

## University Policy 541: Free Expression and Assembly

**Category:** Operating

**Subcategory:** General

**Covered Individuals:** University Employees, Students, and Visitors

**Responsible Executive:** Vice President for Legal Affairs

**Policy Custodian:** Vice President for Legal Affairs

**Last Revised:** 2024/05/01

**Previous USU Policy Number:** N/A

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### 541.1 PURPOSE AND SCOPE

Utah State University (the “University” or “USU”) is committed to free expression and assembly as guaranteed by the United States Constitution, the Utah Constitution, and by state law.

The purposes of this Policy are (i) to protect the free exchange of ideas, free speech, freedom of assembly, and academic freedom within University programs and activities and on the University Campus, (ii) to define the limits of protected expression and assembly, (iii) identify unprotected expression and assembly, (iv) to set reasonable rules governing the time, place, and manner of expression and assembly, and (v) provide a process for individuals to report concerns that their free speech rights have been violated.

### 541.2 POLICY

#### 2.1 Scope

All persons on the University Campus, including the University Community and Visitors, are protected by and subject to laws governing freedom of expression and assembly and are required to abide by this policy and all other applicable University policies and procedures while on the University Campus.

The University reserves all rights afforded to it under applicable law. Nothing in this Policy or related USU policies and procedures shall be read to provide any contractual or quasi-contractual right, remedy, or cause of action against the University of any kind, and the University further states that it has no intent to extend a contractual or quasi-contractual right of any kind.

#### 2.2 Designation of University Campus Spaces

The University designates the University Campus exclusively for the direct and indirect advancement of the University’s functions to ensure that it is used in keeping with the mission and objective of the University. Academic and administrative uses of University Campus spaces will be reasonably prioritized over public access or use.

#### 2.4.4 Outdoor Areas.

Consistent with state law, outdoor areas of the University Campus are designated open to the public and, generally, may be accessed for lawful Expressive Activity as “traditional public forums.” Access shall conform to all applicable time, place, and manner restrictions, which may be imposed or maintained on a case-by-case basis.

### 2.4.3 Indoor Areas.

The University may designate administrative offices, laboratory spaces, and certain indoor spaces and facilities as Restricted Areas and closed to public access and use. See section 2.4.5 of this Policy.

Select buildings and facilities have spaces, including, but not limited to, classrooms, auditoriums, and conference spaces that may be reserved for activities or events by the University Community and Visitors. The procedures for reserving such spaces are maintained by USU Events Services and/or the responsible University units and/or building administrators. Rental fees may be charged for the use of University spaces and facilities.

Building administrators may also designate certain indoor areas of the University Campus as Limited Public Forums where Expressive Activity may be permitted for designated groups and/or categories of speech. Examples include but are not limited to open areas of the Taggart Student Center, kiosks, bulletin boards, and display cases and areas.

### 2.4.5 Restricted Areas.

No person may enter or access University Campus spaces that have been designated as closed, private, or otherwise inaccessible to the public (referred to as "Restricted Areas"). Members of the University Community and/or Visitors found in violation of such designations may be subject to USU disciplinary procedures, trespass, and potential criminal prosecution.

## 2.3 Unprotected Expression and Assembly

Not all Expressive Activity is protected by the law. The following categories of expression and assembly are NOT PROTECTED by law, and are not permitted on the University Campus or in University programs or activities:

- (a) Obscenity;
- (b) Defamation;
- (c) Incitement to violence and/or True Threats;
- (d) Violations of state or federal law, including without limitation, criminal trespass, and willful interference with lawful University activities, see Utah Code section 76-8-701, *et seq.*;
- (e) Expressive Activity that creates a hostile environment within the meaning of Title IX of the *Educational Amendments of 1972*, Title VI of the *Civil Rights Act*, Title VII of the *Civil Rights Act of 1964*, or other applicable law;
- (f) Expressive Activity that substantially disrupts, obstructs, or interferes with classes, teaching, the use of offices, ceremonies, sporting events, or other university activities;
- (g) Expressive Activity that damages property; and
- (h) Expressive Activity that discloses private or confidential information or trade secrets without appropriate authorization.

