Brief on the Merits
No. 18-1234

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2019

VALENTINA MARIA VEGA

Petitioner,

v.

JONATHAN JONES; and REGENTS OF THE UNIVERSITY OF ARIVADA,

Respondents.

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

BRIEF FOR PETITIONER

Team 12
Counsel for Petitioner

QUESTIONS PRESENTED

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

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STATEMENT OF JURISDICTION

The United States Court of Appeals for the Fourteenth Circuit entered final judgment on this matter on November 1, 2018. *Jones v. Vega (Vega II)*, No. 18-1757, slip op. at 1 (14th Cir. Nov. 1, 2018). Petitioner timely filed a petition for a writ of certiorari, which this Court granted. This Court has jurisdiction over the matter pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Petitioner Valentina Vega brought this First Amendment action against respondents Jonathan Jones and the Regents of the University of Arivada on October 1, 2017 (collectively, "the University") after the University suspended Ms. Vega for the remainder of the semester on September 5, 2017. *Vega v. Jones* (*Vega I)*, C.A. No. 18-CV-6834, slip op. At 1, 6 (A. Sheehan Jan. 17, 2018). Both parties submitted cross motions for summary judgment, and the district court granted Ms. Vega's motion on January 17, 2018. *Id.* at 7. The court held that the University's Free Speech Policy violated the Ms. Vega's free speech rights under the First and Fourteenth Amendments both facially and as-applied. *Id.* at 2.

The University filed a timely appeal to the United States Court of Appeals for the Fourteenth Circuit. *Vega II*, at 1. On November 1, 2018, the Fourteenth Circuit reversed the district court and remanded the case with instructions for the lower court to grant the University's Motion for Summary Judgment. *Id.* at 1, 12. The Fourteenth Circuit held that the University's Free Speech Policy did not violate the First Amendment's Free Speech clause because it was not vague or overbroad, and that the University did not unconstitutionally apply the Policy. *Id.* Ms. Vega filed a timely petition for writ of certiorari, and this Court granted the writ.

STATEMENT OF THE FACTS

The State of Arivada adopted the "Free Speech in Education Act of 2017," which required all higher education institutions of the state to enact policies designed to "safeguard the freedom of expression on campus." Av. Gen. Stat. § 118–200. In response, the University of Arivada adopted its Free Speech Policy, aimed at providing escalating punishments for students who violate the standard set forth in the Policy. Jt. Stip. App. A. The University's Free Speech Policy states that "expressive conduct that materially and substantially infringes upon the rights of other to engage in or listen to expressive activity shall not be permitted on campus and shall be subject to sanction." Jt. Stip. App. A.

The Policy authorizes Campus Security to determine what conduct qualifies as a material and substantial infringement and to issue citations accordingly. Jt. Stip. App. A. The University's Dean of Students then reviews the citations and verifies that the citation is appropriate. Jt. Stip. App. A. The student who violates the Policy attends a disciplinary hearing where the Dean of Students may then issue the "strike" against the student. Jt. Stip. App. A. The University places any "strike" under the Policy on the student's record. Jt. Stip. App. A.

The first violation of the Policy causes the offending student to receive a warning. Jt. Stip. App. A. A second "strike" requires that the school suspend the students for the remainder of the semester, and a third "strike" results in expulsion. Jt. Stip. App. A. Second and third strikes lead to a formal disciplinary hearing. Jt. Stip. App. A. This hearing provides "written notice of the charges, right to counsel, right to review the evidence in support of the charges, right to confront witnesses, right to present a defense, right to call witnesses, a decision by an impartial arbiter, and the right of appeal." Jt. Stip. App. A.

The University of Arivada sent this Policy to all students before the start of the school year. Jt. Stip. ¶ 1. The University required students to sign a "Policy Statement" confirming that they received the policies, read them, and agreed to follow them. Jt. Stip. ¶ 2. Ms. Valentina Vega, a student at the University of Arivada, signed the Policy statement, acknowledging that she received the Policy, read it, and would conform her conduct to meet its requirements. Jt. Stip. ¶ 5.

