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**UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII**

**MERRITT BURCH and ANTHONY
VIZZONE**)

Plaintiffs,)

v.)

**UNIVERSITY OF HAWAII
SYSTEM, DAVID LASSNER,
DONALD STRANEY, ELLEN
KUSANO and LEOMI BERGKNUT,**)

Defendants.)

Case No.

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF
AND DAMAGES; EXHIBITS A-E;
SUMMONS**

JURY TRIAL DEMANDED

Plaintiffs Merritt Burch and Anthony Vizzone complain of Defendants and allege:

I. INTRODUCTION

1. “The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.” *Shelton v. Tucker*, 364 U.S. 479, 487 (1960). This is particularly true of public universities, where “[t]eachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding.” *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957). The freedoms of speech, assembly, and petition must be zealously guarded because “[t]he college classroom with its surrounding environs is peculiarly the ‘marketplace of ideas.’” *Healy v. James*, 408 U.S. 169, 180 (1972). Recognizing the gravity of these principles, the United States Supreme Court has held that “state colleges and universities are not enclaves immune from the sweep of the First Amendment,” *id.*, and it has stressed that “[t]he first danger to liberty lies in granting the State the power” to limit these freedoms “against a background and tradition of thought and experiment that is at the center of our intellectual and philosophic tradition.” *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 835 (1995).

2. Despite the fact that “state-operated schools may not be enclaves of totalitarianism,” and that neither “students [nor] teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate,” *Tinker v. Des*

Moines Indpt. Comm. Sch. Dist., 393 U.S. 503, 506, 511 (1969), the University of Hawaii-Hilo (“UH Hilo”) has adopted and enforced excessive restrictions on the rights of student organizations, and limited student speech in open areas of the campus. UH Hilo officials ordered Plaintiffs to cease approaching their fellow students to offer them copies of the United States Constitution and then later chilled their expression by telling them “this isn’t really the 60s anymore” and “people can’t really protest like that anymore.” Further, UH Hilo unconstitutionally restricts access to open areas on campus by requiring students to seek permission to speak at least seven business days in advance and by limiting the areas where students may engage in spontaneous expressive activities to only 0.26% of UH Hilo’s 115-acre campus.

3. This is a civil rights action to protect and vindicate the First and Fourteenth Amendment rights of Merritt Burch and Anthony Vizzone and their fellow students at UH Hilo. By policy and practice, UH Hilo unlawfully restricts students’ constitutional rights to free expression, and it has restricted the Plaintiffs’ constitutional rights specifically. Accordingly, UH Hilo’s policies and enforcement practices are challenged on their face and as applied to Ms. Burch and Mr. Vizzone. This action seeks declaratory and injunctive relief, damages, and attorneys’ fees.

II. JURISDICTION AND VENUE

4. This action arises under the United States Constitution, particularly the First and Fourteenth Amendments, and the Civil Rights Act, 42 U.S.C. §§ 1983 and 1988.

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

6. This Court has authority to grant the requested declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and Federal Rule of Civil Procedure 57.

7. This Court has authority to issue the requested injunctive relief pursuant to 42 U.S.C. § 1983 and Federal Rule of Civil Procedure 65.

8. This Court has authority to award attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

9. Venue is proper in the United States District Court for the District of Hawaii pursuant to 28 U.S.C. § 1391(b) because the events giving rise to the instant claim occurred within this District and because at least one Defendant resides in this District.

III. PLAINTIFFS

10. Plaintiff Merritt Burch is, and was at all times relevant to this Complaint, a resident of Kurtistown, Hawaii, and she is presently a student at the University of Hawaii at Hilo pursuing a bachelor of science degree in molecular

biology. She is the current president of the Young Americans for Liberty (“YAL”) chapter at UH Hilo. YAL is a pro-liberty organization, with more than 500 chapters and 162,000 youth activists on America’s college campuses nationwide. Its mission is to “to identify, educate, train, and mobilize young people committed to winning on principle.”

11. Plaintiff Anthony Vizzone is, and was at all times relevant to this Complaint, a resident of Keaau, Hawaii, who is presently a student at the University of Hawaii at Hilo pursuing a bachelor of science degree in computer science. He is the current treasurer of the YAL chapter at UH Hilo.

