

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

<p>JASON W. ROBERTS,</p> <p>Plaintiff,</p> <p>v.</p> <p>DONALD R. HARAGAN, President of Texas Tech University, DAVID R. SMITH, Chancellor of the Texas Tech University System, JOHN W. JONES, NANCY E. JONES, J. MICHAEL WEISS, CARIN M. BARTH, E.R. “Dick” BROOKS, BRIAN C. NEWBY, J. ROBERT BROWN, DAVID R. LOPEZ, and C. ROBERT BLACK, Regents of the Board of Regents of the Texas Tech University System, MICHAEL D. SHONROCK, Vice President for Student Affairs at Texas Tech University, and MARY DONAHUE, Assistant Director of the Center for Campus Life at Texas Tech University, individually and in their official capacities,</p> <p>Defendants.</p>	<p>CIV NO. _____</p>
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VERIFIED COMPLAINT

Comes now the Plaintiff, by counsel and pursuant to the Federal Rules of Civil Procedure, and for his causes of action against Defendants avers the following:

I.

INTRODUCTION

1. This is a civil rights action under 42 U.S.C. § 1983 to protect the First Amendment rights of students at Texas Tech University (“University”). By policy and practice the University unlawfully restricts these rights, as its policies

- are facially overbroad, vague, involve content based and viewpoint discrimination, and unconstitutionally restrict student speech. These constitutional defects give rise to both facial and as-applied constitutional challenges to the discriminatory policies.
2. University policies require students to obtain prior permission before speaking on all university grounds except in a small gazebo designated as a “Free Speech Area.”
 3. If Mr. Roberts (or any other student) would like to deliver a five minute speech on his way to class to fellow students as they pass by on the sidewalk, he must first apply for a permit from University officials, unless the speech is limited to the gazebo Free Speech Area.
 4. The application for permission to speak must be submitted six days before speaking.
 5. Students are also prohibited from engaging in any speech that might “intimidate” or “humiliate” another person anywhere on campus.
 6. The University therefore restricts the free speech of the Plaintiff and other students throughout the campus.
 7. To redress the irreparable harm that Plaintiff is suffering, and has suffered, under the University’s policies and practices, Plaintiff seeks a declaratory judgment that the Defendants’ policies violate First Amendment rights on their face and as applied and threatened to be applied to the Plaintiff and others.

8. Plaintiff also seeks preliminary and permanent injunctive relief to prevent Defendants from further enforcing the challenged policies in a manner inconsistent with his constitutional rights, and damages.

II.

JURISDICTION AND VENUE

9. Jurisdiction for this case is based on 28 U.S.C. §§ 1331, 1343, 1367, 2201, 2002, and 42 U.S.C. §§ 1983 and 1988.
10. Venue is proper under 28 U.S.C. § 1391 in the Northern District of Texas because this claim arose there.

III.

IDENTIFICATION OF PLAINTIFF

11. Plaintiff Jason Roberts is and was at all times relevant to this Complaint a resident of the City of Lubbock, Texas, and a student at Texas Tech University School of Law.

IV.

IDENTIFICATION OF DEFENDANTS

12. Defendant Donald R. Haragan is and was at all times relevant to this Complaint the president and chief executive officer of Texas Tech University. Among other things, he is charged with the responsibility for administering the University's policies as they relate to student speech and expressive activities.
13. Defendant David R. Smith is and was at all times relevant to this Complaint the Chancellor of the Texas Tech University System. Among other things, he is

- charged with the responsibility for enacting and enforcing the University's policies as they relate to student speech and expressive activities.
14. Defendant John W. Jones is and was at all times relevant to this Complaint a member of the Board of Regents of the Texas Tech University System. Among other things, he is charged with the responsibility for enacting and enforcing the University's policies as they relate to student speech and expressive activities.
 15. Defendant Nancy E. Jones is and was at all times relevant to this Complaint a member of the Board of Regents of the Texas Tech University System. Among other things, she is charged with the responsibility for enacting and enforcing the University's policies as they relate to student speech and expressive activities.
 16. Defendant J. Michael Weiss is and was at all times relevant to this Complaint a member of the Board of Regents of the Texas Tech University System. Among other things, he is charged with the responsibility for enacting and enforcing the University's policies as they relate to student speech and expressive activities.
 17. Defendant Carin M. Barth is and was at all times relevant to this Complaint a member of the Board of Regents of the Texas Tech University System. Among other things, she is charged with the responsibility for enacting and enforcing the University's policies as they relate to student speech and expressive activities.
 18. Defendant E.R. "Dick" Brooks is and was at all times relevant to this Complaint a member of the Board of Regents of the Texas Tech University System. Among other things, he is charged with the responsibility for enacting and enforcing the University's policies as they relate to student speech and expressive activities.