Ms. Vega is a first-generation Hondaraguan-American sophomore student, majoring in Sociology and minoring in Pre-Law Studies. Vega Aff. ¶ 2. She is also a dedicated advocate to human rights, with a specific focus on "promoting respect for the rights and dignity of immigrants in the United States." Vega Aff. ¶ 3. She also serves as the President of her University's branch of a national student organization called "Keep Families Together" (KFT). Vega Aff. ¶ 4. The organization focuses on advocating for immigrant's rights on campus. Vega Aff. ¶ 4. KFT participated in multiple peaceful events on campus while engaging with their peers. Jt. Stip. ¶ 6.

Ms. Vega received her first citation on August 31, 2017 while attending an anti-immigration rally in a school auditorium. Vega Aff. ¶ 5. Ms. Vega and her counterparts tried to shut down the rally by entering the auditorium, standing on their chairs, and chanting over the speaker. Vega Aff. ¶ 5. Leaders of the rally contacted the Campus Security Department to report the conduct. Thomas Aff. ¶ 5. All members of KFT present received citations, which the Campus Security officer shared with the Dean of Students. Thomas Aff. ¶ 6–7. After their informal hearing, the students all received their "first strike" because the Dean decided they violated the Policy by "materially and substantially infringing upon the rights of others to engage in or listen to expressive activity." Winters Aff. ¶ 8.

On September 5, 2017, the "American Students for America" (ASFA) student organization hosted Samuel Payne Drake, Executive Director of Stop Immigration Now (SIN), to speak at the University in the outdoor amphitheater. Jt. Stip. ¶ 7. ASFA did not secure a permit for their event, though they did reserve the amphitheater through the University. Jt. Stip. ¶ 8. SIN actively speaks out against illegal immigration and labels it as the "primary source" of major illegal activity. Drake Aff. ¶ 2–3. The amphitheater sits within the University's "Quad" at the center of campus and is surrounded with open areas designed for students to congregate, play sports, listen to music, and engage in other social activities. Jt. Stip. ¶ 10–11. The amphitheater often hosts student events including concerts and other speakers, seating around one-hundred audience members. Jt. Stip. ¶ 12–13. The amphitheater connects to the Quad and its open areas. Jt. Stip. ¶ 14.

Mr. Drake's speech drew about thirty-five people to the amphitheater. Jt. Stip. ¶ 15. Mr. Drake shared anti-immigration opinions and pushed for deportation of undocumented immigrants. Drake Aff. ¶ 8. He also cried out that illegal immigrants cause most crimes and were stealing jobs. He shouted controversial rhetoric to "build the wall and keep them out;" and "make America American again!" Drake Aff. ¶ 9. During the speech, other students engaged in distracting conduct around the amphitheater, such as participating in and cheering on a flag football game as well as speaking with each other and listening to music. Jt. Stip. ¶ 17.

While Mr. Drake shared his opinions in the amphitheater, Ms. Vega stood on a path in the Quad while dressed in a Statue-of-Liberty costume. Vega Aff. ¶ 15. Ms. Vega began sharing her own views to others in the area, encouraging the disbanding of ICE and advocating that families be kept together. Vega Aff. ¶ 16. When the President of ASFA heard Ms. Vega on the sidewalk, he called campus security to report what he thought was a "disruption" to his speaker.

Putnam Aff. ¶ 9. When the security officer arrived, he found Ms. Vega speaking in the direction of the amphitheater, causing her voice to project more loudly than other activities going on in the Quad. Thomas Aff. ¶ 9. The officer then exercised the discretion given to him in the school's Speech Policy and issued Ms. Vega a citation for "materially and substantially infringing upon the rights of others to engage in or listen to expressive activity." Thomas Aff. ¶ 11. Ms. Vega's second citation resulted in a formal disciplinary hearing on September 12, 2017, at which Ms. Vega received her "second strike" and was suspended for the rest of the semester. Winters Aff. ¶ 12.

SUMMARY OF THE ARGUMENT

This Court should reverse the decision of the United States Court of Appeals for the Fourteenth Circuit and remand for entry of summary judgment in favor of Ms. Vega. This Court should find that the University's Free Speech Policy is unconstitutional, both on its face and as-applied.

