No. 18-1234

In the

SUPREME COURT OF THE UNITED STATES

VALENTINA MARIA VEGA,

Petitioner,

V.

JONATHAN JONES AND REGENTS OF THE UNIVERSITY OF ARIVADA,

Respondent.

On Writ of Certiorari
to the United States Supreme Court

BRIEF FOR PETITIONER

Team 24
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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JONATHAN JONES AND REGENTS OF THE UNIVERSITY OF ARIVADA

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OPINIONS BELOW

The opinion of the Court of Appeals for the Fourteenth Circuit is reported at *Jones v. Vega*, No. 18-1757 (14th Cir. 2018). The district court opinion for the District Court of Arivada is reported at *Vega v. Jones*, C.A. No. 18-CV-6834 (D. Av. 2018).

JURISDICTION

The judgment of the court of appeals was entered on November 1, 2018. Following the court of appeals decision, this petition was timely filed. The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the First Amendment to the United States Constitution as well as Av. Gen. Stat. § 118-200. Both provisions are reproduced in the Appendix.

STATEMENT OF THE CASE

Arivada's "Free Speech in Education Act of 2017," enacted June 1, 2017, requires state higher education institutions to adopt school-wide policies that "safeguard the freedom of expression on campus." Av. Gen. Stat. § 118-200. In compliance with the Act, the University of Arivada adopted the Campus Free Speech Policy ("the Policy"), which set forth sanctions for students who "materially and substantially infringe upon the rights of others to engage in or listen to expressive activity." R. at 23.

The Policy employs a three-strike system. *Id.* Students accused of violating the Policy receive citations from University Security Campus Officers. *Id.* These citations are reviewed and investigated by the University's Dean of Students. *Id.* During this process, students may appear in an informal hearing before the Dean of Students. *Id.* If the Dean of Students decides, after investigation and the optional hearing, that the citation was warranted, the student receives a "first strike." *Id.* Though a warning, the strike is a part of the student's permanent record. *Id.* For second and third strikes, students are provided a formal disciplinary hearing by the School Hearing Board. *Id.* If the School Hearing Board determines that there has been a violation, the student will be suspended for a second strike and expelled for a third strike. *Id.*

Ms. Valentina Maria Vega, president of Keep Families Together at the University of Arivada, received her first citation and strike after attending an immigration rally hosted by Students for Defensible Borders ("SDB"). R. at 37. In an attempt to ensure "that other students understand the pro-immigration perspective," Ms. Vega tried to explain to event attendees "that immigration is a good thing and that immigrants are at the heart of America." *Id.* Ms. Vega and several fellow university students stood on chairs to share this message during the SDB advocate's speech. *Id.* Members of SDB called campus security. R. at 34. Campus Security

Officer Michael Thomas responded to the student organization's call. *Id.* After he evaluated the situation, he decided to issue citations to Ms. Vega and her colleagues. *Id.*

After receiving notification of the citations from Campus Security, University Dean of Students Louise Winters met individually with Ms. Vega and each of her colleagues. R. at 40. Determining that the students had "materially and substantially infring[ed] upon the rights of others to engage in or listen to expressive activity" in violation of the Campus Free Speech Policy, Ms. Winters issued each of the students, including Ms. Vega, a citation. R. at 41.

Ms. Vega received her second strike following an event at the Emerson Amphitheatre. The Amphitheatre—a space that students may reserve to host on-campus events for roughly 100 attendees—is located on the University "Quad," a large open space at the campus's center. R. at 21. The Amphitheatre "has wooden benches arranged in a semi-circular fashion facing a small stage," and is surrounded by open, green space where "students gather to play informal sports, to socialize, and to study." *Jones v. Vega*, No. 18-1757, at 3 (14th Cir. 2018). It is unclear where the Amphitheatre begins and ends within the Quad. R. at 21. Just ten feet from the last row of Amphitheatre benches lies a public walkway through the Quad. *Id.*

