

FISCAL YEAR 2020

FREE EXPRESSION ANNUAL REPORT



ARIZONA BOARD OF
REGENTS
ASU ♦ NAU ♦ UA



ABOUT THIS REPORT

The Arizona Board of Regents and Arizona's public universities protect and ensure intellectual freedom and free expression at our institutions. Students, staff and faculty members may discuss any topic, as the First Amendment allows and within the limits of reasonable content- and viewpoint-neutral restrictions on time, place and manner of expression that are consistent with applicable law.

The board has established a Committee on Free Expression, which submits this report as required by A.R.S. §15-1867. The membership of the Free Expression Committee is provided in Exhibit A.

ABOUT THE ARIZONA BOARD OF REGENTS

The Arizona Board of Regents is committed to ensuring access for qualified residents of Arizona to undergraduate and graduate institutions; promoting the discovery, application, and dissemination of new knowledge; extending the benefits of university activities to Arizona's citizens outside the university; and maximizing the benefits derived from the state's investment in education.

MEMBERS

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ABOR EXECUTIVE DIRECTOR

John Arnold



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THE BOARD AND THE UNIVERSITIES DO NOT TOLERATE BARRIERS TO OR DISRUPTIONS OF PROTECTED SPEECH

There were no barriers to or disruptions of lawful free expression within any of Arizona's public universities, as described in A.R.S. §15-1867. All three of Arizona's public universities maintain the highest green light rating from the Foundation for Individual Rights in Education ([FIRE](#)), recognizing the commitment of the board and the universities to free speech. "Arizona's green light schools are setting a standard for free expression that colleges across the country should aspire to follow," said FIRE's Laura Beltz, policy reform senior program officer.

Each university has policies and procedures to encourage and protect all lawful speech. All expressive activities are subject to reasonable time, place and manner restrictions as permitted by law. Expressive activities are subject to applicable law, including laws that address discrimination, harassment, safety, defamation, threats, privacy and confidentiality. The board and universities do not permit actions that unlawfully disrupt the functions of the institutions. As required by statute, board policy provides:

A student who is subject to the jurisdiction of a university and who engages in individual conduct that materially and substantially infringes on the rights of other persons to engage in or listen to expressive activity, as defined in A.R.S. § 15-1861, is subject to disciplinary sanctions under the Student Code of Conduct and other applicable university and board policies. This does not preclude students from engaging in counter speech as First Amendment principles may permit.

Although a more complete list of applicable policies is provided in Exhibit B, here are some examples of how the board and university policies promote lawful free expression within any of Arizona's public universities without barriers.

ARIZONA STATE UNIVERSITY

ASU is committed to free speech, subject to reasonable restrictions designed to promote free speech while serving the university's educational function.

The University of Chicago Statement affirms the role of academic freedom and freedom of expression on college campuses. ASU has adopted the core principles of the statement as those principles reflect and are consistent with ASU's existing policies.

ASU community members and visitors may reserve space both indoors and outside in accordance with university policy ([SSM 802-01](#) and [SSM 801-02](#)) and may use other areas where reservations are not necessary. The university respects the ASU community's rights to engage in expressive activities within public and designated public while: 1) facilitating the free flow of pedestrian traffic and access for all fire, police and emergency services; 2) preserving the health and safety of its community members; and 3) protecting the mission of the university, which includes activities related to studying, teaching, research, service and university administration. ASU staff are available to actively assist in facilitating and supporting speech activities on campus, including arranging and managing space to permit speakers, listeners, and

protestors to engage in speech without disrupting university activities. In addition, during the current pandemic situation when in-person gatherings are limited by public health orders and considerations, ASU staff have worked with student organizations to increase their awareness of available tools for virtual events, such as Zoom.

NORTHERN ARIZONA UNIVERSITY

[The NAU Speech Expressive Action Knowledge \(SpEAK\)](#) team worked to ensure all planned, reported and spontaneous representations of speech on campus were supported. The Campus Inclusion Team (CIT), which includes the SpEAK team, serves as an impartial support system committed to fostering a campus community that honors freedom of expression and therefore does not discipline, investigate or adjudicate any reported concerns. The CIT served as a support resource for several on-campus speakers, events and protests, and also provided support for students and community members who expressed concerns about the speech activity of others by listening, discussing and connecting individuals with resources such as counseling services and Office of Inclusion support services.

