakers on college and university campuses." *Id.*; R. at 19. Recognizing the critical importance of free expression on campus, the Arivada Legislature required "all state institutions of higher education . . . to develop and adopt policies designed to safeguard the freedom of expression on campus of all members of the campus community and all others lawfully present on . . . campuses in th[e] state." *Id.* Thus, the principal justification for both the statute, and the Policy promulgated thereunder, was to safeguard freedom of expression on campus by limiting material and substantial intrusions on the rights of others to engage in expressive conduct. *Id.* This justification had nothing to do with the content of the regulated speech. *See id.*

In addition, the Policy applies to all speakers regardless of the content of their message, placing only a limited restriction on the *manner* in which that message is delivered. *See Heffron*, 452 U.S. at 649. Nothing in the statute advantages or disadvantages any particular viewpoint, or indicates disagreement with any particular topic discussed or idea or message expressed. *Contra Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2222 (2015) ("Speech regulation is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed.") In *Heffron*, 452 U.S. 640, this Court upheld a state fair rule limiting the distribution of written material and solicitation of donations on fair grounds to fixed locations, because the regulation "applie[d] evenhandedly to all who wish to distribute and sell written materials or to solicit funds," without reference to content or subject matter of the speech. *Heffron*, 452 U.S. at 649–50**.** Likewise, here, there is no suggestion in the record that Officer Thomas issued Ms. Vega

a citation because of the underlying content of her speech. *See* R. at 20-22; 34-36. Instead, the Officer's report indicates that he issued Ms. Vega a citation after "observ[ing] spectators in the amphitheater turning around to look at Ms. Vega" and noting that the audience members "appeared to have difficulty focusing on [Mr. Drake's] speech due to the disruption." R. at 36. As his affidavit demonstrates, Office Thomas's rationale for enforcing the Policy against Ms. Vega was entirely dependent on the *manner* in which the speech was delivered. *Id.* Also notably absent from the record is any indication that University prevented Ms. Vega from speaking while allowing someone else espousing a different viewpoint from causing a material disturbance on campus. *See Mosley*, 408 U.S. at 96. Thus, the University's application of the Policy satisfies the content-neutrality requirement for a time, place, or manner regulation. *See Ward*, 491 U.S. at 791.

ii. The Policy is narrowly tailored to serve the University's compelling interest in protecting the free speech rights of all members of the campus community and invited guests on campus

In *Shelton v. Tucker*, 364 U.S. 479, 487 (1960), this Court noted that "[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." In subsequent cases it went on to recognize the university as the "quintessential marketplace of ideas," *Healy v. James*, 408 U.S. 169, 180 (1972) (quoting *Keyishian v. Bd. of Regents of Univ. of State of N. Y.*, 385 U.S. 589, 603 (1967)), and identified exposing students to debate on diverse points of view is at the core of a university's educational mission. *Bd. of Regents of Univ. of Wisconsin Sys. v. Southworth*, 529 U.S. 217, 217 (2000).

Of equal consequence is the considerable deference this Court has given to university administrators to define the intangible characteristics central to that educational mission. *Fisher v. Univ. of Texas at Austin*, 136 S. Ct. 2198, 2214 (2016); *Norton v. Discipline Comm. of E. Tennessee State Univ.*, 419 F.2d 195 (6th Cir. 1969); *Radford*, 315 F. Supp. at 896. In fact, "decisions of this Court have never denied a university's authority to impose reasonable regulations

compatible with that mission upon the use of its campus and facilities." *Widmar v. Vincent*, 454 U.S. 263, 268 n.5 (1981). To the contrary, a recent opinion even cautioned the lower courts to resist "substitut[ing] their own notions of sound educational policy for those of … school authorities," because judges lack the on-the-ground expertise and experience of school administrators. *Christian Legal Soc. Chapter of the Univ. of California, Hastings Coll. of the Law v. Martinez*, 561 U.S. 661 (2010) (quoting *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cty. v. Rowley*, 458 U.S. 176, 206 (1982)). This deference to the educational mission of institutions of higher learning incorporates "recognition of a university's right to exclude even First Amendment activities that violate reasonable campus rules or substantially interfere with the opportunity of other students to obtain an education." *Alabama Student Party v. Student Gov't Ass'n of the Univ. of Alabama*, 867 F.2d 1344, 1345 (11th Cir. 1989) (quoting *Widmar*, 454 U.S. at 277) (internal quotations omitted).

