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# SPEECH FIRST

## Fourth Circuit Decision in Speech First Lawsuit Against VA Tech Over Anti-Free Speech Policies that Enabled Student Censorship

**Washington, D.C. (May 31, 2023)** – Speech First, a nonprofit membership association working to combat restrictions on free speech and other civil rights at colleges and universities across America, has received a decision from the U.S. Court of Appeals for the Fourth Circuit in their lawsuit against the Virginia Polytechnic Institute and State University (“Virginia Tech”). In [Speech First v. Sands, et al.](#), the court ruled in a 2-1 decision that Speech First did not have standing to challenge Virginia Tech’s bias-incident policy, as enforced by its Bias Incident Response Team (“BIRT”), or its Informational Activities Policy (flyering policy). Judge J. Harvie Wilkinson III dissented. Judge Wilkinson would have held that Speech First has standing to challenge both policies and remanded the case to the district court with instructions to enjoin them. See decision and opinions [HERE](#).

Speech First launched the initial lawsuit against Virginia Tech back in April 2021 on behalf of its student members on campus, challenging several Virginia Tech policies that chill student speech and violate students’ First Amendment rights.

The District Court granted Speech First a partial injunction—it held that Virginia Tech’s computer-use policy likely violated the First Amendment, but it otherwise denied preliminary relief. Speech First appealed the district court’s rulings on the BIRT and the flyering policy to the Fourth Circuit in January 2022.

Under the bias-incident policy, students can be reported to the BIRT for any “expression[] made against a person or group”—whether online or in person—that the University considers to be motivated by “bias” against a protected characteristic. Examples of “bias incidents” under the policy include “words or actions that contradict the spirit of the Principles of Community,” “jokes that are demeaning to a particular group of people,” and “posting flyers that contain demeaning language or images.” Virginia Tech encourages students to report biased speech whenever they encounter it. The flyering policy forbids students from engaging in “informational activities,” such as petitioning for signatures or handing out informational literature, unless are sponsored by a university-affiliated organization and receive prior approval from the University.

These policies objectively chill student speech. Accordingly, students self-censor themselves, losing out on a college experience where ideas are vigorously debated in the pursuit of truth.

Speech First agrees with Judge Wilkinson's assessment of the BIRT:

"BIRT's own self-description lays bare Virginia Tech's persistent efforts to impose a bureaucratic superstructure that dampens speech. Because the majority glosses over the policy's practical consequences, it is important to lay it out from beginning to end exactly as it is presented to students. Once the full policy is exposed, stripped of fig-leaf assurances, its oppressive nature has nowhere to hide..."

"...Viewpoint discrimination is arguably the cardinal First Amendment sin, but that is exactly where the BIRT policy leads. When anyone can be anonymously reported for an offense vaguely defined as a "bias incident," one must abandon common sense to think that all students will feel an equal effect. The truth is that those who believe their views are the least popular will be the first to clam up. No student who knows his speech will rouse applause will hesitate to make his voice heard. But the student who wishes to dissent will shrink from the stage. Because of this lopsided effect, BIRT commits the First Amendment's original sin..."

**[Cherise Trump](#), Executive Director of Speech First, issued the following statement:**

"Virginia Tech and its administrators have silenced, intimidated, and suppressed students' speech for years with these policies. Our student members actively censor what they say, hide their views on social or political issues, and avoid speaking up in the classroom because they know they can be reported by their peers to the University's Bias Incident Response Team. Open discourse and inquiry should be a staple at universities; it shouldn't be monitored for bias and 'intervened' against by university administrators. Virginia Tech's goal of 'eliminating' speech it disagrees with does not supersede the First Amendment."

To schedule an engagement with Speech First, please contact Michael Hensley at  
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