NO. _____

IN THE
Supreme Court of the United States

CHIKE UZUEGBUNAM AND JOSEPH BRADFORD,

Petitioners,

v.

STANLEY C. PRECZEWSKI, JANN L. JOSEPH, LOIS C. RICHARDSON, JIM B. FATZINGER, TOMAS JIMINEZ, AILEEN C. DOWELL, GENE RUFFIN, CATHERINE JANNICK DOWNEY, TERRANCE SCHNEIDER, COREY HUGHES, REBECCA A. LAWLER, AND SHENNA PERRY,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

While a student at Georgia Gwinnett College, Petitioner Chike Uzuegbunam began distributing religious literature on campus. College officials stopped him because he was outside the 0.0015% of campus where "free speech expression" was allowed. When Chike reserved a free-speech space and again tried to evangelize, officials stopped him because someone complained which, under College policy, converted Chike's speech to "disorderly conduct" (*i.e.*, "disturb[ing] the peace and/or comfort of person(s)"). Facing discipline if he continued, Chike sued. Another student, Petitioner Joseph Bradford, self-censored after hearing how officials mistreated Chike.

Chike and Joseph raised constitutional claims against Respondents' enforcement of their policies, seeking damages and prospective equitable relief to remedy the censorship and chill. After Respondents changed their speech policies post-filing, mooting all equitable claims, the lower courts held that Chike and Joseph did not adequately plead compensatory damages, and their nominal-damages claims were moot.

Six circuits hold that a government's policy change does not moot nominal-damages claims. Two circuits hold such claims moot if the government changes a policy it has never enforced against the plaintiff. The Eleventh Circuit alone holds that, absent compensatory damages, government officials are never liable for violating constitutional rights if they change their policy after being sued. The question presented is:

Whether a government's post-filing change of an unconstitutional policy moots nominal-damages claims that vindicate the government's past, completed violation of a plaintiff's constitutional right.

PARTIES TO THE PROCEEDING & CORPORATE DISCLOSURE

Petitioners are Chike Uzuegbunam (pronounced "CHEE'-kay Oo-zah-BUN'-um") and Joseph Bradford. When this case began, both were students at Georgia Gwinnett College. Both are individual persons.

Respondents are Stanley C. Preczewski, Lois C. Richardson, Jim B. Fatzinger, Tomas Jiminez, Aileen C. Dowell, Gene Ruffin, Catherine Jannick Downey, Terrance Schneider, Corey Hughes, Rebecca A. Lawler, and Shenna Perry. All are or were officials at Georgia Gwinnett College involved in enforcing the challenged policies, and Chike and Joseph sued them in their official and individual capacities. During this lawsuit, Respondent Preczewski left the employ of Georgia Gwinnett College, and Respondent Jann L. Joseph took his place as president. Under FED. R. CIV. P. 25(d), Respondent Joseph is automatically substituted for the official capacity claims against Respondent Preczweski. The individual capacity claims against Respondent Preczewski remain.

LIST OF ALL PROCEEDINGS

U.S. Court of Appeals for the Eleventh Circuit, No. 18-12676, *Uzuegbunam* v. *Preczewski*, judgment entered July 1, 2019, rehearing en banc denied September 4, 2019, mandate issued September 12, 2019.

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U.S. District Court for the Northern District of Georgia, No. 1:16-cv-04658-ELR, *Uzuegbunam* v. *Preczewski*, final judgment entered May 25, 2018.

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The district court's decision granting Respondents' motion to dismiss is reported at 378 F. Supp. 3d 1195 (N.D. Ga. 2018), and reprinted at App.22a–46a.

STATEMENT OF JURISDICTION

On July 1, 2019, the Eleventh Circuit entered its judgment. On September 4, it denied rehearing en banc. On October 29, Justice Thomas extended the time to file this petition until January 31, 2020. This Court has jurisdiction under 28 U.S.C. 1254(1).

PERTINENT CONSTITUTIONAL PROVISIONS

Relevant portions of Article III and the First and Fourteenth Amendments to the United States Constitution are reprinted at App.55a.

INTRODUCTION

Two students, Chike Uzuegbunam and Joseph Bradford, sought to exercise free speech rights on their college campus—the quintessential marketplace of ideas. Chike was silenced twice; both were chilled, entitling the students to nominal damages. But they were never given a chance to prove the constitutional violations. The lower courts held that once College officials changed their unconstitutional policies, they mooted not only the students' request for prospective equitable relief, but also their nominal-damages claims for past, completed constitutional violations.

Six circuits hold that nominal-damages claims challenging the past enforcement of unconstitutional laws or policies present justiciable controversies. Two circuits agree, unless the policies have not been applied against the plaintiff. Only the Eleventh Circuit—which admits that all "the circuit courts that have reached this issue have taken a position contrary" to its own—declares nominal-damages claims moot, closing the courthouse to plaintiffs whose constitutional rights have been violated. *Flanigan's Enters., Inc.* v. *City of Sandy Springs*, 868 F.3d 1248, 1267 n.19 (11th Cir. 2017) (en banc).

This is not the first time the Eleventh Circuit has applied its novel rule, but it is the most troublesome. In *Flanigan's*, the en banc Eleventh Circuit held that the government's repeal of an ordinance it never enforced mooted plaintiffs' requests for prospective equitable relief and nominal damages. Now, the Eleventh Circuit extended its rule to moot nominal-damages claims involving a policy that College officials enforced repeatedly against two students to censor them, a clear First Amendment violation.

Nominal damages hold government officials accountable when constitutional violations occur but do not inflict compensable injuries. The Eleventh Circuit should not treat nominal damages—and the violations they vindicate—as worthless.

The "vigilant protection of constitutional freedoms is nowhere more vital" than at public colleges. *Shelton* v. *Tucker*, 364 U.S. 479, 487 (1960). Yet the Eleventh Circuit's outlier view allows these institutions to violate constitutional rights with impunity—avoiding judicial review through a well-timed policy shift. This rule sends a clear message to students when school officials trample their freedoms: "Don't bother retaining counsel; we know how to game the legal system." And it signals that colleges can censor students without consequence, without clarifying the law, and with the cover of qualified immunity. This Court should intervene and declare that federal courts remain open when colleges violate students' constitutional rights.

STATEMENT OF THE CASE

I. Censorship through Speech Policies

A. Censorship by Speech Zones

In 2016, Chike was sharing his Christian faith by leafleting and conversing outdoors on campus. App.90a–92a. Respondents stopped him for violating their Speech Zone Policy. App.92a. Under that policy, expressive activities could occur by "reserving" one of two speech zones. App.75a, 79a–80a, 138a, 146a–47a. Open about 10% of the week, the zones comprised one patio and one sidewalk—0.0015% of campus. App.76a–78a, 138a, 146a. To speak their views at all other times or places, inside or outside the speech zones, students needed a "permit." App.78a–79a.

To reserve the zones, students had to submit a form and any leaflets three business days in advance. App.79a–80a, 138a, 142a–44a, 147a. Four officials reviewed them with no limits on their discretion to approve or deny. App.81a–82a, 139a, 147a–48a. The policy listed 15 criteria all speakers "must meet." App.81a, 138a–41a, 147a–50a. But it never said that officials must grant requests satisfying every requirement; even those requests could be denied. App.81a.

College officials also prohibited Chike from discussing his faith orally outside the speech zones. App.93a–94a. Given these threats, he stopped any such expression anywhere on campus. App.94a.

B. Censorship by Speech Codes

Chike later reserved a speech zone to speak publicly about his faith. App.94a–96a. But College officials, including campus police, stopped him yet again, saying that because someone had complained, his expression constituted "disorderly conduct." App.96a–97a, 99a–101a. Under the College's Speech Code, "disorderly conduct" included anything that "disturbs the peace and/or comfort of person(s)." App.84a, 151a. These officials threatened to punish Chike if he kept speaking, enforcing a heckler's veto that silenced Chike. App.100a–03a.

This left Chike unable to speak about his faith anywhere on campus. Without a permit, he was banned from speaking in the over 99.99% of campus outside the speech zones. Even *with* a reservation in the zones, open only about 10% of the time, he could avoid discipline if he said only those things that made no one uncomfortable.

II. Lower Court Proceedings

In December 2016, Chike sued, seeking prospective equitable relief and damages. App.157a–58a. Respondents moved to dismiss, defending their speech policies, invoking qualified immunity, and claiming that Chike's speech—the basic tenets of the Christian faith—"arguably rose to the level of 'fighting words.'" App.155a. Petitioners then filed an amended complaint that added Joseph as a plaintiff, since he also desired to discuss his faith and Respondents' policies and actions chilled his speech. App.158a–59a; App.56a–136a.

Respondents again moved to dismiss, raising nearly identical arguments. App.159a–60a. Then they eliminated their Speech Code, revised their Speech Zone Policy, and moved to dismiss Petitioners' requests for injunctive and declaratory relief as moot. App.160a. Three months later, the en banc Eleventh Circuit decided *Flanigan's*, which held that the government's repeal of an ordinance it never enforced mooted the plaintiffs' nominal-damages claims. 868 F.3d at 1263–70. (The majority noted that its holding conflicted with other circuits, *id*. at 1267 n.19, and a five-judge dissent reiterated the same, citing contrary cases from seven circuits, *id*. at 1271 (Wilson, J. dissenting).) Meanwhile, the U.S. Department of Justice filed a statement of interest in this case, noting its satisfaction "that Plaintiffs have stated claims for violations of the First and Fourteenth Amendments." United States' Statement of Interest at 9, No. 1:16-cv-04658, Sept. 26, 2017, ECF No. 37; App.162a.

Eight months after *Flanigan's*, Respondents argued that it mooted Chike's and Joseph's nominal-damages claims. App.163a. In response, Petitioners

explained why *Flanigan's* neither controlled nor required dismissal of their claims. App.163a.

The court waited to rule until May 2018, more than a year after briefing was complete and also after Chike graduated. App.163a. It held that Chike's graduation mooted his request for prospective relief, and that Respondents' policy changes mooted Joseph's. App.26a–40a. In support, the court explained that the students' amended complaint did not request compensatory damages, and their nominal-damages claims were moot under *Flanigan's*, even though College officials had actually enforced their unconstitutional policies against Chike. App.40a–46a. The court rejected Chike and Joseph's request in their briefing to amend the complaint to clarify that they also sought compensatory damages, faulting them for not moving to amend, as if they should have anticipated their compensatory-damages argument would be rejected and their nominal-damages claim would be mooted. App.45a n.11. The court dismissed the case without prejudice, then entered judgment minutes later, App.20a, 163a, preventing Petitioners from filing a motion to amend. *Jacobs* v. *Tempur-Pedic Int'l, Inc.*, 626 F.3d 1327, 1344 (11th Cir. 2010) (Rule 15(a), authorizing motions to amend, has "no application" after final judgment).

After denying initial hearing en banc, App.50a–52a, the Eleventh Circuit affirmed, relying on *Flanigan's* to declare the case moot. App.12a–16a. Chike's and Joseph's nominal-damages claims, the panel reasoned, could not keep the case alive because nominal damages would not "have a practical effect on the parties' rights or obligations." App.13a, 15a–16a. Chike and Joseph argued that nominal damages would lead to a determination whether their rights

had been violated. App.14a–15a. But per the panel, *Flanigan's* categorically established that nominal damages have no practical effect absent "a well-pled request for compensatory damages." App.15a.

Flanigan's had included a caveat that courts have "Article III powers to award nominal damages" when they "determine[ ] that a constitutional violation occurred, but that no actual damages were proven." App.13a. But the panel here went much further, holding that *Flanigan's* "limited" its caveat "to cases in which both compensatory and nominal damages were pled." App.13a. According to the panel, nominal-damages claims are useless unless combined with a request for compensatory damages. App.13a–16a.

The Eleventh Circuit also eliminated any nominal-damages distinction between claims based on unconstitutional policies that have been enforced and those that have not. (As noted above, *Flanigan's* involved a policy that had not been enforced. 868 F.3d at 1262–65.) Chike's "right to receive nominal damages as the result of any unconstitutional conduct . . . would [still] have to flow from a well-pled request for compensatory damages," said the panel. App.15a.

In sum, the Eleventh Circuit's decision below renders standalone nominal-damages claims—those unaccompanied by requests for compensatory damages—worthless in maintaining a case once prospective injunctive relief is unavailable. According to the Eleventh Circuit, requests for nominal damages do not prevent a case from becoming moot even when the government has already enforced a challenged policy and violated the plaintiffs' rights.

Chike and Joseph sought rehearing en banc, a request the Eleventh Circuit denied. App.47a–49a.

REASONS FOR GRANTING THE WRIT

Nominal damages are critical to ensure that federal courts remain open to litigants, especially in civil-rights cases. That is because constitutional violations often do not inflict financial injuries, and governments often moot equitable claims by changing unconstitutional policies. Many circuits review these mid-litigation tweaks with "more solicitude" than a private defendant's, as if politicians and bureaucrats were somehow less inclined to dodge accountability by manipulating jurisdiction than anyone else.[1] Without nominal damages, bureaucrats can trample constitutional freedoms, then deprive citizens of a way to vindicate their rights. The Eleventh Circuit's rule slams the door on many civil-rights plaintiffs and makes future challenges less likely.

This is particularly true for college students. At graduation, their equitable claims evaporate, giving them four to five years (at most) to obtain relief. And when courts, like the district court, take more than a year to rule on a motion to dismiss, that narrow window of opportunity closes rapidly. Without nominal damages, universities and schools can violate students' rights with impunity, without clarifying the law, and with the cover of qualified immunity. This Court should not allow that. Review is warranted for three reasons.

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[1] *E.g.*, *Mosley* v. *Hairston*, 920 F.2d 409, 415 (6th Cir. 1990) ("[C]essation of . . . allegedly illegal conduct by government officials has been treated with more solicitude by the courts than similar action by private parties."); *Coral Springs St. Sys., Inc.* v. *City of Sunrise*, 371 F.3d 1320, 1328–29 (11th Cir. 2004) ("[G]overnmental entities and officials have been given considerably more leeway than private parties in the presumption that they are unlikely to resume illegal activities.").

First, the circuits are now split into three camps over whether standalone nominal-damages claims preserve an ongoing controversy once later events moot a plaintiff's request for prospective equitable relief. Six circuits—the Second, Fifth, Sixth, Seventh, Ninth, and Tenth Circuits—hold that nominal-damages claims preserve a controversy. Two more, the Fourth and Eighth, agree but also recognize a limited exception: when the government changes an unconstitutional policy before enforcing it against the plaintiffs. The Eleventh Circuit alone holds that plaintiffs can never pursue a standalone nominal-damages claim, even when an unconstitutional policy has been enforced against them. Litigants in the Eleventh Circuit have no way to adjudicate past constitutional violations unless they can prove compensatory damages.

Second, the Eleventh Circuit's outlier rule conflicts with this Court's precedent. According to the Eleventh Circuit, nominal damages have no "practical effect" on parties' rights and obligations. But this Court, when concluding that a nominal-damages award confers prevailing-party status, has held that nominal damages "materially alter[ ] the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff," *Farrar* v. *Hobby*, 506 U.S. 103, 111–12 (1992), deterring colleges from recycling bad policies. And this Court has also recognized the important power to "vindicate[ ] deprivations of certain 'absolute' rights . . . through the award of a nominal sum of money." *Carey* v. *Piphus*, 435 U.S. 247, 266 (1978). The Eleventh Circuit's nominal-damages rule diminishes constitutional rights and cannot be squared with this Court's precedents.

Third, this case is an excellent vehicle to affirm the indispensable role of nominal damages. The facts are undisputed, and the legal issue is cleanly presented. The university speech context—where nominal damages play an essential role because of student graduations, frequent policy changes, and the all-too-common absence of financial loss—is an ideal backdrop for resolving the question presented. And the error below is especially troubling because the Eleventh Circuit has done what no other circuit has: declared that a standalone nominal-damages claim cannot preserve a challenge to the past unconstitutional enforcement of a government policy. Review is warranted.

I. The Eleventh Circuit's decision exacerbates a circuit conflict.

The Eleventh Circuit's ruling deepens an existing circuit split. When the en banc Eleventh Circuit decided *Flanigan's*, it recognized that its holding created a split with many other circuits over whether a nominal-damages claim saves a case from mootness. 868 F.3d at 1265, 1267 n.19. Accord *id.* at 1271 (Wilson, J. dissenting). But *Flanigan's* involved an unconstitutional policy that government officials changed (in response to litigation) without ever having enforced it against the plaintiff or anyone else. The Eleventh Circuit here went further and held that even when bureaucrats have applied a policy and violated a plaintiff's constitutional rights, a nominal-damages claim is insufficient for the plaintiff to vindicate the violation with a court ruling. In so holding, the Eleventh Circuit transformed what had been a 6–3 circuit split, after *Flanigan's*, into a 6–2–1 split, with the Eleventh Circuit standing alone.

A. The Second, Fifth, Sixth, Seventh, Ninth, and Tenth Circuits hold that standalone nominal-damages claims avoid mootness.

Following the view of distinguished scholars, six circuits hold that nominal-damages claims preserve a live case or controversy once claims for prospective equitable relief are moot. 13C WRIGHT & MILLER, FED. PRAC. & PROC. JURIS. § 3533.3 (3d ed. 2018) ("Nominal damages . . . suffice to deflect mootness.").

Second Circuit. In a constitutional challenge to an election law, the Second Circuit explained that "for suits alleging constitutional violations under 42 U.S.C. § 1983, it is enough [to preclude mootness] that the parties merely request nominal damages." *Van Wie* v. *Pataki*, 267 F.3d 109, 115 n.4 (2d Cir. 2001). In fact, that court encouraged plaintiffs to "avoid the potential for mootness by . . . expressly pleading . . . nominal money damages." *Ibid.* Accord *Davis* v. *Vill. Park II Realty Co.*, 578 F.2d 461, 463 (2d Cir. 1978) ("The availability of . . . nominal . . . damages is sufficient to prevent this case from becoming moot."); *Flanigan's*, 868 F.3d at 1265 n.17 (en banc) (recognizing its decision conflicts with the Second Circuit).

The Second Circuit applies these principles to college students. When students challenged restrictions on the student newspaper and interference in student elections, the district court held their equitable claims moot. *Husain* v. *Springer*, 494 F.3d 108, 120 (2d Cir. 2007). On appeal, the students waived those equitable claims, *id.* at 121 n.10, and sought "only . . . nominal damages." *Id.* at 135 n.17. The Second Circuit entertained the claim and denied defendants qualified immunity. *Id.* at 134.

Fifth Circuit. The Fifth Circuit agrees with the Second. It reversed a district-court ruling dismissing as moot a student's case against her high school because the school altered a challenged policy. *Morgan* v. *Plano Indep. Sch. Dist.*, 589 F.3d 740, 744 (5th Cir. 2009). The court agreed the equitable claims were moot, but it faulted the district court for ignoring nominal damages. *Id.* at 748. After all, the Fifth Circuit and its "sister circuits" have "consistently held that a claim for nominal damages avoids mootness." *Id.* at 748 & n.32 (collecting cases). Accord *Flanigan's*, 868 F.3d at 1265 n.17 (en banc) (recognizing its decision conflicts with the Fifth Circuit).

Similarly, the Fifth Circuit held that a student's graduation mooted her equitable claims against her school, but not her claim for nominal damages—the only kind of damages she sought. *Brinsdon* v. *McAllen Indep. Sch. Dist.*, 863 F.3d 338, 345 (5th Cir. 2017). "The mootness doctrine," the court explained, "will not bar any claim for . . . nominal damages." *Ibid.*

And after a Fifth Circuit decision mooted a high school graduate's nominal-damages claim contesting a later-rescinded policy, *Ward* v. *Santa Fe Indep. Sch. Dist.*, 2002 WL 494510, *1 (5th Cir. Mar. 14, 2002) (per curiam), the panel promptly corrected itself, *Ward* v. *Santa Fe Indep. Sch. Dist.*, 2002 WL 753502, *1 (5th Cir. Apr. 9, 2002) (per curiam). Fifth Circuit law authorizing plaintiffs to "seek nominal damages for [constitutional] violation[s] in the absence of other damages" "necessarily implie[s] that a case is not moot so long as the plaintiff seeks to vindicate his constitutional rights through a claim for nominal damages." *Ibid.* Accord *Ward* v. *Santa Fe Indep. Sch. Dist.*, 393 F.3d 599, 601–02 (5th Cir. 2004).

Sixth Circuit. In *Murray* v. *Board of Trustees, University of Louisville*, 659 F.2d 77 (6th Cir. 1981), a fired student-newspaper editor sued his university, raising First Amendment claims and seeking "injunctive relief and money damages." *Id.* at 78. The district court dismissed the case after the request for injunctive relief became moot and the plaintiff failed to prove "actual damages for the firing." *Ibid.* On appeal, the Sixth Circuit agreed that the injunctive claim was moot and that the "plaintiff failed to prove actual damages." *Id.* at 78–79. But the Sixth Circuit reversed the dismissal of the "entire" case "as moot" because the district court still needed to resolve "plaintiff's claims for nominal damages." *Id.* at 79. The court remanded for consideration of the nominal-damages claim. *Ibid.*

The Sixth Circuit has created some ambiguity about nominal damages and standing. It once found no standing for a plaintiff challenging a high school speech policy when the government had not enforced the policy against him, and the only alleged injury was subjective chill. *Morrison* v. *Bd. of Educ. of Boyd Cty.*, 521 F.3d 602, 608 (6th Cir. 2008). But shifting from standing to mootness, the court clarified that its circuit precedent allows "nominal-damages claim[s] to go forward in . . . otherwise-moot case[s]." *Id.* at 611. Since then, the Sixth Circuit has reiterated that nominal-damages claims for past constitutional violations are not moot, even when the challenged policy changes. *E.g.*, *Miller* v. *City of Cincinnati*, 622 F.3d 524, 533 (6th Cir. 2010) ("[P]laintiffs' claims remain viable to the extent that they seek nominal damages as a remedy for past wrongs.").

Seventh Circuit. The Seventh Circuit also allows plaintiffs to litigate standalone nominal-damages claims after injunctive relief is no longer available. In *Crue* v. *Aiken*, 370 F.3d 668, 674 (7th Cir. 2004), the district court awarded declaratory relief and nominal damages to professors and a graduate teaching assistant who challenged restrictions on their speech. *Id.* at 677. On appeal, the Seventh Circuit ruled that the school's removal of the speech restraints mooted injunctive relief, but that "the requests for declaratory relief and for [nominal] damages remain," keeping the case alive. *Ibid.* And in another case, the Seventh Circuit ruled for a prisoner plaintiff because nominal damages remained available even though injunctive relief was "rendered moot by his release from prison" and governing statutes foreclosed compensatory and punitive damages. *Koger* v. *Bryan*, 523 F.3d 789, 803–04 (7th Cir. 2008).

Ninth Circuit. The Ninth Circuit also embraces the rule that a nominal-damages claim alone avoids mootness. In *C.F. ex rel. Farnan* v. *Capistrano Unified School District*, 654 F.3d 975, 982–84 (9th Cir. 2011), a student challenged his high school teacher's in-class comments. While the student's graduation mooted his claims for equitable relief, the Ninth Circuit ruled that his nominal-damages claim was viable because a "live claim for even nominal damages will prevent dismissal for mootness." *Id.* at 983 (cleaned up). Accord *Jacobs* v. *Clark Cty. Sch. Dist.*, 526 F.3d 419, 425–27 (9th Cir. 2008) (although students challenging a school policy "may be entitled to collect *only* nominal damages were they to succeed on their free speech claims, they nonetheless present[ed] justiciable challenges" to the policy).

The Ninth Circuit similarly allowed a state employee who brought constitutional claims against a workplace speech policy to continue her case even after she left state employment. *Yniguez* v. *Arizona*, 975 F.2d 646, 647 (9th Cir. 1992) (per curiam). "Although the plaintiff may no longer be affected by the [policy]," said the court, "that d[id] not render her action moot." *Ibid.* Her "constitutional claims may entitle her to an award of nominal damages," and the "pursuit of nominal damages . . . prevents mootness." *Ibid.* Accord *Bernhardt* v. *Cty. of L.A.*, 279 F.3d 862, 871–73 (9th Cir. 2002) (while plaintiff's "claims for prospective relief" against a challenged government policy "are moot," "her possible entitlement to nominal damages creates a continuing live controversy"); *Flanigan's*, 868 F.3d at 1265 n.17 (en banc) (acknowledging its decision conflicts with the Ninth Circuit).

Like the Fifth Circuit, the Ninth has rejected *Flanigan's* nominal damages rule as error. A panel once dismissed a RLUIPA appeal as moot after the plaintiff church moved. *Praise Christian Ctr.* v. *City of Huntington Beach*, 352 F. App'x 196, 198 (9th Cir. 2009). On rehearing, the court corrected itself, holding that a "claim for nominal damages creates the requisite personal interest necessary to maintain a claim's justiciability." *Ibid.*

Tenth Circuit. The Tenth Circuit confirms that "a complaint for nominal damages survives mootness even where prospective relief is no longer available." *Baca* v. *Colo. Dep't of State*, 935 F.3d 887, 924 (10th Cir. 2019), *cert. granted*, __ S. Ct. __, 2020 WL 254162 (Jan. 17, 2020) (No. 19-518). Consider *Committee for First Amendment* v. *Campbell*, 962 F.2d 1517 (10th Cir. 1992), where an association of students requested damages and equitable relief when challenging a

university's decision to censor a controversial film. *Id.* at 1519–20. The university later changed course, allowed the film, and adopted new policies, mooting equitable relief. *Id.* at 1524–26. Those actions did not "erase[ ] the slate" of "alleged First Amendment violations in connection with the film." *Id.* at 1526. "[T]he district court erred in dismissing the nominal damages claim which relates to *past* (not future) conduct." *Id.* at 1526–27.

In another case, the Tenth Circuit held that removing an allegedly unconstitutional statue from campus mooted the plaintiffs' equitable claims, but not their request for nominal damages. *O'Connor* v. *Washburn Univ.*, 416 F.3d 1216, 1221–22 (10th Cir. 2005). "Unlike the claims for injunctive and declaratory relief," the nominal-damages claim—the only remaining claim in the case—was "not mooted by the removal of the statue from campus." *Id.* at 1222. Similarly, the Tenth Circuit adjudicated the free-speech claims of a high school valedictorian, though her graduation speech was completed and "[o]nly [her] claim for nominal damages . . . remain[ed]." *Corder* v. *Lewis Palmer Sch. Dist. No. 38*, 566 F.3d 1219, 1225 (10th Cir. 2009). Accord *O'Connor* v. *City & Cty. of Denver*, 894 F.2d 1210, 1216 (10th Cir. 1990) (nominal damages—the only relief still available—"were past damages not affected by any changes in the [law]").

While the Tenth Circuit's rule on nominal damages and mootness is unambiguous and unbroken, it has sparked debate among some on that court. Compare *Utah Animal Rights Coal.* v. *Salt Lake City Corp.*, 371 F.3d 1248, 1262–71 (10th Cir. 2004) (McConnell, J., concurring) (questioning the Tenth Circuit's rule while recognizing its consistency with "the views of a distinguished commentator"), with *id.*

at 1271–75 (Henry, J., concurring) (defending the rule). In fact, one (now former) Tenth Circuit judge called for this Court to "examine the question" whether nominal-damages claims, by themselves, prevent a case from becoming moot. *Id.* at 1271 (McConnell, J., concurring). This Court should grant the petition and provide the guidance lower courts are seeking in situations where government officials change a policy to avoid liability, and the plaintiff continues to pursue a ruling vindicating the violation of constitutional rights.[2]

B. The Fourth and Eighth Circuits hold that standalone nominal-damages claims avoid mootness unless the challenged policy was never enforced against the plaintiff.

The Fourth and Eighth Circuits agree with the general rule that a standalone nominal-damages claim keeps a case alive once prospective equitable relief is no longer available. But those circuits have recognized a narrow exception: nominal damages alone cannot preserve a challenge to a rescinded law or policy when the government never enforced it against the plaintiffs.

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[2] It does not appear that the Third Circuit has squarely addressed whether a nominal-damages request—standing alone—can preserve a case once equitable relief is moot. The closest that court came to addressing that issue was when it held that even though later events mooted a prisoner's "claims for declaratory and injunctive relief," his remaining claims for nominal *and* punitive damages kept the case alive. *Doe* v. *Delie*, 257 F.3d 309, 314 & n.3 (3d Cir. 2001).

Fourth Circuit. The Fourth Circuit generally allows a standalone nominal-damages claim to preserve justiciability. In a case reminiscent of this one, that court relied on a nominal-damages claim in allowing two students to continue their challenge to university policies after the policies changed and the students graduated. *Mellen* v. *Bunting*, 327 F.3d 355, 363–65 (4th Cir. 2003). The Fourth Circuit ruled that the students' standalone nominal-damages claim "continue[d] to present a live controversy," *id.* at 365, and considered the merits, *id.* at 365–77. Accord *Henson* v. *Honor Comm. of Univ. of Va.*, 719 F.2d 69, 72 n.5 (4th Cir. 1983) (expelled student's case "remained a live controversy even after the disciplinary proceedings were dropped" because he had a "right to seek . . . nominal damages").[3]

The Fourth Circuit applied these principles when commercial property owners brought free-speech claims against a sign ordinance. *Cent. Radio Co.* v. *City of Norfolk*, 811 F.3d 625, 631–32 (4th Cir. 2016). Although the city's changes to its ordinance mooted an injunction request, the "request for retrospective relief in the form of nominal damages, based on an alleged unconstitutional . . . restriction on speech"—the only remaining relief that the plaintiffs requested—was "not moot." *Id.* at 632.

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[3] Accord *Am. Humanist Ass'n* v. *Greenville Cty. Sch. Dist.*, 652 F. App'x 224, 228, 231 (4th Cir. 2016) (graduate "typically continues to have a live claim for damages against a school for a past constitutional violation" and "claim for nominal damages based on a prior constitutional violation is not moot because the plaintiffs' injury was complete at the time the violation occurred"); *Rock for Life-UMBC* v. *Hrabowski*, 411 F. App'x 541, 550 (4th Cir. 2010) ("[E]ven permanent remedial measures will not moot the [student organization's compensatory or nominal damages] claim.").