The University's American Students for America ("ASFA") chapter submitted an application to use the Emerson Amphitheatre and received approval to host an event on September 5, 2017 at 3:00 PM. *Id.* The day of the event, Director of Stop Immigration Now Samuel Payne Drake spoke at Emerson Amphitheatre, supporting Stop Immigration Now's view that "immigration—especially illegal immigration—leads to violent crime, drug smuggling, and human trafficking." *Id.*; *Jones,* No. 18-1757, at 3. At one point during the event, Mr. Jones stated that "immigration destroys American families and takes 'away the jobs hard-working Americans need and want.'" *Jones*, No. 18-1757, at 4 (quoting R. at 24). He encouraged the approximately

thirty-five attendees to "make America American again!" and "build the wall and keep them out!" *Id.;* R. at 20.

As Mr. Drake spoke, Ms. Vega stood at the edge of the nearby walkway, ten feet from the amphitheater's last bench. R. at 38. Wearing a Statute of Liberty costume, Ms. Vega walked along the walkway, surrounded by picnics, football games, and the nearby event. R. at 21, 38. As she walked, Ms. Vega chanted, "Disband ICE," "Immigrants made this land," "Keep families together," and other similar phrases. R. at 38. When American Students for America President Theodore Hollingsworth Putnam heard Ms. Vega, he contacted Campus Security. R. at 29.

Once again, Officer Thomas arrived in response to the call and assessed the situation. R. at 35. Though Officer Thomas "could hear other voices from students passing by the amphitheater, as well as shouts from the flag football game," he found that Ms. Vega was facing the amphitheater and was "more distracting." R. at 36. This led Officer Thomas to believe that Ms. Vega was "materially and substantially infringing upon the right of others to engage in or listen to expressive activity," and he issued her a second citation *Id.*

Dean Winters received the citation and "initiated proceedings in accordance with the University's disciplinary protocols." R. at 41. Ms. Vega received a formal hearing before the Hearing Board on September 12, 2017. *Id*. The Hearing Board found that she violated the Campus Free Speech Policy, and—in line with the Campus Free Speech Policy signed by Ms. Vega—the Dean issued her a second strike and suspended her. *Id*. Ms. Vega appealed the Hearing Board's decision to the University, but was denied. R. at 39. Ms. Vega then filed suit in the United States District Court for the District of Arivada, alleging that the University Policy is facially vague and overbroad, and unconstitutional as applied to her. *Jones,* No. 18-1757, at 5.

The district court ruled in favor of Ms. Vega on both issues, but the Court of Appeals reversed. *Id.* at 2. Ms. Vega now appeals.

SUMMARY OF THE ARGUMENT

Ms. Vega received suspension from the University of Arivada for an alleged violation of the Campus Free Speech Policy. Ms. Vega faces considerable future consequences as a result of this suspension, including the notation of this suspension on her permanent record, and potential expulsion should she be found to violate the Campus Free Speech Policy in the future.

The University's treatment of Ms. Vega was improper, as the Campus Free Speech Policy is vague and overbroad. Though Ms. Vega signed the Campus Free Speech Policy, the vague wording of the policy did not provide sufficient notice to her of what types of speech and expression are prohibited. The vagueness of the policy will discourage students like Ms. Vega—fearful of harsh punishment like suspension and expulsion from the University—from engaging in speech and expression. The Campus Free Speech Policy is also overbroad, banning all types of speech rather than curtailing only unprotected categories of speech. The overinclusiveness of the policy has the potential to stifle constitutionally legitimate speech. *See Thornhill v. State of Alabama*, 310 U.S. 88 (1940). The Campus Free Speech Policy is thus constitutionally invalid.