19. Defendant Brian C. Newby is and was at all times relevant to this Complaint a member of the Board of Regents of the Texas Tech University System. Among other things, he is charged with the responsibility for enacting and enforcing the University's policies as they relate to student speech and expressive activities.
20. Defendant J. Robert Brown is and was at all times relevant to this Complaint a member of the Board of Regents of the Texas Tech University System. Among other things, he is charged with the responsibility for enacting and enforcing the University's policies as they relate to student speech and expressive activities.
21. Defendant David R. Lopez is and was at all times relevant to this Complaint a member of the Board of Regents of the Texas Tech University System. Among other things, he is charged with the responsibility for enacting and enforcing the University's policies as they relate to student speech and expressive activities.
22. Defendant C. Robert Black is and was at all times relevant to this Complaint a member of the Board of Regents of the Texas Tech University System. Among other things, he is charged with the responsibility for enacting and enforcing the University's policies as they relate to student speech and expressive activities.
23. Defendant Michael D. Shonrock is and was at all times relevant to this Complaint the Vice President for Student Affairs at Texas Tech University. Among other things, he is charged with the responsibility for enacting and enforcing the University's policies as they relate to student speech and expressive activities.
24. Defendant Mary Donahue is and was at all times relevant to this Complaint the Assistant Director for the Center for Campus Life at Texas Tech University. Among other things, she is charged with the responsibility for enacting and

enforcing the University's policies as they relate to student speech and expressive activities.

25. Each defendant is sued in his or her official capacity, and in his or her individual and personal capacity.

V.

STATEMENT OF FACTS

26. The University policies restricting student speech (the "Speech Code") are comprised of the various documents and publications that govern student life at the University, including the *Rules and Regulations of the Board of Regents of the Texas Tech University System* ("Regents' Rules"), the *Operating Policy and Procedure Manual* ("OP Manual"), and the *Student Affairs Handbook 2002-2003* ("Handbook"), as well as various policy statements presented by the University website ("Website"). Relevant excerpts of each publication are attached hereto as Exhibits A, B, C, and D, respectively and incorporated herein by reference.
27. These governing documents contain policies which place restrictions on student expression at the University.
28. These documents attach a range of sanctions for violations of those policies, as specified in the Code of Student Conduct [Handbook, Part IX(D), p. 23], including: disciplinary reprimand, disciplinary probation, deferred disciplinary suspension, time-limited disciplinary suspension, and disciplinary expulsion, all of which may be imposed with or without secondary conditions and/or restrictions.

Challenged Policies

Speech Zone Policies

29. University policy provides that, before a student makes a speech on campus grounds, they must first obtain permission from University officials. [Handbook at 14, par. B].
30. Before making a speech on campus grounds, students and student organizations must first obtain a grounds use permit by registering for use in the Center for Campus Life. [Handbook at 15, Part VII, par. E(2)].
31. The University prohibits certain groups and individuals, such as non-registered student organizations, from reserving space on campus. [Handbook, Part VII(A), p. 14; OP Manual 61.02(1); Regents' Rules 08.07.2].
32. Students and student organizations desiring to hold expressive activities on campus must obtain grounds use permits from the Center for Campus Life Office at least six University working days in advance of those activities. [Handbook, Part VII(E), p. 15; OP Manual 61.02(4)].
33. Any “students or registered student organizations desiring grounds use **may** be required to provide evidence of appropriate liability insurance in accordance with recommendations from the Department of Contracting, General Counsel’s Office, other university departments or others as necessary prior to approval from the Grounds Use Committee.” [Handbook, Part VII(E), p. 15, emphasis added].
34. The Center for Campus Life, Academic Facilities office, and the manager of any particular University building may, in their discretion, deny or cancel a ground use permit. [Handbook, Part VII(A), p. 14; OP Manual 61.02(2)].

