

December 1, 2021

The Honorable Ralph Northam
Governor of Virginia
Post Office Box 1475
Richmond, Virginia 23218
c/o clark.mercer@governor.virginia.gov

The Honorable L. Louise Lucas
Chairwoman of the Senate Committee on Education and Health
Senate of Virginia
900 East Main Street
Pocahontas Building, Room E604
Richmond, Virginia 23219
district18@senate.virginia.gov

The Honorable Roslyn C. Tyler
Chairwoman of the House Committee on Education
Virginia House of Delegates
900 East Main Street
Pocahontas Building, Room E306
Richmond, Virginia 23219
DelRTyler@house.virginia.gov

Dear Governor Northam, Senator Lucas, and Delegate Tyler:

In accordance with § 23.1-401.1(D) of the Code of Virginia, the University of Virginia submits this report regarding our compliance with § 23.1-401.1.

UVA maintains a website, <https://freespeech.virginia.edu/>, that includes links to University policies and state regulations relevant to free speech, materials that are associated with such policies, and the process to report incidents involving the disruption of constitutionally protected speech. The University's policies and regulations regarding constitutionally protected speech are located at <https://freespeech.virginia.edu/policies-regulations> and include the following:

- [PRM-017: Use of University Facilities or Property, and Limits on Direct Solicitation and Advertising](#)
- [Academic Freedom \(section 3.1 in the Faculty Handbook\)](#)
- [Amplified Sound Policy](#)
- [Athletic Facility Policies](#)
- [Office of the Dean of Students Event Planning Services](#)

- [Parties, Dances, Socials and Late Night Events](#)
- [GOV-004: Use of the University's Federally Registered Trademark](#)
- [PRM-008: Exterior Posting and Chalking](#)
- [PRM-018: Issuance of Trespass Warnings](#)
- [SEC-030: Regulation of Weapons, Fireworks, and Explosives](#)
- [SEC-032: Open Burn and Open Flame Operations at the University of Virginia](#)
- [SEC-039: Protests, Demonstrations and Other Expressive Activities during Official University Ceremonies and Events held at the Academical Village](#)
- [SEC-040: Use of Unmanned Aircraft Systems \("UAS" or "Drones"\)](#)
- [EXT-003: Communicating with Government Officials](#)

These policies and regulations are also included in the University's online student handbook for undergraduate students at <http://records.ureg.virginia.edu/index.php> and for graduate students at <http://records.ureg.virginia.edu/index.php>. Information about these policies and regulations in the form of Frequently Asked Questions (FAQs) also are featured on the website at <https://freespeech.virginia.edu/faqs>. The homepage of this website prominently displays the reporting systems that our constituents may use to report an incident involving the disruption of constitutionally protected speech at <https://freespeech.virginia.edu/> and can also be found at <https://justreportit.virginia.edu/>.

UVA's students and employees, including those responsible for student discipline or education of free speech materials, are notified of these policy resources and processes to report incidents of disruption of constitutionally protected speech throughout the year via various communication channels. These channels include the above-mentioned websites, the student information system enrollment module for new and returning students (*see* Exhibit 1), and the University Judiciary Committee training and education (*see* Exhibit 2).

Since December 1, 2020, no complaints have been filed in a court of law to initiate a lawsuit against UVA or an employee of the institution in his or her official capacity for an alleged violation of the First Amendment to the United States Constitution.

On behalf of the University, I am pleased to certify that the University has fulfilled the requirements in Virginia Code § 23.1-401.1. Should you need additional information, please do not hesitate to contact me.

Thank you for your service to the Commonwealth.

Best,



James E. Ryan
President

c: Gary Nimax, Assistant Vice President for Compliance

PEOPLE/WEB SEARCH CALENDAR EMERGENCY INFO A-Z INDEX UVA EMAIL UNIVERSITY of VIRGINIA

STUDENT INFORMATION SYSTEM

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Task Details Legend

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- Introduction
- Dependency Status
- Criminal History
- Criminal Agreement
- University Policies
- Free Speech and Expression**
- Student Financial Agreement
- Communication
- Address
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- Complete

Free Speech and Expression

Alex Pellicane

In 2018, the Commonwealth of Virginia established by [statute](#) a requirement that "[e]xcept as otherwise permitted by the First Amendment to the United States Constitution, no public institution of higher education shall abridge the constitutional freedom of any individual, including enrolled students, faculty and other employees, and invited guests, to speak on campus." The Commonwealth further required "[e]ach public institution of higher education [to] establish and include in its student handbook, on its website, and in its student orientation programs policies regarding speech that is constitutionally protected under the First Amendment to the United States Constitution and the [process](#) to report incidents of disruption of such constitutionally protected speech.