## 2.4 Expressive Activities

### 2.4.1 Free Expression Rights.

Subject to the limitations in this Policy and applicable law, and as more fully described in the following subsections, members of the University Community shall have the right to engage in Expressive Activity and assembly on the University Campus.

### 2.4.2 Time, Place, and Manner Restrictions.

The First Amendment allows the University to enact reasonable time, place, and manner restrictions on Expressive Activity. These restrictions must be (1) neutral in viewpoint and content, (2) no more extensive than necessary, and (3) serve a significant University interest. Examples of such interests include, but are not limited to crime prevention, public safety, avoiding disruption of University functions, and maintenance of an educational atmosphere. Any such restrictions must also leave open other channels for Expressive Activity.

**2.4.6 Demonstrations.**

Individuals or groups desiring to demonstrate, picket, or distribute literature within public forums on the University Campus are encouraged to file a written request with the Executive Director of Public Safety indicating the preferred time, place, and manner of such activity. Such requests would be welcome at least 24 hours in advance.

**2.4.7 Speakers.**

When individuals are invited to speak or present on campus, the University respects the speaker's right to engage in protected speech and encourages a respectful presentation environment free from undue disruption or interference. Substantial disruption is not permitted and may result in an individual being removed from the event and/or trespassed from the University Campus and subject to USU disciplinary procedures.

**2.4.8 Commercial Speech and Activity.**

No person shall operate any commercial enterprise or solicit, sell, or rent goods or services (including any lessons, classes, or instruction) on the University Campus, whether for profit or otherwise, except those expressly authorized by USU in writing. For purposes of this Policy, soliciting and selling shall include commercial leafleting or distribution of advertisements or other promotional items or materials. Any sponsor of such commercial activity may be subject to established University fees and must comply with applicable University policies and procedures.

Commercial support of University programs or a Registered Student Organization is not considered a commercial activity under this Policy, and may therefore be permitted, provided that the primary purpose of such support is to underwrite the University program or organization, as opposed to the promotion or endorsement of a commercial product.

**2.4.9 Student Organizations.**

As described in and governed by the USU Student Code, student organizations may be established for any lawful purpose that does not interfere with or interrupt the policies and activities of the University. All Registered Student Organizations must comply with the USU Student Code, this Policy, and all applicable standards established by Student Affairs, the sponsoring department, USUSA, and/or the Greek Interfraternal and Panhellenic Councils, as applicable.

**2.4.10 Student Publications.**

Student-driven publications supported by University funds and/or student fees shall be governed by reasonable and nondiscriminatory procedures and practices, which shall be Viewpoint-Neutral and consistent with this policy. No member of the administration or staff, including but not limited to student publication advisors, shall prohibit speech in advance or exercise editorial control over the content of these publications. Notwithstanding, the University and its administrative units retain full editorial control over all non-student, University publications.

**2.4.11 Institutional Statements.**

The University, as an institution, has the right to engage in free speech. The University will exercise its right to speak in a manner consistent with its core principles, values, and mission. Any statements issued by or on behalf of the University must be approved by the President or their designee. No other individual is authorized to speak or issue statements on behalf of USU.

**2.4.12 Sub-Unit or Departmental Statements.**

Departments and other sub-units of USU should not issue statements that do not directly relate to the Department or sub-unit's work at the University without the approval of the President or their designee. Sub-Units and Departments should refrain from taking positions on political, social, or unsettled issues that do not directly relate to the University's mission, role, or pedagogical objectives.

**2.4.13 Personal Statements.**

Generally, USU employees have the right to express themselves in their personal capacity regarding issues of public concern, so long their speech does not disrupt the University's interest in an efficient and harmonious workplace. Employees should not use University letterhead or University email addresses when engaging in Expressive Activity in their personal capacity. In addition, Utah law prohibits state

employees, including University employees, from engaging in certain political activities, such as campaigning or advocating for a ballot initiative, during work or with state-owned property.

#### **2.4.14 Signage.**

Signs, notices, posters, or banners may only be posted on University spaces specifically designated for public postings. Postings in or adjacent to student housing must comply with USU's Student Housing regulations. No sign, poster, paint, or other written messages may be placed, affixed, or applied to any University surface (except for those designated for public posting), including, but not limited to, walls, windows, floors, doors, light posts, or any other surface.

