No. _____

In The
Supreme Court of the United States

RODNEY KEISTER, *Petitioner*,
v.

STUART BELL, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNIVERSITY OF ALABAMA, ET AL., *Respondents.*

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Except in the unique setting of a military installation, this Court has never held that a public sidewalk running alongside a public street was anything but a traditional public forum. Here, the Eleventh Circuit reached a contrary result. The questions presented are:

1. Does the presence of adjacent college campus buildings negate the First Amendment public forum status of a sidewalk running along a public street?

2. Did the Eleventh Circuit err by holding that a virtual ban on leafletting and street preaching on a public sidewalk is not likely to violate the First Amendment right to free speech?

PARTIES

The petitioner is listed on the cover.

The respondents, defendants/appellees below, are Stuart Bell, sued in his official capacity as President of the University of Alabama; John Hooks, sued in his official capacity as Chief of Police for the University of Alabama Police Department; and Mitch Odom, sued in both his individual capacity and his official capacity as Police Lieutenant for the University of Alabama Police Department.

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INTRODUCTION

The court below held that a sidewalk, adjacent to a public street and connected seamlessly to the vehicular and pedestrian transportation grid of a city, was nevertheless *not* a traditional public forum for free speech purposes. Why? Because college buildings occupy property adjacent to the sidewalk in question. The court below reached this conclusion despite classic precedents from this Court holding that public streets and sidewalks are "traditional public fora" regardless of who owns the underlying property (*Hague*) and regardless of whether the property adjacent to the street or sidewalk contains such sensitive facilities as a high school (*Grayned*), a courthouse (*Grace*), an embassy (*Boos*), a sleepy residential neighborhood (*Frisby*), an abortion facility (*McCullen*), or a church conducting a funeral (*Snyder*),[1] with the only exception being the special enclave of a military base (*Greer*), and even then not always (*Flower*).[2]

There are at least three main reasons to grant the present petition. First, this case presents a recurring question of great First Amendment importance. Second, the decision below conflicts dramatically with the way other federal circuits – and this Court – have

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[1] *Hague v. CIO*, 307 U.S. 496, 515 (1939); *Grayned v. City of Rockford*, 408 U.S. 104 (1972); *United States v. Grace*, 461 U.S. 171 (1983); *Boos v. Barry*, 485 U.S. 312 (1988); *Frisby v. Schultz*, 487 U.S. 474 (1988); *McCullen v. Coakley*, 134 S. Ct. 2518 (2014); *Snyder v. Phelps*, 562 U.S. 443 (2000).

[2] *Greer v. Spock*, 424 U.S. 828 (1976); *Flower v. United States*, 407 U.S. 197 (1972).

resolved the public forum issue. And third, the rule the Eleventh Circuit adopted – that there is no public forum if the street and sidewalk run through "the heart of campus" and are "surrounded" by campus buildings – is unworkable, unprincipled, and likely to spawn endless litigation.

DECISIONS BELOW

All decisions in this case are styled *Keister v. Bell*. The district court decision denying a preliminary injunction is reported at 240 F. Supp. 3d 1232 (N.D. Ala. 2017). Pet. App. B. The opinion of the U.S. Court of Appeals for the Eleventh Circuit affirming the district court is reported at 879 F.3d 1282 (11th Cir. 2018). Pet. App. A. The Eleventh Circuit's order denying rehearing is unreported. Pet. App. C.

JURISDICTION

The Eleventh Circuit issued its panel decision on Jan. 23, 2018 and denied a timely petition for rehearing/rehearing en banc on Apr. 3, 2018. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND REGULATIONS

The text of the First and Fourteenth Amendments appears in Appendix D. Pertinent excerpts of the University of Alabama Policy for the Use of University Space, Facilities and Grounds appear in Appendix E.

STATEMENT OF THE CASE

1. Jurisdiction in District Court

The complaint invoked 42 U.S.C. § 1983; the district court had jurisdiction under 28 U.S.C. §§ 1331, 1343.

2. Facts Material to the Questions Presented

Petitioner Rodney Keister, a traveling street evangelist, wishes to be able to speak and/or hand out literature on the sidewalks at the intersection of University Boulevard and Hackberry Lane in Tuscaloosa. The University of Alabama (UA) told him he could not do so, leading to this lawsuit.

a. The physical setting

UA is a state-funded public university located in the city of Tuscaloosa, Alabama. The campus straddles various public streets. *See* Ex. A to Aff. of Donna McCray (map of campus) (CA App. 081).[3] For example, University Boulevard is a city-owned, public street that begins outside of the UA campus, runs east/west through portions of the UA campus, and continues beyond that campus. Likewise Hackberry Lane is a city-owned, public street that begins south of and outside of UA grounds and then runs north through the UA campus virtually to its northern border. (The UA campus is bordered on the north by a river.)

Sidewalks run alongside both University Boulevard

[3] "CA App." refers to the Appendix in the Court of Appeals.

and Hackberry Lane. The adjacent buildings are a mix of university facilities and private businesses. *See* Aff. of Bryan Peoples (CA App. 129-211) (including photos); Aff. of Douglas Behm, Director of University Lands (CA App. 241-44). In particular, passing westward along *University Boulevard* from its intersection with McFarland Boulevard,[4] on the first block is DCH Regional Medical Center. At the next intersection, with Paul Bryant Drive, is the BBVA Compass finance company. Businesses along the stretch between Paul Bryant Drive and 2d Avenue include a Rite Aid pharmacy, Warren Tire & Auto, a Chevron gas station, medical offices, a U.S. Marine Corps Officer Selection Station, Alabama Credit Union, and Newk's and Arby's restaurants. The stretch from 2d Avenue to Hackberry Lane features a PNC bank (at 4th Avenue), with churches nearby, and a park, with Canterbury Chapel (an Episcopal church) set back from the park (at Hackberry Lane). Several blocks further west along University Boulevard begins "The Strip," a collection of retail establishments including Steamers on the Strip, The Houndstooth, CVS pharmacy, Publix Super Market, Buffalo Phil's pub, Mooyah's Burgers, GNC, Rounder's, and The Pita Pit. Beyond The Strip, to the west, only private commercial or government businesses appear along University Boulevard. Meanwhile, various UA facilities, including the UA stadium, are also situated along University Boulevard from The Strip to McFarland Boulevard.

As for *Hackberry Lane,* proceeding north from its

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[4] *See* Aff. of Douglas Behm, Dir. of Univ. Lands at 2, ¶18 (CA App. 242) (identifying McFarland as eastern limit of UA campus).

intersection with Hargrove Road to the intersection with University Boulevard, adjacent to the street are residences, apartments, a public park, and a variety of commercial businesses including Global Tax Services, Mitchem Abernathy Accountants, Eddie's Wallpaper Shop, dry cleaners, gas stations, a General Sew and Vac, restaurants, a baking company, a strip mall, a shopping center, Regions Bank, and finally Canterbury Chapel and the park to its north of the chapel. Again, mixed with these private uses (beginning north of the railroad tracks just north of Meador Drive) are a host of UA facilities including sporting complexes, an auditorium, and a dining hall.

Notably, UA banners, symbols on street signs, and markings on the street itself appear inconsistently at a host of locations both in the vicinity of campus buildings and in the vicinity of private businesses, Peoples Aff. ¶¶ 4-5, 8-9, 11, 13, 20, 22, 24-26, 28-29, 31 (CA App. 129-35), indeed throughout the city of Tuscaloosa, *id.* ¶ 28 (CA App. 134). The placement of landscaping fencing (where it exists) in relation to the sidewalks is likewise inconsistent. Sometimes bollards are curbside, between the sidewalks and the street; other times the street and sidewalks are on one side of the bollards, with the campus buildings on the other. *See* Verified Cplt. Ex. B (CA App. 031); McCray Aff. Exs. D-I (CA App. 097-108). Moreover, there are also bollards/fencing in front of private businesses or apartments as well as campus facilities. *E.g.,* Peoples Aff. Exs. Z, AA, BB (PNC Bank), WW (apartments), BBB (park), MMM (shops on The Strip), NNN (same), SSS (same) (CA App. 151-53, 176, 181, 193-94, 199).

b. Keister's speech and UA's response

Keister is a traveling Christian evangelist who typically uses public sidewalks to reach out to his intended audience. He uses verbal speech, distribution of literature, and display of banners to communicate to passersby. Pet. App. 2a. Keister lives in Pennsylvania but travels to various destinations for his religious outreach. Among his annual destinations is Tuscaloosa, Alabama.

It is undisputed that on Mar. 10, 2016, Keister and a companion initially took to the sidewalk on 6th Avenue within the UA campus. (Whether that sidewalk is a traditional public forum is not at issue here.) Keister held a banner and handed out literature while his companion engaged in street preaching. UA police officers and a UA grounds official[5] approached Keister and told him he "could not continue his expressive activity" at that location without a UA permit. McCray Aff. ¶ 45 (CA App. 078). (Such permits are only available to those who are either affiliated with UA or sponsored by a UA affiliated entity. Pet. App. 5a.) One of the officers indicated that the street preachers could relocate to University Boulevard. Keister and his companion then moved to a sidewalk at the intersection of University Boulevard and Hackberry Lane, where they resumed their evangelism. UA police again approached and said that the police had been mistaken, that the sidewalks along University Boulevard were also UA property, and that

[5] Donna McCray, Senior Director of Facilities Operation and Ground Use Permits, McCray Aff. at 1 (CA App. 075).

Keister could not engage in any expression without a permit. *See also* McCray Aff. ¶ 46 (CA App. 078) ("prohibited from expressive activity there without a GUP [Grounds Use Permit]"). Keister and his companion, fearing arrest, then left the area.

Keister wishes to return to the sidewalks at the intersection of University and Hackberry to evangelize by word of mouth and by literature distribution, but he refrains from doing so because of the threat of arrest.

Through counsel, Keister asserted a right to speak on the sidewalks in question. In response, UA counsel asserted that the sidewalks at that intersection were not traditional public fora for free speech purposes.

3. Course of proceedings

a. District Court

Keister filed suit in the U.S. District Court for the Northern District of Alabama on Jan. 25, 2017, and promptly moved for a preliminary injunction barring the UA defendants from enforcing the UA use policy against his peaceful speech and literature distribution on a public sidewalk at the intersection of University Boulevard and Hackberry Lane. The UA defendants opposed the motion and filed an answer to the verified complaint. Both sides filed affidavits, and the district court held a hearing on the motion for a preliminary injunction on Feb. 28, 2017. On Mar. 6, 2017, the district court entered an order and opinion denying a preliminary injunction. Pet. App. B. The district court acknowledged that the sidewalks in question "border

otherwise public streets which are a part of the city of Tuscaloosa's greater urban grid," Pet. App. 31a (CA App. 255), and that "UA's campus is not fenced off, gated, or otherwise self-contained, and while it is its own separate property, some of the city's transportation grid runs through the campus," Pet. App. 21a n.3 (CA App. 247). Nevertheless, declaring that the sidewalks "lie in the heart of UA's campus" and "do not border the perimeter of the University's property," Pet. App. 31a,[6] the district court held that the sidewalks were a "limited public forum,"[7] not a "traditional public forum," because "aspects of the intersection [are] embellished by UA markings" and "the intersection itself is surrounded by UA's campus and buildings." Pet. App. 33a (CA App. 256). The court analogized the present case to a prior Eleventh Circuit decision addressing the *internal* campus walkways at Georgia Southern University, *Bloedorn v. Grube*, 631 F.3d 1218 (11th Cir. 2011),[8] and concluded that, as in *Bloedorn*, the campus – including sidewalks along public streets – "functions as a sort of special enclave"

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[6] Given the undisputed fact that the sidewalks border a public thoroughfare *not* owned by UA, the court must have meant by "perimeter" the outermost point at which a UA facility was located. (The Eleventh Circuit employed the same usage. Pet. App. 4a, 16a n.7.) By that standard, much non-UA property, including various private commercial establishments and public streets, lie within the "perimeter" of the UA campus.

[7] On the term "limited public forum," *see infra* p. 18 n.19.

[8] As the district court noted, *Bloedorn* addressed walkways "inside of GSU's campus," the "entrances" to which "were identified with large blue signs and brick pillars." Pet App. 31a.

instead of a traditional public forum, Pet. App. 33a-34a (CA App. 256-57).

"Because the intersection sidewalk is a limited public forum," the district court reasoned, the UA restrictions need only be "reasonable and viewpoint neutral," Pet. App. 34a (CA App. 257). With those premises in place, the court concluded that Keister was not likely to prevail on the merits of his First Amendment challenge.[9] The court accordingly denied the requested preliminary injunction.

