No. 18-1234

IN THE

Supreme Court of the United States

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VALENTINA MARIA VEGA,

Petitioner,

v.

JONATHON JONES AND REGENTS OF THE UNIVERSITY OF ARIVADA

Respondent.

_____

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

_____

BRIEF FOR PETITIONER

_____

Team 11
Counsel for Petitioner

STATEMENT OF THE ISSUES

1. Is the University of Arivada's Campus Free Speech Policy, that was adopted pursuant to the legislative directive in the Free Speech in Education Act of 2017 to safeguard the expressive rights of all of those lawfully present on public university campuses with explicit mention of invited speakers, unconstitutional on its face for being vague or substantially overbroad?
2. Was Jonathan Jones and the Regents of the University of Arivadas's[1] decision to cite and suspend Ms. Vega under the Campus Free Speech Policy for peacefully protesting Mr. Drake's anti-immigration speech, outside the confines of the event space and the academic environment, a violation of Ms. Vega's First Amendment right to freedom of speech?

[1] Hereinafter Jonathan Jones and the Regents of the University of Arivada will be referred to collectively as the University.

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STATEMENT OF JURISDICTION

This case asserts a claim of a violation of the First Amendment to the United States Constitution as incorporated against the State of Arivada through the Due Process clause of the Fourteenth Amendment. *See* App'x. C. The United States District Court for the District of Arivada had subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (2018). The United States Court of Appeals for the Fourteenth Circuit had jurisdiction of this appeal pursuant to 28 U.S.C. § 1291 (2012) because this is an appeal of a final judgment in a civil case. The Fourteenth Circuit entered final order on November 1, 2018, and the Writ of Certiorari was timely filed and granted pursuant to 28 U.S.C. §1254 (1) (2018).

STATEMENT OF THE CASE

1. Factual Background

Ms. Vega, a first-generation Hondaraguan American, serves as the President of the University of Arivada's Chapter of the pro-immigration Keep Families Together ("KFT"). R.3. On August 31, 2017, Ms. Vega and nine other KFT members shouted down an anti-immigration speaker in an indoor auditorium on campus. R.4. Officer Thomas issued each student a citation for their participation in the incident. Id. Ms. Vega acknowledged her role in the incident and states that she tailored her later behavior to better comply with the Policy after mistakenly believing she learned under what circumstances expressive conduct constituted a policy violation. R.38.

On June 1, 2017, the state of Arivada passed the "Free Speech in Education Act of 2017," requiring all Arivada universities to enact policies to "safeguard the freedom of expression on campus." R.4. In response, on August 1, 2017, the University of Arivada adopted its "Campus Free Speech Policy." It states: "Expressive conduct that materially and substantially infringes upon the rights of others to engage in or listen to expressive activity shall not be permitted on campus[.]" R. 4, 23. The Policy delineates a three-strike disciplinary process for violations that begins with a

first-strike warning, escalates to a second-strike suspension, and concludes with a third-strike expulsion. R.23. The University electronically transmitted a copy of the Policy to all students, including Ms. Vega, in early August 2017. Ms. Vega signed the Policy statement. R.2.

On September 5, 2017, the University's Chapter of American Students for America ("ASFA") invited Samuel Drake, Executive Director of Stop Immigration Now ("SIN"), a vehemently anti-immigration lobbying group, to the university to deliver a speech on immigration policy. R. 21, 24. SIN takes the uncompromising position that illegal immigrants are the major cause of America's drug and violence problems. R.24. ASFA requested to reserve the Emerson Amphitheater, a small outdoor venue located in the Quad, the busiest area on campus, for Mr. Drake's speech. The University granted the reservation, as is its norm, but acknowledges this does not amount to a University invitation to Mr. Drake nor an approval of his views or speech. R. 4, 28. The Quad is a large area surrounded by dorms in the center of campus that is used for a variety of activities. R.28. At the time of Mr. Drake's speech, students were seen playing a flag football game, socializing, studying, eating lunch, and playing and listening to music. R. 4, 36.

When Mr. Drake began his speech in front of a small crowd of thirty-five people, Ms. Vega began protesting alone on a public sidewalk located ten-feet beyond the barrier of the amphitheater. R.38. Ms. Vega was alone because two other KFT members were unable to understand the University's policy and feared receiving a second citation. R. 27, 31.

Ms. Vega chanted pro-immigrant slogans in an effort to provide the audience with a counter argument to Mr. Drake's speech. R.38. Mr. Putnam, the president of ASFA, immediately called campus security to report Ms. Vega, and Officer Thomas responded to the scene. R. 28, 35. Within moments of his arrival, Officer Thomas determined Ms. Vega's protest constituted a violation of the policy. R.35. He determined this despite two audience members, Meghan Taylor and Mr.

Putnam, stating in their affidavits that all the activity on the Quad, not just Ms. Vega, distracted them. R. 27, 32. Even after Ms. Vega was removed, the area remained loud and distracting according to Ms. Taylor. R.32. No other students on the Quad were investigated, much less cited, for activities that also disrupted Mr. Drake's speech. R.36.

2. Proceedings Below

On October 1, 2017, Ms. Vega filed a complaint in the U.S. District Court for the District of Arivada against Jonathan Jones and the Regents of the University of Arivada. R. 1. She claimed a violation of her First Amendment rights in response to the University's decision to suspend her for her alleged violation of the Campus Free Speech Policy. R. 1, 23; *see* App'x. A. She alleged the Policy was unconstitutional both facially as applied to her. R.43. The University answered that it justifiably suspended Ms. Vega due to her infringement upon Mr. Drake's free speech rights. R.2. Both parties filed cross motions for summary judgment on December 15, 2017. R.2. On January 17, 2018, the district court granted Ms. Vega' motion, issuing a declaratory judgement that the University violated Ms. Vega's First Amendment rights, and that she had the right to reinstatement as a student in good standing. R. 17, 18. The University appealed to the United States Court of Appeals for the Fourteenth Circuit. R.43. The Fourteenth Circuit reversed remanded the case for an entry of summary judgement in favor of the University. R.43. The Supreme Court of the United States granted Ms. Vega's Petition for Writ of Certiorari, certifying the questions presented above. R.54.