IV. DEFENDANTS

12. Defendant University of Hawaii System (“UH System”) is a public university system organized and existing under the laws of the State of Hawaii. The UH System includes 10 campuses, including the University of Hawaii at Hilo, and dozens of educational, training and research centers across the Hawaiian Islands. The UH System has a total enrollment of 60,330 students, and a fiscal year 2012 budget of \$902.3 million. The UH System is properly sued pursuant to Haw. Rev. Stat. § 304A-108.

13. Defendant David Lassner is, and was at all times relevant to this Complaint, Interim President of the University of Hawaii System. He is the UH System’s chief executive officer, responsible for the UH System’s administration

and policy-making, including the policies and procedures challenged herein that were applied to deprive Ms. Burch and Mr. Vizzone of their constitutional rights. Defendant Lassner acquiesced in, sanctioned, and supported the actions of Defendants Ellen Kusano and Leomi Bergknut in enforcing these policies against Ms. Burch and Mr. Vizzone. Defendant Lassner acted under color of state law when he violated Ms. Burch's and Mr. Vizzone's constitutional rights to free expression. Defendant Lassner is sued in his official capacity.

14. Defendant Donald Straney is, and was at all times relevant to this Complaint, the Chancellor of the University of Hawaii at Hilo, a public university organized and existing under the laws of the State of Hawaii. He is the chief executive officer of the University of Hawaii at Hilo, responsible for enactment and enforcement of UH Hilo policies, including the policies and procedures challenged herein that were applied to deprive Ms. Burch and Mr. Vizzone of their constitutional rights. Defendant Straney acquiesced in, sanctioned, and supported the actions of Defendants Ellen Kusano and Leomi Bergknut in enforcing these policies against Ms. Burch and Mr. Vizzone. Defendant Straney acted under color of state law when he violated Ms. Burch's and Mr. Vizzone's constitutional rights to free expression. Defendant Straney is sued in his official capacity.

15. Defendant Ellen Kusano is, and was at all times relevant to this Complaint, Director of Student Affairs at the University of Hawaii at Hilo. She is

responsible for overseeing regulation of and compliance by all Registered Independent Student Organizations (“RISOs”), including under the policies and procedures challenged herein that were applied to deprive Ms. Burch and Mr. Vizzone of their constitutional rights. Defendant Kusano acted under color of state law when she violated Ms. Burch’s and Mr. Vizzone’s constitutional rights to free expression. Defendant Kusano is sued both in her individual and official capacities.

16. Defendant Leomi Bergknut is, and was at all times relevant to this Complaint, the Student Leadership Development Coordinator at the University of Hawaii at Hilo. She also oversees training and regulation of RISOs, including the policies and procedures challenged herein that were applied to deprive Ms. Burch and Mr. Vizzone of their constitutional rights. Defendant Bergknut acted under color of state law when she violated Ms. Burch’s and Mr. Vizzone’s constitutional rights to free expression. Defendant Bergknut is sued both in her individual and official capacities.

V. STATEMENT OF FACTS

A. Violation of Plaintiffs’ Constitutional Rights

(1) Campus Center Plaza Incident

17. From January 14 through January 16, 2014, Ms. Burch and other members of the UH Hilo YAL chapter participated in a university-sponsored event

to introduce campus students to UH Hilo's various student organizations. YAL and other student groups congregated at tables set up in the Campus Center Plaza, a concrete patio located near the main entrance of campus. The activity, known as "tabling," allows student groups to display information about their activities and to speak with students who might be interested in joining.

18. When they arrived at the Campus Center Plaza on January 16, 2014, Ms. Burch and another YAL member found that the only available table that could accommodate their banner was in the corner of the plaza, removed from the main flow of pedestrian traffic.

19. About half-an-hour before the end of the event, Ms. Burch and the other YAL member became discouraged by the minimal number of students approaching their remote table and decided to engage students directly in the same way they had seen other groups do that day. For instance, they witnessed members of the Accounting Club approach students asking them to buy "chili tickets" for a club fundraiser. Accordingly, Ms. Burch and her fellow YAL member got up from behind their table to hand out the copies of the United States Constitution and two other cards explaining YAL's mission.