The University's Free Speech Policy is unconstitutional on its face because it is both unconstitutionally vague and substantially overbroad. Based on the policy considerations set forth in *Grayned v. City of Rockford*, the Free Speech Policy is unconstitutionally vague because (1) it fails to give fair warning to an ordinary person of reasonable intelligence of what is allowed and what is not, (2) it allows enforcers to apply the Policy in an impermissibly *ad hoc* and subjective basis, and (3) it leads citizens to steer far outside of the unlawful zone.

The Policy is also substantially and impermissibly overbroad. The breadth inhibits free expression and a substantial number of the applications of the Policy are unconstitutional. There are less restrictive means and in practice the Policy does not effectuate the purported goals, but instead limits free speech.

The Policy is unconstitutional as-applied to Ms. Vega because she did not materially and substantially infringe upon the rights of Mr. Drake or the people listening to his speech. She did not disrupt classwork, create disorder, or invade anybody's rights. Whether or not her speech annoyed Mr. Drake and his listeners, she did not prevent him from speaking and did not stop anyone from listening to him.

ARGUMENT

I. THE UNIVERSITY OF ARIVADA'S CAMPUS FREE SPEECH POLICY IS UNCONSTITUTIONALLY VAGUE.

The First Amendment of the United States Constitution protects citizens by requiring that "Congress shall make no law . . . abridging the freedom of speech." U.S. Const. amend. I. Under the Due Process Clause of the Fourteenth Amendment, the First Amendment applies to the states, including state universities. U.S. Const. amend. XIV, § 1. This Court has upheld that "an enactment is void for vagueness if its prohibitions are not clearly defined." *Grayned v. City of Rockford,* 408 U.S. 104, 108 (1972).

The University's Free Speech Policy offends important values that the Constitution promises to uphold as outlined in *Grayned*. First, the vagueness of the Free Speech Policy makes it impossible for "the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning." *Id.* at 108. Second, the Free Speech Policy fails to "provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application." *Id*. at 108–09. Finally, the Policy "'abut[s] upon sensitive areas of basic First Amendment freedoms, [and therefore it] operates to inhibit the exercise of [those] freedoms.' Uncertain meanings inevitably lead citizens to 'steer far wider of the unlawful zone . . . than if the boundaries of the forbidden areas were clearly marked.'" *Id.* at 109 (quoting *Baggett v. Bullitt*, 377 U.S. 360, 372 (1964)). When determining the vagueness of a policy, this Court should determine the allowable meaning by looking "to the words of the ordinance itself, to the interpretations the court below has given to analogous statutes, and . . . to

the interpretation of the statute given by those charged with enforcing it." *Id.* at 110 (quoting in part *Coates v. Cincinnati*, 402 U.S. 611, 614 (1971)).

A. The University's Free Speech Policy does not provide the person of ordinary intelligence a reasonable opportunity to know what conduct is prohibited.

On its face, the University's Policy is unconstitutionally vague because its prohibitions are not clearly defined. *Id.* at 108. The Policy fails to define what conduct actually qualifies as a material or substantial infringement upon the rights of others. This prevents students from fully understanding what they can and cannot do and does not place them on sufficient notice. The court in *Grayned* recognized that the case was a close call and that the ordinance came near unconstitutional vagueness. *Id.* at 109. This case, however, is distinguishable from *Grayned* in that this Policy extends beyond the "flexibility and reasonable breadth" that is allowable for an ordinance and instead blurs the lines between what is acceptable and what is forbidden. *Id.* at 110.

In *Grayned*, the policy "[forbade] willful activity at fixed times – when school is in session – and at a sufficiently fixed place – "adjacent" to the school." *Id.* at 111. The degree of judgment in *Grayned* proved more permissible in that enforcers and students alike could more clearly draw the line between what activities disrupt school. The Policy here, however, has no spatial or temporal restrictions and applies to all times and places on campus. Thus, even those in appropriate venues for shouting and drowning out others, such as two sets of cheering fans for opposing sports teams, run the very serious risk of breaching the Policy purely because they are on University grounds, even though there is no disruption to the campus. Furthermore, *Grayned* also required that the disruptive acts be "willfully" done, thus narrowing the ordinance further so as to give reasonable notice. *Id.* at 113–14. In the case at hand, any act that infringes upon the rights of another qualifies as a violation of the school's policy. Behaviors like yelling to a friend

to slow down their pace or a couple having a lover's quarrel could breach the Policy, even when the infringers have no intent to violate the rules and are not on notice that their conduct might get them in trouble.