SUMMARY OF THE ARGUMENT

The University's Policy is facially unconstitutional because it suffers from vagueness and substantial overbreadth. The University's condemnation of any expressive conduct that "materially or substantially infringes upon the rights of others to engage in or listen to expressive activity" is dangerously broad and its hazards have already been realized. It has unjustifiably

disrupted Ms. Vega's education and dissuaded two other students from speaking out against a pundit whose viewpoint they oppose. This chilling effect is the exact evil that the Court employs the overbreadth doctrine to prevent. In a similar vein, the Policy is unconstitutionally vague because its limitless language is bereft of measurable standards, leaving those same students in the dark regarding the conduct and surrounding circumstances that trigger a violation. If the University's goal is to protect the expressive rights of invited speakers, the policy sweeps far wider than necessary. Because a considerably less speech-restrictive policy could have furthered this purpose, the policy is not narrowly tailored and thus should be held void.

The circuit court mistakenly relied on *Tinker*. This Court has never extended the *Tinker* standard to a university setting and should not do so here. The University of Arivada is distinct from the secondary school in *Tinker* for two reasons. First, university students are older and more mature than secondary school students and are entitled to more First Amendment protection. Second, students learn fundamental values in secondary school while college gives students a chance to apply them through intellectual debate. Even if the Court extends *Tinker* to the University setting, Ms. Vega's speech fails to uphold its dual aims: balancing the safe and orderly operation of the school with students' speech rights. Because Ms. Vega's protest did not adversely affect the University's operations, it falls outside of *Tinker's* scope.

The University's Policy is unconstitutional as applied to Ms. Vega because her protest was not significantly more distracting than the numerous other activities taking place on the Quad during Mr. Drake's speech. Despite Ms. Vega never entering the amphitheater where Mr. Drake was speaking and the Quad's loud and noisy environment, Officer Thomas failed to investigate these other sources of distraction. Additionally, the same witnesses said the Quad remained

distracting after Ms. Vega's removal. The court of appeals lacked a sufficient basis to conclude Ms. Vega's protest significantly and materially infringed on Mr. Drake's rights.

ARGUMENT

I. This Court should reverse the circuit court's grant of summary judgement because the University's policy is invalid on its face as substantially overbroad and unconstitutionally vague.

As the district court pointed out, just as a legislature cannot enact statutes that are substantially overbroad or vague, a public university such as the University of Arivada cannot enact policies that that suffer from these constitutional deficiencies. R.7 (*citing Rust v. Sullivan*, 500 U.S. 173, 200 (1991)). A government policy is unconstitutionally vague if "its prohibitions are not clearly defined" so that "men of common intelligence must necessarily guess at its meaning." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972) (*quoting Connally v. Gen. Const. Co.*, 269 U.S. 385, 391 (1925). Vague statutes are especially dubious in the First Amendment context; therefore, a "greater degree of specificity" is required. *Smith v. Goguen*, 415 U.S. 566, 573 (1974).

In a related vein, a law can also fail for overbreadth. *See Grayned*, 408 U.S. at 114. An enactment is overbroad in the First Amendment context if "a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *See Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 (2008). A facial challenge of a government statute or policy is appropriate when the provision will be "inevitably used for invidious viewpoint discrimination," which is a common side effect of speech regulations that suffer from vagueness and substantial overbreadth. *Cf. Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569, 582 (1998) (holding that there is no reason to address an as-applied challenge in a

situation where the grant's denial does not equate to view-point discrimination). Sub-sections A and B will consider the policy's substantial overbreadth and vagueness respectively.

A. The Policy is substantially overbroad because its plain language suggests it extends to all students' expressive conduct campuswide, and therefore, it is not narrowly tailored.

The Policy's reach extends impermissibly wide because it pulls a significant amount of constitutionally-protected student speech within its regulatory ambit. R.12. This is the case even though the Policy purports only to regulate conduct. R. 23. When regulation of conduct is "inextricably intertwined with a 'particularized message,'" it places a burden on expression and thus falls within the purview of First Amendment protection. *See Young v. N.Y.C. Transit Auth.*, 903 F.2d 146, 153 (2nd Cir. 1990) (*quoting Spence v. Washington*, 418 U.S. 405, 410-411(1974)); *Id*. Because the Policy refers to the applicable conduct as "expressive," the policy implicates this right and is entitled to some amount of protection. R. 23. The Policy does not outline particular categories of expressive conduct that are included and excluded and has been applied to Ms. Vega and other students in a manner that punishes "the spoken…word," an act that amounts to "pure speech." *See Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 901 F.3d 1235, 1240 (11th Cir. 2018) (noting that "constitutional protection does not end at the spoken or written word"); R. 38, 39. When a content-neutral regulation pulls or has the potential to pull "pure speech" within its reach, it must be narrowly tailored to a significant government interest, meaning the regulation cannot "burden substantially more speech than necessary to further" the interest. *See Hill v. Colo.*, 530 U.S. 703, 710 (2000); *see also McCullen v. Coakley*, 134 S. Ct. 2518, 2535 (2014) (*quoting Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989)).

The narrow tailoring requirement extends to public school's speech policies, including those of public universities that regulate expressive conduct. *See Perry Educ. Ass'n. v. Perry Local*

Educators' Ass'n., 460 U.S. 37, 61 (1983*); see also U.S. v. Grace*, 461 U.S. 171, 177 (1983) (holding that a government entity can "regulate the time, place, or manner of the expressive activity, so long as such restrictions are content neutral, are narrowly tailored to serve a significant governmental interest, and leave open ample alternatives for communication). Because the policy regulates all expressive conduct, it is content-neutral on its face. Nevertheless, it does not meet the above requirements for a constitutional time, place, or manner regulation for two reasons: the policy is not narrowly tailored to either conceivable significant government interest and no limiting construction of the policy cures its substantial overbreadth. R.23.

