



NAACP
FLORIDA STATE CONFERENCE



AMERICAN ASSOCIATION OF
UNIVERSITY PROFESSORS



NATIONAL ASSOCIATION OF DIVERSITY OFFICERS
IN HIGHER EDUCATION

May 3, 2024

Dear Florida College and University Presidents:

We write as a nonpartisan coalition of national and Florida-based nonprofit organizations including PEN America Florida, PRISM, Youth Action Fund, the ACLU of Florida, the National Association of Diversity Officers in Higher Education, the American Association of University Professors, and the NAACP Florida State Conference to express our grave concern over responses to student protests on Florida's campuses, the unnecessary use of force, and encroachments on students' and faculty's First Amendment rights. This letter sets forth the First Amendment framework that should be considered when responding to campus protests and our concerns of current unconstitutional overreach.

A. The Constitutional and Legal Framework When Considering Campus Protest

Free speech is a core fundamental constitutional liberty and cannot be curtailed because of the content of speech. The right to protest is inherent in the freedom of speech.

The rights of citizens and students to protest governmental policies is at the core of the rights sought to be protected by the First Amendment . . . **this Court can think of no place that should be more hospitable to the free expression of ideas than the campus of a great university.**¹

Dissent, critical thinking, and expression are fundamentally important to higher education. "The college classroom with its surrounding environs is peculiarly the 'marketplace of ideas,'" and the Supreme Court has consistently "reaffirm[ed] this Nation's dedication to safeguarding academic freedom."² Without an environment that not only withstands but promotes diverse viewpoints, debate, and engagement with difficult and divisive topics, institutions of higher education fail at their primary functions and missions of uplifting academic freedom³ and building "multicultural

¹ *Auburn All. For Peace & Just. v. Martin*, 684 F. Supp. 1072, 1076 (M.D. Ala.), *aff'd sub nom. Auburn All. for Peace v. Martin*, 853 F.2d 931 (11th Cir. 1988).

² *Healy v. James*, 408 U.S. 169, 180–81 (1972) (quoting *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967)).

³ See, e.g., University of South Florida, Mission Vision Values, <https://cloud.usf.edu/usf-news-archive/article/articlefiles/6504-usf-mission-vision-values.pdf>; Florida State University Mission Statement,

skills and perspectives.”⁴ Florida universities have obligations under the First Amendment and their own missions to respond to protests in a way that does not suppress or chill speech.

Colleges and universities can enforce reasonable time, place, and manner restrictions on student protests, so long as they are content neutral.⁵ It is also without question that civil disobedience, by its nature, is not constitutionally protected speech—it is intended to be unlawful.⁶ However, it is critical for higher education institutions to keep in mind that even when protest veers into unlawful civil disobedience, universities and colleges should not single out specific viewpoints for disproportionate punishment designed to chill constitutionally protected speech.⁷

Universities must also be mindful of their obligations to keep their campuses free of discriminatory harassment under Title VI of the Civil Rights Act. The Department of Education Office for Civil Rights (OCR) has instructed that schools must take steps to address harassment that is “subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the recipient’s education program or activity.”⁸ Title VI holds schools accountable for failing to protect their communities from such harassment, meaning that it is their obligation to ensure that adequate steps are being taken to prevent and remedy it. This is an important responsibility, both to ensure compliance with the law and to keep institutions accessible and open to protected classes.

However, as described by the OCR, intruding on student protest by means of Title VI is a high bar. Assessments of whether or not there is harassment or a hostile environment must be made on a case-by-case basis in a manner that does not infringe on First Amendment rights. This includes speech that some may find deeply offensive.⁹

Florida’s leaders of higher education should also carefully consider the means and methods of dealing with speech and expression that may violate Title VI. Addressing such speech or

<https://www.fsu.edu/about/mission-vision.html#:~:text=Florida%20State%20University%20preserves%2C%20expands,traditions%20of%20the%20liberal%20arts>.

⁴ University of Florida, Mission and Plans, <https://handbook.ua.ufl.edu/about-uf/mission-and-plans/#:~:text=We%20are%20The%20Gator%20Nation,economic%2C%20cultural%20and%20societal%20benefit>.