While *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969), permits primary and secondary schools to limit certain types of speech that may be disruptions to the learning environment, those restrictions were intended for primary and secondary schools, and only for academic classroom settings or school-sponsored events. *See id.* Applying similar restrictions in the university environment is an impermissible burden speech not justified by the reasoning of *Tinker.*

Finally, even if the Campus Free Speech Policy is found to be valid, the policy is invalid as applied to Ms. Vega. Ms. Vega did not substantially or materially disrupt the University learning environment when she chanted political messages in an open public forum. Ms. Vega's voice was just one of many distractions to the open-air anti-immigration event. R. at 36. Ms. Vega's actions in no way stopped the event; she did not enter the event or attempt to stop its progress. R. at 38. Mr. Drake was able to speak freely. Ms. Vega, on the other hand, faced punishment for her speech. Campus Security curtailed her speech and issued her a citation. R. at 36. She was the only individual to receive a citation for "disrupting" the event, though other distractions could be heard during Mr. Drake's speech. *Id.* In punishing Ms. Vega, the Campus Free Speech Policy improperly stifled Ms. Vega's speech, silencing her voice from the university's valued "marketplace of ideas."

ARGUMENT

I. The University Free Speech Policy Is Vague and Overbroad on Its Face

The University of Arivada's Campus Free Speech Policy, which imposes 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 overbroad on its face. "As a general principle, the First Amendment bars the government from dictating what we see or read or speak or hear." *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 245 (2002). This policy, implemented and enforced by a government actor,[1] seeks to regulate how the students of the University can speak. It does so with so little elaboration that some reasonable students may

[1] The University is a government actor and is constrained by the First Amendment. The Fourteenth Amendment incorporated free speech protections against the states, and the University is a state actor. *Cf. Healy v. James*, 408 U.S. 169, 180 (1972).

unintentionally violate the policy and others may curb their protected speech in an attempt to comply with the policy's vague boundaries. While the policy may rightfully punish some unprotected speech, its broad contours also encompass swaths of protected speech.

A. The Campus Free Speech Policy is Unconstitutionally Vague

The University of Arivada's Free Speech Policy is unconstitutionally vague. "An enactment . . . may be impermissibly vague because it fails to establish standards for the police and public that are sufficient to guard against the arbitrary deprivation of liberty interests." *City of Chi. v. Morales*, 527 U.S. 41, 52 (1999). The policy is written in such broad language that its meaning is difficult to decipher—this deprives the students of notice, gives discretion to enforcers without giving them guidance, and chills student speech. The policy, as written and as applied, violates Ms. Vega's due process and free speech rights. "It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." *Connally v. General Construction Co.*, 269 U.S. 385 (1926).

And it is important to note that these concerns—and the accompanying standard of specificity—are heightened in cases that also implicate the First Amendment. "Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity." *NAACP v. Button*, 371 U.S. 415, 438 (1963). The Court has emphasized again and again that "[p]recision of regulation must be the touchstone in an area so closely touching our most precious freedoms." *Id.* at 438. Especially considered under this heightened standard of review, the policy is overly and unconstitutionally vague.

First, the policy does not provide sufficient notice to students and may "trap the innocent by not providing fair warning." *Grayned v. City of Rockford*, 408 U.S. 104, 109 (1972). In fact, Ms. Vega thought that she was steering clear of potential violations by protesting on a public

walkway rather than inside the amphitheater. *Vega v. Jones*, C.A. No. 18-CV-6834, at 8 (D. Av. Jan. 17, 2018). The policy does not define what it means to "materially or substantially infringe" on the rights of others, nor does it differentiate the two. The policy could be interpreted to ban almost any manner of speech (for example, listening to music at a reasonable, but potentially distracting volume) or only the most extreme and prohibitive interference (for example, physically blocking other students from entering a political event). Here, Ms. Vega was reasonable to think that she was not "materially or substantially" interfering with any speech—the speaker could still be heard and continued his lecture relatively unencumbered. *Id.* at 6. Ms. Vega's conduct and subsequent punishment is just one example of how a reasonable and well-informed student could unintentionally violate the policy. Its vague wording simply does not give sufficient notice to students of how to avoid punishment. Because "men of common intelligence must necessarily guess," *Connally v. Gen. Const. Co.*, 269 U.S. 385, 391 (1926), at the meaning of the policy, it is unconstitutionally vague and jeopardizes the due process rights of all students subject to it.

