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VIA ELECTRONIC MAIL

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Dear President Fuchs and Board of Trustees:

Our office is assisting the United Faculty of Florida and student organizers that intend to engage in lawful First Amendment activities on November 1, 2022, in opposition to the appointment of University of Florida Presidential Candidate Senator Ben Sasse during the University of Florida Board of Trustees' meeting at Emerson Alumni Hall.

We are concerned that the University of Florida (UF or University) has issued restrictions that threaten the free speech rights of those who seek to express opposition to Senator Sasse's appointment. UF President Kent Fuchs announced that a UF regulation prohibiting demonstrations inside campus buildings, a rule that UF has not enforced for many years, will be selectively enforced in anticipation of protests during this particular UF Board of Trustees meeting.¹ President Fuchs also stated that students who violate the regulation may be subject to discipline under the UF Student Conduct Code. *Id.* The rule also provides possible criminal penalties.

The University's decision to selectively enforce a ban on protected First Amendment activity is legally and factually unsupported. *See Shamloo v. Mississippi State Bd. of Trustees of Institutions of Higher Learning*, 620 F.2d 516, 521-22 (5th Cir. 1980) (citation omitted) (a

¹ See Message from President Fuchs, dated October 23, 2022, available at: <https://statements.ufl.edu/statements/2022/october/message-from-president-fuchs.html>

student may exercise his First Amendment rights. . . if he does so without “materially and substantially interfer(ing) with the requirements of appropriate discipline in the operation of the school” and without colliding with the rights of others”). Based on this standard, UF cannot restrict speech through an outright ban for a demonstration that has not even occurred. UF also cannot ban speech in a location (e.g., Emerson Alumni Hall) where there is no impact, much less a material and substantial interference on educational/classroom instruction.² *Id.* at 522.

This preemptive content-based restriction on speech is also unconstitutional because it is based merely on speculation, disagreement with the views expressed, and relies on fear or apprehension of disturbance. *See Healy v. James*, 408 U.S. 169 (1972). Specifically, UF cited a demonstration that occurred last week at a student forum in Emerson Hall, which also concerned Senator Sasse, as the justification for this restriction. These are insufficient justifications to overcome the well established right to freedom of expression at a public university. *See id*; *see also Tinker v. Des Moines Independent Community School District*, 393 U.S., at 508 (1969).

UF's selective enforcement of this ban is also an impermissible content-based restriction of protected expression. *See Forsyth County v. Nationalist Movement*, 505 U.S. 123, 131 (1992) (where the grant or denial of speech rests on the “appraisal of facts, the exercise of judgment, and the formation of an opinion,” it is content-based and the “danger of censorship and of abridgement of our precious First Amendment freedoms is too great to be permitted.”). UF is targeting specific speech that opposes Senator Sasse's views. This is clear from President Fuchs' statement about why the ban on protests inside campus buildings will be enforced at this particular meeting when UF has chosen not to do so for many years regarding other demonstrations. UF's decision is based on a protest that occurred during an October 10, 2022, student forum at Emerson Hall where protesters expressed their opposition to Senator Sasse's candidacy.³ A government regulation that allows arbitrary application, such as here, is “inherently inconsistent with a valid time, place, and manner regulation because such discretion has the potential for becoming a means of suppressing a particular point of view.” *Forsyth County*, 505 U.S. at 130.

A state university may not “forbid some speech which is unpopular or which antagonizes the administrators while allowing other speech more in harmony with the position of those in authority.” *See, e.g., Auburn Alliance For Peace and Justice v. Martin*, 684 F.Supp. 1072, 1076 (M.D. Ala. 1988). The vitality of civil and political institutions in our society depends on free discussion. *Terminiello v. City of Chicago*, 337 U.S. 1, 4 (1949). A function of free speech under our system of government is to invite dispute. *Id.* The University's decision to censor such views under threats of student disciplinary action and criminal penalties is contrary to these fundamental democratic values. It is also intended to have a chilling effect on the exercise of University and Gainesville community members' free speech rights.

² *See* <https://www.uff.ufl.edu/eah/>

³ *See* Message from President Fuchs, dated October 23, 2022, available at: <https://statements.ufl.edu/statements/2022/october/message-from-president-fuchs.html>

For the reasons explained above, UF's decision to enforce this ban also fails as a valid exercise of the University's adoption and enforcement of reasonable, non-discriminatory regulations as to the time, place, and manner of University-based demonstrations. *Tinker*, 393 U.S. 503; *Burnside v. Byars*, 363 F.2d 744 (5th Cir. 1966). The ban is content-based and not narrowly tailored to serve a significant government interest. *See Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984); *see also McCullen v. Coakley*, 573 U.S. 464, 477 (2014). UF's enforcement of the ban fails to leave ample alternative channels of communication open; protesters outside Emerson Hall will be out of sight or sound of their intended audience. *Id.* It also burdens substantially more speech than is necessary to further the University's educational interests by prohibiting, for example, even a silent demonstration inside a University building. *See McCullen*, 573 U.S. at 466.

On behalf of the United Faculty of Florida, we ask the University to reconsider its position and repeal the ban on demonstrations inside University buildings. If the University chooses not to do so, our organizations will consider legal action to ensure that free speech rights of all at the University are upheld.

Furthermore, the United Faculty of Florida reminds the University to follow the letter and spirit of the Collective Bargaining Agreements and the due process and academic freedom rights enshrined within. Abridgement of the right to concerted activity to advocate for their profession and protest administrative actions could be grounds for a grievance and/or an Unfair Labor Practice charge. We expect public employees' rights will be honored by the university.

Sincerely,



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Candi Churchill
Executive Director
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