



STUDENT GOVERNMENT

THE UNIVERSITY OF TEXAS AT AUSTIN

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A.R. 15 SUPPORTING CHANGES IN UNIVERSITY FREE SPEECH POLICY

WHEREAS: The rights to free speech and peaceful assembly are protected by the First Amendment of the United States Constitution. The University has a long-standing right to restrict speech to proper time, place and manner. However, this right is not absolute.

WHEREAS: The Undergraduate Student Association (UGSA), a student organization within the University, has drafted a proposal (see attached proposal) recommending changes to University speech policies in order to make them meet Constitutional standards.

WHEREAS: Over twenty (20) student organizations have given written endorsement of the UGSA's 6-Point Proposal For Free Speech including almost all undergraduate political organizations representing both conservative and progressive philosophies.

WHEREAS: The UGSA's proposal finds that University free speech policies contain content-based censorship and unjustifiable restrictions on the time, place, and manner of free speech activities. Furthermore the University has no official policy regulating police monitoring of student organizations, according to interviews with UTPD staff.

WHEREAS: The University will begin in January a Free Speech Task Force to be chaired by UT Law Professor Douglas Laycock.

WHEREAS: The Student Government has long advocated student input in the University's decision-making process (c.f. A.R. 7 from April 2001).

BE IT RESOLVED: That the Student Government of the University of Texas endorses the Undergraduate Student Association's 6-Point Proposal for Free Speech.

BE IT FURTHER RESOLVED: That the Student Government shall actively promote the Undergraduate Student Association's recommendations by supporting a petition advocating the proposal and using any and all influence with the University Administration to promote these recommendations.

BE IT FURTHER RESOLVED: That the Student Government shall actively promote the inclusion of voting student representatives to be placed on the University Free Speech Task Force to be chaired by Professor Douglas Laycock.

Authored By: Aaron Garza and Brian Carnes

Sponsored By: Brian Carnes

Undergraduate Student Association

6-Point Proposal For Free Speech

October 11, 2001

Committee Members

Collin Bost (Chair)

Aaron Garza

Neil Davis

Brian Carnes

Jared Van Fleet

Rebecca Lajudice

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Sponsoring Student Organizations

Action For Abortion Rights
Alliance For Media Reform
Amnesty International
Asian-American Relations Group
Campaign To End The Death Penalty
Campus Coalition For Peace and Justice
College Republicans at Texas
Contumacy
International Socialist Organization
Justice For All
Movimiento Estudiantil Chicana/o de Aztlan
National Lawyers Guild
Radical Action Network
Students Against Cruelty to Animals
Students For Sensible Drug Policy
Students For The American Civil Liberties Union
Undergraduate Student Association
University Democrats
University Green Party
Voices For Choice
Young Conservatives of Texas

Executive Summary

UT law professor Douglas Laycock said in a UT forum on Free Speech in Spring 2001,

“The fundamental mistake in the Regent's rules is that they are written backwards. In a free society, everything is permitted except what is expressly forbidden. In a totalitarian regime, and at the University of Texas, everything is prohibited except what is expressly permitted.”

In March, the Undergraduate Student Association (UGSA) began to examine the rules regulating speech at the University. Convening a council composed of members of several different student organizations, the UGSA set forth to begin an honest evaluation of the speech guidelines at UT from the perspective of those actually affected by the policies: student organizations.

In our research, we found inconsistencies, arbitrarily enforced rules, and blatantly unconstitutional guidelines to be relatively common in the guidelines. Focusing our work on the Constitution, we examined Supreme Court precedents that directly prohibit many of the rules in effect at the University today.

The University has an obligation to its students to provide a forum for thought, advocacy, and expression. A university ceases to be a university when it unfairly prohibits students from engaging in legitimate forms of free speech and assembly. Differing sides of political issues should be explored and discussed rather than silenced by unnecessary limitations. The University has a long-standing right to restrict speech to proper time, place and manner. This right, however, is not absolute. The Constitution does not cease to function upon entering the University.

In addition to supporting the mission of the University, adopting Constitutional free speech standards has the added advantage of shielding the University from lawsuits. When Justice For All approached the

University with its lawyer, Jim Spencer, the University was sent scrambling to defend its inconsistent, arbitrary and vague guidelines concerning rally spaces. This is because the restrictions are far too expansive to craft a policy from. Relaxing and specifying restrictions will help ensure that the University cannot be intimidated by threats of lawsuits.