Keister appealed.

b. Eleventh Circuit

The Eleventh Circuit agreed that "the district court properly found the intersection is a limited public forum," Pet. App. 2a, and affirmed. The court of appeals acknowledged that "University Boulevard and Hackberry Lane are public Tuscaloosa streets which extend beyond the UA campus perimeter" and that "UA's campus is not fenced off, gated, or otherwise self-contained to prevent public access." Pet. App. 4a. The court nevertheless ruled that the sidewalks in question

[9] It is by no means clear that the First Amendment would permit a government veto on literature distribution, much less conversational outreach, on an open-air sidewalk adjacent to a public street, even under the more relaxed "reasonableness" standard. *See Lee v. ISKCON*, 505 U.S. 830 (1992) (overturning, under First Amendment, ban on literature distribution in a nonpublic forum airport terminal). By contrast, it is well settled that veto authority over literature distribution in a traditional public forum is unconstitutional. *Schneider v. State*, 308 U.S. 147 (1939); *United States v. Grace*, 461 U.S. 171 (1983).

were only a limited public forum, relying upon its *Bloedorn* precedent, Pet. App. 14a-15a. The court declared that the intersection did not consist of "'mere' public Tuscaloosa streets," *id.* at 16a; rather, "the intersection, as evident from the UA map, is in the heart of campus," *id.* (footnote omitted).[10] The court specifically reserved the question whether the analysis would be different "if the intersection were instead at the perimeter of the university's campus." *Id.* at 16a n.7. The court found dispositive the fact that the intersection

> is surrounded by UA buildings, and there are numerous permanent, visual indications that the sidewalks are on UA property including landscaping fences and UA signage.

Id. at 16a. Such physical characteristics, the court opined, "suggest to the intended speaker that he has entered a special enclave." *Id.* The court did not explain how its reliance upon fencing and UA signage could be reconciled with the largely haphazard relation of such items to the actual UA campus. *See supra* p. 5.

The court concluded that Keister was not entitled to a preliminary injunction and affirmed the district court.

Keister petitioned for rehearing en banc, which the Eleventh Circuit denied. Pet. App. C.

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[10] The court ruled that, as a matter of historical and constitutional fact, the intersection in question is "within the heart of UA's campus," Pet. App. 9a n.3.

REASONS FOR GRANTING THE WRIT

This Court should grant review. The First Amendment question whether sidewalks along public streets are traditional public fora for speech is a consistently recurring question, both in general and in the specific context of streets running through or alongside college campuses. Hence, this case presents a recurring question of great First Amendment importance, as resolution of the forum question is often dispositive of free speech claims.

Review is especially needed here because the constitutional rule the Eleventh Circuit adopted – refusing to grant sidewalks along public streets presumptive public forum status, disregarding the seamless connection to other city streets and sidewalks, and instead relying upon the identity of the adjacent property – departs dramatically from the way other federal circuits – and this Court – have addressed the public forum issue.

Moreover, the constitutional rule the lower court adopted – that there is no public forum if the street and sidewalk run through "the heart of campus" – is incoherent, unworkable, and will generate uncertainty and an increase of litigation, thereby chilling free speech and forcing courts to resolve endless nice questions about the surroundings of sidewalks.

I. THE QUESTION IS RECURRING AND IMPORTANT.

The campuses of many colleges and universities

across the nation, both public and private, straddle public streets.[11] While some college grounds are largely self-contained (like Catholic University of America, in Washington, DC,[12] or Princeton University[13]), other college campuses are riddled with cross streets (like the University of Pennsylvania,[14] Yale University,[15] and the University of Michigan[16]).

The decision of the Eleventh Circuit in this case calls into question the traditional public forum status of every sidewalk that runs through or alongside a college campus. This is not an issue of merely theoretical significance. Cases already abound addressing the rights of speakers in open areas on *internal* campus grounds.[17] The decision in this case expands that class

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[11] The present case involves a public university. But nothing in the Eleventh Circuit's analysis suggests the outcome would be any different were the case to involve the public forum status of a street adjacent to a private college. Indeed, the absence of a state actor would, if anything, presumably increase the willingness of the Eleventh Circuit to hold that the sidewalks were not a traditional public forum.

[12] https://www.catholic.edu/res/docs/cuamap.pdf.

[13] http://m.princeton.edu/map/campus.

[14] https://www.facilities.upenn.edu/maps.

[15] https://map.yale.edu/15/41.31124/-72.9266?.

[16] gallatin.physics.lsa.umich.edu/~keithr/lscaa/ccamp.html.

[17] *See, e.g., Bloedorn v. Grube*, 631 F.3d 1218 (11th Cir. 2011); *Sonnier v. Crain*, 613 F.3d 436 (5th Cir. 2010); *Davis v. Stratton*, 360 Fed. Appx. 182 (2d Cir. 2010); *Gilles v. Blanchard*, 477 F.3d 466 (7th Cir. 2007); *Gilles v. Davis*, 427 F.3d 197 (3d Cir. 2005); *Gilles v. Garland*, 281 Fed. Appx. 501 (6th Cir. 2008); *Hershey v.*

(continued...)

of litigation to speakers on *public* streets and their accompanying sidewalks.

Moreover, there is a profound irony in the lower court's ruling that confers special immunity from unwelcome speech in the context of a *university*. As this Court has forcefully stated,

> The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools. . . . The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth 'out of a multitude of tongues, [rather] than through any kind of authoritative selection.'

Keyishian v. Board of Regents, 385 U.S. 589, 603 (1967) (citations omitted). *Accord Healy v. James*, 408 U.S. 169, 180 (1972).

But the constitutional problems stemming from the decision below are not confined to the vicinity of institutions of higher learning. Nothing in the analysis which the Eleventh Circuit adopted turns on the fact that the adjoining facilities are devoted to *higher education*. Presumably the same arguments could be made about sidewalks running past an arts center, a corporate complex, an industrial or commercial district, or farming tracts. In all of these contexts, authorities

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[17] (...continued)
Goldstein, 938 F. Supp. 2d 491 (S.D.N.Y. 2013); *Masel v. Mansavage*, 526 F. Supp. 2d 902 (W.D. Wis. 2007); *Bourgault v. Yudof*, 316 F. Supp. 2d 411 (N.D. Tex. 2004); *Guengerich v. Baron*, No. 2:10-cv-01045-JHN-PLAx, 2011 U.S. Dist. LEXIS 162989 (C.D. Cal. May 5, 2011).

wishing to shut down speech they deem unwelcome can be expected to invoke the decision below, or its reasoning, to negate the traditional public forum status of sidewalks running beside such properties.

With the sole exception of military bases, this Court has consistently rejected the notion that surrounding uses negate the traditional public forum status of streets and sidewalks. *Infra* § II. The lower court's rejection of that virtually axiomatic norm of free speech law has profound doctrinal and practical significance.

II. THE ELEVENTH CIRCUIT'S DECISION CONFLICTS WITH THE APPROACH TAKEN BY THIS COURT AND OTHER FEDERAL CIRCUITS.

The decision of the court below departs dramatically from the settled jurisprudence of this Court as well as the other circuits implementing that jurisprudence.

A. Conflict with Supreme Court cases

For the better part of a century, this Court has repeatedly affirmed that

> one who is rightfully on a street which the state has left open to the public carries with him there as elsewhere the constitutional right to express his views in an orderly fashion. This right extends to the communication of ideas by handbills and literature as well as by the spoken word.

Jamison v. Texas, 318 U.S. 413, 416 (1943).[18] The fact that ownership of the realty beneath the sidewalk or street may technically belong to an adjacent property owner is irrelevant:

> Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.

Hague v. CIO, 307 U.S. 496, 515 (1939).

The term this Court uses for such places is "traditional public forum." The quintessential examples of traditional public fora are "streets, sidewalks, and parks," which "are considered, without more, to be 'public forums.'" *United States v. Grace*, 461 U.S. 171, 177 (1983). Indeed, the public forum nature of such property "follow[s] automatically" from its identification as a public street, sidewalk, or park. *Frisby v. Schultz*, 487 U.S. 474, 480 (1988). *See also id.* ("our decisions identifying public streets and sidewalks as traditional public fora are not accidental invocations of a 'cliché'"). Hence, this Court has insistently adhered to the now well-established rule that streets and sidewalks are presumptively, indeed virtually

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[18] Of course, "reasonable time, place, and manner regulations . . . are permitted." *Grayned v. City of Rockford*, 408 U.S. 104, 115 (1972); "[s]ubject to such reasonable regulation, however, peaceful demonstrations in public places are protected by the First Amendment," *id.* at 116.

invariably, traditional public fora. *E.g.*, *Grace*, 461 U.S. at 177 ("without more"); *Frisby*, 487 U.S. at 480 ("automatically"); *Schenck v. Pro-Choice Network of W.N.Y.*, 519 U.S. 357, 377 (1997) ("prototypical"); *Snyder v. Phelps*, 562 U.S. 443, 456 (2000) ("archetype"); *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983) ("at one end of the spectrum"); *see also USPS v. Council of Greenburgh Civic Ass'ns*, 453 U.S. 114, 133 (1981) (government "may not by its own *ipse dixit* destroy the 'public forum' status of streets and parks which have historically been public forums"). As this Court recently explained,

> It is no accident that public streets and sidewalks have developed as venues for the exchange of ideas. Even today, they remain one of the few places where a speaker can be confident that he is not simply preaching to the choir. With respect to other means of communication, an individual confronted with an uncomfortable message can always turn the page, change the channel, or leave the Web site. Not so on public streets and sidewalks. There, a listener often encounters speech he might otherwise tune out. In light of the First Amendment's purpose "to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail," *FCC v. League of Women Voters of Cal.*, 468 U.S. 364, 377 (1984) (internal quotation marks omitted), this aspect of traditional public fora is a virtue, not a vice.

McCullen v. Coakley, 134 S. Ct. 2518, 2529 (2014).

Accordingly, the traditional public forum status of sidewalks and streets remains a constitutional norm regardless of the presence of sensitive facilities right next to those sidewalks and streets. *See Grayned* (high school); *Grace* (U.S. Supreme Court); *Boos v. Barry,* 485 U.S. 312 (1988) (embassy); *Frisby* (residential neighborhood); *McCullen* (abortion facility); *Snyder* (church conducting a funeral). The solitary exception to this rule is a military base. *Greer v. Spock*, 424 U.S. 828 (1976), which this Court described as "a special type of enclave," *Grace*, 461 U.S. at 180.

This constitutional norm has important consequences: When government restricts speech in a public forum, a much more demanding standard of constitutional review applies than when the speech takes place in a nonpublic forum. *Perry*, 460 U.S. at 45. Specifically,

> In . . . public forums, the government may not prohibit all communicative activity. For the State to enforce a content-based exclusion it must show that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end. . . . The State may also enforce regulations of the time, place, and manner of expression which are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.

Id. By contrast, restrictions on speech in a nonpublic forum need only be reasonable and viewpoint neutral.

Id. at 46.[19]

B. Conflict with other circuits' decisions

Aside from the decision below, the federal circuit courts have faithfully embraced and applied this Court's teaching that sidewalks and streets are presumptively traditional public fora, even in cases with significantly less favorable facts than those presented here.

The starkest conflict with the decision below appears with the Sixth Circuit case of *McGlone v. Bell*, 681 F.3d 718 (6th Cir. 2012). That case, like this one, involved a street evangelist using the sidewalks along city streets that ran through and around college campus property – in that case, Tennessee Technological University (TTU), *id.* at 723. The Sixth Circuit embraced the presumption that sidewalks are public fora, holding that "[t]he burden is on TTU to show that the sidewalk is overwhelmingly specialized to negate its traditional

[19] The Eleventh Circuit, like the district court, held that the sidewalks here were a "limited public forum," but applied the same reasonable/viewpoint-neutral standard that governs nonpublic fora. Pet. App. 12a. For clarity, Petitioner avoids the term "limited public forum" in this petition because that term has been used to mean different things in different cases. *Compare Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 802-04 (1985) (using "limited public forum" as synonymous with "designated public forum"); *Widmar v. Vincent*, 454 U.S. 263, 269-70 (1981) (equating "limited public forum" with "generally open forum" subject to the standard governing public fora), *with Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 106-07 (2001) (equating "limited public forum" with nonpublic forum subject to reasonable/viewpoint-neutral standard).

forum status." *Id.* at 732. The Sixth Circuit concluded that because the sidewalks in question "blend into the urban grid and are physically indistinguishable from public sidewalks, they constitute traditional public fora." *Id.* at 733.[20] The Eleventh Circuit in this case reached the opposite result.[21]

The decision below likewise conflicts with the Fifth Circuit's decision in *Brister v. Faulkner*, 214 F.3d 675 (5th Cir. 2000). *Brister* involved leafletting outside a university event center, on a paved area that connected the public sidewalk with the event center. *Id.* at 678. Even though the paved area was not itself part of the public sidewalk, the Fifth Circuit held that the paved area was a traditional public forum because it was seamlessly connected to the public sidewalk. *Id.* at 682.