First, the significant governmental interest the Policy serves remains unclear because the Policy and its legislative directive imply different, conflicting purposes. On the one hand, the plain language of both the policy and the legislative directive in the Free Speech in Education Act of 2017 call for the protection of "free speech rights of all persons lawfully present on. . . university campuses" R. 10, 19. However, the Free Speech in Education Act explicitly condemns "episodes of shouting down invited speakers on college and university campuses." R.10. Because the policy was adopted to fulfill the University's obligations under this legislative directive, a narrower intent to only prohibit incidents of shouting down speakers seems implied. R. 10, 19. However, the unlimited language of the policy leads to heavy-handed enforcement that, while perhaps furthering the goal of preventing the shouting down of speakers, does so at the expense of eroding students' speech rights. Thus, the two potential objectives of the policy are not only incompatible, but the narrower interpretation of prevention of shouting down speakers burdens substantially more student speech than the First Amendment allows.

1. With regard to the narrower interest in preventing the shouting down of speakers, the Policy is so overbroad that it obfuscates precisely what expressive conduct is punishable, resulting in a chilling effect on student speakers.

If this Court finds that the University's interest is to prevent the shouting down of invited speakers, the Policy captures much more speech than necessary to further that goal. The content-neutral policy in this case is novel in the university context, but this Court has addressed speech regulations that operation in a similar manner by imposing "floating buffer zones" around women entering and leaving abortion clinics. This Court addressed buffer zones that "float" on two occasions, invalidating the speech restriction in *Schenck* and upholding the regulation in *Hill*. *Compare Schenck v. Pro-Choice Network of W. N.Y.*, 519 U.S. 357, 361 (1997), *with Hill*, 530 U.S. at 712. The University's Policy in this case is more akin to the injunction imposed in *Schenck* than the regulations in *Hill*, and its constitutional deficiencies are even more severe.

In *Schenck,* this Court invalidated an injunction that banned protestors and counselors from coming within fifteen feet of a woman entering or leaving an abortion clinic because it restricted more speech than necessary to further the government's interest in protecting these women from harassment. 519 U.S. at 379. Because the buffer zone traveled with each patient entering or leaving a clinic, compliance with the injunction was particularly difficult. Not only did the injunction force a protester wishing to speak with patients to constantly ensure that another patient has not entered the unlawful zone, it punished even innocent, inadvertent violations. *Id.* at 378. The Court reasoned that the uncertainty regarding how a protestor could comply would likely result in "substantially more speech… [being] burdened than the injunction by its terms prohibits." *Id.*

Similar to the injunction in *Schenck,* the University's policy seems to create de facto unlawful zones in which students engaging in protests of another's expression risk punishment. *Schenck*, 519 U.S. at 378; R. 23. Like the zones in *Schenck,* the Policy's zones seem to "float" and

encircle every invited speaker wherever he goes on campus. R.23. For example, a student protester could be subject to sanctions if a speaker encroaches on her demonstration or inadvertently enters the zone of a speaker. Both of these scenarios seem to expose a student to sanctions under the Policy, regardless of whether she is aware of these occurrences. *See* Charles S. Nary, *The New Heckler's Veto: Shouting Down Speech on University Campus* 21 U. Pa. J. Const. L. 305, 324 (2018) (analyzing university speech jurisprudence to determine that a permissible speech policy should include *clearly-defined* counter-protest zones so that students can reasonably determine whether they are subject to sanctions); R.23. These issues raise similar practical difficulties with compliance to those in *Schenck* that are only compounded by the policy's lack of boundaries and specificity of the nature of the prohibited conduct. R.23. Nevertheless, Ms. Vega's punishment under the policy suggests it creates zones where certain protest activities are prohibited that appear to, in some circumstances, exceed fifteen feet. R.1. Ms. Vega was cited when she was ten feet beyond the outer boundary of the amphitheater. R.4. Therefore, she was likely many more feet from the front area of the amphitheater where most students likely congregated and Mr. Drake spoke. *Id.* This suggests the Policy's potential breadth extends far beyond the fifteen-foot buffer zone in *Schenck.* 519 U.S. at 379. Not only was Ms. Vega unaware that her speech would be cited under the policy, two other members of KFT, unable to decipher what kind of speech the Policy prohibited, opted to skip the protest out of fear that they would be punished. R. 27, 31. Indeed, in failing to give students any reasonable notice on the type of expressive conduct that results in a violation, it demonstrates the potential to chill substantially more speech than the injunction in *Schenck.* 519 U.S. at 379; R. 27, 31, 39. Because invited speakers could use defined buffer zones in fixed locations sufficiently to further the University's goal, the Policy should not survive even an intermediate standard of scrutiny.

The Court upheld a more reasonable eight foot "floating buffer zone" in *Hill v. Colorado*. The statute in *Hill* was markedly different than the Policy at issue in this case in that it burdened significantly less speech due to two mechanisms that narrowed its application. 530 U.S at 726-27. First, the Colorado statute excluded inadvertent violations. *Id.* at 727. In contrast, the University's policy does not consider a student's state of mind and thus could be used to punish accidental violations. R.23. Second, unlike the University's Policy, the Colorado statute specifies exactly what type of speech or expressive conduct is prohibited within the zone. *Id.* at 707 (prohibiting "passing a leaflet or a handbill to, displaying a sign to, or engaging in oral protest, education, or counseling with such other person" without her consent). Because the statute's breadth is reduced by both of the methods above, it is much more narrowly tailored than the University's Policy.

2. Under the alternative interpretation of the Policy's objective to protect the free speech rights of all persons lawfully present, the policy is not only unsuitable to accomplish this interest but its unconstrained application actually undercuts it.

The Court could interpret the Policy to protect "the free speech rights of all persons lawfully present[.]" R.19. Under this interpretation, the Policy fails narrow tailoring because it is severely underinclusive. *See City of Ladue v. Gilleo*, 512 U.S. 43, 51 (1994) (holding that "the notion that a government regulation on speech may be impermissibly underinclusive is firmly grounded in First Amendment principles"). This is because the policy unfairly and irrationally champions the expressive rights of non-students over those of students. If the roles were reversed and Mr. Drake was the one protesting Ms. Vega's message, the Policy would not offer Ms. Vega any protection. Because the policy is only enforceable against students, she would have no recourse even if he were to engage in substantially more disruptive behavior. R.20. Therefore, the in this large category of cases, the Policy fails to achieve its goal of protecting free speech rights of all those lawfully on campus, illustrating its unsuitability for its intended objective.