35. The only place on University campus grounds that students can make a speech without first obtaining permission is in a gazebo referred to as the “Free Speech Area” (hereinafter the “Free Speech Gazebo”).
36. The Free Speech Gazebo is octagonal and approximately twenty feet wide. [Handbook, Part VII(F), p. 15; OP Manual 61.02(5)].
37. The total area measurement of the Free Speech Gazebo equals approximately 280 square feet.
38. According to the Director of Fire Safety Inspections at the Texas Department of Insurance, to ensure public safety, persons in enclosed areas are presumed to each require a minimum of 7 square feet of space.
39. By this standard, no more than 40 persons could safely occupy the Free Speech Gazebo at any given time.
40. The University has approximately 28,000 students.
41. Many moderately-sized to large student organizations, including groups to which the Plaintiff belongs, are too large to be accommodated within the Free Speech Gazebo.
42. Speech on numerous topics would interest and attract many more students than could safely fit in the Free Speech Gazebo.
43. If the Free Speech Gazebo is fully occupied, other students and student groups outside the Gazebo are prohibited from engaging in free speech anywhere on campus without prior permission.
44. The small area of the Free Speech Gazebo strictly limits the ability of students and student groups to engage in free speech at the University.

45. Limiting free speech to only a certain location on campus without first obtaining permission is inherently unconstitutional because it places a prior restraint on student speech in all locations except the Free Speech Gazebo.

Restrictions on Speech Content

46. The Speech Code prohibits speech that intimidates or humiliates any person.
[Handbook, Part IX(B), p. 19].
47. The terms “intimidate” and “humiliate” are not defined by the Speech Code.
48. There are no rules or regulations to guide University officials when determining whether a student’s speech is intimidating or humiliating.
49. Students may violate the Speech Code and be subjected to punishment by “referring to an adult as ‘girl’, ‘boy’, or ‘honey’” or conveying “sexual innuendos or stories.”
50. Students may violate the Speech Code and be subjected to punishment by engaging in any of the following speech:
 - a. Expressing unpopular views on race or gender, such as why they may disagree with affirmative action plans or Title IX provisions;
 - b. Disagreeing with another person who may subjectively interpret the disagreement and feel intimidated or humiliated;
 - c. Distributing flyers or invitations to church services and events with particular themes or messages;
 - d. Reading many portions of the Bible aloud, including the book of Romans and the story of Sodom and Gomorrah; and
 - e. Expressing sincerely held religious and philosophical views that homosexuality or other lifestyles are immoral and/or unhealthy.

51. The prohibition on intimidating and humiliating speech is unconstitutionally overbroad, and expressly prohibits a wide variety of protected speech based on its speech and viewpoint.

Restrictions on Literature Distribution, Advertising, Solicitation, and Signs

52. Students must have prior permission to distribute any printed materials in virtually all areas of campus, including:
- a. The Texas Tech Bookstore;
 - b. The Student Union;
 - c. All academic buildings;
 - d. All residence halls and dining areas;
 - e. Intercollegiate athletic facilities; and
 - f. The Robert H. Ewalt Recreation Center. [Handbook, Part VIII(E), p. 17]
53. Literature distributed by students cannot conflict with the provisions of the Code of Student Conduct. [Handbook, Part VIII(E), p. 17].
54. The Code of Student Conduct prohibits speech that may intimidate or humiliate another person. [Handbook, Part IX(B), p. 19].
55. Solicitations, advertisements, and the sale, display, or distribution of publications are generally not permitted on the University campus, unless the policies make an exception. [Handbook, Part VIII(A), p. 16].
56. The Speech Code makes some exceptions, including the following: altruistic or charitable projects, service projects, and educational or cultural projects having community-wide benefits.
57. The Speech Code does not define the terms “altruistic,” “charitable,” “service,” “educational,” “cultural,” and “community-wide benefits.”
58. There are no rules and regulations to guide University officials when determining when speech falls within one of the exceptions listed above.