> If individuals are left to guess whether they have crossed some invisible line between a public and non-public forum, and if that line divides two worlds

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[20] The *McGlone* court referred to the sidewalks as "perimeter sidewalks." *Id.* By this term the court apparently meant that the sidewalks ran along the perimeter of the streets or blocks at issue. The streets in question, particularly North Peachtree Avenue and North Dixie Avenue, *id.* at 723, clearly run through the midst of the TTU campus, *see* https://www.universitymaps.com/tennessee-technological-university/ (campus map).

[21] Cementing the conflict, the Sixth Circuit has also held that even an internal sidewalk encircling a sports arena was a public forum because it "blends into the urban grid, borders the road, and looks just like any public sidewalk, . . . [and] also is a public thoroughfare." *United Church of Christ v. Gateway Econ. Dev. Corp. of Greater Cleveland, Inc.*, 383 F.3d 449, 452 (6th Cir. 2004).

> – one in which they are free to engage in free speech, and another in which they can be held criminally liable for that speech – then there can be no doubt that some will be less likely to pursue their constitutional rights, even in the world where their speech would be protected.

Id. at 682-83. *A fortiori*, the sidewalks adjacent to the public streets in this case would, in the Fifth Circuit, be recognized as public fora.

The D.C. Circuit, while not addressing the specific context of an adjacent college campus, has likewise embraced this Court's teachings on public forum analysis. In *Henderson v. Lujan*, 964 F.2d 1179 (D.C. Cir. 1992), also a street evangelist case, the court addressed the status of a sidewalk that was officially part of the Vietnam War Memorial and which was adjacent to a public street, *id.* at 1180. The court expressly recognized that the burden is on the government to explain why a particular sidewalk should not be regarded as a public forum: the "sidewalks' apparent similarity to ones of the classic variety at a minimum put the burden on the government to show that the use was overwhelmingly specialized." *Id.* at 1182. The court explained that "tradition operates at a very high level of generality, establishing a working presumption that sidewalks, streets and parks are normally to be considered public forums." *Id.* Moreover, consistent with this Court's cases, the *Henderson* court stated that "[t]he mere fact that a sidewalk abuts property dedicated to purposes other than free speech is not enough to strip it of public

forum status." *Id.*

Again, in *Lederman v. United States*, 291 F.3d 36 (D.C. Cir. 2002), involving a solitary demonstrator holding a sign or distributing leaflets on the grounds of the U.S. Capitol, the D.C. Circuit reaffirmed that the burden was on the government to negate the public forum status of the pertinent sidewalk: "to convince us the sidewalk is not a public forum, the Government must establish that the sidewalk differs from the remainder of the public Grounds in ways that make it uniquely 'nonpublic.'" *Id.* at 42. The sidewalk in that case did not even border any public streets, *id.* at 44, yet the D.C. Circuit ruled that it was a traditional public forum because it was "continually open, often uncongested, and constitutes not only a necessary conduit in the daily affairs of the city's citizens, but also a place where people may enjoy the open air or the company of friends and neighbors," *id.* (editing marks and citation omitted). As the court explained,

> Even assuming, as did the district court, that the sidewalk "is used primarily by people coming to and from the Capitol building," . . . we do not think that use sufficiently "specialized" to warrant distinguishing the sidewalk from the remainder of the Grounds for purposes of the public forum analysis. If people entering and leaving the Capitol can avoid running headlong into tourists, joggers, dogs, and strollers – which the Government apparently concedes, as it has not closed the sidewalk to such activities – then we assume they are also capable of circumnavigating the occasional

protester.

Id. at 43. The Eleventh Circuit, by contrast, discounted the fact that the intersection is "open as a public thoroughfare," Pet. App. 16a, instead emphasizing the "educational mission" of UA, *id.* at 15a, and equating sidewalks running along public streets to sidewalks running through a military base or to walkways and driveways internal to a college campus, *id.* at 16a-17a.

Other circuits, consistent with the Fifth, Sixth, and D.C. Circuits, have ruled that there is no "special neighbors" exception to the traditional public forum status of sidewalks and streets. *E.g., Gerritsen v. City of Los Angeles*, 994 F.2d 570, 576 (9th Cir. 1993) ("special ambience" and "particular functions" of Olvera Street do not negate street's status as a traditional public forum); *ACLU of Nevada v. City of Las Vegas*, 333 F.3d 1092, 1102-03 (9th Cir. 2003) (canopy-covered, decoratively paved portion of Fremont Street providing a pedestrian walkway through a unique "commercial and entertainment complex," *id.* at 1094-95, remains a traditional public forum); *First Unitarian Church of Salt Lake City v. Salt Lake City Corp.*, 308 F.3d 1114, 1117, 1120-31 (10th Cir. 2002) (pedestrian easement across LDS religious complex, which easement "forms part of the downtown pedestrian transportation grid, and . . . is open to the public," *id.* at 1128, remains a traditional public forum); *United States v. Marcavage*, 609 F.3d 264, 269, 276-78 (3d Cir. 2010) (sidewalks surrounding Independence National Historical Park are, despite distinctive paving and chain-linked bollards,

traditional public fora). *See also Venetian Casino Resort, LLC. v. Local Joint Exec. Bd.*, 257 F.3d 937 (9th Cir. 2001) (sidewalk on private casino property subject to easement for public passage and seamlessly connected to other sidewalks is a traditional public forum). *Cf. Bowman v. White*, 444 F.3d 967, 977-79 (8th Cir. 2006) (specified open areas on college campus grounds held to be designated public fora, while sidewalks at the borders of campus are likely traditional public fora).[22]

The Eleventh Circuit, by creating a heretofore unknown exception to the traditional public forum status of sidewalks, has created a circuit conflict.

III. THE ELEVENTH CIRCUIT'S TEST IS INCOHERENT AND UNWORKABLE.

This Court's repeated insistence that streets and sidewalks are, without more, traditional public fora, provides a valuable level of certainty to free speech litigation. While the nature of adjoining property "may

[22] In *dicta*, the *Bowman* court seemed to distinguish between "public streets and sidewalks which surround the campus but are not on the campus," *id.* at 977, and "streets, sidewalks, and other open areas that might otherwise be traditional public fora . . . [but] fall within the boundaries of the University's vast campus, *id.* at 978. As a practical matter, this may not make a difference, as *Bowman* held that even the open areas *within* campus grounds at issue there were designated public fora; presumably a city street or sidewalk would receive at least that designation, triggering the same standard as that which governs traditional public fora. And even if *Bowman* were read to align with the lower court decision here, that would simply underscore the circuit conflict and the need for Supreme Court review.

well inform the application of the relevant test, . . . it does not lead to a different test." *Frisby*, 487 U.S. at 481. The Eleventh Circuit's approach, by contrast, replaces that doctrinal certainty with subjective, unprincipled uncertainty.

The court of appeals found decisive the fact that the streets and sidewalks were "surrounded" by UA buildings and located at "the heart of campus." Pet. App. 16a & n.7. As noted, using such factors to negate the public forum status of public streets and sidewalks is incompatible with the precedents of this Court and of the other circuits. More pertinent here, such an approach yields a horribly unworkable and subjective test that will invite litigation and result in considerable uncertainty in the law.

Consider the "surroundings" test. This test looks at the immediate neighborhood through which a street runs, and presumably would apply regardless of the public or private nature of the adjoining lots. Why should it matter that the street runs past university facilities? Such a consideration has no bearing on the history and value, to free speech, of public forum property. As noted *supra* § I, the lower court's invocation of a "surroundings" test would call into question the forum status of streets which run through urban universities. But what principled limitation dictates that only an adjacent *university* negates the public forum status of the sidewalk? What about an arts complex? The corporate headquarters of some large company? A group of automobile sales lots? A large tract of farmland? The "surroundings" test gives no clue as to which adjacent owners will be privileged

to cancel out the free speech rights of speakers on neighboring sidewalks. Nor does the test identify what counts as "surrounding" in the first place. Here, for example, one corner of the intersection contains an Episcopal chapel, and private businesses were a short distance away, yet the Eleventh Circuit said the intersection was "surrounded" by university facilities.

The Eleventh Circuit's "heart of the campus" test presents even more uncertainty. What counts as the "heart" of a campus – or a commercial district, a corporate or government complex, an arts community, an agricultural space, etc. – as opposed to "peripheral" parts? The answer will depend upon the subjective or esthetic – and hence disparate and unpredictable – perceptions of judges. It is hard to imagine a slipperier test. Yet attorneys and lower court judges are supposed to follow such a standard? And again, why should it matter, for free speech purposes, whether one is in the "heart" of a neighborhood (*cf. Frisby*), a federal complex (*cf. Grace*), Embassy Row (*cf. Boos*), or some other locale? Fixation on the nearby lots misses the point:

> Traditional public forum property occupies a special position in terms of First Amendment protection and will not lose its historically recognized character for the reason that it abuts government property that has been dedicated to a use other than as a forum for public expression. Nor may the government transform the character of the property by the expedient of including it within the statutory definition of what might be considered a nonpublic forum parcel of property.

Grace, 461 U.S. at 180.

In short, the Eleventh Circuit not only erred by departing from the settled status of public streets and sidewalks as traditional public fora, but in replacing that settled rule with an unworkable, subjective, sidewalk-by-sidewalk, neighborhood by neighborhood test. This Court should grant review.

CONCLUSION

This Court should grant the petition for certiorari and reverse the judgment below.

Respectfully submitted,

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July 2, 2018

APPENDIX

Appendix A (879 F.3d 1282)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-11347

D.C. Docket No. 7:17-cv-00131-RDP

RODNEY KEISTER,

Plaintiff-Appellant,

versus

STUART BELL, in his official capacity as President of the University of Alabama,
JOHN HOOKS, in his official capacity as Chief of Police for the University of Alabama Police Department,
MITCHELL ODOM, in his official capacity as Police Lieutenant for the University of Alabama Police Department,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Alabama

(January 23, 2018)

Before ED CARNES, Chief Judge, and BLACK, Circuit Judge, and MAY,* District Judge.

* Honorable Leigh Martin May, United States District Judge for the Northern District of Georgia, sitting by designation.

[*1284] MAY, District Judge:

Rodney Keister appeals the district court's denial of a preliminary injunction. Mr. Keister sought to enjoin University of Alabama ("UA") officials from applying UA's grounds use policy to the intersection of University Boulevard and Hackberry Lane. Application of this grounds use policy prevents him from speaking on UA's campus unless he complies with its terms. Because the district court properly found the intersection is a limited public forum within UA's campus, we affirm.

I. BACKGROUND

Mr. Keister is a traveling Christian evangelist who claims he is called to publicly share his religious beliefs throughout the country. Mr. Keister typically shares his beliefs on public sidewalks by preaching, passing out gospel tracts, and having one-on-one conversations and praying with passers-by. Because he desires to reach young people, Mr. Keister routinely visits college and university campuses.

On March 10, 2016, Mr. Keister went to UA, a state-funded public university located in Tuscaloosa, Alabama, to share his beliefs. Around 4 p.m. that afternoon, Mr. Keister and his friend—neither of whom are UA students, faculty, nor employees—began to preach using a loudspeaker, held up a banner, and passed out religious literature on a sidewalk adjacent to 6th Avenue on UA's campus. This sidewalk is near Smith and Lloyd Halls and across the street from the Quad—a well-traveled, wide-open grassy field surrounded by UA buildings. Shortly after they began,

Mr. Keister and his friend were approached by two UA police department officers and UA official Donna McCray,[1] who advised them that they would be unable to speak at that location because they did not have a Grounds Use Permit ("GUP") as required by UA's Policy for the Use of University Space, Facilities and Grounds ("grounds use policy"). They advised that the grounds use policy required 10 working days advance notice and university organization sponsorship.

