

ARIZONA BOARD OF REGENTS' COMMITTEE ON FREE EXPRESSION ANNUAL REPORT

September 1, 2019

THE ARIZONA BOARD OF REGENTS AND ARIZONA'S PUBLIC UNIVERSITIES PROMOTE AND PROTECT FREE EXPRESSION

The board and the universities strive to ensure the fullest degree of intellectual freedom and free expression at our institutions. The universities do not shield individuals from speech protected by the First Amendment, including ideas and opinions that may be unwelcome, disagreeable or deeply offensive.

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 Arizona Board of Regents 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.

The universities and the board have a long history of protecting free expression. A comprehensive list of current board and university policies that protect and promote free speech is provided in Exhibit B. The ABOR Policy on Free Expression is included as Exhibit C.

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

All three of Arizona's public universities have a green light rating from the Foundation for Individual Rights in Education (FIRE), recognizing the commitment of the board and the universities to free speech.

<https://www.thefire.org/one-million-students-now-attend-colleges-with-fires-highest-free-speech-rating/>

Each university has policies and procedures to encourage and protect lawful speech. All expressive activities are subject to reasonable time, place and manner restrictions as permitted by law. Board and university policies reflect that not all speech is protected 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 from each university.

ASU

Arizona State University is committed to free speech, subject to reasonable restrictions designed to promote free speech while serving the university's educational function. This is consistent with the board's recognition that university "... grounds and properties are devoted to and maintained for the sovereign function of providing higher education to the people and are not places of unrestricted public access." (ABOR Policy 7-201)

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 fora 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.

NAU

The Northern Arizona University "Statement Regarding Planned Events" recognizes that the right to freedom of expression is protected by the First Amendment and is upheld by the Arizona Board of Regents and NAU. NAU supports the free expression of individual and group views on a variety of topics. The creation and maintenance of productive environments within which this expression and exchange of ideas may take place is an important mission for the university.

While the issues and topics may vary and at times be controversial, it is the expectation of the university that members of the university community (students, faculty, staff and guests) will respect the right of others to freely express their opinions, beliefs and views. The university recognizes the importance of and the right to freedom of speech, including the right to assemble, to march, and other rights related to the expression of thoughts and ideas. Related to its role of creating and maintaining a conducive atmosphere for the free expression of views, the university recognizes the importance of organizing events so that they may be carried out in a positive and safe way.

These guidelines exist to ensure that the free exchange of ideas within public and designated public fora may occur, while simultaneously preserving public health, safety, welfare, the normal business uses of the campus, and the rights of all members of the NAU community to legitimately use and enjoy the campus. The statement also provides detailed procedures related to the organization of individual and group events.

NAU's SpEAK (Speech, Expression, Action and Knowledge) Team responds to planned and spontaneous free speech events and visiting speakers to ensure that the First Amendment rights of students and guests are protected and address any safety concerns. Staff from the Office of the Dean of Students serve on the SpEAK Team in an on-call rotation along with director-level staff and other volunteers from across the Student Affairs division.

UA

University 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 UA's "Policy and Regulations Governing the Use of the Campus" 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 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 a process for responding to allegations of barriers to or disruptions of protected speech. 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.

Neither ASU nor NAU reported any barriers to or disruptions of protected speech. UA reported one allegation, as discussed below. During this reporting period, ABOR successfully defended a lawsuit alleging a violation of the First Amendment.

On Nov. 29, 2018, the Federal District Court for the District of Arizona dismissed a lawsuit filed by American Muslims for Palestine (AMP) alleging that ABOR and university policies regarding speakers violated the First Amendment - <https://public.azregents.edu/News%20Clips%20Docs/AMP%20Order.pdf>. The case, which generated a lot of media attention when first filed, was really a challenge to the state statute that requires putting in an anti-boycott Israel provision in state contracts, i.e., requiring parties that contract with public entities to certify that they are not engaged in and won't during the pendency of the contract engage in a boycott of Israel.

In December 2017, ASU removed that provision from its speaker engagement contracts because it concluded that the statute did not apply to speaker contracts.

In February 2018, the chairman of AMP was invited to speak at ASU. Relying on an outdated version of the contract, AMP filed suit against the Arizona Attorney General and ASU/ABOR challenging the application of the statute. ASU promptly told the plaintiffs that they had the wrong contract and also provided assurances that they could speak without having to make the certification. The AMP representatives did in fact speak at ASU in April.