Second, the policy allows for discretion—and ultimately abuse—by individual government actors. By failing to provide sufficient guidance to law enforcement, the policy enables the enforcing individual to decide which speech is protected and which is not—altogether too much authority for one security officer. Even if the officer is well intentioned and behaves reasonably, the policy's delegation of decision-making authority is impermissible and invites arbitrary application. Here, the application of the policy was prompted by a student, the president of American Students for America (ASFA). The vague contours of the policy allow students to report and potentially suppress almost any unpopular speech—awarding them a "hecklers' veto," exactly what the University presumably sought to prevent with its policy.

Macklin W. Thornton, *Laying Siege to the Ivory Tower: Resource Allocation in Response to the Heckler's Veto on University Campuses*, 55 SAN DIEGO L. REV. 673, 674 (2018). There were other distractions in the area—students playing a spirited game of flag football, for example, *Vega,* No. 18-CV-6834, at 8,—but the ASFA president called campus security about Ms. Vega because he found her speech especially distasteful. The campus security officers who enforce the policy will naturally be inclined to follow through on specific reports, which provide much more guidance than the policy itself. *See* R. at 35 (Thomas didn't think to punish other distracting students because he was "responding to a specific call about a specific event.").

Third, the vagueness of the statute chills speech and jeopardizes the marketplace that the First Amendment strives to protect. "[S]tandards of permissible statutory vagueness are strict in the area of free expression." *NAACP v. Button*, 371 U.S. 415, 432 (1963). And for good reason: "Where a vague statute 'abuts upon sensitive areas of basic First Amendment freedoms,' 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.'" *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972) (cleaned up); *see also Keyishian v. Bd. Of Regents of Univ. of State of N. Y.*, 385 U.S. 589, 601 (1967); *Baggett v. Bullitt*, 377 U.S. 360, 374 (1964) ("The uncertainty as to the utterances and acts proscribed increases that caution in 'those who believe the written law means what it says.'"). Here, students may avoid constitutionally permissible speech for fear of infringing on the loosely defined policy. *Keyishian*, 385 U.S. at 603–04; *Button*, 371 U.S. at 438. Two other students chose not to attend the ASFA event for fear of violating the indeterminate policy. *Vega v. Jones*, No. 18-CV-6834, at 8 (D. Av. Jan. 17, 2018). Because the students were unsure if their behavior would violate the policy, they chose not to speak at all—exactly the 'chilling effect' that the

Court's First Amendment jurisprudence aims to eliminate. And the students were reasonable to fear violating the policy: as the district court noted, any number of activities could infringe upon the rights of others to listen to or engage in expressive activity, something the policy forbids. *Vega*, No. 18-CV-6834, at 8. As written, the policy could forbid students from almost any behavior, from "voicing disagreement with another speaker on campus" to "play[ing] music" in their dormitories. *Id.* Indeed, the policy is "more a code of politeness than a legal standard." *Id.* The "dangerously uncertain," *Keyishian*, 385 U.S. at 598, language of the policy will suppress and discourage speech as students try to avoid punishment.

B. The Campus Free Speech Policy is Substantially Overbroad

Not only is the University's policy vague, it also is substantially overbroad—its impermissible applications are many. "[T]he overbreadth doctrine permits the facial invalidation of laws that inhibit the exercise of First Amendment rights if the impermissible applications of the law are substantial when 'judged in relation to the statute's plainly legitimate sweep.'" *Broadrick v. Oklahoma,* 413 U.S. 601, 612–615 (1973). Here, those impermissible applications are certainly substantial—the policy could ban almost any speech that happens in public. It threatens to curtail even peaceful, silent protest—which could surely distract from a class, conversation, or simultaneous protest.[2] Here again, the standards are heightened when an overbroad law threatens to restrict First Amendment freedoms: "The Constitution gives significant protection from overbroad laws that chill speech within the First Amendment's vast and privileged sphere." *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 244 (2002). Because the policy "sweeps within its ambit other activities that . . . constitute an exercise of freedom of

[2] Even if the University denies that it would apply the policy in this manner, "[w]e would not uphold an unconstitutional statute merely because the Government promised to use it responsibly." *United States v. Stevens*, 559 U.S. 460, 480 (2010).

speech or of the press," it is unconstitutionally overbroad. *Thornhill v. State of Alabama*, 310 U.S. 88, 97 (1940).