Here, the University carefully tailored its Policy to address the growing threat of campus shout-outs without infringing on otherwise protected speech by "target[ing] and eliminat[ing] no more than the exact source of the 'evil' it seeks to remedy." *See Frisby v. Schultz*, 487 U.S. 474, 485 (1988) (*Taxpayers,* 466 U.S. at 808–810). In adhering to the Legislature's clear mandate, the Policy prohibits expressive conduct *only* if it "materially and substantially" infringes on the rights of other in order to "ensure that the free speech rights of all persons . . . are fully protected." R. at 19. Therefore, the regulation "responds precisely to the substantive problem which legitimately concerns" of the State and "curtails no more speech than is necessary to accomplish its purpose." *Taxpayers*, 466 U.S. at 810.

These narrowly tailored limitations are modest in comparison to others this Court has upheld. *Frisby*, 487 U.S. at 485; *Heffron*, 452 U.S. at 649; *Grayned*, 408 U.S. at 109, 118. For example, the regulation interferes far less with a speaker's ability to communicate than did the total

ban on picketing on the sidewalk outside a residence upheld in *Frisby*, 487 U.S. 474 or the restrictions on distributing flyers at a fairground which this Court upheld in *Heffron*, 452 U.S. at 649. Moreover, by limiting only the *manner* in which a speech is conducted, rather than the time and place of the speech, the Policy places fewer restriction on speech than even the anti-noise ordinance this Court upheld in *Grayned* which prohibited a person, while on grounds adjacent to a building in which a school is in session, from creating a disturbance which materially disrupts classwork. 408 U.S. at 118 (citing *Tinker*, 393 U.S. at 513.).

Adding support to the University's argument, this Court has made clear that a narrowly tailored regulation need not be the *least* restrictive means of furthering the government's interests. *Hill v. Colorado*, 530 U.S. 703, 704 (2000); *Frisby*, 487 U.S. at 485; *see United States v. O'Brien (1968),* (declaring that incidental restrictions of speech rights as permissible if these restrictions are narrowly tailored and necessary to pursue compelling governmental interests). In *Hill*, this Court affirmed the Colorado Supreme Court's decision not to grant an injunction against enforcement of a Colorado criminal statute prohibiting any person from "knowingly approaching" within eight feet of another person near health care facility without that person's consent, in order to pass "a leaflet or handbill to, displa[y] a sign to, or engag[e] in oral protest, education, or counseling with [that] person," claiming that the statute violated their First Amendment rights. 530 U.S. 703. Justice Stevens writing for the majority noted that a "[w]hen a content-neutral regulation does not entirely foreclose any means of communication, it may satisfy the tailoring requirement even though it is not the least restrictive or least intrusive means of serving the statutory goal." *Id.* at 704. Although, the statute "encourage[d] the most aggressive and vociferous protesters to moderate their confrontational and harassing conduct" the Court noted that the imposition of an eight foot interval did not prevent the protestors from engaging with willing listeners. *Id.* Likewise, here, the Policy did not prohibit Ms. Vega from attending the AFSA event, nor did the Policy

completely preclude her from engaging with Mr. Drake and his audience. R. at 23. Instead, it simply restricted engaging with the speaker and his audience in a manner that materially and substantially infringed on their own rights of free expression. *Id.* Therefore, even if this Court were to determine that the Policy not the least restrictive means of achieving the University's objectives, it easily meets the standard articulated in *Hill*, 530 U.S. at 704; *see also Frisby*, 487 U.S. at 485. And thus, the Policy also satisfies the second prong of the *Ward* analysis because it is appropriately tailored to serve the University's compelling interest in protecting free speech and open discourse on campus. *See Ward*, 491 U.S. at 791.

iii. The Policy left open ample alternative channels of communication through which Ms. Vega could share her message.