59. In its discretion, the Center for Campus Life may grant special permission for students to engage in solicitation. [Handbook, Part VIII(C), p. 16].
60. Students denied special permission may only appeal to the director of the Center for Campus Life. [Handbook, Part VIII(C), p. 17].
61. “Advertisements” are defined as “displays of any items that have, as an integral part of their design, the identification of a consumer product or service.” [Handbook, Part VIII(B), p. 16].
62. Advertisements are limited to registered student organization functions, the athletic department, and other official university publications. [Handbook, Part VIII(D), p. 17].
63. Students, faculty, and staff may only distribute advertising media on campus when it is “within the bounds of good taste.” [Regents’ Rules 08.09.4].
64. The University has no rules or regulations to guide officials when determining whether advertising is “within the bounds of good taste.”
65. Posters, signs, and announcements may only be displayed on designated university announcement bulletin boards. [Handbook, Part VIII(E), p. 17].

Application of the Speech Code to the Plaintiff

66. The Plaintiff, Mr. Roberts, desires to engage in speech with his classmates on campus grounds outside of the Free Speech Gazebo without prior permission from University officials.
67. Mr. Roberts has refrained, and continues to refrain, from speaking on University grounds outside the Free Speech Gazebo without prior permission from University officials.

68. On or about May 22, 2003, Mr. Roberts decided to engage in oral communication on campus grounds, outside the Free Speech Gazebo, expressing his religious and political view that “homosexuality is a sinful, immoral, and unhealthy lifestyle,” and to pass out a leaflet citing the Scriptural basis for his view.
69. Before speaking outside the Free Speech Gazebo, Mr. Roberts first had to obtain permission from University officials.
70. Plaintiff applied to the University for the use of the corner of 15th Street and Akron—a large, outdoor, open area outside the campus bookstore—by submitting a “Grounds Use Request” form to the University’s Center for Campus Life pursuant to the University’s policies. [See Exhibit E (Completed “Grounds Use Request” form with attachments).]
71. Because the Speech Code requires applications to be submitted at least six (6) business days prior to engaging in the speech, Plaintiff requested permission to speak on June 4, 2003.
72. Plaintiff’s application was initially denied on May 29, 2003, in a letter e-mailed from Mary Donahue, Assistant Director of the Center for Campus Life. (See Exhibit F.) The letter explained in part:

The use of University grounds, as stated in the University policy, is encouraged for activities which are intended to serve or benefit the entire University community. It is the view of the committee that your request is the expression of a personal belief and thus, is something more appropriate for the free speech area which is the Gazebo area located near the corner of 15th Street and Boston.
73. Plaintiff appealed this denial, and was eventually given permission to speak, but only if he moved across the street from the area originally requested.

74. Because he first had to obtain permission, Plaintiff was required to wait at least a week before engaging in speech outside the Free Speech Gazebo.
75. When Plaintiff was finally granted permission to speak, it was not in the area he had requested but in an area that was less desirable for speech purposes.
76. Mr. Roberts has censored, and continues to censor, his own speech on campus grounds outside of the Free Speech Gazebo because he has not obtained permission from University officials.
77. Mr. Roberts has censored, and continues to censor, speaking in the form of distribution of literature in academic buildings (outside of classrooms) because he has not obtained permission from University officials.
78. Mr. Roberts has censored, and continues to censor, his own speech to avoid being disciplined for intimidating or humiliating another person.
79. Plaintiff is suffering irreparable harm from the conduct and challenged policies of Defendants.
80. Unless and until the conduct and challenged policies of Defendants are enjoined, Plaintiff will continue to suffer irreparable harm.

VI.

STATEMENT OF LAW

81. At all times relevant to this Complaint, each and all of the acts alleged herein were attributed to the defendants, acting under the color, authority and pretense of state law, statutes, ordinances, regulations, customs, usages, and policies of Texas Tech University and the State of Texas.
82. Speech is entitled to comprehensive protection under the First Amendment.