The Fourth Circuit, in an unpublished decision, has recognized a narrow exception to the general rule. *Chapin Furniture Outlet Inc.* v. *Town of Chapin*, 252 F. App'x 566, 571–72 (4th Cir. 2007) (per curiam). Ruling on a store's free-speech challenge to a sign ordinance, the court started with the "normal[ ]" rule that "a defendant's change in conduct will not moot the case" "so long as the plaintiff has a cause of action for damages," even just "nominal damages." *Id.* at 571. But the Fourth Circuit held that the plaintiff's "assertion of a nominal damages claim alone is insufficient to preserve a live controversy" because "the [o]rdinance was never enforced against it." *Ibid.*

Eighth Circuit. The Eighth Circuit follows that same approach. When the government "remedie[s]" flaws in its policies after suit is filed, those remedial efforts "moot any claim for injunctive relief," but the entire case is "not moot" if the plaintiff maintains a claim for "nominal damages." *Advantage Media, LLC* v. *City of Eden Prairie*, 456 F.3d 793, 803 (8th Cir. 2006). Accord *Flanigan's*, 868 F.3d at 1265 n.17 (en banc) (recognizing that its decision conflicts with the Eighth Circuit).

And in another case, the Eighth Circuit ruled that while a policy change mooted a prisoner's request for prospective equitable relief, it "did not deprive [him] of the opportunity to seek monetary damages for prior violations of his constitutional rights." *Keup* v. *Hopkins*, 596 F.3d 899, 904 (8th Cir. 2010). Although the plaintiff there at first sought compensatory and punitive damages, *id.* at 902, the district court awarded only nominal damages, *id.* at 903. Because the plaintiff did not appeal the denial of compensatory and punitive damages, only nominal damages were at issue on appeal.

But the Eight Circuit, like the Fourth, has recognized that nominal damages do not prevent mootness when the government defendants have never enforced the challenged law against the plaintiff. For example, the Eighth Circuit held that a request for nominal damages did not allow protesters to contest the prior version of a speech ordinance in a city where they never engaged in their protest activities and were never prosecuted. *Phelps-Roper* v. *City of Manchester*, 697 F.3d 678, 684, 687 (8th Cir. 2012).

C. The Eleventh Circuit's outlier view holds that standalone nominal-damages claims do not prevent mootness, even in a challenge to past enforcement of a policy against the plaintiff.

Eleventh Circuit law on nominal damages and mootness has morphed. With each step, its position becomes more extreme, and it closes the door on more plaintiffs seeking to vindicate their constitutional rights. This Court should use this case to realign not only the Eleventh, but all the courts of appeal.

Just a few years ago, the Eleventh Circuit followed the prevailing view. In *Carver Middle School Gay-Straight Alliance* v. *School Board of Lake County*, 842 F.3d 1324 (11th Cir. 2016), after a middle school denied a student's request to form an LGBT group, the student and group sued seeking equitable relief and nominal damages. *Id.* at 1328, 1330. When the student left the school, his equitable claims became moot, but his "demands for nominal damages" did not. *Id.* at 1330. Accord *Covenant Christian Ministries, Inc.* v. *City of Marietta*, 654 F.3d 1231, 1244 (11th Cir. 2011) (though injunctive relief was moot, case was not because plaintiffs requested nominal damages).

The year after, the en banc Eleventh Circuit in *Flanigan's* drastically shifted the circuit's default rule. There, businesses challenged an ordinance prohibiting the sale of sexual devices, before the law was enforced against them. *Flanigan's*, 868 F.3d at 1253 (en banc). After an Eleventh Circuit panel ruled for the city, the court granted en banc review, putting the city on the defensive and prompting it to repeal the ordinance. *Id.* at 1254. The city then argued the case was moot, and the court agreed. *Id.* at 1253–54.

After concluding that the plaintiffs' requests for equitable relief were moot, *id.* at 1255–63, the court held that their nominal-damages claim was of no effect, *id.* at 1263–70. No longer a well-accepted remedy that preserves justiciability when government defendants change contested laws or policies, "a prayer for nominal damages will not save [such a] case from dismissal," the Eleventh Circuit held. *Id.* at 1264. The Eleventh Circuit admitted that "the circuit courts that have reached this issue have taken a position contrary to" what *Flanigan's* announced, *id.* at 1267 n.19, citing cases from five circuits to show the conflict, *id.* at 1265 n.17.

Judge Wilson penned a five-judge dissent. *Id.* at 1271–75. He began by citing case law from seven circuits whose views contradicted the majority's new rule. *Id.* at 1271. He then explained that the majority's holding conflicts with this Court's precedent, *id.* at 1272–73; is "unworkable" in that it undermines the purpose of nominal damages, *id.* at 1272–74; and ignores the "practical effect" that nominal damages have "on the parties' rights [and] obligations," *id.* at 1274–75. "Under the majority opinion," "the government gets one free pass at violating your constitutional rights." *Id.* at 1275.

Any hope that the Eleventh Circuit would quickly cabin or correct *Flanigan's* vanished here. While the government defendants in *Flanigan's* never enforced the law against the plaintiffs, Respondents have twice enforced the challenged policies against Chike. Had the Eleventh Circuit held that Chike's and Joseph's nominal-damages claims preserve their challenge to Respondents' past enforcement of the policies, the court could have at least aligned itself with the Fourth and Eighth Circuits. It could have limited *Flanigan's* rule to cases in which government defendants have never enforced the challenged law or policy against the plaintiffs. Instead, the Eleventh Circuit adopted an extreme position that leaves no judicial forum for many plaintiffs, such as the college students here, who have suffered an actual violation of their constitutional rights.

In sum, the Eleventh Circuit is the lone outlier in a deep, three-way circuit conflict over an important issue about access to justice. In eight circuits, Chike's and Joseph's nominal-damages claims would have kept this case alive. Only the Eleventh Circuit maintains a position that allows government officials to evade accountability for their misconduct and closes federal courts to many citizens who seek to vindicate their priceless constitutional rights. This Court should grant review and resolve the circuit conflict.

II. The Eleventh Circuit's ruling conflicts with this Court's precedent on nominal damages.

For over four decades, this Court has affirmed the importance, role, and effect of nominal damages. The Eleventh Circuit has sidestepped and diminished these rulings. Because that court's position conflicts with this Court's precedent, review is needed.

A. Unlike the Eleventh Circuit, this Court has ruled that nominal damages have significant practical effects.

Courts have long recognized the importance of awarding nominal damages for the violation of private legal rights. *E.g.*, *Robinson* v. *Lord Byron*, 2 Cox 4, 30 Eng. Rep. 3, 3 (1788) (awarding nominal damages where plaintiff provided invasion of riparian rights but did not offer proof of damages); *Webb* v. *Portland Mfg.*, 29 F. Cas. 506, 508 (Story, Circuit Justice, C.C.D. Me. 1838) (No. 17,322) (if there has been a violation of a right, "the party injured is entitled to maintain his action for nominal damages, in vindication of his right, if no other damages are fit and proper to remunerate him."); 1 J.G. SUTHERLAND, A TREATISE ON THE LAW OF DAMAGES §§ 9–10 (John R. Berryman ed., 4th ed. 1916) (collecting hundreds of cases awarding nominal damages in response to a violation of rights).

Thus, in *Carey* v. *Piphus*, 435 U.S. 247 (1978), this Court held that plaintiff students pursuing a § 1983 action after a school suspension could pursue a nominal-damages claim for the deprivation of their constitutional rights "[e]ven if [the] suspensions were justified, and even if [plaintiffs] did not suffer any other actual injury." *Id.* at 266–67. "By making the deprivation of [absolute] rights actionable for nominal damages without proof of actual injury, the law recognizes the importance to organized society that those rights be scrupulously observed." *Id.* at 266. Later, the Court held that the same reasoning applies to other individual constitutional rights, including those in the First Amendment. *E.g.*, *Memphis Cmty. Sch. Dist.* v. *Stachura*, 477 U.S. 299, 305–08 & n.11 (1986) (free speech).

So when the Eleventh Circuit held that the "right to a single dollar in nominal damages is not the type of 'practical effect' that should, standing alone," keep a case from becoming moot, *Flanigan's*, 868 F.3d at 1270 (en banc), the dissent said this conclusion was "difficult, if not impossible, to square with" *Farrar* v. *Hobby*, 506 U.S. 103 (1992), *Flanigan's*, 868 F.3d at 1274 n.4 (Wilson, J., dissenting). In *Farrar*, a jury found that a government official violated a citizen's rights but awarded him no relief. 506 U.S. at 106–07. The Fifth Circuit remanded for entry of a nominal-damages award. *Id.* at 107. After the district court did that and granted attorney fees to plaintiffs, the Fifth Circuit held that the plaintiffs did not prevail because "the jury gave them nothing. No money damages. No declaratory relief. No injunctive relief." *Ibid.* In its view, the "nominal award of one dollar . . . did not in any meaningful sense change the legal relationship" between the parties. *Ibid.* It was too "technical" and "insignificant" a victory "to support prevailing party status." *Id.* at 108.

This Court reversed, holding that "a plaintiff who wins nominal damages is a prevailing party." *Id.* at 112. That is, such a plaintiff obtains "actual relief on the merits of his claim materially alter[ing] the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff." *Id.* at 111–12. "A judgment for damages in any amount, whether compensatory or nominal, *modifies the defendant's behavior* for the plaintiff's benefit by forcing the defendant to pay an amount of money he otherwise would not pay." *Id.* at 113 (emphasis added). Unlike the Eleventh Circuit, this Court recognized the importance—and deterrent effect—of judgments awarding nominal damages.

The Eleventh Circuit would have resolved *Farrar* the opposite way. After the jury verdict, the Eleventh Circuit would have mooted the case because only nominal damages remained. Yet the Fifth Circuit and this Court exercised jurisdiction over the standalone nominal-damages claim in *Farrar*. Likewise, the Eleventh Circuit would have withheld prevailing-party status because nominal damages have no "practical effect." *Flanigan's*, 868 F.3d at 1269–70 (en banc). But this Court conferred that status because nominal damages have the practical effect of "modif[ying] the defendant's behavior for the plaintiff's benefit by forcing the defendant to pay" and—as in *Carey*—upholding the "scrupulous[ ]" observance of constitutional rights so "importan[t] to organized society." *Farrar*, 506 U.S. at 112–13.

Citing *Flanigan's*, the Eleventh Circuit here denied that a nominal-damages award would have "a practical effect on" Chike's or Joseph's "rights or obligations." App.19–21a. But as *Farrar* recognized, nominal damages would have modified Respondents' behavior by forcing them to pay money to the students. 506 U.S. at 113. And a nominal-damages award—with its accompanying judgment holding that Respondents violated Chike's and Joseph's First Amendment rights—would prevent Respondents from "reenacting" the policies and enforcing them as they did here. *Flanigan's*, 868 F.3d at 1275 (Wilson, J., dissenting). "That is a practical effect on [Respondents'] obligations sufficient to save the case from mootness," *ibid.*, one that flows from a formal recognition that the College wronged Chike and Joseph.

Nominal-damages claims are critical to protect constitutional freedoms and to confer prevailing-party status. They must be justiciable.

B. Unlike the Eleventh Circuit, this Court has ruled that nominal-damages claims vindicate priceless freedoms.

This Court has recognized that under both the common law and our constitutional traditions, nominal damages ensure that government officials respect priceless freedoms, even when their violation does not inflict financial injury. In stark contrast, the Eleventh Circuit sees no value in nominal-damages claims, rending those claims worthless.

When the students in *Carey* challenged the lack of due process their school provided them before imposing discipline, this Court confirmed that "[c]ommon-law courts traditionally have vindicated deprivations of certain 'absolute' rights," including constitutional rights, "through the award of a nominal sum of money." *Carey*, 435 U.S. at 266 & n.24.

Nearly ten years later, in another school case, this Court reiterated that while compensatory damages require "proof of actual injury," "nominal damages . . . are the appropriate means of 'vindicating' [constitutional] rights whose deprivation has not caused actual, provable injury." *Stachura*, 477 U.S. at 308 & n.11. Awarding nominal damages when a plaintiff suffers no monetary loss is essential to "recognize[ ] the importance to organized society that those rights be scrupulously observed." *Id.* at 308 n.11.

The Eleventh Circuit tries to sidestep these cases by saying they involved "a live claim for actual damages," *Flanigan's*, 868 F.3d at 1265–66 & n.18—as though actual damages are a necessary predicate to make constitutional freedoms meaningful. But that reading does not square with what this Court said in *Carey* and *Stachura*. While the plaintiffs in those

cases did seek compensatory damages with nominal damages, nowhere in the opinions did this Court even hint that nominal damages remained live only because compensatory claims were also sought. To the contrary, this Court instructed in *Carey* that "if, upon remand, the District Court determines that [the plaintiffs'] suspensions were justified, [they] nevertheless will be entitled to recover nominal damages" even if they fail to prove their compensatory damages. 435 U.S. at 267. Accord *Farrar*, 506 U.S. at 105.

The Eleventh Circuit's novel approach also invites "jurisdictional manipulation." *Flanigan's*, 868 F.3d at 1272 (Wilson, J., dissenting). If the *Carey* plaintiffs could not prove compensatory damages, they could have pled them anyway to bootstrap their nominal-damages claim. Or if a plaintiff seeks injunctive relief and nominal damages against a government defendant, the government can escape liability simply by changing an unconstitutional policy.

The Eleventh Circuit's rule also creates unjustifiable inconsistencies. A student who suffers a constitutional violation but cannot in good faith allege any compensable loss could not litigate a nominal-damages claim. But a student who endures the same constitutional violation may raise a nominal-damages claim if he experienced any economic injury, no matter how trifling.

So if a university violates the free-speech rights of two similarly-situated students by unconstitutionally forcing them into a speech zone, the one who paid a few dollars in gas to drive to the zone can seek vindication through a court judgment while the one who walked to the zone cannot. *Cf. United States* v. *Students Challenging Regulatory Agency Procedures*,

412 U.S. 669, 689 n.14 (1973) ("[A]n identifiable trifle," such as a $1.50 tax or $5.00 fine, "is enough for standing to fight out a question of principle").

The Eleventh Circuit suggests that a standalone request for nominal damages cannot preserve justiciability because nominal damages are so small. *Flanigan's*, 868 F.3d at 1270. But this Court has held that even when plaintiffs' claims for injunctive relief are moot, their right to recover a "minute" amount of compensatory damages keeps the case alive. *Ellis* v. *Bhd. of Ry., Airline & S.S. Clerks, Freight Handlers, Express & Station Emps.*, 466 U.S. 435, 442 (1984). Courts should treat a nominal-damages award no differently. Indeed, the priceless constitutional freedoms at issue here are far more valuable than the "undeniably minute" dollar damages that the plaintiffs recovered in *Ellis*. *Ibid.*

III. This case is an ideal vehicle to address the relationship between nominal damages and mootness, an issue with serious ramifications for students and other civil rights plaintiffs.

This case is an excellent vehicle to decide whether a standalone nominal-damages claim keeps a case alive after later events moot a plaintiff's request for prospective equitable relief. Six factors highlight this.

First, the record cleanly frames the question presented. The facts are not disputed because the district court ruled on a motion to dismiss. All the facts in the complaint must be accepted as true, and those facts state a claim for constitutional violations. United States' Statement of Interest at 9, No. 1:16-cv-04658, Sept. 26, 2017, ECF No. 37 ("[T]he United States is satisfied . . . that Plaintiffs have stated claims for violations of the First and Fourteenth Amendments."); App.162a. No one disputes that Chike and Joseph seek nominal damages. App.15a; App.133a. And they have not appealed the ruling that their request for prospective equitable relief is moot. Nor are Chike and Joseph contesting the lower court's determination that they did not request compensatory damages. The only question is clean and purely legal: Are standalone nominal-damages claims moot?

Second, a lawsuit against a college's policy abridging free speech is an ideal context to consider the mootness of nominal-damages claims. Student plaintiffs are particularly vulnerable under the Eleventh Circuit's rule. Their claims for prospective equitable relief are highly susceptible to mootness because students graduate and colleges often change offending policies when sued. Nor are students likely to suffer compensable harm from speech-suppressing policies, so they must rely on nominal-damages claims. If standalone nominal-damages claims cannot keep a case like this alive, students will be all too often left with no way to challenge violations of their First Amendment rights on campus. That will lead to fewer suits and more frequent constitutional violations. Allowing standalone nominal-damages claims is the only way to ensure that constitutional rights are "scrupulously observed." *Carey*, 435 U.S. at 266.

Third, the College officials' actual enforcement of the challenged policies against these students makes this case an especially suitable vehicle. The ordinance in *Flanigan's* was never enforced, and the Fourth and Eighth Circuits agree that nominal-damages do not preserve justiciability under those circumstances. But no circuit—save the Eleventh Circuit here—has held that nominal-damages claims are moot even when government defendants have already enforced a contested law or policy against the plaintiff. The need for nominal-damages claims is obvious in that context because, without them, government defendants can insulate already-completed constitutional violations from judicial review. Facing this harsh consequence head on is the best way to explore nominal damages' crucial role in preserving justiciability.

Fourth, the facts involving Chike and Joseph are different, which expands the options for deciding this case and the guidance afforded lower courts. College officials silenced Chike by enforcing their speech policies against him; their actions chilled Joseph's speech. Addressing the nominal-damages claims of both students—and their slightly different circumstances—will broaden the counsel that this Court gives lower courts, making this a choice vehicle for review.

Fifth, the issue presented is not one where the Court will benefit from further percolation. The en banc Eleventh Circuit in *Flanigan's* already chose to set itself apart from other circuits, acknowledging that it was creating a circuit conflict in so doing. By denying en banc review here, the Eleventh Circuit ensured that its nominal-damages approach would not only remain in the minority, but would stand apart even from the Fourth and the Eighth Circuits.

Last, this Court should act to prevent the Eleventh Circuit's rule from spreading. If students sue for constitutional violations, officials can quickly tweak their policies, mooting both prospective relief and retrospective nominal damages. As a result, the law is never clarified, and the cycle can repeat itself, both on that campus and others. Should something interrupt this cycle, officials can still say the law was never clear, giving them enough plausible deniability to invoke qualified immunity. Immediate review is needed.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-12676

D.C. Docket No. 1:16-cv-04658-ELR

CHIKE UZUEGBUNAM,
JOSEPH BRADFORD,

Plaintiffs–Appellants,

versus

STANLEY C. PRECZEWSKI,
President of Georgia Gwinnett College, in his official and individual capacities,
LOIS C. RICHARDSON,
Acting Senior Vice President of Academic and Student Affairs and Provost at Georgia Gwinnett College, in her official and individual capacities,
JIM B. FATZINGER,
Senior Associate Provost for Student Affairs for Georgia Gwinnett College, in his official and individual capacities,
TOMAS JIMINEZ,
Dean of Students at Georgia Gwinnett College, in his official and individual capacities,
AILEEN C. DOWELL,
Director of the Office of Student Integrity at Georgia Gwinnett College, in her official and individual capacities,

GENE RUFFIN,
Dean of Library Services at Georgia Gwinnett College, in his official and individual capacities,
CATHERINE JANNICK DOWNEY,
Head of Access Services and Information Commons, in her official and individual capacities,
TERRANCE SCHNEIDER,
Associate Vice President of Public Safety and Emergency Preparedness/Chief of Police at Georgia Gwinnett College, in his official and individual capacities,
COREY HUGHES,
Campus Police Lieutenant at Georgia Gwinnett College, in his official and individual capacities,
REBECCA A. LAWLER,
Community Outreach and Crime Prevention Sergeant at Georgia Gwinnett College, in her official and individual capacities,
SHENNA PERRY, Campus Safety/Security Officer at Georgia Gwinnett College, in her official and individual capacities,

Defendants–Appellees.

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

(July 1, 2019)

Before MARCUS and BLACK, Circuit Judges, and

RESTANI,* Judge.

PER CURIAM:

Appellants Chike Uzuegbunam and Joseph Bradford, both students at Georgia Gwinnett College (GGC) at the time they filed this lawsuit, sued multiple GGC officials, pursuant to 42 U.S.C. § 1983, asserting facial and as-applied challenges to the constitutionality of two policies included in GGC's Student Handbook: the "Freedom of Expression Policy" and the "Student Code of Conduct" (the Prior Policies). While the case was pending before the district court, GGC revised both policies and Uzuegbunam graduated, rendering the claims for declaratory and injunctive relief moot. The district court dismissed the case as moot, concluding Appellants' claims for nominal damages could not save their otherwise moot constitutional challenges to the Prior Policies. After review, and with the benefit of oral argument, we affirm.

I. BACKGROUND

A. Factual Allegations in the First Amended Complaint

In July 2016, Uzuegbunam began distributing religious literature in an open, outdoor plaza on GGC's campus. Shortly after he began these activities, he was stopped by a member of Campus Police who explained Uzuegbunam was not allowed to distribute religious literature (or any literature) at that location, in accordance with GGC's "Freedom of Expression Policy." Specifically, the policy stated students were generally permitted to engage in expressive activities

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* Honorable Jane A. Restani, Judge for the United States Court of International Trade, sitting by designation.

only in two designated speech zones and often only after reserving them.

Some time later, Uzuegbunam reserved one of the designated speech zones in order to distribute religious literature and speak to students about his religious beliefs. However, soon after Uzuegbunam began speaking, a member of Campus Police approached him and asked him to stop, explaining they had received "some calls" complaining about his speech. The officer informed Uzuegbunam he had only reserved the speech zone for certain specific purposes, not including "open-air speaking," and that he was in violation of GGC's "Student Code of Conduct" because his speech constituted "disorderly conduct."

Given the warnings from GGC Campus Police and the threat of disciplinary action, Uzuegbunam elected to stop speaking entirely and leave the designated speech zone. After this incident, neither Uzuegbunam nor Bradford—another GGC student who shares Uzuegbunam's religious beliefs and desire to speak publicly concerning those beliefs—have attempted to speak publicly or distribute literature in any open, outdoor, generally accessible areas of the GGC campus outside the two speech zones, nor have they engaged in any "open-air speaking" or other expressive activities in the speech zones.

B. Requests for Relief in the First Amended Complaint

In the section of the complaint entitled "Prayer for Relief," Appellants requested: (1) a declaratory judgment that the Speech Zone and Speech Code Policies, facially and as-applied, violated their First and Fourteenth Amendment rights; (2) a declaratory judgment

that Appellees' restriction of their literature distribution violated their First and Fourteenth Amendment rights; (3) a declaratory judgment that Appellees' restriction of their open-air speaking violated their First and Fourteenth Amendment rights; (4) a preliminary and permanent injunction prohibiting Appellees from enforcing the challenged policies; (5) nominal damages; (6) reasonable costs and attorneys' fees; and (7) "[a]ll other further relief to which [they] may be entitled."

Additionally, at the end of each of the four sections describing the individual causes of action, Appellants asserted "they [were] entitled to an award of monetary damages and equitable relief." They also stated they were "entitled to damages in an amount to be determined by the evidence and this Court."

C. The Motions to Dismiss

Appellees filed a motion, pursuant to Fed. R. Civ. P. 12(b)(6), to dismiss the First Amended Complaint for failure to state a claim. While that motion was pending, GGC revised its "Freedom of Expression Policy" such that students would be permitted to speak anywhere on campus without having to obtain a permit except in certain limited circumstances. GGC also removed the challenged portion of its "Student Code of Conduct." Both revised policies superseded the Prior Policies and have been in full force and effect since February 28, 2017.

As a result of these changes to the Prior Policies, Appellees filed a motion to dismiss the First Amended Complaint as moot. Approximately one year later, the district court having taken no action on the pending motions, Appellees filed a supplemental brief on the issue of mootness. Specifically, Appellees apprised the district court of two significant developments: (1)

Uzuegbunam's graduation from GGC; and (2) this Court's decision in *Flanigan's Enterprises, Inc. of Georgia v. City of Sandy Springs*, 868 F.3d 1248 (11th Cir. 2017) (en banc), in which we held a prayer for nominal damages generally will not save an otherwise moot challenge to an allegedly unconstitutional policy or law.

In their response to Appellees' supplemental brief, Appellants insisted that, even assuming their claims for declaratory and injunctive relief were moot, a live controversy remained ongoing, in part because the First Amended Complaint, properly construed in their favor, in fact included a request for compensatory damages. At the end of their response, they indicated that, if the district court disagreed, they should be permitted to amend their complaint to "clarify[]" their request for damages. Such a clarification, they assured the court, "would be simple, would pose no prejudice, and would allow this dispute to be decided on the merits, rather than technicalities."

D. The District Court's Order

The district court granted both of Appellees' motions to dismiss, though it based its decision entirely on mootness and did not address whether the First Amended Complaint otherwise stated a claim on which relief could be granted. The court concluded Uzuegbunam's graduation had mooted his claims for declaratory and injunctive relief, and GGC's revised policies mooted Bradford's claims. Specifically, the court concluded GGC had "unambiguously terminated the Prior Policies and there is no reasonable basis to expect that it will return to them."[1]

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[1] The district court engaged in a lengthy analysis concerning whether GGC's change in its policies in fact rendered Bradford's

The court then turned to whether the remaining damages claim was "sufficient to support standing and save this case." The court ultimately concluded Appellants sought only nominal damages, rejecting what it characterized as their "after-the-fact contentions" that they in fact sought compensatory damages. Applying *Flanigan's*, the district court then concluded such a claim for nominal damages could not save the otherwise moot complaint, rejecting Appellants' contentions that their case was distinguishable from *Flanigan's* or fell within any of the exceptions discussed in, or contemplated by, our opinion in that case.

Finally, the court denied Appellants' request for leave to amend their complaint on the ground it was not procedurally proper to seek leave to amend through a response to a motion to dismiss. The court agreed to dismiss the claims without prejudice, but it declined to "go as far as to direct the [Appellants] to file a motion for leave to amend," noting it was "up to [Appellants] to decide how to litigate their case."

On the same day the district court entered its order, the clerk entered judgment in favor of Appellees, dismissing the action without prejudice. The instant appeal followed.

II. DISCUSSION

We review the dismissal of a case for mootness *de*

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claims for declaratory and injunctive relief moot, applying the three-part test this Court identified in *Flanigan's*. Appellants do not challenge this portion of the district court's analysis on appeal. That is, they do not contest the district court's conclusion that their claims for injunctive and declaratory relief are moot. As such, we will not address this portion of the district court's analysis here.

novo. *Flanigan's*, 868 F.3d at 1255. Appellants raise three issues on appeal concerning the district court's dismissal of the First Amended Complaint. First, they argue the district court erred in concluding the First Amended Complaint did not include a request for compensatory damages. Second, they argue that, even assuming the First Amended Complaint included only a request for nominal damages, this case is distinguishable from *Flanigan's* and dismissal was not required. Finally, they argue we should reverse the district court's dismissal on the ground it abused its discretion when it denied them the opportunity to amend their complaint to add an explicit request for compensatory damages.[2] We will address each argument in turn.

A. Damages Allegations in the First Amended Complaint

Appellants assert the district court erred in concluding their amended complaint did not request compensatory damages because the court (1) construed the complaint against them, and (2) focused solely on the prayer for relief, rather than considering the complaint as a whole.

As Appellants note, at the motion to dismiss stage, the district court was required to "accept[] the complaint's allegations as true and construe[] them in the

[2] Appellants also argue extensively that *Flanigan's* was wrongly decided. However, "[u]nder the prior precedent rule, we are bound to follow a prior binding precedent 'unless and until it is overruled by this Court en banc or by the Supreme Court.'" *United States v. Vega-Castillo*, 540 F.3d 1235, 1236 (11th Cir. 2008) (quoting *United States v. Brown*, 342 F.3d 1245, 1246 (11th Cir. 2003)). Accordingly, we limit our review to whether the district court properly applied *Flanigan's* when it dismissed the First Amended Complaint as moot.

light most favorable to [Appellants]." *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1335 (11th Cir. 2012) (internal quotation marks omitted). They contend the district court failed to do so when it construed the allegations that they were entitled to "monetary damages" and "damages in an amount to be determined by the evidence and this Court" against them by concluding those phrases referred solely to nominal damages.

The district court did, as Appellants note, acknowledge the somewhat ambiguous nature of the term "monetary damages" and of Appellants' requests for "damages in an amount to be determined by the evidence and this Court" and "[a]ll other further relief to which [they] may be entitled." But the court did not then, as Appellants contend, arbitrarily construe those admittedly ambiguous phrases against them. Instead, it viewed the allegations in the context of the rest of the complaint and concluded Appellants could not have been requesting compensatory damages. We agree with that assessment.

In particular, the district court looked to the prayer for relief—which requested only nominal damages in addition to injunctive and declaratory relief—and to the factual allegations in the complaint. As to the latter, the court correctly noted that "compensatory damages in a § 1983 suit [must] be based on actual injury caused by the defendant rather than on the 'abstract value' of the constitutional rights that may have been violated." *Slicker v. Jackson*, 215 F.3d 1225, 1230 (11th Cir. 2000). Such "actual injury" can include monetary loss, physical pain and suffering, mental and emotional distress, impairment of reputation, and personal humiliation. *Id.* at 1231.

But Appellants did not allege they suffered any actual injury, instead resting their complaint—and request for damages—on the abstract injury suffered as the result of the violation of their constitutional rights. In fact, the First Amended Complaint mentions "injury" only twice, and in neither instance does it specify what the injury was. It also states, at the conclusion of each cause of action, that Appellants "suffered, and continue to suffer, irreparable harm," though, again, without specifying what that harm was.

On appeal, Appellants insist, largely through oral argument, that Uzuegbunam, at least, suffered any number of concrete injuries as a result of Appellees' enforcement of the Prior Policies, including loss of time and money traveling to GGC's campus to speak, as well as harm to his reputation and personal humiliation stemming from the actions taken by GGC officials to stop him from speaking. However, Appellants never identified these injuries to the district court, resting instead on their argument that the district court should broadly construe their vague requests for monetary damages as including *unspecified* compensatory damages, and they make only passing reference in their brief on appeal to the reputational harm suffered by Uzuegbunam. As a result, these arguments are not properly before us, as they were not raised in the district court or, indeed, properly briefed on appeal. *See Hurley v. Moore*, 233 F.3d 1295, 1297 (11th Cir. 2000) ("Arguments raised for the first time on appeal are not properly before this Court."). Because these injuries were not specifically pled in the complaint or articulated to the district court, we cannot fault the court for failing to infer these injuries from the other allegations in the complaint.

