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Ken Harmon  
Interim President  
Office of the President  
Kennesaw State University  
585 Cobb Avenue NW  
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April 9, 2018

Dear President Preczewski and Interim President Harmon:

I write as one member of the U.S. Commission on Civil Rights, and not on behalf of the Commission as a whole, to express my concern about your respective universities' alleged infringements of the First Amendment.

At Georgia Gwinnett College (GGC), students Chike Uzuegbunam and Joseph Bradford allege that college officials have enforced campus speech rules to prevent them from sharing their religious faith with passersby.<sup>1</sup> At Kennesaw State University (KSU), student Zachary Bohannon alleges that campus speech rules categorically bar him from sharing his faith with passersby and also relegate a Christian group to which he belongs to an undesirable free speech zone.<sup>2</sup>

The root of the problem in both these cases is that GGC and KSU limit public speech to “free speech zones.” The entire United States of America is a free speech zone, and that should be doubly true on the campuses of state universities.<sup>3</sup> Yet at GGC, Mr. Uzuegbunam was told he could not stand in front of the college library and peacefully pass out religious literature.<sup>4</sup> Mr.

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<sup>1</sup> Uzuegbunam v. Preczewski, First Amended Verified Complaint, Case No. 1:16-cv-04658-ELR, Feb. 15, 2017, <http://ia601609.us.archive.org/4/items/gov.uscourts.gand.233667/gov.uscourts.gand.233667.13.0.pdf>.

<sup>2</sup> Ratio Christi v. Olens, Complaint, Case No. 1:18-cv-00745-MHC, Feb. 20, 2018, <http://www.adfmedia.org/files/RatioChristiComplaint.pdf>.

<sup>3</sup> Rosenberger v. Rector, 515 U.S. 819, 836 (1995) (“For the University, by regulation, to cast disapproval on particular viewpoints of its students risks the suppression of free speech and creative inquiry in one of the vital centers for the Nation’s intellectual life, its college and university campuses.”).

<sup>4</sup> Uzuegbunam v. Preczewski, *supra* note 1, at 226, 230-231.



Bohannon cannot even reserve a free speech zone at KSU in order to share his faith, because individual students are not permitted to reserve free speech zones.<sup>5</sup>

Furthermore, GGC and KSU discriminate against Messrs. Uzuegbunam, Bradford, and Bohannon because of the content of their speech. After Mr. Uzuegbunam reserved a free speech zone and began to share his faith, GGC authorities stopped him because other individuals were offended by the content of his speech.

Defendant Lawler stated that Mr. Uzuegbunam’s open-air speaking was “disorderly conduct” because “people are calling us because their peace and tranquility is being disturbed and we’ve asked you to stop.”

Defendant Lawler stated that the mere fact that someone complains about expression converts that expression into disorderly conduct. . . .

During the conversation, Defendant Dowell stated that it is a violation of GGC policy for anyone to express a “fire and brimstone message” on campus, even within the speech zones.<sup>6</sup>

Similarly, Mr. Bohannon is a member of a Christian group at KSU, Ratio Christi, that twice sought to erect a pro-life display in order to engage with students and others on campus. Reservation specialists at KSU told Ratio Christi that because its display was “controversial” it could not erect the display in the most desirable free speech zone on campus, Zone 2, unless it removed some of the posters that were part of the display. Ratio Christi refused to do so, and was relegated to the least desirable free speech zone, Zone 4.<sup>7</sup> When a member of Ratio Christi addressed this issue with then-KSU president Sam Olens, then-President Olens confirmed that this discrimination against “controversial” speech was KSU policy.<sup>8</sup>

State universities are bound by the First Amendment. Both GGC and KSU engaged in viewpoint discrimination against religious speech. This implicates both the free speech and free exercise of religion provisions of the First Amendment. The Supreme Court has said, “It is axiomatic that the government may not regulate speech based on its substantive content or the message it

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226. Defendant Dowell confirmed that Defendants’ Speech Zone Policy prohibits Mr. Uzuegbunam from distributing religious literature outside of the library because that location is not within one of the two speech zones.

