

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE**

JOHN MCGLONE,

Plaintiff,

vs.

JIMMY G. CHEEK, in his official capacity as Chancellor of the University of Tennessee at Knoxville; DR. MAXINE DAVIS, individually and in her official capacity as Dean of Students at the University of Tennessee at Knoxville; ANGI SMITH, individually and in her official capacity as Associate Dean of Students at the University of Tennessee at Knoxville;

Defendants.

CIVIL ACTION NO. 3:11-cv-00405

**MEMORANDUM IN SUPPORT OF  
MOTION FOR PRELIMINARY  
INJUNCTION**

Plaintiff John McGlone (“McGlone”) challenges the University of Tennessee’s (“UT”) sponsorship requirement, contained in policy # 1720-1-2 and in the “Access to Campus” policy, facially and as-applied, because this sponsorship requirement allows for unbridled discretion and is unconstitutionally vague. Given McGlone’s continued interest in exercising his First Amendment rights, he seeks a preliminary injunction.

**STATEMENT OF FACTS**

McGlone is a Christian who is obliged to share his religious faith with others. (Verified Complaint, ¶ 12). He fulfils this religious obligation by going to outdoor areas on university campuses and expressing his beliefs there. (Affidavit of John McGlone, ¶¶ 2-3, attached to Motion for Preliminary Injunction as Exhibit “A”). McGlone shares a message about Jesus Christ through speaking, distributing literature, and displaying signs. (Ex. “A,” ¶¶ 4-5). He is not

violent, does not cause a disturbance, and never harasses anyone. (Ex. “A,” ¶¶ 7-8). McGlone just wants to share his beliefs. (Ex. “A,” ¶¶ 10-11).

In particular, McGlone wants to share his Christian message at UT in Knoxville, Tennessee. (Ex. “A,” ¶ 11). UT is a public university with over 27,000 students and 8000 faculty members. (Compl., ¶¶ 18-19). The campus covers 560 acres and has roughly 236 buildings sitting on it. (Compl., ¶ 19). Because the campus is not encompassed by fences or gates, the general public can – and does – access UT’s campus. (Compl., ¶¶ 20, 24). Individuals not affiliated with UT commonly access UT’s campus for various reasons, including walking, jogging, picnicking, sight-seeing, and frisbee throwing. (Compl., ¶ 24). These individuals routinely travel through campus while conversing with others. (Compl., ¶ 24).

Accessible, outside areas on UT’s campus include the Pedestrian Walkway located on Andy Holt Ave, the Amphitheatre located on the Pedestrian Walkway near the Humanities and Social Sciences Building (HSS), and Circle Park. (Compl., ¶ 22). Besides these areas, UT’s campus contains many other sidewalks, park areas with benches and tables, grassy knolls, amphitheatres, pedestrian malls, and various other public ways. (Compl., ¶ 22). These open areas physically resemble and function like typical public parks, public sidewalks, and public malls found elsewhere in the City of Knoxville. (Compl., ¶ 23). These areas dissipate noise well, allow people to gather without disrupting UT’s educational goals, and are perfectly compatible with free expression. (Compl., ¶¶ 23, 25).

From 2008 to August 2010, McGlone visited the open areas on UT’s campus five times and expressed his beliefs. (Ex. “A,” ¶ 12). On his first visit, McGlone shared his views and left without incident. (Ex. “A,” ¶ 13). For the other visits, McGlone contacted UT officials beforehand as a courtesy. (Ex. “A,” ¶ 14).

During these visits, McGlone typically went to the Amphitheatre located on the Pedestrian Walkway near the Humanities and Social Sciences Building (HSS). (Ex. “A,” ¶ 15; photographs of McGlone speaking in Amphitheatre in 2010, attached to Motion for Preliminary Injunction as Exhibits “B” and “C”). This open-air Amphitheatre resembles a pedestrian mall and allows McGlone an opportunity to share his message with students. (Ex. “A,” ¶ 15; Ex. “B”; Ex. “C”). UT officials often watched McGlone as he expressed his beliefs there, but never required him to secure permission or sponsorship. (Ex. “A,” ¶ 16; Compl. ¶ 30; Ex. “C”).