The issue of free speech is especially important in light of recent events. Recent anti-war rallies at the Capitol have drawn up to 600 people. Given these numbers, the restrictions on rally areas are virtually impossible to uphold. Relaxing these restrictions will foster a more free and open environment to discuss the issues facing the country in the wake of the September 11 tragedy.

This policy proposal separates the rules into three categories:

- Content-Based Restrictions
- Police Monitoring
- Time, Place and Manner Restrictions

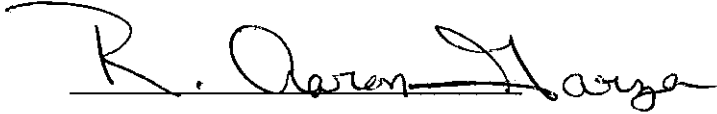
In order to address these concerns the Undergraduate Student Association, recommends the following:

- 1) The University should cease all unconstitutional censorship of content. The word “vulgar” from the list of impermissible speech should be stricken as an unconstitutional impediment to free speech. Students should be allowed to register as student organizations even if their goals are “inimical” to the educational purpose of the University. The University should not discriminate against speakers whose viewpoints may promote violence, so long as those speakers do not engage in any acts which may directly lead to violence.
- 2) The rules regulating solicitation should be well-defined so that students are more aware of the exact forms of solicitation allowed under University codes. These rules should be relaxed so that student organizations can advocate non-profit and charitable

organizations. Likewise, student organizations should be allowed to promote non-profit advocacy groups.

- 3) The University should adopt a coherent and public policy regarding UTPD monitoring of student organizations. Monitoring should take place only under strict scrutiny and highly-defined standards. Random monitoring of peaceful student groups should be ceased immediately. The monitoring policy must be printed in the Campus and Community Involvement Student Organization Handbook so that student organizations understand their rights and the rules under which they may be monitored.
- 4) A study should be completed by the University to determine the appropriateness of new rally areas. Specifically, the Main Mall should be opened to rallies during designated times similar to the West mall. The University should always err on the side of free assembly by allowing more spaces to be used as designated rally areas. Restrictions on rallying should be the bare minimum required to facilitate the normal functioning of the University. Terms such as “public discussion,” “amplified sound,” “public assembly,” and “sign” should be more narrowly defined so as to limit any potential discrimination when determining the rules regulating these activities. In addition, the prohibition against “hawking and shouting,” should be modified to prohibit “harassment” rather than hawking and shouting.
- 5) Rules relating to anonymous speech should be ended as an unconstitutional impediment to free speech. Students should not be forced to fear public reprisals for their views.
- 6) The University should end any rules requiring the Dean’s permission for public demonstrations outside of the designated rally areas. They will still have the ability to regulate demonstrations if they unreasonably interfere with regular institutional activities or obstruct pedestrian or vehicular traffic. Demonstrations occurring within designated rally spaces during designated times should still require prior consent.

We encourage the University to actively and aggressively promote the ideals advanced in this memo. We pledge our support and assistance to any Administrative attempts to address this issue.

A handwritten signature in cursive script that reads "R. Aaron Garza". The signature is written in black ink on a white background.

Aaron Garza, President, Undergraduate Student Association

A handwritten signature in cursive script that reads "Collin Bost". The signature is written in black ink on a white background.

Collin Bost, President, Students for the ACLU

A handwritten signature in cursive script that reads "Brian Carnes". The signature is written in black ink on a white background.

Brian Carnes, Student Government Representative

Content-Based Censorship

Although the University maintains that it “does not restrict speech based on content,” its rules provide administrators with the ability to unconstitutionally restrict student’s rights to free speech. Under University policy, administrators are allowed to restrict speech if it is deemed “obscene, vulgar, or libelous.” There is no constitutional problem with restricting obscene or libelous speech under reasonable guidelines. However, in *Cohen v. California* (1971) the Supreme Court ruled that:

“We cannot indulge the facile assumption that one can forbid particular words without also running a substantial risk of suppressing ideas in the process. Indeed, governments might soon seize upon the censorship of particular words as a convenient guise for banning the expression of unpopular views.”

State Institutions do not have the right to restrict “vulgar” speech. This particularly applies to the University’s policy because the University never defines vulgarity, and the decision to restrict speech is left in the hands of administrators. Furthermore, this rule falls outside the University’s right to time, place and manner restrictions. It is not a content-neutral decision. Although we agree with the University’s obligation to restrict obscene and libelous speech, content-based restrictions are undemocratic methods of censorship that stifle the free exchange of ideas.

