November 22, 2019

**VIA EMAIL**
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**VIA EMAIL**
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Re: *Unconstitutional First Amendment Violations: University of Georgia Student Government Association Resolutions 32-06 and 32-07*

Dear Ms. Byers and Mr. Sumner:

We are writing to you on behalf of students at the University of Georgia who are concerned about what occurred during a recent Student Government Association (SGA) meeting. The students fear that two of the resolutions passed, Resolutions 32-06 and 32-07, will stifle their First Amendment rights.

Southeastern Legal Foundation is a nonprofit public interest law firm and policy center dedicated to advocating limited government, protecting American freedom, and defending individual liberties. Through our 1A Project, we educate the public about students’ First Amendment rights on college campuses. This letter seeks to inform SGA about the dangerous, unconstitutional precedent these Resolutions set because they serve to suppress, rather than encourage, public debate. As such, we respectfully demand that SGA rescind these Resolutions.

**Factual Background**

On November 12, 2019, SGA Senate passed two resolutions regarding speech on campus. Resolution 32-06 condemns “graphic images” that were part of a student protest that it claims “could have had triggering effects” on the student body. SGA resolves that it is deeply distressed by the speech, claiming that it “might have” affected students’ ability “to pursue education, conduct research, and otherwise work and attend the Institution.” It also strongly suggests that the speech is punishable as a violation of UGA’s Code of Conduct.

Resolution 32-07 resolves, “[I]n light of recent events on campus regarding organizational affairs” and UGA’s “welcoming climate of respect and inclusiveness,” SGA will publicize all student activities on campus through a weekly newsletter. The newsletter will include all student plans to “table, advertise, or advocate at” campus free speech zones. The Resolution also appears to require a description in the newsletter of students’ “intent” behind their activities. SGA claims that the newsletter will keep students...
“more informed about activities” and will allow students to determine whether to participate in campus programs.

**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.” Indeed, freedom of speech and academic inquiry are “vital” on college campuses, because only through thoughtful debate and discourse can real education occur. The Resolutions undermine this bedrock principle and raise serious First Amendment concerns because they (1) are unconstitutionally vague and overbroad; (2) pave the way for content and viewpoint-based discrimination; and (3) have a serious chilling effect on student speech.

I. The SGA Resolutions are unconstitutionally vague and overbroad.

The Constitution does not protect four limited categories of speech: obscenity, inciting others to imminent lawless action, “true threats,” and defamation. However, the Constitution does protect every other form of speech, including—but not limited to—protesting, tabling, distributing flyers, posting signs, and publishing articles. Most importantly, the Constitution protects speech that offends others, including hate speech. A school cannot single out speech it finds offensive, even if the entire student body is offended.

A policy violates the Constitution when it is so broad that it infringes on constitutionally protected speech. SGA does not limit the scope of its Resolutions to the four categories of unprotected speech—obscenity, incitement to violence, true threats, or defamation. By failing to describe specifically how the demonstrations fit within one of these four categories, the Resolutions are unconstitutionally overbroad.

A law or policy is unconstitutionally vague when it establishes a requirement or punishment without specifying what is required or what conduct is punishable. Students cannot be and are not expected to comply with a vague school policy because they have no way of knowing exactly what is required or prohibited. Resolution 32-06 points to “imagery” that is “graphic and distressing in nature.” But the policy provides no definition for imagery—does it refer to pictures? videos? art? posters? a play? It also does not define “graphic” or “distressing.” In fact, words like “distressing” are quite subjective and beg the question: distressing to whom? Does SGA intend to limit the scope of “distress” to members of the UGA community who have experienced miscarriages and abortion? Moreover, the Resolution points to potential triggering effects, such as nausea, without articulating any instance where this effect actually occurred. Are triggering effects limited only to nausea? In what ways do these potentially serious effects limit students’ ability “to pursue education, conduct research, and otherwise work and attend the Institution”?