This all changed on August 25, 2010 when McGlone called UT officials to inform them of his intention to express his beliefs at UT the following day. (Ex. “A,” ¶ 17). McGlone discussed the prospect of this with Dean Maxine Davis and Dean Angi Smith. (Ex. “A,” ¶¶ 17-18). Dean Davis identified Dean Smith as the person in charge of the solicitation process for UT. (Ex. “A,” ¶ 19). McGlone clarified that he merely wanted to share his beliefs, not solicit, but Dean Smith interjected and explained that the term “solicitation” at UT encompassed many activities, including McGlone’s desire to share information about his religion. (Ex. “A,” ¶¶ 20-21). Dean Smith then informed McGlone that he had to obtain a “sponsorship” to speak in the Amphitheatre or in any other open area at UT. (Ex. “A,” ¶ 22).

McGlone objected to the sponsorship requirement because it adversely impacts expression in public areas. (Ex. “A,” ¶ 23). Dean Smith, though, questioned the public nature of the open areas and reiterated the restriction. (Ex. “A,” ¶ 23). McGlone continued to voice concern about the sponsorship requirement on legal grounds (Ex. “A,” ¶ 24), but without waiving his objection, he formally requested permission to speak in the Amphitheatre and on the Pedestrian Walkway at UT. (Ex. “A,” ¶ 25).

Dean Davis refused to sponsor McGlone and promptly denied his request to speak. (Ex. “A,” ¶ 26). McGlone asked the deans if they would consult with their legal counsel about the sponsorship requirement. (Ex. “A,” ¶ 27). Dean Davis advised that UT’s counsel, Matthew Scoggins, had already approved of the requirement. (Ex. “A,” ¶ 28). After McGlone asked for and received Scoggins’ telephone number, he repeated his desire to share his religious beliefs at UT without obtaining sponsorship, emphasizing the impropriety of the sponsorship requirement. (Ex. “A,” ¶ 29).

Following this telephone conversation, later on that day, McGlone spoke with Scoggins on the phone. (Ex. “A,” ¶¶ 30-31). During this conversation, Scoggins asked for McGlone’s email address so he could send McGlone a written copy of the policies requiring sponsorship. (Ex. “A,” ¶ 31). After providing his email address, McGlone asked Scoggins why a sponsorship requirement was never imposed in the past. (Ex. “A,” ¶ 31). Scoggins declined to comment on McGlone’s past experiences but assured McGlone that “outside speakers have to be sponsored by students, faculty, or staff.” (Ex. “A,” ¶ 31). According to Scoggins, this requirement came from a Board of Trustees policy restricting UT’s campus to students, faculty, staff, and invitees. (Ex. “A,” ¶ 31).

After this conversation concluded, McGlone received a second telephone call from Dean Smith. (Ex. “A,” ¶ 33). Smith confirmed: “In order to speak in an area on campus, you need to be sponsored by a registered student organization, staff, or faculty.” (Ex. “A,” ¶ 33). McGlone then requested the telephone number for UT’s General Counsel, Catherine Mizell. (Ex. “A,” ¶ 34). Following his conversation with Dean Smith, McGlone called Mizell, but she was unavailable; McGlone left a message for Mizell to call him back. (Ex. “A,” ¶ 35).

While McGlone awaited Mizell's phone call, Scoggins emailed McGlone two links directing McGlone to the policies containing the sponsorship requirement. (Copy of August 25, 2010 email from Matthew Scoggins to John McGlone, attached to Motion for Preliminary Injunction as Exhibit "D"). The first link directed McGlone to policy # 1720-1-2-.01, entitled "Access to University Property." (Ex. D). This policy reads:

1720-1-2-.01 RESTRICTIONS. The University's campuses and facilities shall be restricted to students, faculty, staff, guests, and invitees except on such occasions when all or part of the campuses, buildings, stadia, and other facilities are open to the general public.