Finally, although the policy limits certain manners of communication, it leaves open ample alternative channels for Ms. Vega to express her views. *Clark*, 468 U.S. at 293; *see Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983). Where a speaker has access to alternative channels of communication, this Court has routinely upheld restrictions on the time, place, and manner of speech. *See e.g.*, *Ward*, 491 U.S. at 803 (upholding municipal noise ordinance where ample alternatives of communication were available); *Clark*, 468 U.S. at 308 (prohibiting camping on park lands was not unconstitutional restriction on free speech because it left open alternative channels of communication); *Bowman v. White*, 444 F.3d 967, 981 (8th Cir. 2006) (approving regulation designed to minimize distractions during exam period leaves open ample other times during which expressive activities may occur). As firmly articulated in *Ward*, 491 U.S. 781, the fact that the statute "may reduce to some degree the potential audience for [petitioner's] speech is of no consequence, for there has been no showing that the remaining avenues of communication are inadequate." *Ward*, 491 U.S. at 802–03.

Here, Ms. Vega's ability to communication with her intended audience, so long as she does so without "materially and substantially" infringing upon the rights of others to listen and engage in free expression, remains uninhibited. R. at 23. Ms. Vega could have expressed her views on immigration in a variety of other ways without interrupting an ongoing event on campus. For example, as the Circuit Court pointed out, "Ms. Vega . . . and her KFT group . . . could have reserved the Amphitheater or some other campus venue for another day, thereby adding their view to the marketplace of ideas without taking Mr. Drake's ideas off of the field." R. at 52. Ms. Vega could have also challenged Mr. Drake's ideas by asking questions after the event and engaged with passersby and event attendees leaving the program. *See Hill*, 530 U.S. at 714. Finally, Ms. Vega was free to communicate her message throughout the campus community through the use of various media including mailings, the internet, and flyers. *See id.* (did not preclude use of signs and stationary speakers); *see also Pell v. Procunier*, 417 U.S. 817, 827–828, (1974) (prison inmates may communicate with media by mail). Thus, the fact that the Policy may reduce to some degree the potential audience for [Ms. Vega's] speech is of no consequence" because there has been "no showing that the remaining avenues of communication are inadequate." *Ward*, 491 U.S. at 802–03 (citing *Taxpayers*, 466 U.S., at 803 and n. 23, 812 and n. 30 and *Kovacs v. Cooper*, 336 U.S. 77, 88–89 (1949)).

B. Ms. Vega did not have a First Amendment right to shout down a speaker at a campus activity.

Moreover, as this Court noted in *Taxpayers*, the First Amendment right of free speech "does not guarantee the right to employ every conceivable method of communication at all times and in all places." 466 U.S. at 812; *see Schenck v. United States*, 249 U.S. 47, 52 (1919) ("[T]he most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre . . . ."). The right of free speech, though "fundamental in our democratic society do[es] not mean that everyone with opinions or beliefs to express may address a group at any public place and at