20. Ms. Burch and the other YAL member walked toward the middle of Campus Center Plaza. As students walked by, Ms. Burch and the other YAL member asked if the passerby wanted a copy of the Constitution. Every student

who was offered a Constitution took a copy. No suggestion was made that Ms. Burch or any other YAL member acted in a disruptive manner or annoyed other students, and no complaints were made about their activities.

21. Nevertheless, as they began handing out copies of the Constitution, Ms. Burch and the other YAL member noticed a woman watching them, who was later identified as Defendant Ellen Kusano, University Director of Student Affairs. After about 15 minutes, Defendant Kusano drew near, and, without identifying herself, instructed Ms. Burch and other YAL members not to approach students to “solicit information.” In an authoritative tone, she directed the Plaintiff to “go back behind your table and wait for the students to come to you.” During this exchange Defendant Kusano pointed repeatedly to the YAL table in the far corner of Campus Center Plaza.

22. Defendant Kusano explained that the University had a policy to prevent RISOs from approaching other students during tabling events. The YAL member accompanying Ms. Burch responded that she and Ms. Burch had a “constitutional right to hand out this document.” Defendant Kusano answered, “It’s not about your rights in this case, it’s about the University policy that you can’t approach people.” When Ms. Burch asked whether it was “unconstitutional on campus to hand out copies of the Constitution,” Defendant Kusano responded,

“This isn’t about your rights. In the RISO Handbook it says that you can’t approach people.”

23. The next day, on January 17, 2014, Defendant Leomi Bergknut, the Student Leadership Development Coordinator, sent an email at 1:18 a.m, to all RISO presidents, vice presidents, and advisers at UH Hilo. An attached document contained the following statement:

Reminder: When using a public venue such as the Campus Center Plaza, RISOs may not approach people to solicit information. Although we support a diverse intellectual and social atmosphere on campus, we also believe that each person should be able to freely choose whether to listen to your solicitation or not. At all times, during a RISO’s use of any campus facility, there shall be RISO members present. – from RISO Handbook

24. As a direct result of Defendant Kusano’s and Defendant Bergknut’s actions, YAL members Ms. Burch and Mr. Vizzone curtailed expressing their beliefs or distributing literature while on campus for fear of being punished under University policies.

25. Additionally, Ms. Burch, Mr. Vizzone, and other YAL members have limited their expressive activities out of fear of being punished pursuant to policies set forth in the University’s RISO Handbook.

(2) RISO Orientation Meeting

26. On January 23, 2014, Ms. Burch and Mr. Vizzone attended a RISO orientation meeting at which Defendant Bergknut reiterated: “The University policy [for events] says that RISOs can’t approach people. We run a diverse campus and people can feel intimidated and it’s like they [the students] can’t say no. We have a free speech zone for students to use and it’s between the theater and new student services building.”

27. Defendant Bergknut asked Ms. Burch and Mr. Vizzone about YAL’s plans for spring semester. They responded that they were “thinking about protesting the NSA’s spying.” Defendant Bergknut asked what the letters N-S-A mean, and when Mr. Vizzone clarified that they meant the National Security Agency, Defendant Bergknut suggested that they hold their events “in the free-speech zone” rather than in the larger more accessible parts of campus where students are more likely to congregate.

28. As set forth in UH Hilo policies, the “Free Speech Zone” is the only public location on campus where students may express themselves without obtaining University permission in advance. It is an area located on the edge of campus between the theater and the student services building. Ms. Burch and Mr. Vizzone estimate that the area is approximately .3 of an acre, or about .26% of UH Hilo’s 115-acre campus. The tiny area slopes downward towards a muddy ravine

and the sidewalks that surround it are on a steep upward incline from the zone itself. This area is illustrated on the University of Hawaii at Hilo Main Campus Map highlighted in yellow. (*See* Exhibit A, Main Campus Map, modified with color, and related photographs).

29. When Ms. Burch expressed concern that the “free speech zone” was in an area of campus with minimal pedestrian traffic, Defendant Bergknut counseled them to do “PR and advertising” which could lead them to “be surprised about the people that show up.” Defendant Bergknut then ended the conversation by saying, “This isn’t really the 60’s anymore. People can’t really protest like that anymore, times have really changed since the movement back then.”

