

**ARIZONA BOARD OF REGENTS**  
Minutes of the Free Expression Committee  
August 7, 2018

A meeting of the Free Expression Committee was held on August 7, 2018 at the board office in Phoenix, Arizona.

Present:        John Arnold  
                  Derrick Anderson (via phone)  
                  Stefanie Lindquist (via phone)  
                  Joanne Vogel (via phone)  
                  Erin Grisham (via phone)  
                  Michelle Parker  
                  Eric Yordy (via phone)  
                  Kimberly Ott (via phone)  
                  Natalynn Masters (via phone)  
                  Kathy Adams Riestler (via phone)  
                  David Schmitz (via phone)  
                  Robert "Bob" Sommerfeld (via phone)

Absent:         José Cárdenas, Michael Bergstrom and Dylan Graham.

Also present were Regent Taylor Robson (via phone), Nancy Tribbensee, Jennifer Pollock, Julie Newberg, Lia Foy, Monica Simental, Kate Linder and Suzanne Templin from the board office; and Cynthia Jewitt (via phone) and Christine Wilkinson (via phone) from Arizona State University. In the audience Rachel Leingang and Casey Kuhn.

John Arnold called the meeting to order at 2:02 p.m.

**Review of Statutory Authorization for the Committee: A.R.S. § 15-1867 (Item 1)**

Nancy Tribbensee presented the statute that requires the Board of Regents to establish a committee on Free Expression. The statute includes requirements for the content and distribution of a report on free expression.

**Discussion and Action Regarding Statutory Report (Item 2)**

Nancy Tribbensee stated that the statutory report was originally scheduled for action to review and approve at this meeting, but because the committee has not had an opportunity to view the report, the committee will use this meeting to discuss the responsibilities of the committee and the universities under this new legislation and items on the report. Approval will be moved to a future meeting.

Nancy stated that legislation went into effect on August 3, 2018. The first report is due to the governor, legislature and the secretary of state by September 1, 2018. Nancy has been working with the senior associates to the presidents and university legal counsel to develop the draft report for the committee to review.

The report will help to demonstrate how the AZ public universities address speech issues on campuses. The report will document for the members of the committee, the campuses,

the legislature and the regents what the universities have been doing to protect and promote free speech.

As educational institutions it is a core part of our mission to explain that it is not the role of the universities to shield students or the broader community from protected speech. We do have a role in explaining what it means for speech, including offensive speech, to be protected. As part of our educational mission, the universities work with constituents to explain why offensive speech may be protected and may discuss strategies for responses that are consistent with constitutional protections.

Broadly the statutory requirements for the annual report are to address any barriers to, or disruptions of free expression on campus. The universities are strong advocates for free expression, they take this very seriously and welcome the opportunity to demonstrate their commitment to free speech through this committee and the report that will be provided to the legislature.

The proposed report will explain that the universities do not tolerate barriers to, or disruptions of free expressions. There are reasonable time, place and manner restrictions in place because we are public educational institutions. Speech that disrupts the educational mission may be subject to restriction by the universities. Each university has established procedures for scheduling expressive activities on campus and for speech that arises extemporaneously that does not violate safety, restrict public access, or is so loud that it disrupts classes. When a university receives an allegations that someone is disrupting protected speech, the circumstances are reviewed to make sure that protected speech is allowed to continue and flourish on campus. The report will provide information from each university about its policies and procedures.

The universities strive to promote diversity of thought and not to decide what views people should take on campus. There is no single administrative position on issues that faculty, staff and students are required to promote. There is a great effort to address speech, even offensive speech, with opportunities for more speech to encourage the safe expression of divergent viewpoints. Each university engages in a tremendous amount of educational programming with incoming students, to make sure students understand their rights and responsibilities.

Nancy thanked the individuals that have provided information to draft the proposed report. The level of commitment to training people who work with students and educating students is outstanding. The universities have materials in orientation programs for new students to campus who may not be familiar with this diverse of an environment. The statute focuses on student expression because of a number of nationally examples in which controversial speakers have come to campuses resulting in student protests and increased security costs. None of these examples have been from Arizona universities. Speech is not just an important student issue it is of great importance to employees that work on campus and faculty who cherish academic freedom. Universities' commitments to speech and protections for speech go beyond the statutory requirements.