any time." *Cox v. Louisiana*, 379 U.S. 536, 554 (1965); *see Baines v. City of Danville, Va.*, 337 F.2d 579 (4th Cir. 1964), *on reh'g in part,* 357 F.2d 756 (4th Cir. 1966), *cert. granted, judgment aff'd sub nom. Baines v. City of Danville, Virginia.*, 384 U.S. 890 (1966), and *disapproved of by Mitchum v. Foster*, 407 U.S. 225 (1972) (holding that First Amendment rights "are not a license to trample upon the rights of others" and that the right of free speech "must be exercised responsibly and without depriving others of their rights, the enjoyment of which is equally precious."). This Court reemphasized this important limitation in *Gregory v. City of Chicago*, 394 U.S. 111, 124–25 (1969) noting that "the rights of the people peaceably to assemble and petition for a redress of grievances, would be worth little if outsiders could disrupt and prevent such a meeting in disregard of the customs and rules applicable to it." *Tinker* and its progeny recognized the added importance of these limitations in the context of educational institutions explaining that "conduct by []student[s], in class or out of it, which for any reason—whether it stems from time, place, or type of behavior—materially disrupts classwork or involves substantial disorder or invasion of the rights of others is . . . not immunized by the constitutional guarantee of freedom of speech." 393 U.S., at 513; *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 685 (1986) (holding that school acted "within its permissible authority in imposing sanction" in response to student's offensive speech); *Keefe v. Adams*, 840 F.3d 523, 531-33 (8th Cir. 2016) (holding that nursing school did not violate student's First Amendment rights after removing him from program based on student's unprofessional speech online).

Ms. Vega's deliberate obstruction of an ongoing campus event interfered not only with Mr. Drake's First Amendment right to free speech, but also his audience members' rights to listen to, engage in, and receive information and ideas. *Pico*, 457 U.S. at 866–67. Federal courts, including this one, have recognized this right to "receive information and ideas" in a variety of contexts. *See e.g., Pico*, 457 U.S. 853; *Radford*, 315 F. Supp. at 896; *Kleindienst v. Mandel*, 408 U.S. 753, 775

(1972) (Marshall, J., dissenting) ("The freedom to speak and the freedom to hear are inseparable; they are two sides of the same coin.").

In *Pacific Gas and Elec. Co. v. Public Utilities Comm'n of California*, 475 U.S. 1 (1986)*;* for example, this Court held that the constitutional guarantee of free speech protects significant societal interests wholly apart from the speaker's interest in self-expression, including the public's interest in receiving information. *See also U.S. West, Inc*. v. *F.C.C.*, 182 F. 3d 1224 (10th Cir. 1999) (holding that the two components of effective speech are a speaker and an audience, and that a restriction on either of these components is a restriction on speech); *Rossignol v. Voorhaar*, 199 F. Supp. 2d 279 (D. Md. 2002) (ruling that the First Amendment protects the right to receive information and ideas). The *Pico* court explained that the right to receive ideas "follows ineluctably from the sender's First Amendment right to send them." 457 U.S. at 867. This right to receive ideas is a "necessary predicate to the *recipient's* meaningful exercise of his own rights of speech, press, and political freedom." *Id.* "The dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them. It would be a barren marketplace of ideas that had only sellers and no buyers." *Id.* (quoting *Lamont v. Postmaster Gen. of U. S.*, 381 U.S. 301, 308 (1965) (Brennan, J., concurring)); *see Radford*, 315 F. Supp. at 896 (holding that "right to free speech" would have little value "if the right to hear such speech could be foreclosed.")

Ms. Vega argued, and the District Court held, that the University violated Ms. Vega's First Amendment right of free speech and protest when it sanctioned her under the Policy. R. at 16-17. But, by protecting obtrusive conduct under the guise of free speech, a ruling in Ms. Vega's favor would allow hostile audience members to materially infringe on the constitutionally protected rights of others and render the University powerless to stop them. Therefore, this Court should

instead affirm the Fourteenth Circuit's decision in favor of the University upholding the Constitutionality of the Policy as applied to Ms. Vega. R. at 53.

CONCLUSION

For the foregoing reasons, the University respectfully asks this Court to affirm the decision of the United States Court of Appeals for the Fourteenth Circuit and find that the Policy comports with the Free Speech Clause of the First Amendment both facially and as applied.

BRIEF CERTIFICATION

The work product contained in all copies of this team's brief are the work product of this team's members. This team has complied within our school's governing honor code. This team has also complied with the Rules of the Competition.

Respectfully,

Team 18