Thus, this is not a case in which the court took

phrases susceptible to more than one interpretation—e.g., "monetary damages"—and construed them against Appellants. Rather, the district court simply read those phrases in context and concluded they could have only one meaning: nominal damages.

Appellants further assert the district court erroneously focused "solely on the prayer for relief" in concluding the First Amended Complaint did not include a well-pled request for compensatory damages. They claim this was inconsistent with Fed. R. Civ. P. 54(c), which states federal courts "should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings."

The Supreme Court has instructed federal courts not to "dismiss a meritorious constitutional claim because the complaint seeks one remedy rather than another plainly appropriate one." *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 65 (1978). It has further reminded those courts that "although the prayer for relief may be looked to for illumination when there is doubt as to the substantive theory under which a plaintiff is proceeding, its omissions are not in and of themselves a barrier to redress of a meritorious claim." *Id.* at 66.

Here, contrary to Appellants' assertions, the district court did not "solely" look to the prayer for relief. Instead, it did what *Holt* expressly permits: it "looked to [the prayer for relief] for illumination" because Appellants' other vague requests for "monetary" and other appropriate damages created "doubt as to the substantive theory under which [they were] proceeding." *Id.* There was no other "plainly appropriate" remedy available here beyond the injunctive relief and nominal damages Appellants expressly requested

because, as previously discussed, the allegations in the complaint simply did not support a claim for compensatory damages.

B. Applying Flanigan's

Appellants further argue that, even assuming the First Amended Complaint cannot be read to include an implicit request for compensatory damages, their nominal damages claim presents an ongoing case or controversy notwithstanding our decision in *Flanigan's*. They argue the district court ignored portions of *Flanigan's* suggesting not all claims for nominal damages are necessarily moot.

Briefly, *Flanigan's* involved a challenge to a municipal ordinance that prohibited the sale of sexual devices. 868 F.3d at 1253-54. The plaintiffs alleged the ordinance violated their rights under the Fourteenth Amendment. *Id.* Though the challenged ordinance was never actually enforced against any of the plaintiffs, they nonetheless preemptively challenged the constitutionality of the ordinance, seeking injunctive and declaratory relief and asking the district court to strike down the ordinance as unconstitutional and permanently enjoin its enforcement. *Id.* at 1254. Two of the plaintiffs also sought an award of nominal damages but did not seek compensatory damages. *Id.* at 1254, 1265. While the case was pending before this Court, the city repealed the challenged ordinance, mooting the claims for declaratory and injunctive relief and leaving nominal damages as the only requested relief. *Id.* at 1254, 1263.

Turning to "whether a prayer for nominal damages . . . is sufficient to save [an] otherwise moot constitutional challenge," we first acknowledged there were certain cases in which a claim solely for nominal

damages would present a live case or controversy:

> To be sure, there are cases in which a judgment in favor of a plaintiff requesting only nominal damages would have a practical effect on the parties' rights or obligations. Likewise, there are situations in which nominal damages will be the only appropriate remedy to be awarded to a victorious plaintiff in a live case or controversy. In such circumstances, the exercise of jurisdiction is plainly proper.

Id. at 1263-64 (footnotes omitted). We juxtaposed those cases with those in which an award of nominal damages "would serve no purpose other than to affix a judicial seal of approval to an outcome that has already been realized." *Id.* at 1264. We concluded the plaintiffs' case fell decidedly in the latter category because they, in effect, had "already won" by "reciev[ing] all the relief they requested." *Id.*

We reiterated our holding "does not imply that a case in which nominal damages are the only available remedy is always or necessarily moot," and we noted that where a "court determines that a constitutional violation occurred, but that no actual damages were proven, it is within Article III powers to award nominal damages." *Id.* at 1270 n.23. Notably, we limited our discussion in this regard to cases in which both compensatory and nominal damages were pled, but the only available remedy was nominal damages. *See id.*

Appellants argue the district court ignored this apparent limitation on the core holding of *Flanigan's*, "brushing aside the portions of *Flanigan's* that show that nominal damages claims are not automatically moot." Specifically, Appellants take issue with the

district court's conclusions that there was no live controversy regarding compensatory damages and that nominal damages would have no practical effect on the parties' rights or obligations. Appellants insist the district court was wrong in both respects.

First, they insist a live dispute about compensatory damages remains ongoing as to Uzuegbunam's challenges to the "enforcement" of the policies against him, noting that if the specific "conduct" of the GGC officials were found to be illegal, Uzuegbunam "could be entitled to compensatory damages." This appears to concern the "as-applied" portion of Uzuegbunam's challenge to the Prior Policies. However, as discussed above, the First Amended Complaint did not include a well-pled request for compensatory damages, in part because it failed to allege any concrete injuries arising from the allegedly unconstitutional conduct of the GGC officials.

Second, Appellants argue that, in any case, awarding nominal damages here "would have a practical effect on the parties' rights or obligations." They identify two such "practical effects": (1) "determin[ing] the disputed boundary over how public colleges can restrict student expression"; and (2) answering the "important question" of whether "GGC officials violate[d] Mr. Uzuegbunam's rights when they censored him." The first of these is plainly at odds with *Flanigan's*, as any opinion we or the district court issued that did little more than delineate the "boundar[ies]" around public colleges' regulation of student speech would constitute exactly the sort of impermissible advisory opinion *Flanigan's* sought to avoid. *See Flanigan's*, 868 F.3d at 1269-70.

As to the second "practical effect" Appellants identify, they again focus on the allegedly unconstitutional actions GGC officials took in enforcing the policies, as distinct from the facial challenge to the policies themselves, asserting it would be appropriate for a court to adjudicate whether and to what extent the specific actions taken by GGC officials violated Uzuegbunam's constitutional rights. But under the explicit exception in *Flanigan's* implicated by Appellants' argument, Appellants' right to receive nominal damages as the result of any unconstitutional conduct on the part of GGC officials would have to flow from a well-pled request for compensatory damages. The cases we sought to distinguish from *Flanigan's*—cases in which a claim for nominal damages was adequate, on its own, to sustain an action—involved an ongoing controversy regarding compensatory damages throughout the entire litigation. *See id.* at 1264-67 & n.18, 1270 n.23. In other words, they all involved a well-pled complaint for compensatory damages, though no actual damages were ultimately *proven*. *See id.* at 1270 n.23 ("This Court has long recognized that '[n]ominal damages are appropriate if a plaintiff establishes a violation of a fundamental constitutional right, even if he cannot *prove* actual injury sufficient to entitle him to compensatory damages.'" (alteration in original) (emphasis added) (quoting *KH Outdoor, LLC v. City of Trussville*, 465 F.3d 1256, 1260 (11th Cir. 2006))).

Here, in contrast, the only relief Appellants actually requested, other than declaratory and injunctive relief, was nominal damages, and there has never been any controversy over compensatory damages. While *Flanigan's* contemplates a class of cases in

which a claim for nominal damages would be sufficient to maintain a case or controversy, this is not that case, and we decline to carve out any new exception here.[3] Accordingly, we agree with the district court that this case is "strikingly similar" to *Flanigan's* and apply our precedent to conclude Appellants' claim for nominal damages cannot save their otherwise moot constitutional challenge to the Prior Policies.

C. Leave to Amend

Notwithstanding the above mootness analysis, Appellants insist that, even if we agree with the district court's application of *Flanigan's*, we should reverse the district court's dismissal of their complaint on the ground it improperly denied them the opportunity to amend their complaint to add an explicit request for compensatory damages. We review a district court's decision to deny leave to amend for abuse of discretion. *See Santiago v. Wood*, 904 F.2d 673, 675 (11th

[3] Notably, Appellants do not explicitly request we carve out any *new* exception here for cases involving an as-applied challenge to an allegedly unconstitutional law or policy that has been enforced against a plaintiff, instead arguing their case falls within the category of cases *Flanigan's* explicitly distinguishes. To the extent it would be appropriate for us to identify such an exception, this is not the case to do so. The issue is not well-developed in the record below, as Appellants never presented the district court with the argument that their case was distinguishable from *Flanigan's* on the ground it involved an as-applied—as opposed to solely a facial—challenge to the Prior Policies. Moreover, in accordance with our description of *Flanigan's*, their argument to the district court that their case falls within the category of cases distinguished in *Flanigan's* presumes their complaint included a well-pled request for compensatory damages, insisting they could recover nominal damages whether or not "they ultimately *receive* compensatory damages."

Cir. 1990).

On appeal, Appellants primarily take issue with the district court's assertion that it was not procedurally proper for them to seek leave to amend via a response to Appellees' motion to dismiss. However, as our precedent makes clear, the district court was right to be concerned about the procedural mechanism by which Appellants sought to amend their complaint. *See, e.g., Cita Tr. Co. AG v. Fifth Third Bank*, 879 F.3d 1151, 1157 (11th Cir. 2018) ("[T]his Court has clearly held that '[w]here a request for leave to file an amended complaint simply is imbedded within an opposition memorandum, the issue has not been raised properly.'" (second alteration in original) (quoting *Rosenberg v. Gould*, 554 F.3d 962, 967 (11th Cir. 2009))).

As they did in the district court, Appellants continue to focus on the simplicity of the proposed amendment, noting it would have involved simply "adding 'compensatory and' to the prayer for relief and a paragraph describing [their] financial injuries." But even assuming the relative complexity of the proposed amendment would have any bearing on Appellants' responsibility to seek amendment via a properly filed motion, they failed to specifically inform the district court of the substance of their proposed amendment, other than to indicate they would "clarify" that they sought compensatory damages. *See Newton v. Duke Energy Fla., LLC*, 895 F.3d 1270, 1277 (11th Cir. 2018) ("When moving the district court for leave to amend its complaint, the plaintiff must 'set forth the substance of the proposed amendment or attach a copy of the proposed amendment' to its motion." (quoting *Cita Tr.*, 879 F.3d at 1157)).

They did not, for example, specify what additional factual allegations they would have included to support their request for compensatory damages.

To the extent that Appellants argue the district court abused its discretion when it entered judgment so soon after issuing its order dismissing the First Amended Complaint as moot, we find such an argument unavailing. Appellants contend they were deprived of the ability to file a procedurally proper motion to amend "[a]fter the district court entered judgment immediately." But even assuming they were precluded from proceeding under Rule 15, *see Jacobs v. Tempur-Pedic Int'l, Inc.*, 626 F.3d 1327, 1344 (11th Cir. 2010) (noting that Fed. R. Civ. P. 15(a)(2) "governs amendment of pleadings *before* judgment is entered; it has no application *after* judgment is entered"), Appellants could still have moved under Rule 60(b) or 59(e) on the ground they could rectify the pleading issues in the First Amendment Complaint through further proposed amendments. *Czeremcha v. Int'l Ass'n of Machinists & Aerospace Workers, AFL-CIO*, 724 F.2d 1552, 1556 (11th Cir. 1984).

> [A]fter a complaint is dismissed the right to amend under Rule 15(a) terminates; the plaintiff, however, may still move the court for leave to amend, and such amendments should be granted liberally. The plaintiff may also move for relief under Rules 59(e) or 60(b) on the basis of proposed amendments even after the action is dismissed and final judgment is entered.

Id. (footnotes and citation omitted). The district court never acted to prevent Appellants from seeking leave to amend following its dismissal of the First Amended Complaint without prejudice, expressly leaving that

decision in the hands of Appellants. Accordingly, we can discern no abuse of discretion by the district court in its handing of Appellants' request to amend—a request they only expressed in response to a motion to dismiss.

III. CONCLUSION

For the reasons discussed above, we affirm the district court's dismissal of the First Amended Complaint as moot.

AFFIRMED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CHIKE UZUEGBUNAM and JOSEPH BRADFORD, Plaintiffs, v. STANLEY C. PRECZEWSKI, President of Georgia Gwinnett College, in his official and individual capacities, et al., Defendants.	CIVIL ACTION FILE NO. 1:6-CV-04658-ELR

J U D G M E N T

This action having come before the Court, Honorable Eleanor L. Ross, United States District Judge, and the Court having granted Defendants' [18] Motion to Dismiss and [21] Motion to Dismiss for Mootness, it is hereby

ORDERED AND ADJUDGED that this action be **DISMISSED WITHOUT PREJUDICE**.

Dated at Atlanta, Georgia this 25th day of May, 2018.

JAMES N. HATTEN
CLERK OF COURT

By: *s/ Charlotte Diggs*
Deputy Clerk

Prepared, Filed and Entered
In the Clerk's Office
May 25, 2018
James N. Hatten
Clerk of Court

By: *s/ Charlotte Diggs*
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

CHIKE UZUEGBUNAM and JOSEPH BRADFORD,	*	
Plaintiffs,	*	1:16-CV-04658-ELR
v.	*	
STANLEY C. PRECZEWSKI, President of Georgia Gwinnett College, in his official and individual capacities, et al.,	*	
Defendants.	*	

O R D E R

Presently before the Court are Defendants' Motion to Dismiss and Motion to Dismiss for Mootness. As explained below, because the Court finds that this case is now moot, the Court grants both of Defendants' Motions and dismisses this case.

I. Background

Plaintiffs Chike Uzuegbunam and Joseph Bradford bring this suit against Defendants Stanley C. Preczewski, Lois C. Richardson, Jim B. Fatzinger, Tomas Jiminez, Aileen C. Dowell, Gene Ruffin, Catherine Jannick Downey, Terrance Schneider, Corey Hughes, Rebecca A. Lawler, and Shenna Perry (collectively, "Defendants") in their individual and official capacities

pursuant to 42 U.S.C. § 1983 for violation of Plaintiffs' constitutional rights. As alleged in the 83-page, 470-paragraph First Amended Complaint, at the time of filing this suit, Plaintiffs were students at Georgia Gwinnett College ("GGC"). [Doc. 13]. Defendants each have official roles at GGC; for example, Defendant Preczewski is the President and Defendant Dowell is the Director of the Office of Student Integrity.[1]

As alleged in the First Amended Complaint, in July 2016, Plaintiff Uzuegbunam, while a student at GGC, began distributing religious literature (or leafleting) in a plaza on the GGC campus, and a short time later, Defendant Perry, a Campus Safety/ Security Officer for Campus Police, stopped Plaintiff Uzuegbunam and explained that he was not allowed to distribute literature at that location. Upon Plaintiff Uzuegbunam's inquiry, Defendant Downey, the Head of Access Services and Information Commons at GGC, later explained to Plaintiff Uzuegbunam that he could not distribute written materials outside of GGC's two speech areas and that he would need to reserve a speech area before he could distribute his literature.

In August 2016, Plaintiff Uzuegbunam applied for, and was granted, a reservation of the speech area for three separate dates, including August 25, 2016. Thereafter, on August 25, 2016, Plaintiff Uzuegbunam went to the reserved speech area, stood on a stool, verbally shared his religious views, and distributed his religious literature. After approximately thirty minutes, Defendant Hughes, a Lieutenant for Campus Police, informed Plaintiff Uzuegbunam that

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[1] While the parties debate whether some Defendants can be held liable in this case, the Court need not address this issue because the case is moot.

he could not speak publicly in the area because GGC had received calls from people complaining about Plaintiff Uzuegbunam's expression. Defendant Hughes further explained that Plaintiff Uzuegbunam's speaking constituted "disorderly conduct" because it was disturbing the peace and tranquility of individuals in the area, was in violation of GGC policy, and that if Plaintiff Uzuegbunam continued to speak, he could be prosecuted. Plaintiff Uzuegbunam stopped speaking publicly and left the area.

Plaintiff Bradford desires to engage in similar expressive activities on campus like Plaintiff Uzuegbunam, including literature distribution and public speaking, but claims that Defendants' policies and practices prevent him from doing so.

There were two GGC policies at the time that these events occurred: (1) Prior Speech Zone Policy and (2) Prior Speech Code Policy (collectively, "Prior Policies").[2] These Prior Policies are discussed in detail below, but for background, the Court summarizes the Prior Policies here. The Prior Speech Zone Policy limited public speech to speech zones on campus, which were available only on certain days and times. The Prior Speech Zone Policy did not allow public speech on campus, including leafleting, unless the speaker applied for a reservation with GGC and received permission from GGC to speak in the speech zone. If GGC granted permission, then the speech was regulated to the speech zone at a specific date and time. The Prior

[2] These Prior Policies are titled, "GGC Freedom of Expression Policy" and "Student Code of Conduct" respectively. However, for consistency, the Court has referred to the Prior Policies using the same language as Plaintiffs.

Speech Code Policy prohibited behavior which disturbed the peace and/or comfort of persons.

Plaintiffs bring facial and as applied challenges to the Prior Policies, alleging that the Prior Policies violate their freedom of speech and exercise of religion under the First Amendment to the United States Constitution and due process and equal protection under the Fourteenth Amendment. Plaintiffs seek declaratory and injunctive relief as well as damages, as discussed more fully *infra*.

Importantly, after Plaintiffs filed suit against Defendants, GGC amended its Speech Zone and Speech Code Policies. The Court will refer to these amended policies collectively as "Amended Policies" and individually as the "Amended Speech Zone Policy" and "Amended Speech Code Policy."

Defendants move to dismiss Plaintiffs' claims pursuant to Fed. R. Civ. P. 12(b)(6). Defendants also move to dismiss Plaintiffs' claims due to mootness.[3]

II. Discussion

> It is well established that "[u]nder Article III of the Constitution, federal courts may adjudicate only actual, ongoing cases or controversies." Lewis v. Cont'l Bank Corp., 494 U.S. 472, 477, 110 S.Ct. 1249, 1253, 108 L.Ed.2d 400 (1990). At a minimum, this requirement means that "a litigant must have suffered, or be threatened with, an actual injury traceable to

[3] The United States filed a Statement of Interest arguing that the Prior Policies violated Plaintiffs' constitutional rights. [Doc. 37]. Importantly, however, the United States specifically stated that it "does not advance any position as to whether Plaintiffs' claims are moot," on which the Court's opinion turns. [Id. at 9].

> the defendant and likely to be redressed by a favorable judicial decision." Id. at 477, 110 S.Ct. at 1253. Moreover, this "actual controversy must be extant at all stages of review, not merely at the time the complaint is filed." Arizonans for Official English v. Arizona, 520 U.S. 43, 67, 117 S.Ct. 1055, 1068, 137 L.Ed.2d 170 (1997) (quoting Preiser v. Newkirk, 422 U.S. 395, 401, 95 S.Ct. 2330, 2334, 45 L.Ed.2d 272 (1975)). As a result, the Supreme Court has routinely cautioned that a case becomes moot "if an event occurs while a case is pending on appeal that makes it impossible for the court to grant 'any effectual relief whatever' to a prevailing party." Church of Scientology of Cal. v. United States, 506 U.S. 9, 12, 113 S.Ct. 447, 449, 121 L.Ed.2d 313 (1992) (quoting Mills v. Green, 159 U.S. 651, 653, 16 S.Ct. 132, 133, 40 L.Ed. 293 (1895)). Thus, even a once-justiciable case becomes moot and must be dismissed "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." Powell v. McCormack, 395 U.S. 486, 496, 89 S.Ct. 1944, 1951, 23 L.Ed.2d 491 (1969).

Flanigan's Enters. Inc. of Georgia v. City of Sandy Springs, Ga., 868 F.3d 1248, 1255 (11th Cir. 2017) (hereinafter "Flanigan's").

In supplemental responses filed by the parties, there is no dispute that Plaintiff Uzuegbunam graduated from GGC in August 2017. Therefore, there is no reasonable expectation that he will be subjected to the same alleged injury again, such that the Court could grant him declaratory or injunctive relief, and as a result, his claims for declaratory and injunctive relief

are moot. Adler v. Duval Cty. Sch. Bd., 112 F.3d 1475, 1478 (11th Cir. 1997) (upon graduation from high school, students' claims for a violation of their First and Fourteenth Amendment rights became moot). Plaintiffs acknowledge as much. Pls.' Resp. in Opp'n to Defs' Suppl. Br. at 1 [Doc. 40].

Therefore, as to Plaintiff Bradford only, first, the Court must determine whether GGC's amendments to the Prior Speech Zone and Prior Speech Code Policies have rendered Plaintiff Bradford's claims for declaratory judgment and injunctive relief moot. See Flanigan's, 868 F.3d at 1255. Then, if these claims are moot, the Court must determine whether Plaintiffs' claim for damages will save this case. See id.

A. Declaratory and Injunctive Relief

As noted above, a case generally becomes moot when the issues are no longer "live or the parties lack a legally cognizable interest in the outcome." Id. (quotation omitted). This may result when "subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." Id. (quotation omitted). "[I]ntervening events will render a case moot only when [the Court has] 'no reasonable expectation that the challenged practice will resume after the lawsuit is dismissed.'" Id. at 1255-56 (quoting Jews for Jesus, Inc. v. Hillsborough Cty. Aviation Auth., 162 F.3d 627, 629 (11th Cir. 1998)) (further quotation omitted). "The key inquiry in this mootness analysis therefore is whether the evidence leads [the Court] to a reasonable expectation that [Defendants] will reverse course and reenact the allegedly offensive portion of its [Prior Policies] should this Court grant [Defendants'] motion to dismiss." Id. at 1256.

In conducting this mootness analysis, the Court considers three broad factors as follows:

> First, [the Court] ask[s] whether the change in conduct resulted from substantial deliberation or is merely an attempt to manipulate [the Court's] jurisdiction. Thus [the Court] will examine the timing of the repeal, the procedures used in enacting it, and any explanations independent of this litigation which may have motivated it. Second, [the Court] ask[s] whether the government's decision to terminate the challenged conduct was "unambiguous." This requires [the Court] to consider whether the actions that have been taken to allegedly moot the case reflect a rejection of the challenged conduct that is both permanent and complete. Third, [the Court] ask[s] whether the government has consistently maintained its commitment to the new policy or legislative scheme. When considering a full legislative repeal of a challenged law—or an amendment to remove portions thereof—these factors should not be viewed as exclusive nor should any single factor be viewed as dispositive. Rather, the entirety of the relevant circumstances should be considered and a mootness finding should follow when the totality of those circumstances persuades the court that there is no reasonable expectation that the government entity will reenact the challenged legislation.

Id. at 1257 (citation omitted).[4]

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[4] The parties debate who has the burden of proof in this analysis. The Court need not decide this issue because even if Defendants have the burden, they have met it.

While some of the language quoted above refers specifically to government legislation, which is not at issue here, intervening governmental action need not rise to the level of legislation for this mootness analysis to apply. Id. at 1256. "Indeed, even where the intervening governmental action does not rise to the level of a full legislative repeal," court have held that "'a challenge to a government policy that has been unambiguously terminated will be moot in the absence of some reasonable basis to believe that the *policy* will be reinstated if the suit is terminated.'" Id. (quoting Troiano v. Supervisor of Elections, 382 F.3d 1276, 1285 (11th Cir. 2004) (emphasis added)); see Harrell v. The Fla. Bar, 608 F.3d 1241, 1266 (11th Cir. 2010) (applying the same reasonable basis standard even where the government action at issue falls "short of so weighty a legislative act"); Students for Life USA v. Waldrop, 90 F. Supp. 3d 1265, 1271 (S.D. Ala. 2015) (applying this mootness analysis to a state university policy).

The Court now turns to apply these foregoing principles to the facts of this case to determine whether the totality of the circumstances indicates that there is a reasonable expectation that GGC will reenact or reinforce the Prior Speech Zone and Prior Speech Code Policies. In conducting this analysis, the Court will rely on two affidavits presented by Defendants. First is the Affidavit of Defendant Dowell, who is the Director of Student Integrity at GGC. Dowell Aff. at ¶ 2 [Doc. 21-2]. Defendant Dowell is "responsible for implementing programmatic and policy changes, supervising the Office of Student Integrity staff, and adjudicating all disciplinary and non-disciplinary infractions for GGC, including academic integrity violations, disorderly conduct, etc." Id. at ¶ 3. Second

is the Affidavit of Marc Cadinalli, who is the Executive Director of Legal Affairs at GGC. Cardinalli Aff. at ¶ 2 [Doc. 21-3].

1. Substantial Deliberation

As for the first factor, substantial deliberation, both Defendant Dowell and Mr. Cardinalli state in their affidavits that "[o]n February 28, 2017, the GGC Cabinet approved revisions to GGC's Freedom of Expression Policy [Prior Speech Zone Policy], as well as revisions to the Student Code of Conduct Section [Prior Speech Code Policy] in the GGC Student Handbook for 2016-2017." Dowell Aff. at ¶ 4; Cardinalli Aff. at ¶ 3. While these statements at a minimum inform the Court that there is a GGC Cabinet and the revisions to the Prior Policies were approved by that Cabinet, it is unclear what deliberation may have occurred. Importantly, however, there is no allegation or evidence to suggest that GGC acted in secrecy or departed from its own procedures, such that the Court has "pause about the level of deliberation attending a change in policy." Flanigan's, 868 F.3d at 1260 (citing to cases where policy was changed in secrecy behind closed doors and where the governmental actors departed from their own procedures).

The Court also considers the timing of the changes to the Prior Policies. Plaintiffs filed suit on December 19, 2016. GGC changed the Prior Policies on February 28, 2017, or approximately 10 weeks later. Such a quick change to the Prior Policies, while not dispositive, counts in Defendants' favor.[5] See id. at 1259-60

[5] Plaintiffs argue that the delay was actually much longer because GGC was aware at least in 2013 that its Prior Policies were unconstitutional, having received a letter from Plaintiffs' counsel at that time. As Defendants argue, this may have been

(timing was not dispositive but finding case was moot when repeal occurred three years into the litigation after the appellate court agreed to hear the case en banc); Nat'l Advert. Co. v. City of Miami, 402 F.3d 1329, 1331 (11th Cir. 2005) (finding controversy was moot where city began process of amending its regulations ten months after litigation began); Jews for Jesus, Inc., 162 F.3d at 629 (finding case was moot where policy was changed one month after the commencement of the lawsuit).

The motivation for GGC's changes to its Prior Policies is unclear. While motivation is a consideration, it is not dispositive nor the Court's focus. Nat'l Advert. Co., 402 F.3d at 1334. Rather, the most important inquiry is whether the Court believes that GGC will reenact the Prior Policies. Id. Because the Court ultimately concludes based on the totality of the circumstances that GGC will not reenact these Prior Policies, discussed *infra*, the Court need not dwell on GGC's motivation. Id. at 1331 n.3.

2. Unambiguous Change to Prior Policies

Next, the Court considers whether GGC's changes to its Prior Policies are "plainly an unambiguous termination of the challenged conduct." Flanigan's, 868 F.3d at 1261.

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a routine letter from Plaintiffs' counsel, evidenced by the fact that it refers to "ABAC," an acronym for Abraham Baldwin Agricultural College, rather than GGC. [Doc. 1-16, at 3]. Moreover, under Plaintiffs' theory, anytime counsel sends a demand letter suggesting that policies are unconstitutional, the recipient would be required to change its policies immediately.

i. Termination of Challenged Conduct

> [W]hen an ordinance is repealed by the enactment of a superseding statute, then the 'superseding statute or regulation moots a case only to the extent that it removes challenged features of the prior law. To the extent that those features remain in place, and changes in the law have not so fundamentally altered the statutory framework as to render the original controversy a mere abstraction, the case [is] not moot.'

Coal. for the Abolition of Marijuana Prohibition v. City of Atlanta, 219 F.3d 1301, 1310 (11th Cir. 2000) (quoting Naturist Soc., Inc. v. Fillyaw, 958 F.2d 1515, 1520 (11th Cir. 1992)). "If the repeal is such that the allegedly unconstitutional portions of the [challenged] ordinance no longer exist, the appeal is rendered moot because any decision [the Court] would render would clearly constitute an impermissible advisory opinion." Tanner Advert. Grp., L.L.C. v. Fayette Cty., GA, 451 F.3d 777, 790 (11th Cir. 2006) (quotation omitted) (alteration in original). Therefore, the Court must examine whether the features of the Prior Policies – challenged by Plaintiffs – have been substantially altered by the Amended Policies. Coal. for the Abolition of Marijuana Prohibition, 219 F.3d at 1312. In other words, the Court examines whether the alleged constitutional violations of which Plaintiffs originally complained in the Prior Policies will continue with the enforcement of the Amended Policies. Id. at 1315.

1. Speech Zone Policy

The Prior Speech Zone Policy applied to students, like Plaintiffs, and the non-GGC community. Prior Speech Zone Policy at 1 [Doc. 13-3]. It identified "free

speech expression areas" on campus and limited the availability of these areas to certain hours and days. Id. at 2. GGC reserved the right to modify the speech areas, and the Policy allowed for other areas and times to be authorized, upon written request. Id. A designated GGC official was responsible for authorizing the use of the free speech expression area and the reservation. Id. The Prior Speech Zone Policy set forth a reservation procedure. Id. An individual was required to submit to a GGC official a specific form at least three business days prior to the requested use of the area and attach any publicity materials to their form. Id. The Prior Speech Zone Policy then listed fifteen criteria that must be met for GGC to authorize the speech, event, or demonstration. Id. at 3-5. An individual could also appeal the GGC official's decision regarding authorization to the Dean of Students. Id. at 2. Individuals "failing to comply with the [Prior Speech Zone Policy] may be asked to leave." Id. at 5. In short, if individuals wanted to engage in public speech on campus, including leafleting, they had to receive authorization from GGC, and upon approval, their speech would then be limited to the assigned speech area at a certain time of day.

The Amended Speech Zone Policy provides as follows:

> This policy in no way prohibits members of the GGC community from engaging in conversations on campus and does not apply to College-sponsored activities or classroom instruction or participation, but rather only establishes as designated public forums certain outdoor areas of GGC's campus and sets forth requirements for forum reservations in the following limited

> circumstances: (1) members of the GGC community who plan an event with 30 or more persons; and, (2) individuals or groups who are not members of the GGC community who wish to speak on GGC's campus. By placing reasonable limitations on time, place, and manner of speech, GGC does not take a position on the content or viewpoint of the expression, but allows for a diversity of viewpoints to be expressed in an academic setting.