Because Mr. Keister and his friend had not obtained a GUP, they moved to the [*1285] intersection of University Boulevard and Hackberry Lane ("the intersection") to continue preaching and passing out literature. Mr. Keister contends he was told to go to that location by a UA police supervisor who advised him, "On that corner, you're good." Mr. Keister also thought that the intersection appeared to be a public city sidewalk as opposed to a part of UA's campus.

Not long after Mr. Keister and his friend moved locations, they were again met by UA police. The police advised them that the intersection and sidewalk *were* part of UA's campus, and the grounds use policy would also apply to the intersection. Fearing arrest for criminal trespass, Mr. Keister and his friend left.

A. THE INTERSECTION

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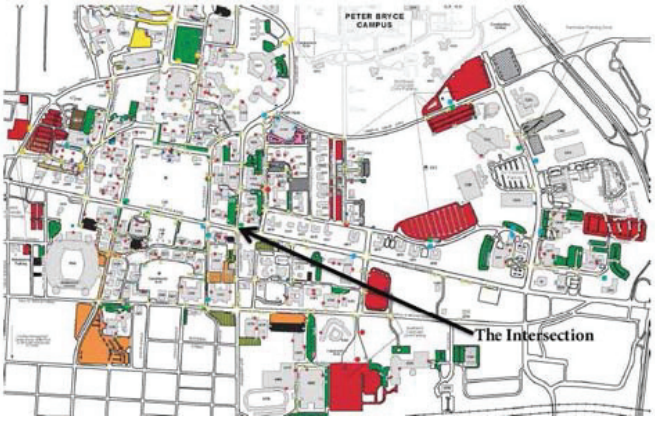
[1]Ms. McCray is the Senior Director of Facilities Operation and Grounds Use Permits at UA.



Mr. Keister admits that the intersection lies within the bounds of UA's campus, and the district court determined that it is in the "heart" of the UA campus. While the two streets that form that intersection run through much of UA's campus, University Boulevard and Hackberry Lane are public Tuscaloosa streets which extend beyond the UA campus perimeter. Sidewalks run alongside these two streets both within and outside the UA campus, and UA's campus is not fenced off, gated, or otherwise self-contained to prevent public access. However, within the campus (including at the intersection), landscaping fences line the sidewalks, street signs bear the script "A" UA logo, and UA signs hang from streetlamps. Some of the city's transportation grid also runs through campus.

Visible from the intersection are numerous UA facilities and landmarks. The intersection is approximately one block from the Quad. Russell Hall sits prominently at the northeast corner, where Mr. Keister was preaching. Gallalee Hall and a UA parking lot with a sign restricting its use to UA faculty and staff occupy the northwest corner. The southwestern

corner includes Farrah Hall and its adjacent UA-only parking lot. A park sits at the southeastern corner, which ultimately connects to the campus Episcopal ministry building further south on Hackberry Lane. About a block away from the intersection on one side of University Boulevard there are private businesses interspersed among UA buildings.

[*1286] B. UA'S GROUNDS USE POLICY

UA's grounds use policy is intended to provide access to UA grounds while upholding the "primacy" of UA's "teaching and research mission," including to "facilitate responsible stewardship of institutional resources and to protect the safety of persons and the security of property." The grounds use policy governs when, where, and how those who are unaffiliated with UA may speak publicly on campus. It specifically includes UA sidewalks within its auspices.

To obtain approval to speak publicly at UA, an unaffiliated potential speaker must: (1) be sponsored by or affiliated with a UA department or registered student organization; and (2) fill out a GUP form. GUP forms must be submitted at least 10 working days prior to an intended event, unless the intended event is "spontaneous," in that it is "occasioned by news or issues coming into public knowledge with[in] the preceding two (2) calendar days," or it is a "counter-event," meaning that it is in response to an event for which a GUP has already been issued. For either of those exceptions, UA will attempt to accommodate the request within 24 hours.

The stated purpose of the required lead-time is to

facilitate review by all UA departments that would be responsible for aspects of an event, such as UA police, food service, and electrical service. If the intended event does not require multiple UA department approvals, UA may issue its approval in as few as three days' time.

Once a GUP form is submitted, UA will approve the application unless one of the following conditions are present:

a) The applicant, if a student or a recognized student organization, is under a disciplinary penalty withdrawing or restricting privileges made available to the student or a recognized student organization[], such as use of a facility.

b) The proposed location is unavailable at the time requested because of events previously planned for that location.

c) The proposed date or time is unreasonable given the nature of the Event and the impact it would have on University resources.

d) The Event would unreasonably obstruct pedestrian or vehicular traffic.

e) The Event would prevent, obstruct, or unreasonably interfere with the regular academic, administrative, or student activities of, or other approved activities at, the University.

f) The Event would constitute an immediate and actual danger to University students, faculty, or

> staff, or to the peace or security of the University that available law enforcement officials could not control with reasonable effort.
>
> g) The University Affiliate on whose behalf the application is made has on prior occasions:
>
> 1) Damaged University property and has not paid in full for such damage, or
>
> 2) Failed to provide the designated University official with notice of cancellation of a proposed activity or Event at least two (2) University working days prior to a scheduled activity or Event.

If an application is denied, the grounds use policy also sets out an appeal process.

C. RELEVANT PROCEDURAL HISTORY

On January 25, 2017, Mr. Keister filed this action in the Northern District of Alabama under 42 U.S.C. §§ 1983 and 1988, asserting UA's grounds use policy violates the First Amendment's free speech clause and the Fourteenth Amendment's due process clause.[2]

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[2]In a footnote, Mr. Keister raises in passing that the ground use policy is unconstitutionally vague in violation of the Fourteenth Amendment. However, we need not address this argument because Mr. Keister has not properly raised the issue on appeal and it is therefore waived. *See Old W. Annuity & Life Ins. Co. v. Apollo Grp.*, 605 F.3d 856, 860 n.1 (11th Cir. 2010) ("Although Coast mentions the lack of supporting pleading in a footnote in its appellate brief, Coast has not presented substantive argument on this point on appeal; the issue is therefore waived.").

[*1287] The next day, Mr. Keister filed a Motion for Preliminary Injunction, contending that UA's ground use policy violates the First Amendment and UA officials should be enjoined from enforcing UA's policy because the intersection is a traditional public forum and UA's policy fails scrutiny. After a hearing on the matter, the district court denied Mr. Keister's motion. Among other reasons, it found that the intersection was a limited public forum and the grounds use policy met the lower level of scrutiny required. This appeal followed.

II. STANDARDS OF REVIEW

We generally review for an abuse of discretion a district court's preliminary injunction denial, but review *de novo* the district court's underlying legal conclusions. *ACLU of Fla., Inc. v. Miami-Dade Cty. Sch. Bd.*, 557 F.3d 1177, 1198 (11th Cir. 2009) [hereinafter "*ACLU*"]. "Ordinarily, we review district court factfindings only for clear error, but First Amendment issues are not ordinary." *Id.* at 1203. "Where the First Amendment Free Speech Clause is involved our review of the district court's findings of 'constitutional facts,' as distinguished from ordinary historical facts, is *de novo*." *Booth v. Pasco Cty.*, 757 F.3d 1198, 1210 (11th Cir. 2014) (quoting *ACLU*, 557 F.3d at 1203).

> Historical facts "are facts about the who, what, where, when, and how of the controversy," and we review them for clear error. "By contrast, under the assumptions about the law that we [make] for purposes of deciding this case, we must determine the 'why' facts. Those are the core constitutional

> facts that involve the reasons the [defendant] took the challenged action."

Flanigan's Enters. Inc. of Ga. v. Fulton Cty., 596 F.3d 1265, 1276 (11th Cir. 2010) (internal citations omitted) (quoting *ACLU*, 557 F.3d at 1206).[3]

To receive a preliminary injunction, the plaintiff must clearly establish the following requirements: "(1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury; (3) that the threatened injury to the plaintiff outweighs the potential harm to the defendant; and (4) that the injunction will not disserve the public interest." *Palmer v. Braun*, 287 F.3d 1325, 1329 (11th Cir. 2002) (citing *Suntrust Bank v. Houghton Mifflin Co.*, 268 F.3d 1257, 1265 (11th Cir. 2001)).

"A preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant clearly establishes the burden of persuasion as to the four requisites." *ACLU*, 557 F.3d at 1198 (quoting *All Care Nursing Serv., Inc. v. Bethesda Mem'l Hosp., Inc.*, 887 F.2d 1535, 1537 [*1288] (11th Cir. 1989)). If Mr. Keister is unable to demonstrate a substantial

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[3]The parties dispute whether the district court's finding that the intersection is in the "heart of the campus" is a historical fact or a constitutional fact. Mr. Keister argues that although the intersection is technically "where" the event occurred, because that fact is so crucial to the ultimate constitutional analysis, this Court must review *de novo* the district court's finding that the sidewalk's location is within campus. However, we need not decide that question. Under either standard of review—clear error or *de novo*—it is apparent that the intersection is indeed within the heart of UA's campus.

likelihood of success on the merits, we do not need to address the remaining preliminary injunction requirements. *Bloedorn v. Grube*, 631 F.3d 1218, 1229 (11th Cir. 2011).

III. DISCUSSION

Mr. Keister contends that the district court erred in finding the intersection is a limited public forum, arguing that it is instead properly classified as a traditional public forum. This distinction matters because the type of forum determines the level of scrutiny applied. *Id.* at 1230 ("[T]he degree of scrutiny we place on a government's restraint of speech is largely governed by the kind of forum the government is attempting to regulate.").[4]

As a preliminary matter, the First Amendment does not guarantee access to property merely because the government owns it. *Id.* (citing *Cornelius v. NAACP*

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[4]Notably, Mr. Keister did not argue on appeal that the policy could not survive scrutiny if the district court correctly found the intersection was a limited public forum. *See Christian Legal Soc'y Chapter of the Univ. of Cal., Hastings Coll. of the Law v. Martinez*, 561 U.S. 661, 679 (2010) (noting that speech restrictions within a limited public forum are permitted when the restrictions are "reasonable and viewpoint neutral"). While this Court does have some concerns about whether UA's 10 working day advance notice requirement would be reasonable for events that do not require multiple department approvals, because Mr. Keister did not raise that issue in his initial brief, we have no occasion to address it here. *Access Now, Inc. v. S.W. Airlines Co.*, 385 F.3d 1324, 1330 (11th Cir. 2004) ("[T]he law is by now well settled in this Circuit that a legal claim or argument that has not been briefed before the court is deemed abandoned and its merits will not be addressed.").

Legal Def. & Educ. Fund, Inc., 473 U.S. 788, 803 (1985)). Rather, courts use "'forum analysis' to evaluate government restrictions on purely private speech that occurs on government property." *Walker v. Tex. Div. Sons of Confederate Veterans, Inc.*, 576 U.S. ___, 135 S. Ct. 2239, 2250 (2015) (citing *Cornelius*, 473 U.S. at 800).

The Supreme Court has recognized four categories of government fora: the traditional public forum; the designated public forum; the limited public forum; and the nonpublic forum. *Barrett v. Walker Cty. Sch. Dist.*, 872 F.3d 1209, 1224 (11th Cir. 2017). The parties agree there are only two possible fora at issue here: the traditional public forum and the limited public forum.

A traditional public forum is government property which "ha[s] immemorially been held in trust for the use of the public, and, time out of mind, ha[s] been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983) (quoting *Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 515 (1939)). The Supreme Court has restricted traditional public forum status to its "historic confines." *Walker*, 135 S. Ct. at 2250 (quoting *Ark. Educ. Television Comm'n v. Forbes*, 523 U.S. 666, 678 (1998)). Quintessential examples are parks and streets. *Barrett*, 872 F.3d at 1224. "[A] time, place, and manner restriction can be placed on a traditional public forum *only* if it is content neutral, narrowly tailored to achieve a significant government interest, and 'leave[s] open ample alternative channels of communication.'" *Bloedorn*, 631 F.3d at 1231 (quoting *Perry*, 460 U.S. at 45).

[*1289] In contrast, a limited public forum is established when governmental entities open their property but limit its use to "certain groups or dedicate[] [it] solely to the discussion of certain subjects." *Christian Legal Soc'y*, 561 U.S. at 679 n.11 (quoting *Pleasant Grove City v. Summum*, 555 U.S. 460, 470 (2009)). It is plain that governments may exclude a speaker "if he is not a member of the class of speakers for whose especial benefit the forum was created." *Cornelius*, 473 U.S. at 806 (citing *Perry*, 460 U.S. at 49). "Indeed, implicit in the idea that a government forum has not been opened widely and intentionally to the general public is the government's right to draw distinctions in access based on a speaker's identity." *Bloedorn*, 631 F.3d at 1235 (citing *Perry*, 460 U.S. at 49). Limitations made in a limited public forum need to be only "reasonable and viewpoint neutral." *Id.* at 1231.