Even though the University has a legitimate interest in ensuring its students' ability to communicate, "that purpose cannot be pursued by means that broadly stifle fundamental personal liberties." *Keyishian*, 385 U.S. at 602; *Shelton v. Tucker*, 364 U.S. 479, 488 (1960). The University may find it difficult to protect students' ability to have events without suppressing some speech. It is unclear which category of unprotected speech the University claims that the policy encompasses, if any. And "the possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that protected speech of others may be muted." *Ashcroft*, 535 U.S. at 255.

The Court in *United States v. Stevens* laid out the steps to determine if a law or policy is overbroad. 559 U.S. 460, 474 (2010). "The first step in overbreadth analysis is to construe the challenged statute; it is impossible to determine whether a statute reaches too far without first knowing what the statute covers." *United States v. Williams*, 553 U.S. 285, 293 (2008). In *Stevens*, the Court invalidated a statute that criminalized depictions of animal cruelty as unconstitutionally overbroad. As in Stevens, the Policy is one of "alarming breadth." *United States v. Stevens*, 559 U.S. 460, 474 (2010). It reaches protected speech of every variety—for all public speech is likely to distract from other speech. The *Stevens* Court also noted that government promises to enforce the statute only in regards to blameworthy speech carried no weight. "[T]he First Amendment protects against the Government; it does not leave us at the mercy of *noblesse oblige*." *Id.* at 480. Here, just as in *Stevens*, the University cannot repair the unconstitutional policy by promising to apply it responsibly.

In *Cohen v. California*, the Supreme Court found a statute prohibiting offensive profanity to be unconstitutionally overbroad. 403 U.S. 15 (1971). Of course, some applications of the statute could be lawful—punishment of fighting words, for example, has long been accepted by the Court. However, the legislature could not punish *any* speech likely to cause a dispute, even if doing so would result in a more peaceful public sphere. The freedoms of the First Amendment can result in "verbal tumult, discord, and even offensive utterance. These are, however . . . in truth necessary side effects of the broader enduring values which the process of open debate permits us to achieve." *Id.* at 24–25. When public institutions allow for these side effects of free speech, they avoid the more severe results of an overly broad statute: a "continuous and pervasive restraint on all freedom of discussion that might reasonably be regarded as within its purview." *Thornhill v. State of Alabama*, 310 U.S. 88, 98 (1940). Just as in *Cohen*, the University of Arivada has a legitimate interest in ensuring peace and civil discourse on its campus. But it may not do so by banning protected speech.

C. *Tinker* Does Not Justify the Application of the Unconstitutional Policy

Finally, the University's application of an unconstitutional statute is not justified by *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969). The *Tinker* Court famously acknowledged that the First Amendment rights of students do not stop at the schoolhouse gate:

> In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect . . . .

Tinker, 393 U.S. at 511 (1969). *Tinker* acknowledges that some regulations may be permissible in order for schools to maintain authority,[3] but that reasoning does not extend to the University's policy.

First, *Tinker* concerned high school students, while the University of Arivada is an institute of higher education. Its students are primarily adults, who have chosen to continue their education for the very purpose of challenging their viewpoints. The college campus is a bastion of free speech, and "[t]he college classroom with its surrounding environs is peculiarly the 'marketplace of ideas.'" *Healy v. James*, 408 U.S. 169, 180–181 (1972). Further, a primary purpose of elementary and secondary school is to instill discipline in its students—this is generally not true for universities. Thus, the need for rigid regulations of student behavior is less on a college campus.

Second, *Tinker* was based on the idea that school officials may regulate to prevent substantial disruption of or material interference with school activities. *Tinker*, 393 U.S. at 509. Tinker emphasizes that a school may not regulate protected speech unless that speech "would materially and substantially disrupt the work and discipline of the school." *Id.* at 513. Here, there is no such disruption: First, the speech that the University is concerned with is entirely that of ASFA, not the University itself. Second, the speech was not interrupted or substantially interfered with. Just as in *Tinker*, "[t]here is no indication that the work of the schools or any class was disrupted." *Id.* at 508. The policy extends far beyond the limits set by Tinker, which were intended to protect the legitimate functions of schools themselves.

