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March 12, 2024

Dr. Richard A. Carvajal
President
Valdosta State University
president@valdosta.edu

Re: Violation of Georgia's FORUM Act and Students' First Amendment Rights

Dear President Carvajal:

We are writing to you out of concern that Valdosta State University (VSU) may have run afoul of Georgia's FORUM Act, OCGA § 20-3-48, and the First Amendment to the United States Constitution. We understand that, during the fall 2023 semester, a VSU student and his invited guest, an employee of Young Americans for Liberty (YAL), came to VSU's campus to use an open space to recruit students for a new chapter of YAL. The student and his invited guest were informed by a VSU official that they could not use the space that they were in and that they would need to move to VSU's "free speech zone." The free speech zone is an approximately 10-foot-wide plot; it is far away from the center of campus and obscured by trees and bushes. This action by VSU officials may have violated Georgia's FORUM Act and may have infringed the First Amendment rights of both the student and his invited guest.

Southeastern Legal Foundation is a national, nonprofit legal organization dedicated to defending liberty and Rebuilding the American Republic®. We educate the public about students' First Amendment rights on college campuses and take legal action when the rights of students and speakers are violated. This letter seeks to inform VSU that its actions may not accord with the First Amendment and Georgia law.

Factual Background

A VSU student and his invited guest, an employee of YAL, set up a table in an open, outdoor area of campus to speak with students who walked by about starting a YAL chapter on VSU's campus. On the first day they tabled, the student and his invited guest collected signatures and contact information from interested students who walked by without incident. But when they returned on the second day, they were met by a VSU administrator who insisted that only registered student organizations could use the area they were in and that they would need to move to the "free speech zone"—a tiny, out-of-the-way section of campus obscured by bushes and trees that is only open for a small part of the week. Knowing it would be harder for them to reach students from the "free speech zone," the pair complied, but reluctantly. They hoped they would be able to become a registered student organization and gain access to better locations on campus. But barring them from the area where most students were made it hard for them to raise awareness and get enough interest in YAL to start a registered student organization. YAL is still not a registered organization.

The actions of the administrator follow VSU's Free Expression and Assembly policy.¹ That policy provides that "individuals or groups who are not members of the University Community," like the student's invited guest, may *only* speak in the "free speech zone"—which must be reserved in advance, is only open during working hours Monday through Thursday and only until 2:30 p.m. on Friday, is only open to one table at a time, and is poorly positioned on campus. The policy goes on to explain that members of the "University Community" are free to speak in outdoor areas of campus between 8:30 a.m. and 10 p.m., seven days of the week. It defines the University Community as only students, faculty, and staff.

VSU's actions and policies appear to contradict state law. Georgia's FORUM Act² orders that:

Unrestricted outdoor areas of campuses of public institutions of higher education in this state shall be deemed public forums for the campus community, and public institutions of higher education *shall not create* "free speech zones" or other designated areas of campus outside of which expressive activities are prohibited for the campus community.

The FORUM Act defines "campus community" to mean "students, administrators, faculty, and staff at the public institution of higher education *and their invited guests.*"³ Under the FORUM Act, both the VSU student and his invited guest are entitled to speak in any unrestricted outdoor area of campus, like the location they originally selected for their recruitment efforts before being instructed to move.

Analysis

It is well-settled that a college campus is the "marketplace of ideas" where students are exposed "to that robust exchange of ideas which discovers truth."⁴ Indeed, freedom of speech and academic inquiry are "vital" on college campuses, because only through thoughtful debate and discourse can real education occur.⁵ This peculiar environment is why the Supreme Court has often likened students' free speech rights on their campuses to that most firmly guaranteed right of every person to speak their mind on public streets and in public parks.⁶ VSU's actions undermine this bedrock principle and raise serious First Amendment concerns. VSU's decision to order the student and his invited guest to move to the "free speech zone" does not align with the First Amendment, with Georgia's FORUM Act, or even with VSU's own policy.

The First Amendment permits only reasonable and content-neutral time, place, and manner restrictions on speech, and it permits those only when they are "narrowly tailored to serve a significant government interest . . . leav[ing] open ample alternative channels of communication."⁷

¹ <https://www.valdosta.edu/administration/policies/documents/free-expression-and-assembly.pdf>.

² OCGA § 20-3-48 (emphasis added).

³ OCGA § 20-3-48(b)(1) (emphasis added).

⁴ *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967).

⁵ *Healy v. James*, 408 U.S. 169, 180 (1972).

⁶ See *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 802–03 (1985); *Widmar v. Vincent*, 454 U.S. 263, 267 n.5 (1981).

⁷ *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983).

In keeping with this principle, courts frequently prevent universities from enforcing policies that relegate speech to tiny areas set apart from the center of campus.⁸ VSU's policies are in tension with the First Amendment because they limit non-student speech to the tiny free speech zone, by tightly curtailing the hours in which speech can occur, and by requiring that speakers obtain prior permission for even basic expressive activities like tabling.⁹ Further, these VSU policies appear to contradict Georgia's FORUM Act, which requires that members of the campus community be permitted to spontaneously assemble in open areas of campus and never be relegated to "free speech zones." VSU's policies limit these protections only to students themselves, but the FORUM Act requires that a student's invited guests—such as the YAL employee here—be granted the same speech protections as any other member of the campus community. Lastly, VSU even appears to have violated its own policies by requesting that a current VSU student move to the free speech zone.¹⁰ The pair should have been allowed to continue their activities where and when they were—in an open outdoor area of campus during daytime hours.

Demand

SLF urges VSU to (1) amend its policies as necessary to accord with state and federal law and (2) ensure that its staff are enforcing VSU policies in compliance with state and federal law. We further urge VSU to issue a statement acknowledging the error and reiterating VSU's commitment to open discourse on its campus.

Open discourse is critical to both a functioning democracy and a well-rounded college experience. College students are in the unique position of being surrounded by true diversity: diversity of thought, background, religion, and culture. For many, this is the first—and perhaps only—time they will be exposed to a "marketplace of ideas" different from their own. The college experience can have a significant impact on the leaders of tomorrow, and for this reason, universities must provide students with access to share their ideas and hear ideas from other students. VSU must do its part to ensure this.

Yours in Freedom,

/s/ Braden Boucek

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⁸ See, e.g., *Shaw v. Burke*, No. 17-CV-2386, 2018 U.S. Dist. LEXIS 7584, at *9 (C.D. Cal. Jan. 17, 2018); *Univ. of Cincinnati Chapter of Young Ams. For Liberty v. Williams*, No. 12-cv-155, 2012 U.S. Dist. LEXIS 80967, at *6–7 (S.D. Ohio June 12, 2012); *Pro-Life Cougars v. Univ. of Houston*, 259 F. Supp. 2d 575, 578 (S.D. Tex. 2003), *dismissed*, 67 F. App'x 251 (5th Cir. 2003).

⁹ See, e.g., *Healy*, 408 U.S. at 184; *Perry Educ. Ass'n*, 460 U.S. at 45.

¹⁰ See *supra* n.1, VSU Free Expression and Assembly Policy, at 5 (expressing that the policy does not apply to speech by students in gatherings smaller than 30 people).