(Copy of Policy # 1720-1-2, entitled "Access to University Property," attached to Motion for Preliminary Injunction as Exhibit "E"). The second link directed McGlone to the "Hilltopics," the student handbook for UT. (Ex. "D"). A section of this student handbook is entitled "Access to Campus." This section reads as follows:

The university's campuses and facilities shall be restricted to students, faculty, staff, administrators, guest-visitors and invitees except on such occasions when all or part of the campuses, buildings, stadia, and other facilities are open to the general public. On occasions when public events are held on campus, e.g., intercollegiate athletic contests, concerts, lectures, etc., the university shall be considered open to all persons desirous of attending such events.... Guests, visitors, and invitees of the University of Tennessee shall honor university rules and regulations concerning the use of and conduct in university facilities or grounds. Violation of rules and regulations may result in lawful removal from campus, prosecution, and withdrawal of visitation privileges.

(Copy of Policy entitled "Access to Campus" attached to Motion for Preliminary Injunction as Exhibit "F").

McGlone never heard from General Counsel Mizell; instead, Scoggins called McGlone on Mizell's behalf on September 9, 2010. (Ex. "A," ¶ 38). During this conversation, Scoggins confirmed that policy # 1720-1-2 required McGlone to obtain sponsorship to speak anywhere on campus. (Ex. "A," ¶ 39).

Faced with this barrier, McGlone tried to comply with the sponsorship requirement by seeking sponsorship from various student groups. (Copy of email from John McGlone to UT student groups, attached to Motion for Preliminary Injunction as Exhibit “G”). None of the groups agreed to sponsor McGlone or even responded to McGlone’s request. (Ex. “A,” ¶ 41). Unable to secure sponsorship, but still wanting to avoid litigation, McGlone, through counsel, wrote a letter to UT expounding on the constitutional concerns with the sponsorship requirement. (Copy of letter from Plaintiff’s counsel to UT officials, attached to Motion for Preliminary Injunction as Exhibit “H”). This letter specifically asked UT officials to refrain from applying the sponsorship requirement to McGlone’s expression. (Ex. “H”).

In a response letter, UT confirmed that McGlone must obtain sponsorship prior to expressing his beliefs anywhere on campus. (Copy of letter from UT officials to Plaintiff’s counsel, attached to Motion for Preliminary Injunction as Exhibit “I”). This letter also confirmed the unbridled discretion given to officials to determine who may receive sponsorship. (Ex. “I”; “...the decision to sponsor a speaker is left to the individual discretion of students, faculty, and staff.”).

UT’s sponsorship requirement remains in place and perpetually serves to deter McGlone’s expression. (Ex. “A,” ¶ 47). McGlone is afraid to express his beliefs anywhere on UT’s campus, including the Pedestrian Walkway, the Amphitheatre, and Circle Park. (Ex. “A,” ¶ 51). If not for UT’s policies, and the actions of Defendants in enforcing these policies, McGlone would soon return to UT to share his message via speaking, one-on-one conversation, literature distribution, and/or signs. (Ex. “A,” ¶ 53).

## ARGUMENT

A request for preliminary injunction requires consideration of four factors: (I) substantial likelihood of success on the merits; (II) irreparable injury; (III) presence of substantial harm to others; and (IV) impact of a preliminary injunction on the public interest. *Déjà vu of Nashville, Inc. v. Metropolitan Government of Nashville and Davidson County*, 274 F.3d 377, 400 (6th Cir. 2001). All factors favor injunctive relief here.

### **I. MCGLONE IS LIKELY TO SUCCEED ON THE MERITS**

McGlone challenges UT's policies on their face and as-applied for vagueness and for allowing unbridled discretion. Because the prohibitions against vagueness and unbridled discretion apply in every forum type, even non-public fora, forum classification is largely irrelevant in this case. *See, e.g., Miller v. City of Cincinnati*, 622 F.3d 524, 535-36 (6th Cir. 2010) (enjoining policy as vague, while refusing to classify forum as non-public or limited, because such classification would be irrelevant). *See also Child Evangelism Fellowship of Md. v. Montgomery County Pub. Sch.*, 457 F.3d 376, 386 (4th Cir. 2006) ("Thus, there is broad agreement that, even in limited public and nonpublic forums, investing governmental officials with boundless discretion over access to the forum violates the First Amendment.")<sup>1</sup>