. . . .

230. Mr. Uzuegbunam’s acquaintance then asked Defendant Dowell if Mr. Uzuegbunam could continue engaging interested individuals in conversations about his religious views while standing outside of the two speech zones.

231. In response, Defendant Dowell shook her head and stated that Defendants’ Speech Zone Policy prohibits such conversations outside of the speech zones.

<sup>5</sup> Ratio Christi v. Olens, *supra* note 2, at 207-209.

<sup>6</sup> Uzuegbunam v. Preczewski, *supra* note 1, at 289-290, 305.

<sup>7</sup> Ratio Christi v. Olens, *supra* note 2, at 154-183.

<sup>8</sup> *Id.* at 184-185.



conveys.”<sup>9</sup> Apparently the administrators of GGC and KSU need to reacquaint themselves with this axiom. Stating that everyone is prohibited from “express[ing] a ‘fire and brimstone message’ on campus”<sup>10</sup> or that “certain presentations and organizations will be restricted to the free speech zone”<sup>11</sup> are regulations of the substantive content of speech.

In 2016, the Commission published a report on conflicts between religious liberty and nondiscrimination norms. I was concerned that many of the witnesses who testified at the briefing that was the basis for the report, and many of my fellow commissioners, thought that any conflicts between religious teachings and nondiscrimination norms *must* be resolved in favor of the latter.<sup>12</sup> At least on the KSU campus, it appears that this bias has evolved into a bias in favor of those who promote LGBT issues and against those who promote traditional religious viewpoints. Consider: Ratio Christi was not allowed to reserve the most desirable free speech zone, Zone 2, for its event, but KSU “permitted Kennesaw Pride Alliance to reserve *all seven* zones of the Campus Green for its ‘Pride Day’ event.” [emphasis added]<sup>13</sup> This is one of the problems with regulating the content of speech based on whether it is “controversial.” “Controversy” is in the eye of the beholder: To those who do not share the views of certain KSU administrators, Ratio Christi’s religiously-motivated pro-life display may not be as “controversial” as “Pride Day.” In fact, next year, with a change in administrative personnel, KSU’s position may change. This is ideology and incoherence masquerading as rationality and deliberation.

I urge you and the relevant authorities in Georgia to take several steps. First, I urge both of you to change your institutions’ policies to allow *individual* students to speak freely on campus without going through a permitting process. A single student leafleting in front of the library or on the sidewalk does not raise issues of ensuring adequate space for groups that want to have a more formal event. The default presumption should be *in favor* of speech. Second, I urge both of you to address the students at your institutions and explain that part of being an adult, and a responsibility (indeed, a *necessity*) of someone who has the privilege of attending an institution of higher learning, is the ability to hear speech with which you disagree without complaining to authorities and trying to shut down the speaker. Finally, I urge you to immediately end all unconstitutional viewpoint and content-based discrimination.

Sincerely,

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<sup>9</sup> *Rosenberger v. Rector*, 515 U.S. 819, 828 (1995).

<sup>10</sup> *Uzuegbunam v. Preczewski*, *supra* note 1, at 305.

<sup>11</sup> *Ratio Christi v. Olens*, *supra* note 2, at 185.

<sup>12</sup> U.S. Commission on Civil Rights, *Peaceful Coexistence: Reconciling Nondiscrimination Principles with Civil Liberties*, Sept. 2016, <http://www.usccr.gov/pubs/Peaceful-Coexistence-09-07-16.PDF>.

<sup>13</sup> *Ratio Christi v. Olens*, *supra* note 2, at 198.



UNITED STATES COMMISSION ON CIVIL RIGHTS

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A handwritten signature in black ink, appearing to read 'P. Kirsanow'.

Peter Kirsanow  
Commissioner

Cc: Governor Nathan Deal