3. Failing narrow tailoring under either discernable government interest, the Policy is void because it lacks a conceivable limiting construction.

Regardless of whether this Court accepts the broader interest of protecting the speech rights of all lawfully present or narrows it to invited speakers, the Policy is not narrowly tailored under either possible interpretation because it applies broadly to any student speech. *See Keyishian v. Bd. of Regents*, 385 U.S. 589, 602 (1967) (*quoting Shelton v. Tucker*, 364 U.S. 479, 488 (1960)) (holding that a purpose "cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved").

A court must invalidate a facially overbroad statute when it is not "readily susceptible" to a limiting construction drawn from the text or legislative intent that points to clear lines to limit its application. *See Reno v. ACLU*, 521 U.S. 844, 884 (1997); *see also DeJohn v. Temple Univ.*, 537 F.3d 301, 315 (3d Cir. 2008) (*quoting Sypniewski v. Warren Hills Reg'l Bd. of Educ.*, 307 F.3d 243, 258-259 (3d Cir. 2002)). If no clear lines are apparent, an enactment cannot be rewritten to fit constitutional edicts. *Reno*, 521 U.S. at 884.

In this case, the most obvious method to narrow the Policy is to apply it only in the context of a student who knowingly or intentionally interferes with an invited speaker's expression. However, such a limiting construction cannot save this Policy from overbreadth for three reasons. First, similar problems like those in *Schenck* regarding difficulty to comply and notice of what type of expressive conduct is prohibited would remain. 519 U.S. at 378. Therefore, this limiting construction would fail to reduce any meaningful chill on student speech, the primary danger the overbreadth doctrine is designed to prevent. *See Broadrick v. Okla*., 413 U.S. 601, 630 (1973). Second, neither the language of legislative directive nor the Policy itself reveal a narrower interpretation was overtly intended. R. 19, 23. Third, even if this Court were to find a clear intent

to limit the enforcement of the Policy to interference with "invited speakers," the lack of a definition within the Policy for this ambiguous term creates problems. R.23.

Similar ambiguities in Temple's harassment policy led the Third Circuit to refuse to cure its overbreadth through a limiting construction in *DeJohn v. Temple Univ*. *See* 537 F.3d at 318. In *DeJohn*, the Court noted the phrase "gender motivated" in the definition of harassment creates more questions than it answers, such as whether the speaker or the listener's motivation is dispositive. The University of Arivada's policy raises similar issues. R.23. Can anyone report a student's violation? Who counts as an "invited speaker?" Can it be a student, a faculty member? Because uncertainties permeate the Policy, no clear lines exist to narrow it.

B. The Policy should be void for vagueness because it does not provide a clear and measurable standard of conduct that constitutes a violation.

Even if the Policy were to have a workable limiting construction, it lacks a standard for determining when conduct results in a "material or substantial interference" of another's ability to listen or engage in expression. R.23. A government policy is unconstitutionally vague if it does not set a reasonably clear standard to guide officials tasked with enforcing it. *See Goguen*, 415 U.S. at 573. The above requirement ensures the enactment does not "trap the innocent" and guards against "arbitrary and subjective application." *Id.* at 573; *Grayned,* 408 U.S. at 108-09. For a facial challenge, both a policy's plain language and implementation must be considered. 408 U.S. at 110.

1. The Policy's lack of standards creates the risk of arbitrary enforcement.

Because the policy lacks measurable standards, it opens the door to arbitrary enforcement in a similar manner to the statute invalidated in *Coates v. Cincinnati,* 402 U.S. 611, 616 (1971). In *Coates*, an ordinance that prohibited "three or more persons" from assembling on a sidewalk and engaging in conduct in a "manner annoying to persons passing by" them was voided. *Id.* at 611-14. The ordinance was unconstitutionally vague because "no standard of conduct [was] specified

at all" and what is annoying to some people may not be to others. *Id.* at 614. The Court clarified that government "is free to prevent people from blocking sidewalks, obstructing traffic, littering streets . . . or engaging in . . . anti-social conduct," but it cannot impose limits on the freedom of speech or assembly merely because some find it to be annoying. *Id* at 614.

Similar to the problem with the *Coates* ordinance, it is impossible for students wishing to protest a speaker's views to discern what kind of conduct would create a "material or substantial interference" and violate the policy. In fact, the record indicates that this difficulty is already occurring. Ari Hadad and Teresa Smith stated that, because the policy's language gave them no indication of what type and under what circumstances expressive conduct was prohibited, they skipped the September 5th protest out of fear of receiving another violation. R. 27, 31. An absence of clear lines to gauge what could objectively be considered a "material or substantial interference" also creates a danger of subjective enforcement. R.23. Mr. Putnam and Ms. Taylor indicate that Ms. Vega was highly distracting, but that they could still hear Mr. Drake's speech. R. 32, 28. If a material or substantial interference is equal to distracting expressive conduct as Ms. Vega's previous violation seems to indicate, then the University's policy is plagued with the same subjectivity problem as the ordinance in *Coates.* 402 U.S. at 614; *see also* Clay Calvert, *Reconsidering Incitement, Tinker and the Heckler's Veto on College Campuses: Richard Spencer and the Charlottesville Factor*, 112 Nw. U. L. Rev. Online 109, 127 (2017-2018) (explaining that the primary concern of such policies is preventing a "heckler's veto," not verbal disruptions. As the California Supreme Court observed in 1970, 'Audience activities, such as heckling, interrupting, and harsh questioning, even though they may be impolite, can nonetheless advance the goals of the First Amendment.'")