---

<sup>1</sup> There are four types of property for speech purposes: traditional, designated, limited, and nonpublic fora. *Miller v. City of Cincinnati*, 622 F.3d 524, 534-36 (6th Cir. 2010). A traditional public forum is an area devoted to assembly and debate by long tradition or government fiat. *Id.* A designated public forum is an area opened to the public at large. *Id.* A limited public forum is an area opened for certain groups or dedicated solely to the discussion of certain subjects. *Id.* And a nonpublic forum is government-owned property that is not by tradition or governmental designation a forum for public communication. *Id.*

Though forum classification is not essential for analysis here, the areas in which McGlone desires to speak are in fact traditional public fora since they are compatible with expression and physically resemble public parks, malls, and sidewalks. At the very least, these areas must be considered designated or limited public fora since UT has expressly opened these areas to campus affiliated speakers and to some outside speakers.

To succeed on his First Amendment claim, McGlone is to show that (A) he desires to engage in expression, (B) UT's policy adversely impacts his expression, and (C) UT's policy is vague. *See, e.g., Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 755-56 (1988) ("...when a licensing statute allegedly vests unbridled discretion in a government official over whether to permit or deny expressive activity, one who is subject to the law may challenge it..."). *See also Miller*, 622 F.3d at (noting that party could bring First Amendment challenge because "[w]hen the City instructed the plaintiffs to secure a sponsor, the City placed the plaintiffs' request at the mercy of the unfettered discretion of those officials authorized to grant access."). McGlone easily makes this showing.

#### **A. McGlone's Desired Expression Constitutes Protected Speech**

McGlone desires to speak, distribute literature, and display signs. (Ex. "A," ¶ 4). All of these activities classify as protected speech under the First Amendment. *See, e.g., Boos v. Barry*, 485 U.S. 312, 318 (1988) (displaying signs is protected speech); *Heffron v. Int'l Soc'y for Krishna Consciousness*, 452 U.S. 640, 647 (1981) (oral and written dissemination of religious viewpoint are protected speech); *Murdock v. Pennsylvania*, 319 U.S. 105, 108 (1943) (explaining that the hand distribution of tracts "has the same claim as the others to the guarantees of freedom of speech and freedom of the press..."). The protection afforded this speech does not fade upon someone being offended by the message. *See, e.g., Cox v. Louisiana*, 379 U.S. 536, 551 (1965).

#### **B. UT's Sponsorship Requirement Adversely Affects McGlone's Expression**

McGlone would like to express his message on open, outside areas on UT's campus, including the Pedestrian Walkway, the Amphitheatre, and Circle Park. (Compl., ¶ 31; Ex. "A," ¶ 17). But UT requires McGlone to obtain sponsorship before speaking in any of these spots. (Ex.

“A,” ¶¶ 21-39). Thereby, the sponsorship requirement necessarily impacts McGlone’s desired expression. *See* (Ex. “A,” ¶¶ 11, 44-53) (noting desire to express beliefs on UT’s campus but inability to attempt to do so in future because of sponsorship requirement). *See also CAMP Legal Defense Fund, Inc. v. City of Atlanta*, 451 F.3d 1257, 1273, 1276 (11th Cir. 2006) (allowing party to bring First Amendment challenge because provision of policy “affects” or “pertains to” a party’s desired activities). *Accord Planned Parenthood Ass’n of Cincinnati, Inc. v. City of Cincinnati*, 822 F.2d 1390, 1394-96 (6th Cir. 1987).<sup>2</sup>

### **C. UT’s Sponsorship Requirement Allows Unbridled Discretion and is Vague**

Unbridled discretion is problematic because it forces speakers to alter their message or forgo speaking altogether in an effort to appease officials who control access to a forum. *See Lakewood*, 486 U.S. at 757. Unbridled discretion also enables officials to exclude speech on the basis of viewpoint. *Id.* A vague law produces identical concerns. *See, e.g., United Food & Commercial Workers Union Local 1099 v. Southwest Ohio Regional Transit Auth.*, 163 F.3d 341, 358-59 (6th Cir. 1998) (explaining that vague laws “trap the innocent by not providing fair warning” and vague laws “fail to provide explicit standards guiding their enforcement”). *Accord Miller*, 622 F.3d at 539.<sup>3</sup> A regulation is vague if its terms are not clearly defined such that a

---

<sup>2</sup> Of course, the fact that UT already forced McGlone to comply with its sponsorship requirement (Ex. “A,” ¶¶ 17-39) and that McGlone attempted to but could not obtain sponsorship (Ex. “A,” ¶¶ 40-42) also proves that the sponsorship requirement affects and hinders McGlone’s expression. *See generally LSO, Ltd. v. Stroh*, 205 F.3d 1146, 1155 (9th Cir. 2000) (compiling factors used to determine if there is a credible threat of future enforcement and noting that one such factor is “evidence of past instances of enforcement”).