[3] For example, students could not claim a First Amendment right to chant protests during their classes—this would detract from their peers' education as well as their own.

II. The Policy Is Unconstitutional As-Applied to Ms. Vega

This Court has recognized that "the First Amendment rights of speech and expression extend to the campuses of state universities." *Widmar v. Vincent*, 454 U.S. 263, 268 (1981). To determine whether the University is burdening free speech, courts typically apply a three-part inquiry for free speech claims:

> First, we determine whether the speech at issue is afforded constitutional protection; second, we examine the nature of the forum where the speech was made; and third, we assess whether the government's action in shutting off the speech was legitimate, in light of the applicable standard of review.

Bible Believers v. Wayne Cty., 805 F.3d 228, 242 (6th Cir. 2015) (restating test established in *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 797 (1985)). Under the three-part test, the University's actions toward Ms. Vega are unconstitutional.

A. Ms. Vega's Political Speech Is at the Pinnacle of First Amendment Protection

Providing students with the opportunity to speak and engage with other students is the epitome of speech protected by the First Amendment. Such dialogue contributes to the "marketplace of ideas" in the University setting. *See Grutter v. Bollinger*, 539 U.S. 306, 329 (2003) ("We have long recognized that, given the important purpose of public education and the expansive freedoms of speech and thought associated with the university environment, universities occupy a special niche in our constitutional tradition."). Ms. Vega's engagement with her peers and the guest speaker is exactly the type of speech the First Amendment protects.

Student speech on university campuses is highly valued, and the controversial and political nature of the speech affords it extra protection.[4] *See Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46 (1988); *Fed. Election Comm. V. Colo. Republican Fed. Campaign Committee*, 533 U.S. 431, 465–66 (2001) (Thomas, J., dissenting) (noting that political speech is viewed as the pinnacle of First Amendment protection). Ms. Vega's speech was highly political in nature, as she was speaking about American immigration policies and chanting statements like "disband ICE." R. at 38. Ms. Vega's attempts to convince listeners to change their minds about important political topics should receive the highest level of First Amendment protection. Indeed, "[t]he right to free speech . . . includes the right to attempt to persuade others to change their views, and may not be curtailed simply because the speaker's message may be offensive to [her] audience." *Hill v. Colorado*, 530 U.S. 703 (2000).

B. Ms. Vega Spoke in a Forum Where Speech is Most Protected

A University's regulation on speech will depend "on the character of the property at issue." *Frisby v. Schultz*, 487 U.S. 474 (1988). Most circuits recognize three categories of forums: traditional public forum, designated (or limited) public forum, and nonpublic forum. Public forums are places open for discourse and discussion, such as public streets, sidewalks, and parks. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983). A designated public forum is "government property that has not traditionally been regarded as a public forum [but] is

[4] Not all types of speech receive protection. Two areas of unprotected speech that have particular relevance to the interaction between offensive speakers and hostile crowds are incitement to violence and "fighting words." *See Jones v. Vega*, No. 18-1757, at 12 n.11 (D. Av. 2018). Though the University could place greater restrictions on these types of speech, there is no evidence that Ms. Vega's commentary at either event fell into these two categories of speech. *See id.; see also Terminiello v. Chicago*, 337 U.S. 1, 4–5 (1949) ("Freedom of speech, though not absolute, is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest.").

intentionally opened up for that purpose." *Pleasant Grove v. Summum*, 555 U.S. 460, 469 (2009). In designated public forums, a "government entity may create a forum that is limited to use by certain groups or dedicated solely to the discussion of certain subjects." *Id.* A nonpublic forum is one that is not designated for or opened up to public expression. While restrictions on speech in traditional public forums are subject to strict scrutiny, "a government entity may impose restrictions on speech that are reasonable and viewpoint neutral" in limited public forums. *Id.*