Another troublesome rule is Regent’s Rules 4.8 which says:

“No component institution shall register any student organization or group whose actions or activities, in the opinion of the president or the appropriate Executive Vice Chancellor, are inimical to the educational purpose and work of the institution.”

This rule states that if the Executive Vice Chancellor does not agree with the purpose of a particular group, he or she has the sole discretion to unilaterally deny the group. This directly contradicts the Supreme Court’s unanimous ruling in *Healy v. James* (1972). In *Healy*, the Supreme Court found that the president of Central Connecticut State College had overstepped Constitutional limits by preventing a student chapter of Students for Democratic Society from becoming officially registered due to fears of

disruptive action. The Court found that, “There can be no doubt that denial of official recognition, without justification, to college organizations burdens or abridges that associational right.”

The confusing “nonpermissible” or “impermissible” solicitation restrictions allow the university to censor student advocacy. The Regents’ Rules Part One, Chapter VI, Section 6.6 states that “the oral or written appeal or request to support or join an organization other than a registered student, faculty, or staff organization” is impermissible. The Student Handbook, in language found in neither the Regents’ Rule nor the Institutional Rules on Student Services and Activities, states that a student or organization cannot have “post or carry a sign” or distribute literature on campus “which promotes an off-campus business, organization, agency, national association, or charitable group.” This has nothing to do with time, place or manner, but with content: essentially, it prohibits students or organizations from advocating their causes. And when this regulation is enforced, there are telltale signs of censorship: the university forced Justice for All to blackout the *content* of their pamphlets and cover up with cardboard the *content* of their exhibit. Issue advocacy groups like Voices for Choice and Campaign to End the Death Penalty should be allowed to promote supportive national organizations; and a political group like Young Conservatives of Texas should be allowed to promote off-campus conservative organizations. This is an expression by association and essential for organizations’ constitutional right to advocacy. Furthermore, this prohibition places an undue burden on the expression on religious organizations: many campus religious organizations have ties to off-campus charities and churches. If this regulation was enforced against them, they would be denied the right to express their religious associations. And if you consider that the regulation would also apply to websites, students would be denied the ability to post links to outside organizations that provide information essential to their mission. Although this regulation is rarely enforced, the administration has used it to censor Justice For All, and the regulation must be changed before it can happen again.

Another rule is Regent’s Rule 7.26:

“No person shall be permitted on any campus of the System to engage in speech, either orally or in writing, that is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”

In *Brandenburg v. Ohio* (1969), the Court ruled that a person who is punished for merely advocating violent or criminal actions “falls within the condemnation of the First and Fourteenth Amendments.”

Further, it found that:

“Freedoms of speech and press do not permit a State to forbid advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”

While we commend the University for using the language of *Brandenburg*, their interpretation of this case leaves much to be desired. The Per Curiam decision in *Brandenburg* argued that, as per *Noto v. United States* (1961):

“The mere abstract teaching...of the moral propriety or even moral necessity for a resort to force and violence is not the same as preparing a group for violent action and steeling it to such action.”

The University does not have the right to discriminate against speakers who may simply promote lawless action without any physical actions taken to prepare a group to engage in violent or criminal activities.

Police Monitoring

The active monitoring of student organizations by members of the University of Texas Police Department is currently taking place with no guidelines, restrictions or official policies to regulate it.

Police reports obtained through Freedom of Information requests regarding have revealed evidence of police monitoring of non-violent student organizations. Police reports from Lt. J. Gillespie record the Lieutenant's undercover monitoring of peaceful pro-choice protestors. Requests by the University for use of the "Informer's Privilege" point to the possibility of active student informants in student organizations.

The UTPD plays a vital role on the UT campus and student organizations should work closely with the police to ensure the safety of our campus community. Furthermore, the police should have the ability to investigate crimes; that is their duty and it should be respected. However, according to Lt. Robert Ewan, there is no official policy regulating police monitoring of student organizations. Without an official policy, the UTPD risks compromising its credibility with campus organizations. Instead of creating an atmosphere of cooperation, it causes friction and hurts both the police and students.

Because the UTPD can currently monitor arbitrarily and without warrant, there must be checks and balances to assure that this duty is carried out fairly and without abuse. Any police monitoring of student organizations must take place under strict scrutiny, with oversight and strict rules to assure that there are no warrantless investigations. Investigations of student groups should only be allowed if there is specific and direct evidence implicating a student organization in a crime. Mere suspicion of a crime does not warrant a police investigation. The ongoing use of informants to monitor student group activity is inexcusable.