Ms. Vega attempted to conform her behavior to fit the University's requirements, changing her protest methods based on what she thought the school would find acceptable. Vega Aff. ¶ 14. She chose to "[stand] outside of the event this time and did not attempt to shout down the speaker, but rather make [her] perspective known to the community." *Id.* She herself recognized that "[a]fter [her] first strike in violation of the Policy, [she] knew [she] could not attempt to shout down speakers while standing on chairs during their events . . . [but instead] thought that [she] could convey [her] perspective on a public walkway in the University's campus Quad." *Id.* at ¶ 18. Ms. Vega's understanding of the Policy reflects a reasonable interpretation that one would think fits squarely outside the confines of the speech restrictions. This demonstrates how unclear the Policy is, since Ms. Vega could not fairly discern what conduct was prohibited.

B. The University's Free Speech Policy allows enforcers to apply the rules in an *ad hoc* and subjective basis.

The ambiguity of the University's Policy not only ensnares unsuspecting students, but also makes the campus security officers the ones to determine whether the students deserve a citation. The University's Policy allows policy enforcers to bring resolutions in an impermissibly *ad hoc* and subjective basis. The appellate court emphasized that the Policy was not vague because, like in *Grayned*, the language allowed violations to be issued on a case-by-case basis as determined by the particulars of the situation. *Vega II*, at 8. This Policy, however, lacks the boundaries of the *Grayned* ordinance that points security officers in the correct direction for making determinations and stretches far outside of *Grayned*'s confines.

The security officer singled out Ms. Vega due to the phone call placed by ASFA and "did not consider addressing other sources of noise distraction because [he] was responding to a specific call about a specific disturbance." Thomas Aff. ¶ 12. Further, he chose to issue a citation only to Ms. Vega, despite there being "a lot of noise from the football game and the other students gathered on the quad who were not listening to the speech." Taylor Aff. ¶ 7. The security guard himself even admitted that he could "hear other voices from students passing by the amphitheater, as well as shouts and cheers from the nearby football game." Thomas Aff. Add. A. Thus, those enforcing the University's Policy do so based on their own subjective basis.

C. The University's Free Speech Policy fails to delineate what is allowed and what is not, causing students to steer well outside the unlawful zone.

The First Amendment requires policies infringing upon speech to be narrowly tailored so as to not trample upon constitutionally protected conduct. *See Grayned*, 408 U.S. at 116–17. The *Grayned* court upheld the ordinance because one could delineate what behavior was acceptable based on its impact on the school environment. *Id.* at 112 (citing *Cameron v. Johnson*, 390 U.S. 611 (1968)).

In this case, other students and members of KFT abstained entirely from participation with Ms. Vega due to the unclear boundaries set by the Policy and feared crossing the line which they could not reasonably ascertain. As stated by one of those students, "Even though I felt as though I had a right to express my views, I was fearful that I would get a second strike, and risk suspension from the University." Smith Aff. ¶ 12. Another student shared similar concerns, stating, "I am passionate about advocating for the rights of immigrants. However, after receiving my first strike, I decided not to attend the planned protect, out of fear that if I received a second strike, I would be suspended." Haddad Aff. ¶ 14. Ms. Vega likewise noted the hazy boundaries. Thus, the Policy not only runs the risk of punishing constitutionally protected conduct, but even

stopping conduct from happening in the first place. Such pour-over unconstitutionally inhibits speech at an institution where differing thoughts and opinions are meant to be shared and challenged.

II. THE UNIVERSITY OF ARIVADA'S CAMPUS FREE SPEECH POLICY IS IMPERMISSIBLY OVERBROAD.

A policy is impermissibly overbroad if "it prohibits constitutionally protected conduct." *Grayned v. City of Rockford*, 408 U.S. 104, 114 (1972). Additionally, "the regulation must be narrowly tailored to further the State's legitimate interest." *Id.* at 116–17. Further, the Policy is in stark contrast to the professed goals and intentions of the legislative mandate. Mem. at 2.

A. The Policy is overinclusive, chills protected speech, and inhibits free expression.

When "a substantial number of its applications are unconstitutional" a policy is impermissibly overbroad. *United States v. Stevens*, 559 U.S. 460, 473 (2010) (quoting *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449, n. 6 (2008)).