The statute also requires the universities to provide an allocation of student activities fees that are used to support and facilitate “the expression and activities of students or student organizations”. There are not very many (if any) student fees that are directly allocated to speech and because the statute has just gone into effect, these records have not been previously maintained.

The report will be distributed to the Governor, Speaker of the House of Representatives, the President of the Arizona Senate and the Arizona Secretary of State. Arizona Board of Regents is also required to post the report on our website. ABOR’s communication team has created a website dedicated to the work of the Free Expression’s Committee, where the report will be posted, along with the ongoing work of the committee, resources for anyone that is interested in free expression, such as the University of Chicago statement, the Kalven report, the state constitution, first amendment and the bill passed establishing the Free Expression’s committee. Nancy asked that any recommendations on materials to be posted on the website be sent to her. The goal is to be thorough, transparent and comply with the statute and to begin the year by describing the tremendous amount of work that the universities are already doing.

Chair Arnold thanked Nancy and opened the floor for discussions and questions.

David Schmitz asked about the dimensions of diversity that the committee will be concerned about i.e.: that women don’t get intimidated in a classroom setting; people with non-mainstreamed political views are not intimidated? Intimidation is only a subset of the categories that the committee should worry about. When talking about diversity, is the discussion in any direction that can be imagined? What is the context? Is it other colleges not in Arizona where visiting speakers have not been allowed to speak? Is this the type of headline news situation to be worried about? Or is the committee to talk about things that are way more subtle or more ambiguous than that? What if someone says, “I hear what you’re saying about diversity of thought, but I actually think there are some forms of diverse thought that are beyond the pale and we should make sure people like that don’t get to talk or at least don’t feel comfortable when they do talk.” There are philosophical puzzles, like when someone says that they think there is speech that shouldn’t be protected. Do we say you have a right to your point of view? Do we say we have a duty to be officially neutral? Do we have to give the impression that we think the truth is somewhere in the middle? Or do we just say freedom of speech, you are wrong to want to limit it and then someone says you are limiting freedom of speech. Will these be something that the committee will get to? Is it part of the committee’s purview?

Nancy Tribbensee commented that these are questions the committee may discuss over the next year. The question back is, if these conversations can’t happen at a university where can they happen? Some are difficult conversations, not everyone may agree on perspectives on those issues. There are some people for whom some speech is so intolerable and so offensive that it is very hard to protect, but we are having the conversation not only in the context of First Amendment jurisprudence, but also other laws that are out there that protect individuals from speech that is so directed at an individual that it is no longer subject to protection. These type of philosophical questions are important ones, the universities wrestle with these more nuanced questions about

particularly offensive speech. The legislature is encouraging the universities to always remain neutral and not have an official position. It is a challenge for universities that are very conscious of the effect of words on members of their communities, so I believe this is an ongoing conversation and an important one.

The report is anticipated to be distributed to the committee by August 8 or August 9. Nancy reminded the committee that they are subject to the open meeting law. The report will be sent in a way that members can respond to her only and not to other members of the committee. Nancy cautioned that we cannot have a quorum of the committee emailing about committee business.

Chair Arnold asked that the committee send comments or questions to Nancy Tribbensee. Nancy is the key staff contact for this committee.

### **Next Steps – Meetings and Potential Topics for Next Year (Item 3)**

Chair Arnold asked for a review of the open meeting laws as they relate to the Free Expressions Committee be discussed at the next meeting.

Chair Arnold recommended that committee meetings be held quarterly to prepare and review for next year's report.

Bob Sommerfeld asked to include on the agenda a review of any sort of freedom of expression events that have occurred in that quarter that can be looked at and discussed for possible after action and possible future actions to be taken.

Kathy Riester asked for a discussion item to identify what type of events to track for future reporting, and a standardized format.

Chair Arnold stated that ABOR staff will be contacting the committee to schedule a meeting for next week, and to schedule a mid-fall meeting. Send any suggestions for future meetings to Nancy Tribbensee. The webpage designated for the Free Expression Committee will be housed on the Arizona Board of Regents website. The committee materials, announcements and other materials will be uploaded to the website. All suggestions are welcome for additions to the website.

### **ADJOURNMENT**

Chair Arnold made the motion, seconded by Michelle Parker to adjourn. The meeting adjourned 2:30 p.m.

Submitted by:

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Suzanne Templin  
Committee Secretary