What may be distracting conduct to some may not be to others. Even if this Court were to adopt a reasonableness standard to limit subjective enforcement, the policy, like the unconstitutional ordinance in *Coates*, gives no indication as to what type of conduct causes an interference. *Id.*at 611. Would distributing flyers through the aisles of the amphitheater during the speech trigger a violation? Intermittent booing from within the amphitheater? Outside of it? Like the ordinance in *Coates,* it is unclear. *Id.* Therefore, the policy fails for vagueness. *Id.*

Similar to the Policy, a vague statute caused the risks of arbitrary enforcement to be realized in *Forsyth County v. Nat'list Movement*, where an ordinance that regulated the amount of permitting fees for reserving city property for demonstrations, parades, and open air public meetings was found unconstitutional. 505 U.S. 123, 126 (1992). Because "narrowly drawn, reasonable, and definite standards" were absent, the administrator had no basis on which to rest his determination of proper fees. *Id.* at 132-33. This problem became apparent due to his inability to explain the wide range of fees imposed on applicants and why some expenses were incorporated into the fees of some applicants but not others. *Id.* at 132. Similar to the administrator in *Forsyth County,* Mr. Thomas, who issued Ms. Vega citations on two occasions, did not have an adequate reason for why only Ms. Vega was cited when other sources of noise were present. 503 U.S. at 132; R.35. He merely said that he was "responding to a specific call about a specific disturbance." R.35. Finally, neither he nor the University explained how Ms. Vega's September 5th actions—which illustrated a conscious effort to comply with the policy and markedly departed from her attempt to shout down a speaker on August 31st—could still amount to a violation. Like the ordinance in *Forsyth County*, the Policy's vagueness led to arbitrary and standard-less application. 505 U.S. at 126. This violation of the University of Arivadas' student speech rights will continue unless this Court strikes down the Policy.

2. The Fourteenth Circuit's reliance on *Grayned v. City of Rockford* is misplaced because universities are different from secondary schools, and the Policy lacks the redeeming limitations of that in *Grayned.*

The circuit court incorrectly concluded that the Policy more closely resembled the anti-noise ordinance upheld in *Grayned*, 408 U.S. at 107-09. The ordinance in that case prohibited the willful making or assistance in the making of "any noise or diversion which disturbs or tends to disturb the peace or good order of such a school session or class. . ." near or adjacent to a school while class is in session. *Id.* at 107. It was sufficiently specific, in part, because it applied at "fixed times—when school is in session—and at a sufficiently fixed place—near or adjacent to a school." *Id.* at 111. The Court emphasized that the "prohibited disturbances" were easily measured by their impact on the normal activities of the school. *Id.* at 112. The University Policy is distinct from the *Grayned* ordinance in both of the key respects mentioned above. First, the Policy has no time constraints, so it can be violated at any time. R.23. Although the Policy is geographically constrained to conduct on campus, this constraint restricts substantially more expressive conduct than the *Grayned* ordinance. R.23; *Id.* at 111. Not only is the University's campus likely much larger than that of a secondary school, it is typical for many university students to live, socialize, and learn almost exclusively on campus. This Policy threatens to infiltrate into students' lives and burden their free expression in significantly more respects than the *Grayned* ordinance. *Id.* at 107.

II. The University of Arivada's decision to cite and suspend Ms. Vega according to its Policy violates the First Amendment because it restricted conduct beyond the scope of a reasonable time, place, and manner restriction.

First Amendment jurisprudence displays "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *New York Times Co. v. Sullivan*, 376 U.S. 254, 279 (1964). The Court has consistently protected expression of ideas on public issues because "speech concerning public affairs is more than self-expression; it is the

essence of self-government." *Garrison v. La.*, 379 U.S. 64, 74-75 (1964). Accordingly, "speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection." *Connick v. Myers*, 461 U.S. 138, 145 (1983). The University's attempts to silence Ms. Vega's peaceful political protest directly disregard these fundamental values that form the bedrock of the right to free speech.

A. *Tinker* and its progeny do not apply to this case because the Policy censors far more speech than that which disrupts the academic environment.

The Fourteenth Circuit's reliance on *Tinker* and other public education cases is misguided for two reasons. First, Ms. Vega's protest took place on a college campus, which is fundamentally different from the high school environment in *Tinker*. Second, Ms. Vega's protest did not disrupt academic environment and therefore is outside the scope of the *Tinker* holding.

States possess the right to censor vulgar or lewd student expression in public elementary and secondary schools. *See Bethel Sch. Dist. v. Fraser*, 478 U.S. 675 (1986) (upholding a suspension based on lewd comments made in a school assembly speech); *see also Bd. of Educ. v. Pico*, 457 U.S. 853 (1982) (holding a school board may remove books from a school library on the basis of extreme vulgarity, but not because it disagreed with the views espoused in the books). This right stems from the unique parent-like role played by the secondary public education system, which exists not only to teach students math and grammar but also the "fundamental values necessary to the maintenance of a democratic political system." *Bethel*, 478 U.S. at 681 (*quoting Ambach v. Norwick*, 441 U.S. 68, 76-77 (1979)).

1. While the Policy incorporates a portion of the language of the *Tinker* standard, the University's application of it disregards one of the key purposes the standard was designed to address.

Despite this leeway, the right of elementary and secondary schools to restrict student expression is far from absolute. *See Tinker v. Des Moines Indep. Cty. Sch. Dist.*, 393 U.S. 503

(1969). In *Tinker*, this Court stated students may express their opinions, even on controversial topics, during school controlled activities if they do so without "materially and substantially interfering with the requirements of appropriate discipline in the operation of the school and without colliding with the rights of others." *Id.* at 513. This standard balances the school's interest in maintaining an environment that is "free from disruptive interference of the educational process" and the students' interest in exercising their freedom of speech uninhibited by school regulation. *See Healy v. James*, 408 U.S. 169, 171 (1972).

The University's Policy undoubtedly borrows its language from *Tinker*, but it does so in a way that runs contrary to the decision's reasoning. Specifically, the Policy disregards the background of an interference with the educational process, which was dispositive for the *Tinker* Court. 393 U.S. at 514 (holding that the record did not demonstrate any reason for administrators to predict a substantial disruption or interference with school activities). The University contends that the Policy adequately mirrors the *Tinker* standard, as punishment is triggered by an interference with another's rights, similar to the language that also appears in the case. *Id.* at 513 (holding speech that invades or collides with the rights of others to be secure and let alone is not shielded under the First Amendment). However, this contention ignores the duality of the *Tinker* standard's purpose: (1) to promote the school's need to provide students an education free of significant disruption and (2) the need to respect students' First Amendment rights, attempting to compromise where the two conflict. *See Healy*, 408 U.S. at 171. *see also* Richard A. Posner, *Pragmatism v. Purposivism in First Amendment Analysis*, 54 Stan. L. Rev., 737, 729 (2002) (explaining that First Amendment law "[is] . . . a product of the judges' . . . trying to reach reasonable results", which should weigh the benefits to the speaker's rights against the harms to protestor's rights). In contrast, the University's Policy restricts a substantial amount of expressive

conduct that does not adversely affects a school's need to operate in an orderly fashion. Ms. Vega is case in point. R.39. Her protest was peaceful and did not disrupt class or any other school-sponsored activity. R. 38, 39. The Policy's reach extends far beyond the aim of the *Tinker* standard and cannot be saved by piecemeal use of similar language that is taken out of context. *Healy*, 408 U.S. at 171; R.23.

