

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

ALFRED J. FLUEHR,)	
)	
Plaintiff,)	
)	
vs.)	Case No. _____
)	
PENNSYLVANIA STATE)	
UNIVERSITY and GRAHAM B.)	
SPANIER, in his individual and)	
official capacities,)	
)	
Defendants.)	

VERIFIED COMPLAINT

Plaintiff Alfred J. Fluehr, by and through counsel, and for his Complaint against Defendants, Pennsylvania State University (the “University”) and Graham B. Spanier, states as follows:

INTRODUCTION

1. Pennsylvania State University (“Penn State”) is violating the free speech and associational rights of each and every student on its campus. Penn State, acting through its president, Defendant Graham Spanier, has implemented an Orwellian speech code policy that is vague, overbroad, and suppresses the discussion of controversial viewpoints. This code is enforced in part through a system of reporting that encourages students to inform on their fellow students whenever those students utter words or engage in actions deemed subjectively “intolerant.” Penn State has supplemented its speech code policy with a student organization recognition policy that systematically disadvantages religious expression and violates clear constitutional prohibitions against viewpoint discrimination. Further, Penn State restricts the availability of outdoor space on campus where students and student organizations can engage in expressive activity. With this suit, Plaintiff Alfred Joseph Fluehr seeks injunctive relief against the policies that chill his own speech and limit his rights to free association and seeks damages caused by the university's impermissible closure of the “marketplace of ideas.”

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JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 (federal question) and the Civil Rights Act of 1871, 42 U.S.C. §§ 1983 and 1988.

3. Venue is proper in this district pursuant to U.S.C. § 1391(b) in that Defendants reside in this district and all of the acts described in this Complaint occurred in this district.

PLAINTIFF

4. Plaintiff Alfred J. Fluehr is a sophomore at the University and is a member of at least one expressive student organization at the University.

DEFENDANT

5. Defendant Graham B. Spanier is the President of Pennsylvania State University (the “University”), a public university organized and existing under the laws of the Commonwealth of Pennsylvania.

FACTUAL BACKGROUND

A. The University’s Speech Codes

6. Student life for undergraduate students at the University is governed in part by two primary documents: the University’s Policy Manual, and the University’s Student Guide to General University Policies and Rules (“Student Guide”), which is an abridged version of the Policy Manual. Together, these

documents contain comprehensive student conduct guidelines that regulate the bounds of permissible speech and expression on campus and regulate the conduct of expressive student organizations. These guidelines will be referred to throughout this Complaint as the University's "speech codes."

7. The University also binds student organizations and their members by two additional documents, the Student Activity Fee Handbook and the Policies and Rules for Student Organizations. Together, these documents contain organizational conduct and activity guidelines that regulate the bounds of permissible speech, expression, association, and religious exercise on campus and condition the receipt of University student activity fees on compliance with these restrictive rules.

1. Harassment Policy

8. The University's Policy Manual purports to prohibit "discrimination and harassment." Policy AD-42 contains the following statement:

The Pennsylvania State University is committed to the policy that all persons shall have equal access to programs, facilities, admission and employment without regard to personal characteristics not related to ability, performance, or qualifications as determined by University policy or by state or federal authorities. It is the policy of the University to maintain an academic and work environment free of discrimination, including harassment. The Pennsylvania State University prohibits discrimination and harassment against any person because of age, ancestry, color, disability or handicap, national origin, race, religious creed, sex, sexual orientation or veteran status. Discrimination or harassment against faculty, staff or students will not be tolerated at The Pennsylvania State University.

Discrimination is conduct of any nature which denies equal privileges or treatment to a particular individual because of the individual's age, ancestry, color, disability or handicap, national origin, race, religious creed, sex, sexual orientation or veteran status.

Harassment may include, but is not limited to, verbal or physical attacks, written threats or slurs that relate to a person's membership in a protected class, unwelcome banter, teasing, or jokes that are derogatory, or depict members of a protected class in a stereotypical and demeaning manner, or any other conduct which has the purpose or effect of interfering unreasonably with an individual's work or academic performance or creates an offensive, hostile, or intimidating working or learning environment.

9. Violation of Policy AD-42 results in punishment ranging “from a disciplinary warning to expulsion from the University.”

10. The University’s Student Guide contains an abridged version of Policy AD-42’s statement on discrimination. Copies of the relevant portions of University’s Policy Manual and Student Guide are attached as Exhibit A to this Complaint.