⁵ *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293 (1984) (“We have often noted that restrictions of this kind are valid provided that they are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.”).

⁶ See, e.g., *U.S. v. Grady*, 18 F.4th 1275 (11th Cir. 1275).

⁷ See, e.g., *Dambrot v. Cent. Mich. Univ.*, 55 F.3d 1177 (6th Cir. 1995); *Iota Xi Chapter of Sigma Chi Fraternity v. George Mason Univ.*, 993 F.2d 386 (4th Cir. 1993).

⁸ United States Department of Education, Office for Civil Rights, Dear Colleague Letter of November 7, 2023,

<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-202311-discrimination-harassment-s-hared-ancestry.pdf>.

⁹ See *supra* note 7.

expression could include dialogue and engagement; education on addressing anti-Muslim, anti-Arab, anti-Palestinian hate, and antisemitism; university statements of inclusion; reasonable time, place, and manner restrictions; and any number of options that could be explored besides summoning law enforcement.

Reasonable, proportionate measures that de-escalate are especially important when dealing with highly fraught and contentious issues. This is especially true now in Florida, where executive leadership has signaled a distinct bias against pro-Palestinian students.¹⁰ University and college presidents and administrators must resist any such viewpoint discrimination and bias and rise above the political winds to consistently uphold the rights of free speech.

B. The Response to Student Protests from Florida Higher Education Leaders is Troubling and Dangerous.

Some Florida colleges and universities are failing to meet their constitutional and institutional obligations. As of the date of this letter, there have been at least 35 arrests¹¹ of student protesters across the state, including at the University of Florida, University of South Florida, University of North Florida, and Florida State University.¹² Police deployed tear gas against students at the University of South Florida¹³, and universities continue to threaten use of force.¹⁴

¹⁰ See, e.g., Jackie Llanos, *'The inmates run the asylum.'* DeSantis criticizes pro-Palestine protests in college campuses, Fla. Phoenix (Apr. 22, 2024), <https://floridaphoenix.com/briefs/the-inmates-run-the-asylum-desantis-criticizes-pro-palestine-protests-in-college-campuses/> (reporting that Governor DeSantis advocated for expelling American students and revoking the visas of foreign students); Andrew Hay, *Florida's DeSantis bans pro-Palestinian student group*, Reuters (Oct. 26, 2023), <https://www.reuters.com/world/us/floridas-desantis-bans-pro-palestinian-student-group-2023-10-25/> (reporting that Governor DeSantis ordered universities to dismantle chapters of Students for Justice in Palestine on the grounds that they provide "harmful support for terrorist groups").

¹¹ Elizabeth Weill-Greenberg, Ethan Corey, Jerry Iannelli, Meg O'Connor, *We Tracked 2,200 Pro-Palestinian Campus Arrests. Here's How Prosecutors Are Responding*, The Appeal (May 2, 2024), <https://theappeal.org/prosecutors-charges-protesters-arrested-gaza-colleges-april/>; First Coast News, *Pro-Palestinian protestors detained as dozens of police descend on UNF* (May 3, 2024), <https://www.firstcoastnews.com/article/news/local/dozens-of-officers-move-protest-on-unf-green-handcuffing-protestors/77-0b4ab7b9-ca4b-4b59-b7c3-59f212a679b3>.

¹² Divya Kumar, et. al, *Police use tear gas on pro-Palestinian protesters at USF in Tampa*, Tampa Bay Times (Apr. 30, 2024), <https://www.tampabay.com/news/breaking-news/2024/04/30/live-updates-student-protest-standoff-with-police-usf-tampa-campus/>.

¹³ *Id.*

¹⁴ See *id.*; Vivienne Serret, *9 people arrested during a pro-Palestinian protest at the University of Florida*, WUSF NPR (April 30, 2024), <https://www.wusf.org/2024-04-30/university-of-florida-pro-palestinian-protest-9-arrested>; Nancy Guan, *Three people are arrested during a pro-Palestinian protest at USF*, WUSF NPR (April 29, 2024), <https://www.wusf.org/university-beat/2024-04-29/three-people-arrested-at-pro-palestinian-protest-at-the-university-of-south-florida>.