Amended Speech Zone Policy at 1 [Doc. 21-2].

The Amended Speech Zone Policy further provides that for GGC community members "who plan to engage in expressive activity on campus in a group that is expected to consist of 30 or more persons" or individuals who are not enrolled or employed at GGC, individuals are required to submit a reservation request form to GGC two business days prior to the speech. Id. at 2. GGC officials must respond to the request within one business day of receipt of the request. Id. at 2-3. A denial of the request is appealable to GGC's Senior Vice President for Academic and Student Affairs and Provost, and these officials or their designee must respond to the appeal within one business day. Id. at 3. The individual must attach any written materials in connection with the speech to the reservation request form. Id. The Amended Speech Zone Policy provides that GGC "may not deny any request to distribute written materials based on the content or viewpoint of the expression." Id. The Amended Speech Zone Policy further states that a GGC official may only deny a reservation request for seven specific reasons, summarized as follows: (1) the form is not fully completed; (2) the form contains a material falsehood or misrepresentation; (3) the area

has been previously reserved, in which case, an alternate location, date or time will be provided; (4) the speech would conflict or disturb previously planned programs by GGC; (5) the area is not large enough to accommodate the group, in which case GGC will provide an alternate location to safely accommodate the applicant if the applicant is a member of the GGC community; (6) the speech intended would present a danger to the applicant, GGC community, or the public; and (7) the speech is prohibited by law or GGC policy. Id. at 3-4. The Amended Speech Zone Policy further provides that "[w]hen assessing a reservation request, the Student Affairs official must not consider or impose restrictions based on the content or viewpoint of the expression." Id. at 4. If the reservation request is granted, the Amended Speech Zone designates two zones as the GGC public forums, and makes these areas available from 9:00 a.m. to 7:00 p.m., Monday through Friday, provided that the area is not already reserved. Id. at 1.

Additionally, the Amended Speech Zone Policy sets forth that if a GGC community member attracts a group of 30 or more persons while engaged in the expressive activity, a representative from the group is to provide GGC with as much notice as possible. Id. at 2. GGC reserves the right to direct the group to an available area of campus to provide for safety and crowd control and limit disruption to GGC operations. Id.

The Amended Speech Zone Policy specifically states that GGC community members may distribute non-commercial pamphlets and other written materials "on a person-to-person basis in open outdoor areas of the campus." Id. at 4. In short, the Amended Speech Zone Policy provides that students may speak on campus and distribute literature on a person-to-person

basis in open outdoor areas of the campus. Prior reservations to speak and the limiting of that speech to the speech areas are only required for GGC community members who plan to speak in a group expected to consist of 30 or more persons or by non-GGC community members.

In order for the changes to the Prior Policies to moot the issues presented by Plaintiffs, the "'gravamen of [Plaintiffs'] complaint' must have been changed in some fundamental respect." Coal. for the Abolition of Marijuana Prohibition, 219 F.3d at 1311 (quoting Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville, Fla., 508 U.S. 656, 662 (1993)). The gravamen of Plaintiffs' First Amended Complaint is that Plaintiffs want to distribute religious literature and exclaim their religious beliefs anywhere on campus at any time, without first having to obtain a permit. See Pls.' First Am. Compl. at ¶ 2 (Prior Policies restrict all speech to two small areas of campus, prohibit students from speaking on campus spontaneously, and require students to obtain a permit before engaging in expressive activity). As a student,[6] Plaintiff Bradford wants to engage in spontaneous speech and spontaneous leafleting. Pls.' Resp. to Defs.' Mot. to Dismiss for Mootness at 23.

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[6] The Amended Speech Zone Policy provides that an "individual who is not a member of the GGC community may only distribute written materials within the Public Forum Areas and only during the time in which the individual has reserved Public Forum Area." Amended Speech Zone Policy at 4-5. However, Plaintiffs' First Amended Complaint is based on their positions as students, and they have not argued the Prior Policies' constitutionality with respect to non-GGC community members, including Plaintiff Uzuegbunam's status as a non-GGC community member upon his graduation.

[Doc. 27]. This is now allowed under the Amended Speech Zone Policy, and thus, the gravamen of Plaintiffs' First Amended Complaint has been changed in a fundamental respect.[7] See Jews for Jesus, Inc., 162 F.3d at 629 (finding case was moot where "the airport's change of policy has already given Jews for Jesus the relief they seek—the ability to distribute literature at the airport—and there is therefore no meaningful relief left for the court to give. The only remaining issue is whether the airport's policy was constitutional—which, at this stage, is a purely academic point.").

2. Speech Code Policy

The Prior Speech Code Policy which Plaintiffs challenged prohibited "behavior which disrupts the peace and/or comfort of person(s)." Prior Speech Code Policy

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[7] Plaintiffs spend considerable time attacking the Amended Speech Zone Policy as unconstitutional. Importantly, the Court refrains from deciding whether the changes to the Prior Policies "would nullify *any* potential constitutional infirmities in the" Amended Policies. Nat'l Advert. Co., 402 F.3d at 1335 (emphasis in original). Instead, the Court holds that the changes to the Prior Policies "rendered all the complaints raised by [Plaintiffs] in this suit moot. Whatever defects may remain in the [Amended Policies] are not properly before [the Court] and [the Court] do[es] not address them." Id. The Court is mindful of the restraint it must exercise, such that it must "generally decline to pass on the constitutionality of [policies] unless 'as a necessity in the determination of real, earnest, and vital controversy between individuals.'" Flanigan's, 868 F.3d at 1269 (quoting Ashwander v. Tennessee Valley Auth., 297 U.S. 288, 346 (1936)). "It is not the habit of the court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case." Ashwander, 297 U.S. at 347. Rendering opinions on whether all parts of the Amended Policies are constitutional are not "absolutely necessary" to a decision of this case.

at 23 [Doc. 13-15]. The Amended Speech Code Policy deletes this provision entirely, making no reference to behavior that might disturb the peace. Once again, the gravamen of Plaintiffs' First Amended Complaint has been changed in a fundamental respect.

ii. Ambiguity

Because the Court finds that the challenged conduct has been terminated by the Amended Policies, the Court must now examine whether that termination is unambiguous. First, GGC has assured the Court that it has no intention of reenacting the Prior Policies. In her affidavit, Defendant Dowell states that "GGC has no intention of returning to or enforcing the former policies." Dowell Aff. at ¶ 14; see Flanigan's, 868 F.3d at 1262-63 (finding strong evidence of mootness from the defendant's representation in filings with the court that it disavowed any intent to adopt the challenged regulation in the future or reenact it); Coral Springs St. Sys., Inc. v, City of Sunrise, 371 F.3d 1320, 1332-33 (11th Cir. 2004). Second, rather than keep the Prior Policies in place, GGC has fundamentally changed them, including for the Prior Speech Code Policy, removing the challenged portion altogether. See Flanigan's, 868 F.3d at 1261. Third, Defendant Dowell states that the Amended Policies are available to the public and have been published on GGC's website. Dowell Aff. at ¶ 14; cf. Flanigan's, 868 F.3d at 1262-63 (finding mootness based in part on the defendant's public commitment not to reenact the repealed provision).

Plaintiffs argue that Defendants have continued to defend the Prior Policies, including in this litigation and by filing a motion to dismiss. However, this is

"weak evidence," at best, that the changes were ambiguous and GGC will return to the Prior Policies. Flanigan's, 868 F.3d at 1262. Instead, GGC's actions in changing the Prior Policies and proclaiming. that it has no intention of returning to them suggests an unambiguous termination from which the Court is "unable to draw a reasonable expectation that [GGC] will reenact the challenged [Prior Policies]." Id.

3. Commitment to the Amended Policies

The Court next considers whether GGC has maintained its commitment to the Amended Policies. GGC adopted the Amended Policies over a year ago, on February 28, 2017. Plaintiffs have not presented any evidence that GGC has changed the Amended Policies or reenacted or enforced the Prior Policies. In addition, GGC has taken actions to implement the Amended Policies. Mr. Cardinalli states in his affidavit that legal counsel for the Georgia Board of Regents has provided GGC employees with four training sessions on the Prior Speech Zone Policy. Cardinalli Aff. at ¶ 5. He further states that approximately forty-nine GGC employees attended this training, including employees from offices and departments encompassing Defendants. Id. at ¶ 6. See Troiano, 382 F.3d at 1285 (government official consistently followed new policy and took actions to implement it). Additionally, Mr. Cardinalli states that "[a]dditional training will be on-going as needed." Cardinalli Aff. at ¶ 8. All of this, together with GGC's stated intention of not returning to or enforcing the Prior Policies, sufficiently show GGC's commitment to the Amended Policies. Flanigan's, 868 F.3d at 1262-63.

After consideration of all of these factors and viewing the totality of the circumstances, the Court finds

that GGC has unambiguously terminated the Prior Policies and there is no reasonable basis to expect that it will return to them. See id. at 1263; Jews for Jesus, Inc., 162 F.3d at 629. Therefore, Plaintiff Bradford's claims for injunctive and declaratory relief are moot.

B. Nominal Damages

Having found that Plaintiffs' claims for declaratory and injunctive relief are moot, the Court must now determine whether Plaintiffs' remaining claim for damages is sufficient to support standing and save this case. Plaintiffs argue that the Court may still render an opinion on the Prior Policies and whether they violated Plaintiffs' constitutional rights because Plaintiffs have alleged damages. Defendants argue that Plaintiffs have only prayed for nominal damages and attorneys' fees, and neither is sufficient to save this case from being dismissed as moot. Plaintiffs argue in response that they pleaded in their First Amended Complaint for an award of monetary damages and for damages in an amount to be determined by the evidence and the Court. Plaintiffs assert that the Court must construe their First Amended Complaint broadly for a claim of actual, compensatory damages.

Plaintiffs are correct that in several instances in their First Amended Complaint they request "monetary damages and equitable relief." First Am. Compl. at ¶¶ 417-418, 434-435, 450-451, 469-470. However, monetary damages can encompass both compensatory and nominal damages. Quinlan v. Pers. Transp. Servs. Co., 329 F. App'x 246, 249 (11th Cir. 2009) (defining monetary damages to include compensatory or punitive damages); Virdi v. DeKalb Cty. Sch. Dist., 216 F. App'x 867, 873 (11th Cir. 2007) (finding request for monetary damages to include nominal damages).

Throughout their First Amended Complaint, Plaintiffs do not elaborate on the type of damages they seek. Instead, the only place where they specify the type of damages sought is in their Prayer for Relief, as follows: "Nominal damages for the violation of Plaintiffs' First and Fourteenth Amendment rights from the Defendants sued in their individual capacities." First Am. Compl. at 79, ¶ G. Thus, in their Prayer for Relief, wherein they set forth the exact relief they seek including an injunction and declaratory relief, Plaintiffs specify that they are seeking nominal damages.

Furthermore, Plaintiffs' after-the-fact contentions now – that they are seeking compensatory damages – are not supported by the First Amended Complaint. "[C]ompensatory damages in a § 1983 suit [must] be based on actual injury caused by the defendant rather than on the 'abstract value' of the constitutional rights that may have been violated." Slicker v. Jackson, 215 F.3d 1225, 1230 (11th Cir. 2000). Plaintiffs do not allege in their First Amended Complaint that they suffered an actual injury, and instead, they plead that their constitutional rights have been violated.[8] Plaintiffs argue that they pleaded in their First

[8] For example, in the context of a § 1983 case, such as this one, compensatory damages can encompass monetary loss, physical pain and suffering, mental and emotional distress, impairment of reputation, and personal humiliation. Slicker, 215 F.3d at 1231. Plaintiffs have alleged no such injuries. Instead, Plaintiffs mention an "injury" two times in their First Amended Complaint, and neither time do they set forth any facts that would support a compensatory damages claim. See First Am. Compl. at ¶ 6 ("In taking these actions, [Defendants] implemented the challenged GGC policies, violated Mr. Uzuegbunam's constitutional rights, and inflicted irreparable injury upon him."); ¶ 368 ("Unless the policies and conduct of Defendants are enjoined, Mr. Uzuegbunam and Mr. Bradford will continue to suffer irreparable injury.").

Amended Complaint that they were entitled to "damages in an amount to be determined by the evidence and this Court" and "[a]ll other further relief to which Plaintiffs may be entitled." First Am. Compl. at ¶¶ 418, 435, 451, 470, I. However, such blanket statements do not automatically lend themselves to a claim for compensatory damages and instead could also support a claim for nominal damages. See Flanigan's, 868 F.3d at 1254 n.3.

Thus, the Court concludes that upon viewing Plaintiffs' First Amended Complaint in its entirety, Plaintiffs only sought nominal damages, rather than compensatory damages. To find otherwise would require ignoring Plaintiffs' own Prayer for Relief. Even construing Plaintiffs' First Amended Complaint in their favor, the Court cannot stretch or interpret a complaint to find allegations or relief that are not there.

In this particular case, where Plaintiffs' constitutional challenges to the governmental policies are now moot, where the Court can grant Plaintiffs no practical relief in the form of an injunction or a declaratory judgment, and where Plaintiffs did not plead for compensatory damages, the lone remaining claim of nominal damages is insufficient to save this otherwise moot case. Flanigan's, 868 F.3d at 1264-70.[9]

Plaintiffs argue that the United States Court of Appeals for the Eleventh Circuit in Flanigan's left open the possibility that a claim for nominal damages will not moot a case and can still be adjudicated, even where other claims are moot. While such an exception may be true, this case is not the exception. Instead, this case is

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[9] Additionally, Plaintiffs seek attorneys' fees pursuant to 42 U.S.C. § 1988, but this is insufficient to create a case or controversy. See Flanigan's Enters. Inc. of Georgia, 868 F.3d at 1263 n.11.

akin to Flanigan's, and therefore, Plaintiffs' sole claim for nominal damages will not sustain this case.

First, this case is strikingly similar to Flanigan's. In Flanigan's, the plaintiffs challenged a municipal ordinance, alleging that the ordinance violated their First Amendment and Fourteenth Amendment rights. 868 F.3d at 1253-54; see also Flanigan's Enters. Inc. v. City of Sandy Springs, GA, No. 1:13-CV-03573-HLM, 2014 WL 12685907, at *3 (N.D. Ga. Oct. 20, 2014). The plaintiffs sought declaratory and injunctive relief, striking down the ordinance as unconstitutional and permanently enjoining its enforcement. Flanigan's, 868 F.3d at 1254. They also specifically requested an award of nominal damages, and they did not seek compensatory damages. Id. at 1254, 1263 n.11, 1265. The Eleventh Circuit Court of Appeals found that the claims for declaratory and injunctive relief were moot after the challenged ordinance was repealed. Id. at 1255-63.

The remaining claim was for nominal damages, and the Eleventh Circuit held that such a lone prayer for nominal damages was insufficient to sustain the case. Id. at 1263-1270. The appellate court determined that because the challenged ordinance had been repealed with no likelihood of reenactment, the plaintiffs had received all the relief that they had requested. Id. at 1264. Thus, the appellate court could offer the plaintiffs no practical remedy that would affect the rights or obligations of the parties. Id. The availability of a practical remedy is a prerequisite to Article III jurisdiction, and therefore, because no such remedy was available, the plaintiffs could not proceed before the court on a claim solely for nominal damages. Id. at 1264, 1270.

The same is true here. Plaintiffs contend that the Prior Policies violated their First and Fourteenth Amendment rights. They sought declaratory and injunctive relief, along with nominal damages, and they did not seek compensatory damages. The Court has found that Plaintiff Uzuegbunam's claims for declaratory and injunctive relief are moot because he has graduated from GGC. The Court has also found that Plaintiff Bradford's claims for declaratory and injunctive relief are moot because GGC has unambiguously terminated the Prior Policies and there is no reasonable basis to expect that GGC will return to them. As explained above, a fair reading of Plaintiffs' First Amended Complaint reveals that all of their alleged injuries would be remedied by the removal of the Prior Policies. See Flanigan's, 868 F.3d at 265. The Prior Policies have been removed with no reasonable basis to believe that GGC will reenact them. As a result, there is no practical remedy for this Court to offer Plaintiffs. See id. at 1264. "There is simply nothing left for [the Court] to do." Id. at 1265. Just as in Flanigan's, the only redress the Court could possibly offer Plaintiffs is "judicial validation, through nominal damages, of an outcome that has already been determined," and perhaps joy in seeing the Court vindicate their cause. 868 F.3d at 1268. Yet, "absent an accompanying practical effect on the legal rights or responsibilities of the parties[, the Court is] without jurisdiction to give them that satisfaction." Id. Finally, any opinion the Court would render now on the constitutionality of the Prior Policies would be an impermissible advisory one. Id. The Prior Policies, and with them, the necessity of deciding their constitutionality, "has ceased to exist and [are] now no more real than any other hypothetical statute on which the federal

courts should routinely decline to pass judgment." Id. at 1269. As well stated in Flanigan's, to allow Plaintiffs' remaining claim for nominal damages to sustain this case would result in a manipulation of the jurisdiction of the Court, a circumvention of the mootness doctrine, and a requirement that the Court decide a case that could have no practical effect on the legal rights or obligations of the parties. 868 F.3d at 1270.

Second, contrary to Plaintiffs' arguments, this case does not present the exceptions discussed or contemplated in Flanigan's. In these exceptional cases, a live controversy existed regarding compensatory damages throughout the entire litigation or an award of nominal damages would have a practical effect on the parties' rights or obligations. Id. at 1263-67, n.18, 1270, n.23. This case presents neither of those situations.[10]

Therefore, the Court concludes that Plaintiffs' "prayer for nominal damages will not save the case from dismissal." Id. at 1264.[11]

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[10] To the extent there are any other exceptions or the Eleventh Circuit wants to create an exception for this case, those are matters for the Eleventh Circuit to decide. This Court is bound by precedent in Flanigan's and finds that this case is moot pursuant to this precedent.

[11] In their Response in Opposition to Defendants' Supplemental Brief, while Plaintiffs maintain that their case should not be dismissed, they assert that any dismissal must be without prejudice and they request leave to amend if the Court deems it necessary. The Court denies Plaintiffs' request for leave to amend. Burgess v. Religious Tech. Ctr., Inc., 600 F. App'x 657, 665 (11th Cir. 2015) ("We repeatedly have held that plaintiffs cannot amend their complaint through a response to a motion to dismiss . . . our precedent is clear: the proper method to request leave to amend is through filing a motion, and such motion for leave to amend should either set forth the substance of the proposed

III. Conclusion

For the foregoing reasons, the Court **GRANTS** Defendants' Motion to Dismiss for Mootness [Doc. 21]; **GRANTS** Defendants' Motion to Dismiss [Doc. 18]; **DENIES** Plaintiffs' Motion for Oral Argument [Doc. 35]; and **DISMISSES WITHOUT PREJUDICE** this case.

SO ORDERED, this 25th day of May, 2018.

Eleanor L. Ross
Eleanor L. Ross
United States District Judge
Northern District of Georgia

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amendment or attach a copy of the proposed amendment."); Rosenberg v. Gould, 554 F.3d 962, 967 (11th Cir. 2009) ("Where a request for leave to file an amended complaint simply is imbedded within an opposition memorandum, the issue has not been raised properly."). For the reasons stated herein, the Court will dismiss Plaintiffs' claims without prejudice but need not go as far as to direct Plaintiffs to file a motion for leave to amend. Quinlan, 329 F. App'x at 250 (court did not have to give the plaintiff an opportunity to amend where the court dismissed the complaint without prejudice). It is up to Plaintiffs to decide how to litigate their case.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-12676-AA

CHIKE UZUEGBUNAM,
JOSEPH BRADFORD

Plaintiffs – Appellants,

versus

STANLEY C. PRECZEWSKI,
President of Gerogia Gwinnett College, in his official and individual capacities,
LOIS C. RICHARDSON,
Acting Senior Vice President of Academic and Student Affairs and Provost at Georgia Gwinnett College, in her official and individual capacities,
JIM B. FATZINGER,
Senior Associate Provost for Student Affairs for Georgia Gwinnett College, in his official and individual capacities,
TOMAS JIMINEZ,
Dean of Students at Georgia Gwinnett College, in his official and individual capacities,
AILEEN C. DOWELL,
Director of the Office of Student Integrity at Georgia Gwinnett College, in her official and individual capacities,
GENE RUFFIN,
Dean of Library Services at Georgia Gwinnett College, in his official and individual capacities,
CATHERINE JANNICK DOWNEY,
Head of Access Services and Information Commons, in her official and individual

capacities,
TERRANCE SCHNEIDER,
Associate Vice President of Public Safety and Emergency Preparedness/Chief of Police at Georgia Gwinnett College, in his official and individual capacities,
COREY HUGHES,
Campus Police Lieutenant at Georgia Gwinnett College, in his official and individual capacities,
REBECCA A. LAWLER,
Community Outreach and Crime Prevention Sergeant at Georgia Gwinnett College, in her official and individual capacities,
SHENNA PERRY,
Campus Safety/Security Officer at Georgia Gwinnett College, in her official and individual capacities,

Defendants – Appellees.

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

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

BEFORE: MARCUS and BLACK, Circuit Judges, and RESTANI, * Judge.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no

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* Honorable Jane A. Restani, Judge for the United States Court of International Trade, sitting by designation.

judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Rehearing En Banc is also treated as a Petition for Rehearing before the panel and is DENIED. (FRAP 35, IOP2)

ENTERED FOR THE COURT:

UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-12676-AA

CHIKE UZUEGBUNAM,
JOSEPH BRADFORD

Plaintiffs – Appellants,

versus

STANLEY C. PRECZEWSKI,
President of Gerogia Gwinnett College, in his official and individual capacities,
LOIS C. RICHARDSON,
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AILEEN C. DOWELL,
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GENE RUFFIN,

Dean of Library Services at Georgia Gwinnett College, in his official and individual capacities,
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REBECCA A. LAWLER,
Community Outreach and Crime Prevention Sergeant at Georgia Gwinnett College, in her official and individual capacities,
SHENNA PERRY,
Campus Safety/Security Officer at Georgia Gwinnett College, in her official and individual capacities,

Defendants – Appellees.

On Petition for Hearing En Banc from the
United States District Court
for the Northern District of Georgia

ORDER:

No Judge in regular active service on the Court having requested that the Court be polled on hearing en banc (Rule 35 Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-1), the petition for hearing en banc is DENIED.

UNITED STATES CIRCUIT JUDGE

UNITED STATES COURT OF APPEALS
For the Eleventh Circuit

No. 18-12676

District Court Docket No.
1:16-cv-04658-ELR

CHIKE UZUEGBUNAM,
JOSEPH BRADFORD

Plaintiffs – Appellants,

versus

STANLEY C. PRECZEWSKI,
President of Gerogia Gwinnett College, in his official and individual capacities,
LOIS C. RICHARDSON,
Acting Senior Vice President of Academic and Student Affairs and Provost at Georgia Gwinnett College, in her official and individual capacities,
JIM B. FATZINGER,
Senior Associate Provost for Student Affairs for Georgia Gwinnett College, in his official and individual capacities,
TOMAS JIMINEZ,
Dean of Students at Georgia Gwinnett College, in his official and individual capacities,
AILEEN C. DOWELL,
Director of the Office of Student Integrity at Georgia Gwinnett College, in her official and individual capacities,
GENE RUFFIN,
Dean of Library Services at Georgia Gwinnett College, in his official and individual capacities,

CATHERINE JANNICK DOWNEY,
Head of Access Services and Information Commons, in her official and individual capacities,
TERRANCE SCHNEIDER,
Associate Vice President of Public Safety and Emergency Preparedness/Chief of Police at Georgia Gwinnett College, in his official and individual capacities,
COREY HUGHES,
Campus Police Lieutenant at Georgia Gwinnett College, in his official and individual capacities,
REBECCA A. LAWLER,
Community Outreach and Crime Prevention Sergeant at Georgia Gwinnett College, in her official and individual capacities,
SHENNA PERRY,
Campus Safety/Security Officer at Georgia Gwinnett College, in her official and individual capacities,

Defendants – Appellees.

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

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JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: July 01, 2019
For the Court: DAVID J. SMITH, Clerk of Court
By: Djuanna Clark

Excerpts from United States Constitution

Article III, Section 2, Paragraph 1

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; —to all Cases affecting Ambassadors, other public Ministers and Consuls; —to all Cases of admiralty and maritime Jurisdiction; —to Controversies to which the United States shall be a Party; —to Controversies between two or more States; —between a State and Citizens of another State, —between Citizens of different States, —between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

Amendment I

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.

Amendment XIV, Section 1

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.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CHIKE UZUEGBUNAM and **JOSEPH BRADFORD**,

Plaintiffs,

v.

STANLEY C. PRECZEWSKI, President of Georgia Gwinnett College, in his official and individual capacities; **LOIS C. RICHARDSON**, Acting Senior Vice President of Academic and Student Affairs and Provost at Georgia Gwinnett College, in her official and individual capacities; **JIM B. FATZINGER**, Senior Associate Provost for Student Affairs for Georgia Gwinnett College, in his official and individual capacities; **TOMAS JIMINEZ**, Dean of Students at Georgia Gwinnett College, in his official and individual capacities; **AILEEN C. DOWELL**, Director of the Office of Student Integrity at Georgia Gwinnett College, in her official and individual capacities; **GENE RUFFIN**, Dean of Library Services at Georgia Gwinnett College, in his official and individual capacities; **CATHERINE JANNICK DOWNEY**,

Case No. 1:16-cv-04658-ELR

THE HONORABLE ELEANOR L. ROSS

JURY TRIAL DEMANDED

Head of Access Services and Information Commons, in her official and individual capacities; **TERRANCE SCHNEIDER**, Associate Vice President of Public Safety and Emergency Preparedness/Chief of Police at Georgia Gwinnett College, in his official and individual capacities; **COREY HUGHES**, Campus Police Lieutenant at Georgia Gwinnett College, in his individual and official capacities; **REBECCA A. LAWLER**, Community Outreach and Crime Prevention Sergeant at Georgia Gwinnett College, in her official and individual capacities; **SHENNA PERRY**, Campus Safety/Security Officer at Georgia Gwinnett College, in her official and individual capacities.

Defendants.

FIRST AMENDED VERIFIED COMPLAINT

Plaintiffs Chike Uzuegbunam and Joseph Bradford, by and through counsel, and for their First Amended Verified Complaint against Defendants, hereby states as follows:

INTRODUCTION

1. The cornerstone of higher education is the ability of students to participate in the "marketplace of ideas" on campus. That marketplace depends on free and vigorous debate and expression between students—debate and expression that is spontaneous,

ubiquitous, and often anonymous—and is carried out through spoken word, flyers, signs, and displays.

2. By policy and practice, Georgia Gwinnett College ("GGC" or "College") claims the unchecked right to restrict the free speech rights of students and to regulate the location of student expression and assembly on campus. The College claims to encourage free discourse and debate on campus, but its *Freedom of Expression Policy* restricts all types of student speech to two small speech zones that occupy less than 0.0015% of campus. To use these speech zones, students must submit a "free speech area request" form three days in advance and submit any publicity materials and literature they want to distribute to administrators for review. If students want to speak—whether through oral or written communication—anywhere else on campus, then they must obtain a permit from College officials. Thus, students may not speak spontaneously anywhere on campus. If students violate this policy, they violate the College's *Student Code of Conduct* and expose themselves to a variety of sanctions, including expulsion. Through the permitting process, GGC retains unfettered discretion to determine both whether students may speak at all and where they may speak. In so doing, it fails to protect students against content and viewpoint discrimination. These policies and practices chill protected student speech and disable spontaneous student speech on campus.

3. By policy and practice, Georgia Gwinnett College claims the unchecked right to restrict the content and viewpoint of what students say on campus. Despite their claims to celebrate free speech, Defendants' *Student Code of Conduct* defines "disorderly conduct" to include any expression "which disturbs the

peace and/or comfort of person(s)." Defendants enforce this speech code to prohibit students from saying anything that prompts complaints from listeners. In so doing, Defendants have created and have enforced a heckler's veto that effectuates content and viewpoint discrimination. This policy and its related practices chill protected student speech on campus.

4. When Plaintiff Chike Uzuegbunam, a student at GGC, sought to distribute religious literature in an open, generally accessible area of the campus outside the library, Defendants required him to stop because he was outside of the two tiny speech zones and because he had not first obtained a permit.

5. When Mr. Uzuegbunam tried to share his religious views in one of the speech zones after reserving it for this purpose, Defendants required him to stop because his speech had generated complaints, informed him that his speech constituted "disorderly conduct" because it had generated complaints, and instructed him to use the methods of other religious denominations to communicate his beliefs and viewpoints.

6. Defendants took these actions because of the content and viewpoint of Mr. Uzuegbunam's expression, because his expression prompted complaints and they believed it would continue to do so, and because they wanted to pacify those who were or might be offended by his expression. In taking these actions, they implemented the challenged GGC policies, violated Mr. Uzuegbunam's constitutional rights, and inflicted irreparable injury upon him.

7. Plaintiff Joseph Bradford, a student at GGC, desires to engage in similar expressive activities on campus, including literature distribution and

public speaking, but Defendants' policies and practices prevent him from doing so, thus chilling his exercise of his constitutional rights.

8. This action is premised on the United States Constitution and concerns the denial of Mr. Uzuegbunam's and Mr. Bradford's fundamental and clearly established rights under the Free Speech and Free Exercise Clauses of the First Amendment and the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

9. The aforementioned policies and practices are challenged on their face and as applied.

10. Defendants' policies and practices have deprived and will continue to deprive Plaintiffs of their paramount rights and guarantees under the United States Constitution.

11. Each and every act of Defendants alleged herein was committed by Defendants, each and every one of them, under the color of state law and authority.

JURISDICTION & VENUE

12. This civil rights action raises federal questions under the United States Constitution, particularly the First and Fourteenth Amendments, and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

13. This Court has original jurisdiction over these federal claims pursuant to 28 U.S.C. §§ 1331 and 1343.

14. This Court has authority to award the requested damages pursuant to 28 U.S.C. § 1343; the requested declaratory relief pursuant to 28 U.S.C. §§ 2201–02; the requested injunctive relief pursuant

to 28 U.S.C. § 1343 and FED. R. CIV. P. 65; and costs and attorneys' fees under 42 U.S.C. § 1988.