This Court "has recognized that the campus of a public university, at least for its students, possesses many characteristics of a public forum," but acknowledged that "a university differs in significant respects from public forums such as streets or parks." *Widmar*, 454 U.S. at 267 n.5 (citing *Police Dept. of Chi. v. Mosley*, 408 U.S. 92 (1972)); *Cox v. Louisiana*, 379 U.S. 536 (1965); *Healy*, 408 U.S. at 180 (1972)). Though there may be some differences regarding public forums in universities, the Arivada "Quad" acts in all ways as a public forum.[5] The Quad is open to all, and individuals can study, play football, or eat lunch there—indicating that there are no restrictions placed on the Quad as a whole. R. at 21. Ms. Vega spoke right beside the general walkway for the Quad. R. at 38. Though it is unclear where Emerson Amphitheatre ends and the Quad begins, Ms. Vega was not sitting in the chairs for the Amphitheatre, nor was she attempting to enter the Amphitheatre's seating area while speaking. *Id.*

However, even if Ms. Vega was considered 'inside' Emerson Amphitheatre during her speech, she would be in a designated public forum. Emerson Amphitheatre was restricted in the

[5] It is unclear from the record whether the general public (including non-students) also has access to the Quad, given that the quad is enclosed by dormitories. R. at 21. However, as Ms. Vega is a student and her speech is under analysis, it is sufficient that the Quad serves as a public forum for University students.

same way a university restricted space in *Widmar*. There, the Court acknowledged that "[t]hrough its policy of accommodating [student organization] meetings, the University ha[d] created a forum generally open for use by student groups. Having done so, the University ha[d] an obligation to justify its discriminations and exclusions under applicable norms." *Widmar,* 454 U.S. at 267. Though the University allows students to reserve the space for exclusive use, no permit is required to use the space. R at 21.[6] At the least, this could be considered a designated public forum, subject to strict scrutiny just as a public forum is. *Perry Education Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45–47 (1983); *see also McGlone v. Bell*, 681 F.3d 718, 733 (6th Cir. 2012)[7]; *Brister v. Faulkner*, 214 F.3d 674, 683 (5th Cir. 2000) (citing *United States v. Grace*, 461 U.S. 171 (1983)).[8]

C. The University Illegitimately Stifled Ms. Vega's Speech

The right of access to a public forum still might be subject to reasonable time, manner, and place restrictions. However, taking into account a forum's special attributes is relevant to the determination of reasonableness, and the test for reasonableness is whether the restrictions "are

[6] The record does not show whether the Amphitheatre can only be used by accredited student organizations, or if it is open to the general public as well. *See* R. at 21.

[7] In *McGlone*, a Christian speaker challenged a university policy requiring individuals not affiliated with the university to obtain permission before speaking in open parts of the campus. The Sixth Circuit declared that open areas of campus were a designated public forum and applied strict scrutiny. *See McGlone*, 681 F.3d at 733.

[8] The *Brister* court held that members of the public were permitted to hand out fliers directly outside the university administration building because it was unclear to the public whether they had "entered the university's enclave." 214 F.3d at 682. The court stated:

> If individuals are left to guess whether they have crossed some indivisible line between a public and non-public forum, and if that line divides two worlds—one in which they are free to engage in free speech, and another in which they can be held criminally liable for that speech—then there can be no doubt that some will be less likely to pursue their constitutional rights, even in the world where their speech would be protected.

Id. at 683.

justified without reference to the content of the regulated speech, that they serve a significant governmental interest, and that in doing so they leave open ample alternative channels for communication and information." *Int'l Soc'y for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 703 (1992). Here, the time, place, and manner restrictions placed on the forum—namely, that students comply with the Campus Free Speech Policy—are unreasonable as to Ms. Vega. Suppressing her speech serves no compelling government interest, and therefore restricting Ms. Vega's speech was invalid.