We have also made clear that "[t]he physical characteristics of the property alone cannot dictate forum analysis." *Id.* at 1233. "Instead, we look to the traditional uses made of the property, the government's intent and policy concerning the usage, and the presence of any special characteristics." *Id.* "[T]he scope of the relevant forum is defined by 'the access sought by the speaker.'" *Id.* at 1232 (quoting *Cornelius*, 473 U.S. at 801). As Mr. Keister solely seeks to speak at the intersection, that is the scope of our forum assessment today.

Mr. Keister contends that the intersection is a traditional public forum because: (1) it is a sidewalk bordering a public street; (2) Tuscaloosa maintains an

easement on this land[5]; and (3) the sidewalks are indistinguishable from other sidewalks, blending in with Tuscaloosa's urban grid and not suggesting a special enclave. Mr. Keister likens his case to other cases in which courts have ruled that sidewalks, which are indistinguishable from the public landscape, are traditional public fora. *See United States v. Grace*, 461 U.S. 171, 180, 183 (1983) (holding that because "[t]here is no separation, no fence, and no indication whatever to persons stepping from the street to the curb and sidewalks that serve as the perimeter of the Court grounds that they have entered some special type of enclave," the public sidewalks surrounding the Supreme Court were public fora and noting that "[t]here is nothing to indicate to the public that these sidewalks are part of the Supreme Court grounds or are in any way different from other public sidewalks in the city"); *McGlone v. Bell*, 681 F.3d 718, 732 (6th Cir. 2012) (holding that perimeter sidewalks around Tennessee Technological University's campus were traditional public fora but noting that "Appellees have not attempted to dispute Plaintiff's characterization of

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[5]Because Mr. Keister pled in his Complaint that the intersection is within UA campus's bounds, we need not resolve the parties' disputes as to who maintains and owns the sidewalks at issue. What is clear is that the intersection is within UA's campus and UA treats it as such, as the district court found. And that is all that matters for our purposes today. *See Bloedorn*, 631 F.3d at 1233 (11th Cir. 2011) ("Publicly owned or operated property does not become a public forum simply because members of the public are permitted to come and go at will. Instead, we look to the traditional uses made of the property, the government's intent and policy concerning the usage, and the presence of any special characteristics." (internal quotations and citations omitted)).

the perimeter sidewalks as traditional public fora"); *Brister v. Faulkner*, 214 F.3d 675, 681-83 (5th Cir. 2000) (holding that the sidewalks surrounding the University of Texas at Austin's Erwin Center, which all abutted public streets, were traditional public fora as [*1290] they were indistinguishable from the City of Austin's public sidewalks as the only indication that a person was entering University property was a verbal warning from a police officer).

This Court has previously provided controlling guidance on how to determine the type of forum on a public college campus. In *Bloedorn*, the plaintiff wished to preach on Georgia Southern University's ("GSU") campus and, when denied, filed suit asserting that GSU's speech policy violated the First Amendment. 631 F.3d at 1225-27. This Court held that GSU's sidewalks, pedestrian mall, and rotunda were limited public fora because (1) a state-funded university is not *per se* a traditional public forum[6]; and (2) there was no evidence GSU intended to open those areas for public expressive conduct. *Id.* at 1232. By limiting who may use its facilities to a discrete group of people—the GSU community—we concluded "[t]his is precisely the definition of a limited public forum." *Id.*

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[6]*See Widmar v. Vincent*, 454 U.S. 263, 267 n.5 (1981) ("A university differs in significant respects from public forums such as streets or parks or even municipal theaters. A university's mission is education, and decisions of this Court have never denied a university's authority to impose reasonable regulations compatible with that mission upon the use of its campus and facilities. We have not held, for example, that a campus must make all of its facilities equally available to students and nonstudents alike, or that a university must grant free access to all of its grounds or buildings.").

We also held that "it is of lesser significance that the GSU sidewalks and Pedestrian Mall physically resemble municipal sidewalks and public parks. The physical characteristics of the property alone cannot dictate forum analysis." *Id.* at 1233. Noting that although GSU's campus possessed many features similar to public parks—such as sidewalks, pedestrian malls, and streets—we held its essential function was quite different: education. *Id.* at 1233-34 ("Perhaps most important, the purpose of a university is strikingly different from that of a public park. Its essential function is not to provide a forum for general public expression and assembly; rather, the university campus is an enclave created for the pursuit of higher learning by its admitted and registered students and by its faculty."). Thus, because GSU did not intend to open its sidewalks to public discourse, it was a limited public forum.

The same is true here. Mr. Keister's main argument is that the intersection's sidewalks look like Tuscaloosa sidewalks and one can walk unimpeded from the city onto campus. But this argument misses the mark. The relevant inquiry is whether UA intended to open this area up for non-student use. *See United States v. Kokinda*, 497 U.S. 720, 730 (1990) ("[T]he government does not create a public forum by . . . permitting limited discourse, but only by intentionally opening a nontraditional forum for public discourse." (quoting *Cornelius*, 473 U.S. at 802)). Because UA did not, our precedent dictates that the sidewalks are limited public fora.

The essential function of UA's property is congruent with its educational mission. *See Widmar*, 454 U.S. at

267 n.5; *Bloedorn*, 631 F.3d at 1233. It is entirely reasonable for UA to place some restrictions on who can speak where and when on its campus, especially with the use of a loudspeaker, while its students are attempting to learn and its faculty attempting to teach.

Further, there are objective indications that University Boulevard and Hackberry Lane are within UA's campus as opposed [*1291] to "mere" public Tuscaloosa streets at that intersection. Unlike in *Grace*, where the Supreme Court held that its perimeter sidewalks were traditional public fora because they were not distinguishable from the Washington, D.C. public sidewalks, 461 U.S. at 179-80, here the intersection, as evident from the UA map, is in the heart of campus.[7] It is surrounded by UA buildings, and there are numerous permanent, visual indications that the sidewalks are on UA property including landscaping fences and UA signage. While physical characteristics are not dispositive for forum analysis, they independently support a limited public forum in this case as they suggest to the intended speaker that he has entered a special enclave. *See Bloedorn*, 631 F.3d at 1234 (holding that because GSU's campus was clearly defined by large signs and pillars, among others, and the relevant GSU forum was inside campus, *Grace* was inapplicable).

Neither are we persuaded by Mr. Keister's argument that because the intersection is open as a public

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[7]Because the intersection is in the heart of campus, we need not address if our analysis would be different if the intersection were instead at the perimeter of the university's campus.

thoroughfare, it is *per se* a traditional public forum. As the Supreme Court held in *Greer v. Spock*, 424 U.S. 828 (1976), the government permitting its citizenry to access its land via sidewalks and streets does not automatically convert a nonpublic forum to a public one. *Id.* at 830, 835-38 (holding that although the military had allowed unimpeded civilian traffic on roads and sidewalks within a military base's unrestricted area, that access did not convert the base to a public forum); *Bloedorn*, 631 F.3d at 1233 ("Publicly owned or operated property does not become a 'public forum' simply because members of the public are permitted to come and go at will.") (quoting *Grace*, 461 U.S. at 177)).

In sum, because the intersection is within the UA campus, is not intended as an area for the public's expressive conduct, and contains markings clearly identifying it as an enclave, the district court properly determined it was a limited public forum. As Mr. Keister did not challenge the district court's application of the relevant level of scrutiny, we conclude the district court did not abuse its discretion in denying Mr. Keister's preliminary injunction request.

IV. CONCLUSION

For the reasons set out above, the district court did not abuse its discretion in denying Mr. Keister's preliminary injunction motion. As a result, we affirm.

AFFIRMED.

Appendix B (240 F. Supp. 3d 1232)

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

RODNEY KEISTER,
Plaintiff,
v.
STUART BELL, et al.,
Defendants.

Case No.: 7:17-cv-00131-RDP

[*1233] **MEMORANDUM OPINION**

I. Introduction

This matter is before the court on Plaintiff's Amended Motion for Preliminary Injunction (Doc. # 7). The motion is fully briefed. (Docs. # 10, 15, 17). Plaintiff, a traveling evangelist, moves for a preliminary injunction to enjoin Defendants, University of Alabama ("UA") officials, from enforcing UA's "Grounds Use Policy" and permit scheme. Specifically, Plaintiff desires to speak at the northeast corner of the intersection of University Boulevard and Hackberry Lane, and he contends that UA's Policy unlawfully infringes on his First Amendment right to do so at that location. Defendants contend that the specific sidewalk involved in this dispute is not a traditional public forum, and in turn, [*1234] UA's Policy does not infringe on Plaintiff's First Amendment rights.

II. Relevant Undisputed Facts

Plaintiff is a travelling Christian missionary, who shares his religious beliefs in public places across the country. (Doc. # 1 at ¶¶ 12-14). He typically conveys his message[1] on public sidewalks, and he frequently visits college campuses to share his beliefs. (Doc. # 1 at ¶¶ 15, 16).

On March 10, 2016, Plaintiff's travels took him to the University of Alabama, a state-funded public university located in Tuscaloosa, Alabama. (Docs. # 6-1 at ¶¶ 19-21, # 15 at ¶ 5). At around 4:00 p.m., Plaintiff -- who is not a UA student, employee, or faculty member -- began sharing his religious beliefs on UA's campus. (Doc. # 6-1 at ¶¶19-23). Plaintiff, as well as a companion of his, began spreading their message[2] on a sidewalk next to 6th Avenue, near the corners of Smith Hall and Lloyd Hall on UA's campus. (*Id.*; Doc. # 15 ¶¶ 41-43). Shortly after Plaintiff and his companion began, they were approached by campus police and a UA representative, who informed the pair that they could not continue their activities because UA policy required that they obtain a grounds use permit before engaging in such expressive conduct. (Doc. # 6-1 at ¶¶

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[1]Plaintiff tries to convince people of the merits of Christianity by: handing out religious literature ("gospel tracts"), engaging people in one-on-one conversation and prayer, and preaching his beliefs to those nearby. (Doc. # 6-1 at ¶¶ 10-12, 17). He contends that these methods do not draw crowds or otherwise impede pedestrian traffic. (Doc. # 6-1 at ¶¶ 13-14).

[2]Plaintiff held a banner and passed out literature to students, while his companion orally preached to students passing by. (Doc. # 6-1 at ¶ 24; Doc. # 15 at ¶¶ 41-43).

33-35; Doc. # 15 at ¶ 44).

Because Plaintiff did not have a grounds use permit, he moved to the sidewalk at the intersection of University Boulevard and Hackberry Lane ("the intersection") to continue handing out gospel tracts and preaching. (Doc. # 6-1 at ¶ 42, 44-45). Plaintiff contends that he picked this spot because he believed that it was a public city sidewalk, as opposed to university owned property (where UA's grounds use policy applied). (Doc. # 6-1 at ¶ 42). Plaintiff further contends that, while speaking with a UA police supervisor on 6th Avenue, Plaintiff specifically proposed that he move locations and preach at the University Boulevard and Hackberry Lane intersection. (Doc. # 6-1 at ¶ 36-37). He asserts that UA police specifically told him: "On that corner, you're good." (*Id.* at ¶ 41).

A short while after moving to the intersection sidewalk, UA campus police again approached Plaintiff and informed him that the intersection (and sidewalk) were indeed part of campus, and UA's ground use applied at that physical location. Fearing arrest for criminal trespass, Plaintiff left UA's campus and has not returned to the intersection sidewalk since March 10, 2016. (Doc. # 6-1 at ¶¶ 51-52). However, Plaintiff states that he plans to go back to Tuscaloosa and would like to return to the particular intersection sidewalk to preach when he returns. (*Id.* at ¶ 57).

A. The Intersection Sidewalk

The intersection of University Boulevard and Hackberry Lane, where Plaintiff sought to preach and

hand out gospel tracts, is located in the heart of UA's campus. (Doc. # 15 at ¶ 34). However, while they intersect on campus property (and run through much of UA's campus), both University Boulevard and Hackberry Lane are city streets that run beyond the perimeter of UA's campus.[3] (Doc. # 6-5). [*1235] Sidewalks abound both University Avenue and Hackberry Lane. (Doc. # 1 at ¶ 37).

