



May 2, 2017

VIA U.S. Postal Service

Dr. Tony Frank
Colorado State University
Office of the President
102 Administration Building 0100 Campus
Delivery
Fort Collins, CO 80523-0100

Re: Legal Obligations of Colorado Colleges and Universities Under C.R.S. 23-5-144

Dear Dr. Tony Frank:

We are writing to update you on recent changes to Colorado law that affect your obligations regarding campus speech policies, and to offer our assistance in ensuring your policies comply with the legal requirements of Colorado law and the United States and Colorado constitutions.

By way of introduction, Alliance Defending Freedom (ADF) is an alliance-building, non-profit legal organization that advocates for the right of people to freely live out their faith.¹ Our alliance comprises over 3,100 allied attorneys including 84 in Colorado. ADF's Center for Academic Freedom is dedicated to ensuring freedom of speech and association for students and faculty so that everyone can freely participate in the marketplace of ideas without fear of government censorship.

As you may be aware, on April 4, 2017, Governor Hickenlooper signed into law Senate Bill 62, now codified as C.R.S. 23-5-144, and imposing affirmative obligations on all public postsecondary educational institutions.

¹ Alliance Defending Freedom has achieved successful results for its clients before the United States Supreme Court, including four victories before the highest court in the last six years. *See e.g. Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015) (unanimously upholding ADF's client's free-speech rights); *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2759 (2014) (striking down federal burdens on ADF's client's free-exercise rights); *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014) (upholding a legislative prayer policy promulgated by a town represented by ADF); *Arizona Christian Sch. Tuition Org. v. Winn*, 131 S. Ct. 1436 (2011) (upholding a state's tuition tax credit program defended by a faith-based tuition organization represented by ADF).

Specifically, a public postsecondary educational institution shall not:

1. Limit or restrict a student's expression in a student forum, including imposing disciplinary action resulting from expression, because of the content or viewpoint of the expression or because of the reaction or opposition by listeners to such expression.
2. Designate an area of campus as a free speech zone, or restrict student expression to a particular area of campus.
3. Impose restrictions on the time, place, or manner of student expression in a student forum unless the restrictions are (i) reasonable; (ii) justified without reference to the content of the expression; (iii) narrowly tailored to serve a significant governmental interest; and (iv) leave open ample alternative channels for communication of the message.

"Expression" is defined as "any lawful verbal or written means by which individuals may communicate ideas to one another, including all forms of peaceful assembly, protests, speaking verbally, holding signs, circulating petitions, and distributing written material," and specifically includes voter registration activities. A "student forum" as applied to students is defined as "any generally accessible, open, outdoor area on the campus of an institution of higher education, as well as any nonacademic and publicly open portion of a facility that the institution of higher education has traditionally made available to students for expressive purposes."

C.R.S. 23-5-144 generally restates core First Amendment principles, prohibiting (1) limitation of student speech to restrictive "speech zones," (2) requiring advance approval for student literature distribution and speech, and (3) imposing overbroad "harassment"² policies or other speech codes that may chill or be used to punish constitutionally protected speech.

In order to meet your legal obligations under C.R.S. 23-5-144 you should conduct an immediate review of your institution's policies and, if necessary, revise them to conform to this law and the United States and Colorado Constitutions. Failure to do so may also expose officials

² When evaluating prohibitions on harassment, universities should keep in mind that the Supreme Court ruled that actionable student-on-student harassment is limited to conduct "so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school." *Davis v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 650 (1999). This standard allows schools to protect students from harassment while also honoring core principles of free speech. Any policies prohibiting harassment should adhere to this standard in order to avoid chilling First Amendment protected speech.

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to a heightened risk that they may be held personally liable for constitutional violations that are also prohibited by this state law.

The Center for Academic Freedom has significant expertise in the area of educational institutions' policies relating to free speech and freedom of association. At your request, we, in conjunction with our allied attorneys in Colorado, would be pleased to assist you, *pro bono*, in reviewing your policies to ensure they comply with the applicable statutory and constitutional requirements.

If you have any questions, please feel free to contact us.

Very truly yours,



Barry Arrington
ARRINGTON LAW FIRM
3801 East Florida Avenue, Suite 830
Denver, CO 80210
BARRY@ARRINGTONPC.COM
(303) 205-7870



Tyson C. Langhofer
Center for Academic Freedom
ALLIANCE DEFENDING FREEDOM
15100 N. 90th St.
Scottsdale, AZ 85260
TLANGHOFER@ADFLEGAL.ORG
(480) 388-8205

CC: Jason L. Johnson
Joshua B. Zugish

Encl.: Senate Bill 62 signed by Governor Hickenlooper