In 2021, the University's Board of Visitors' endorsed a [statement](#) affirming its commitment to free expression as put forward by the University's Committee on Free Expression and Free Inquiry. This statement and the content below, published in the University's Undergraduate and Graduate Records, reflect the University's policies on free speech.

The University's Statement of Students' Rights and Responsibilities ([STAF-003](#)) begins by stating:

The University of Virginia is a community of scholars in which the ideals of freedom of inquiry, freedom of thought, freedom of expression, and freedom of the individual are sustained. The

I acknowledge receipt of this statement.

Date

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Student Task WorkCenter

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Free Speech and Expression

University is committed to supporting the exercise of any right guaranteed to individuals by the Constitution and the Code of Virginia and to educating students relative to their responsibilities.

The Statement of Students' Rights and Responsibilities goes on to explain that:

...[T]he exercise and preservation of these freedoms and rights require a respect for the rights of all in the community to enjoy them to the same extent. It is clear that in a community of learning, willful disruption of the educational process, destruction of property, and interference with the orderly processes of the University or with the rights of other members of the University cannot be tolerated. Students enrolling in the University assume an obligation to conduct themselves in a manner compatible with the University's function as an educational institution.

The First Amendment protects a wide range of speech, including on controversial topics of the day. It also protects much of what is often characterized as "hate speech." As a result, there is natural tension between broad First Amendment rights to free expression in a public university and a desire to create and maintain a community in which everyone feels included, respected and supported. Some speech that is constitutionally protected, and thus outside the scope of formal University sanction through the University Judiciary Committee, may nonetheless impact certain members of the community disproportionately, with a potential negative impact on their educational experience. If the University is

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Free Speech and Expression

to achieve both important goals – a robust intellectual community where people feel free to speak their minds on important public issues and a diverse community where all feel included and welcome – we must be mindful of the power of our words.

To fulfill the University’s mission, each student must feel empowered to speak their mind, but do so in a way that provides space for dissenting views and allows for a true exchange of ideas. This means making a sincere effort to think about the impact of hateful rhetoric and culturally insensitive statements even though a person may have a constitutional right to say these things. This also means engaging with those who disagree, even when the subject is a topic of great personal importance. Of course, there are some individuals who are not interested in engaging constructively or in truly listening to the views of others. They may also be interested solely in creating division or distrust, rather than seeking to understand and engage in healthy debate. Such individuals are likely to be the exception, however.

There are some forms of expression that are not constitutionally protected and are subject to sanction by the University. The most common of these include [harassment](#) as defined by University policy, including a subset of specific [gender-based harassment](#); disruption of University operations; preventing an invited or permitted [speaker](#) from speaking or being heard by others in attendance; directing threats to a person or group with the intention of placing them in fear of bodily harm or death; advocacy intended to and likely to incite imminent lawless action; and slander/libel/defamation. Virginia also has

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to a person or group with the intention of placing them in fear of bodily harm or death; advocacy intended to and likely to incite imminent lawless action; and slander/libel/defamation. Virginia also has laws prohibiting: "[harassment by computer](#)," criminalizing communication via computer or computer network of certain [obscene](#), vulgar, profane, lewd, lascivious, or indecent language, or language threatening an illegal or immoral act, with the intent to coerce, intimidate, or harass an individual; and "[use of a person's identity with the intent to coerce, intimidate, or harass](#)," criminalizing publication of a person's name or photograph along with either their home address or certain other [personal identifying information](#), and done with the intent to coerce, intimidate, or harass them.

Even when a statement is constitutionally protected, the University or other members of the community may use their own respective voices to criticize, denounce, or express disagreement with that statement. We are not shielded from criticism, even if we may be shielded from formal University disciplinary action. Posting something online often has negative consequences, either by placing you or others in an unfavorable light or unleashing individuals trolling online who may respond in ways never intended or expected. Regardless of whether the "doxing" activity falls within the more narrow scope of prohibited criminal conduct, it nonetheless can be potentially dangerous to the person targeted. Students should promptly report any actual threats received as a result of doxing or other social media activity using [Just Report It](#), or by dialing 911 in an emergency.

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Free Speech and Expression

social media activity using [Just Report It](#), or by dialing 911 in an emergency.