Small lawn signs may be used to promote University programs or activities, and/or to advertise an upcoming event held on the University Campus. However, these signs must comply with USU's Facilities' published sign procedures.

USU may remove and discard any signs, notices, posters, or banners that do not comply with USU policies. USU Facilities and those individuals charged with cleaning spaces will remove non-compliant signage each day in the ordinary course of their scheduled duties.

#### **2.4.15 Academic Freedom.**

Academic freedom in the pursuit and dissemination of knowledge shall be maintained at the University in a manner consistent with this Policy and other relevant USU policies, including without limitation USU Policy 403, Academic Freedom and Professional Responsibility.

Academic freedom is the right to teach, study, discuss, investigate, discover, create, and publish freely. Academic freedom protects the rights of faculty members in teaching and of students in learning. Freedom in research is fundamental to the advancement of knowledge. The faculty member is entitled to full freedom in teaching, research, and creative activities, subject to the limitations imposed by professional responsibility. See USU Policy 403.

#### **2.4.16 Classroom Conduct.**

The University supports freedom of expression for both faculty and students within the classroom. The University respects the rights of faculty to teach and students to engage in the learning process. To preserve these rights, classroom conditions must not impede the learning process. Disruptive classroom behavior is not appropriate. An individual engaging in such behavior may be subject to disciplinary action as described in the Code of Policies and Procedures for Students at Utah State University, University Faculty Policies, and other administrative disciplinary actions.

### **2.5 Grievance Rights**

Complaints regarding violations of free expression and/or assembly rights, as protected by this Policy and by state and federal law, can be reported to the [University's Ethics & Compliance Hotline](#).

Complaints regarding violations of USU's nondiscrimination policies, including discriminatory harassment, can be reported to the Office of Equity using its [online reporting form](#).

Safety concerns should be reported to USU Police by calling 911 or by calling the 24-hour dispatch center at 435-797-1939.

### **2.5 Training and Education**

Consistent with its commitment to training the next generation of ethical leaders, nurturing intellectual growth and the expansion of knowledge, respecting the fundamental value of freedom of speech, and encouraging a diversity of perspectives, the University will endeavor to provide opportunities for education and research in free speech and civic education.

All employees are required to complete annual training on free speech and academic freedom. Failure to complete this training may result in disciplinary action under USU Policy 311: Setting Expectations and Managing Performance or USU Policy 407: Academic Due Process: Sanctions and Hearing Procedures, as applicable.

## 541.3 RESPONSIBILITIES

### 3.1 Departments

Each department with administrative control of University facilities and spaces must (i) develop, document, and maintain procedures addressing the permissible speech-related uses of indoor spaces and facilities, and (ii) train relevant administrative staff regarding this policy and all applicable procedures. Departments should seek advice from the Office of General Counsel on matters relating to the application of this Policy.

### 3.2 Individuals

The University Community and all Visitors must comply with this Policy.

### 3.3 Supervisors

Supervisors must maintain work environments consistent with this Policy and the standards of the University. Supervisors are responsible for ensuring all reporting employees complete required training. Supervisors should seek advice from the Office of General Counsel on matters relating to the application of this Policy.

### 3.4 Office of General Counsel

The Office of General Counsel is responsible for providing advice to departments and supervisors relating to the application of this Policy. Additionally, the Office of General Counsel will review complaints received from the Ethics & Compliance Hotline regarding this Policy and First Amendment Rights and refer complaints to the appropriate administrative system for investigation and resolution.

### 3.4 Human Resources

In partnership with the Office of General Counsel, Human Resources is responsible for developing and tracking employee completion of training required by this Policy.

## 541.4 REFERENCES

- United States Constitution, First Amendment
- Utah Constitution, Article I, §15
- Title VI of the *Civil Rights Act of 1964*
- Title VII of the *Civil Rights Act of 1964*
- Title IX of the *Educational Amendments of 1972*
- Utah Code Ann. § 53B-1-116 to -118
- Utah Code Ann. § 53B-27-101, *et seq.*, *Campus Individual Rights Act*
- Utah Code Ann. § 76-8-701, *et seq.*, *Offenses Against the Administration of Government, Colleges and Universities*
- Utah Administrative Code r.765-800-1, *et seq.*, *Free Expression on Campus*
- UBHE Rule 251, *Campus Speakers*
- UBHE Resolution on Freedom of Expression, May 18, 2023.
- UBHE Resolution Establishing Expectations for Implementing Principles of Free Expression on Campus, December 1, 2023.

