



SOUTHEASTERN LEGAL FOUNDATION

Rebuilding the American Republic®

September 23, 2020

VIA EMAIL

Ms. Audrey L. Pusey
Interim Dean of Students
Florida Atlantic University
apusey@fau.edu

Mr. Ryan Iocco
Assistant Director of Student Conduct
Florida Atlantic University
riocco@fau.edu

Re: Unconstitutional First and Fourteenth Amendment Violations: Campus COVID-19 Policies

Dear Ms. Pusey and Mr. Iocco:

We are writing to you to follow up about the letter we sent on September 16, 2020, regarding COVID policies at Florida Atlantic University (FAU). As we stated in our letter, several students are concerned about these policies and potential disciplinary actions that could be taken against them.

For instance, members of the Turning Point USA (TPUSA) chapter at FAU set up a table on Diversity Way on September 1, 2020. This was after the student group observed other organizations—including the FAU Student Government—tabling the day before. The TPUSA members wore facemasks the entire time except to drink water, used hand sanitizer and gloves, and kept their distance from each other and from students who approached the table.

While they were tabling, several students walked past the TPUSA members and shouted obscenities at them. One student took a photo of them. Later in the afternoon, the members received an email notifying them that they were reported for a COVID violation and asking them to meet with the Assistant Director of Student Activities. During the meeting, the students were told they failed to follow social distancing and mask guidelines, and that they were not allowed to table because they did not receive approval. However, they were also told that the University is currently not approving facilities use applications.

Since then, other student groups have gathered without maintaining social distancing. Although the members of TPUSA were recently informed that the meeting with administrators will not appear as a disciplinary infraction on their records, they are still uncertain about how FAU will enforce its policies. As SLF mentioned in its prior letter, university policies must apply neutrally to everyone, and students must know what conduct is punishable and what that punishment will be.

SLF understands that these times present serious challenges for Universities. However, policies must be clear and viewpoint-neutral. SLF requests further clarity about how the University plans to address different speech activities. The following are common ways students like the members of TPUSA assemble and exercise their First Amendment rights. Please indicate how the University would handle each of the following situations, regardless of how the University becomes aware of these events:

1. A student organization sets up a table in an outdoor area—such as Diversity Way, the Breezeway, or the Free Speech Lawn—wearing masks and standing 6 feet apart.
2. A student organization sets up a table in an indoor area—such as the Student Union—wearing masks and standing 6 feet apart.
3. A student group hosts a 10-person meeting indoors, wearing masks and standing 6 feet apart.
4. A student group hosts a 10-person meeting outdoors, wearing masks and standing 6 feet apart.
5. Students host a rally in favor of a presidential candidate.
6. Students engage in a protest on campus.
7. Students engage in a counter-protest on campus.
8. Students post flyers to bring awareness to current events and issues.
9. Students approach other students to poll them about political issues.
10. Students bring speakers to campus.
11. Students post advertisements for their on-campus events.
12. Students post advertisements for their off-campus events.
13. A student organization is anonymously reported for violating COVID policies without supporting evidence.
14. A student organization is anonymously reported for violating COVID policies with supporting evidence.
15. A student organization is reported a second time for violating COVID policies without supporting evidence.
16. A student organization is reported a second time for violating COVID policies with supporting evidence.

Several Supreme Court Justices have affirmed the government's duty to uphold our Constitution during COVID, stating that "a public health emergency does not give Governors and other public officials *carte blanche* to disregard the Constitution for as long as the medical problem persists."¹ Even during these times of unrest and uncertainty, "the remedy to be applied is more speech, not enforced silence."² Students must be allowed and encouraged to exercise their First Amendment rights to speak and assemble freely. It is imperative that students know the

¹ *Calvary Chapel Dayton Valey v. Sisolak*, 591 U.S. ____ (2020) (Alito, J., dissenting from Court's decision not to hear case seeking injunctive relief).

² *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring).

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University's position on these matters, because every minute that goes by is another minute that they are chilled into silence for fear of discipline.

Yours in Freedom,



Kimberly S. Hermann
General Counsel
Southeastern Legal Foundation