This Policy does not apply specifically to events on campus but upon any "rights of others to engage or listen to expressive activity". Av. Gen. Stat. § 118–200. In practice, the effect of the broad language is such that constitutionally protected speech is no longer protected. Many conversations that should be protected by the First Amendment can be considered violations of this Policy, leading to violations of the speaker's freedom of speech. If one's roommate is screaming about their opinion of another roommate's loud music to a point at which it interferes with the ability to hear the music, based on the breadth of this Policy, the roommate shouting would be in violation. Her screaming could be construed to affect the ability to hear one's chosen music. If two friends get into an argument in the lunchroom debating the best pizza topping and one shouts the other down, it would be in violation of this Policy. One's opinion of pizza

toppings and music should be protected by the First Amendment, but on this campus, may not be. Under this Policy, lunch room disagreements or dorm hall conversations become violations sanctionable by suspension. It is clearly unconstitutional to prohibit any dorm or lunch room disagreements over music or pizza or even politics and religion. For these reasons, many applications of this statute would be unconstitutional and place limits on freedom of speech.

"In order to decide whether the overbreadth exception is applicable in a particular case, we have weighed the likelihood that the statute's very existence will inhibit free expression." *Members of City Council of City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 799 (1984). This Policy acts to chill protected speech and inhibit free expression. The other club members who attended the first protest, which resulted in the first violation, opted out of attending the second event. They made this decision based on their fear of a potential violation, leading to an inhibition of free expression that would otherwise be constitutional expression. Smith Aff. ¶ 12. Haddad Aff. ¶ 12. Further, "there must be a realistic danger that the statute itself will significantly compromise recognized First Amendment protections of parties not before the Court for it to be facially challenged on overbreadth grounds." *Members of City Council of City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 801 (1984). The danger here is not only "realistic" but realized. There are at least two students, Ari Haddad and Teresa Smith, who's recognized First Amendment rights have been compromised as they did not attend the second event at all as a result of the breadth of the Policy. The other members feared suspension and were unable to express their views as a direct result of the overbreadth of this statue. Vega Aff. ¶ 11.

B. The Policy does not represent the least restrictive means and is not narrowly tailored.

"The crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time . . . the regulation must be narrowly tailored to further the State's legitimate interest." *Grayned v. City of Rockford*, 408 U.S. 104, 116–17 (1972).

Ms. Vega's conduct in the Quad was not "incompatible with the normal activity of a particular place at a particular time." *Id.* Her actions represent conduct in line with that which normally occurs in the Quad. "Students frequently gather in the Quad to study, talk, play games, play and listen to music, and engage in sports such as flag football and frisbee." Jt. Stip. ¶ 6. Ms. Vega was speaking on the sidewalk, which is common conduct for the Quad.

There are less restrictive means for achieving the same goals that the Policy aims to achieve. The Policy is so broad as to have no limits on who, when, what, or where the Policy applies. The Court has upheld Policies when they do limit time, place, and manner restrictions that are reasonable. *Grayned v. City of Rockford*, 408 U.S. 104, 116 (1972). For example, the government can place limits on time and place when two parades wanted to march on the same street simultaneously, the government may limit it to only one. *Cox v. New Hampshire*, 312 U.S. 569, 576 (1941). Here, the Policy is not narrowly tailored with reasonable time, place, nor manner restrictions. The Policy can be changed to limit the breadth and better effectuate the goals. For one, the restriction can have manner restrictions to limiting only expression that makes it impossible to hear the speaker. The Policy can be limited to the times during events that have permits. Here, the event did not have a permit, but it would be easy for the school to require events get approved to receive permits and then apply a Policy such as this. The Policy could also be limited by place as to only apply in certain rooms that are used for hosting events. The

school has many less restrictive alternatives and more narrowly tailored means to achieve their purpose. However, as it stands, the Policy is not narrowly tailored to further the State's legitimate interests and is impermissibly overbroad.

C. The Policy in action is contrary to the purported goals.

The legislature reasoned that this Policy is intended to enhance protected speech and discussion; however, the Policy does the opposite. The Court is required "to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights of others." *Schneider v. State of New Jersey, Town of Irvington*, 308 U.S. 147, 161 (1939).