30. Defendant Bergknut’s actions caused Ms. Burch and Mr. Vizzone to curtail expressing their beliefs or distributing literature while on campus for fear of being punished under UH Hilo policies.

(3) Reservation of Campus Facilities

31. Besides the “free speech zone” area, only two other outdoor campus locations are available to students to engage in free expression with the UH Hilo student body – the Campus Center Plaza and the Library Lanai. UH Hilo policies require that students request a reservation at least seven working days in advance to obtain permission to hold expressive activities at either of those areas. Requests

must be made through the Campus Center, which is directed by Defendant Ellen Kusano.

32. On March 3, 2014, Ms. Burch requested use of the Library Lanai from 9:00 a.m. through 2:00 p.m. on April 24, 2014, to hold an even called “War on YOUth” to attract attention to the rate of government spending and the responsibility that current students will have for repaying the national debt currently being incurred by government borrowing. As part of the activity the UH Hilo YAL group planned to set up a banner and distribute literature to raise awareness about the issue.

33. The request was received and assigned control number 140431. The confirmation of the request contained the following warning: “DO NOT PUBLICIZE THIS EVENT UNTIL CONFIRMATION EMAIL IS RECEIVED.” (Capitalization is in the original.)

34. On information and belief, reservation requests are usually approved or denied within a few days. However, sixteen days after submitting a request, the University had not authorized YAL’s “War on YOUth” event in the Library Lanai. Therefore, on March 19, 2014, Ms. Burch went to the Student Center to inquire about the status of the reservation request. A staff member at the Student Center could not explain to Ms. Burch why the YAL event had not been approved. Later

that day, Ms. Burch received electronic confirmation for the YAL event only after she raised concerns in person about the delay.

35. The Reservation Policy for use of the Campus Center Plaza and the Library Lanai imposes a prior restraint on Plaintiffs' expressive activities and unconstitutionally impeded their ability to publicize their event.

36. Defendant's discriminatory treatment of Plaintiffs' request to use the Library Lanai for expressive purposes also constituted an as-applied violation of Ms. Burch's and Mr. Vizzone's constitutional rights.

B. The UH System's and UH Hilo's Policies

37. The Board of Regents of the UH System ("BOR") promulgates Administrative Rules pursuant to Haw. Rev. Stat. §304A-103. Pursuant to Chapter 13 of the Board of Regents' Bylaws and Policies ("BOR Chapter 13"), the UH System President may delegate responsibility for promulgating practices and procedures governing the use of university owned or operated facilities to the chief executive officers of the institutions within the system, including UH Hilo. § 20-13-2. (*See* Exhibit B).

38. BOR Chapter 13 provides that "[t]he president or a designee shall designate one or more appropriate public forum areas on campus where individuals may assemble and engage in public speech activities." § 20-13-6(a). It further provides that any use of a designated public forum area "must comply with

university and campus rules and policies,” § 20-13-6(b), and “[w]hen a location other than a designated public forum area is utilized for public speech activities, the practices and procedures governing the time, place, and manner of such activities to be established shall be observed.” § 20-13-6(c).

39. Pursuant to BOR Chapter 13, UH Hilo adopted and published a “Facilities Use Policy.” (*See* Exhibit C). This policy and the regulations UH Hilo has devised to implement the policy are constitutionally flawed for the reasons outlined in paragraphs 40 to 56 of this complaint.

40. The Facilities Use Policy designates the campus’s “Public Forum Area,” where “individuals may assemble and engage in public speech activities,” as the “lawn area between Student Service Building and the Theater.”

41. The “Public Forum Area” as defined in the UH Hilo policy is the so-called “Free Speech Zone,” the .3-acre area described in Paragraph 28 above, to which Defendant Bergknut directed Ms. Burch and Mr. Vizzone for their NSA protest event.

42. The Facilities Use Policy further provides limited areas for students and student groups to post and/or display written material “on designated bulletin boards,” and forbids attaching notices, posters, announcements and other printed and written material “to any structure or natural feature on campus, including, but

not limited to, the sides or doors of building [sic], the surface of walkways or streets, posts, waste receptacles, benches and trees.”