UNIVERSITY OF ARIZONA

UArizona policy reflects individual rights to free speech and expressive activity within public and designated public forums, while preserving public health, safety and welfare; the normal business uses of the campus; and the rights of others to legitimately use and enjoy the campus. The UArizona's "Campus Use Policy - Interim," provides:

The campus grounds and properties of the University of Arizona (the "university") are devoted to and maintained for the sovereign function of providing higher education to the people and are not places of unrestricted public access.

The university is committed to protecting the free speech rights of students, faculty, staff and invited guests. The purpose of this policy is to respect the campus community's rights to free speech and expressive activity within public and designated public forums, while preserving public health, safety and welfare; the normal business uses of the campus; and the rights of others to legitimately use and enjoy the campus.

The university may regulate the time, place and manner of free speech and expressive activities in order to prevent unreasonable interference with or disruption of its educational, research, outreach and business functions, and normal or scheduled uses of university property by the campus community, as well as to protect public health, safety and welfare. Commercial activity ... is prohibited on campus except as authorized by the Business Practices Guidelines Policy, guidelines on 'Sponsored Commercial Activity on University Property.'



THE BOARD AND THE UNIVERSITIES PROMOTE PROTECTED SPEECH AND PROMPTLY ADDRESS ALL ALLEGATIONS OF BARRIERS TO OR DISRUPTIONS OF PROTECTED SPEECH

Each university has an administrative process for responding to allegations of barriers to or disruptions of protected speech. All three universities provide active support for free speech activities on campus, including managing campus events to support meaningful opportunities for protest and to listen to invited speakers. The universities also engage in dialogue with, and provide support for, students and community members who feel negatively impacted by the speech of others. However, consistent with the provisions of ABOR's policy on free expression and the ABOR Student Code of Conduct, the universities do not impose discipline for constitutionally protected speech solely because that speech is controversial or objectionable to others. As appropriate, the response may address the conduct immediately and may include additional review or sanctions under board or university policy. Campus police may be involved if allegations include criminal conduct or implicate safety concerns.

ASU

ASU reported one allegation involving the election code adopted and enforced by the student government, which certain candidates claimed violated their speech rights as written and applied. The university reviewed the candidates' concerns and found no violation of their speech rights.

NAU

There were no conduct related incidents this past year related to barriers to or disruptions of free expression at NAU. However, there were incidents addressed by CIT, which includes the SpEAK team, who serves as an impartial support system committed to fostering a campus community that honors freedom of expression and therefore does not discipline, investigate or adjudicate any reported concerns. The CIT served as a support resource for students that felt negatively impacted by speech, both protected and not protected, as well as a resource for the campus community, including the Office of the Dean of Students (ODOS) and Residence Life. The CIT provided support for several impacted community members by listening, discussing and connecting individuals with resources such as counseling services and Office of Inclusion support services. In particular, the CIT served as a support for the following reported concerns:

- Early fall – SpEAK Team was deployed for a March for LGBTQ rights, and provided resources to organizers.
- Fall – A non-student made statements to a Jewish student that the Jewish student found upsetting. The Jewish student was provided resources from ODOS and NAU's Office of Inclusion.
- October 2019 – Near Halloween, a few NAU students posted pictures on social media while dressed in attire that other NAU students found culturally insensitive. To express their opinions, the second group of students posted comments on the social media pages of the

original students who had posted the pictures. After the postings were reported to ODOS, staff met with each group of students, to educate the students regarding freedom of expression (and the right that the original group of students had to post photos and express themselves by their attire, as well as the right the second group of students had to “fight speech with speech”) and to provide them with resources to assist them in navigating social media.