15. This Court has supplemental jurisdiction over the state law claims made herein pursuant to 28 U.S.C. § 1367.

16. Venue is proper in this district and division pursuant to 28 U.S.C. § 1391(b) and L.R. 3.1, N.D. Ga., because Defendants reside in this district and division and/or all of the acts described in this Complaint occurred in this district and division.

PLAINTIFFS

17. Mr. Chike Uzuegbunam and Mr. Joseph Bradford are residents of the State of Georgia and students at GGC.

18. Mr. Uzuegbunam and Mr. Bradford are professing evangelical Christians who strive to live out their faith on a daily basis.

19. Their Christian faith governs the way Mr. Uzuegbunam and Mr. Bradford think about marriage, morality, politics, and social issues, and it causes them to hold sincerely-held religious beliefs in these areas.

20. As evangelical Christians, Mr. Uzuegbunam and Mr. Bradford believe that the Bible is God's Word and sets out the plan of salvation for all people. They believe that the Bible teaches that all people are sinners and therefore deserve God's wrath, but that anyone can receive salvation and eternal life by believing in Jesus Christ.

21. Because of their firmly-held Christian beliefs, Mr. Uzuegbunam and Mr. Bradford believe it is their duty to inform others, including members of the GGC community, for their own benefit, that they have

sinned and need salvation through Jesus Christ. They look for opportunities to share their beliefs with their fellow students and community members.

22. Mr. Uzuegbunam's message is purely evangelistic in nature. Through personal conversations, the distribution of religious tracts, and open-air speaking, he communicates in a loving way that all people (including himself) are sinners and that salvation and eternal life are available only through Jesus Christ.

23. Mr. Bradford's message is both evangelistic and apologetic in nature. That is, through personal conversations, the distribution of religious tracts, and open-air speaking, he communicates in a loving way that all people (including himself) are sinners and that salvation and eternal life are available only through Jesus Christ. In addition, he desires to convince others of the truth of the Bible and to persuade others to approach all areas of life from a Biblical worldview.

24. Mr. Uzuegbunam and Mr. Bradford do not seek monetary gain with their expressive activities. They do not try to sell products or services, seek donations, or solicit signatures. They merely wish to expose others to their religious beliefs.

25. Mr. Uzuegbunam's and Mr. Bradford's expressive activities do not create a disturbance or cause congestion. They merely wish to express their religious beliefs peacefully, without being confrontational and without using amplification devices, to those who are willing to listen.

DEFENDANTS

26. Defendant Stanley C. Preczewski is, and was at all times relevant to this Complaint, the Pres-

ident of Georgia Gwinnett College, a public college organized and existing under the laws of the State of Georgia.

27. As president, Defendant Preczewski is the Chief Executive Officer of GGC.

28. Defendant Preczewski's duties include, among others, authorizing, executing, enforcing, and implementing the policies governing students at GGC and overseeing the operation and management of GGC.

29. Defendant Preczewski has the responsibility for final policymaking authority concerning students at GGC.

30. Defendant Preczewski is responsible for the enactment, amendment, enforcement, execution, and implementation of College policies, including policies challenged herein, and their application to students in restricting their ability to speak freely and without a permit on campus.

31. As president of the College, Defendant Preczewski possesses the authority to change and enforce the policies challenged herein.

32. Defendant Preczewski possesses the authority and responsibility for coordination and approval of campus expression by students on campus.

33. All changes in campus policies concerning student expression are made only with the prior approval of Defendant Preczewski.

34. Defendant Preczewski has not instructed GGC personnel, including the other Defendants, to change or alter the policies and practices governing student expression on campus, including the policies

and practices challenged herein, to comply with the Constitution.

35. As president, Defendant Preczewski has the authority to review, approve, or reject the decisions of other College officials and the other Defendants regarding the policies challenged herein.

36. Defendant Preczewski not only authorized, approved, or implemented the policies used to restrict Mr. Uzuegbunam's expression, but he also failed to stop any GGC officials from applying those policies to Mr. Uzuegbunam.

37. Defendant Preczewski is ultimately responsible for administration and policymaking at GGC.

38. Defendant Preczewski is sued in his individual and official capacities.

39. Defendant Lois C. Richardson is, and was at all times relevant to this Complaint, Acting Senior Vice President of Academic and Student Affairs and Provost at Georgia Gwinnett College, a public college organized and existing under the laws of the State of Georgia.

40. Defendant Richardson is responsible for administration and policymaking for the College, including the policies challenged herein.

41. Defendant Richardson is responsible for the enactment and enforcement of College policies, including the policies challenged herein that restrict the ability of students to speak freely on campus and without a permit.

42. Defendant Richardson is responsible for overseeing the College's Office of Student Affairs and

Defendant Jim B. Fatzinger, and for creating, reviewing, changing, authorizing, and enforcing the policies of that office, including GGC's *Freedom of Expression Policy* and *Student Code of Conduct*.

43. Defendant Richardson has failed to stop College officials, including the other defendants, from applying the policies challenged herein to students, including Mr. Uzuegbunam.

44. Defendant Richardson possesses the authority to change and enforce the policies challenged herein.

45. Defendant Richardson has failed to recommend any changes to the policies challenged herein.

46. Defendant Richardson is sued in her official and individual capacities.

47. Defendant Jim B. Fatzinger is, and was at all times relevant to this Complaint, Senior Associate Provost for Student Affairs at Georgia Gwinnett College, a public college organized and existing under the laws of the State of Georgia.

48. Defendant Fatzinger is responsible for administration and policymaking for the College, including the policies challenged herein.

49. Defendant Fatzinger is responsible for the enactment and enforcement of College policies, including the policies challenged herein, that restrict the ability of students to speak freely on campus and without a permit.

50. Defendant Fatzinger, under the direction of Defendants Preczewski and Richardson, instructs the Office of Student Affairs when to create, review, change, authorize, and enforce student speech policies

and procedures.

51. Defendant Fatzinger is responsible for overseeing the College's Office of Student Affairs and Defendant Tomas Jiminez, and for creating, reviewing, changing, authorizing, and enforcing the policies of that office, including GGC's *Freedom of Expression Policy* and *Student Code of Conduct*.

52. Defendant Fatzinger has failed to stop College officials, including the other defendants, from applying the policies challenged herein to students, including Mr. Uzuegbunam.

53. Defendant Fatzinger possesses the authority to change and enforce the policies challenged herein.

54. Defendant Fatziner has failed to recommend any changes to the policies challenged herein.

55. Defendant Fatzinger is sued in his official and individual capacities.

56. Defendant Tomas Jiminez is, and was at all times relevant to this Complaint, Dean of Students at Georgia Gwinnett College, a public college organized and existing under the laws of the State of Georgia.

57. Defendant Jiminez is responsible for administration and policymaking for the College, including the policies challenged herein.

58. Defendant Jiminez is responsible for the enactment and enforcement of College policies, including the policies challenged herein, that restrict the ability of students to speak freely on campus and without a permit.

59. Defendant Jiminez, under the direction of Defendants Preczewski, Richardson, and Fatzinger,

leads the Office of Student Affairs and directs it when to create, review, change, authorize, and enforce student speech policies and procedures.

60. Under Defendant Jiminez's leadership, the Office of Student Affairs created and enforced the policies challenged herein.

61. Defendant Jiminez is responsible for overseeing the College's Office of Student Integrity and Defendant Aileen C. Dowell, and for creating, reviewing, changing, authorizing, and enforcing the policies of that office, including GGC's *Freedom of Expression Policy* and *Student Code of Conduct*.

62. Defendant Jiminez has failed to stop College officials, including the other defendants, from applying the policies challenged herein to students, including Mr. Uzuegbunam.

63. Defendant Jiminez possesses the authority to change and enforce the policies challenged herein.

64. Defendant Jiminez has failed to recommend any changes to the policies challenged herein.

65. Defendant Jiminez is sued both in his individual and official capacities.

66. Defendant Aileen C. Dowell is, and was at all times relevant to this Complaint, Director of the Office of Student Integrity at Georgia Gwinnett College, a public college organized and existing under the laws of the State of Georgia.

67. Defendant Dowell is responsible for administration and policymaking for the College, including the policies challenged herein.

68. Defendant Dowell is responsible for the en-

actment and enforcement of College policies, including the policies challenged herein, that restrict the ability of students to speak freely on campus and without a permit.

69. Defendant Dowell, under the direction of Defendants Preczewski, Richardson, Fatzinger, and Jiminez, is responsible for applying and interpreting the policies challenged herein, including processing requests by students for permits under those policies.

70. Defendant Dowell continues to enforce the policies challenged herein to students, including Mr. Uzuegbunam.

71. Defendant Dowell has failed to recommend any changes to the policies challenged herein.

72. Defendant Dowell enforced the policies challenged herein against Mr. Uzuegbunam by stopping him from peacefully distributing religious literature and engaging interested students in conversation in an open, generally accessible location outside of the library and by stopping him from sharing his religious beliefs in the speech zone he reserved for that purpose.

73. Defendant Dowell is sued both in her individual and official capacities.

74. Defendant Gene Ruffin is, and was at all times relevant to this Complaint, Dean of Library Services at Georgia Gwinnett College, a public college organized and existing under the laws of the State of Georgia.

75. Defendant Ruffin is responsible for the enforcement of College policies, including the *Freedom of Expression Policy* challenged herein, that restrict

the ability of students to speak freely on campus and without a permit.

76. Defendant Ruffin, under the direction of Defendant Preczewski, is responsible for applying and enforcing the *Freedom of Expression Policy*.

77. Defendant Ruffin continues to enforce the *Freedom of Expression Policy* to students, including Mr. Uzuegbunam.

78. Defendant Ruffin is sued both in his individual and official capacities.

79. Defendant Catherine Jannick Downey is, and was at all times relevant to this Complaint, Head of Access Services and Information Commons at Georgia Gwinnett College, a public college organized and existing under the laws of the State of Georgia.

80. Defendant Downey is responsible for the enforcement of College policies, including the *Freedom of Expression Policy* challenged herein, that restrict the ability of students to speak freely on campus and without a permit.

81. Defendant Downey, under the direction of Defendant Ruffin, is responsible for enforcing the *Freedom of Expression Policy*.

82. Defendant Downey enforced the *Freedom of Expression Policy* against Mr. Uzuegbunam by stopping him from peacefully distributing religious literature and engaging interested students in conversation in an open, generally accessible location outside of the library.

83. Defendant Downey continues to enforce the *Freedom of Expression Policy* against students, including Mr. Uzuegbunam.

84. Defendant Downey is sued both in her individual and official capacities.

85. Defendant Terrance Schneider, is, and was at all times relevant to this Complaint, the Associate Vice President of Public Safety and Emergency Preparedness/Chief of Police at Georgia Gwinnett College, a public college organized and existing under the laws of the State of Georgia.

86. As Chief of Police, Defendant Schneider is charged with responsibility for enforcing GGC's policies and practices governing student expression taking place on public property at the College.

87. As Chief of Police, Defendant Schneider is responsible for enforcing all GGC policies that govern student expression, including the policies challenged herein.

88. As Chief of Police, Defendant Schneider oversees all law enforcement officers on campus, as they also enforce GGC policies that govern student expression.

89. Defendant Schneider is sued both in his individual and official capacities.

90. Defendant Corey Hughes, is, and was at all times relevant to this Complaint, a lieutenant for Campus Police at GGC.

91. As a law enforcement officer, Defendant Hughes is charged with responsibility for enforcing GGC's policies and practices governing student expression taking place on public property at the College, including the policies challenged herein.

92. Defendant Hughes enforced GGC's policies

and practices regarding student expression on campus, including the policies challenged herein, against Mr. Uzuegbunam when he stopped Mr. Uzuegbunam from speaking publicly inside the speech zones on the GGC campus.

93. Defendant Hughes is sued both in his individual and official capacities.

94. Defendant Rebecca A. Lawler, is, and was at all times relevant to this Complaint, a Community Outreach and Crime Prevention Sergeant for Campus Police at GGC.

95. As a law enforcement officer, Defendant Lawler is charged with responsibility for enforcing GGC's policies and practices governing student expression taking place on public property at the College, including the policies challenged herein.

96. Defendant Lawler enforced GGC's policies and practices regarding student expression on campus, including the policies challenged herein, against Mr. Uzuegbunam when she stopped Mr. Uzuegbunam from speaking publicly inside the speech zones on the GGC campus.

97. Defendant Lawler is sued both in her individual and official capacities.

98. Defendant Shenna Perry, is, and was at all times relevant to this Complaint, a Campus Safety/Security Officer for Campus Police at GGC.

99. As a law enforcement officer, Defendant Perry is charged with responsibility for enforcing GGC's policies and practices governing student expression taking place on public property at the College, including the policies challenged herein.

100. Defendant Perry enforced GGC's *Freedom of Expression Policy* against Mr. Uzuegbunam by stopping him from peacefully distributing religious literature and engaging interested students in conversation in an open, generally accessible area of campus outside the library.

101. Defendant Perry is sued both in her individual and official capacities.

FACTUAL BACKGROUND

102. GGC is a public college organized and existing under the laws of the State of Georgia and receives funding from the State of Georgia to operate.

103. The College's campus in Lawrenceville, Georgia is composed of various publicly-accessible buildings and outdoor areas, including streets, sidewalks, open-air quadrangles, and park-like lawns. Copies of two maps of the GGC campus are attached as Exhibit 1 to this Complaint. A Google Maps satellite view of GGC's campus is attached as Exhibit 2 to this Complaint.

104. GGC's campus is located on 260 acres, which is approximately 11,325,600 square feet.

105. GGC's campus has many suitable streets, sidewalks, open-air quadrangles and plazas, and park-like lawns where expressive activity will not interfere with or disturb the College's activities, its campus environment, or access to its buildings or sidewalks.

106. For all of the College's students—and especially for the many who live on campus—the College's campus is their town square where they socialize and engage in a variety of expressive activities.

I. DEFENDANTS' UNCONSTITUTIONAL POLICIES

A. DEFENDANTS' UNCONSTITUTIONAL SPEECH ZONE POLICY

107. The College regulates student expressive activity on campus through the *Freedom of Expression Policy* ("Speech Zone Policy"). A true and accurate copy of Defendants' Speech Zone Policy is attached as Exhibit 3 to this Complaint.

108. Defendants' Speech Zone Policy claims that GGC "is committed to providing a forum for free and open expression of divergent points of view by students [and] student organizations." Ex. 3 at 1.

109. But Defendants' Speech Zone Policy strictly curtails where students and student organizations may exercise their First Amendment rights in the outdoor areas of campus.

110. Defendants' Speech Zone Policy also gives GGC officials unbridled discretion over whether, when, and where students and student organizations may speak and express themselves in the outdoor areas of campus.

111. As detailed in subsequent paragraphs, Plaintiffs challenge, facially and as-applied, the provisions of Defendants' Speech Zone Policy that:

- Restrict student expression to two tiny areas of campus, *see* Ex. 3 at 2 (identifying "the concrete area/walkway between Student Housing and the Student Center or the concrete in front of the Food Court area, Building A as 'free speech expression areas'"); Ex. 3 at 4 (permitting literature distribution only "on a person-to-person basis in the free speech

expression areas designated above"); *see also infra* ¶¶ 113–25, 154–55;

- Allow student expression in those areas for only two to four hours per day during the week and close those areas to student expression entirely on the weekends, *see* Ex. 3 at 2 (opening the speech zones "from 11:00 a.m. to 1:00 p.m. and 5:30 p.m. to 7:30 p.m., Monday through Thursday, and 11:00 a.m. to 1:00 p.m. on Friday"); *see also infra* ¶¶ 114–16, 127–28, 131–32;
- Require students to get a permit to engage in expression in any other outdoor location on campus, *see* Ex. 3 at 2 ("On occasion upon written request, other areas . . . may be authorized. . . ."); *see also infra* ¶¶ 126, 128–30;
- Require students to get a permit to engage in expression at any time the speech zones are closed, *see* Ex. 3 at 2 ("On occasion upon written request, . . . other times may be authorized. . . ."); *see also infra* ¶¶ 127–28, 131–32;
- Grant Defendants unbridled discretion to decide on a case-by-case basis which students and student organizations may engage in expression outside the speech zones or during times the speech zones are closed *see* Ex. 3 at 2 ("On occasion upon written request, other areas and other times may be authorized. . . ."); *see also infra* ¶¶ 126–32;

- Grant Defendants unbridled discretion to modify the speech zones from time to time for different speakers, *see* Ex. 3 at 2 ("[T]he College reserves the right to modify the free speech areas based on the operational needs of the institution."); *see also infra* ¶¶ 133–35;
- Require students to seek permission to utilize the speech zones three days in advance, *see* Ex. 3 at 2 ("The designated free speech forms (PDF) must be completed and any publicity materials submitted to the Student Affairs official at least three (3) business days prior to the free expression speech, program, event or gathering in accordance with this policy."); *see also infra* ¶¶ 136–39;
- Grant Defendants unbridled discretion in deciding who may reserve the speech zones, *see* Ex. 3 at 2 ("A designated Student Affairs official is responsible for reservation scheduling and authorization of the free speech expression areas in order to accommodate all interested users."); *see also infra* ¶¶ 140–48;
- Require students to submit to College officials any written materials they want to distribute for review and grant College officials unbridled discretion in that review process, *see* Ex. 3 at 2 ("[A]ny publicity materials submitted to the Student Affairs official at least three (3) business days prior to the free expression speech, program, event or gathering

in accordance with this policy."); Ex. 3 at 3 ("All publicity materials must be submitted with the application form. . . . Upon authorization, copies of the application form and any publicity material shall be distributed to the campus Senior Associate Provost for Student Affairs, the Director of Public Services/Campus Police, the Office of Public Relations[,] the Dean of Students[,] and the applicant."); *see also infra* ¶¶ 149–53; and

- Prohibit a student from utilizing the speech zones again for thirty days after utilizing them once, even if no one else want to use them in the meantime, *see* Ex. 8 at 1 (specifying that "requests received within 30 days of the last date of use by an organization and/or individual will be declined"); *see also infra* ¶¶ 160–61.

112. Defendants' Speech Zone Policy states that it "is applicable to students, student organizations, faculty, staff and visitors." Ex. 3 at 1.

113. Defendants Speech Zone Policy designates two areas as "free speech expression areas," referred to hereafter as "speech zones."

114. The two speech zones are only open eighteen hours per week.

115. The two speech zones are "generally available from 11:00 a.m. to 1:00 p.m. and 5:30 p.m. to 7:30 p.m., Monday through Thursday, and 11:00 a.m. to 1:00 p.m. on Friday." Ex. 3 at 2.

116. According to Defendants' Speech Zone Policy, at all other times of the week, the two speech

zones cannot be used for expressive activities without a permit, though students and others may continue to access them.

117. The first of the two speech zones is "the concrete area/walkway between Student Housing and the Student Center." Ex. 3 at 2. This will be referred to hereafter as the Sidewalk Speech Zone.

118. The Sidewalk Speech Zone comprises approximately 11,718 square feet.

119. The Sidewalk Speech Zone occupies approximately 0.001% of the College's campus.

120. The Sidewalk Speech Zone does not include any of the expansive, grassy, park-like areas along either side of the sidewalk. True and accurate pictures of the Sidewalk Speech Zone and surrounding areas of campus are attached as Exhibit 4 to this Complaint.

121. The second of the two speech zones is "the concrete in front of the Food Court area, Building A." Ex. 3 at 2. This will be referred to hereafter as the Patio Speech Zone, as it encompasses the patio of the Food Court area.

122. The Patio Speech Zone comprises approximately 0.0004% of the College's campus.

123. The Patio Speech Zone does not include the sidewalks extending down either side of the Food Court area (*i.e.*, Building A). It includes only the patio area on the westernmost edge of this building. True and accurate pictures of the Patio Speech Zone and surrounding areas are attached as Exhibit 5 to this Complaint.

124. Altogether, the two speech zones set forth in Defendants' Speech Zone Policy comprise less than

0.0015% of the College's campus. A map of the GGC campus with the two speech zones highlighted in red is attached to this Complaint as Exhibit 6.

125. The 99.9985% of the College's campus that is not included in the "free speech expression areas" includes a variety of open, generally accessible, park-like areas where students naturally and freely congregate and where students' expressive activity would not disrupt College activities and functions (including classes). True and accurate pictures of some of these areas of campus that are off-limits to student speech are attached as Exhibit 7 to this Complaint.

126. If students wish to engage in expressive activities outside of the two tiny speech zones, they must first submit a written request to College officials and seek permission from those officials.

127. If students wish to engage in expressive activities outside of the few hours the two tiny speech zones are open, they must first submit a written request to College officials and seek permission from those officials.

128. Defendants' Speech Zone Policy states: "On occasion upon written request, other areas and other times may be authorized. . . ." Ex. 3 at 2.

129. Defendants' Speech Zone Policy contains no objective and comprehensive guidelines, standards, or criteria to limit the discretion of Defendants or other College officials in granting, denying, or modifying student requests to use areas outside of the two speech zones for expressive activities.

130. Upon information and belief, Defendants do not possess any policies that set forth objective or comprehensive guidelines, standards, or criteria to

limit the discretion of Defendants or other College officials in granting, denying, or modifying student requests to use areas outside of the two speech zones for expressive activities

131. Defendants' Speech Zone Policy contains no objective and comprehensive guidelines, standards, or criteria to limit the discretion of Defendants or other College officials in granting, denying, or modifying student requests to engage in expressive activities outside of the few hours that the two speech zones are open.

132. Upon information and belief, Defendants do not possess any policies that set forth objective or comprehensive guidelines, standards, or criteria to limit the discretion of Defendants or other College officials in granting, denying, or modifying student requests to engage in expressive activities outside of the few hours that the two speech zones are open.

133. According to Defendants' Speech Zone Policy, the "College reserves the right to modify the free speech areas based on the operational needs of the institution." Ex. 3 at 2.

134. Defendants' Speech Zone Policy contains no objective and comprehensive guidelines, standards, or criteria to limit how or when Defendants or other College officials may modify the two speech zones.

135. Upon information and belief, Defendants do not possess any policies that set forth objective or comprehensive guidelines, standards, or criteria to limit how or when Defendants or other College officials may modify the two speech zones.

136. If students wish to use the two speech zones for expressive activity, they must first submit a written request to College officials and receive permission

to use those zones.

137. Defendants' Speech Zone Policy outlines the "reservation procedures for use of free expression areas." Ex. 3 at 2 (capitalization altered).

138. Those reservation procedures specify that "[a]ll requests must follow the appropriate facility reservation process." Ex. 3 at 2.

139. The "appropriate facility reservation process" means that the "designated free speech forms (PDF) must be completed and any publicity materials must be attached and submitted to the Student Affairs official at least three (3) business days prior to the free expression speech, program, event or gathering in accordance with this policy." Ex. 3 at 2. A true and correct copy of the "designated free speech forms" is attached as Exhibit 8 to this Complaint.

140. According to Defendants' Speech Zone Policy, a "designated Student Affairs official is responsible for reservation schedule and authorization of the free speech expression areas." Ex. 3 at 2.

141. According to Defendants' Speech Zone Policy, this designated Student Affairs official is charged with reviewing requests to reserve the speech zones so as to "accommodate all interested users." Ex. 3 at 2.

142. Defendants' Speech Zone Policy contains no objective and comprehensive guidelines, standards, or criteria for this designated Student Affairs official to use when determining how to "accommodate all interested users."

143. Upon information and belief, Defendants do not possess any policies that set forth objective or comprehensive guidelines, standards, or criteria for this

designated Student Affairs official to use when determining how to "accommodate all interested users."

144. Defendants' Speech Zone Policy contains no objective and comprehensive guidelines, standards, or criteria that limit the discretion of this designated Student Affairs official in granting, denying, or modifying requests to reserve the speech zones.

145. Upon information and belief, Defendants do not possess any policies that set forth objective or comprehensive guidelines, standards, or criteria that limit the discretion of this designated Student Affairs official in granting, denying, or modifying requests to reserve the speech zones.

146. Defendants' Speech Zone Policy notes that College officials will limit student expression so that it does "not interfere with the operation of the College or the rights of others," and it lists fifteen considerations that all speakers "must meet" (two of which are challenged in this lawsuit). Ex. 3 at 3–5.

147. Defendants' Speech Zone Policy does not provide that these are the only reasons that reservation and permit requests may be denied, it does not guarantee that requests that satisfy these considerations will be granted, and it does not prohibit College officials from basing their decisions on other unspecified and unwritten considerations.

148. Thus, the Speech Zone Policy allows Defendants to deny a student's request for a reservation or permit even if it satisfied all fifteen considerations.

149. One of the fifteen considerations allows Defendants' to review the content and viewpoint of a student's expression.

150. According to the Policy, "[a]ll publicity materials must be submitted with the application form." Ex. 3 at 3.

151. If Defendants approve a student's request to engage in expressive activities, the Speech Zone Policy specifies that "copies of the application form and any publicity material shall be distributed to the campus Senior Associate Provost for Student Affairs, the Director of Public Services/Campus Policy, the Office of Public Relations[,] the Dean of Students[,] and the applicant." Ex. 3 at 3.

152. Defendants' Speech Zone Policy contains no objective and comprehensive guidelines, standards, or criteria to limit the discretion of Defendants or other College officials when evaluating the written materials submitted along with a request to utilize the speech zones.

153. Upon information and belief, Defendants do not possess any policies that set forth objective and comprehensive guidelines, standards, or criteria to limit the discretion of Defendants or other College officials when evaluating the written materials submitted along with a request to utilize the speech zones.

154. Another of the fifteen considerations makes it clear that students may only distribute literature in the two speech zones and only if they reserve those speech zones.

155. According to Defendants' Speech Zone Policy, "[n]on-commercial pamphlets, handbills, circulars, newspapers, magazines and other written materials may be distributed on a person-to-person basis in the free speech expression areas designated above, as long as the reservation procedures for use of the free

expression areas have been completed." Ex. 3 at 4.

156. Other than prohibiting the use of "microphones, bullhorns or any sound amplification device," Ex. 3 at 3, Defendants' Speech Zone Policy places no limits on the volume of student expression.

157. Defendants' Speech Zone Policy contains no deadlines or timetables in which College officials must respond to a permit or reservation request.

158. Defendants' Speech Zone Policy does not require the "designated Student Affairs official" to provide students the reason any request for a reservation or permit is denied.

159. If a student is displeased with the decision of the "designated Student Affairs official," Defendants' Speech Zone Policy allows the student to appeal that decision to the Dean of Students (*i.e.*, Defendant Jiminez), whose decision is final. Ex. 3 at 2.

160. Once a student has utilized a speech zone for expressive activity, Defendants prohibit him from using those zones again for at least thirty days, even if no one else has reserved the speech zones during that period of time.

161. According to Defendants' "Free Speech Area Request Form," "requests received within 30 days of the last date of use by an organization and/or individual will be declined." Ex. 8 at 1.

B. DEFENDANTS' UNCONSTITUTIONAL SPEECH CODE POLICY

162. Defendants' regulate student conduct through their *Student Handbook*. This document contains comprehensive student conduct guidelines that regulate the bounds of permissible speech and expression on campus, including GGC's *Student Code of*

Conduct. A true, correct, and complete copy of GGC's *Student Handbook 2016–2017*, which includes the *Student Code of Conduct* on pages 23–39, is attached as Exhibit 9 to this Complaint.

163. All students are required to comply with GGC's *Student Code of Conduct* both on and off campus.

164. GGC's *Student Code of Conduct* states that its conduct regulations shall apply to conduct that "occur[s] on GGC property or at GGC-sponsored or affiliated events, or otherwise violate GGC's student conduct policies at non-GGC sponsored events." Ex. 9 at 25.

165. GGC's *Student Code of Conduct* contains a list of actions that "are prohibited and constitute a violation of the Georgia Gwinnett College Student Code of Conduct." Ex. 9 at 25.

166. Any student who commits one of these violations exposes himself to disciplinary action.

167. GGC's *Student Code of Conduct* states that "[a]ny student, club or organization found to have committed a violation of these conduct regulations is subject to the sanctions outlined in this Code." Ex. 9 at 25.

168. GGC's *Student Code of Conduct* prohibits students from engaging in "disorderly conduct." Ex. 9 at 26.

169. The definition of "disorderly conduct" in GGC's *Student Code of Conduct* includes elements that prohibit or restrict expression that is protected by the First Amendment.

170. GGC's *Student Code of Conduct* defines "disorderly conduct" to include "behavior which disturbs the peace and/or comfort of person(s)." Ex. 9 at 26. This provision of GGC's *Student Code of Conduct*

will hereafter be referred to as Defendants' Speech Code or Defendants' Speech Code Policy, and Plaintiffs challenge this provision facially and as-applied.

171. Defendants' Speech Code contains no objective or comprehensive guidelines, standards, or criteria to limit the discretion of Defendants or other College officials when deciding whether specific expression "disturbs the peace and/or comfort of person(s)."

172. Upon information and belief, Defendants do not possess any policies that set forth objective or comprehensive guidelines, standards, or criteria to limit the discretion of Defendants or other College officials when deciding whether specific expression "disturbs the peace and/or comfort of person(s)."

173. Defendants' definition of "disorderly conduct," including their Speech Code, places no limits on the volume of student expression.

174. When enforcing their Speech Code, Defendants do not exempt expression protected by the First Amendment from disciplinary action.

175. According to GGC's *Student Code of Conduct*, Defendants merely "consider[ ]" students' First Amendment freedoms when "investigating and reviewing these types of alleged conduct violations." Ex. 9 at 27.

176. Defendants' Speech Code prohibits students, including Mr. Uzuegbunam and Mr. Bradford, from engaging in any expression that happens to offend, disturb, or discomfort anyone who witnesses it.

177. Students run the risk of disciplinary action—ranging from a reprimand to expulsion—if they engage in any form of expression that runs afoul of

Defendants' Speech Code. *See* Ex. 9 at 36.

178. As students, Mr. Uzuegbunam's and Mr. Bradford's expression are governed by Defendants' Speech Code both on and off campus.