2. Intolerance Policy

11. The University’s Policy Manual also claims to prohibit intolerance. Policy AD-29 states:

The University is committed to creating an educational environment which is free from intolerance directed toward individuals or groups and strives to create and maintain an environment that fosters respect for others. As an educational institution, the University has a mandate to address problems of a society deeply ingrained with bias and prejudice. Toward that end, the University provides educational

programs and activities to create an environment in which diversity and understanding of other cultures are valued.

...

Intolerance refers to an attitude, feeling or belief in furtherance of which an individual acts to intimidate, threaten or show contempt for other individuals or groups based on characteristics such as age, ancestry, color, disability or handicap, national origin, political belief, race, religious creed, sex, sexual orientation or veteran status.

Acts of intolerance will not be tolerated at The Pennsylvania State University. The University is committed to preventing and eliminating acts of intolerance by faculty, staff and students, and encourages anyone in the University community to report concerns and complaints about intolerance to the Affirmative Action Office or the Office of the Vice Provost for Educational Equity, and in cases involving students, reports also may be made to the Office of Judicial Affairs.

Sanctions will be imposed for any violation of University policy, rule or regulation. When the violation is motivated by intolerance toward an individual or group based on characteristics such as age, ancestry, color, disability or handicap, national origin, political belief, race, religious creed, sex, sexual orientation, veteran status or political belief, the sanction will be increased in severity and may include expulsion from the University. (Emphasis Added).

12. Policy AD-29 also informs students that while “expression of diverse views and opinions is encouraged in the University community,” some “ideas are expressed which are contrary to University values and objectives;” “[n]evertheless, the University cannot impose disciplinary sanctions upon such expression *when it is otherwise in compliance with University regulations.*” (Emphasis Added).

13. Additionally, the University encourages students to inform on other students' alleged acts of "hate" or "intolerance" by providing and publicizing a "Report Hate" telephone hotline and "web form" that encourages students to confidentially report on the impermissible expressive activities of fellow students. A copy of the home page of the "Report Hate" site is attached as Exhibit B to this Complaint.

14. The University's Student Guide contains an abridged version of the Policy Manual's statement on intolerance. The Student Guide tells students that the University is committed to creating an environment "free from intolerance" toward an individual or group based on "race, color, national origin, gender, sexual orientation, or political or religious belief." In furtherance of that goal the University imposes sanctions, up to and including expulsion, upon violators who hold "an attitude, feeling, or belief wherein an individual behaves with contempt for other individuals or groups" based on the University's defined characteristics. The University also reminds students that it will not impose sanctions or expulsion so long as expression "is otherwise in compliance with University regulations" on intolerance. Copies of the relevant portions of University's Policy Manual and Student Guide are attached as Exhibit C to this Complaint.

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3. Expression Policy

15. The Preamble to the Student Guide further explains that students have the right to “organize” their personal lives and behaviors, only “so long as it does not violate the law or University regulations and does not interfere with the rights of others....” A copy of the relevant portion of University’s Student Guide is attached as Exhibit D to this Complaint.

16. The Student Guide’s Policy Statement on Free Expression and Disruption specifically states that the “University recognizes, respects and protects all peaceful, non-obstructive expressions of dissent, whether individual or collective,” so long as the expressions “*are within University regulations*” and do not interfere with University operations. A copy of the relevant portion of University’s Student Guide is attached as Exhibit E to this Complaint.

17. Finally, the Student Guide specifically states that its provisions—as well as other University regulations (including, presumably, the University Policy Manual)—apply not only to individual students but also to student organizations:

Just as individual behaviors are expected to correspond to stated University and community guidelines, members of student organizations are expected to act responsibly....Student organizations must be registered with the University and abide by regulations governing membership, hazing,...and other activities and behaviors.

Moreover, the Policies and Rules for Student Organizations states that “all recognized student organizations will be held responsible by the University for

abiding by...all University regulations.” A copy of the relevant portion of University’s Student Guide and the Policies and Rules for Student Organizations is attached as Exhibit F to this Complaint.

4. Speech Zone Policy

18. As a condition of use of University facilities, recognized student organizations must give an “assurance that all University regulations” will be followed and that that students will comply with Policy AD-57 contained in the Policy Manual. AD-57 requires that “Any group or individual(s) using University property for a permitted purpose...must assure as a condition of use that...All University policies and regulations, and all local, state and federal laws concerning fire and safety, security and conduct will be followed.”