Even if this Court holds that the *Tinker* standard is applicable in a university setting, the policy both facially and as applied ignores one of the *Tinker* Court's main considerations: the maintenance of a safe learning environment. Indeed, the Ninth Circuit took this into account when it applied the *Tinker* standard solely on the basis of student conduct that collided with or was likely to "collide with the rights of others." *See Harper v. Poway Unified Sch. Dist.*, 445 F.3d 1166, 1175 (9th Cir. 2006); s*ee also Wynar v. Douglas Cty. Sch. Dist.*, 728 F.3d 1062, 1067 (9th Cir. 2013). In *Wynar*, the speech that was punished was a student's off-campus threats to shoot his classmates. 728 F.3d at 1065-66. The Court concluded that the school was justified in punishing the student for these statements because they impinged on other students' right to a safe learning environment. *Id.* at 1072. In *Harper*, the Court was similarly concerned with this idea of students' right to a safe learning environment. 445 F.3d at 1178 (holding that a student's shirt, which had the message "HOMOSEXUALITY IS SHAMEFUL…," among other things printed on it invaded other students' rights to be free from verbal attacks that psychologically damage their identity and "to be secure and to be let alone.") (*quoting Tinker*, 393 U.S. at 514). This interest in a secure learning environment that firmly grounds the speech in these cases within the dual aims of *Tinker* is absent from the language of the University's policy. In fact, Ms. Vega was punished for speech that did not target other students or put their safety or their secure learning environment at risk in any way. R. 38, 39. Because the Policy is not anchored to the safety, security, and smooth functioning of the

learning environment like the speech restrictions in *Harper* and *Wynar*, it is outside *Tinker's* scope. 445 F.3d at 1178; 728 F.3d at 1072; R.23.

2. The Court has consistently declined to apply *Tinker* to the University context, and it should not do so now because of the important differences between secondary schools and universities.

In the fifty years since *Tinker*, the Court has never applied the holding in the University context because of the fundamental differences between high schools and universities. *See Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 272 (1988). Part of the basic purpose of elementary and secondary schools is to teach students acceptable social behavior and fundamental values. *See Bethel*, 478 U.S. at 681. Conversely, college is a time of personal exploration and challenging conventional norms and mainstream thinking. *McCauley v. Univ. of the V.I.*, 618 F.3d 232, 243 (3d. Cir. 2010). Based on these differences, this Court holds that a university campus is the place with "the widest latitude for free expression and debate consonant with the maintenance of order." *Healy*, 408 U.S. at 171.

Ms. Vega's conduct cannot be analyzed under the same "materially and substantially interfering" standard as *Tinker* and its progeny because fundamental limiting principles in those decisions place Ms. Vega's conduct outside their scope. *Tinker*, 393 U.S. at 513. The University clearly relied on *Tinker* when writing their Campus Free Speech Policy, as the policy featured only minor variations from the standard found in *Tinker*. *See* App'x. A. Ms. Vega acknowledges secondary school administrators' ability to censor vulgar language. But a standard designed in the context of their need to perform a parent-like role should not be extended to the university setting because this need simply does not exist for college-age adults. *See Bethel*, 478 U.S. at 675; *see also* Calvert, *supra*, at 123 (equating lower courts' use of *Tinker* in university-speech cases to "reducing the First Amendment rights of university [young-adults]" to those of high school pupils,

suffocating free expression). Indeed, because of the Court's longstanding precedent that secondary schools are fundamentally different than universities, the University cannot rely on the *Tinker* standard to render its policy, and its application of it, constitutional. 393 U.S. at 513. The basic purpose of elementary and secondary schools is to teach students the fundamental values most important to our democratic society. *See Bethel*, 478 U.S. at 681. One of these fundamental values is "a profound national commitment . . . to uninhibited, robust, and wide-open" debate. *New York Times Co.*, 376 U.S. at 279. College is the time to apply these values by challenging conventional norms to push society forward under a new generation of leaders. *See McCauley*, 618 F.3d at 243. Ms. Vega's protest encapsulates the progression from learning to applying that value.

The immigration debate between Mr. Drake and Ms. Vega simply would not occur at an American high school. Ms. Vega is a first generation Hondaraguan-American adult who disagreed with Mr. Drake's beliefs based on her own life experiences. R.37. Mr. Drake is a successful immigration pundit, serving as the Executive Director of the well-known Stop Immigration Now. R.4. This is a debate on a highly divisive public interest issue between two well-educated adults with fully-formed opinions, both of whom possess the right to vote on the issue. In contrast, in a secondary school setting, where two minors disagree and argue over an issue while still being taught the basic principles of both the issue itself and the democratic process, there would be a stronger case for regulation. It would be misguided and overly restrictive to apply the *Tinker* standard to a university setting that is fundamentally different and where the democratic stakes are much higher than the secondary school at issue in *Tinker*.