- March 3, 2020 – SpEAK Team was deployed for a “March! Stand Up to Rita” event. This involved roughly six students who gathered at the Union and marched down to the High Country Conference Center (HCCC) prior to a campus forum. Once at the HCCC, the students dispersed. The SpEAK team let the students know that they had a right to freedom of expression and provided materials on NAU’s support of freedom of expression on campus.
- Spring 2020 – A social media photo of a person with a swastika drawn on their face was brought to the attention of Fraternity & Sorority Life (FSL) staff. One person in the photo was a member of a fraternity but the other two people, including the person with the swastika drawn on their face, were not members. FSL staff reached out to the fraternity president and also reported it to the CIT.
- June 2020: A former student posted racist comments on social media. This student’s social media account incorrectly listed her as a current student. Many current students called and emailed the university with concerns about this post. No action was taken related to the former student’s posts.

UARIZONA

During the fall 2019 semester, many UArizona students and community members participated in on-campus protests related to the university’s handling of an on-campus assault of a Black student. These protests were peaceful and did not result in any university discipline or actions for the speech-related activities. After this event, there was increased dialogue between students and university leaders on issues of race, safety and inclusion.

More recently, in the wake of the mass protests related to George Floyd’s death, the university has received a large number of complaints about the social media accounts of UArizona students (or purported students) who allegedly have a history of posting racially insensitive or blatantly racist content. There has been intense community pressure on UArizona leaders to rescind the admission of or initiate disciplinary actions towards these individuals. Although each case is unique, the university is keenly aware of the First Amendment rights of current or prospective students and how those rights intersect with the ABOR Student Code of Conduct. No students have been disciplined for their social media posts, nor have any offers of admission been rescinded. The UArizona believes that focusing on student safety and the opportunity to receive and benefit from an education are its top priorities. In that vein, it plans to connect with those students who allegedly posted racist or offensive content when they arrive on campus or enroll in classes.

Also, there was a large Black Lives Matter rally on campus in June of 2020. The rally was peaceful and was very well attended. Since the event, a number of students have reengaged university leadership to address the concerns and other issues that remain regarding their experience on campus, including their ability to engage in lawful expression.



THE BOARD AND THE UNIVERSITIES PROMOTE DIVERSITY OF THOUGHT, ADMINISTRATIVE AND INSTITUTIONAL NEUTRALITY

The board and the universities are committed to maintaining a posture of administrative and institutional neutrality about speech and to allowing all protected speech, even speech that some may find offensive. From time to time, the board and universities hear concerns from members of campus and the broader community who may not appreciate the broad constitutional protections afforded to speech – even to speech that many in the community may find deeply offensive. The universities are committed to protecting all lawful expression. The universities are also committed, as part of their educational missions, to providing information about protected speech to those who may seek to have the board or universities interfere with or suppress free expression. When protected but offensive speech occurs on campus, universities may use this as an opportunity to educate the broader community as to the nature of constitutional protections as well as to identify opportunities for the safe expression of divergent viewpoints – countering the offensive speech with more speech.

At its Aug. 23, 2018 meeting, the board adopted a Free Expression Policy in compliance with A.R.S. § 15-1866. A copy of the policy is attached as Exhibit C. State statute and board policy also address political speech. Board and university policies recognize the limitations imposed by A.R.S. § 15-1633, which limits the use of university resources or employees to influence elections.

ABOR

To highlight its support of free speech, while maintaining administrative and institutional neutrality, on Nov. 16, 2019, ABOR and the universities held the inaugural Regents' Cup [debate competition](#) at UArizona. The Regents' Cup is a tri-university team debate competition designed to highlight and encourage civil discourse among students.

Thirty-six students on two-student teams from ASU, NAU and UArizona competed during the daylong event at UArizona showcasing Arizona's public universities commitment to freedom of expression. Subjects debated included how (if at all) social media sites should regulate speech, free speech on college campuses, and if the United States should have tougher libel, slander and defamation laws.

Winning student teams received scholarships and were eligible for course credit. The Regents' Cup was an opportunity for Arizona's public universities to showcase their commitment to diversity of thought and civil discourse.

The second 2020-21 Regents' Cup is scheduled to take place in spring 2021.

ASU

ASU's faculty and student organizations continue to host numerous events encouraging public discourse on a wide variety of topics, many of which focus on free speech. Examples during the 2020 academic year include Rodney Smolla, "[Free Speech at 100](#)," and Robby Soave, "[Panic Attack: Young Radicals in the Age of Trump](#)."