19. The Student Guide also limits the use of outdoor areas for expressive activity to: “Old Main Front Patio,” “Allen Street Gate,” “Willard Building Patio area between Willard and Obelisk,” “Palmer Art Museum Plaza,” “Northwest Corner of Shortledge Road and College Avenue,” “Fisher Plaza,” and “Pattee Library Mall Entrance Plaza.” Policy AD-51 in the Policy Manual adds five (5) additional locations where expression is permitted: “IST Plaza,” “HUB-Robeson – rear sidewalk pad (not the Patio),” “HUB-Robeson – Lawn,” “Osmond Fountain Area (after 5 p.m.),” and “Area under the Willaman Gateway to the Life Sciences.”

20. For use of indoor facilities, students and student organizations must “contact the Office of Unions and Student Activities.”

21. Upon information and belief, any “speaking, literature distribution, poster or sign displays, petitioning and similar noncommercial activities” or “expressive activity” outside the classroom that does not take place in the designated areas is prohibited and violates the speech zone policy. A copy of the University’s speech zone policies, as contained in the Policy Manual and Student Guide, is attached as Exhibit G to this Complaint.

5. Student Activity Fee Policy

22. Every undergraduate student at the University is required, in addition to paying tuition, to pay a Student Activity Fee. This fee must be paid in advance and varies in amount depending on the campus location and the student’s course load at the University.

23. For students taking nine (9) or more credits at the University Park campus, the fee is \$52.00 per semester. For students taking between five (5) and eight (8) credits, the fee is \$39.00 per semester. For students taking less than five (5) credits, the fee is \$16.00 per semester.

24. According to the Student Activity Fee Handbook, the “purpose of the fee is to provide funds to improve the co-curricular environment for undergraduate and graduate students.” The Student Activity Fees are used for, *inter alia*,

“funding to student organizations.” A copy of the relevant portions of University’s Student Activity Fee Handbook are attached as Exhibit H to this Complaint.

25. The 2005-2006 edition of the Student Guide states that “designated University facilities may be reserved...for meetings and other non-commercial events by” registered student organizations.

26. The Student Activity Fee Handbook requires that all student organization expenditures must comply with the Policy Manual and the Policies and Rules for Student Organizations.

27. Student organizations are also regulated by the Policy Manual, the Student Guide, and the Policies and Rules for Student Organizations. Collectively, these documents govern which student organizations can receive funds from the student activity fee and how those organizations may use the funds.

28. Only “recognized” student organizations may request the use of student activity fees.

29. The Policies and Rules for Student Organizations state that individuals acting as members of a recognized student organization “will be held accountable for their conduct individually and collectively.”

30. The Student Activity Fee Handbook and the Policies and Rules for Student Organizations also outline the distribution of funds from the student activity fees collected to student organizations and their activities. Organizations

do not receive funds for holding particular viewpoints and engaging in certain conduct. Included in this list of organizations and activities that will not receive funding is:

Any activity or organization that discriminates on the basis of age, ancestry, color, disability or handicap, national origin, race, religious creed, sex, sexual member, or citizen.

...

Any activity whose primary purpose is to engage in the willing act of attempting to convert another person to accept the religious beliefs or faith of any individual or groups, or whose primary purpose is to engage in a religious celebration or ceremony or other worship service, except when such activity is for educational purposes.

31. Until a student organization is recognized “it can hold no meetings on University property except for organizational purposes.” A copy of the University’s student organization funding policies, as contained in the Student Activity Fee Handbook and the Policies and Rules for Student Organizations, is attached as Exhibit I to this Complaint.

B. The Effect of the University’s Speech Codes on Plaintiff

32. Because of the University’s onerous speech codes and intolerance of any students who dissent from its orthodoxy on matters relating to—among other things—race, gender, sexual orientation, religion, and political affiliations, Plaintiff cannot engage in the full range of dialogue on matters of political, cultural, and religious importance.

33. Plaintiff is a Political Science major and finds himself consistently engaged in conversations and class discussions regarding issues implicated by the speech codes and Plaintiff fears that the discussion of his social, cultural, political and/or religious views regarding these issues may be sanctionable under applicable University speech codes.

34. Additionally, Plaintiff is a member of politically-interested expressive student organizations which hold (and seek to advance) opinions and beliefs regarding issues of race, gender, religion and sexual orientation that may be objectionable or offensive to other students and sanctionable under applicable University speech codes.