43. The UH Hilo Registered Independent Student Organizations Handbook (“RISO Handbook”) identifies only two other outdoor campus facilities for students to hold events – the Campus Center Plaza and the Library Lanai. (*See* Exhibit D). The reservation process for securing permission to use either the Campus Center Plaza or the Library Lanai requires at least seven working days before a reservation may be confirmed. For example, the reservation form for the Library Lanai states:

After agreeing to these regulations [for using the space], the next step will take you to the online reservation form to request the Library Lanai. Until an email confirmation is sent by the Campus Center to you, the request is not final. Seven working days lead time is required for all reservations. Please do not publicize your event’s location until receiving confirmation of your reservation.

...

A confirmed reservation must be officially canceled 24 hours in advance. If the reservation is during non-regular hours, it must be cancelled 48 hours in advance. Non-cancellation may result in service fees and/or may cause suspension of scheduling privileges for a month.

44. The UH Hilo campus has many suitable open areas and sidewalks beyond the free speech areas where student expressive activity, including distribution of literature, will not interfere with or disturb access to university

buildings or sidewalks, impede vehicular or pedestrian traffic, or in any way substantially disrupt the operations of campus or the university's educational functions.

45. The Facilities Use Policy and the RISO Handbook do not provide standards to guide the discretion of the public officials of UH Hilo tasked with reviewing requests to use the "free speech area" or other designated public fora or to evaluate requests for additional time, thus empowering such public officials to administer the policy arbitrarily or on the basis of impermissible factors.

46. The policies function as a licensing scheme with which students must comply before engaging in the exercise of their free speech rights.

47. Students are subject to disciplinary action for violating the Facilities Use Policy, which states that "violation of any University of [sic] campus rules and policies, any of the practices and procedure contained herein, or the terms of any executed use or rental agreement shall be grounds to terminate or deny the right of an organization or individual to use campus facilities at the University."

48. Section 20-13-7 of the BOR Bylaws and Policies prohibits "solicitation" in "any building, structure, facility, or on any grounds, sidewalks, or streets on the campus of any institution." The policy does not define the term "solicitation."

49. However, the policy expressly excludes numerous activities from the prohibition, including (but not limited to): sales of newspapers or magazines; collections of membership fees or dues by RISOs; collections of admission fees for campus events; fundraising activities sponsored by RISOs; and fundraising activities sponsored by the University.

50. Apart from these enumerated exceptions, the Policy vests Defendants with unbridled discretion to expand or restrict the definition of “solicitation,” and expressly authorizes the president to “except other forms of solicitation” if he “determines this to be in the best interest of the university.” The rules governing solicitation are also set forth in UH Hilo’s “Facilities Use Policy.”

51. The RISO Handbook further provides:

[I]f you are fundraising, recruiting members, providing information, taking a survey, you need to let people know this without their having to actually go to your table or booth. When using a public venue, RISOs may not approach people to solicit them. Although we support a diverse intellectual and social atmosphere on campus, we also believe that each person should be able to freely choose whether to listen to your solicitation or not.

52. Students are subject to disciplinary action for violating the RISO Handbook, which states that “[a]ll UH Hilo students participating in RISOs are expected to behave in a civil manner,” and that “[s]tudents who choose to violate

the rights of others and disrupt activities through impermissible behavior will be subject to disciplinary action under the UH Hilo Student Conduct Code.”

53. BOR Chapter 13, the Facilities Use Policy, and the RISO Handbook have a chilling effect on Ms. Burch’s and Mr. Vizzone’s rights, and those of all students of the UH System and the University of Hawaii at Hilo, to engage freely and openly in expressive activities, including distributing literature.

54. Ms. Burch and Mr. Vizzone wish to engage in expressive activities, including distributing literature, on the UH Hilo campus without the need to obtain advance approval from university officials, but they have continued to submit to UH Hilo’s licensing scheme since being censored by Defendant Kusano and Defendant Bergknut for fear of disciplinary action.

