



SOUTHEASTERN LEGAL FOUNDATION
Rebuilding the American Republic®

September 24, 2020

VIA EMAIL

Dr. Ronald L. Mitchelson
Interim Chancellor
East Carolina University
mitchelsonr@ecu.edu

Re: Unconstitutional First Amendment Violations: Campus COVID-19 Policies

Dear Dr. Mitchelson:

We are writing to you to follow up about the letter we sent on September 16, 2020, regarding COVID policies at East Carolina University (ECU). As we stated in our letter, several students are concerned about these policies and potential disciplinary actions that could be taken against them. Although ECU students are currently not on campus, they are already planning ahead for the spring semester. A lack of clarity about ECU's COVID policies will influence their decisions to return to campus in the spring.

As SLF mentioned in its last letter, some student organizations were allowed to gather in protest on campus, despite a University ban on gatherings over 50 people. We also understand that members of ECU's faculty and administration were present at the gathering. The issue is not that some students engaged in speech; SLF supports the rights of *all* students to do so. The issue is whether the University will respect the speech activities of all students in the spring, regardless of the format or views behind them. Any school policies that distinguish between activities—based either on the message or the type of activity—amount to viewpoint and content-based discrimination, respectively.

SLF understands that these times present serious challenges for universities. However, policies must be both viewpoint and content-neutral. SLF and ECU students request further clarity about how the University plans to address different speech activities. The following are common ways students assemble and exercise their First Amendment rights. Please indicate how the University would handle each of the following situations, regardless of how the University becomes aware of these events:

1. A student organization tables on campus to gain new members.
2. A student group hosts a 60-person meeting indoors, 6 feet apart, wearing masks.
3. A student group hosts a 60-person meeting outdoors, 6 feet apart, wearing masks.

4. Students host an off-campus event indoors.
5. Students host an off-campus event outdoors.
6. A sports club hosts a practice or game outdoors.
7. A sports club hosts a practice or game indoors.
8. Students engage in a protest on campus.
9. Students engage in a counter-protest on campus.
10. Students engage in a protest or counter-protest off campus.
11. Students host a rally to support local police.
12. Students bring speakers to campus.
13. Students post advertisements for their on-campus events.
14. Students post advertisements for their off-campus events.
15. A student or student organization is anonymously reported for violating COVID policies without supporting evidence.
16. A student or student organization is anonymously reported for violating COVID policies with supporting evidence.
17. A student or student organization is reported a second time for violating COVID policies without supporting evidence.
18. A student or student organization is reported a second time for violating COVID policies with supporting evidence.

Several Supreme Court Justices have affirmed the government’s duty to uphold our Constitution during COVID, stating that “a public health emergency does not give Governors and other public officials *carte blanche* to disregard the Constitution for as long as the medical problem persists.”¹ Even during these times of unrest and uncertainty, “the remedy to be applied is more speech, not enforced silence.”² Students must be allowed and encouraged to exercise their First Amendment rights to speak and assemble freely. It is imperative that students know the University’s position on these matters as they assess their plans for the spring semester.

Yours in Freedom,



Kimberly S. Hermann
General Counsel
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¹ *Calvary Chapel Dayton Valley v. Sisolak*, 591 U.S. ___ (2020) (Alito, J., dissenting from Court’s decision not to hear case seeking injunctive relief).

² *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring).

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