The rationale behind this Policy mirrors that of the Goldwater Institute in response to many universities creating "safe spaces." "Safe spaces" are designed to create a bias-free area to share ideas. The Arivada legislature intended to avoid "safe spaces" and increase free speech. Mem. at 10. However, in practice this Policy works to stifle speech even more than a "safe space." Whoever is the first person to discuss a topic, like America First, can call the campus security on anyone who speaks out against them at any time, thus shutting down any sharing of ideas in opposition to the group. This style of stifling conversation and disagreement on college campuses is a detriment to society and goes against the reasons for implementing the Policy initially.

"The safeguarding of these rights to the ends that men may speak as they think on matters vital to them and that falsehoods may be exposed through the processes of education and discussion is essential to free government." *Thornhill v. State of Alabama*, 310 U.S. 88, 95 (1940). The challenging of ideas and promotion of conversation on college campuses is essential to our free government and the upholding of the constitution. In limiting the disagreement, there

becomes a major impact on the movements and the conversations taking place. In an attempt to safeguard differing ideas, this Policy is so broad as to stifle discussion and disagreement and to shut down any expressive conduct to the disagreement of whoever calls security. In this way, the Policy is undermining freedom of speech and free government and not achieving its goals.

III. THE UNIVERSITY OF ARIVADA'S CAMPUS FREE SPEECH POLICY IS UNCONSTITUTIONAL AS-APPLIED TO MS. VEGA.

"First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students." *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503, 506 (1969). The University of Arivada's Campus Free Speech Policy as applied to Ms. Vega violated her First Amendment right of free speech because Ms. Vega did not materially and substantially infringe upon the rights of Mr. Drake or the people listening to his speech. She did not disrupt classwork, create disorder, or invade the rights of others. Although Ms. Vega's speech may have been annoying to Mr. Drake and some of his listeners, she did not shout down Mr. Drake and did not prevent his listeners from listening to his speech. Any interference with the rights of Mr. Drake or his listeners did not rise to the level of being material and substantial. "The college classroom with its surrounding environs is peculiarly the 'marketplace of ideas,' and we break no new constitutional ground in reaffirming this Nation's dedication to safeguarding academic freedom." *Healy v. James*, 408 U.S. 169, 171 (1972) (quoting *Keyishian v. Bd. Of Regents, State Univ. of N.Y.*, 385 U.S. 589, 603 (1967)). The university's Policy as applied to Ms. Vega violated her First Amendment right to add her ideas about immigration to the marketplace of ideas.

A. Ms. Vega did not disrupt classwork or a school-sponsored event.

Students have a First Amendment right to free speech "unless school authorities have reason to believe that such expression will 'substantially interfere with the work of the school or

impinge upon the rights of other students."' *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 266 (1988) (quoting *Tinker*, 393 U.S. at 509). "[E]ducators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns." *Hazelwood*, 484 U.S. at 273.

In attempting to show that Ms. Vega's speech materially and substantially disrupted Mr. Drake's speech, the University provided examples of material and substantial disruptions of school environments that related to interference with the school itself or school-sponsored events. D. Ct. Op. at 16. The University cited *Hazelwood*, in which the United States Supreme Court emphasized that educators can permissibly exercise control over student speech in school-sponsored activities. *Hazelwood*, 484 U.S. at 273. The *Hazelwood* Court reasoned that a school could exercise control over the content of a student newspaper because the newspaper was part of the school's journalism curriculum and students received both grades and academic credit for participation in the school newspaper. *Id.* at 268. The Court clarified that the school could exercise control over the student newspaper because the newspaper was not a public forum used for public debate of policy questions and that a public forum would be created if the school opened up the area for use by the general public or "by some segment of the public, such as student organizations." *Id.* at 267.

The University also cited to *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 685 (1986), in which the Court found that the school acted "within its permissible authority in imposing sanctions" in response to a student's "lewd and indecent speech" in front of a school assembly. In *Fraser*, "[t]he assembly was part of a school-sponsored educational program in self-government" and students as young as fourteen years old were required to attend either the

assembly or a study hall. *Id.* at 678. In finding that the school could permissibly punish the student for his speech, the Court emphasized the sexually explicit content of the speech being made to children. *Id.* at 683.