ASU regularly communicates its values regarding campus speech, such as in this November 2019 [message](#) from President Michael Crow to the campus community reminding them that the university aspires to be a place that “invites civil dialogue and debate and where thoughts and ideas can be shared in an environment free from threat and intimidation.”

ASU is also a joint sponsor of the Future Tense initiative, whose ongoing Free Speech Project is conducting a series of public programs on timely free expression topics, including a recent virtual [program](#) on the effect of the pandemic on free speech. See its recent “[Symptoms May Include Censorship](#)” event focused on the pandemic.

NAU

To reinforce NAU’s commitment to the First Amendment, NAU added language to its orientations for both students and parents regarding free expression, namely:

- NAU is a public institution committed to free, robust and uninhibited sharing of ideas among all members of the university’s community.
- Freedom of speech is protected by the U.S. Constitution.
- There are limits to free speech: Inciting comments and discrimination are not allowed.
- Free speech visitors come to campus to share their ideas. Students have the choice of engaging with them or walking away.
- Free speech is allowed even when we don’t agree with the person or group speaking.
- Even though free speech is given by visitors, this does not mean the university approves of the message.
- Freedom of speech allows us to expand our thinking.

NAU also shared the [First Amendment: Free Expression on Campus Handout](#) when training with student organizations who are planning or hosting events and on the day of events as NAU interacts/engages with students. It is also used for training Student Affairs and the SpEAK team members. NAU also added the following New Student Handbook Language:

Northern Arizona University honors its commitment to the freedoms of speech and assembly guaranteed by the First Amendment of the Constitution. NAU is a public institution, and public universities are considered to be the quintessential “marketplace of ideas” – where both the campus community and the general public engage in free speech activities. As a public institution, NAU recognizes that freedom of expression is integral to the purpose and process of the university, whose primary goal is education. Many speakers use our campus, and some may have messages which seem inconsistent with the mission and values of the institution. In the “marketplace of ideas” not all ideas will resonate with the listener and some ideas may even seem distasteful or offensive. NAU encourages both the listener and the speaker to exercise this important freedom with respect, civility and responsibility. Students always have the choice of engaging with the free speech visitor(s) or walking away.

Furthermore, NAU's Economic Policy Institute continues to host an annual conference on economic climate, bringing information to the northern region with a variety of perspectives from panelists. Finally, NAU's students participated in the inaugural Regents' Cup.

UARIZONA

The UArizona's mission is one of service, and fundamental to its success is ensuring that all students and faculty practice and promote principles of freedom of expression and inquiry. One example of UArizona's engagement in its mission is hosting the inaugural Regents' Cup for a weekend in Tucson, promoting the discussion of diverse and civil discourse.



ALLOCATION OF STUDENT ACTIVITY FEES

Exhibit D provides the allocation of student activity fees, if any, that are used to support and facilitate the expression and activities of students or student organizations as required by A.R.S. §15-1867 (B)(5).



DISTRIBUTION OF THIS REPORT

As required by A.R.S. §15-1867, this report will be posted on the ABOR website and submitted to:

- The governor
- The speaker of the Arizona House of Representatives
- The president of the Arizona Senate
- The Arizona secretary of state

EXHIBIT A

MEMBERS OF THE COMMITTEE ON FREE EXPRESSION AS OF SEPT. 1, 2020

Committee Chair: John Arnold, Executive Director, Arizona Board of Regents

ASU REPRESENTATIVES:

- Derrick Anderson, School of Public Policy and Design and Advisor to the President
- José Cárdenas, Senior Vice President and General Counsel
- Courtnee King, Student
- Stefanie Lindquist, Deputy Provost and Vice President for Academic Affairs
- Joanne Vogel, Deputy Vice President and Dean of Students, Tempe campus

NAU REPRESENTATIVES:

- Erin Grisham, Associate Vice President for Student Affairs
- Joe Carter, ASNAU Student Body President
- Kimberley Ott, Assistant to the President for Executive Communications & Media Relations
- Michelle Parker, General Counsel
- Eric Yorby, Associate Professor, Business Law, The W.A. Franke College of Business