The sidewalks at the intersection, however, are maintained by the University.[4] Russell Hall, a university owned building, sits on the northeast corner of the intersection (the particular corner where Plaintiff did his preaching). (Doc. # 1 at ¶ 60; Doc. # 15 at ¶ 35). On the northwest corner of the intersection is a campus parking lot with a sign restricting its use to university faculty and staff. (Doc. # 15 at ¶ 36). The intersection is further surrounded (on three sides) with other identifiable university buildings, including Gallalee Hall and Farrah Hall. (*Id.* at ¶ 35). However, on one side of University Boulevard (approximately one city block away from the intersection) there are certain private businesses "mixed in" with the university buildings. (Doc. # 17-1 at ¶¶ 7-8).

There are streetlamps at the intersection. (Doc. # 15 at ¶ 39). University of Alabama signs hang from these streetlamps. (*Id.*). Along with the respective street

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[3]Indeed, UA's campus is not fenced off, gated, or otherwise self-contained, and while it is its own separate property, some of the city's transportation grid runs through the campus. (Doc. # 1 at ¶ 30-31).

[4]This fact was admitted by the parties at oral argument.

names, the street signs at the intersection display the script "A" logo of the university. (*Id.* at ¶ 37). Landscaping fences, which run through campus, are on each corner of the intersection. (*Id.* at ¶ 38).

B. The Speech Policy

UA's Policy governs when, where, and how persons not affiliated with the university may engage in public speaking on campus. (*Id.* at ¶ 12). The Policy specifically provides for the use of UA sidewalks. (*Id.* at ¶ 18; Doc. # 15-2 at p. 2). The Policy provides that persons not affiliated with UA who wish to conduct an event or engage in public speaking must: (1) be sponsored by or affiliated with a University academic or administrative department or registered student organization; and (2) complete a Grounds Use Permit ("GUP") form. (Doc. # 15-2 at pp. 2, 4). The Policy requires that applicants request permission ten (10) working days prior to the event "[t]o facilitate the review by all the different University departments that have responsibility for the various aspects of an Event." (*Id.* at p. 4). The Policy provides that, "[i]f an Event does not involve factors that require multiple University department approvals, approval may be given in as few as three (3) days, if the GUP form is filled out completely and accurately." (*Id.*). The university will approve of an application properly made under the Policy unless there are reasonable grounds to believe that one or more of the conditions listed under Section G(1) of the Policy are present.[5] (Doc. # 15

[5]Specifically, the Policy states that the university will approve the application, unless there are reasonable grounds to believe

at ¶ 26). Further, applicants [*1236] may appeal a GUP denial as provided by Section H of the Policy.

III. Analysis

The purpose of the preliminary injunction is to preserve the positions of the parties as best as possible until a trial on the merits may be had. *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). It is axiomatic that entry of a preliminary injunction in advance of trial is an extraordinary and drastic remedy not to be granted unless the movant "clearly carries the burden of persuasion" as to the four prerequisites. *United States v. Jefferson Cty.*, 720 F.2d 1511, 1519 (11th Cir.

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that one or more of the following conditions are present: 1) the applicant, if a student or a recognized student organization, is under a disciplinary penalty withdrawing or restricting privileges made available to the student or a recognized student organization, such as use of a facility; 2) the proposed location is unavailable at the time requested because of events previously planned for that location; 3) the proposed date or time is unreasonable given the nature of the event and the impact it would have on University resources; 4) the event would unreasonably obstruct pedestrian or vehicular traffic; 5) the event would prevent, obstruct, or unreasonably interfere with the regular academic, administrative, or student activities of, or other approved activities at, the university; 6) the event would constitute an immediate and actual danger to University students, faculty, or staff, or to the peace or security of the University that available law enforcement officials could not control with reasonable effort; or, 7) the university affiliate on whose behalf the application is made has on prior occasions a) damaged university property and has not paid in full for such damage, or b) failed to provide the designated university official with notice of cancellation of a proposed activity or event at least two university working days prior to a scheduled activity or Event. (Doc. # 15-2 at p. 5).

1983) (internal citations omitted). A district court may grant injunctive relief if the movant shows:

> (1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered unless the injunction issues; (3) that the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party, and (4) that if issued the injunction would not be adverse to the public interest.

All Care Nursing Serv., Inc. v. Bethesda Mem'l Hosp., Inc., 887 F.2d 1535, 1537 (11th Cir. 1989).

Plaintiff brought this action pursuant to 42 U.S.C. §§ 1983 and 1988 and alleges that UA's speech policy unduly restricts religious expression, "including literature distribution and conversational dialogue, taking place on... sidewalks and ways." (Doc. # 1 at ¶ 1). His motion for preliminary injunction specifically requests that the court enjoin Defendants from enforcing UA's speech policy in the space where Plaintiff desires to speak (i.e., the sidewalks adjoining University Boulevard and Hackberry Lane). (Doc. # 10 at pp. 4, 11).

Oral and written dissemination of religious views and doctrines is protected by the First Amendment. *Heffron v. Int'l Soc. for Krishna Consciousness, Inc.*, 452 U.S. 640, 647 (1981). Accordingly, both religiously motivated speech and the distribution of handbills are entitled to constitutional protection. *Id.*; *Fla Gulf Coast Bldg. & Const. Trades v. NLRB*, 796 F.2d 1328, 1332 (11th Cir. 1986); *Murdock v. Com. of Pennsylvania*, 319 U.S. 105, 108 (1943).

But, the First Amendment does not guarantee access to property just because it is owned by the government. *Bloedorn v. Grube*, 631 F.3d 1218, 1230 (11th Cir. 2011) (citing *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 803 (1985)). Instead, in determining whether a forum is open to public expression (or whether a prior restraint on expression is permissible) the court is required to do two things. First, a court must "examine the policy and practice of the government to determine whether it intended to open a specific place for public discourse."[6] *Bloedorn*, 631 F.3d at 1230, citing *Ark. Educ. Television Comm'n v. Forbes*, 523 U.S. 666, 677 (1998). Second, if the government's intent is not to open a specific place for public discourse (or, alternatively, to open that place to only a limited class), the court must engage in a [*1237] forum analysis. *United States v. Frandsen*, 212 F.3d 1231, 1236-37 (11th Cir. 2000). This is because, "[i]n order to help answer whether government property may be utilized for an expressive purpose by the general public, the courts have resorted to classifying the character of the property." *Bloedorn*, 631 F.3d at 1230. Accordingly, "[w]hen a regulation restricts the use of government property as a forum for expression, an initial step in analyzing whether the regulation is unconstitutional is determining the nature of the government property involved." *Id.* at 1237 (citing *United States v. Kokinda*, 497 U.S. 720,

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[6]The court notes that, while the historical use of the forum is relevant in conducting a forum analysis, there is no record evidence regarding how long UA has employed its speech policy or its historical practice regarding the intersection sidewalk. But, without question, UA's position here is that it has not opened the sidewalk at issue to public discourse.

726-27 (1990)).

The Eleventh Circuit, interpreting Supreme Court pronouncements, has identified four different categories of forums: traditional public, designated public, limited public, and nonpublic. *See Keeton v. Anderson-Wiley*, 664 F.3d 865, 871 (11th Cir. 2011); *Bloedorn*, 631 F.3d at 1232. Importantly, the degree of scrutiny placed on a government's restraint of speech is determined by the nature of the forum the government seeks to regulate. Here, Plaintiff contends that the sidewalk at issue is a traditional public forum. (Doc. # 10 at p. 11). Defendant argues that the sidewalk is a limited public forum. (Doc. # 14 at p. 8).

In *Bloedorn*, our circuit court described the distinction between these two categories of forums:

> Traditional public fora are public areas such as streets and parks that, since "time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." Thus, a time, place, and manner restriction can be placed on a traditional public forum only if it is content neutral, narrowly tailored to achieve a significant government interest, and "leave[s] open ample alternative channels of communication."

631 F.3d at 1231. By contrast:

> [A] limited public forum may be established when the government limits its property "to use by certain groups or dedicate[s it] solely to the discussion of certain subjects." Any restrictions made on

> expressive activity in a limited public forum only must be reasonable and viewpoint neutral.

Id. Accordingly, the threshold question is whether the sidewalk is a traditional or limited public forum.

A. The Forum Analysis Framework

Public sidewalks have long been considered a "prototypical example" of a traditional public forum. *Schenck v. Pro-Choice Network Of W. N.Y.*, 519 U.S. 357, 358 (1997). Indeed, "without more," public places such as sidewalks are considered to be traditional public forums. *United States v. Grace*, 461 U.S. 171, 177 (1983). Of course, there is "more" in this instance. Plaintiff desires to speak on a university sidewalk, as opposed to a public city sidewalk. However, ownership or control of a sidewalk alone is not dispositive to the forum analysis, and instead, "[t]raditional public fora are defined by the objective characteristics of the property." *Ark. Educ. Television Comm'n*, 523 U.S. at 677; *see also Grace*, 461 U.S. at 177.

Further, while a state-funded university's campus is not a traditional public forum, the court cannot consider UA's campus as a whole in conducting its analysis. *Bloedorn*, 631 F.3d at 1232. Instead, the scope of the relevant forum (i.e., the university campus) is defined by the "access sought by the speaker," meaning that when a speaker seeks access to only a limited area of government property, forum [*1238] analysis must be tailored to that limited area. *Id.* (citing *Cornelius v. NAACP Legal Def. & Educ.*

Fund, Inc., 473 U.S. 788, 801 (1985)).[7] Two important conclusions follow. First, in considering Plaintiff's motion for preliminary injunction, the court is constrained to determining only whether the specific area Plaintiff seeks to speak is a traditional public forum. Second, in determining the nature of the forum, the court's analysis must assess the objective characteristics of the property. Indeed, Plaintiff has directed the court to cases in which federal courts, after examining the objective characteristics of the sidewalks, have pegged university sidewalks that appear like, and blend in with, surrounding municipal sidewalks and the urban grid, to be traditional public forums. *See McGlone v. Bell*, 681 F.3d 718, 733 (6th Cir. 2012); *Brister v. Faulkner*, 214 F.3d 675, 681-82 (5th Cir. 2000).

However, *Bloedorn* appears to add another wrinkle to this analysis. 631 F.3d at 1233. While the court examined the objective physical characteristics of the forum, it nonetheless determined that "[t]he physical characteristics of the property alone cannot dictate the forum analysis. *Id.* (citing *Kokinda*, 497 U.S. at 727). The court reasoned that, "[i]nstead, we look to the traditional uses made of the property, the government's intent and policy concerning the usage,

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[7]Starting with this premise, the *Bloedorn* court reasoned that "[a] university campus will surely contain a wide variety of fora on its grounds," and cited *Bowman v. White*, 444 F.3d 967, 976-77 (8th Cir.2006) for the premise that "labeling the campus as one single type of forum is an impossible, futile task." 631 F.3d at 1232.

and the presence of any special characteristics."[8] *Id.* (citing *Greer v. Spock*, 424 U.S. 828, 837-38 (1976); *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969)). Accordingly, when courts in this circuit conduct a forum analysis, they are tasked with assessing the forum's physical characteristics, as well as the traditional uses made of the property. To be sure, this is a fact-intensive inquiry, and at least some courts have been guided by the time-tested adage: "[i]f it looks like a duck, and it walks like a duck, and it quacks like a duck, then it's probably a duck." *McMahon v. City of Panama City Beach*, 180 F. Supp. 3d 1076, 1080 (N.D. Fla. 2016) (noting the utility of the "duck test" in the context of forum analysis). So, the question becomes this: is the intersection a public forum duck or a limited public forum duck?

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[8]This approach is consistent with the Eighth Circuit's reasoning in *Bowman v. White*, 444 F.3d 967 (8th Cir. 2006). There, the plaintiff sought "to speak at various locations throughout the campus including the streets, sidewalks, and open areas located inside and directly adjacent to the campus." *Id.* at 977. The record evidence demonstrated that those particular areas "combine[d] the physical characteristics of streets, sidewalks, and parks, and are open for public passage." *Id.* The court reasoned, however, that the open nature of those spaces was merely one factor in determining whether the government had opened its property. *Id.* at 978. In determining that the particular forums were not traditional public forums, the court noted that "streets, sidewalks, and other open areas that might otherwise be traditional public fora may be treated differently when they fall within the boundaries of the University's vast campus." *Id.* As such, the court conducted its analysis by looking to the "university's purpose, its traditional use, and the government's intent with respect to the property," and reasoned that "a university's mission is education and the search for knowledge — to serve as a special enclave devoted to higher education." *Id.* (internal citations omitted).