Hazelwood and *Fraser* are easily distinguishable from the present case because Mr. Drake's speech was not part of the school curriculum or a school-sponsored event. Although ASFA reserved the venue for the speech, the event did not require a permit and was in no way sponsored by the school. *Hazelwood*'s holding only applies to school-sponsored activities or events, and the reasoning in *Hazelwood* actually supports Ms. Vega's position by suggesting that schools have greater rights to restrict student speech in school publications than in public forums. The Quad in which the amphitheater is located is more like a public forum than a school-sponsored student publication because the Quad is a prominent place for student life and many speakers hold events in the amphitheater. The district court correctly noted that "the event at the heart of this proceeding was more akin to a gathering in a park on a sidewalk than to an academic setting." D. Ct. Op. at 17. *Hazelwood* suggests that a public forum such as the Quad is exactly the kind of location in which Ms. Vega should be allowed to present her viewpoints without being punished.

Fraser also does not apply to the present case. Unlike in *Fraser*, where the assembly was part of a school-sponsored program in self-government and the school had a right to regulate lewd speech made to children, Mr. Drake's speech was not part of a school program and there were no issues of lewd speech to minors. The University's reliance on *Hazelwood* and *Fraser* is misplaced because those cases only provide examples of material and substantial disruptions of school-sponsored activities or school itself. In the present case, Ms. Vega did not interfere with

classwork or a school-sponsored event. She merely made her views known in a prominent public forum on campus.

B. Ms. Vega's conduct did not disrupt order on campus.

"Conduct by the student, 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, of course, not immunized by the constitutional guarantee of freedom of speech." *Tinker,* 393 U.S. at 513. "We also are mindful of the equally significant interest in the widest latitude for free expression and debate consonant with the maintenance of order." *Healy*, 408 U.S. at 171.

In *Tinker*, the United States Supreme Court found that students wearing anti-war armbands on campus did not substantially disrupt school activities and that "no disturbances or disorders on the school premises in fact occurred." *Tinker*, 393 U.S. at 514. Rather, the anti-war students simply wore their armbands around school attempting to influence others to adopt their views and "neither interrupted school activities nor sought to intrude in the school affairs or the lives of others." *Id.* They "caused discussion outside of the classrooms, but no interference with work and no disorder." *Id. Tinker* shows that student political speech on campus is protected as long as it does not interfere with school activities or cause disorder.

The University cites to the case of *Kowalski v. Berkeley County Schools*, 652 F.3d 565, 573 (4th Cir. 2011) as an example of a case in which a school can permissibly punish a student for off-campus speech that causes disorder on campus. In *Kowalski*, the Fourth Circuit found that a student who started a defamatory social media group targeting another student while not on school property created "substantial disorder and disruption in the school" and that the school could justifiably punish a student whose speech "interfered with the work and discipline of the

school." *Id.* at 574. *Kowalski* shows that schools can punish students for speech made off campus when that speech is likely to cause a substantial disturbance to order and discipline in the school.

Ms. Vega's protest was much more similar to the protected conduct in *Tinker* than to the unprotected conduct in *Kowalski* because she did not disrupt school activities or create disorder.[1] Like the protesting students in *Tinker*, Ms. Vega did not disrupt order on campus. Just as no disturbances or disorders occurred due to the students wearing armbands in *Tinker*, no disturbances occurred relating to her protests. Just as the students in *Tinker* attempted to influence other students by wearing armbands, Ms. Vega attempted to influence other students by presenting her pro-immigration viewpoints alongside the anti-immigration viewpoints of Mr. Drake. The Court should overturn Ms. Vega's suspension in the present case because her speech in a public forum put forth diverse ideas without impeding order on campus. Students around the Quad had the ability to listen to both Ms. Vega and Mr. Drake if they wanted to. Rather than causing disorder or interfering with school affairs, Ms. Vega was merely putting forth her ideas into the marketplace of ideas to counter Mr. Drake's ideas. The present case is entirely different from *Kowalski* because Ms. Vega's protest did not threaten or defame other students and could not reasonably be expected to disrupt order and discipline on campus. At most, her speech would irritate Mr. Drake and his listeners without causing a significant disturbance.