The ties between Mr. Drake's speech and the academic environment are tenuous, making it unclear whether the *Tinker* analysis should even apply. While Mr. Drake was invited to speak at an event hosted by the University's chapter of American Students for America (ASFA), AFSA

was not required to nor did seek the University's approval for the event. R.21. AFSA merely reserved the amphitheater through the University, which does not imply university sponsorship of the event and is distinguishable from the grant of a permit. *Id.* This was not a University course taught by Mr. Drake, nor even a University-invited guest speaker. Instead, this was a public talk, and the university was merely the venue. If Mr. Drake's speech occurred even barely off-campus, *Tinker* would not have been implicated. Geographic location, though certainly important, should not predominate over other important factors that actually concern the speech and the speakers, such as the factual nature of the relationship between the speaker, the university, and the students. In nearly every way, except for the fact that the speaker stepped foot onto campus which the University contends allows them to insulate themselves under *Tinker*, this case is more like protests that occur on a public sidewalk or in a park. Regulation of these kinds of protests are analyzed under a much stricter standard. *Snyder v. Phelps*, 562 U.S. 443, 451 (2011). During her protest, Ms. Vega acted as an adult activist protesting a political speech she disagreed with, not as a student disrupting a lecture or University sanctioned event. As such, her conduct should be analyzed under the framework of a political or social protestor exercising her Freedom of Speech. Everything that could reasonably be considered expressive activity on a university campus does not affect the academic environment. Otherwise, all large sporting events and social gatherings on campus would be subject to the Free Speech Policy.

B. The Policy, as applied to Ms. Vega, restricts her First Amendment rights beyond the scope allowed under a reasonable time, place, and manner restriction.

Speech dealing with matters of public concern is the pinnacle of First Amendment expression and is entitled to special protection. *Connick*, 461 U.S. at 145. Speech deals with matters of public concern when it can "be fairly considered as relating to any matter of political, social, or other concern to the community," *id.* at 146, or when it "is a subject of legitimate news

interest; that is, a subject of general interest and of value and concern to the public." *City of San Diego v. Roe*, 543 U.S. 77, 83-84 (2004).

Perhaps the best example of this principle comes from *Snyder*, a case involving the notoriously outspoken Westboro Baptist Church. In *Snyder*, church members picketed on a public sidewalk just over 300 yards away from a fallen soldier's funeral with signs reading "America is Doomed" and "Thank God for Fallen Soldiers." 562 U.S. at 448. The Court held this speech was protected by the First Amendment because, while undoubtedly offensive and unpopular, the speech involved matters of public concern—i.e., opposition to the War on Terror—and deserved the highest First Amendment protection. *Id.* at 454-55.

Speech dealing with matters of public concern may be restricted only by a reasonable time, place, and manner restriction. *Id.* at 451. Because Ms. Vega's pro-immigrant protest is speech dealing with a matter of public concern, the University may only restrict her speech in this way. *Snyder*, 562 U.S. at 451. A reasonable time, place, and manner restriction requires content neutrality, narrow tailoring, and adequate guidance. *Frisby v. Schultz*, 487 U.S. 474, 484-85 (1988). Admittedly, the Policy is content neutral, which leaves the remaining two factors.

1. The Policy is not narrowly tailored and is distinguishable from cases relied on by the court of appeals that permit regulations of vulgarity or violence.

Regarding the second requirement of narrow tailoring, the University's Policy fails because it restricts a large array of expressive activity outside its stated intent. The framework of a narrow tailoring analysis and the facial deficiencies of the Policy were thoroughly detailed in the previous section. *See* discussion *supra* pp. 9-13. This analysis will focus on the Policy's tailoring as applied to Ms. Vega's conduct.

The Court of Appeals cites several cases concerning applications of school speech policies exhibiting narrow tailoring, but they are all readily distinguishable from the current case. *See Pico*,

457 U.S. at 867 (holding that a secondary school library may remove a vulgar book); *see also Barker v. Hardway*, 283 F. Supp. 228 (S.D.W. Va. 1968) (upholding student suspensions after violent protests that threatened personal safety and caused property damage). There are no allegations in the record that Ms. Vega used any type of vulgar language nor engaged in any violent behavior. She was merely a single student exercising her right to share a different viewpoint from a speaker on campus.

2. Officer Thomas's arbitrary selection of Ms. Vega amid the clamor surrounding Mr. Drake's speech demonstrates an unconstitutional lack of guidance for the Policy's implementation.

Even if this Court finds the policy to be sufficiently tailored, Ms. Vega's protest did not materially and substantially infringe upon the rights of Mr. Drake or his listeners. This is because her conduct was not more distracting or worthy of restriction than the multitude of other activities taking place on the Quad that went unpunished. A reasonable time, place, or manner restriction must "contain adequate standards to guide the official's decision and render it subject to effective judicial review." *Thomas v. Chi. Park Dist.*, 534 U.S. 316, 323 (2002). The amphitheater Mr. Drake spoke in is located on the Quad, in the center of campus. Student dorms and other facilities surround it on all sides. R.4. The presence of dorms alone, much less the bustling Quad, would likely cause the entire area to be loud and distracting.

During the time Mr. Drake was speaking, in addition to Ms. Vega's protest, there were students socializing, competing in and cheering for a flag football game, playing guitars and listening to music from speakers, eating lunch, and moving about. R.21. These activities demonstrate that the Quad, and by extension the amphitheater located in its center, was a very loud and distracting place during Mr. Drake's talk irrespective of Ms. Vega's protest. Despite this other distracting activity, Officer Thomas did not consider issuing citations to any students other than

Ms. Vega because he was "responding to a specific call about a specific disturbance." R. 21, 35. This was unreasonable. Just as it would be absurd for officers to ignore a robbery they observe simply because they are responding to a call about another robbery, it is absurd for Officer Thomas to ignore potential policy violations simply because only Ms. Vega's conduct was reported. This is a weak excuse for targeting a particular student that was engaging in conduct no more conclusively distracting than other activities taking place on the Quad. Blindly responding to complaints provides students the unchecked ability to silence opposing viewpoints.