B. The Intersection Sidewalk is a Limited Public Forum

The parties each direct the court to cases which they contend involve similar [*1239] factual scenarios to the present case. Plaintiff points to *McGlone*, where the Sixth Circuit held that perimeter sidewalks along the side of Tennessee Tech's ("TTU") campus were traditional public forums. 681 F.3d at 732-33. The court reasoned that the perimeter sidewalks were traditional public forums "[b]ecause the perimeter sidewalks at TTU blend into the urban grid and are physically indistinguishable from nearby city sidewalks." *Id.* at 733. Similarly, the Fifth Circuit held that the sidewalks outside a University of Texas property, which was surrounded on all sides by public streets, were a traditional public forum, where there was no physical demarcation indicating where university property ended and the city's began. *Brister v. Faulkner*, 214 F.3d 675, 682 (5th Cir. 2000).

Plaintiff further points to *U.S. v. Grace*, 461 U.S. 171 (1983). In *Grace*, the Supreme Court determined that the sidewalks running along the outer boundaries of the Supreme Court's grounds were traditional public forums. *Id.* at 179-80. The court reasoned that, "[t]he sidewalks comprising the outer boundaries of the Court grounds are indistinguishable from any other sidewalks in Washington D.C., and we can discern no reason why they should be treated any differently." *Id.* at 179. The court found it instructive that, "[t]here is no separation, no fence, and no indication whatever to persons stepping from the street to the curb and sidewalks that serve as the perimeter of the Court grounds that they have entered some special type of

enclave." *Id.* at 180.

By contrast, Defendants rely heavily on *Bloedorn* in support of their position. There, the Eleventh Circuit determined that the sidewalks of Georgia Southern University ("GSU") were not traditional public forums. 631 F.3d at 1233-34. The court initially reasoned that:

> Even though GSU's campus possesses many of the characteristics of a public forum—including open sidewalks, streets, and pedestrian malls—it differs in many important ways from public streets or parks. Perhaps most important, the purpose of a university is strikingly different from that of a public park. Its essential function is not to provide a forum for general public expression and assembly; rather, the university campus is an enclave created for the pursuit of higher learning by its admitted and registered students and by its faculty.

Id. The court then assessed the physical characteristics of GSU's sidewalks, and determined that they were distinguishable from other public sidewalks because they were contained inside of GSU's campus, all of the University's entrances were identified with large blue signs and brick pillars, all of the buildings were identified with large blue signs, and all of its parking lots had signs restricting their use to GSU community members. *Id.* at 1234.

Unlike the sidewalks in the cases cited by Plaintiff, the intersection sidewalks lie in the heart of UA's campus, and do not border the perimeter of the University's property. In that sense, the intersection sidewalks differ from those addressed in *McGlone*,

Brister, and *Grace*, which were situated on the perimeter of the government properties in question. However, while the UA sidewalks may intersect on University property, they nonetheless border otherwise public streets which are a part of the city of Tuscaloosa's greater urban grid. The Supreme Court, in *United States v. Kokinda*, held that a postal sidewalk, which ran between a parking lot and the post office, was not a traditional public forum. 497 U.S. 720, 727-28, 730 [*1240] (1990). The sidewalks at issue, however, are distinguishable from the sidewalk in *Kokinda* in at least one respect — they run parallel to public streets which extend beyond the reaches of UA's campus.[9]

As such, the court looks to the physical characteristics and visual surroundings of the intersection sidewalks to determine if they constitute an "enclave" distinguishable from the city streets and sidewalks outside of the campus' reach. Much like in *Bloedorn*, the physical characteristics of the intersection sidewalk (and its immediate surroundings) are what bear significantly on the forum analysis. University of Alabama signs hang from the streetlamps surrounding the intersection. And, those street signs display the script "A" logo of the university, and landscaping fences, which run through campus, are on each corner of the intersection. Plaintiff

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[9]Indeed, the analysis in this case would be different if the sidewalks in question ran only from one UA building to another. However, while the sidewalks at issue do not run the whole length of each street, they do run parallel to University Boulevard and Hackberry Lane — two streets that pass through and beyond UA's campus.

argues that these physical characteristics fall short of establishing the intersection sidewalks as a special sort of enclave removed from traditional forum status. (Doc. # 17 at p. 6); *see United States v. Marcavage*, 609 F.3d 264, 276 (3d Cir. 2010) (finding that a sidewalk was not a "special enclave" despite being made of a different type of building block, and bordered by chain-linked metal bollards, because it was used as a public thoroughfare and connected to city sidewalks). The court disagrees.

Here, the physical characteristics of the intersection, viewed in conjunction with the intersection's surroundings, distinguish the intersection sidewalks from typical Tuscaloosa city sidewalks. Not only are aspects of the intersection embellished by UA markings, but the intersection itself is surrounded by UA's campus and buildings. Russell Hall, a clearly marked UA building, sits prominently at the corner where Plaintiff seeks to speak. On other sides, the intersection is bounded by distinctively marked campus buildings and a campus parking lot with a sign restricting its use to University faculty and staff. The intersection is surrounded by clearly identifiable UA property and has identifiable physical features which distinguish it from a typical city intersection. These objective characteristics, taken as a whole, demonstrate that the intersection sidewalk is not a traditional public forum. Instead, because UA -- through its permit policy -- limits access to its sidewalks to certain groups (i.e., sponsored speakers), the sidewalk is a limited public forum. *See Bloedorn*, 631 F.3d at 1231.

The court arrives at this decision having viewed only

the objective characteristics of the intersection sidewalk and its immediate surroundings. However, the court's analysis in *Bloedorn* further enforces this determination. As mentioned above, in conducting its forum analysis, the court found the purpose and essential function of a university to be different from that of a public park, and reasoned that this supported a finding that a university campus is a special enclave that is not a traditional public forum. 631 F.3d at 1233-34. To be sure, this holds true here. The essential function of the University of Alabama is not to provide a forum for general public expression. *See id.*; *Bowman*, 444 F.3d at 978. Rather, the campus functions as a sort of special enclave "created for the pursuit of higher learning by its admitted and registered students and by its faculty." *Bloedorn*, 631 F.3d at 1234. That UA opens its campus to a limited group of [*1241] sponsored individuals does not change the purpose of the university.

IV. Plaintiff has Failed to Establish the Four Factors Necessary to Grant Injunctive Relief

In deciding Plaintiff's Motion for Preliminary Injunction, the first prong of the analysis -- whether Plaintiff has a substantial likelihood of success -- proves to be the most important. In his Complaint, Plaintiff asserts causes of action for violations of the Free Speech Clause of the First Amendment and the Due Process Clause of the Fourteenth Amendment. (Doc. # 1 at pp. 13-14). Because the intersection sidewalk is a limited public forum, the constitutionality of the speech policy, and Plaintiff's likelihood of success in bringing his First Amendment claim, turn on whether its restrictions on speech are

reasonable and viewpoint neutral. *Id.* at 1231. The *Bloedorn* court found GSU's speech policy, which banned all non-sponsored speakers from speaking on the campus, reasonable. *Id.* at 1235. The court reasoned that GSU had an interest in preserving its limited facilities and resources for its students, faculty, and employees, and its speech policy reasonably advanced that aim while still permitting outside speech. *Id.* The same can surely be said here. UA's policy is also reasonable because it does not limit outside speakers' access to the campus entirely. Instead, it allows sponsored speakers access to UA's campus so long as the seven objective criteria listed in its policy are met.

Further, the *Bloedorn* court did not find the sponsorship requirement an unreasonable restraint on speech. *Id.* Consistent with that binding decision, neither does this court. Such a requirement furthers the university's aims as an educational institution and still allows individuals not associated with the university access to UA's grounds. Finally, the requirement that a hopeful speaker give UA a ten-day advance notice does not place an unreasonable prior restraint on speech. (And, to be clear, in the instance of a limited public forum, that is all that is required — reasonableness. *Christian Legal Soc. Chapter of the Univ. of California, Hastings Coll. of the Law v. Martinez*, 561 U.S. 661, 679 (2010)). In *Bloedorn*, the court found that a similar, albeit shorter, notice requirement was not just reasonable, but "narrowly tailored." *Id.* at 1240. Notice requirements serve a legitimate purpose, particularly on a college campus. Universities are less equipped than other public forums to respond to disruptions on short notice, and

implementing a relatively short[10] "wait period" for UA to review a GUP form is certainly reasonable. *See Sonnier v. Crain*, 613 F.3d 436, 445 (5th Cir. 2010), *opinion withdrawn in part on reh'g*, 634 F.3d 778 (5th Cir. 2011) (finding that a public university's speech policy was narrowly tailored when it employed a seven-day notice requirement).[11]

Further, as in *Bloedorn*, there is no indication that the ban on outside, non-sponsored speakers is viewpoint-based. *See* 631 F.3d at 1240. On its face, UA's speech policy applies equally to all outside, non-sponsored speakers. Similarly, there is no record evidence (nor has Plaintiff even alleged) that UA employs its speech policy [*1242] in a viewpoint specific manner.[12] Instead, a review of the conditions

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[10]While the Policy requires that applicants request permission to speak ten (10) working days prior to the event, the Policy also provides that, "[i]f an Event does not involve factors that require multiple University department approvals, approval may be given in as few as three (3) days, if the GUP form is filled out completely and accurately." (Doc. # 15-2 at p. 4).

[11]Although the Fifth Circuit withdrew its *Sonnier* opinion in part, the court finds the reasoning of the opinion persuasive.

[12]Plaintiff maintained at oral argument that the sponsorship requirement embedded in UA's speech policy may ultimately lead to speakers being denied access to UA's campus based on their viewpoint. Speakers are only entitled access to the campus under UA's Policy if they are sponsored by a student group. Because there is a potential that student groups may deny him (or any other speaker) sponsorship based on his viewpoint, Plaintiff contends that UA's Policy itself is not viewpoint-neutral. The court disagrees and finds guidance from *Bloedorn* on this issue. There, regarding GSU's sidewalks, the court noted "[t]he University has limited these areas only for use by a discrete group

UA imposes on sponsored speakers' access to facilities indicates that those conditions are in no way viewpoint-based. (*See* Doc. # 15-2 at p. 5 (prohibiting access to campus where the proposed location is unavailable, the event would unreasonably obstruct traffic, etc.)). Accordingly, the restrictions UA's speech policy places on speech are both reasonable and viewpoint neutral.

Further, while Plaintiff includes a Due Process based claim in his Complaint, and that claim alleges that UA's policies are vague and lack sufficient objective standards, he (1) makes no such argument in support of his Motion for Preliminary Injunction, and, in any event, (2) has not provided evidence on the matter. By contrast, Defendants have provided evidence of UA's speech policy, which establishes articulable and objective standards for reviewing

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of people — the GSU community; its students, faculty, and employees; and their sponsored guests. *Bloedorn*, 631 F.3d at 1232. Having found that *Bloedorn* was not "a member of the class of speakers for whose especial benefit the forum was created," the court reasoned that "he may be constitutionally restricted from undertaking expressive conduct on the University's sidewalks," and that such restriction (based on his lack of sponsorship) was not viewpoint-based. *Id.* at 1235. The court finds the same to be true here. UA's Policy applies equally to all sponsored speakers (who are allowed to speak so long as they meet the criteria outlined in the policy) and to all non-sponsored speakers (who are not allowed to speak, regardless of viewpoint). The key is that *UA* is not making any decisions based on a speaker's viewpoint. See *Gilles v. Miller*, 501 F. Supp. 2d 939, 948 (W.D. Ky. 2007) (finding that a university's sponsorship policy did not result in viewpoint discrimination where the university did not bar the plaintiff from obtaining a sponsorship from a student organization and did not forbid student groups with views similar to the plaintiff's).

speech requests. On the limited record, the court cannot conclude that Plaintiff has demonstrated a substantial likelihood of success on his Due Process claim. As such, Plaintiff has failed to demonstrate a substantial likelihood of success on the merits on either of the causes of action which form the basis of his Complaint.

IV. Conclusion

On this limited record, the court finds Plaintiff has not established a substantial likelihood that he will succeed on his claim. Plaintiff's Motion for Preliminary Injunction is due to be, denied. A separate order will be entered.

DONE and ORDERED this March 6, 2017.