The use and threat of force against peaceful protesters, including chemical weapons, is wholly inappropriate and dangerous. Bringing in local or state law enforcement in response to peaceful protest threatens student and community safety and has a chilling effect on expression.

Thus far, the responses to the student protests also raise serious concerns about unconstitutional viewpoint-discrimination. For example, the University of Florida distributed a list of prohibited activities to student and faculty protesters under threat of termination, suspension, and banishment from campus for three years (which appears tantamount to expulsion¹⁵). The prohibited activities were vague, such as “no disruption,” and appear targeted only at the pro-Palestinian encampment.¹⁶ If institutions allow certain activities and items at other campus events, such as voice amplification, tents, or blankets, they cannot impose such restrictions on pro-Palestinian protesters simply because of the content of their protest. Furthermore, applying exceptionally harsh penalties for protesters, such as banishment and termination, is disproportionate and appears to be targeting students and faculty on the basis of their beliefs.

Pro-Palestinian campus protest sites and encampments are continuing to grow across the state. These protests have been peaceful, with students expressing condemnation of the war in Gaza and support for the Palestinian people. Alongside peaceful protests, there are also reports in Florida of the use of phrases by protesters, onlookers, and counter protesters that are difficult for some to hear, that make many uncomfortable, cause pain, and are either blatantly racist or interpreted as such. These facts are not inconsequential. In fact, they are of great importance. They represent an opportunity for universities to do what they should do best—welcome dialogue, healthy debate, educate, and engage deeply with controversial and sensitive topics. These divides provide an opportunity for active listening and thoughtful engagement. This is not a time for less speech, it is a time for more.

To say these are difficult times is an understatement. To say that your jobs are hard, and that the responsibility you carry on your shoulders is heavy fails to capture the weight of the moment. But times like these are when your leadership is critical—for Florida’s students, our higher education system, and our democracy. You are charged with monumental tasks: to lead through crisis, to walk boldly into student and faculty pain and discontent, to defend free expression and condemn hate, to de-escalate, and engage in active listening, learning, and communication.¹⁷

¹⁵ See University of Florida Readmission Rules, <https://admissions.ufl.edu/apply/readmission#:~:text=UF%20students%20who%20do%20not,ap,pointment%20for%20two%20additional%20terms>.

¹⁶ Amanda Friedman & Vivienne Serret, *UF threatens student protesters with suspension, banishment from campus for 3 years*, WUFT (Apr. 26, 2024), <https://www.wuft.org/fresh-take-florida/2024-04-26/uf-threatens-student-protesters-with-suspension-banishment-from-campus-for-3-years>.

¹⁷ For further guidance on responding to student protests, please find the following resources: PEN America, *Campus Free Speech Guide*, <https://campusfreespeechguide.pen.org/>; ACLU of Fla., *Know Your Rights: Demonstrations & Protests*, https://www.aclufla.org/sites/default/files/field_documents/kyr_demonstrations_and_protests_-_aclu_of_florida_final.pdf; <https://www.aclufla.org/en/know-your-rights/right-record-police-florida>.

Now more than ever, we need higher education leaders to act decisively to protect First Amendment rights for the students of today and tomorrow. The concerns laid out in this letter echo those of over 7,000 Floridians that have sent letters to university administrators this week in support of free speech. It matters not how you, Florida's leadership, or other campus community members feel about the protests on your campuses. What is critical now is maintaining your core values and fundamental liberties for all of Florida's students, faculty, and campus communities and working diligently to turn great turmoil into opportunity for greater understanding.

Sincerely,

Katie Blankenship
Director, PEN America Florida

Cameron Driggers
Executive Director, Florida Youth Action Fund

Maxx Fenning
Executive Director, PRISM FL

Paulette Granberry Russell
President and CEO, National Association of Diversity Officers in Higher Education

Howard Simon
Interim Executive Director, ACLU of Florida

Irene Mulvey
President, American Association of University Professors

Adora Obi Nweze
President, NAACP Florida State Conference