Officer Thomas stated that he determined Ms. Vega's protest drowned out the majority of Mr. Drake's remarks, and that is why he issued only her a citation. R.35. Not so. Meghan Taylor, an audience member, stated that "all of the noises combined made it difficult to hear Mr. Drake speak." R.32. Even after Ms. Vega was removed, Ms. Taylor explained that the area was still very noisy due to the other activity taking place on the Quad. *Id.* Even Mr. Putnam, the student who invited Mr. Drake to speak and complained about Ms. Vega's protest, acknowledged that he could hear other background noises during Mr. Drake's speech. R.28. Taken together, these affidavits paint a picture of a very noisy outdoor location in the center of a college campus. Both Mr. Drake and Mr. Putnam must have known that some distractions were not unlikely, especially in that specific location. Ms. Vega did not engage in any violent activity or shout down Mr. Drake. She stood outside the amphitheater on a public sidewalk and provided a counter viewpoint to Mr. Drake's assertions. R.20. Mr. Drake's listeners were still able to hear his views to a satisfactory degree. It is not Ms. Vega's fault they were upset that they had to hear opposition to their beliefs. Public debate is at the heart of American political discourse. *New York Times Co.*, 376 U.S. at 279. The Policy is unconstitutional as applied to Ms. Vega because she was stopped from actively participating in a peaceful and respectful protest that did not materially and significantly infringe

on Mr. Drake's rights. *See* Posner, *supra*, at 742 (arguing that while hecklers should be punished to avoid a heckler's veto, this should *only* be done when the benefits to the speaker's rights outweigh the infringement upon the heckler's).

3. Reason dictates that if exceptionally disturbing and intrusionary speech such as that of the Westboro Baptist Church in *Snyder v. Phelps* is deemed worthy of heightened protection as speech of public concern, Ms. Vega's speech should be, too.

Prior decisions from this Court protect expression substantially more distracting, upsetting, and socially problematic than Ms. Vega's benign protest. In *Snyder v. Phelps*, Westboro Baptist Church members peacefully picketed on a public sidewalk, in accordance with police instructions, just over 300 yards from a fallen soldier's funeral with signs reading "America is Doomed" and "Thank God for Fallen Soldiers." 562 U.S. at 456. The soldier's father sued the church for intentional infliction of emotional distress. *Id.* at 448. He was unable to focus on burying his son and gaining closure because he could not separate the memory of his son from the protestors at his funeral. *Id.* While the church members were quiet, their conduct was clearly distracting on an emotional level. Nevertheless, this Court held the church's speech, while incredibly offensive and unpopular, was protected by the First Amendment because it was a protest of the War on Terror, a matter of public concern, and not a direct attack on the fallen soldier. *Id.* at 454-55. The Court held that allowing Snyder to recover from the Westboro protestors for their message, which fell squarely within matters of public concern, ran too great a risk of allowing a jury to punish the church members for their unpopular views. *Id.* at 457.

Ms. Vega's protest is substantially similar to *Snyder*. Like in *Snyder*, there are no allegations that Ms. Vega used either vulgarity or violence during the course of her protest. While the Westboro Church members were quieter than Ms. Vega, noise is not the only way to be distracting. The knowledge of a notoriously pernicious and hateful group's presence can infiltrate

the mind and disturb one's thoughts just as effectively. Mr. Snyder was unable to focus on his son's memory at an emotionally vulnerable time for this exact reason. *Id.* at 448. While no policy prohibited the Westboro members' conduct, the University's policy is so vague and devoid of guidance as to be virtually no policy at all. Even though the Westboro protest and Ms. Vega's protest were similar in their political messages, their differences are why Ms. Vega's speech must be protected. Even Mr. Drake's staunchest supporters would be hard pressed to say they found Ms. Vega's protest as objectively offensive as speech that celebrates soldiers dying just a short distance from a soldier's funeral. Ms. Vega's protest is far from that. Because the Court was willing to protect Westboro members that quietly waived signs saying "You're Going to Hell" at an American soldier's funeral, it must be willing to protect Ms. Vega's expression, too.

CONCLUSION

For all of the foregoing reasons, Petitioner Valentina Maria Vega requests this Court to reverse the Fourteenth Circuit's Opinion and Order, and enter judgment in favor of Petitioner.

Dated: January 30, 2019 Respectfully submitted,

/s/ Team 11

CERTIFICATE

The work product contained in all copies of this brief is in fact the work product of Team 11. Team 11 has complied fully with our school's honor code. Team 11 has complied with all rules of the competition.

Respectfully signed,
Team 11

Appendix A.

University of Arivada Campus Free Speech Policy
Enacted: August 1, 2017

Scope
This policy applies to all University of Arivada students.

Purpose
This Policy is adopted to fulfill the University's obligations under the Arivada "Free Speech in Education Act of 2017."

Policy Statement
The Board of Regents of the University of Arivada hereby reaffirms the University's commitment to the principle of freedom of expression.

Free Expression Standard

1. Expressive conduct that materially and substantially infringes upon the rights of others to engage in or listen to expressive activity shall not be permitted on campus and shall be subject to sanction.

Disciplinary Procedures
1. This Policy includes a three strike range of disciplinary sanctions for a University of Arivada student who infringes upon the free expression of others on campus.
2. Any student who violates this Policy shall be subject to a citation by University Campus Security.
3. Campus Security shall transmit citations for violation of this Policy to the University's Dean of Students for review and investigation. The Dean of Students shall determine whether a student has materially and substantially infringed upon the rights of others to engage in or listen to expressive activity on the basis of the Dean's review and investigation.
4. Any student who receives a first citation pursuant to the Policy is entitled to an informal disciplinary hearing before the Dean of Students.
5. If the Dean of Students determines that the citation is appropriate, the Dean shall issue a warning to the student to be known as a first strike.
6. The review and investigation procedures described above, in three and four, apply to citations for second and third citations in violation of the Policy.
7. A student who receives a second or third citation is entitled to a formal disciplinary hearing before the School Hearing Board.
8. The School Hearing Board shall determine whether the behavior constitutes a violation of the Policy and therefore merits a second or third strike.
9. A formal disciplinary hearing includes 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.
10. The sanction for a second strike shall be suspension for the remainder of the semester.
11. The sanction for a third strike shall be expulsion from the University.
12. Any strike issued under this Policy shall be placed on the student's record.

Notice
The University of Arivada shall provide notice of this Policy to all enrolled students.

Appendix B

Effective: June 1, 2017

Free Speech in Education Act of 2017

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 polices 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.

Appendix C

Relevant Constitutional and Statutory Provisions

1. Amendment I to the United States Constitution

   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.

2. Amendment XIV to the United States Constitution

   Section 1.
   All persons born or naturalized in the Unites 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.

3. 28 U.S.C §1254 provides:
   Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
   (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;
   (2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

4. 28 U.S.C. § 1291 provides:
   The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

5. 28 U.S.C. § 1331 provides:
   The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.