55. UH Hilo repeatedly has been put on notice that its speech policies are unconstitutional. In late 2008, the Foundation for Individual Rights in Education (“FIRE”), a non-partisan, non-profit, civil liberties organization that protects free expression on college and university campuses, and to whose Student Network plaintiffs belong, sent a certified letter to UH Hilo’s Chancellor informing him that the university maintained unconstitutional speech codes. As *The Chronicle of Higher Education* reported, this letter was part of a national mailing to put senior officials of public universities with unconstitutional speech codes on notice that they could be sued for violating students’ rights. (*See* Exhibit E). UH Hilo

received a second letter with a similar warning in 2010. Since 2010, UH Hilo has been listed every year in FIRE's annual "Spotlight on Speech Codes" report as a "red light" school, namely one with policies, such as those at issue in this case, that "clearly and substantially" restrict freedom of speech. UH Hilo has had ample notice of its policies' infirmities and time in which to reform them, but has ignored these notifications and persisted in violating students' expressive rights.

56. Defendants' policies and actions create a hostile atmosphere for free expression on campus, chilling the speech of other UH Hilo students who are not before the Court.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

As-Applied Violation of Plaintiff's Right to Free Speech Under the First and Fourteenth Amendments (42 U.S.C. § 1983)

57. Plaintiff repeats and realleges each of the foregoing allegations in Paragraphs 1-56 of this Complaint.

58. The First and Fourteenth Amendments extend to campuses of state colleges and universities. *Healy v. James*, 408 U.S. at 180.

59. All of the acts of Defendants, their officers, agents, employees, and servants were executed, and are continuing to be executed, by the Defendants under the color and pretense of the policies, statutes, ordinances, regulations, customs, and usages of the State of Hawaii.

60. The College bears the burden of justifying any regulation of expressive activity in the public areas of the campus.

61. By stopping Plaintiffs' lawful activities distributing copies of the U.S. Constitution on the UH Hilo campus without prior approval and outside the "free speech zone," Defendants have explicitly and implicitly chilled Plaintiffs' free expression, and have deprived Plaintiffs of their clearly established rights to freedom of speech and expression secured by the First and Fourteenth Amendments to the Constitution of the United States. Defendant Kusano and Defendant Bergknut violated a clearly established constitutional right of which all reasonable college administrators and staff should have known, rendering them liable to Ms. Burch and Mr. Vizzone under 42 U.S.C. § 1983.

62. The denial of constitutional rights is irreparable injury *per se*, and Ms. Burch and Mr. Vizzone are entitled to declaratory and injunctive relief. As a consequence of being denied their First Amendment rights, including but not limited to the ability to distribute copies of the U.S. Constitution, Plaintiffs experienced significant emotional pain and anguish.

63. Plaintiffs are entitled to a declaration that Defendants violated their First Amendment rights. 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

Facial Challenge to Violation of Right to Free Speech Under the First and Fourteenth Amendments (42 U.S.C. § 1983) – Prior Restraint

64. Plaintiffs repeat and reallege each of the foregoing allegations in Paragraphs 1-63 of this Complaint.

65. Students have a First Amendment right to engage in expressive activities and to distribute written materials in the public areas of a state college without obtaining advance permission from government officials. *Widmar v. Vincent*, 454 U.S. 263, 267 n.5 (1981); *Papish v. Board of Curators of Univ. of Mo.*, 410 U.S. 667 (1973); *Jews for Jesus, Inc. v. City Coll. of San Francisco*, No. C 08-03876 MHP, 2009 WL 86703, at *3 (N.D. Cal. Jan. 12, 2009).

66. A permitting requirement is a prior restraint on speech and therefore bears a heavy presumption against its constitutionality. *Berger v. City of Seattle*, 569 F.3d 1029, 1037 (9th Cir. 2009). The presumptive invalidity and offensiveness of advance notice and permitting requirements stem from the significant burden they place on free speech.

67. The policies and conduct of Defendants restricting all First Amendment protected speech by requiring an advance application to engage in such activity before allowing expressive activities on the University campus grounds constitute an unconstitutional prior restraint on First Amendment rights.

68. Laws that subject the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority, are unconstitutional. *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 150–51 (1969). Defendants’ policies vest unfettered discretion in University administrative personnel to restrict constitutionally protected expression.

69. As a direct result of the Defendants’ continued maintenance of BOR Chapter 13, the Facilities Use Policy, and the RISO Handbook, Plaintiffs and other similarly situated students have been, and will continue to be, irreparably injured in that they have been, and will be, deprived of their right to free speech under the First and Fourteenth Amendments to the Constitution.

