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SENT VIA US MAIL

Dr. Jo-Anne T. Vanin
Dean of Students
Associate Vice Chancellor for Student Affairs
227 Whitmore Administration Building
University of Massachusetts Amherst
Amherst, MA 01003
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RE: Unconstitutional Policy on Rallies

Dear Dr. Vanin:

Please be advised I am an allied attorney with Alliance Defense Fund, a national non-profit legal organization dedicated to the defense of civil liberties. We represent Students For Life, a University of Massachusetts Amherst registered student organization (“RSO”) concerning UMass Amherst’s policy on rallies which we believe infringes the rights not only of Students For Life but of every UMass student and student organization. By this letter, we request that you take prompt action to amend this policy to comply with the First Amendment’s protection of the rights of free speech and assembly.

The UMass Amherst RSO handbook’s section on policies and procedures defines rallies as “events where people freely assemble around a common cause(s) and/or point(s) of advocacy.” (<http://umasscsd.pbworks.com/w/page/8078701/Rallies>). The rally policy requires students to request space 24 hours in advance and limits venue options to “the Student Union steps (either front entrance or south steps)” during class hours. *Id.* The policy proceeds to lay out a more stringent set of rules concerning “controversial rallies,” which imposes 5 working days prior notice, time limitations of noon to 1 pm, and requires the sponsoring RSO to “designate at least 6 members to act as a security team.” *Id.*

As a public university, U-Mass Amherst is bound by the First Amendment to uphold the individual liberties of its students. Yet this policy unlawfully restricts students’ rights of free speech and assembly by discriminating against certain student groups. The most egregious violation of student rights is contained in the “Controversial Rallies” section which imposes harsher requirements than those applied to non-controversial rallies. The very title of this section, “Controversial Rallies” reflects an inherently flawed policy based on viewpoint discrimination. *Id.* The mere act of distinguishing between a controversial rally versus a non-controversial rally requires school officials to examine each rally’s content and message, engaging in viewpoint discrimination by evaluating each speaker’s views for their popular acceptance.

As the United States Supreme Court made clear,

[A] law or policy permitting communication in a certain manner for some but not for others raises the specter of content and viewpoint censorship. This danger is at its zenith when the determination of who may speak and who may not is left to the unbridled discretion of a government official.... [W]e have often and uniformly held that such statutes or policies impose censorship on the public or the press, and hence are unconstitutional, because without standards governing the exercise of discretion, a government official may decide who may speak and who may not based upon the content of the speech or viewpoint of the speaker.

City of Lakewood v. Plain Dealer Publishing Co., 486 U.S. 750, 763-64, 108 S.Ct. 2138, 2147, 100 L.Ed.2d 771 (1988) (striking down a city ordinance authorizing the mayor to grant or deny applications for annual permits to publishers to place their newsracks on public property). UMass school officials are wrongfully empowered with the authority to approve student rallies whose message they agree with while denying or limiting venue access to student groups whose message they wish to suppress. "A government regulation that allows arbitrary application is inherently inconsistent with a valid time, place, and manner regulation because such discretion has the potential for becoming a means of suppressing a particular point of view." *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 130, 112 S.Ct. 2395, 2401, 120 L.Ed.2d 101 (1992) (quoting *Heffron v. International Soc'y for Krishna Consciousness, Inc.*, 452 U.S. 640, 649, 101 S.Ct. 2559, 2565, 69 L.Ed.2d 298 (1981)).

The policy further violates students' First Amendment rights by applying an overly broad definition of the term "rally." In its current form, the policy appears to regulate any occasion in which two or more students meet to publicly express themselves, irrespective of the number of participants or the means of expression. (<http://umasscsd.pbworks.com/w/page/8078701/Rallies>). Therefore, if as few as two students meet up on the quad to openly discuss politics or walk through campus side by side wearing T-shirts that say "choose life" they could be required under the rally policy to give 24 hours advanced notice and meet only on the Student Union steps during class hours. The United States Supreme Court has repeatedly struck down broadly written laws which can be used as a tool for silencing protected speech. "The very existence of some broadly written laws has the potential to chill the expressive activity of others." *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 129, 112 S.Ct. 2395, 120 L.Ed.2d 101 (1992); *see also Lind v. Grimmer*, 30 F.3d 1115, 1122 (9th Cir.1994)

The requirements that students reserve space for the rally 24 hours in advance of non-controversial rallies and five working days in advance of controversial rallies, meet only on the student union steps during class hours and in some cases meet only from noon to 1pm constitutes a prior restraint on students' freedom of speech and assembly. (<http://umasscsd.pbworks.com/w/page/8078701/Rallies>). As emphasized by the Supreme Court, a "system of prior restraint of expression" bears "a heavy presumption against its constitutional validity" *Bantam Books v. Sullivan*, 372 U. S. 58, 70 (1963); *Freedman v. Maryland*, 380 U. S. 51, 57 (1965).

December 29, 2010
Dr. Jo-Anne T. Vanin
Page 3 of 3

Often times the immediacy of the rally is its greatest effect. Students must be allowed to react quickly to current events. A delay of a day or a week could severely weaken the message.

Likewise, the student union steps make up only a narrow percentage of the UMass campus and restrict students from standing where their message can be most effective. A limitation of student speech and association to this tiny area, and for a single hour if the speech is deemed controversial, is a patently unreasonable regulation of student speech. A valid time, place, and manner regulation, must be “justified without reference to the content of the regulated speech,” must be “narrowly tailored to serve a significant governmental interest,” and must “leave open ample alternative channels for communication of the information.” *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984). The limitation of controversial rallies to a single hour is explicitly by reference to the content of the speech, limitation of speech to such a small area – and the corresponding prohibition of speech on over 99% of the UMass-Amherst campus fails to provide “ample alternative channels,” and in any event these restrictions are not narrowly tailored to serve any significant interest.

Finally, the requirement that at least six members of RSO serve as a security team for controversial rallies unlawfully restricts student speech by excluding all smaller RSOs who after designating six members to act as security, would have few members left to orchestrate the rally. Not only does this requirement constitute a prior restraint of protected speech but it also jeopardizes the personal safety of untrained students by requiring them to handle dangers which could present themselves when rallying over a controversial message.

Our clients appreciate their relationship with UMass-Amherst and desire to continue to be an important part of the public debate on campus, contributing to a robust and civil debate that serves those who agree and disagree with its message. As UMass-Amherst students, they also are concerned about the notoriety these policies have earned the school, (see <http://www.thefire.org/article/12205>), and desire to work with you to correct them. At this time, we ask you to take immediate action to revise this policy and bring it into compliance with the First Amendment. We would be happy to dialogue with you about possible revisions that would protect the rights of our clients and other UMass-Amherst students. We request a response to this letter confirming the revision of the rallies policy by January 14, 2011.

Sincerely,



Mari Grace Chamberlain

CC: Casey Mattox, Senior Legal Counsel, Alliance Defense Fund