UARIZONA REPRESENTATIVES:

- Sydney Hess, ASUA Student Body President
- Toni Massaro, College of Law
- David Schmitz, Social & Behavioral Sciences, Political Economy and Moral Science
- Bob Sommerfeld, UA Police Department
- Kendal Washington White, Dean of Students

EXHIBIT B

ABOR Policies

- 1-124 (Free Expression) <https://public.azregents.edu/Policy%20Manual/1-124-Free%20Expression.pdf>
- 1-119 (B)(4) (Nondiscrimination and Anti-harassment) <https://public.azregents.edu/Policy%20Manual/1-119-Nondiscrimination%20and%20Anti-Harassment.pdf>
- 5-301(B)(1) (Code of Conduct) <https://public.azregents.edu/Policy%20Manual/5-301-Code%20of%20Conduct%20-%20Jurisdiction,%20Philosophy,%20Purpose%20and%20Limitations.pdf>
- 5-303(11) (Prohibited Conduct) <https://public.azregents.edu/Policy%20Manual/5-303-Prohibited%20Conduct.pdf>
- 5-308 (A)(1) and (B)(1) (Student Code of Conduct) <https://public.azregents.edu/Policy%20Manual/5-308-Student%20Code%20of%20Conduct.pdf>
- 6-202 (Academic Freedom) <https://public.azregents.edu/Policy%20Manual/6-202-Academic%20Freedom.pdf>
- 6-905 (Political Activity) <https://public.azregents.edu/Policy%20Manual/6-905-Political%20Activity.pdf>

ASU Policies and Statements

- ACD 201 (Academic Freedom)
- ACD 201-01 (Faculty Responsibilities)
- ACD 204-01 (Code of Ethics)
- ACD 204-02 (Standards of Professional Conduct for Faculty Members and Academic Professionals)
- ACD 205-01 (Political Activity)
- Policy Statement Supporting Diversity and Free Speech <https://inclusion.asu.edu/cci/policies-procedures>

NAU Policies and Statements

- Safe Working and Learning Environment Policy
- NAU HR Policy 5.10 Regarding Political Activity <http://hr.nau.edu/apps/policy-manual/10256>
- NAU HR Policy 5.14 Use of University Property <http://hr.nau.edu/apps/policy-manual/10258>
- NAU Faculty Handbook 1.7.1 (Role of the Faculty)
- NAU Faculty Handbook 4.1 (Code of Ethics and Conduct)
- NAU Conditions of Faculty Service
- NAU Student Handbook <https://nau.edu/student-life/student-handbook/>
- NAU Club & Organization Event Approval Process <https://nau.edu/leap/planning-events>
- Information Distribution Policy <https://nau.edu/student-life/university-policies-rules-regulations/>
- First Amendment: Free Expression on Campus Handout

UA Policies and Statements

- Policy and Regulations Governing the Use of Campus, SA-200: <http://policy.arizona.edu/ethics-and-conduct/policy-and-regulations-governing-use-campus>
- Political Activity: UHAP 2.10: <https://policy.arizona.edu/ethics-and-conduct/political-activity-and-lobbying-policy-interim>
- Non-Discrimination and Anti-Harassment Policy, HR-200E: <http://policy.arizona.edu/human-resources/nondiscrimination-and-anti-harassment-policy>
- Religious Accommodation Policy, HR-202: <http://policy.arizona.edu/human-resources/religious-accommodation-policy>
- Academic Freedom
 - Statement on academic freedom from the Committee on Academic Freedom and Tenure, approved by Faculty Senate 9/14/09: https://facultygovernance.arizona.edu/sites/default/files/def-academic_freedom_with_senate_edit_9-14-09_final.pdf
 - From University Handbook for Appointed Personnel Definitions: "Professional and intellectual freedom means the right and responsibility to exercise judgment within the standards of the employee's profession. Professional and intellectual freedom is defined as 'academic freedom' for employees involved in teaching or research." <http://policy.arizona.edu/uhap-definitions>
- Faculty Responsibilities: UHAP 3.1, Duties and Responsibilities of Faculty: <http://policy.arizona.edu/employmenthuman-resources/duties-and-appointments-faculty#revision>
- Statement on Professional Conduct, UHAP 7.01: <https://policy.arizona.edu/faculty-affairs-and-academics/professional-conduct>
- Proposed revision: <http://policy.arizona.edu/faculty-affairs-and-academics/proposed-revision-uhap-statement-professional-conduct>