83. First Amendment rights of speech and association extend to campuses of state universities.
84. Defendants' policy regarding Use of University Space, Facilities, and Amplification Equipment is unconstitutional on its face and as applied because it is overbroad, impermissibly restricts student expression and association, is a prior restraint, and grants University officials unfettered discretion in the restriction of expression.
85. Defendants' policy designating a small Free Speech Area is unconstitutional on its face and as applied because it is overbroad, impermissibly restricts student expression, and is a prior restraint.
86. Defendants' policy (and corresponding Regents' Rules provision) regarding the use and distribution of Solicitations, Advertisements, and Printed Materials is unconstitutional on its face and as applied because it is vague and overbroad, impermissibly restricts student expression and association, violates freedom of the press, is a prior restraint, and grants University officials unfettered discretion in the restriction of expression.
87. Defendants' Harassment Policy is unconstitutional on its face and as applied because it impermissibly restricts student expression, includes viewpoint-based restrictions on speech, and is a prior restraint.
88. Plaintiff is suffering irreparable injury from the challenged policies of Defendants which cannot be fully compensated by an award of money damages.
89. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff is entitled to appropriate relief invalidating the unconstitutional University policies.

VII.

FIRST CAUSE OF ACTION

VIOLATION OF THE RIGHT TO FREEDOM OF SPEECH UNDER THE UNITED STATES CONSTITUTION

90. Plaintiff realleges all matters set forth in the preceding paragraphs and incorporates them herein.
91. The policies and conduct of the Defendants constitute a violation of the First and Fourteenth Amendments of the United States Constitution, by among other things, restricting all “unapproved” speech to a single “Free Speech Gazebo,” requiring a six-day advance reservation before allowing expressive activities on the campus grounds, and prohibiting any non-registered student organization from reserving space to engage in expressive activities.
92. Defendants’ policies constitute an impermissible viewpoint-based and content-based restriction of constitutionally protected expression.
93. The policies vest unfettered discretion in the Defendants to restrict constitutionally protected expression.
94. The policies and the actions of the Defendants are prior restraints and restrictions on speech in campus areas that are commonly considered traditional and/or designated public fora.
95. The policies are not content-neutral time, place, and manner restrictions on expression. Further, they are not narrowly tailored, do not serve significant government interests, and do not leave open ample alternative channels of communication as the Constitution requires.
96. Defendants policies are vague and overbroad.

97. The policies restrict students' freedom of association and are not supported by a narrowly tailored compelling state interest.
98. The policies fail to provide adequate procedures for administrative and judicial appeal and redress of denials to engage in expression.

WHEREFORE Plaintiff respectfully prays that the Court grant the relief set forth hereinafter in the prayer for relief.

VIII.

SECOND CAUSE OF ACTION

VIOLATION OF THE RIGHT TO FREEDOM OF THE PRESS UNDER THE UNITED STATES CONSTITUTION

99. Plaintiff realleges all matters set forth in the preceding paragraphs and incorporates them herein.
100. The distribution of written expression is a classic example of the exercise of the right to freedom of the press.
101. No compelling government interest exists to justify the restrictions imposed on such an exercise of the freedom of the press by the Defendants' policies and actions, nor is the restriction the least restrictive means available to serve any permissible government purpose intended to be served by Defendants' policies dealing with literature distribution.
102. Defendants' policies on their face and as applied impose a system of prior restraints on the publication and/or circulation of Plaintiff's printed expression. This system of prior restraints is unconstitutional under the First and Fourteenth Amendments.

103. By their actions, Defendants have violated Plaintiff's rights to distribute literature expressing his religious and political views.

WHEREFORE, Plaintiff respectfully prays that the Court grant the relief set forth hereinafter in the prayer for relief.

IX.

THIRD CAUSE OF ACTION

**VIOLATION OF THE RIGHT TO DUE PROCESS
UNDER THE UNITED STATES CONSTITUTION**

104. Plaintiff realleges all matters set forth in the preceding paragraphs and incorporates them herein.

105. The policies and conduct of the Defendants constitute a violation of the First and Fourteenth Amendments of the Constitution.

106. Defendants' policies are vague.

107. Defendants' policies prohibiting intimidating or humiliating speech fail to adequately advise, notify, or inform students threatened with disciplinary action for violation of this provision.

108. Defendants' policies prohibiting literature distribution, advertising, solicitation, and the posting of signs fail to adequately advise, notify, or inform students threatened with disciplinary action for violation of this provision.