The First Amendment guarantees the right of expression to people of all beliefs, ages, and levels of education. *See* U.S. CONST. amend. I. Though this Court has found that speech can sometimes be curtailed in the context of primary and secondary public schools, "[i]t can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 507 (1969). This Court held in *Tinker* that "[i]n the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views." *Id.* at 511. Over the years, school districts and universities alike have struggled to determine where free speech should thrive, especially when "students in the exercise of First Amendment rights collide with the rules of the school authorities." *Id.* Attempting to help resolve that tension, the Court has determined that only where a material and substantial disruption to the learning environment exists can students' free speech rights be curtailed. *See id.*

However, the Court drew this line in the context of primary and secondary education, and universities are different from those institutions. In *Healy,* this Court noted that "[t]he college classroom with its surrounding environs is peculiarly the 'marketplace of ideas' and that court precedents 'leave no room for the view that, because of the acknowledged need for order, First

Amendment protections should apply with less force on college campuses than in the community at large.'" 408 U.S. at 180. The Court went on to note that "the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." *Id.*; *see also Antonelli v. Hammond*, 308 F. Supp. 1329, 1336 (D. Mass. 1970) (finding that any harm from disruption in a university setting was outweighed by the danger of censorship because "[t]he university setting of college-age students being exposed to a wide range of intellectual experience creates a relatively mature marketplace for the interchange of ideas so that the free speech clause of the First Amendment with its underlying assumption that there is positive social value in an open forum seems particularly appropriate"). It is questionable whether the line for curtailing free speech in primary and secondary schools drawn in *Tinker* applies equally in the university setting.

And even if the line drawn in *Tinker* applies to the University, Ms. Vega did not "substantially and materially disrupt the learning environment." Ms. Vega was not interacting with a "learning environment." As the district court noted, contrary to examples of disruption in primary and secondary schools which interfered with school or school-sponsored events, "[t]he event at issue here was neither in an academic setting nor part of a University-sponsored event." *Vega*, No. 18-CV-6834, at 16. The University did not approve or sponsor the speaker. Instead, this proceeding "was more akin to a gathering in a park or on a sidewalk than to an academic setting." *Id.* This event was not a part of the institutional learning environment; it was merely a gathering of students to express their ideas. In the same way that—however unconventional—students eating lunch and discussing politics might be interrupted by another student who disagreed with them, so too were the students in Emerson Amphitheatre faced with two different narratives about immigration.

Additionally, Ms. Vega was not causing a significant disruption. Ms. Vega was standing away from the event, immediately next to the public walkway. R. at 38. Though she could be heard by those listening to Mr. Drake, so too could the spectators of the nearby flag football game, passersby, and students eating lunch. R. at 36. The district court appropriately summarized:

> Ms. Vega's voice did not stop Mr. Drake from speaking, nor did it drown out his speech. It is important to note that the amphitheater is an open-air venue located in the midst of a busy part of campus, not an indoor auditorium. Given the setting, common sense dictates that at least some distractions were almost certain to occur. In this case, there were multiple distractions, but only one speaker was sanctioned.

Vega, No. 18-CV-6834, at 17.

It is possible that Ms. Vega's words were deemed more of a distraction because of the nature of her speech. While the shouts of a nearby football game did not rise to a level of a distraction, Ms. Vega's disagreement with the speaker's message did. To stifle Ms. Vega's narrative and not the other not only undermines the real purpose of universities—to encourage and nurture the marketplace of ideas—but amounts to an impermissible heckler's veto. *See Brown v. Louisiana*, 383 U.S. 131 (1966). The Campus Free Speech Policy ultimately inhibited, rather than encouraged, an open exchange and dialogue of ideas. Because the Campus Free Speech Policy is meant to contribute to the marketplace of ideas, rather than detract from it, the University has grievously erred with respect to Ms. Vega.

CONCLUSION

For the foregoing reasons, the Supreme Court should reverse.

Respectfully submitted,

Team 24

Counsel for Petitioner

APPENDIX

Constitutional Provision: U.S. Const. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Statute: Av. Gen. Stat. § 118-200

Section 1:

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

Section 2:

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

Section 3:

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

CERTIFICATE

Team 24 hereby certifies:

(i) The work product contained in all copies of the team's brief is in fact the work product of the team members.

(ii) The team has complied fully with our school's governing honor code.

(iii) The team has complied with all Rules of the Competition.

Respectfully submitted,

Team 24