The University's primary policy on freedom of expression on Grounds, [PRM-017](#), sets forth broad protections for the free expression rights of students, faculty and staff (collectively defined in the policy as "Affiliated Persons"). Under the First Amendment and applicable [state law](#), the University is permitted to put into place content-neutral, reasonable policies as to the time, place and manner of speech tailored to significant interests such as enabling the academic enterprise to proceed without disruption. These policies include when, where and how [amplified sound](#) may be used; the manner and location of [posting flyers and chalking](#) on sidewalks; how [space](#) may be reserved and used; and some regulations of demonstrations during certain [ceremonies and events](#). There are [Housing policies](#) specific to on-Grounds University residences. You may also wish to briefly review the helpful [FAQ](#) on PRM-017.

The information provided above is intended to offer insight into your broad rights to free expression as a student, links to relevant University policies and state laws, and important things to consider as you exercise these rights within a diverse intellectual community. Each of you should feel empowered to speak passionately on subjects of interest or importance, while working to respect each other and create a truly inclusive community.

I acknowledge receipt of this statement.

Date

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Exhibit 2



FIRST AMENDMENT TRAINING AND DISCUSSION

UJC – August 2021



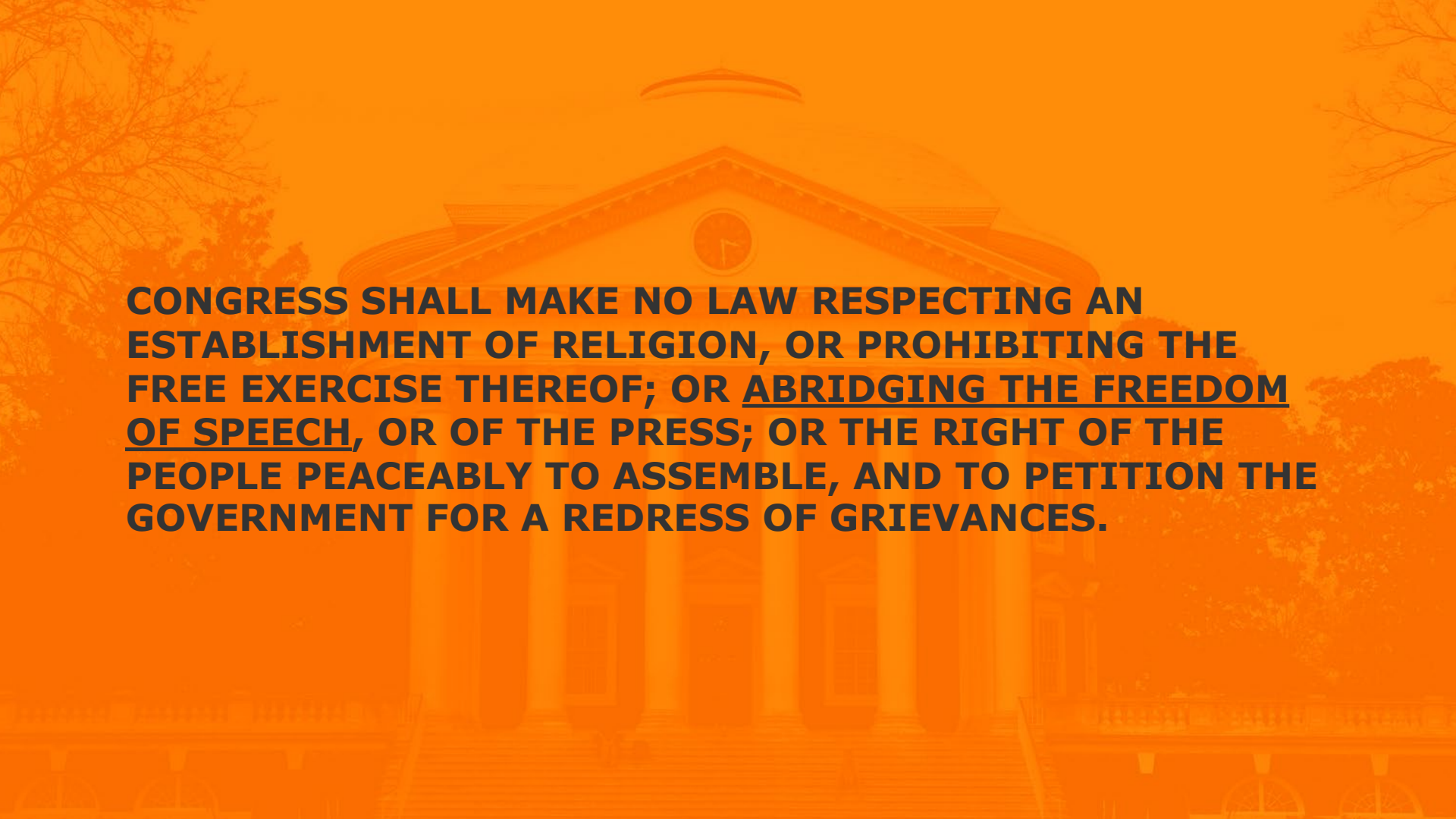


Contents

1. Establishing the Context
2. First Amendment Basics
3. University Policy
4. Role and Requirements of the UJC



ESTABLISHING THE CONTEXT



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.

WHY IS ALL THIS IMPORTANT?

The University of Virginia is a public institution and a recipient of public funding. We are bound by the United States Constitution and the rights articulated therein (including 1A).

Virginia Law § 23.1-401.1:

- A. Except as otherwise permitted by the First Amendment to the United States Constitution, no public institution of higher education shall abridge the constitutional freedom of any individual, including enrolled students, faculty and other employees, and invited guests, to speak on campus.

- B. Each public institution of higher education shall establish and include in its student handbook, on its website, and in its student orientation programs policies regarding speech that is constitutionally protected under the First Amendment to the United States Constitution and the process to report incidents of disruption of such constitutionally protected speech.

- C. Each public institution of higher education shall develop materials on the policies established pursuant to subsection B and notify any employee who is responsible for the discipline or education of enrolled students of such materials.

WHY IS ALL THIS IMPORTANT?

UJC is an agent of the University and, by extension, the Commonwealth of Virginia.

+

UJC is responsible for the discipline of enrolled students.

