



FLORIDA LEGAL SERVICES, INC.

14260 WEST NEWBERRY ROAD #412, NEWBERRY, FL 32669 - PHONE: (407) 801-4350 - FAX: (407) 505-7327

EDRICK BARNES
PRESIDENT

CHRISTOPHER M. JONES
DIRECTOR

October 10, 2017

VIA ELECTRONIC MAIL

Email: updinfo@admin.ufl.edu

Chief Linda J. Stump-Kurnick
University of Florida Police Department
Assistant Vice President of Public and Environmental Safety
Building 51, Museum Road
P.O. Box 112150
Gainesville, Florida 32611-2150

VIA ELECTRONIC MAIL

Email: curtey@ufl.edu

Curtis Reynolds
Vice President for Business Affairs
204 Tigert Hall
P.O. Box 113100
Gainesville, FL 32611

Dear Chief Stump-Kurnick and Mr. Reynolds:

Our offices are assisting several campus and community organizations that intend to engage in lawful First Amendment activities on October 19, 2017, in opposition to Richard Spencer when he speaks at the University of Florida's Curtis M. Phillips Center for the Performing Arts.

We are concerned that the University of Florida's Police Department (UPD) has issued restrictions that threaten the free speech rights of those who seek to express opposition to Mr. Spencer's racist views. Law enforcement has promulgated a "Richard Spencer Speaking Engagement Prohibited Items List - October 19, 2017" which is on the UPD website under Frequently Asked Questions for the Richard Spencer event. We request that UPD clarify several problematic issues, explained below, which would

violate the First, Fourth and Fourteenth Amendment rights of individuals engaged in protected free speech activities.

First, UPD has provided no parameters as to the area of ban of the listed items. It is a basic due process requirement of regulations that criminalize conduct that the government provide fair notice to enable ordinary people to understand what conduct is prohibited or permitted and not speculate as to the meaning. *City of Chicago v. Morales*, 527 U.S. 41, 56 (1999). Without this specificity, the policy or regulation is unconstitutionally vague. The ban on prohibited items provides no such notice. Is this a campus wide ban or only as to a certain areas inside or near the Performing Arts Center? Which areas are covered? This is not clear from reading the policy.

Second, the list of items is overbroad. Does UPD intend to confiscate or ban every bicycle, bike lock, cigarette, umbrella, purse, backpack and water bottle from thousands of students across the entire University of Florida (UF) campus on October 19, 2017? Does the UPD intend to criminalize these lawfully and commonly possessed items in certain locations or prohibit entry into certain areas with any of these items? Does the UPD intend to criminalize these items when in the possession of some persons but not others, i.e. persons that the UPD determines are engaged in First Amendment activity, or persons believed not to be students? We request that you clarify this issue.

Further, a burden on free speech, such as the items ban, cannot be imposed through the exercise of a government official's unbridled discretion. It is well established that restrictions on First Amendment freedoms may not be left to the unfettered discretion of law enforcement without any guidelines or standards to constrain enforcement. Laws lacking objective criteria to cabin enforcement are unconstitutionally vague and pose a danger of arbitrary and discriminatory application. *Grayned v. City of Rockford*, 408 U.S. 104, 108-109 (1972); *Wollschlaeger v. Governor, Florida*, 848 F.3d 1293, 1322 (11th Cir. 2017). The ban on prohibited items suffers from this constitutional infirmity.

In addition to providing no guidance whatsoever as to the scope of where the ban will apply (see above), there are impermissible grants of broad discretion to allow the banning and seizure of "other items deemed inappropriate by law enforcement" or "other items which could be used as a weapon" without any guidance or criteria. Where there are no established standards, nothing prevents law enforcement from applying different standards to different groups or persons depending on the views expressed.

Will law enforcement view an assistive walking device like a cane used by a person with a disability who is wearing an anti-fascist t-shirt as a potential weapon? Would this person be required to choose between walking or exercising her First Amendment rights when arriving at an unknown security perimeter?

What criteria will law enforcement use to inspect items, determine that something is “inappropriate” and where will individuals with these undefined items be subject to such a search? These types of broad and vague prohibitions which have the effect of restricting and chilling speech before it occurs are not permissible.

Moreover, we require clarification as to whether law enforcement seeks to subject demonstrators to mass, warrantless, suspicionless searches as a condition of participation in lawful protected activity. Does the UPD intend to operate a perimeter checkpoint or engage in discretionary frisks?

Law enforcement must clarify these issues in conformity with the Constitution and so that judicial intervention may be timely sought as needed.

It is also important to note that if the items ban only applies to certain persons on a public university campus expressing political views related to Richard Spencer’s talk, it would be an impermissible content-based regulation on speech in violation of the First Amendment.

The government’s ban of certain items on the list, including megaphones, “other amplified sound devices” and masks, is also unreasonable. These items, used to convey a message to an intended audience or to protest anonymously, cannot be unreasonably restricted in this manner under the First Amendment. UF’s own policies which permit the use of amplified sound on campus as part of First Amendment activities undermines any asserted rationale for the sound ban.

Cherished First Amendment freedoms may not be infringed upon because of the government’s anticipation of how one group might react to another, including speculation that expressing views, such as protesting white supremacists, might create hostility or lead to breaking the law. UPD cannot enact a broad stroke ban on speech like the one here by making these assumptions. To do so not only harms the very core of our democratic traditions, but creates a chilling effect on the exercise of constitutional rights.

Individuals and political groups have a right to be in public space and make their views known. UPD and UF need to clarify these issues to ensure that the rights of all people in our community are protected and upheld.

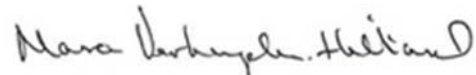
In light of the imminent date of the event, we request your response, in writing, to clarify these issues within two business days. If we are unable to obtain sufficient clarification that permits community members to exercise their constitutional rights, we intend to seek judicial intervention.

We look forward to your response. Please feel free to contact Ms. Costello at: andrea@floridalegal.org.

Sincerely,



Andrea Costello
Florida Legal Services



Mara Verheyden-Hilliard
Partnership for Civil Justice Fund
617 Florida Avenue, NW
Washington, D.C. 20001