179. Mr. Uzuegbunam and Mr. Bradford desire to engage in conversations and other expressive activities, both on and off campus, that cover a range of social, cultural, political, and/or religious topics that some might find offensive, disturbing, or discomforting.

180. Defendants have enforced their Speech Code against Mr. Uzuegbunam.

181. Defendants Hughes and Lawler enforced this Speech Code against Mr. Uzuegbunam when he was engaging in religious expression in the Patio Speech Zone, as discussed in more detail later.

182. Upon information and belief, Defendants Hughes and Lawler enforced the Speech Code at the direction of Defendants Dowell and Schneider.

183. Mr. Uzuegbunam fears that his expression will expose him to further enforcement and disciplinary actions due to Defendants' Speech Code.

184. Being aware of Defendants' Speech Code and knowing how Defendants enforced it against Mr. Uzuegbunam, Mr. Bradford fears that the expression in which he desires to engage would expose him to enforcement and disciplinary actions under that Speech Code, and therefore, he has not spoken in these ways as not to violate the policies even though he immediately wishes to do so.

C. DEFENDANTS' STUDENT CODE OF CONDUCT

185. It is GGC's policy and practice to enforce its Speech Zone Policy against its students.

186. Defendants implement and enforce their Speech Zone Policy in part through GGC's *Student Code of Conduct*.

187. It is GGC's policy that any student who fails to comply with its regulations and guidelines regarding student expression violates the *Student Code of Conduct*.

188. As detailed in subsequent paragraphs, Plaintiffs challenge, facially and as-applied, the provisions of GGC's *Student Code of Conduct* that implement Defendants' Speech Zone policy, namely the provisions that:

- Prohibit students from distributing literature on campus without first getting permission from College officials, *see* Ex. 9 at 26 (defining "disorderly conduct" to include "[c]irculating any advertising media without approval from proper College officials or in a manner that violates or is contrary to the policies of Georgia Gwinnett College."); *see also infra* ¶¶ 189–91, 195–96; and
- Prohibit students from using the open, generally accessible areas of the campus for peaceful expression without first getting authorization from College officials, *see* Ex. 9 at 29 (prohibiting students from "[m]aking or attempting to make unauthorized use of College facilities."); *see also infra* ¶¶ 192–94, 196.

189. GGC's *Student Code of Conduct* also defines "disorderly conduct" to include "[c]irculating any advertising media without approval from proper College

officials or in a manner that violates or is contrary to the policies of Georgia Gwinnett College." Ex. 9 at 26.

190. When enforcing this provision of the *Student Code of Conduct*, Defendants do not exempt expression protected by the First Amendment from disciplinary action.

191. According to GGC's *Student Code of Conduct*, Defendants merely "consider[ ]" students' First Amendment freedoms when "investigating and reviewing these types of alleged conduct violations." Ex. 9 at 27.

192. Another of the "violations" of GGC's *Student Code of Conduct* is "[m]aking or attempting to make unauthorized use of College facilities." Ex. 9 at 29. Plaintiffs challenge this provision as it applies to student expression in the outdoor, generally accessible areas of campus.

193. It is GGC's policy—as expressed in the *Student Code of Conduct*—that students who engage in expressive activities outside of the two speech zones have violated the provision of the *Student Code of Conduct* that prohibits "making or attempting to make unauthorized use of College facilities."

194. It is GGC's policy—as expressed in the *Student Code of Conduct*—that students who engage in expressive activities without reserving one of the two speech zones have violated the provision of the *Student Code of Conduct* that prohibits "making or attempting to make unauthorized use of College facilities."

195. It is GGC's policy—as expressed in the *Student Code of Conduct*—that students who distribute written materials on campus without first submitting

them to College officials and obtaining a permit violate the provision of the *Student Code of Conduct* that prohibits "[c]irculating any advertising media without approval from proper College officials or in a manner that violates or is contrary to the policies of Georgia Gwinnett College."

196. Students who violate GGC's *Student Code of Conduct* expose themselves to a variety of disciplinary sanctions, ranging from a reprimand to possible expulsion. *See* Ex. 9 at 36.

II. DEFENDANTS' REFUSAL TO CHANGE THEIR UNCONSTITUTIONAL SPEECH ZONE POLICY

197. On June 28, 2013, Plaintiffs' counsel sent an informational letter to GGC officials, informing them that the College maintained and enforced policies that violated the First Amendment rights of its students. A true and correct copy of this letter is attached as Exhibit 10 to this Complaint.

198. One of the two policies highlighted in the letter Plaintiffs' counsel sent to GGC officials was Defendants' Speech Zone Policy.

199. Plaintiffs' counsel explained at significant length the constitutional infirmities of Defendants' Speech Zone Policy.

200. Plaintiffs' counsel offered to assist GGC officials in revising Defendants' Speech Zone Policy so that it would comply with the First Amendment in the hopes that "no need for litigation to protect student expression will arise." Ex. 10 at 4.

201. None of the GGC officials addressed on this letter, including GGC's president and general counsel, ever responded to this letter.

202. In the more than three years since Plaintiffs' counsel sent that letter, none of the Defendants have taken any steps to revise their Speech Zone Policy to protect and respect the First Amendment rights of their students.

203. In the more than three years since Plaintiffs' counsel sent that letter, Defendants have maintained and enforced their Speech Zone Policy to limit and curtail student expression on campus.

III. DEFENDANTS' UNCONSTITUTIONAL SILENCING OF PLAINTIFFS

A. DEFENDANTS RESTRICT LITERATURE DISTRIBUTION & CONVERSATIONS

204. In late July 2016, Mr. Uzuegbunam decided that he needed to inform his fellow students and other passersby of their need for salvation through Jesus Christ by distributing religious literature in the open, outdoor areas of the GGC campus.

205. Mr. Uzuegbunam desired to communicate his religious views to his fellow classmates and instructors at GGC because of his sincerely held religious beliefs and because he practices his religion by doing so.

206. To communicate his views, Mr. Uzuegbunam stood in the expansive concrete plaza just outside the library and distributed religious literature to the passing students and other individuals who were willing to accept it.

207. Mr. Uzuegbunam also engaged willing students and other passing individuals in conversation, explaining to them that they could find salvation only through Jesus Christ.

208. Mr. Uzuegbunam was careful to stand in an area of the plaza that would not block the entrances and exits of any buildings, block pedestrian traffic, or create any congestion. He stood over forty feet away from the entrance to the library.

209. Mr. Uzuegbunam chose to utilize this plaza because it is a central location on GGC's campus near the library, and thus, it is a hub of student pedestrian traffic.

210. Students commonly walk through this plaza and speak to one another, often stopping friends and classmates passing through to speak to them about their classes, extracurricular activities, and any number of other topics of conversation.

211. Students also frequently utilize this plaza to play music while they sit on the benches provided in this area. This music is played using amplification, and often at a high volume.

212. When Mr. Uzuegbunam was distributing his literature, he was not engaging in any form of expression that would have disturbed anyone inside the library, as he was speaking in nothing louder than an average, conversational tone of voice.

213. When Mr. Uzuegbunam was distributing his religious literature, he did not force his literature on anyone who was unwilling to take it, harass those who were not interested, or chase anyone down so that they would take it.

214. When Mr. Uzuegbunam was engaging people in conversation, he did not force anyone to participate in a conversation, berate those who were not interested in conversing, or denigrate those who disagreed with him.

215. A short time after Mr. Uzuegbunam began his expressive activities, Defendant Perry stopped him.

216. Defendant Perry explained that Mr. Uzuegbunam was not allowed to distribute religious literature at that location.

217. Defendant Perry instructed Mr. Uzuegbunam to come inside the library and speak with Defendant Downey to learn more about the limits on his expressive activities.

218. Mr. Uzuegbunam complied with Defendant Perry's instructions and sought out Defendant Downey.

219. Defendant Downey confirmed Defendant Perry's statement that Mr. Uzuegbunam could not distribute religious literature outside the library.

220. Defendant Downey explained that Mr. Uzuegbunam could not distribute any written materials outside of GGC's two speech zones.

221. During this conversation, Defendant Downey pulled up Defendants' Speech Zone Policy on the computer and explained it to Mr. Uzuegbunam.

222. In the process, Defendant Downey made it clear that Mr. Uzuegbunam's expressive activities violated Defendants' Speech Zone Policy and that he was stopped from continuing those activities because of Defendants' Speech Zone Policy.

223. Defendant Downey instructed Mr. Uzuegbunam that he could get further information about Defendants' Speech Zone Policy and the restrictions on his expression by going to the Office of Student Integrity.

224. Shortly after this conversation, Mr. Uzuegbunam and an acquaintance visited the Office of Student Integrity and spoke with Defendant Dowell.

225. Mr. Uzuegbunam recounted how Defendants Perry and Downey had stopped him from distributing religious literature outside the library.

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

227. Defendant Dowell explained that religious literature constitutes "written materials" under Defendants' Speech Zone Policy.

228. Defendant Dowell explained that, due to Defendants' Speech Zone Policy, Mr. Uzuegbunam must reserve one of the speech zones before he can distribute any religious literature.

229. In saying this, Defendant Dowell referenced and enforced the provision of Defendants' Speech Zone Policy that reads: "Non-commercial pamphlets, handbills, circulars, newspapers, magazines and other written materials may be distributed on a person-to-person basis in the free speech expression areas designated above, as long as the reservation procedures for use of the free expression areas have been completed." Ex. 3 at 4.

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

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

232. Defendant Dowell also explained that Mr. Uzuegbunam would have to reserve one of the two speech zones before engaging in any such religious conversations on the GGC campus.

233. In saying this, Defendant Dowell was enforcing Defendants' Speech Zone Policy against Mr. Uzuegbunam.

234. At the end of this conversation, Mr. Uzuegbunam and his acquaintance thanked Defendant Dowell for her information and left the office.

235. After all of these conversations, Mr. Uzuegbunam stopped trying to distribute literature and engage people in conversations outside the library for fear that he would be disciplined for violating Defendants' Speech Zone Policy and the analogous provisions of the *Student Code of Conduct*.

236. If it were not for Defendants' Speech Zone Policy, the analogous provisions of the *Student Code of Conduct*, and Defendants' actions enforcing these policies, Mr. Uzuegbunam would continue his expressive activities outside the library.

237. If it were not for Defendants' Speech Zone Policy, the analogous provisions of the *Student Code of Conduct*, and Defendants' actions enforcing these policies, Mr. Bradford would immediately engage in similar expressive activities outside the library.

B. DEFENDANTS RESTRICT OPEN-AIR SPEAKING

238. In August 2016, Mr. Uzuegbunam again decided that he needed to inform his fellow students and other passersby of their need for salvation through Jesus Christ by expressing these religious beliefs on campus through open-air speaking.

239. Mr. Uzuegbunam desired to communicate his religious views to his fellow classmates and instructors at GGC, as well as other passersby, because of his sincerely-held religious beliefs and because he practices his religion by doing so.

240. After having his efforts to distribute religious literature outside the library thwarted, Mr. Uzuegbunam sought to reserve a speech zone in order to share his religious beliefs.

241. On or about August 22, 2016, Mr. Uzuegbunam visited the Office of Student Integrity to reserve the speech zones.

242. The official at the front desk, Mrs. Charlisa Powell Hall, asked Mr. Uzuegbunam to indicate which days he wanted to reserve the speech zone and which speech zone he wanted to reserve.

243. Mr. Uzuegbunam reserved the Patio Speech Zone for August 25, 2016; September 8, 2016; and September 22, 2016.

244. During the conversation, Mr. Uzuegbunam explained that he wanted to use the Patio Speech Zone to share his religious beliefs with the people congregated in that area.

245. During the conversation, Mr. Uzuegbunam explained that he was not acting as a member of a student organization but that one to three people would accompany him as he shared his religious beliefs in the Patio Speech Zone.

246. Mr. Uzuegbunam completed Defendants' "Free Speech Area Request Form," attached copies of two tracts he intended to distribute, and submitted the form to Mrs. Hall. A true and correct copy of the "Free

Speech Area Request Form" that Mr. Uzuegbunam completed is attached as Exhibit 11 to this Complaint.

247. Mrs. Hall stapled the two tracts to the form Mr. Uzuegbunam submitted, approved his request, and signed the form confirming his reservation of the Patio Speech Zone.

248. On August 25, 2016, Mr. Uzuegbunam went to the Patio Speech Zone to communicate his religious views by speaking publicly and distributing religious literature.

249. The Patio Speech Zone is the patio area outside the Food Court, with tables and benches distributed at various points where students routinely congregate to eat and socialize. *See* Ex. 5 (picturing the area).

250. Mr. Uzuegbunam was careful to stand in an area of the Patio Speech Zone that did not block the entrances and exits to the building, block pedestrian traffic, or create any congestion.

251. Mr. Uzuegbunam stood on a small stool and began publicly speaking about the Gospel to the students and other individuals in the Patio Speech Zone at that time.

252. Mr. Uzuegbunam was accompanied by a friend.

253. Mr. Uzuegbunam's friend prayed and distributed religious literature while Mr. Uzuegbunam shared his religious beliefs.

254. Mr. Uzuegbunam chose to utilize the Patio Speech Zone because Defendants require him to use a speech zone.

255. When Mr. Uzuegbunam began to speak, many students were lingering in the Patio Speech

Zone, eating, studying, or visiting with each other on the tables in the area.

256. When Mr. Uzuegbunam spoke in the Patio Speech Zone, he did not carry signs or utilize amplification. He merely spoke loud enough to be heard, using his unaided voice, for about fifteen or twenty minutes to the students congregated in the area at the time.

257. When Mr. Uzuegbunam spoke in the Patio Speech Zone, he did not utilize inflammatory rhetoric or personally attack any individual.

258. Mr. Uzuegbunam began by discussing the brevity of life and how all men and women have fallen short of God's commands. He continued by explaining how Jesus Christ had come to earth to die on the cross and rise again from the dead in order to provide men and women the only means of obtaining salvation and eternal life. He also explained how this gift of eternal life is available to all by God's grace and that it is the only way to avoid the penalty for our sins.

259. After Mr. Uzuegbunam had been speaking for about twenty minutes, Defendant Hughes drove up and approached him, asking him to stop speaking so that the two of them could talk.

260. Mr. Uzuegbunam immediately complied with Defendant Hughes' instructions.

261. Defendant Hughes explained that he had come to the scene because "we just got some calls on you" and asked what Mr. Uzuegbunam was doing.

262. Mr. Uzuegbunam explained that he was "preaching the love of Christ" and that he had reserved the Patio Speech Zone for this purpose with the Office of Student Integrity.

263. After asking Mr. Uzuegbunam to provide his first and last names, Defendant Hughes asked Mr. Uzuegbunam to produce his student identification card.

264. Mr. Uzuegbunam complied with Defendant Hughes' instructions.

265. Defendant Hughes took this information and returned to his patrol vehicle.

266. While in his patrol vehicle, Defendant Hughes called the Office of Student Integrity and spoke with an official there.

267. Upon information and belief, the official at the Office of Student Integrity who spoke with Defendant Hughes either was Defendant Dowell or acted at the direction of Defendant Dowell.

268. Approximately ten minutes later, Defendant Hughes returned and informed Mr. Uzuegbunam that he could not speak publicly in the Patio Speech Zone.

269. As he returned, Defendant Hughes was accompanied by Defendant Lawler.

270. Defendant Hughes explained that the Office of Student Integrity claimed that Mr. Uzuegbunam had only reserved the Patio Speech Zone in order to distribute literature and have one-on-one conversations with individuals.

271. Defendant Hughes also told Mr. Uzuegbunam that the only reason Defendant Hughes interrupted Mr. Uzuegbunam's open-air speaking was because GGC officials had received calls from people complaining about his expression.

272. Defendant Hughes instructed Mr. Uzuegbunam to stop speaking publicly and to restrict his expressive activities to distributing literature and

having one-on-one conversations with individuals.

273. Mr. Uzuegbunam explained that he had clearly informed the Office of Student Integrity that he was reserving the Patio Speech Zone in order to share his religious beliefs with the people congregated there.

274. Defendant Hughes responded by reiterating what the Office of Student Integrity had told him.

275. Because Mr. Uzuegbunam had allegedly reserved the Patio Speech Zone for select forms of expression (*i.e.,* literature distribution and one-on-one conversations), Defendant Hughes declared that he could not use it for another, closely related form of expression (*i.e.*, open-air speaking) because he had not obtained permission to conduct that additional mode of expression.

276. Defendant Hughes stated that Mr. Uzuegbunam's right to free speech in the Patio Speech Zone was limited to having conversations with people and distributing literature and that it did not include the right to engage in some form of open-air, public address.

277. Defendant Hughes stated that Mr. Uzuegbunam's speaking in the Patio Speech Zone constituted "disorderly conduct" because it was disturbing the peace and tranquility of individuals who were congregating in that area.

278. Defendant Hughes stated that Mr. Uzuegbunam's speaking was disturbing the peace and tranquility of individuals who were congregating in that area because it had generated complaints.

279. In saying this, Defendant Hughes enforced Defendants' Speech Code against Mr. Uzuegbunam.

280. Defendant Hughes instructed Mr. Uzuegbunam to go back to the Office of Student Integrity and clarify whether he could use the Patio Speech Zone for open-air speaking.

281. Defendant Hughes also stated that he anticipated receiving additional complaints about Mr. Uzuegbunam's open-air speaking.

282. Defendant Hughes stated that if Mr. Uzuegbunam continued speaking publicly in the Patio Speech Zone, he could face discipline under the *Student Code of Conduct*, particularly if GGC officials received additional complaints about his speaking.

283. Defendant Hughes stated that if Mr. Uzuegbunam's friend started speaking publicly in the Patio Speech Zone, he could be prosecuted for "disorderly conduct."

284. Defendant Hughes instructed Mr. Uzuegbunam and his friend to "respect the community" by ceasing any efforts to share their religious beliefs through open-air speaking in the Patio Speech Zone.

285. Mr. Uzuegbunam noted that GGC has allowed other events and speakers to use amplified sound, both inside and outside the speech zones, without interference. Many of these speakers and events have used offensive language (including the broadcasting of vulgar, lewd, and obscene music using amplification), but were still allowed to continue expressing their message.

286. Defendant Hughes responded by saying that Mr. Uzuegbunam had an obligation to comply with GGC policies, but did not identify any policies that Mr. Uzuegbunam had allegedly violated.

287. At this point, Defendant Lawler also stated that Mr. Uzuegbunam's open-air speaking in the Patio Speech Zone constituted disorderly conduct.

288. Defendant Lawler stated that Mr. Uzuegbunam's open-air speaking in the Patio Speech Zone would constitute "disorderly conduct" because it was disturbing people's peace and tranquility, as shown by the complaints GGC officials received.

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

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

291. In saying this, Defendant Lawler enforced Defendants' Speech Code against Mr. Uzuegbunam.

292. Defendant Hughes then instructed Mr. Uzuegbunam that he should cease speaking publicly in the Patio Speech Zone because it was not an effective method of communicating his message.

293. Defendant Hughes noted that members of the Church of Jesus Christ of Latter-Day Saints ("LDS") regularly visit the GGC campus and get approval to express their religious views on campus.

294. Defendant Hughes noted that members of the LDS church spread their religious views through one-on-one conversations, not through open-air speaking.

295. Defendant Hughes stated that Mr. Uzuegbunam should communicate his religious views using

the same methods that members of the LDS Church uses, rather than through speaking publicly.

296. Defendant Hughes observed that GGC officials do not receive complaints about the activities of members of the LDS Church when they express their religious viewpoints.

297. Defendant Hughes summarized the conversation by ordering Mr. Uzuegbunam to stop speaking publicly and to go back to the Office of Student Integrity to get permission to resume speaking publicly.

298. Defendant Hughes reiterated that if Mr. Uzuegbunam ignored these instructions, he could be disciplined under the *Student Code of Conduct* and other GGC policies.

299. Defendant Hughes also reiterated that if Mr. Uzuegbunam did not want to return to the Office of Student Integrity, he needed to confine his expressive activities to literature distribution and one-on-one conversations.

300. Mr. Uzuegbunam questioned whether returning to the Office of Student Integrity would serve any purpose because even if that office authorized him to speak publicly, people could still call with complaints, which would prompt further interference from Defendant Hughes, Defendant Lawler, and their colleagues.

301. Defendant Hughes responded by saying that he did not think open-air speaking would be approved in the Patio Speech Zone "because it disturbs people."

302. Defendant Hughes concluded the conversation by stating again that Mr. Uzuegbunam's speech would qualify as "disorderly conduct" and by ordering him again to stop speaking publicly and to revert to

literature distribution and one-on-one conversations.

303. After Defendant Hughes left, Mr. Uzuegbunam and his friend left the Patio Speech Zone.

304. After leaving the Patio Speech Zone, Mr. Uzuegbunam went to the Office of Student Integrity and spoke with Defendant Dowell.

305. During the conversation, Defendant Dowell stated that it is a violation of GGC policy for anyone to express a "fire and brimstone message" on campus, even within the speech zones.

306. Upon information and belief, this prohibition on "fire and brimstone messages" would also prohibit students from conveying such messages, however they might be defined, to fellow students in private, one-on-one conversations.

307. Mr. Uzuegbunam has frequently observed a percussion group that plays its drums and other instruments very loudly, especially as it utilizes amplification, approximately once a week outside Building B on campus.

308. Building B is not within either of the two speech zones on campus.

309. During his conversation with Defendant Dowell, Mr. Uzuegbunam referenced this percussion group and how it was permitted to perform without hindrance from GGC.

310. Defendant Dowell responded by saying that the percussion group was "definitely in the wrong" and should not have been performing.

311. Upon information and belief, when Defendant Dowell said that the percussion group was "definitely in the wrong," it was because the group did not

obtain a permit before engaging in these expressive activities, because the group was using amplification, or both.

312. Upon information and belief, no GGC official has ever interrupted this percussion group or required it to stop performing its music, even though it is outside of the two speech zones and uses amplification.

313. Mr. Uzuegbunam has frequently observed representatives of the LDS church distribute literature, engage students in conversation about their religious beliefs, and conduct other forms of religious expression, both inside and outside the speech zones.

314. Upon information and belief, these representatives of the LDS church did not obtain a permit before engaging in some or all of these expressive activities.

315. Upon information and belief, no GGC official has ever required these representatives of the LDS church to stop their religious expression, even when it was outside of the two speech zones.

C. Impact of Defendants' Policies & Actions on Plaintiffs

316. Since Defendants stopped Mr. Uzuegbunam from distributing literature outside of the speech zones in July 2016, Mr. Uzuegbunam and Mr. Bradford have not attempted to speak publicly in any open, outdoor, generally accessible areas of campus that are outside of the two speech zones.

317. Since Defendants stopped Mr. Uzuegbunam from distributing literature outside of the speech zones in July 2016, Mr. Uzuegbunam and Mr. Bradford have curtailed, restricted, and limited any efforts to share religious literature with fellow students in

any open, outdoor, generally accessible areas of campus that are outside of the two speech zones.

318. Since Defendants Hughes and Lawler stopped Mr. Uzuegbunam from speaking publicly in the Patio Speech Zone, Mr. Uzuegbunam and Mr. Bradford have not attempted to engage in open-air speaking or other expressive activities in the speech zones.

319. Mr. Uzuegbunam and Mr. Bradford desire to resume freely using open, outdoor, generally accessible areas of the GGC campus that are outside of the two tiny speech zones for expressive activities, including literature distribution, at the earliest opportunity.

320. Mr. Uzuegbunam desires to resume his open-air speaking both in the speech zones and in other open, outdoor, generally accessible areas of the GGC campus at the earliest opportunity.

321. Mr. Bradford desires to engage in open-air speaking both in the speech zones and in other open, outdoor, generally accessible areas of the GGC campus at the earliest opportunity.

322. Mr. Uzuegbunam would like to continue speaking publicly not only in the speech zones, but also in other open, outdoor areas of campus that are generally open to students.

323. Mr. Bradford would like to speak publicly not only in the speech zones, but also in other open, outdoor areas of campus that are generally open to students.

324. Mr. Uzuegbunam and Mr. Bradford would like to use the open, outdoor, generally accessible areas of campus for expressive activities, even at times when the two tiny speech zones are closed.

325. For example, Mr. Uzuegbunam and Mr. Bradford would like to speak to different groups of students by conducting expressive activities in the open, outdoor, generally accessible areas of campus, including the following:

- The expansive lawns and green space bordered by Buildings B, the Student Center (*i.e.*, Building E), the library (*i.e.*, Building L);
- The patios and green spaces just north of Building H;
- The sidewalks and pedestrian pathways between the library (*i.e.*, Building L) and the Food Court (*i.e.*, Building A);
- The lawns and between Buildings B and C; and
- The lawns to the east of Building B.

See Exs. 1–2, 6–7.

326. Each of these locations is outside of the speech zones set forth in Defendants' Speech Zone Policy.

327. Mr. Uzuegbunam and Mr. Bradford desire to engage in peaceful expressive activities on campus—including public oral communication—without first seeking permission to do so from GGC three days in advance and without agreeing to limit their activities to the speech zones or methods of communication that GGC officials specify, but they have not done so for fear of punishment.

328. Mr. Uzuegbunam and Mr. Bradford desire to engage in peaceful literature distribution without first seeking permission to do so from GGC three days

in advance and without agreeing to limit their activities to the speech zones GGC officials specify, but they have limited these activities for fear of punishment.

329. Since July 2016, Mr. Uzuegbunam has not attempted to speak publicly in the open, outdoor, generally accessible areas of the GGC campus that are outside of the two speech zones because GGC policies prohibit these activities and because numerous GGC officials, including Defendants, have enforced those policies against him. Thus, he would risk disciplinary action if he were to engage in such activities in those locations.

330. Likewise, Mr. Bradford has not attempted to speak publicly in the open, outdoor, generally accessible areas of the GGC campus that are outside of the two speech zones because he is aware that Defendants' policies prohibit these activities and that numerous GGC officials, including Defendants, have enforced these policies. Thus, he would risk disciplinary action if he were to engage in such activities in those locations.

331. Since July 2016, Mr. Uzuegbunam has greatly curtailed, restricted, and limited his efforts to engage in other expressive activities (especially literature distribution) in the open, outdoor, generally accessible areas of the GGC campus that are outside of the two speech zones because GGC policies prohibit these activities and because numerous GGC officials, including Defendants, have enforced those policies against him. Thus, he would risk disciplinary action, including possible expulsion, if he were to engage in such activities in those locations.

332. Likewise, Mr. Bradford has curtailed, restricted, and limited his efforts to engage in other expressive activities (especially literature distribution) in the open, outdoor, generally accessible areas of the GGC campus that are outside of the two speech zones because he is aware that Defendants' policies prohibit these activities and that numerous GGC officials, including Defendants, have enforced these policies. Thus, he would risk disciplinary action, including possible expulsion, if he were to engage in such activities in those locations.

333. Since approximately August 25, 2016, Mr. Uzuegbunam has not attempted to speak publicly inside the speech zones because GGC policies prohibit these activities if someone in the area happens to complain and because numerous GGC officials, including Defendants, have enforced those policies against him. Thus, he would risk disciplinary action if he were to engage in such expression in those speech zones.

334. Likewise, Mr. Bradford has not attempted to speak publicly inside the speech zones because he is aware that Defendants' policies prohibit these activities if someone in the area happens to complain and that numerous GGC officials, including Defendants, have enforced these policies. Thus, he would risk disciplinary action if he were to engage in such expression in those speech zones.

335. Since July 2016, Mr. Uzuegbunam has greatly curtailed, restricted, and limited any efforts to engage in any form of spontaneous expressive activities because GGC policies state that he would expose himself to disciplinary action, including possible expulsion, if he engaged in these activities without requesting permission three days in advance from GGC

officials and without obtaining that permission.

336. Likewise, Mr. Bradford has curtailed, restricted, and limited any efforts to engage in any form of spontaneous expressive activities because GGC policies state that he would expose himself to disciplinary action, including possible expulsion, if he engaged in these activities without requesting permission three days in advance from GGC officials and without obtaining that permission.

337. Defendants' Speech Code and their enforcement of it against Mr. Uzuegbunam burdens Mr. Uzuegbunam's and Mr. Bradford's free speech because they are prohibited from saying anything that might offend, disturb, or discomfort anyone who happens to hear them lest they be punished for "disorderly conduct."

338. Defendants' Speech Zone Policy, related provisions of GGC's *Student Code of Conduct*, and their enforcement of these policies against Mr. Uzuegbunam burdens Mr. Uzuegbunam's and Mr. Bradford's speech for multiple reasons.

339. Mr. Uzuegbunam and Mr. Bradford want to speak publicly, discuss religious issues, and distribute religious literature while they stand on public ways and open areas on GGC's campus without first having to obtain permission from GGC officials and without having to confine their activities to one of two speech zones.

340. Mr. Uzuegbunam's and Mr. Bradford's speech is further frustrated because they cannot speak publicly or distribute literature at GGC until they first request permission from GGC officials three days in advance, restrict their activities to the speech

zone, and comply with any other restrictions GGC officials impose.

341. The permit requirement, in and of itself, is unduly burdensome as it requires three days advanced notice for processing.

342. If Mr. Uzuegbunam or Mr. Bradford learns of breaking news and wants to share his views about that news with fellow students by speaking publicly, engaging interested passersby in conversations, or distributing literature outside the two speech zones, Defendants' Speech Zone Policy prohibits him from doing so.

343. It is repugnant to Mr. Uzuegbunam and Mr. Bradford that they, as individual citizens and students at a public college, must notify the government in order to speak on campus when either of them feels convicted by his religious faith to speak and distribute literature on campus.

344. Mr. Uzuegbunam and Mr. Bradford also like to spread their message about their faith as it relates to current events.

345. Mr. Uzuegbunam, Mr. Bradford, and all students at GGC require the ability to speak spontaneously in reaction to news. And yet, Defendants' Speech Zone Policy and the related provisions of GGC's *Student Code of Conduct* prohibit such spontaneous speech because they force Mr. Uzuegbunam and Mr. Bradford to obtain a permit prior to engaging in expressive activities and to request that permit three days in advance.