<sup>3</sup> In this respect, there is no meaningful difference between the void-for-vagueness doctrine and the unbridled discretion doctrine. While the void-for-vagueness doctrine flows from the Due Process Clause of the Fourteenth Amendment, the unbridled discretion doctrine flows from the First Amendment and the Fourteenth Amendments. McGlone brings both types of challenges, but combines them in argument for the sake of brevity.

person of ordinary intelligence can readily identify the applicable standard for inclusion and exclusion. *United Food*, 163 F.3d at 358-59.

UT's sponsorship requirement allows for unbridled discretion and is vague because it contains no criteria for university officials in determining whether to sponsor a particular speaker.<sup>4</sup> This sponsorship requirement appears in Policy # 1720-1-2 and in the "Access to Campus" policy. *See* (Ex. "E") ("The University's campuses and facilities shall be restricted to students, faculty, staff, guests, and invitees..."); (Ex. "F") (emphasis added); ("The university's campuses and facilities shall be restricted to students, faculty, staff, administrators, guest-visitors and invitees...") (emphasis added). Under these policies, outside speakers cannot come on campus and engage in expression unless they are "invitees," that is, unless they have received approval from the university. As explained by numerous UT officials to McGlone, he must first obtain sponsorship from the university prior to engaging in any form of expression – whether it be dialogue or literature distribution – on campus. (Ex. "A," ¶ 31).

The sponsorship requirement is so broad and vacuous that permission can be denied (or given) for any reason whatsoever. UT officials have absolute and total discretion to determine

---

<sup>4</sup> UT's sponsorship requirement contains the distinguishing mark of a prior restraint --- it forces all speakers to apply for permission or sponsorship prior to speaking. *See, e.g., Nightclubs, Inc. v. City of Paducah*, 202 F.3d 884, 889 (6th Cir. 2000) ("A 'prior restraint' exists when speech is conditioned upon the prior approval of public officials."). Prior restraints – like UT's sponsorship requirement – "bear[] a heavy presumption against its constitutional validity." *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963). A prior restraint is not valid if it delegates overly broad licensing discretion to official decision-makers. *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 130 (1992).

which speakers receive sponsorship, setting up a system that freely allows for viewpoint discrimination.<sup>5</sup>

The First and Fourteenth Amendments do not permit government officials to condition access to a forum on such vague, *ad hoc* standards. See *Gregoire v. Centennial Sch. Dist.*, 907 F.2d 1366, 1375 (3d Cir. 1990) (“If the concept of a designated open forum is to retain any vitality whatever, the definition of the standards for inclusion and exclusion must be unambiguous and definite. The clear category of groups or clear category of subject matter required in a closed forum is absent here, violating the mandate of *Perry* and the reasoning in *Mergens*.”).<sup>6</sup> The Sixth Circuit invalidated a very similar sponsorship requirement in *Miller v. City of Cincinnati*. 622 F.3d 524 (6th Cir. 2010). In *Miller*, a lobbying group (the Coalition

---

<sup>5</sup> For all the same reasons that UT’s sponsorship scheme hinders McGlone, it also hinders other speakers not before the Court. That is why McGlone seeks to facially enjoin this sponsorship requirement in addition to enjoining this requirement as-applied to his particular expression.