Any policy that is drafted must be specific and available to the public. This policy should be adopted immediately and made available to students. It should be placed in the Campus and Community Involvement Handbook so that Student Organizations have an exact understanding of UTPD policies regarding investigations.

Time, Place, and Manner Restrictions

While the University maintains the right to regulate the “time, place and manner” of speech and assembly activities by students, these regulations are not absolute.

The time and place of public assemblies are unreasonably limited at the UT Austin campus. Of the three approved rally spaces that may be used without prior approval, only the West Mall rally area is adequate for effective assemblies. The East Mall rally area is too far from the heart of campus and is too small. The Union Patio cannot be reserved before 5:00pm. And since the West Mall is frequently reserved, this limits the rights of students to freely assemble by not allowing adequate alternative areas.

The Main Mall should be opened as an additional rally area under similar guidelines as the West Mall rally area. The Main Mall is farther from both business and class areas than current rally areas. Opening the Main Mall would have the added advantage of retaining a smooth flow of traffic during rallies. In the West Mall, traffic flow is constricted because of crowd build-ups during rallies. The Main Mall provides open spaces and alternate walkways that would prevent traffic build-ups during rallies.

The university must reconsider Sec. 10-306 of the Institutional Rules, which says that “a student or organization may publicly assemble or demonstrate in a peaceful manner after obtaining the dean’s permission.” The university should always err on the side of the right of peaceable assembly. The burden of proof should not be on the student or organization, but the university. If prior approval was done away with, the university would still have the ability to stop a demonstration that unreasonably obstructed traffic or interfered with regular academic and institutional activities or would likely incite lawless action.

Sec. 10-305(d) of the Institutional rules gives the Dean of Students the ultimate authority in deciding what area is “inappropriate for a booth.” The Dean of Students initially invoked this rule to deny Justice For All request to display their exhibit. Because there are no standards for making his decision, the Dean of Student can unilaterally deny any student group’s request to set up a booth or exhibit in an area he deems inappropriate.

The terms “public discussion,” “public assembly,” and “amplified sound” are not defined in neither the Regent’s Rules nor the Institutional Guidelines. Once again, guidelines must be created with the priority of upholding the First Amendment, reserving only minimal standards necessary to maintain the regular academic and institutional activities.

Subchapter 10-303 (c) of the University Institutional rules states that “no person shall carry a sign in a University building in a way that is intended to display it.” The definition of a “sign” itself is overly broad and vague, including a “billboard, decal, notice, placard, poster, or banner.” Furthermore, some buildings on campus are not purely for academic purposes. Because it allows for free discourse between students and is open for outside speakers on a nondiscriminatory basis, the Texas Union should be considered a designated public forum. This should also apply to the lobbies of dorms, where Student Government parties frequently campaign. Students should always be allowed to carry signs as long as they do not interfere with regular academic and institutional activities.

Rules against hawking and shouting are a severe infringement on the freedom of speech. In a University of fifty thousand students, shouting may be the only way a student can communicate with others given the often noisy nature of public spaces. This form of speech does not disrupt the normal functions of the University. What is especially troublesome is the subjective and arbitrary nature in the enforcement of this rule. Recently, students collecting for the Red Cross were allowed to shout at passersby throughout the day. No attempt was made by administrators or the UTPD to prevent these students from shouting. Perhaps a more apt rule would prevent “harassment,” as opposed to rules against “hawking and shouting.” This not only has a more specific definition, but it prevents unreasonable infringements on a students free speech rights.

The manner of free speech and assembly is unreasonably restricted as well. For example subchapter 10-301 c of the University Institutional rules requires that “each petition, handbill, or piece of literature shall identify the student or organization distributing it.” This seems to be an application of the broader Regent’s Rule, IV Sec. 10:

Anonymous publications are prohibited, and any individual or organization publishing or aiding in publishing, or circulating or aiding in circulating, any anonymous publication will be subject to disciplinary action.

However, the Supreme Court in *McIntyre v. Ohio Election Commission* (1995) found that:

Quite apart from any threat of persecution, an advocate may believe her ideas will be more persuasive if her readers are unaware of her identity. Anonymity thereby provides a way for a writer who may be personally unpopular to ensure that reader will not prejudge her message simply because they do not like its proponent... Under our Constitution, anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and of dissent.

There is no justifiable reason for forcing students to sign their names to literature. This creates a chilling effect where dissenting voices are intimidated from expressing their viewpoints due to fear of reprisals. This is especially important considering recent death threats made to those who have criticized American foreign policy after September 11. Any student who wishes to engage in this form of speech should be protected by being allowed to speak anonymously.