EXHIBIT C

ABOR FREE EXPRESSION POLICY

1-124 Free Expression

- A. The primary function of Arizona's public universities is to promote the discovery, improvement, transmission and dissemination of knowledge through research, teaching, discussion and debate. The universities must strive to ensure the fullest degree of intellectual freedom and free expression. It is not the proper role of a university to shield individuals from speech protected by the First Amendment, including ideas and opinions that may be unwelcome, disagreeable or deeply offensive.
- B. Students, staff and faculty members may discuss any topic, as the First Amendment allows and within the limits of reasonable content- and viewpoint-neutral restrictions on time, place and manner of expression that are consistent with applicable law and that are necessary to achieve a compelling institutional interest if these restrictions are clear, are published and provide ample alternative means of expression. The board's policy on political activity by employees or others acting on behalf of a university is set forth in Board Policy 6-905.
- C. Students, staff and faculty members may assemble and engage in spontaneous expressive activities if those activities are not unlawful and do not materially and substantially disrupt the functioning of the university.
- D. A student who is subject to the jurisdiction of a university and who engages in individual conduct that materially and substantially infringes on the rights of other persons to engage in or listen to expressive activity, as defined in A.R.S. § 15-1861, is subject to disciplinary sanctions under the Student Code of Conduct and other applicable university and board policies. This does not preclude students from engaging in counter speech as First Amendment principles may permit.
- E. Universities may restrict expressive activity that is not protected by the First Amendment.
- F. The board will establish a Committee on Free Expression composed of representatives from the universities and the board office, which will submit an annual report as required by A.R.S. §15-1867.

EXHIBIT D

ALLOCATION OF STUDENT ACTIVITY FEES BY UNIVERSITY

ASU

The Associated Students of Arizona State University is responsible for oversight of the student programming fee that provides funding to more than 1,000 student organizations annually. This includes funding for the Programming and Activities Board, sport club organizations, cultural coalitions, college councils and registered organizations that seek funding. Students and student organizations can also seek funding for traveling to professional and academic conferences. The Undergraduate Student Government spent approximately \$2,343,938 on appropriations for more than 700 undergraduate clubs and organizations (including general clubs, sport clubs, cultural coalitions, college councils and Programming and Activities Board) in fiscal year 2019-2020. The Undergraduate Student Government also spent approximately \$100,000 on 280 individuals who traveled to academic and professional conferences. The Graduate and Professional Student Association spent approximately \$47,000 on appropriations for more than 40 graduate clubs and organizations. The Graduate and Professional Student Association also spent approximately \$305,000 on 607 individuals who traveled to academic and professional conferences. Undergraduates pay \$30/semester and graduate students pay \$35/semester for the student programming fee. The remainder of the student programming fee budget supported the Safety Escort Service, Bike Co-op, large events such as the Infernofest concert, community gatherings, professional artists and speakers, rental fees and supplies.

NAU

NAU supported 25 different events this past year. Total expenditure for fiscal year 2020 was \$108,920.31 (\$2,798.45 of that going to student wages/ERE).

UARIZONA

The Associated Students of the University of Arizona (ASUA) operate the Wildcat Events Board (WEB), a student-run group that programs campus-wide social and educational events that are open and accessible to all UArizona students. The WEB is funded by a \$5 fee per student. This fee is refundable for any student who requests one. WEB aims to bring about a greater spirit of unity and cooperation among all students and to encourage the development of leadership abilities and other skills through participation in programming. This year the budget supported large events such as concerts, community gatherings, partnering with campus departments for speakers, rental and facility fees, and supplies. At this time, WEB has not received any requests for funding specifically for events related to freedom of expression.