## 541.5 RELATED USU POLICIES

- USU Policy 303: Affirmative Action/Equal Opportunity
- USU Policy 305: Discrimination Based on Protected Characteristics
- USU Policy 333: Political Activity
- USU Policy 339: Title IX Sexual Misconduct in an Employment or Education Program or Activity
- USU Policy 339A: Non-Title IX Sexual Misconduct

- USU Policy 540: University Social Media Accounts
- USU Policy 403: Academic Freedom and Professional Responsibility
- USU Student Code: Article IV, Student Organizations and Their Functions
- USU Student Code: Article V-3, University Standards of Student Conduct

## 541.6 DEFINITIONS

- **Commercial Speech** means all spoken, written, and symbolic expression intended, in whole or in significant part, to generate financial gain.
- **Defamation** is an intentionally false statement that harms an individual's reputation.
- **Disruptive Behavior** is expression or assembly that presents a substantial disruption to a University function.
- **Expressive Activity** is any behavior designed to convey a message, including, without limitation, assembling, protesting, or speaking; distributing literature; carrying a sign; or circulating a petition.
- **Incitement** is an expression that is meant to incite or produce imminent lawless action and is likely to incite such action.
- **Limited Public Forums** are areas that the University has opened for Expressive Activity, but has established initial restrictions on access to the area based on subject matter and/or the speaker. These areas include, but are not limited to, conference rooms, auditoriums, recital halls, concert halls, and sports arenas. The University may impose restrictions on Expressive Activity so long as the restrictions are content-neutral, narrowly tailored to serve a significant University interest, and reasonable in light of the purpose served by the forum.
- **Obscenity**, in the context of free expression, does not refer to the curse words in and of themselves. Rather, it refers to sexually explicit content, that is patently offensive and lacks serious merit.
- **Traditional Public Forums** are areas, such as public parks, sidewalks, and other spaces, that have traditionally been open to the public for free expression and assembly. Maximum First Amendment protections are afforded to expressive activities and assembly in these areas. The University may regulate time, place, and manner of expressive activities in Traditional Public Forums, so long as those regulations are content-neutral, narrowly tailored to serve a significant University interest, and leave open ample alternative channels of communication.
- **True Threat** is a statement that communicates a serious intent to commit an act of violence to a particular person or group. Additionally, the speaker must have some subjective understanding that their statement is threatening, but recklessly make it anyway.
- **Registered Student Organization** refers to a student group (a) registered with or formed by the University according to departmental organization standards established by the relevant departments or (b) registered and functioning according to Utah State University Student Association ("USUSA") organization standards as published and maintained by the USUSA.
- **University Campus** refers to any University facility or property, physical or virtual, owned, operated, or controlled by the University, including without limitation University learning management systems, residential campuses, regional campuses, and University centers across the state of Utah.
- **University Community** refers to all enrolled students, all persons employed by or volunteering for the University, including without limitation members of the Board of Trustees, administrators, faculty, staff, and all organizations comprised of individual members of the University Community.

- **Viewpoint Neutral** means that a regulation, restriction, or requirement does not permit or restrict Expressive Activity based on the message advocated. A regulation would not be viewpoint neutral if it is based on an opinion or ideology. Viewpoint-neutral restrictions are distinguishable from content-based restrictions, which may be permissible under certain circumstances.
- **Visitors** refers to anyone on the University Campus who is not a member of the University Community.

## RESOURCES

*(List resources to aid in compliance or indicate "None.")*

### Procedures

- Hyperlinks to procedures.

### Guidance

- [Presidential Statements and Neutrality](#)
- [Free Speech at USU](#)

### Related Forms and Tools

- Hyperlinks to forms and tools.

### Contacts

- [Mica McKinney, Vice President for Legal Affairs and General Counsel](#)

## POLICY HISTORY

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