But, plaintiffs persisted in their lawsuit alleging that ABOR, ASU, NAU and UA might enforce such a provision in the future. In the meantime, enforcement of the statute plaintiffs were complaining about was enjoined in a separate lawsuit. That was one of the reasons for the court's order. But the court also stated that there was no factual basis for plaintiffs' claims:

Here, plaintiffs haven't suffered an injury. The gist of what occurred is that plaintiffs were invited to speak at ASU. Although they initially believed they'd be required to sign a no-boycott certification in order to

accept the invitation, they quickly learned this understanding was incorrect. As a result, they were allowed to speak at the ASU event on April 3, 2018, without signing the certification. Where's the injury? There is none. (Order at pp 8-9.) ... Here, although the complaint itself alleges plaintiffs were prevented from speaking due to the presence of a no-boycott clause in ASU's speaker contracts, plaintiffs subsequently filed a stipulation confirming they were being allowed to speak without completing the certification. (Doc. 20-1.) It would be nonsensical to confer standing on plaintiffs based on allegations in a complaint that plaintiffs themselves have now admitted are factually inaccurate. (Order at p. 9 n. 4.)

The UA allegation related to an incident that occurred on March 19, 2019. The UA Criminal Justice Club held a meeting at which two agents of the U.S. Border Patrol were invited to present to the club. A UA student outside of the meeting began yelling at the agents and was then joined by two other UA students who also began to yell at the agents. Eventually, the Border Patrol agents agreed to end their presentation early and left the campus. After an investigation, UA police determined that there were sufficient grounds to charge the students with a violation of the state statute that prohibits the disruption of an educational institution. One student was also charged with making threats and engaging in intimidation. The charges were referred to the Office of the Pima County Attorney, which dismissed the charges without prejudice. The matter is currently under confidential review by the UA Dean of Students Office pursuant to board and university policies, including the Student Code of Conduct, e.g. ABOR 5-308 (F)(11).

After the UA incident, students, faculty and staff visibly and publicly expressed concerns. Recognizing the significance of the concerns, UA began an ongoing, extensive university and community-wide engagement to address the speech and expression issues implicated by the incident. This includes a review of the university's speech and expression policies and protocols as well as educational resources relating to free speech to determine if enhancements can be made. Additionally, the university has begun a series of campus-wide conversations on speech and expressive activity at the UA to further that community engagement.

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

As described in this report, the board and the universities remain committed to promoting and protecting diversity of thought and free expression. At the Jan. 24, 2019, meeting of the ABOR Academic Affairs and Educational Attainment Committee, each university provost provided a comprehensive presentation on freedom of speech and civil discourse. The discussion included descriptions of university curricula, culture, environment and campus activities demonstrating the universities' ongoing commitment to free expression, civil discourse and diversity of thought on campus. Those presentations are available at:

<https://public.azregents.edu/Academic%20Affairs%20and%20Educational%20Attainment/2019-1-24-AAEA-Committee-Book-FINAL.pdf>

From time to time, however, the board and the 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 expression permitted under applicable law. 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

During the past year, ABOR and the universities have been preparing for the inaugural [Regents' Cup](#) debate competition, which will be held at the UA on Nov. 16, 2019. The Regents' Cup is a tri-university team debate competition designed to highlight and encourage civil discourse among students.

Students from ASU, NAU and the UA will compete in rigorous debate anchored by mutual respect and civil discourse. Winning student teams will receive scholarships. The Regents' Cup is an opportunity for Arizona's public universities to showcase their commitment to diversity of thought and civil discourse.

ASU

During academic year 2019, the School of Civic and Economic Thought and Leadership, Walter Cronkite School of Journalism and Mass Communication and Sandra Day O'Connor College of Law hosted a lecture series and conference, "Polarization and Civil Disagreement: Confronting America's Civic Crisis."

<https://azpbs.org/2018/10/polarization-a-civic-crisis/>

The 11-session series kicked off on October 26 and concluded on April 26. Topics included "Identity and Citizenship," "Bringing America Together," "How to Have a Civil Conversation Across the Political Divide," "Healing a Fractured Country/Rethinking Polarization: How a Tough Problem Got Tougher" and "Democratic Knowledge: A Roadmap for Rebuilding Civic Education."

NAU

NAU's Philosophy Department faculty continue to participate in Philosophy in the Public Interest (PPI), a program for creating opportunities for deliberation and reflection to benefit the people and communities of Northern Arizona. The central mission of PPI is to provide forums for the public to do philosophy with the guidance of trained philosophers. PPI creates opportunities for members of the community beyond the university to engage in careful, reasoned discussion with one another about topics of deep concern. There are too few spaces for thinking diligently and engaging in deep conversation with others. By providing such spaces, PPI fills a unique and necessary role in the Flagstaff community. Discussions are framed by philosopher-facilitators so that the discussions yield thoughtful exchanges from multiple perspectives.