/s/ R. David Proctor
R. DAVID PROCTOR
UNITED STATES DISTRICT JUDGE

APPENDIX C: Order denying rehearing

Date filed: 04/03/2018

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-11347-AA

RODNEY KEISTER,

Plaintiff-Appellant,

versus

STUART BELL,
in his official capacity as President of the University of Alabama,
JOHN HOOKS,
in his official capacity as Chief of Police for the University of Alabama Police Department,
MITCHELL ODOM,
in his official capacity as Police Lieutenant for the University of Alabama Police Department,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Alabama

ON PETITION(S) FOR REHEARING AND
PETITION(S) FOR REHEARING EN BANC

BEFORE: ED CARNES, Chief Judge, and BLACK, Circuit Judge, and MAY,* District Judge.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested tht the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ Ed Carnes
CHIEF JUDGE

* Honorable Leigh Martin May, United States District Judge for the Northern District of Georgia, sitting by designation.

ORD-42

APPENDIX D

First Amendment

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. I.

Fourteenth Amendment, Section I

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, § 1.

APPENDIX E

University of Alabama
Policy for Use of University Space [excerpts]

Purpose:

This policy provides for access to The University of Alabama facilities and grounds, while preserving the primacy of the university's teaching and research mission. This policy is intended to facilitate responsible stewardship of institutional resources and to protect the safety of persons and the security of property.

Policy Statement:

Requests for use of the facilities or grounds of The University of Alabama made by persons, groups, or organizations affiliated or unaffiliated with the University will be resolved in accordance with this policy. The conditions of this policy will be administered in a manner reasonably designed to advance the mission of the institution, preserve the order necessary to conduct customary University operations and activities, protect the safety of persons and security of property, and maintain the aesthetic appearance of the campus.

Policy:

A. General Policy

The space and facilities of the University are intended primarily for the support of the teaching, research, and service components of its mission.

Second priority is given to programs sponsored and conducted by University academic and administrative departments or organizations affiliated with such departments. Beyond these two priorities, use of campus space is permitted for activities that are intended to serve or benefit the University community and must not interfere with the academic climate of the University.

University buildings or grounds, with the exception of the Ferguson Center and certain other facilities, may not be scheduled for use by individuals or organizations that are not part of the University or that are not sponsored by or affiliated with a University academic or administrative department or registered student organization. Permission to use campus space and facilities may be granted only by designated University officials. An academic or administrative department, registered student organization, or University affiliated student, faculty, or staff member may not reserve space or facilities on campus on behalf of a non-registered organization or off-campus group or person. The use of buildings and grounds must at all times conform to these regulations and to local, state, and federal law.

B. Reservation requirements

Other than uses for casual recreational or social activities, reservations must be made for the use of buildings and grounds under the control of the University, including University sidewalks (an "Event"). Requests for Event reservations will be granted in accordance with the priorities of the designated area. The request must be made by a

signed, written application to the appropriate office as set out in the procedures referenced below.

C. Use of Facilities by Student Organizations

* * *

D. Procedure and Priorities for Designated Facilities

* * *

E. Other Campus Grounds Use

1. Other campus grounds areas (other than those described above) (the "Grounds) are available for Events of University academic or administrative departments, registered student organizations, and University affiliated individuals (students, faculty and staff members) (collectively, a "University Affiliate"). Academic use by departments and colleges has priority. Assignments may be changed or canceled if conflicts with regular academic programs develop. The Ferguson Center is the primary designated location for displays or activities of registered student organizations.

2. Use of Grounds is further governed by the General Terms and Conditions for Grounds Use, which may be accessed at http://www.uafacilities.ua.edu/grounds/information/general-terms-conditions-for-grounds-use.pdf.

3. Each applicant for an Event on campus must complete a Grounds Use Permit (GUP) form. University academic or administrative departments,

faculty, and staff members should submit the GUP form found at http://www.uafacilities.ua.edu/grounds/information/grounds-use-permit.pdf. For registered student organizations and students, the GUP form may be accessed at http://thesource.ua.edu.

4. To facilitate the review by all the different University departments that have responsibility for the various aspects of an Event (e.g., tents, food service, UAPD, electrical service, etc.), applicants for use of the Grounds should request permission for such use ten (10) working days prior to the Event.

5. If an Event does not involve factors that require multiple University department approvals, approval may be given in as few as three (3) days, if the GUP form is filled out completely and accurately.

6. If an Event is spontaneous, such that it is occasioned by news or issues coming into public knowledge with the preceding two (2) calendar days, an expedited request for a GUP may be made by a University Affiliate. In such event, the University will attempt to accommodate and provide access to the University Affiliate within twenty-four (24) hours, to an area of the Grounds which is available and which does not interfere with regular academic programs or scheduled events and programs.

7. If an Event is a counter-event, such that it is occasioned in response to an Event for which a GUP has been issued, an expedited request for a Grounds Use Permit may be made by a University Affiliate. In such event, the University will attempt to

accommodate and provide access to the University Affiliate, within twenty-four (24) hours, to an area of the Grounds which is available and which does not interfere with regular academic programs or scheduled events and programs.

8. A permit granting Grounds use shall specify the boundaries of the area to be used, the date for which the use is approved, the time at which the reservation for the use expires, and any special provision(s) concerning the use of the space.

9. Any person or group holding an Event on campus grounds must remove all trash and other items associated with the Event (e.g. fencing, stages, tents and tarps) and return the grounds to pre-Event condition by 10:00 a.m. the following day. The University will assess the reasonable costs of returning the grounds to pre-Event condition (including damages, labor, repairs, replacement, etc.) and/or cleanup to those persons or organizations failing to comply with this requirement. The assessment may be made, as applicable, by charging the costs to a student account, a University account, payroll deduction, and any and all other methods allowed by law. Items not removed from the event site by 10:00 a.m. the following day will be confiscated by the University.

10. * * *

F. Alcohol Policy

* * *

G. Approval of Reservation Applications

1. Designated University officials under this policy and the policies referenced above will approve an application properly made by an appropriate University Affiliate under the relevant policy, unless there are reasonable grounds to believe that one or more of the following conditions are present:

a) The applicant, if a student or a recognized student organization, is under a disciplinary penalty withdrawing or restricting privileges made available to the student or a recognized student organizations, such as use of a facility.

b) The proposed location is unavailable at the time requested because of events previously planned for that location.

c) The proposed date or time is unreasonable given the nature of the Event and the impact it would have on University resources.

d) The Event would unreasonably obstruct pedestrian or vehicular traffic.

e) The Event would prevent, obstruct, or unreasonably interfere with the regular academic, administrative, or student activities of, or other approved activities at, the University.

f) The Event would constitute an immediate and actual danger to University students, faculty, or staff, or to the peace or security of the

University that available law enforcement officials could not control with reasonable effort.

g) The University Affiliate on whose behalf the application is made has on prior occasions:

1) Damaged University property and has not paid in full for such damage, or

2) Failed to provide the designated University official with notice of cancellation of a proposed activity or Event at least two (2) University working days prior to a scheduled activity or Event.

H. Appeals of Grounds Use Request Denials

1. Student organizations or students whose request for the use of campus grounds or nonacademic facilities are denied may appeal to the Vice President for Student Affairs in accordance with the following procedures:

a) The student organization or student must file a written appeal to the Office of the Vice President for Student Affairs no later than five (5) University working days after receiving notice of the denial from the Office of the Dean of Students.

b) The Vice President for Student Affairs, or his or her designee, shall convey the appeal decision, in writing, to the student organization or student, to the Office of the Dean of Students, and to the Office of Student Involvement and

Leadership within a reasonable time after receiving the appeal.

2. Appeals of denials for the use of space in academic building should be filed with the Office of the Vice President for Academic Affairs.

a) Appeals should be filed in writing with the Office for Academic Affairs within five (5) University working days after receipt of notice of the denial.

b) The Vice President for Academic Affairs, or his or her designee, shall convey the appeal decision in writing to the person or organization and to the appropriate academic department.

3. Faculty and staff members whose requests for the use of campus grounds or nonacademic facilities are denied may appeal to the Vice President for Financial Affairs. Furthermore, any other denials for the use of University space not otherwise set forth herein may appeal to the Vice President for Financial Affairs.

a) Appeals should be filed in writing with the Office of the Vice President for Financial Affairs within five (5) University working days after receipt of notice of the denial.

b) The Vice President for Financial Affairs, or his or her designee, shall convey the appeal decision in writing to the person or organization and to the appropriate administrative unit.

4. An appeal to the appropriate Vice President shall exhaust the right to appeal within the University.

I. Use of Amplification Equipment

1. The use of loudspeakers or any other type of amplified sound or musical instruments on the University grounds is by permission only.

2. Applications for permission to use amplification equipment for Events sponsored by a student or a recognized student organization must be made in the Office of the Dean of Students on forms provided by the office. Each use must be registered. Applications for periodic or recurring use of amplification equipment will not be considered.

3. Applications for permission to use amplification equipment for official University activities inside academic buildings, or on the campus as a part of the academic instructional program, must be made in the Office of Academic Affairs on forms provided by that office.

4. Applications for permission to use amplification equipment on any other University grounds or facilities not within the scope of sections I.2 and I.3 above shall be made to the University Grounds Office on forms provided by that office.

5. Applications under sections I.2, I.3, or I.4. must be completed and submitted no later than ten (10) University working days prior to the intended use. Failure to make timely submission of the application may result in the denial of the request.

6. The use of amplification equipment on campus is subject to the following restrictions:

a) The use of amplification equipment for solicitation purposes must conform to all campus grounds use provisions specified in this part.

b) The use of amplification equipment or loudspeakers is not permitted in the vicinity of classrooms during regularly scheduled class hours.

c) Sound equipment must not disrupt normal functions of the University, including the residence halls, or disturb the surrounding community. Band functions and/or functions involving the amplification of music are restricted, with exception approved by the Dean of Students, to the following times:

- Friday 5 p.m. - 12 midnight
- Saturday 1 p.m. - 12 midnight
- Sunday 1 p.m. - 5 p.m.

d) Outdoor dances and concerts may be held in approved locations only with prior approval by the Office of the Dean of Students. Bands must use their own sound equipment for such dances or concerts.

e) The University reserves the right to limit the number of outdoor band requests granted on any

given evening.

7. During certain times of the year atmospheric conditions may create situations which may cause sounds to be audible for great distances. Therefore, the placement of speakers and the volume of the amplified sound may need to be regulated either prior to or during the course of all outdoor functions, which utilize amplification equipment. The Office of the Dean of Students and the University of Alabama Police Department shall make such determinations.

8. Failure of a person or a sponsoring organization to comply with all requirements regarding the use of amplification equipment shall be cause for the immediate termination of the function and will subject the person or organization to appropriate disciplinary action or denial of future requests for the use of amplification equipment.

II. ADVERTISEMENTS, CO-SPONSORSHIP, PRINTED MATERIAL & SOLICITATION

A. General Guidelines

1. Solicitations, advertisements, sales, displays, yard signs or distribution of publications and other materials on The University of Alabama campus by a University Affiliate are permissible as provided herein. All other solicitations, advertisements, sales, displays, yard signs or distribution of publications on campus are prohibited.

2. These guidelines apply to all individuals, groups, associations or businesses of whatever kind or nature, including those sponsored by a recognized student

organization or a University academic or administrative department, wishing to post any advertisement or distribute printed materials or who wish to engage in any commercial activity on the campus of The University of Alabama.

B. Advertisements, Printed Materials, and Publicity

1. General Provisions

* * *

h) Printed materials may be distributed on public sidewalks. However, the distribution of printed materials on University sidewalks, including those on and around the Quad, constitutes an Event for which a GUP must first be issued. In the event a GUP is issued, the distribution must be conducted in a way that does not impede with free and unimpeded pedestrian and vehicular traffic or disturb or interfere with normal academic, administrative, or student activities. Tables or structures that would impede pedestrian traffic on public sidewalks are prohibited. Other individual's right of privacy must be respected and intrusive or harassing conduct, such as accosting individuals, blocking or impeding their passage and similar behavior is prohibited.

i) Any litter comprised of the material being distributed must be collected and properly disposed of by the person or organization distributing the printed material. The University will assess the reasonable costs of cleanup to the University Affiliate whose

participants fail to comply with this requirement.

* * *

III. VIOLATIONS OF THESE GUIDELINES

The University reserves the right to enforce these guidelines by all necessary means to ensure compliance. Persons who violate these guidelines may be subject to disciplinary action according to the Code of Student Conduct. Persons, groups or associations that repeatedly violate these guidelines may be prohibited from further distribution of materials or use of University grounds and facilities.

Office of the Vice President of Financial Affairs:
Approved by: *DocuSigned by* Cheryl [illegible]_____
Date: __Nov-21-2016_____