<sup>6</sup> Courts have consistently ruled attempts to condition forum access through vague standards unconstitutional. For example, in *Hopper v. City of Pasco*, a city opened up its city hall to art that was not “controversial.” 241 F.3d 1067, 1077-78 (9th Cir. 2001). The Ninth Circuit struck down the standard as too vague. The Ninth Circuit explained:

Courts have also been reluctant to accept policies based on subjective or overly general criteria. " '[S]tandards for inclusion and exclusion' in a limited public forum 'must be unambiguous and definite' if the 'concept of a designated public forum is to retain any vitality whatever.'" *Christ's Bride*, 148 F.3d at 251 (quoting *Gregoire v. Centennial Sch. Distr.*, 907 F.2d 1366, 1375 (3d Cir.1990)). Absent objective standards, government officials may use their discretion to interpret the policy as a pretext for censorship....Therefore, "the more subjective the standard used, the more likely that the category will not meet the requirements of the first amendment." *Cinevision*, 745 F.2d at 575

*Id.* at 1077-78.

UT’s sponsorship requirement is even vaguer than the “controversial” standard invalidated in *Hopper*. At least in *Hopper*, the city set forth some standard to determine access to city hall. But UT has set forth no standard at all to cabin the discretion of officials. UT officials may grant access to the forum for any reason whatsoever. They may deny/grant access for pure viewpoint based reasons; the whole notion of sponsorship is premised upon permitting favored speech and disallowing disfavored speech. Thus, UT’s policy actually incorporates and formulizes unlimited discretion and empowers, if not encourages, officials to engage in viewpoint discrimination.

Opposed to Additional Spending & Taxes or COAST) requested access to the lobby of Cincinnati's city hall in order to conduct a press conference. *Id.* at 529. The city denied the request because COAST did not have "sponsorship" and thus ran afoul of Administrative Regulation # 5:

City Facility Management's practice is that events held inside the building require a City sponsor, either a Council Member or a department as part of their regular business and duties.... [Defendant] Koopman encouraged COAST to seek out a city department or city council member willing to sponsor a press conference and rally inside city hall or, in the alternative, to hold the event on the exterior steps.

*Id.* at 530. Soon after COAST brought the challenge, Cincinnati revised Administrative Regulation # 5, but retained the sponsorship requirement. *Id.* at 530-31. COAST then sought to enjoin the sponsorship requirement facially for allowing unbridled discretion and for vagueness.

*Id.* And, the Sixth Circuit enjoined Cincinnati's sponsorship requirement on its face:

In this case, Administrative Regulation # 5 provides even less guidance to officials than the advertising policy in *UFCW [United Food & Commercial Workers Union Local 1099 v. Southwest Ohio Regional Transit Auth., 163 F.3d 341 (6th Cir.1998)]*. The parties stipulate that the revised version of Administrative Regulation # 5, as did the original, gives complete discretion to council members and department heads to select whom they will sponsor. The only direction provided is that the purpose of the interior of city hall is to allow City officials "to exercise the rights and responsibilities specified in the Charter of the City of Cincinnati." Without further specificity, this directive offers no meaningful guidance. We conclude that the plaintiffs have established a substantial likelihood of success with regard to the merits of their void-for-vagueness claim.

*Id.* at 539-40.

*Miller* dictates the outcome in this case. The sponsorship requirement in *Miller* is no different in language or in effect from UT's sponsorship requirement. They first force speakers to obtain sponsorship before accessing a forum and then give officials absolute discretion in choosing which speakers to "sponsor." In both situations, the practical result is that speakers

must receive approval from – and pander to – officials who can play favorites and discriminate against particular viewpoints, unhindered by any guidelines. As *Miller* confirms, the First Amendment does not allow forum access to turn on such a vague standard, even if branded as a “sponsorship” requirement.<sup>7</sup> This same logic applies to UT’s sponsorship requirement that is textually and practically identical to Cincinnati’s sponsorship requirement. Both the analysis and holding of *Miller* squarely condemn UT’s sponsorship requirement as unconstitutionally vague, requiring UT’s sponsorship requirement to be enjoined.<sup>8</sup>

## II. MCGLONE IS SUFFERING IRREPARABLE HARM

---

<sup>7</sup> Besides the vagueness dilemma, *Miller* struck down Cincinnati’s sponsorship requirement as unreasonable. *Id.* at 536. UT’s sponsorship requirement is also unreasonable because there is no reason for closing an entire campus to all forms of unsponsored speech. There are countless forms of individual expression (one-on-one conversation, literature distribution, etc) that do not interfere with UT’s educational activities. This is evidenced by the fact that McGlone peacefully visited UT numerous times before UT began enforcing its sponsorship requirement, and UT officials had no problem with McGlone’s unsponsored expression. (Ex. “A,” ¶¶ 12-16). The circumstances indicate that UT’s sponsorship requirement primarily serves to limit unpopular ideas, not to achieve any practical goal of the university.