35. The University's speech codes contained in the Policy Manual and Student Guide have a chilling effect on Plaintiff's rights to freely and openly engage in appropriate discussions of his theories, ideas and political and/or religious beliefs. By adopting these speech codes, the University and Defendant Spanier have violated rights guaranteed to Plaintiff—and to all University students—by the First and Fourteenth Amendments to the Constitution of the United States of America. These rights are clearly established by governing legal authority, and Defendants' violations are knowing, intentional and without justification.

36. The speech codes outlined above are vague, overbroad, discriminate on the basis of religious and/or political viewpoint, interfere with the right of free association, impose unconstitutional conditions on the receipt of state benefits, and constitute an illegal prior restraint on the Plaintiff's rights of free speech and assembly. These speech codes are therefore facially invalid under the Free Speech and Free Exercise of Religion clauses of the First Amendment and the due process and equal protection provisions of the Fourteenth Amendment. So long as these speech codes survive, the University is causing ongoing and irreparable harm to the Plaintiff and to every student and student organization at the University.

37. The University's student activity fee policies contained in the Student Activity Fee Handbook and the Policy and Rules for Student Organizations have a chilling effect on Plaintiff's student organizations and the members' rights to freely and openly engage in appropriate discussions of their theories, ideas and political and/or religious beliefs. By adopting these funding policies, the University and Defendant Spanier have violated rights guaranteed to Plaintiff—and to all University students—by the First and Fourteenth Amendments to the Constitution of the United States of America. These rights are clearly established by governing legal authority, and Defendants' violations are knowing, intentional and without justification.

38. The student activity fee policies outlined above discriminate on the basis of religious and/or political viewpoint, interfere with the right of free association, impose unconstitutional conditions on the receipt of state benefits, and constitute an illegal prior restraint on the Plaintiff's rights of free speech and assembly. These funding policies are therefore facially invalid under both the Free Speech and Free Exercise of Religion clauses of the First Amendment. So long as these funding policies survive, the University is causing ongoing and irreparable harm to the Plaintiff and to every student and student organization at the University.

FIRST CAUSE OF ACTION

Violation of Plaintiff's Rights to Freedom of Expression and Due Process of Law (42 U.S.C. § 1983)

39. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 38 of this Complaint.

40. By prohibiting, among other things, "discrimination and harassment" and "acts of intolerance" or conduct that "intimidates" another person or group and by barring "banter, teasing, or jokes...or any other conduct" and "attitudes, feelings or beliefs," Defendants have conditioned compliance with University speech codes on the subjective emotional experience of the listener and have enacted regulations that limit and prohibit speech without providing any objective guidelines by which Plaintiff can guide his behavior.

41. Defendants, acting under color of state law, have enacted regulations (including, but not limited to, policies AD-29 and AD-42) that are both vague and overbroad and have therefore deprived Plaintiff of his clearly established due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and his clearly established rights to freedom of speech and expression secured by the First Amendment to the Constitution of the United States.

42. Because of Defendants actions, Plaintiff has suffered, and continues to suffer, irreparable injury which cannot be fully compensated by an award of money damages.

43. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff is entitled to a preliminary and permanent injunction invalidating and restraining enforcement of the University's speech restrictive Policy Manual and Student Guide and other speech-restrictive policies. Additionally, Plaintiff is entitled to damages in an amount to be determined by the Court and the reasonable costs of this lawsuit, including his reasonable attorneys' fees.

SECOND CAUSE OF ACTION

Violation of Plaintiff's First Amendment Right to Freedom of Expression (42 U.S.C. § 1983)

44. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 43 of the Complaint.

45. By, among other things, prohibiting “discrimination and harassment against any person because of age, ancestry, color, disability or handicap, national origin, race, religious creed, sex, sexual orientation or veteran status,” by prohibiting “acts of intolerance” including a “attitude, feeling or belief” directed at others based on “age, ancestry, color disability or handicap, national origin, political belief, race, religious creed, sex, sexual orientation or veteran status,” and by requiring that every member of the University community “support [the University’s] essential values,” Defendants, acting under color of state law, have explicitly and implicitly discriminated on the basis of viewpoint and deprived Plaintiff of his clearly established rights to freedom of speech and expression secured by the First Amendment to the Constitution of the United States.

46. Because of Defendants’ actions, Plaintiff has suffered, and continues to suffer, irreparable injury which cannot be fully compensated by an award of money damages.

47. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff is entitled to a preliminary and permanent injunction invalidating and restraining enforcement of the University’s speech restrictive Policy Manual and Student Guide and other speech-restrictive policies. Additionally, Plaintiff is entitled to damages in an amount to be determined by the Court and the reasonable costs of this lawsuit, including his reasonable attorneys’ fees.