C. Any interference with Mr. Drake's speech was not material and substantial.

In finding that Ms. Vega materially and substantially infringed upon the right of Mr. Drake to speak and of others to listen to him, the Fourteenth Circuit focused on the fact that Ms. Vega's voice could be heard inside the amphitheater and that her chanting was distracting to Mr. Drake and his listeners. App. Ct. Op. at 11. The court stated that Ms. Vega infringed upon the rights of others, writing that she "created a cacophony of sound that disrupted Mr. Drake's

speech, thereby making it difficult, and perhaps impossible, for his listeners to comprehend Mr. Drake's words." App. Ct. Op. at 11. The court suggested that Ms. Vega attempted to "monopolize the forum" and suggested that she and her organization should have held their own event if they wished to express pro-immigration ideas. *Id.* The court also focused on the fact that although there were many distracting background noises, Ms. Vega's speech was more distracting than the other noises. *Id.*

The Court should reverse the Fourteenth Circuit because Ms. Vega's expressive activity did not disrupt class work or school-sponsored activities and did not create disorder. Further, she did not invade the rights of others because she carefully planned her protest so as to follow the school Policy and allow Mr. Drake to continue speaking. Ms. Vega admitted that during her previous protest on August 31, 2017, she entered the venue and attempted to shout down that anti-immigration speaker. Vega Aff. ¶ 5. This is distinguished from the protest at issue here in which she deliberately did not enter the venue and did not shout down the speaker but merely presented her viewpoint for the school community to hear in a public forum alongside Mr. Drake's speech. *Id.* at ¶ 14.

In finding that Ms. Vega's speech materially and substantially infringed upon the rights of Mr. Drake and his listeners, the Fourteenth Circuit incorrectly suggested that it was difficult and perhaps impossible for Mr. Drake's audience to listen to his speech. Theodore Putnam, the President of ASFA, stated that Ms. Vega's chants were "extremely distracting" but did not suggest that it was impossible to hear Mr. Drake's speech. Putnam Aff. ¶ 8. Meghan Taylor, another student present at Mr. Drake's speech, stated that there were many distracting background noises but that "the student's chanting was significantly more distracting than the other noises." Taylor Aff. ¶ 5. Mr. Drake, the speaker at the event, stated that Ms. Vega's

chanting made it "extremely hard for me to speak, think, and remain focused." Drake Aff. ¶ 10. These statements made by Mr. Drake and his listeners do suggest that they found Ms. Vega's speech to be annoying and distracting but do not suggest that she drowned out Mr. Drake or that it was impossible to listen to his speech. Even if Ms. Vega's chanting was more distracting than the other background noises, it does not necessarily follow that her chanting materially and substantially infringed upon the rights of Mr. Drake or his listeners. Given that Mr. Drake was able to proceed with his speech and his listeners were able to hear him, Ms. Vega by definition did not shout him down. The appellate court's contention that Ms. Vega tried to monopolize the forum is also incorrect because Ms. Vega remained outside the amphitheater and neither stopped Mr. Drake from speaking nor attempted to do so. Rather than attempting to monopolize the forum, she was merely articulating her political viewpoints so that students would be able to hear different perspectives on immigration.

The Campus Free Speech Policy as applied to Ms. Vega violated her First Amendment rights. The University failed to produce case law suggesting that conduct similar to Ms. Vega's can be found to materially and substantially infringe upon the rights of others. Ms. Vega's protest was not made in an academic setting or a school-sponsored event and did not create disorder on campus. While Mr. Drake and his listeners found her to be annoying and distracting, her conduct did not rise to the level of being a material and substantial interference with their rights because she did not shout down Mr. Drake or stop his speech from continuing. The University's Policy as applied to Ms. Vega violated her right to present her political views to the campus community in a public forum.

CONCLUSION

The University's Policy is unconstitutionally vague and overbroad and is unconstitutional as-applied to Ms. Vega. The Court should reverse the Fourteenth Circuit and overturn Ms. Vega's suspension.

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[1] As previously stated, *Hazelwood* and *Fraser* do not apply to the present case because Mr. Drake's speech was not a school-sponsored event.

BRIEF CERTIFICATE

All of the work product contained in all copies of our team's brief is in fact the work product of the team members. We the team members have complied fully with the school's governing honor code and we have complied with all Rules of the Competition.