<sup>8</sup> In the university context, the Sixth Circuit has characterized sponsorship requirements as vague. In *Gilles v. Garland*, a district court dismissed a speaker’s challenge to an unwritten sponsorship requirement on a university campus. 281 Fed.Appx. 501, 502-03 (6th Cir. 2008). The Sixth Circuit reversed and reinstated the speaker’s Due Process claim because the sponsorship requirement was facially vulnerable to a vagueness challenge:

Yet, though the policy is nominally unambiguous in requiring a visitor to obtain an invitation, it includes no standards by which student groups are to judge requests in discharging the authority delegated them by the university. The district court observed that “there is nothing in the policy which permits MU officials to limit speech based on ambiguous or subjective reasons.” Yet, as far as can be determined from the existing record, neither is there anything in the policy that guides discretion and restrains abuse. As the district court recognized in its recitation of the governing standards, it is the absence of clear standards guiding the discretion of the public official that invites abuse and offends due process. Yet, the district court failed to identify any discretion-guiding standards in the speech policy. This unwritten “policy,” to the extent it has been defined in the existing pleadings at all, appears to be devoid of standards and is facially vulnerable to due process challenge.

*Id.* at 508. Though *Gilles* overturned a motion to dismiss, the Sixth Circuit’s analysis in *Gilles* is directly in line with that set out in *Miller*.

McGlone wants to speak at UT as soon as possible. And yet, without the requested injunction, McGlone cannot speak for fear of punishment; he is chilled and deterred by UT's vague sponsorship requirement. (Ex. "A," ¶¶ 47-53). This loss of the First Amendment right to speak is both actual and imminent and constitutes irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *Newsom v. Norris*, 888 F.2d 371, 378 (6th Cir. 1989).

### **III. INJUNCTION WILL CAUSE NO HARM TO UNIVERSITY OFFICIALS**

McGlone only seeks to force UT to comply with the First and Fourteenth Amendments. Hence, McGlone's request can cause no real harm to UT, since UT has no legitimate interest in enforcing an unconstitutional policy. As the Sixth Circuit has observed, "if the plaintiff shows a substantial likelihood that the challenged law is unconstitutional, no substantial harm to others can be said to inhere in its enjoinder." *Déjà vu of Nashville*, 274 F.3d at 400.

### **IV. PUBLIC INTEREST FAVORS PRELIMINARY INJUNCTION**

"[I]t is always in the public interest to prevent the violation of a party's constitutional rights." *G & V Lounge, Inc. v. Michigan Liquor Control Com'n*, 23 F.3d 1071, 1079 (6th Cir. 1994) (citation omitted). In this matter, the public interest will be served best by the invalidation of an unconstitutional policy.

### **CONCLUSION**

For reasons set forth herein, McGlone respectfully requests that this Court grant his Motion for Preliminary Injunction.

Respectfully submitted,

s/ Nathan W. Kellum NATHAN W. KELLUM TN BAR #13482; MS BAR # 8813 JONATHAN SCRUGGS* TN Bar # 025679 Alliance Defense Fund 699 Oakleaf Office Lane, Suite 107 Memphis, TN 38117 (901) 684-5485 telephone (901) 684-5499 – Fax  Attorneys for Plaintiff	W. ANDREW FOX TN BAR #17356 Gilbert & Fox Law Firm 625 S. Gay St., Suite 540 Knoxville, TN 37902 (865) 525-8800 telephone (865) 525-8200 – Fax  Attorney for Plaintiff
--	--

\*Motion for admission *pro hac vice*  
forthcoming

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY this 24th day of August, 2011, that a copy of the foregoing, along with the Complaint and Summons, has been delivered to a process server for service on defendants.

s/ Nathan W. Kellum