THIRD CAUSE OF ACTION

Violation of Plaintiff's First Amendment Right to Free Exercise of Religion (42 U.S.C. § 1983)

48. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 47 of this Complaint.

49. By, among other things, prohibiting “discrimination and harassment against any person because of age, ancestry, color, disability or handicap, national origin, race, religious creed, sex, sexual orientation or veteran status,” by prohibiting “acts of intolerance” including a “attitude, feeling or belief” directed at others based on “age, ancestry, color disability or handicap, national origin, political belief, race, religious creed, sex, sexual orientation or veteran status,” and by requiring that every member of the University community “to support [the University’s] essential values,” Defendants, acting under color of state law, have suppressed Plaintiff’s religious expression and deprived Plaintiff of his clearly established right to free exercise of religion secured by the First Amendment to the Constitution of the United States.

50. Because of Defendants’ actions, Plaintiff has suffered, and continues to suffer, irreparable injury which cannot be fully compensated by an award of money damages.

51. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff is entitled to a preliminary and permanent injunction invalidating and restraining enforcement of

the University's speech restrictive Policy Manual and Student Guide and other speech-restrictive policies. Additionally, Plaintiff is entitled to damages in an amount to be determined by the Court and the reasonable costs of this lawsuit, including his reasonable attorneys' fees.

FOURTH CAUSE OF ACTION

Violation of Plaintiff's Right to Freedom of Expression and Due Process of Law (42 U.S.C. § 1983)

52. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 51 of this Complaint.

53. As described above, the University's policies dictate that student organizations may be "recognized" and therefore be guaranteed access to University facilities and funds (specifically, funding from the mandatory Student Activity Fee), so long as those organizations comply with the University's unconstitutionally vague, overbroad, and viewpoint discriminatory regulations.

54. By failing to provide the applicable University authorities with objective standards from which they can guide their behavior, University student organization recognition and funding guidelines are unconstitutionally vague on their face and constitute an impermissible prior restraint on the Plaintiff's speech. The University's recognition and funding guidelines deprive the Plaintiff of his clearly established rights of free speech and expression secured by the First Amendment to the Constitution of the United States and his clearly established due

process rights secured by the Fourteenth Amendment to the Constitution of the United States.

55. Because of Defendants' actions, Plaintiff has suffered, and continues to suffer, irreparable injury which cannot be fully compensated by an award of money damages.

56. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff is entitled to a preliminary and permanent injunction invalidating and restraining enforcement of the University's speech restrictive Policy Manual and Student Guide and other speech-restrictive policies. Additionally, Plaintiff is entitled to damages in an amount to be determined by the Court and the reasonable costs of this lawsuit, including his reasonable attorneys' fees.

FIFTH CAUSE OF ACTION

Violation of Plaintiff's Right to Freedom of Association (42 U.S.C. § 1983)

57. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 56 of this Complaint.

58. By enacting student organization recognition and funding guidelines that are vague, overbroad and explicitly and implicitly discriminate on the basis of viewpoint, Defendants, acting under color of state law, have deprived Plaintiff of his clearly established right to freedom of association secured by the First Amendment to the Constitution of the United States.

59. Because of Defendants’ actions, Plaintiff has suffered, and continues to suffer, irreparable injury which cannot be fully compensated by an award of money damages.

60. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff is entitled to a preliminary and permanent injunction invalidating and restraining enforcement of the University’s speech restrictive Policy Manual and Student Guide and other speech-restrictive policies. Additionally, Plaintiff is entitled to damages in an amount to be determined by the Court and the reasonable costs of this lawsuit, including his reasonable attorneys’ fees.

SIXTH CAUSE OF ACTION

Unconstitutional Conditions (42 U.S.C. § 1983)

61. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 60 of this Complaint.

62. By enacting the speech-restrictive regulations outlined above and by requiring that every member of the University community, individual and organization, to mirror the University’s policy on harassment and intolerance in their “attitudes, feelings or beliefs,” Defendants, acting under color of state law, have placed unconstitutional conditions on the receipt of state benefits—specifically, the benefit of a higher education at a state-supported University—and have therefore deprived the Plaintiff of his clearly established rights to freedom of

speech and expression secured by the First Amendment to the Constitution of the United States.

63. Because of Defendants' actions, Plaintiff has suffered, and continues to suffer, irreparable injury which cannot be fully compensated by an award of money damages.

64. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff is entitled to a preliminary and permanent injunction invalidating and restraining enforcement of the University's speech restrictive Policy Manual and Student Guide and other speech-restrictive policies. Additionally, Plaintiff is entitled to damages in an amount to be determined by the Court and the reasonable costs of this lawsuit, including his reasonable attorneys' fees.

SEVENTH CAUSE OF ACTION

Unreasonable Time, Place and Manner Restrictions (42 U.S.C. § 1983)

65. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 64 of this Complaint.

66. By enacting the speech-restrictive speech zone policy outlined in the Policy Manual and Student Guide, Defendants have enacted unreasonable time, place and manner restrictions on Plaintiff's speech by, among other things, essentially destroying multiple traditional public forums for speech, restricting the size of currently available public forums and failing to leave open ample

alternative means of communication. Defendants, acting under color of state law, have placed unreasonable restrictions on Plaintiff's rights to freedom of speech, expression, association and assembly and have therefore deprived Plaintiff of rights clearly established and secured by the First Amendment to the Constitution of the United States.

67. Because of Defendants' actions, Plaintiff has suffered, and continues to suffer, irreparable injury which cannot be fully compensated by an award of money damages.

68. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff is entitled to a preliminary and permanent injunction invalidating and restraining enforcement of the University's speech restrictive Policy Manual and Student Guide and other speech-restrictive policies. Additionally, Plaintiff is entitled to damages in an amount to be determined by the Court and the reasonable costs of this lawsuit, including his reasonable attorneys' fees.

EIGHTH CAUSE OF ACTION

Violation of Plaintiff's First Amendment Right to Freedom of Expression (42 U.S.C. § 1983)

69. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 68 of this Complaint.

70. By, among other things, prohibiting student organizations and their activities from discriminating on the basis of "age, ancestry, color, disability or

handicap, national origin, race, religious creed, sex, sexual member, or citizen,” in order to receive funding, Defendants, acting under color of state law, have explicitly and implicitly discriminated on the basis of viewpoint and deprived Plaintiff of his clearly established rights to freedom of speech and expression secured by the First Amendment to the Constitution of the United States.

71. Because of Defendants’ actions, Plaintiff has suffered, and continues to suffer, irreparable injury which cannot be fully compensated by an award of money damages.

72. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff is entitled to a preliminary and permanent injunction invalidating and restraining enforcement of the University’s speech restrictive Policy Manual and Student Guide and other speech-restrictive policies. Additionally, Plaintiff is entitled to damages in an amount to be determined by the Court and the reasonable costs of this lawsuit, including his reasonable attorneys’ fees.

NINTH CAUSE OF ACTION

Violation of Plaintiff’s First Amendment Right to Free Exercise of Religion (42 U.S.C. § 1983)

73. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 72 of this Complaint.

74. By, among other things, prohibiting student organizations and their activities from engaging in “the willing act of attempting to convert another person

to accept the religious beliefs or faith of any individual or group, or whose primary purpose is to engage in a religious celebration or ceremony or other worship service, except when such activity is for educational purposes” from receiving funding Defendants, acting under color of state law, have suppressed Plaintiff’s religious expression and deprived Plaintiff of his clearly established right to free exercise of religion secured by the First Amendment to the Constitution of the United States.

75. Because of Defendants’ actions, Plaintiff has suffered, and continues to suffer, irreparable injury which cannot be fully compensated by an award of money damages.

76. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff is entitled to a preliminary and permanent injunction invalidating and restraining enforcement of the University’s speech restrictive Policy Manual and Student Guide and other speech-restrictive policies. Additionally, Plaintiff is entitled to damages in an amount to be determined by the Court and the reasonable costs of this lawsuit, including his reasonable attorneys’ fees.

WHEREFORE, Plaintiff Alfred J. Fluehr respectfully requests that the Court enter judgment against Defendant Pennsylvania State University and Defendant Graham B. Spanier and provide Plaintiff with the following relief:

- (A) A preliminary and permanent injunction invalidating and restraining enforcement of the University's speech restrictive Policy Manual, Student Guide, Student Activity Fee Handbook, Policies and Rules for Student Organizations and other speech-restrictive policies;
- (B) Monetary damages in an amount to be determined by the Court;
- (C) Plaintiff's reasonable attorneys' fees, costs, and other costs and disbursements in this action pursuant to 42 U.S.C. § 1988; and
- (D) All other further relief to which Plaintiff may be entitled.

Respectfully submitted,

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(*Pro Hac Vice motion concurrently filed)

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