NAU's Economic Policy Institute hosts an annual conference on economic climate, bringing information to the northern region with a variety of perspectives from panelists.

NAU also identified the following speech-related events over the past year:

- Guest preacher at beginning of fall semester
- Student Success Rally (students and community members — ASNAU and Adam Shimoni were involved.)
- Martin Luther King, Jr. Day March (annual event)
- Cesar Chavez March
- Brandon Tatum, hosted by Turning Point
- Amnesty International Rally
- Gathering in First Amendment Plaza regarding Mental Health Services at NAU

UA

In late 2018, the UA's Government and Community Relations team met with the Academic Personnel Policy Committee, a subcommittee of the UA Faculty Senate, to discuss institutional neutrality and diversity of thought on campus, including consideration of the Chicago Statement. The core principles of the Chicago Statement affirm the role of academic freedom and freedom of expression on college campuses. While the UA has long maintained a strong set of institutions regarding these topics, the committee highlighted the importance of emphasizing the values laid out in the Chicago Statement and recommended the full UA Faculty Senate adopt the principles at its next meeting. The UA Faculty Senate unanimously adopted the Chicago Statement at its February 2019 meeting, further demonstrating the UA's commitment to protecting and promoting freedom of expression.

Additionally, the UA reached out to FIRE, about its free expression rating and enacted changes after those discussions. Subsequently, FIRE awarded the UA a green light rating, its highest recognition for protection of free expression. UA President Robert C. Robbins highlighted these accomplishments through a university-wide [communication](#) declaring that free speech is essential in sustaining a democratic society, and it is equally important in providing an exceptional university education.

The UA'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.

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 SEPTEMBER 1, 2019

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
- Ronni Marks, ASNAU Student Body President
- Kimberley Ott, Assistant to the President for Executive Communications & Media Relations
- Michelle Parker, General Counsel
- Eric Yordy, Associate Professor, Business Law, The W.A. Franke College of Business

UA 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/ci/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 Statement Regarding Planned Events <https://nau.edu/student-life/statement-regarding-planned-events/>
 - NAU Club & Organization Event Approval Process <https://nau.edu/student-life/approval-process/>
 - Information distribution policy <https://nau.edu/student-life/university-policies-rules-regulations/>

- 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: <http://policy.arizona.edu/employmenthuman-resources/political-activity-uhap>
 - 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: <http://policy.arizona.edu/employmenthuman-resources/statement-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 ASU is responsible for oversight of the student programming fee that provides funding to more than 600 student organizations annually. This includes funding for the Programming and Activities Board, sport club organizations, cultural coalitions, college councils and registered organizations seeking funding. Students and student organizations can also seek funding for travel to professional and academic conferences. The Undergraduate Student Government spent approximately \$2,567,800 on appropriations for more than 770 undergraduate clubs and organizations (including general clubs, sport clubs, cultural coalitions, college councils, and Programming and Activities Board) in fiscal year 2018-2019. The Undergraduate Student Government also spent approximately \$80,000 on 221 individuals who traveled to academic and professional conferences. The Graduate and Professional Student Association spent approximately \$80,000 on appropriations for more than 20 graduate clubs and organizations. The Graduate and Professional Student Association also spent approximately \$353,000 on 600 individuals who traveled to academic and professional conferences. Undergraduates pay \$30 a semester and graduate students pay \$35 per 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:

Registered student organizations and individual students can apply to ASNAU for financial support to host events, travel to conferences or competitions, etc. During the 2018-2019 academic year, ASNAU paid out \$270,151.69 to over 180 registered organizations and individual students. Of the reimbursement requests that were approved, 101 were for travel to conferences or trainings; 47 were for travel to tournaments or competitions; 26 were for hosting on-campus events; and 17 were for other expenditures such as community service projects, job shadowing and the creation of a student film.

The Student Activities Council (STAC) receives a portion of the student activity fee. Registered student organizations and campus departments can apply to STAC for financial support for events that are open to all students and take place on the Flagstaff Mountain campus. During the 2017-2018 academic year, STAC paid out \$118,177.28 for 22 events hosted or co-hosted by registered student organizations.

UA:

The Associated Students of the University of Arizona (ASUA) operates the Wildcat Events Board (WEB), a student-run group that programs campus-wide social and educational events that are open and accessible to all UA students. WEB has a budget of roughly \$180,000 generated from a \$3 fee per-student. This fee is refundable for any student who requests one. 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.