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5. “True threats” are words or conduct that intentionally put others in fear for their physical safety. This is not the same as hate speech. Koeppe1 v. Romano, 252 F. Supp. 3d 1310 (M.D. Fla. 2017), aff’d sub nom. Doe v. Valencia Coll., No. 17-12562, 2018 WL 4354223 (11th Cir. Sept. 13, 2018).
Resolution 32-07 similarly lacks adequate explanation. It describes “recent events . . . unbeknownst to the student population” that caused “unintended effects” without describing the events that took place or the actual effects on the students.\(^8\) 32-07 also vaguely identifies UGA as a “diverse” and “inclusive[]” campus. But diverse how—in race? religion? thought? And inclusive how—by welcoming speakers of all backgrounds and platforms?

The requirements to comply with these resolutions are also vague. Resolution 32-06 resolves to establish “alternative routes” around Tate Student Center without defining where these routes will be or who is responsible for establishing them. Likewise, Resolution 32-07 claims that student organizations must provide the Office of the Dean information that is already required to register an event. But it also requires “organizations and groups that wish to table, advertise, or advocate at, but not limited to [sic], the designated Freedom of Expression Forums” to participate in this newsletter. Does this mean individual students wishing to use the forums must provide this information? Does a group of two count as an “organization”? And what does “advocate” mean? Does it include private meetings where students wish to discuss issues? Finally, the Resolution requires “a description of what their intent.” [sic.] How long must this description be? What must it include? What does SGA mean by “intent?” These Resolutions are thus not narrow or specific enough to survive constitutional muster.

II. The SGA Resolutions unconstitutionally discriminate based on content and viewpoint.

A public university can never refuse to let someone engage in speech based on his beliefs, nor can it label ideas as “acceptable” or “unacceptable.”\(^9\) This is called viewpoint-based discrimination, and policies that restrict speech in this way are always unconstitutional. The Resolutions single out “demonstrations at Tate Student Center and Bolton Dining Commons.” Although the Resolutions do not name the demonstrators, it is apparent that SGA is referring to a specific group that created displays related to abortion. As the appointed liaison between UGA administration and the student body, SGA “condemns” the display in Resolution 32-06, thereby labeling it “unacceptable.” This is viewpoint-based discrimination.

Moreover, a public university cannot prohibit an entire subject of speech, such as all political speech.\(^10\) This amounts to content-based discrimination. Through its Resolutions, SGA indicates that any speech deemed “distressing” will not be tolerated on campus. This broad, categorical ban on “distressing speech” is content-based discrimination.

These Resolutions extend far beyond any one issue or group. They pave the way for students to determine what “distressing” means on an individual, case-by-case basis. A future student who opposes vaccinations may find flu shot posters “triggering”; his fear of flu shots could be so great that it produces nausea. Will SGA order flu shot posters be taken down in the name of protecting this student? And even more likely, if speech or displays related to LGBTQ issues, Israel, gun control, President Trump, or immigration cause students distress, will SGA order a ban on these categories of speech, or impose additional requirements on these organizations? This would be discriminatory based on content and/or viewpoint, and they would not survive constitutional scrutiny.

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\(^8\) In footnote 6 of Resolution 32-07, SGA points to a 196-size sample survey of the UGA community as evidence of adverse effects without disclosing in the Resolution the results of that survey or how it collected the results.


\(^10\) The only time that this type of restriction is constitutional is if it serves a compelling government interest and is narrowly tailored to achieve that interest. Papish, 410 U.S. at 670; Boos v. Barry, 485 U.S. 312 (1988).
Finally, ordering student groups to publicize their expression in advance, and to state the intent behind their expression, leaves ample room for discrimination. A speaker's intent is entirely irrelevant under the First Amendment, even within the categories of unprotected speech. And requiring students to provide advanced notice of their plans to speak allows SGA, UGA administrators, security, students, and other members of the community to make value judgments about speakers—the impact they will have, the need for additional security, and the need to support “potentially distressed” students—before they can even speak. This undermines the First Amendment at its very core.