= Under law, UJC must not interfere with Constitutionally protected speech.

WHY IS ALL THIS IMPORTANT?

Beyond the law, the most important considerations:

- Free and open inquiry is the basis for the scientific method and all other modes of investigation that produce, expand, and refine knowledge.
- The educational endeavor for students requires freedom to speak, write, inquire, listen, challenge, and learn, including through exposure to a range of ideas and cultivation of the tools of critical thinking and engagement.
- While some ideas we may personally find distasteful, offensive, uncomfortable, or just plain bad, suppressing them removes an opportunity to explore and challenge them – and in doing so being able to connect with another person. Hearing other ideas helps us challenge and refine our own.

The image features a young man with dark hair and glasses, wearing a grey t-shirt, looking intently at a screen. The background is a warm, orange-toned scene with a halftone dot pattern. A large, stylized sunburst graphic, composed of numerous thin white lines radiating from a central point, is positioned on the left side of the frame. The text 'FIRST AMENDMENT BASICS' is written in a clean, white, sans-serif font across the center of the image, partially overlapping the sunburst and the man's face.

FIRST AMENDMENT BASICS

WHAT IS FREE SPEECH?

- Right of any person to express ideas, opinions, or viewpoints without punishment or interference from federal, state, or local government.
- Speech can be written, verbal, or “symbolic” (clothing, signs, pictures/images, protests, and vigils).
- Can include controversial or unpopular ideas, even hate speech.
- Public colleges/universities are agents of the state and thus a part of state government.

WHAT IS FREE SPEECH?

“If there is a bedrock principle underlying the First Amendment, it is that government may not prohibit the expression of an idea simply because it finds it offensive or disagreeable.”

-Justice William Brennan, *Texas v. Johnson* (1989)

WHAT ISN'T PROTECTED BY 1A?

- **Fighting words**: Speech that is personally or individually abusive and is likely to incite imminent physical retaliation.
- **True threats**: Statements where the **speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals**. The speaker does not have to act on his or her words (e.g., commit a violent act) in order to communicate a true threat. For example, if a group of students yelled at a student in a menacing way that would cause the student to fear a physical assault, such speech would not be protected.
- **Obscenity**: Speech or materials may be deemed obscene (and therefore unprotected) if the speech meets the following (extremely high) threshold: It (1) appeals to the “prurient” interest in sex, (2) is patently offensive by community standards and (3) lacks literary, scientific or artistic value.
- **Defamation**: An intentional and false statement about an individual that is publicly communicated in written (called “libel”) or spoken (called “slander”) form, causing injury to the individual.