346. Mr. Uzuegbunam and Mr. Bradford are bound to comply with the terms of Defendants' Speech Zone Policy and GGC's *Student Code of Conduct* at all

times on campus, in part because it is incorporated into GGC's *Student Code of Conduct*.

347. Mr. Uzuegbunam and Mr. Bradford are not engaging in any public speaking or other forms of public address in the open, outdoor, generally accessible areas of campus that are outside of the two speech zones due to Defendants' Speech Zone Policy, the related provisions of GGC's *Student Code of Conduct*, Defendants' enforcement of those policies against Mr. Uzuegbunam, and the accompanying threat of punishment under GGC's *Student Code of Conduct*.

348. Mr. Uzuegbunam and Mr. Bradford have curtailed, restricted, and limited their efforts to engage in any literature distribution in the open, outdoor, generally accessible areas of campus that are outside of the two speech zones due to Defendants' Speech Zone Policy, the related provisions of GGC's *Student Code of Conduct*, Defendants' enforcement of those policies against Mr. Uzuegbunam, and the accompanying threat of punishment under GGC's *Student Code of Conduct*.

349. Mr. Uzuegbunam and Mr. Bradford are not engaging in open-air speaking or publicly discussing religious topics inside the speech zones due to Defendants' Speech Code, Defendants' enforcement of that policy against Mr. Uzuegbunam, and the accompanying threat of punishment under GGC's *Student Code of Conduct*.

350. Mr. Uzuegbunam and Mr. Bradford are not engaging in open-air speaking or publicly discussing religious topics outside the speech zones due to Defendants' Speech Code, Defendants' enforcement of that policy against Mr. Uzuegbunam, and the accompanying threat of punishment under GGC's *Student*

Code of Conduct.

351. Mr. Uzuegbunam and Mr. Bradford are chilled in their ability to engage in expressive activities outside of the two speech zones due to Defendants' Speech Zone Policy, the related provisions of GGC's *Student Code of Conduct*, Defendants' enforcement of those policies against Mr. Uzuegbunam, and the accompanying threat of punishment under GGC's *Student Code of Conduct*.

352. Mr. Uzuegbunam and Mr. Bradford are chilled in their ability to speak publicly and discuss religious topics on campus that might offend, disturb, or discomfort any listener due to Defendants' Speech Code, Defendants' enforcement of that policy against Mr. Uzuegbunam, and the accompanying threat of punishment under GGC's *Student Code of Conduct*.

353. Due to the restrictions imposed by Defendants' Speech Zone and Speech Code and their enforcement of these policies, Mr. Uzuegbunam and Mr. Bradford lack an alternative means of communicating their religious beliefs with the students, faculty, and other members of the GGC community that they desire to reach.

354. If not for Defendants' Speech Zone Policy, the related provisions of GGC's *Student Code of Conduct*, and the actions of Defendants, Mr. Uzuegbunam and Mr. Bradford would immediately go to the open, outdoor areas of the GGC campus and engage in expressive activities like public speaking and discussing religious topics with fellow students and passersby.

355. If not for Defendants' Speech Zone Policy, the related provisions of GGC's *Student Code of Conduct*, and the actions of Defendants, Mr. Uzuegbunam

and Mr. Bradford would immediately stop curtailing, restricting, and limiting their efforts to distribute literature to fellow students and passersby in the open, outdoor areas of the GGC campus.

356. Mr. Uzuegbunam and Mr. Bradford refrain for fear of punishment under Defendants' Speech Zone Policy and the related provisions of GGC's *Student Code of Conduct*.

357. If not for Defendants' Speech Code and the actions of Defendants, Mr. Uzuegbunam and Mr. Bradford would immediately go to the open, outdoor areas of the GGC campus and engage in expressive activities like public speaking and discussing religious topics with fellow students and passersby.

358. Mr. Uzuegbunam and Mr. Bradford refrain for fear of punishment under Defendants' Speech Code and the related provisions of GGC's *Student Code of Conduct*.

359. The fear of arrest or punishment severely limits Mr. Uzuegbunam's and Mr. Bradford's constitutionally-protected expression on campus.

ALLEGATIONS OF LAW

360. At all times relevant to this Complaint, each and all of the acts alleged herein were attributed to the Defendants who acted under color of a statute, regulation, custom, or usage of the State of Georgia.

361. Defendants knew or should have known that by disallowing Mr. Uzuegbunam's expressive activity on campus without him obtaining prior permission, by limiting his expression to two tiny speech zones, and by prohibiting him from speaking publicly because some people complained, Defendants violated his constitutional rights.

362. Defendants knew or should have known that by disallowing Mr. Uzuegbunam's expressive activity on campus because some people complained about it, Defendants violated his constitutional rights.

363. The policies and practices that led to the violation of Mr. Uzuegbunam's and Mr. Bradford's constitutional rights remain in full force and effect.

364. Mr. Uzuegbunam and Mr. Bradford are suffering irreparable harm from the policies and practices of Defendants which cannot be fully compensated by an award of money damages.

365. Mr. Uzuegbunam and Mr. Bradford have no adequate or speedy remedy at law to correct or redress the deprivation of their rights by Defendants.

366. Defendants' actions and policies, as set forth above, do not serve any legitimate or compelling state interest.

367. Defendants have deprived, and continue to deprive, Mr. Uzuegbunam and Mr. Bradford of their clearly established rights under the United States Constitution, as set forth in the causes of action below.

368. Unless the policies and conduct of Defendants are enjoined, Mr. Uzuegbunam and Mr. Bradford will continue to suffer irreparable injury.

369. Pursuant to 42 U.S.C. §§ 1983 and 1988, Mr. Uzuegbunam and Mr. Bradford are entitled to appropriate relief invalidating Defendants' Speech Zone and Speech Code Policies, along with the related policies and practices.

FIRST CAUSE OF ACTION
Violation of Plaintiffs' First Amendment Right to Freedom of Speech (42 U.S.C. § 1983)

370. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–369 of this Complaint, as if set forth fully herein.

371. Speech, including public oral expression, is entitled to comprehensive protection under the First Amendment.

372. Religious speech—including public speaking and preaching—is also fully protected by the First Amendment.

373. The First Amendment rights of free speech and press extend to the campuses of state colleges.

374. The sidewalks and open spaces of the GGC campus are designated public fora—if not traditional public fora—for speech and expressive activities by students enrolled at GGC.

375. The First Amendment's Free Speech Clause, incorporated and made applicable to the states by the Fourteenth Amendment to the United States Constitution, prohibits content and viewpoint discrimination in the public fora for student speech and expression on the campus of a public college.

376. A public college's ability to restrict speech—particularly student speech—in a public forum is limited.

377. The First Amendment's Free Speech Clause prohibits censorship of religious expression.

378. The First Amendment prohibits the government from prohibiting or limiting speech because it

might offend, disturb, or discomfort the sensibilities of listeners, and any governmental attempts to do so are inherently content and/or viewpoint based.

379. Under the First Amendment's Free Speech Clause, a prior restraint on citizens' expression is presumptively unconstitutional, unless it (1) does not delegate overly broad licensing discretion to a government official, (2) contains only content and viewpoint neutral reasonable time, place, and manner restrictions, (3) is narrowly tailored to serve a significant governmental interest, and (4) leaves open ample alternative means for communication.

380. Thus, the government may not regulate speech based on policies that permit arbitrary, discriminatory, or overzealous enforcement.

381. Unbridled discretion to discriminate against speech based on its content or viewpoint violates the First Amendment regardless of whether that discretion has ever been unconstitutionally applied in practice.

382. The First Amendment's Free Speech Clause guarantees a citizen the right to express his views anonymously and spontaneously.

383. Defendants' Speech Zone Policy, the related provisions of GGC's *Student Code of Conduct*, and their practice of requiring students to obtain a permit from College officials before engaging in any expressive activities and of restricting student speech to two tiny speech zones violate the First Amendment facially and as applied because they are prior restraints on speech in areas of campus that are traditional or designated public fora for GGC students.

384. Defendants' Speech Zone Policy, the related provisions of GGC's *Student Code of Conduct*, and

their practice of requiring students to obtain a permit from College officials before engaging in any expressive activities and of restricting student speech to two tiny speech zones violate the First Amendment facially and as applied because they grant College officials unbridled discretion to discriminate against speech based on its content or viewpoint.

385. Defendants' Speech Zone Policy, the related provisions of GGC's *Student Code of Conduct*, and their practice of requiring students to obtain a permit from College officials before engaging in any expressive activities and of restricting student speech to two tiny speech zones violate the First Amendment facially and as applied because they are vague and overbroad.

386. Defendants' Speech Zone Policy, the related provisions of GGC's *Student Code of Conduct*, and associated practices that require students to seek a permit for a proposed expressive activity at least three days in advance and that limit the activity to two tiny speech zones are unconstitutional "time, place, and manner" restrictions that violate Plaintiffs' and other students' right to freedom of speech and expression because they are not content-neutral, they are not narrowly tailored to serve a significant government interest, and they do not leave open ample alternative channels of communication.

387. Defendants' Speech Zone Policy, the related provisions of GGC's *Student Code of Conduct*, and associated practices provide no guidelines or standards to limit the discretion of GGC officials in granting, denying, relocating, or restricting requests by students to engage in expressive activity.

388. Defendants' Speech Zone Policy, the related

provisions of GGC's *Student Code of Conduct*, and associated practices require students to seek a permit for proposed expressive activities from Defendants and then delegate authority to Defendants to determine whether and where students may engage in these expressive activities, thus giving Defendants unbridled discretionary power to limit student speech in advance of such expression on campus and to do so based on the content and viewpoint of the speech.

389. These grants of unbridled discretion to GGC officials violate the First Amendment because they create a system in which speech is reviewed without any standards, thus giving students no way to prove that a denial, restriction, or relocation of their speech was based on unconstitutional considerations.

390. The First Amendment's prohibition against content and viewpoint discrimination requires Defendants to provide adequate safeguards to protect against the improper exclusion, restriction, or relocation of student speech based on its content or viewpoint.

391. Because Defendants have failed to establish neutral criteria governing the granting, denial, or relocation of student speech applications (including requests to use campus facilities), there is a substantial risk that GGC officials will engage in content and viewpoint discrimination when addressing those applications.

392. Defendants exercised the unbridled discretion granted them under their Speech Zone Policy, the related provisions of GGC's *Student Code of Conduct*, and associated practices when they prohibited Mr. Uzuegbunam from distributing religious literature and engaging passing students, faculty, and other

passersby in conversation in the open, generally accessible areas of campus outside the library because he had not first obtained a permit and because he was outside of the two speech zones.

393. Defendants' Speech Zone Policy, the related provisions of GGC's *Student Code of Conduct*, and associated practices do not contain any definite time period in which GGC officials must grant or deny students' requests to engage in expressive activities.

394. Defendants' Speech Zone Policy, the related provisions of GGC's *Student Code of Conduct*, and associated practices that require students to seek a permit three days before any expressive activity prohibit spontaneous expression.

395. Defendants' Speech Zone Policy, the related provisions of GGC's *Student Code of Conduct*, and associated practices are neither reasonable nor valid time, place, and manner restrictions on speech because they are not content-neutral, they are not narrowly tailored to serve a significant government interest, and they do not leave open ample alternative channels of communication.

396. Defendants' Speech Zone Policy, the related provisions of GGC's *Student Code of Conduct*, and associated practices are also overbroad because they prohibit and restrict protected expression.

397. Defendants' Speech Zone Policy, the related provisions of GGC's *Student Code of Conduct*, and associated practices unconstitutionally censor or restrict all private speech (including, but not limited to, literature distribution) that occurs outside the two speech zones, require students to obtain a permit for all expressive activities from Defendants in advance,

and ban a student from utilizing the speech zones for thirty days after each use (even if no one else is utilizing them during that time).

398. The government may not regulate speech based on overbroad policies that encompass a substantial amount of constitutionally protected speech.

399. Defendants' Speech Zone Policy, the related provisions of GGC's *Student Code of Conduct*, and associated practices are overbroad because they prohibit a substantial amount of constitutionally protected speech in that they prohibit students from engaging in expressive activities in the public fora of campus outside the two speech zones, they require students to seek a permit from College officials at least three days in advance, they require students to confine their expressive activities to the speech zones, and they ban students from utilizing the speech zones for thirty days after each use (even if no one else is utilizing them during that time).

400. The overbreadth of Defendants' Speech Zone Policy, the related provisions of GGC's *Student Code of Conduct*, and their associated practices chills the speech of Plaintiffs and students not before the Court who seek to engage in private expression (including public speaking, conversations, and literature distribution) in the open, outdoor area of campus.

401. Defendants' Speech Zone Policy, the related provisions of GGC's *Student Code of Conduct*, and associated practices chill, deter, and restrict Plaintiffs from freely expressing their religious beliefs.

402. The Free Speech Clause of the First Amendment protects speech that is provocative and chal-

lenging and prohibits the government from restricting speech simply because listeners find it offensive or discomforting.

403. Defendants' Speech Code and associated practices violate the First Amendment, facially and as applied, because they create a heckler's veto on campus, allowing any student to silence a speaker and expose him to discipline for engaging in "disorderly conduct" simply by complaining about the speaker's expression.

404. Defendants' Speech Code and associated practices violate the First Amendment, facially and as applied, because they are inherently content- and viewpoint-discriminatory because they prohibit students from engaging in any expression that creates complaints.

405. Defendants' Speech Code and associated practices violate the First Amendment, facially and as applied, because they are vague and overbroad.

406. Defendants' Speech Code and associated practices are overbroad because they prohibit a substantial amount of constitutionally protected speech in that they declare that any expression that prompts complaints from a listener constitutes "disorderly conduct" and subject students to discipline for engaging in such expression.

407. Defendants' Speech Code and associated practices provide no guidelines or standards to limit the discretion of GGC officials when determining whether a student's expression has "disturb[ed] the peace and/or comfort of person(s)."

408. Defendants exercised the unbridled discretion granted them under their Speech Code and asso-

ciated practices when they prohibited Mr. Uzuegbunam from sharing his religious beliefs inside the speech zone he reserved for that purpose because people complained about his expression.

409. Defendants engaged in content and viewpoint discrimination when they applied their Speech Code to prohibit Mr. Uzuegbunam from communicating his religious views inside the speech zone despite allowing members of other religious organizations to communicate their different religious views freely and without interference on campus.

410. Defendants' Speech Code and associated practices are neither reasonable nor valid time, place, and manner restrictions on speech because they are not content-neutral, they are not narrowly tailored to serve a significant government interest, and they do not leave open ample alternative channels of communication.

411. Defendants' Speech Code and associated practices are also overbroad because they prohibit and restrict protected expression.

412. Defendants' Speech Code and associated practices unconstitutionally censor all private speech that prompts complaints from any listener.

413. The overbreadth of Defendants' Speech Code and related practices chills the speech of Plaintiffs and students not before the Court who seek to engage in private expression on campus that some might find offensive or discomforting.

414. Defendants' Speech Code and related practices chill, deter, and restrict Plaintiffs from freely expressing their religious beliefs.

415. Defendants' Speech Zone and Speech Code

Policies, along with the associated policies and practices, do not satisfy strict scrutiny because they support no compelling governmental interest and they are not narrowly tailored to meet any such concerns.

416. Defendants' Speech Zone and Speech Code Policies, along with the associated policies and practices, violate Plaintiffs' right to free speech as guaranteed by the First Amendment to the United States Constitution.

417. Because of Defendants' actions, Plaintiffs have suffered, and continue to suffer irreparable harm. They are entitled to an award of monetary damages and equitable relief.

418. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to a declaration that Defendants violated their First Amendment right to freedom of speech and an injunction against Defendants' policy and actions. Additionally, Plaintiffs are entitled to damages in an amount to be determined by the evidence and this Court and the reasonable costs of this lawsuit, including their reasonable attorneys' fees.

SECOND CAUSE OF ACTION
Violation of Plaintiffs' First Amendment Right to Free Exercise of Religion (42 U.SC. § 1983)

419. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–369 of this Complaint, as if set forth fully herein.

420. The First Amendment's Free Exercise Clause, incorporated and made applicable to the states by the Fourteenth Amendment to the United States Constitution, guarantees Plaintiffs the free exercise of religion.

421. Laws that burden the free exercise of religion must be neutral and generally applicable, and even then, they must have a rational basis.

422. If they are not neutral and generally applicable, then laws that burden the free exercise of religion must be justified by a compelling state interest.

423. Plaintiffs' decisions to distribute religious literature, engage interested students and other individuals in conversations, and engage in open-air speaking are motivated by their sincerely held religious beliefs, are an avenue through which they exercise their religious faith, and constitute a central component of their sincerely held religious beliefs.

424. Defendants' Speech Zone and Speech Code Policies are neither neutral nor generally applicable but allow Defendants to target religious expression and activities specifically.

425. Defendants' Speech Zone and Speech Code Policies and associated practices are neither neutral nor generally applicable because they represent a system of individualized assessments. For the same reason, they are subject to strict scrutiny.

426. Defendants' Speech Zone Policy and the associated policies and practices grant College officials unbridled discretion when evaluating students' requests to utilize the speech zones for expressive activities, and thus, they establish a system of individualized assessments.

427. Defendants' Speech Zone Policy and the associated policies and practices grant College officials unbridled discretion when evaluating students' requests to engage in expressive activities outside the speech zones, and thus, they establish a system of

individualized assessments.

428. Defendants' Speech Zone Policy and the associated policies and practices grant College officials unbridled discretion when evaluating students' requests to engage in expressive activities during hours the speech zones are closed, and thus, they establish a system of individualized assessments.

429. Defendants' Speech Code and associated practices provide no guidelines or standards to limit the discretion of GGC officials when determining whether a student's expression has "disturb[ed] the peace and/or comfort of person(s)," and thus, they establish a system of individualized assessments.

430. Defendants' Speech Code and Speech Zone policies and their associated policies and practices are underinclusive, prohibiting some speech while leaving other speech equally harmful to GGC's asserted interests unprohibited.

431. Defendants' Speech Zone and Speech Code Policies burden several of the constitutional rights of all of its students, including Mr. Uzuegbunam and Mr. Bradford, in addition to their rights under the Free Exercise Clause (*e.g.*, freedom of speech, due process rights, equal protection rights).

432. Defendants' infringement of Plaintiffs' free exercise of religion fails to satisfy strict scrutiny because it is not narrowly tailored to promote a compelling government interest.

433. Defendants, acting under color of state law, and by policy and practice have explicitly and implicitly infringed Plaintiffs' free exercise of religion and deprived Plaintiffs of their clearly established rights to freedom of religious expression secured by the First

Amendment to the United States Constitution.

434. Because of Defendants' actions, Plaintiffs have suffered, and continue to suffer, irreparable harm. They are entitled to an award of monetary damages and equitable relief.

435. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to a declaration that Defendants violated their First Amendment right to free exercise of religion and an injunction against Defendants' policy and actions. Additionally, Plaintiffs are entitled to damages in an amount to be determined by the evidence and this Court and the reasonable costs of this lawsuit, including their reasonable attorneys' fees.

THIRD CAUSE OF ACTION
Violation of Plaintiffs' Fourteenth Amendment Right to Due Process of Law (42 U.S.C. § 1983)

436. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–369 of this Complaint, as if set forth fully herein.

437. The Fourteenth Amendment to the United States Constitution guarantees Plaintiffs the right to due process of law and prohibits Defendants from promulgating and employing vague and overbroad standards that allow for viewpoint discrimination in Defendants' handling of Plaintiffs' open-air speaking, conversations, and literature distribution.

438. The government may not regulate speech based on policies that permit arbitrary, discriminatory, and overzealous enforcement.

439. The government may not regulate speech based on policies that cause persons of common intelligence to guess at their meaning and differ as to their

application.

440. The government also may not regulate speech in ways that do not provide persons of common intelligence fair warning as to what speech is permitted and what speech is prohibited.

441. Defendants' Speech Zone Policy, the related provisions of GGC's *Student Code of Conduct*, and associated practices contain no criteria to guide administrators when deciding whether to grant, deny, relocate, or restrict student speech (including public speaking, conversations, and literature distribution) on campus.

442. Defendants' Speech Zone Policy, the related provisions of GGC's *Student Code of Conduct*, and associated practices contain no criteria to limit the discretion of administrators in deciding when or how to modify the speech zones.

443. Defendants' Speech Zone Policy, the related provisions of GGC's *Student Code of Conduct*, and associated practices contain no criteria to guide administrators in deciding how to schedule use of the speech zones to "accommodate all interested users."

444. Defendants' Speech Zone Policy, the related provisions of GGC's *Student Code of Conduct*, and associated practices contain no criteria to guide administrators in reviewing the literature students are required to submit in order to obtain a permit to engage in literature distribution on campus.

445. Defendants' Speech Zone Policy, the related provisions of GGC's *Student Code of Conduct*, and associated practices are impermissibly vague and ambiguous and are thus incapable of providing meaningful guidance to Defendants.

446. The lack of criteria, factors, or standards in Defendants' Speech Zone Policy, the related provisions of GGC's *Student Code of Conduct*, and associated practices renders these policies and practices unconstitutionally vague and in violation of Plaintiffs' right to due process of law under the Fourteenth Amendment.

447. Defendants' Speech Code and associated practices contain no criteria to limit the discretion of GGC officials when determining whether a student's expression has "disturb[ed] the peace and/or comfort of person(s)."

448. Defendants' Speech Code and associated practices are impermissibly vague and ambiguous. Thus, they are incapable of providing meaningful guidance to Defendants, and they force students to guess as to whether expression that the First Amendment protects is in fact allowed on campus.

449. The lack of criteria, factors, or standards in Defendants' Speech Code and associated practices renders these policies and practices unconstitutionally vague and in violation of Plaintiffs' right to due process of law under the Fourteenth Amendment.

450. Because of Defendants' actions, Plaintiffs have suffered, and continue to suffer irreparable harm. They are entitled to an award of monetary damages and equitable relief.

451. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to a declaration that Defendants violated their Fourteenth Amendment right to due process of law and an injunction against Defendants' policy and actions. Additionally, Plaintiffs are entitled to damages in an amount to be determined by the

evidence and this Court and the reasonable costs of this lawsuit, including their reasonable attorneys' fees.

FOURTH CAUSE OF ACTION
Violation of Plaintiffs' Fourteenth Amendment Right to Equal Protection of the Law (42 U.SC. § 1983)

452. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–369 of this Complaint, as if set forth fully herein.

453. The Fourteenth Amendment to the United States Constitution guarantees Plaintiffs the equal protection of the laws, which prohibits Defendants from treating Plaintiffs differently than similarly situated students.

454. The government may not treat someone disparately as compared to similarly situated persons when such disparate treatment burdens a fundamental right, targets a suspect class, or has no rational basis.

455. Plaintiffs are similarly situated to other students at the College.

456. Defendants have allowed students to engage in various expressive activities outside of the two speech zones, but denied the same to Mr. Uzuegbunam.

457. Defendants have allowed students to engage in loud forms of expressive activities inside the speech zones, including the use of amplified sound, but prohibited Mr. Uzuegbunam from engaging in comparatively quieter forms of expression.

458. Defendants have allowed students to engage in loud forms of expression outside the speech zones, including permitting a percussion group to play approximately once a week, but prohibited Mr. Uzueg-

bunam from engaging in far quieter forms of expression both inside and outside the speech zones.

459. Defendants have allowed students to engage in offensive forms of speech, including the broadcasting of vulgar, lewd, and obscene music, but stopped Mr. Uzuegbunam from speaking publicly, claiming that someone's complaint converted his expression into "disorderly conduct."

460. Defendants have allowed other religious groups, including but not limited to members of the LDS church, to distribute literature and engage students in conversations in the outdoor areas of campus, inside and outside the speech zones, but they prohibited Mr. Uzuegbunam from doing the same things outside the speech zones.

461. Defendants have allowed other religious groups, including but not limited to members of the LDS church to engage in religious advocacy on campus but have stopped Mr. Uzuegbunam from doing the same because his activities provoked complaints while those of other religious groups did not.

462. Defendants' Speech Zone and Speech Code Policies, along with their related policies and practices violate various fundamental rights of Plaintiffs, such as their freedom of speech, their free exercise of religion, and their right to due process of law.

463. When government regulations, like Defendants' Speech Zone and Speech Code Policies, along with their related policies and practices, infringe on fundamental rights, discriminatory intent is presumed.

464. Defendants' Speech Zone and Speech Code Policies, along with their related policies and prac-

tices, have also been applied to discriminate intentionally against Plaintiffs' rights to freedom of speech and the free exercise of religion.

465. Defendants' Speech Code and Speech Zone policies and their associated policies and practices are underinclusive, prohibiting some speech while leaving other speech equally harmful to GGC's asserted interests unprohibited.

466. Defendants lack a rational or compelling state interest for such disparate treatment of Plaintiffs.

467. Defendants' Speech Zone and Speech Code Policies, along with their related policies and practices, are not narrowly tailored as applied to Plaintiffs because Plaintiffs' speech does not implicate any of the legitimate interests Defendants might have.

468. Defendants have applied their Speech Zone and Speech Code Policies, along with their related policies and practices, to Plaintiffs in a discriminatory and unequal manner, allowing other students to speak freely in and out of the speech zones when Defendants say that Plaintiffs cannot do the same, in violation of Plaintiffs' right to equal protection of the laws under the Fourteenth Amendment.

469. Because of Defendants' actions, Plaintiffs have suffered, and continue to suffer, irreparable harm. They are entitled to an award of monetary damages and equitable relief.

470. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to a declaration that Defendants violated his Fourteenth Amendment right to equal protection of law and an injunction against Defendants' policy and actions. Additionally, Plaintiffs

are entitled to damages in an amount to be determined by the evidence and this Court and the reasonable costs of this lawsuit, including their reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment against Defendants and provide Plaintiffs with the following relief:

A. A declaratory judgment that Defendants' Speech Zone Policy, the related provisions of GGC's *Student Code of Conduct* (*i.e.*, those prohibiting "circulating any advertising media without approval from proper College officials" and "making or attempting to make unauthorized use of College facilities"), and associated practices, facially and as-applied, violate Plaintiffs' rights under the First and Fourteenth Amendments;

B. A declaratory judgment that Defendants' Speech Code Policy and associated practices, facially and as-applied, violate Plaintiffs' rights under the First and Fourteenth Amendments;

C. A declaratory judgment that the Defendants' restriction of Plaintiffs' literature distribution violated their rights under the First and Fourteenth Amendments;

D. A declaratory judgment that the Defendants' restriction of Plaintiffs' open-air speaking violated their rights under the First and Fourteenth Amendments;

E. A preliminary and permanent injunction prohibiting the Defendants, their agents, officials, servants, employees, and any other persons

acting in their behalf from enforcing Defendants' Speech Zone Policy, the related provisions of GGC's *Student Code of Conduct* (*i.e.*, those prohibiting "circulating any advertising media without approval from proper College officials" and "making or attempting to make unauthorized use of College facilities"), and associated practices challenged in this Complaint;

F. A preliminary and permanent injunction prohibiting the Defendants, their agents, officials, servants, employees, and any other persons acting in their behalf from enforcing Defendants' Speech Code Policy and associated practices challenged in this Complaint;

G. Nominal damages for the violation of Plaintiffs' First and Fourteenth Amendment rights from the Defendants sued in their individual capacities;

H. Plaintiffs' reasonable attorneys' fees, costs, and other costs and disbursements in this action pursuant to 42 U.S.C. § 1988; and

I. All other further relief to which Plaintiffs may be entitled.

Respectfully submitted this 15th day of February, 2017.

/s/ Travis C. Barham

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Attorneys for Plaintiffs

DEMAND FOR TRIAL BY JURY

Plaintiffs demand trial by jury for all matters so triable herein.

/s/ Travis C. Barham
TRAVIS C. BARHAM
Attorney for Plaintiffs

DECLARATION UNDER PENALTY OF PERJURY

I, CHIKE UZUEGBUNAM, a citizen of the United States and a resident of the State of Georgia, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that I have read the foregoing, that the foregoing is true and correct to the best of my knowledge (except as to statements made on information and belief, and those I believe to be true and correct), and that the foregoing statements that pertain to me are based on my personal knowledge.

Executed this 14 day of February, 2017, at Lawrenceville, Georgia.

/s/ Chike Uzuegbunam
CHIKE UZUEGBUNAM

DECLARATION UNDER PENALTY OF PERJURY

I, JOSEPH BRADFORD, a citizen of the United States and a resident of the State of Georgia, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that I have read the foregoing, that the foregoing is true and correct to the best of my knowledge (except as to statements made on information and belief, and those I believe to be true and correct), and that the foregoing statements that pertain to me are based on my personal knowledge.

Executed this 15th day of February, 2017, at Duluth, Georgia.

/s/ Joseph Bradford
JOSEPH BRADFORD

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of February, 2017, I electronically filed a true and accurate copy of the foregoing document with the Clerk of Court using the CM/ECF system, which automatically sends an electronic notification to the following attorneys of record:

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Respectfully submitted on this the 15th day of February, 2017.

/s/ Travis C. Barham
Travis C. Barham
Attorney for Plaintiffs

Excerpts from Georgia Gwinnett College's "At a Glance" Website, Containing the College's Speech Zone Policies
Filed as an Exhibit to the First Amended Complaint on February 15, 2017

GGC AT A GLANCE

F R E E D O M O F E X P R E S S I O N

Georgia Gwinnett College (GGC) is committed to providing a forum for free and open expression of divergent points of view by students, student organizations, faculty, staff and visitors. GGC also recognizes its responsibility to provide a secure learning environment which allows members of the community to express their views in ways which do not disrupt the operation of the College. Georgia Gwinnett College, in establishment of this policy, in no way supports, fails to support, neither agrees nor disagrees with ideas that may be voiced, but allows for a diversity of viewpoints to be expressed in an academic setting.

This policy is applicable to students, student organizations, faculty, staff and visitors. Free speech area request forms (PDF) are available on the GGC website and also from the Division of Student Affairs. The following procedures apply to all activities authorized to use the designated free speech expression areas. Reasonable limitations may be placed on time, place and manner of speeches, gatherings, distribution of written materials, and marches in order to serve the interests of health and safety, prevent disruption of the educational process, and protect against the invasion of the rights of others as deemed necessary by Georgia Gwinnett College.