III. The SGA Resolutions impose an unconstitutional chilling effect on student speech.

Since 1724, freedom of speech has famously been called the “great Bulwark of liberty,” intended as “a response to the repression of speech and the press that had existed in England.” Our Founding Fathers intended “to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people,” “Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law—the argument of force in its worst form.”

The U.S. Supreme Court has long embraced the Framers’ hatred of censorship. As the Court has acknowledged, “The freedom of speech and of the press guaranteed by the Constitution embraces at least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment.” Speech is “chilled” when a speaker objectively fears that speaking will result in discipline, and as a result censors her speech altogether. The Supreme Court repeatedly writes that the danger of chilling speech “is especially real in the University setting, where the State acts against a background and tradition of thought and experiment that is at the center of our intellectual and philosophic tradition.” Any action taken by university authorities that has a chilling effect on students is unconstitutional. And even when a member of a university does not have the actual authority to impose discipline, the mere appearance of authority is enough to objectively chill and censor speech.

It is undeniable that Resolutions 32-06 and 32-07 can chill student expression—and already have. Although the subjects of the Resolutions are not entirely clear, they are presumably directed toward a pro- or anti-abortion display. Abortion is a highly contested social issue that makes its way into nearly every political debate these days. In this way, the topic of abortion is so intertwined with political speech that it practically is a form of political speech, just like the other religious and social issues listed in Section II. Thus, these resolutions are not just suppressing speech about abortion; they are censoring a type of political speech, and they set the stage to suppress other political and social speech in the future.

Whereas SGA should be the “organized voice for each student,” it is sending a clear message that students espousing certain beliefs are not free to offend others. This is particularly evident where, in Resolution 32-06, SGA expresses its “deep distress” at this form of expression and “condemns” it. In this way, SGA has not only adopted a position in lieu of remaining neutral, but it is using its position to

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15 Meyer, 486 U.S. at 421.
16 Rosenberger, 515 U.S. at 835.
17 Id.
intimidate students into compliance with its resolutions. Although SGA may lack formal authority to discipline students, it certainly gives the appearance of authority. The concerned students who contacted Southeastern Legal Foundation do not know whether and to what extent these resolutions are binding. Clarification is necessary. The threat of punishment and “condemnation” hovers over the Resolutions, leaving these concerned students wondering what will happen if they host a potentially “distressing” event or fail to update the proposed newsletter. The mere threat of prosecution, which could ultimately result in expulsion, is tantamount to forced censorship of students who wish to partake in political and public discourse.

**Demand**

“As a Nation we have chosen a different course” than reacting to offensive speech by punishing the speaker. Instead we have chosen “to protect even hurtful speech on public issues to ensure that we do not stifle public debate.” Southeastern Legal Foundation recognizes that SGA is attempting to rectify some of the pain its students may have experienced in recent weeks as a result of student expression. But the answer is not to rob students of their right to “inquire, to hear, to speak, and to use information to reach consensus” which has been found to be a “precondition to enlightened self-government and a necessary means to protect it.” Rather, “the remedy to be applied is more speech, not enforced silence.”

As this semester draws to a close, we urge SGA to consider the members of the student body who were not represented during the November 12 meeting—those who wish to engage in controversial and potentially offensive discourse to learn more about their peers and their country. We respectfully request that SGA rescind Resolutions 32-06 and 32-07. While we hope it does not come to the need for litigation, the Resolutions raise serious First Amendment violations and cannot go forward.

Yours in Freedom,

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19 Any member of the student body can report another student for a violation of the Code of Conduct. Resolutions 32-06 and 32-07 read as a complaint against students who participated in the displays, and thus set the tone for other students to report offensive speech as a Code of Conduct violation in the future. Students who violate the Code are subject to expulsion, suspension, probation, and other severe sanctions. UGA Code of Conduct 16.


21 *Id.*


23 *Whitney*, 274 U.S. at 377 (Brandeis, J., concurring).