109. Defendants' policies restricting speech fail to adequately advise students subject to discipline under them of the obligations they create, they are unconstitutionally vague, on their face, in violation of the due process guarantee of the Fourteenth Amendment.

WHEREFORE, Plaintiffs respectfully prays that the Court grant the relief set forth hereinafter in the prayer for relief.

X.

FOURTH CAUSE OF ACTION

**VIOLATION OF THE EQUAL PROTECTION CLAUSE
UNDER THE UNITED STATES CONSTITUTION**

110. Plaintiff realleges all matters set forth in the preceding paragraphs and incorporates them herein.
111. Defendants' policies, on their face, treat Plaintiff and other students and student organizations differently from other similarly situated individuals and groups on the basis of the content of their speech , viewpoint, and their size.
112. Defendants do not have a compelling state interest for such disparate treatment of Plaintiff's expression.
113. Therefore, said conduct of Defendants comprises an unconstitutional and continuing interference and infringement upon the rights of Plaintiff and other student groups and individuals to equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiff respectfully prays that the Court grant the relief set forth hereinafter in the prayer for relief.

XI.

FIFTH CAUSE OF ACTION

**VIOLATION OF THE PLAINTIFF'S RIGHT
TO FREEDOM OF ASSOCIATION**

114. Plaintiff realleges all matters set forth in the preceding paragraphs and incorporates them herein.

115. By enacting and enforcing highly restrictive assembly policies, speech polices and solicitation guidelines that are vague, overbroad and explicitly and implicitly discriminate on the basis of viewpoint, Defendants, acting under color of state law, have deprived the Plaintiff and other students of their clearly established right to freedom of association secured by the First Amendment to the Constitution.

WHEREFORE, Plaintiff respectfully prays that the Court grant the relief set forth hereinafter in the prayer for relief.

XII.

SIXTH CAUSE OF ACTION

IMPOSITION OF UNCONSTITUTIONAL CONDITIONS

116. Plaintiff realleges all matters set forth in the preceding paragraphs and incorporates them herein.

117. By enacting and enforcing the speech-restrictive regulations outlined above and by banning a wide variety of constitutionally protected speech, Defendants have placed unconstitutional conditions on the receipt of the government benefits of a higher education at a state-supported University.

118. Defendants have deprived Plaintiff of his clearly established rights to freedom of speech, expression and association secured by the First Amendment to the Constitution by requiring him forfeit these rights in exchange for a governmental benefit.

WHEREFORE, Plaintiff respectfully prays that the Court grant the relief set forth hereinafter in the prayer for relief.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully prays that the Court:

- a. Declare that the sections of the Rules and Regulations of the Board of Regents of the Texas Tech University System, the Operating Policy and Procedure Manual, and the Student Affairs Handbook 2002-2003, described in this Complaint are unconstitutional on their face because they violate the rights to freedom of speech, freedom of the press, the rights to due process, and the rights of equal protection, all guaranteed to the Plaintiff and others under the Constitution of the United States and by operation of federal law;
- b. Declare that the sections of the Rules and Regulations of the Board of Regents of the Texas Tech University System, the Operating Policy and Procedure Manual, and the Student Affairs Handbook 2002-2003, described in this Complaint are unconstitutional as applied or threatened to be applied to the activities of Plaintiff, described in this Complaint, because they violate the Plaintiff's rights to freedom of speech, freedom of the press, the rights to due process, and the rights of equal protection, all guaranteed to the Plaintiff and others under the Constitution of the United States and by operation of federal law;
- c. Issue a preliminary and permanent injunction against the Defendants, their agents, officials, servants, employees, and any other persons acting in their behalf, from enforcing said policies against the Plaintiff and others for his/their participation in the activities described in this Complaint;

- d. Grant to Plaintiff an award of actual and nominal damages in an amount deemed appropriate by this Court;
- e. Grant to Plaintiff an award of his costs of litigation, including reasonable attorneys' fees and expenses; and,
- f. Grant such other and further relief as this Court deems just and proper.

Respectfully submitted this 12th day of June, 2003.

Attorneys for Plaintiff,

ALLIANCE DEFENSE FUND LAW CENTER

By: _____

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*Motion for Admission *Pro Hac Vice* to be submitted