Designated Speech and Demonstration Areas

GGC has identified the concrete area/walkway between Student Housing and the Student Center or the concrete in front of the Food Court area, Building A as "free speech expression areas." These areas are generally available from 11:00 a.m. to 1:00 p.m. and 5:30 p.m. to 7:30 p.m., Monday through Thursday, and 11:00 a.m. to 1:00 p.m. on Friday. On occasion upon written request, other areas and other times may be authorized, and the College reserves the right to modify the free speech areas based on the operational needs of the institution. A designated Student Affairs official is responsible for reservation scheduling and authorization of the free speech expression areas in order to accommodate all interested users. Authorization will be granted in accordance with the principle of content neutrality. Appeals related to the decision of the Student Affairs official should be made to the Dean of Students. The decision of the Dean is final.

Reservation Procedures for Use of Free Expression Areas

All requests must follow the appropriate facility reservation process. The designated free speech forms (PDF) must be completed and any publicity materials must be attached and submitted to the Student Affairs official at least three (3) business days prior to the free expression speech, program, event or gathering in accordance with this policy. Organizers are encouraged to submit their requests as early in the planning stages of the event as possible.

Provisions

In order that persons exercising freedom of expression not interfere with the operation of the College or the

rights of others, all engagements for speakers (internal and external) must meet the following criteria:

- All publicity materials must be submitted with the application form. Admission charges, if any, or suggested donations which are used as a condition of admission, must be included in all publicity for the event. No publicity for a speaker or program may be released prior to authorization of the registration form. Unauthorized use of the College's name, other than to indicate the location of the event, is strictly prohibited. Upon authorization, copies of the application form and any publicity material shall be distributed to the campus Senior Associate Provost for Student Affairs, the Director of Public Services/Campus Police, the Office of Public Relations the Dean of Students and the applicant.
- If a speaker is being sponsored by a student organization, an Advisor (or designee, who must be a full-time faculty or designated staff member) if applicable, must be present at the event.
- No interference with the free flow of traffic nor the ingress and egress to buildings on campus is permitted and no use of microphones, bullhorns or any sound amplification device is allowed.
- No interruption of the orderly conduct of college classes or other college activities is permitted.
- No impediment of passersby or other disruption of normal activities is permitted.
- No intimidation or harassment, verbal or otherwise, of passersby is permitted.

- No interference with scheduled college ceremonies, events or activities is permitted.
- Marches, either independent or related to an event or speech, must be authorized at least 3 business days prior to the program or event in accordance with this policy and appropriate local ordinances, and may only take place on the streets or sidewalks of the campus.
- No commercial solicitations, campus sales or fundraising activities shall be undertaken which are not authorized by GGC.
- Non-commercial pamphlets, handbills, circulars, newspapers, magazines and other written materials may be distributed on a person-to-person basis in the free speech expression areas designated above, as long as the reservation procedures for use of the free expression areas have been completed. Such distribution shall not violate any campus solicitation policies or government ordinances.
- The individual who makes the reservation shall be responsible for seeing that the area is left clean and in good repair. If not accomplished, persons or organizations responsible for the event may be held financially responsible for cleanup costs.
- The individual/organization using the area must supply their own tables, chairs, etc. (unless already part of the facility). No sound amplification devices may be used at any time (unless already part of the facility). No camping is allowed and temporary structures (tents, etc.) are prohibited.

- Malicious or unwarranted damage or destruction of property owned or operated by the College, or property belonging to students, faculty, staff or guests of the College is prohibited. Persons or organizations causing such damage may be held financially and/or criminally responsible.
- Disorderly conduct is prohibited. Examples of disorderly conduct can be found in the Georgia Gwinnett College Student Handbook.
- Individuals and programs using the free speech expression area must comply with all applicable state and federal laws and institutional policies, rules and regulations.

Authorization of a speech, event or demonstration is contingent upon compliance with the criteria listed above. Speakers and/or organizations failing to comply with the above policy may be asked to leave, a trespass warning may be issued and/or judicial action may be pursued. Additional internal disciplinary actions may be enforced against students and staff members who fail to comply with the outlined policy.

Freedom of Expression Policy Questions

Questions about this policy may be addressed to the Division of Student Affairs at 678.407.5882 and should be handled in advance of any speech, event or demonstration.

Georgia Gwinnett College's
"Free Speech Area Request Form"
Filed as an Exhibit to the First Amended
Complaint on February 15, 2017

GEORGIA GWINNETT COLLEGE FREE SPEECH AREA REQUEST FORM

Georgia Gwinnett College (GGC) is committed to providing a forum for free and open expression of divergent points of view by students, student organizations, faculty, staff and visitors. GGC also recognizes its responsibility to provide a secure learning environment which allows members of the community to express their views in ways which do not disrupt the operation of the college.

TODAY'S DATE: _____
ORGANIZATION NAME: _____

All requests must follow the appropriate facility reservation process. The designated free speech forms must be completed and use of free speech space must be confirmed by the designated College official before the free speech areas can be utilized Any publicity materials must be attached and submitted to Student Affairs at least three (3) business days prior to the free expression speech, program, event, or gathering in accordance with this policy. Organizers are encouraged to submit their requests as early in the planning stages of the event as possible. All information submitted must be legible. Individuals and/organizations who are confirmed for use of any free speech areas on campus must wait at least 30 calendar days after the

last date of use, before a new Free Speech Area Request Form can be submitted for review. Requests which fail to follow these guidelines will be declined.

CONTACT PERSON:
ADDRESS:
CELL PHONE:
ALTERNATE CONTACT NUMBER:
FAX:
If student club/organization:_____
(Advisor's Signature/ must be present at event.)

This policy is applicable to students, student organizations, faculty, staff and visitors. The procedures apply to all activities authorized to use the designated Free Speech Expression Areas. Reasonable limitations may be placed on time, place and manner of speeches, gatherings, distribution of written materials, and marches in order to serve the interests of health and safety, prevent disruption of the educational process, and protect against the invasion of the rights of others as deemed necessary by Georgia Gwinnett College. Use of microphones, bullhorns, or any sound amplification device or gadget is prohibited.

DATE(S) REQUESTED FOR FREE SPEECH ACTIVITY: No more than 3 calendar dates can be submitted per organization and/or per individual; requests received within 30 days of the last date of use by an organization and/or individual will be declined. Requests must be for the organizations or individual's own use and cannot be submitted on behalf of other individuals or organizations. A College representative will provide the location of the free speech areas available for the dates requested once the request is confirmed below by a College official.

_____ _____
_____

TIME(S) OF EACH ACTIVITY ABOVE:

_____ _____
_____

ANTICIPATED NUMBER OF ATTENDEES/ ORGANIZATIONAL PARTICIPANTS: _____

DESCRIPTION OF THE EVENT (attach additional pages if necessary):

_____

_____

_____

I HAVE READ AND AGREE THAT THE EVENT WILL COMPLY WITH THE REQUIREMENTS OUTLINED HEREIN AND AS OUTLINED IN THE GGC STUDENT HANDBOOK FREEDOM OF EXPRESSION PROVISIONS available at www.ggc.edu.

_____

Signature of person completing this Request/ Form

_____

Printed Name Above

For use by Student Affairs: Free Speech Request _____Confirmed _____ Declined _____ Date of Action

If Confirmed by College: Free Speech Dates/Times Confirmed_____ Area Confirmed:_____

Signature of College Official: _____

Printed Name:_____

Form Revised November 2010

Excerpts from Georgia Gwinnett College's 2016–2017 Student Handbook, Containing the College's Speech Zone and Speech Code Policies Filed as an Exhibit to the First Amended Complaint on February 15, 2017

Georgia Gwinnett COLLEGE

2016–2017 Student Handbook

Rights, Responsibilities and General Information

* * * * *

4.1.9 GGC Freedom of Expression Policy

Reviewed May 26, 2016

Georgia Gwinnett College (GGC) is committed to providing a forum for free and open expression of divergent points of view by students, student organizations, faculty, staff and visitors. GGC also recognizes its responsibility to provide a secure learning environment which allows members of the community to express their views in ways which do not disrupt the operation of the College. Georgia Gwinnett College, in

establishment of this policy, in no way supports, fails to support, neither agrees nor disagrees with ideas that may be voiced, but allows for a diversity of viewpoints to be expressed in an academic setting.

This policy is applicable to students, student organizations, faculty, staff and visitors. Free speech area request forms are available on the GGC website and also from the Division of Student Affairs. The following procedures apply to all activities authorized to use the designated free speech expression areas. Reasonable limitations may be placed on time, place and manner of speeches, gatherings, distribution of written materials, and marches in order to serve the interests of health and safety, prevent disruption of the educational process, and protect against the invasion of the rights of others as deemed necessary by Georgia Gwinnett College.

Designated Speech and Demonstration Areas

GGC has identified the concrete area/walkway between Student Housing and the Student Center or the concrete in front of the Food Court area, Building A as "free speech expression areas." These areas are generally available from 11:00 a.m. to 1:00 p.m. and 5:30 p.m. to 7:30 p.m., Monday through Thursday, and 11:00 a.m. to 1:00 p.m. on Friday. On occasion upon written request, other areas and other times may be authorized, and the College reserves the right to modify the free speech areas based on the operational needs of the institution. A designated Student Affairs official is responsible for reservation scheduling and authorization of the free speech expression areas in order to accommodate all interested users. Authorization will be granted in accordance with the principle of content neutrality. Appeals related to the

decision of the Student Affairs official should be made to the Dean of Students. The decision of the Dean is final.

Reservation Procedures for Use of Free Expression Areas

All requests must follow the appropriate facility reservation process. The designated free speech forms must be completed and any publicity materials must be attached and submitted to the Student Affairs official at least three (3) business days prior to the free expression speech, program, event or gathering in accordance with this policy. Organizers are encouraged to submit their requests as early in the planning stages of the event as possible.

Provisions

In order that persons exercising freedom of expression not interfere with the operation of the College or the rights of others, all engagements for speakers (internal and external) must meet the following criteria:

- All publicity materials must be submitted with the application form. Admission charges, if any, or suggested donations which are used as a condition of admission, must be included in all publicity for the event. No publicity for a speaker or program may be released prior to authorization of the registration form. Unauthorized use of the College's name, other than to indicate the location of the event, is strictly prohibited. Upon authorization, copies of the application form and any publicity material shall be distributed to the campus Senior Associate Provost for Student Affairs, the Director of Public Services/ Campus Police, the Office of Public Relations

the Dean of Students and the applicant.

- If a speaker is being sponsored by a student organization, an Advisor (or designee, who must be a full-time faculty or designated staff member) if applicable, must be present at the event.
- No interference with the free flow of traffic nor the ingress and egress to buildings on campus is permitted and no use of microphones, bullhorns or any sound amplification device is allowed.
- No interruption of the orderly conduct of college classes or other college activities is permitted.
- No impediment of passersby or other disruption of normal activities is permitted.
- No intimidation or harassment, verbal or otherwise, of passersby is permitted.
- No interference with scheduled college ceremonies, events or activities is permitted.
- Marches, either independent or related to an event or speech, must be authorized at least 3 business days prior to the program or event in accordance with this policy and appropriate local ordinances, and may only take place on the streets or sidewalks of the campus.
- No commercial solicitations, campus sales or fundraising activities shall be undertaken which are not authorized by GGC.
- Non-commercial pamphlets, handbills, circulars, newspapers, magazines and other written materials may be distributed on a person-to-person basis in the free speech expression areas designated above, as long as the reservation procedures for use of the free expression

areas have been completed. Such distribution shall not violate any campus solicitation policies or government ordinances.

- The individual who makes the reservation shall be responsible for seeing that the area is left clean and in good repair. If not accomplished, persons or organizations responsible for the event may be held financially responsible for cleanup costs.
- The individual/organization using the area must supply their own tables, chairs, etc. (unless already part of the facility). No sound amplification devices may be used at any time (unless already part of the facility). No camping is allowed and temporary structures (tents, etc.) are prohibited.
- Malicious or unwarranted damage or destruction of property owned or operated by the College, or property belonging to students, faculty, staff or guests of the College is prohibited. Persons or organizations causing such damage may be held financially and/or criminally responsible.
- Disorderly conduct is prohibited. Examples of disorderly conduct can be found in the Georgia Gwinnett College Student Handbook.
- Individuals and programs using the free speech expression area must comply with all applicable state and federal laws and institutional policies, rules and regulations.

Authorization of a speech, event or demonstration is contingent upon compliance with the criteria listed above. Speakers and/or organizations failing to comply with the above policy may be asked to leave, a

trespass warning may be issued and/or judicial action may be pursued. Additional internal disciplinary actions may be enforced against students and staff members who fail to comply with the outlined policy.

Freedom of Expression Policy Questions

Questions about this policy may be addressed to the Division of Student Affairs at 678.407.5882 and should be handled in advance of any speech, event or demonstration.

* * * * *

4.6.5 Student Code of Conduct

Reviewed June 23, 2016

See Board of Regents Policy Manual Section 4.6.5 Standards for Institutional Student Conduct Investigation and Disciplinary Proceedings. This policy will be known as the GGC Student Code of Conduct as reviewed and approved by the USG Office of Legal affairs. It will go into effect on July 1, 2016.

* * * * *

College Conduct Regulations

The following actions are prohibited and constitute a violation of the Georgia Gwinnett College Student Code of Conduct. The Office of Student Integrity handles all cases involving alleged academic violations and non-academic conduct violations except for matters involving discrimination or discriminatory harassment. All matters related to discrimination or discriminatory harassment by the Office of Diversity, Institutional Equity and Title IX Program Administration under the Student Code of Conduct processes. Student Integrity may handle other non-discrimination Code violations which may be arise out of or be

related to discrimination/ harassment claims.

Any student, club or organization found to have committed a violation of these conduct regulations is subject to the sanctions outlined in this Code. A claim of lack of awareness of policies and procedures does not excuse any violations of such. Pursuant to BOR 4.1.7 Sexual Misconduct Policy and APM 4.1.1.1.2 Academic Integrity Policy for Academic Dishonesty Matters (which also can be found in the Student Handbook: Rights, Responsibilities and General Information.), sexual misconduct and academic dishonesty are covered under separate GGC policies. Please reference those policies as to appropriate process.

Conduct Regulations

* * * * *

The following are conduct regulations:

* * * * *

(3) Disorderly Conduct. Examples of specific prohibited actions include but are not limited to the following:

A. Behavior which disrupts the orderly functioning of the College, or behavior which disturbs the peace and/or comfort of person(s)

* * * * *

Excerpts of Defendants' Memorandum of Law in Support of Motion to Dismiss Filed February 1, 2017

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

CHIKE UZUEGBUNAM,	)	
	)	**Civil Action No.:**
Plaintiff,	)	
v.	)	**1:16-cv-04658-ELR**
STANLEY C. PRECZEWSKI, et al.	)	
	)	
Defendants.	)	

MEMORANDUM OF LAW IN SUPPORT OF THE STATE DEFENDANTS' MOTION TO DISMISS

I. INTRODUCTION

Plaintiff, a student at Georgia Gwinnett College ("GGC"), is challenging the college's Speech Policy, as well as its Disorderly Conduct Policy. Plaintiff claims that both policies are facially unconstitutional and unconstitutional as applied to his speech. (Doc. 1). Plaintiff generally asserts four causes of action with respect to the policies: (1) First Amendment right to freedom of speech; (2) First Amendment right to free exercise of religion; (3) Fourteenth Amendment right to due process; and (4) Fourteenth Amendment right to equal protection. The State Defendants now move to dismiss Plaintiff's lawsuit in its entirety.

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VI. LEGAL ARGUMENT AND CITATION OF AUTHORITY

A. Plaintiff Fails to State a Claim Upon Which Relief May be Granted

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3. The Disorderly Conduct Policy Does Not Violate the First Amendment Right to Freedom of Speech

Plaintiff also challenges, both facially and as-applied to his speech, GGC's Disorderly Conduct Policy, to the extent that it prohibits expression that "disturbs the peace and/or comfort of person(s)." (Doc. 1 at ¶ 3). This Court should dismiss both challenges.

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b. Application of the Disorderly Conduct Policy to Plaintiff's Speech Did Not Violate the First Amendment

Additionally, GGC's application of the Disorderly Conduct Policy to Plaintiff's open-air speaking outside of the food court on August 25, 2016, did not violate the First Amendment. As Plaintiff admits in his Complaint, he was able to speak about his religious beliefs for approximately twenty minutes. (Doc. 1 at ¶ 250). He did so by standing on top of a stool and exclaiming his beliefs in a manner "loud enough to be heard" to "many" students who were eating, studying, and socializing. (Id. at ¶¶ 245, 249, 250). GGC's Safety Department received multiple calls and complaints about Plaintiff's open-air speaking. (Id. at ¶¶ 255, 265). GGC informed Plaintiff that he was engaging in disorderly conduct and needed to stop. (Id. at ¶¶ 262,

265). As Plaintiff admits, GGC interrupted his open-air speaking only because people were calling and "complaining about his expression." (Id. at ¶ 265).

Thus, the allegations in Plaintiff's Complaint demonstrate that GGC stopped Plaintiff—not because of the content of his speech—but because he was engaging in impermissible open-air speaking that was actually disturbing the students. There is a distinction between "mere words, used as a tool of communication," which are protected, and the use of words to "invade the rights of others to pursue their lawful activities," which are not protected. Gold v. City of Miami, 138 F.3d 886 (11th Cir. 1998). For example, in White v. State, 330 So. 2d 3 (Fla. 1976), an individual was convicted for "screaming at the top of his lungs for several minutes at a police station, disturbing the other people at the station and impeding their work." The court found that the individual's words "were not punished because they were offensive, but because by their very decibel count, [those words] did invade the right of others to pursue their lawful activities." Id. at 6. As the court further explained, the individual's conduct "would have been equally disorderly had he merely recited 'Mary Had a Little Lamb' in the same tone and under similar circumstances." Id. at 7.

The same conclusion should be reached here, as Plaintiff's open-air speaking on top of a stool—which disrupted the "many" students who were trying to study, socialize, and eat—would have been equally disruptive regardless of the content. In short, Plaintiff has failed to sufficiently allege that he was stopped because of the content of his words, as opposed to the disruptive effect of open-air speaking in general. The fact that Plaintiff was informed that he could *continue* to

express his beliefs by one-on-one speaking and distributing literature further supports the notion that Plaintiff was asked to stop because he was disturbing students and not because of the substance of his speech.

Regardless, Plaintiff's open-air speaking arguably rose to the level of "fighting words." Plaintiff exclaimed a divisive message directly to a group of "many" individuals while standing on top of a stool, and, in doing so, *actually* caused a disturbance. Gold v. City of Miami, 138 F.3d 886 (11th Cir. 1998) (finding a reasonable officer could not have believed the plaintiff was engaging in legally proscribed disorderly conduct when "there was no crowd to incite; there were no persons disturbed by Gold's speech"). Moreover, Plaintiff used contentious religious language that, when directed to a crowd, has a tendency to incite hostility. See, e.g., Mikhail v. City of Lake Worth, 2009 U.S. Dist. LEXIS 59919 (S.D. Fla. 2009) (a street preacher engaged in fighting words when calling people "sinners" and "prostitutes"); Gilles v. State, 531 N.E.2d 220, 221-222 (Ind. Ct. App. 1988) (calling a crowd gathered for a festival "sinners," among other names, constitutes "fighting words").

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VII. CONCLUSION

For all of the reasons stated above, the State Defendants respectfully ask the Court to dismiss Plaintiff's lawsuit in its entirety.

Respectfully submitted,

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Excerpts from U.S. District Court Docket
Northern District of Georgia (Atlanta)
Civil Docket for Case #: 1:16-cv-04658-ELR

Uzuegbunam v. Preczewski et al

Assigned to: Judge Eleanor L. Ross

Case in other court: USCA 11th-Circuit, 18-12676-AA

Cause: 42:1983 Civil Rights Act

Date Filed: 12/19/2016

Date Terminated: 05/25/2018

Jury Demand: Plaintiff

Nature of Suit: 440 Civil Rights: Other

Jurisdiction: Federal Question

Date Filed	#	Docket Text
12/19/2016	1	COMPLAINT with Jury Demand filed by Chike Uzuegbunam. (Filing fee $400 receipt number 113E-6875536.) (Attachments: # 1 Exhibit 01 Campus Maps, # 2 Exhibit 02 Google Maps, # 3 Exhibit 03 Freedom of Expression Policy, # 4 Exhibit 04A Pictures Sidewalk Speech Zone, # 5 Exhibit 04B Pictures Sidewalk Speech Zone, # 6 Exhibit 05 Pictures Patio Speech Zone, # 7 Exhibit 06 Speech Zone Map, # 8 Exhibit 07A Pictures Off Limits Areas, # 9 Exhibit 07B Pictures Off Limits Areas, # 10 Exhibit 07C Pictures Off Limits Areas, # 11 Exhibit 07D Pictures Off Limits Areas, # 12 Exhibit 07E Pictures Off

		Limits Areas, # 13 Exhibit 07F Pictures Off Limits Areas, # 14 Exhibit 08 Free Speech Form, # 15 Exhibit 09 2016–2017 Student Handbook, # 16 Exhibit 10 2013.06.28 Letter to GGC 4, # 17 Exhibit 11 Speech Zone Confirmation, # 18 Civil Cover Sheet)(jkl) Please visit our website at http://www.gand. uscourts. gov/commonly-used-forms to obtain Pretrial Instructions which includes the Consent To Proceed Before U.S. Magistrate form. (Entered: 12/22/2016)
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02/01/2017	11	MOTION to Dismiss with Brief In Support by Aileen C. Dowell, Catherine Jannick Downey, Jim B. Fatzinger, Corey Hughes, Tomas Jiminez, Rebecca A. Lawler, Shenna Perry, Stanley C. Preczewski, Lois C. Richardson, Gene Ruffin, Terrance Schneider. (Attachments: # 1 Brief In Support of State Defendants' Motion to Dismiss)(Cusimano, Angela) (Entered: 02/01/2017)
* * * * *		
02/15/2017	13	First AMENDED COMPLAINT against All Defendants with Jury Demand, filed by Chike Uzuegbunam and Joseph Bradford. (Attachments: # 1 Exhibit Campus Maps, # 2 Exhibit Google Maps, # 3 Exhibit Freedom of Expression Policy, # 4 Exhibit Pictures

		Sidewalk Speech Zone, # 5 Exhibit Pictures Sidewalk Speech Zone, # 6 Exhibit Pictures Patio Speech Zone, # 7 Exhibit Speech Zone Map, # 8 Exhibit Pictures Off Limits Areas, # 9 Exhibit Pictures Off Limits Areas, # 10 Exhibit Pictures Off Limits Areas, # 11 Exhibit Pictures Off Limits Areas, # 12 Exhibit Pictures Off Limits Areas, # 13 Exhibit Pictures Off Limits Areas, # 14 Exhibit Free Speech Form, # 15 Exhibit GGC 2016–2017 Student Handbook, # 16 Exhibit 2013.06.28 Letter to GGC, # 17 Exhibit Speech Zone Confirmation)(Barham, Travis) Please visit our website at http://www.gand.uscourts.gov/commonly-used-forms to obtain Pretrial Instructions which includes the Consent To Proceed Before U.S. Magistrate form. Modified on 2/16/2017 to edit filer information. (aaq). (Entered: 02/15/2017)
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03/17/2017	18	MOTION to Dismiss *Plaintiffs' 13 Amended Complaint* by Aileen C. Dowell, Catherine Jannick Downey, Jim B. Fatzinger, Corey Hughes, Tomas Jiminez, Rebecca A. Lawler, Shenna Perry, Stanley C. Preczewski, Lois C. Richardson, Gene Ruffin, Terrance Schneider. (Attachments: # 1 Memorandum of Law in Support of Defendants' MTD Plaintiffs'

		Amended Complaint)(Cusimano, Angela) Modified on 3/20/2017 to add document link (cmd). (Entered: 03/17/2017)
		* * * * *
03/31/2017	21	MOTION to Dismiss *For Mootness* with Brief In Support by Aileen C. Dowell, Catherine Jannick Downey, Jim B. Fatzinger, Corey Hughes, Tomas Jiminez, Rebecca A. Lawler, Shenna Perry, Stanley C. Preczewski, Lois C. Richardson, Gene Ruffin, Terrance Schneider. (Attachments: # 1 Brief In Support of Defendants' Motion to Dismiss For Mootness, # 2 Exhibit 1−Affidavit of Eileen Dowell, # 3 Exhibit 2−Affidavit of Marc Cardinalli) (Cusimano, Angela) (Entered: 03/31/2017)
04/07/2017	22	RESPONSE in Opposition re 18 MOTION to Dismiss *Plaintiffs' Amended Complaint* filed by Joseph Bradford, Chike Uzuegbunam. (Barham, Travis) (Entered: 04/07/2017)
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04/24/2017	27	RESPONSE in Opposition re 21 MOTION to Dismiss *For Mootness* filed by Joseph Bradford, Chike Uzuegbunam. (Barham, Travis) (Entered: 04/24/2017)
		* * * * *
05/05/2017	30	REPLY BRIEF re 18 MOTION to Dismiss Plaintiff's Amended Complaint filed by Aileen C. Dowell, Catherine Jannick Downey, Jim B. Fatzinger, Corey Hughes, Tomas Jiminez,

		Rebecca A. Lawler, Shenna Perry, Stanley C. Preczewski, Lois C. Richardson, Gene Ruffin, Terrance Schneider. (Cusimano, Angela) Modified on 5/5/2017 to correct text per call with attorney (jkl). (Entered: 05/05/2017)
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05/05/2017		Submission of 18 MOTION to Dismiss *Plaintiffs' Amended Complaint* to District Judge Eleanor L. Ross. (jkl) (Entered: 05/05/2017)
* * * * *		
05/22/2017	32	REPLY BRIEF re 21 MOTION to Dismiss *For Mootness* filed by Aileen C. Dowell, Catherine Jannick Downey, Jim B. Fatzinger, Corey Hughes, Tomas Jiminez, Rebecca A. Lawler, Shenna Perry, Stanley C. Preczewski, Lois C. Richardson, Gene Ruffin, Terrance Schneider. (Cusimano, Angela) (Entered: 05/22/2017)
05/23/2017		Submission of 21 MOTION to Dismiss *For Mootness* to District Judge Eleanor L. Ross. (cmd) (Entered: 05/23/2017)
06/28/2017	33	MOTION for Settlement *Conference* by Joseph Bradford, Chike Uzuegbunam. (Attachments: # 1 Text of Proposed Order) (Barham, Travis) (Entered: 06/28/2017)
07/12/2017	34	RESPONSE in Opposition re 33 MOTION for Settlement *Conference* filed by Aileen C. Dowell, Catherine Jannick

		Downey, Jim B. Fatzinger, Corey Hughes, Tomas Jiminez, Rebecca A. Lawler, Shenna Perry, Stanley C. Preczewski, Lois C. Richardson, Gene Ruffin, Terrance Schneider. (Cusimano, Angela) (Entered: 07/12/2017)
07/28/2017		Submission of 33 MOTION for Settlement *Conference* to District Judge Eleanor L. Ross. (cmd) (Entered: 07/28/2017)
08/29/2017	35	MOTION for Oral Argument *on Defendants' Pending Motions to Dismiss* by Joseph Bradford, Chike Uzuegbunam. (Attachments: # 1 Text of Proposed Order) (Barham, Travis) (Entered: 08/29/2017)
08/31/2017	36	ORDER DENYING Plaintiffs' 33 Motion for Settlement Conference. If the Court does not resolve the Motions to Dismiss in Defendants' favor and close the case, the Court will reevaluate whether mediation would be appropriate at that time. Signed by Judge Eleanor L. Ross on 8/31/2017. (cmd) (Entered: 09/01/2017)
09/18/2017		Submission of 35 MOTION for Oral Argument *on Defendants' Pending Motions to Dismiss* to District Judge Eleanor L. Ross. (cmd) (Entered: 09/18/2017)
09/26/2017	37	Amicus Curiae Brief entered by Aileen Bell Hughes on behalf of United States of America, Department of Justice. (Hughes, Aileen) Modified on 9/27/2017 to edit event text. (cmd) (Entered: 09/26/2017)

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04/19/2018	39	Supplemental RESPONSE Brief in Support re 21 MOTION to Dismiss *For Mootness* filed by Aileen C. Dowell, Catherine Jannick Downey, Jim B. Fatzinger, Corey Hughes, Tomas Jiminez, Rebecca A. Lawler, Shenna Perry, Stanley C. Preczewski, Lois C. Richardson, Gene Ruffin, Terrance Schneider. (Attachments: # 1 Exhibit)(Cusimano, Angela) Modified on 5/2/2018 to edit event text. (cmd) (Entered: 04/19/2018)
05/01/2018	40	RESPONSE re 39 Supplemental Response Brief in Support of Motion, filed by Joseph Bradford, Chike Uzuegbunam. (Barham, Travis) Modified on 5/2/2018 to edit text. (cmd) (Entered: 05/01/2018)
05/25/2018	41	ORDER: The Court GRANTS Defendants' 21 Motion to Dismiss for Mootness; GRANTS Defendants' 18 Motion to Dismiss; DENIES Plaintiffs' 35 Motion for Oral Argument; and DISMISSES WITHOUT PREJUDICE this case. Signed by Judge Eleanor L. Ross on 5/25/2018. (cmd) (Entered: 05/25/2018)
05/25/2018		Civil Case Terminated. (cmd) (Entered: 05/25/2018)
05/25/2018	42	CLERK'S JUDGMENT in favor of Defendants against Plaintiffs. (cmd)--Please refer to http://www.ca11.uscourts.gov to obtain an appeals jurisdiction checklist-

		-(Entered: 05/25/2018)
06/25/2018	43	NOTICE OF APPEAL as to 42 Clerk's Judgment, 41 Order on Motion for Oral Argument,, Order on Motion to Dismiss,,, by Joseph Bradford, Chike Uzuegbunam. Filing fee $ 505, receipt number 113E-7967876. Transcript Order Form due on 7/9/2018 (Barham, Travis) (Entered: 06/25/2018)
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