WHAT ISN'T PROTECTED BY 1A?

- **Harassment**: Conduct based on a protected category that is so **severe, pervasive and objectively offensive**, and that so **undermines and detracts from the victim's educational experience**, that the victim is effectively **denied equal access to an institution's resources and opportunities**.
- **Certain symbolic actions**: But only if the actions are otherwise illegal, such as tagging, graffiti, littering or burning a cross on private property.
- **Interference with medical treatment**: Speech that interferes with the treatment of patients.
- **Invasion of privacy**: An unjustifiable invasion of privacy or confidentiality not involving a matter of public concern.
- **Material and substantial disruption**: An action that materially and substantially disrupts the functioning of the university or that substantially interferes with the protected free expression rights of others.

SPECIAL EMPHASIS: TRUE THREATS

True Threats in the Context of SOC 2

SOC 2: Conduct which **intentionally or recklessly threatens** the health or safety of any person on University-owned or leased property, at a University sanctioned function, at the permanent or temporary local residence of a University student, faculty member, employee or visitor, or in the city of Charlottesville or Albemarle County.

Speech (non-behavioral) context for SOC 2 must follow the True Threat Doctrine: Statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.

ELEMENTS OF A TRUE THREAT

To find that the Respondent violated SOC 2 based on the speech at issue, the Complainant must prove a beyond a reasonable doubt that:

- The Respondent subjectively intended to convey the speech at issue as a threat. That is, the Respondent said/communicated the words for the purpose of issuing a threat, or with knowledge that the speech will be viewed as a threat; **and**
- The content of the speech contained a “true threat.” That is, an ordinary, reasonable recipient who is familiar with the context in which the speech/statement is made would interpret the words as a serious expression of an intent to do harm.
- The Complainant need not prove that the Respondent had the intent or ability to **carry out** the threat in evaluating whether the speech at issue constituted a true threat.

SPECIAL EMPHASIS: HARASSMENT

University definition of harassment: Unwelcome conduct directed against a person based on one or more of that person's protected characteristics or statuses, which conduct is so severe or pervasive that it interferes with an individual's employment, academic performance or participation in University programs or activities, and creates a working, learning, program or activity environment that a reasonable person would find intimidating, hostile or offensive.

-Based on federal and state laws and policies: Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, ADA of 1990, and others.

SPECIAL EMPHASIS: HARASSMENT

Protected characteristics or statuses: Age, color, disability, family medical or genetic information, gender identity or expression, marital status, military status (which includes active duty service members, reserve service members, and dependents), national or ethnic origin, political affiliation, pregnancy, race, religion, sex, sexual orientation, and veteran status.

Jurisdiction: Speech that potentially qualifies as harassment falls under the jurisdiction of the University's Equal Opportunity & Civil Rights (EOCR) Office (which includes the Title IX Office). The University must follow certain federal policies and investigatory standards in addressing these matters.

Questions of appropriate jurisdiction in potential UJC cases are discussed among UJC Exec, Asst. VP of Student Affairs, University Counsel, and (where appropriate) Assoc. VP of EOCR.



UNIVERSITY POLICY

UNIVERSITY POLICIES RELATED TO SPEECH

[PRM-017: Use of University Facilities or Property, and Limits on Direct Solicitation and Advertising](#)

[SEC-039: Protests, Demonstrations and Other Expressive Activities during Official University Ceremonies and Events held at the Academical Village](#)

[Amplified Sound Policy](#)

[PRM-008: Exterior Posting and Chalking](#)

[Homepage | Free Speech \(virginia.edu\)](#)



ROLES AND RESPONSIBILITIES OF THE UJC

THE UJC ROLE

- In case situations, determine appropriate jurisdiction in partnership with Student Affairs and University Counsel.
- Understand and comply with First Amendment requirements; support the University's statement on free speech and expression (remember, we are agents of the University and Commonwealth of Virginia).
- Serve as a resource for the University Community regarding free speech parameters (this can be challenging!!)
- Apply appropriate rules and standards (as clarified by Counsel) in cases that may involve speech related issues.

QUESTIONS FOR REFLECTION & DISCUSSION

What makes sense to you about First Amendment policies and application at the University? What doesn't make sense?

What questions do you have about your roles or responsibilities?

Where do you get more information or go for questions?

- <https://freespeech.virginia.edu/>
- Marsh Pattie; jmpattie@virginia.edu; Rotunda – Northeast Wing

