



BOISE STATE UNIVERSITY
VICE PRESIDENT FOR CAMPUS OPERATIONS
AND GENERAL COUNSEL

September 12, 2014

American Civil Liberties Union of Idaho
Attn: Mr. Richard Eppink, Legal Director
PO Box 1897
Boise, ID 83701

Idaho Freedom Foundation
Attn: Mr. Geoff Talmon, Director
2404 Bank Dr, Ste 314
Boise, ID 83705

Re: Young Americans for Liberty at Boise State University v. Kustra

Dear Messrs. Eppink, Hudson, and Talmon:

Thank you for meeting with us on September 2, 2014. That meeting, I hope you agree, can be described as a collaborative and productive discussion in meeting the mutual goal of the University and of your clients that the University remain a place where speech is valued and protected as provided for by the Constitution.

As you already know from our discussion, the University values the rights of all students and others in the community to express their views. We regard our setting as the true marketplace for ideas, both in and out of the classroom. While we encourage free expression, we have to keep in mind classroom settings, the competing demands for high traffic open areas, the continued function of the University to carry out its educational and public service missions and the physical maintenance of our campus. The University has to keep in mind functions other than serving as a public forum – to list only a few, we host athletic contests, concerts, and conferences in our facilities, we feed and house students, and we conduct research and testing – functions that require us to consider numerous items of public import in addition to free expression. In such decisions, we must always be mindful of safety, cost, and liability. We also must be mindful that students, like your clients, are planning events, such as their Constitution Day activities, and we need to provide them some assurance that policies needing some improvement will not be utilized to chill or otherwise restrict speech protected by the First Amendment to the Constitution.

The way we treat our facilities and spaces, in classifying them as public or non-public forums and implementing policies for their use, is meant to encourage free expression, only limited by the otherwise legitimate educational, research, and business functions of the University. We assure you that our policies were not written and are not applied for the purpose of restricting the expression of any viewpoint. However, we recognize that you have taken issue with the possibility that University officials could exercise discretion in a way that might violate a speaker's freedom of expression.

As we discussed, it is our intent to work collaboratively with you to propose revisions to our policies and departmental procedures so that they cannot be interpreted or implemented to violate the free speech rights of the members of the campus community.

Boise State University will, then, in the spirit of this agreed collaboration, take the intermediate step of suspending enforcement of certain sections of our policies and procedures until we have revised the policies in a manner that strikes the proper balance between the University's operational and educational needs and yet fully protects the freedom of expression that we have a shared interest in preserving.

Policies of the University that will be suspended until replaced per our discussions include:

- Policy 1100 – Open Spaces, Sections V.H. “Security” and XI “Manner of Display.”
- Policy 9060 – Scheduling Use of BSU Grounds for Student Organizations.
- Student Union Event Policies and Guidelines, Subsection titled “Event Security.”
- Student Organization Handbook, Section IV., Subsections titled “Advertising Events,” “Risk Management,” and “Security Considerations for Events.”
- Student Union Event Policies and Guidelines¹, Subsection titled “Signs, Banners, and Decorations,” to the extent that any bulleted item states “A University Conference Services Event Coordinator must approve signs, banners, and decorations prior to the event” (or substantially similar) or any sentence states “Special requests must be approved by your Event Coordinator” (or substantially similar).
- Policy 1100 – Open Spaces, Section X “Noise and Sound Amplification,” Subsection X.A.1 only, with the remainder of X.A to stay in effect.

Sections of our policies and procedures that we will continue enforcing in part, but that we agree are in need of timely redrafting, include:

- Policy 1100 – Open Spaces, Section III. “Distribution of Literature.” We agree this section as written will be suspended to allow the non-disruptive passing of petitions, distribution of written information, and carrying of placards. Furthermore, the section will be suspended to the extent that facility managers can make exceptions to it. However, the parties agree that it is not the intent of such suspension to change the classification of any forums on campus. To be more clear, we will continue collaborating with you to meet mutual policy goals, but will not allow disruption or interference with legitimate business and educational functions *within* University buildings.

Sections of our policies and procedures that we plan to continue enforcing on a parallel track with this collaboration include the following: Student Union Event Policies and Guidelines, Subsections titled “Audio Visual,” “Day-of Event Changes,” and “Additional Charges.” The University assures you that it itemizes any charges and costs, including the waiver of any such charges and costs, in writing and they will be provided upon request. If a user questions any charges, costs, or waivers, the user can dispute them with Conference Services. Further, the University commits that these business function charges are only used in a content neutral manner and future policy revisions will so reflect.

¹ Any versions of the Student Union Event Policies and Guidelines which include such language are outdated and should no longer be posted or viewable on our website. The sole and current version can be found here: <http://conferenceservices.boisestate.edu/eventguidelines/>

The University will appropriately notify the campus community of the suspension of any policy sections. In addition, we will immediately annotate the policies to reflect any such suspensions. We will also notify users that they can dispute any charges, costs, or waivers.

Finally, as to Policy 1000 – Policy Development Authority, Section II.G., the University assures you that this authority will not be exercised to alter policies to restrict the right to speech, assembly, or association. The University commits to make edits to the policy to reflect that assurance. Furthermore, the University always posts policy changes, when by presidential authority or otherwise, along with rationale, on its policy page, here: <http://policy.boisestate.edu/>.

We will entertain your suggestions and collaborate with you to revise the above sections of policy in order to avoid the concern that the policies could be interpreted to infringe upon freedom of expression. We are committed to working with you to accomplish this in an expedited manner.

Thank you again and we look forward to meeting with you regularly in the coming weeks.

Sincerely,



Kevin D. Satterlee

Vice President for Campus Operations and General Counsel

cc via electronic mail:

Jeremiah Hudson, ACLU Cooperating Attorney

Matt Wilde, Deputy General Counsel, Boise State University