70. As a consequence of the Defendants’ violation of Plaintiffs’ and other similarly situated students’ First and Fourteenth Amendment rights, Plaintiffs are entitled to injunctive relief, and the reasonable costs of this lawsuit, including their reasonable attorneys’ fees.

THIRD CAUSE OF ACTION

Facial Challenge to Violation of Right to Free Speech Under the Plaintiffs’ First and Fourteenth Amendment Rights (42 U.S.C. § 1983) – Overbreadth

71. Plaintiffs repeat and reallege each of the foregoing allegations in Paragraphs 1-70 of this Complaint.

72. The University bears the burden of justifying any regulation of expressive activity in the public areas of the campus. Any restrictions on speech in public areas must serve a substantial public interest and must be narrowly tailored and applied so as not to burden more speech than is essential.

73. Even purportedly neutral regulations, such as time, place, or manner restrictions, must be narrowly tailored and must not burden more speech than necessary to achieve a substantial governmental interest.

74. The University cannot legitimately declare the vast majority of public areas on campus to be “non-public forums.” *McGlone v. Bell*, 681 F.3d 718 (6th Cir. 2012). Nor can the University identify a substantial governmental interest to be served by preventing individuals from speaking through the distribution of literature in the public areas of campus.

75. The policy restricting all unscheduled First Amendment protected speech to a designated free speech zone at the University is unconstitutionally overbroad because it does not serve a significant governmental interest, is not narrowly drawn, and impermissibly restricts student expression.

76. The policies restricting speech on campus burden far more speech than is necessary to serve the asserted interest. Rather than being narrowly tailored to protect speech as the Constitution requires, the University policies give University officials excessive power to preclude speech.

77. As a direct result of the Defendants' continued maintenance of BOR Chapter 13, the Facilities Use Policy, and the RISO Handbook, students at UH Hilo are deprived of their right to free speech under the First and Fourteenth Amendments to the Constitution.

78. As a legal consequence of the Defendants' violation of Plaintiffs' and other similarly situated students' First and Fourteenth Amendment rights, as alleged above, Plaintiffs are entitled to injunctive relief, and the reasonable costs of this lawsuit, including their reasonable attorneys' fees.

FOURTH CAUSE OF ACTION

Facial Challenge to Violation of Right to Free Speech Under the Plaintiffs' First and Fourteenth Amendment Rights (42 U.S.C. § 1983) – Vagueness

79. Plaintiffs repeat and reallege each of the foregoing allegations in Paragraphs 1-78 of this Complaint.

80. A state enactment is void for vagueness if the prohibitive terms are not clearly defined such that a person or ordinary intelligence can readily identify the applicable standard for inclusion and exclusion. *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

81. Defendants' policies restricting speech fail adequately to advise the students subject to discipline of the obligations the policies create, and are

unconstitutionally vague on their face in violation of the First Amendment and of the due process guarantee of the Fourteenth Amendment to the U.S. Constitution.

82. Vague and undefined policies also vest the public officials who must enforce them with unbridled discretion that may be exercised in an inconsistent or discriminatory manner.

83. Defendants' policies do not provide standards to guide the discretion of public officials at the University as to whether the Facilities Use Policy and RISO Handbook apply to particular acts of free expression in the first instance, or for reviewing requests to use campus areas. This empowers such public officials to administer the policy on the basis of impermissible factors or through arbitrary application.

84. The policies set forth in the Facilities Use Policy and RISO Handbook with respect to solicitation are unconstitutionally vague. The policies prohibit "solicitation" in "any, building, structure, facility, or on any grounds, sidewalks, or streets of the University," but fail to define what constitutes a "solicitation." The policies contain a list of activities that "shall not be deemed solicitations," and provide the President "or his/her designee" with unbridled discretion to "accept other forms of solicitation if the President determines this to be in the best interest of the University." The policies provide no criteria that enable students to understand what the prohibition of "solicitation" entails.

85. Because of Defendants' policies and actions, Plaintiffs have suffered, and continue to suffer irreparable harm. Plaintiffs are therefore entitled to injunctive relief, and the reasonable costs of this lawsuit, including their reasonable attorneys' fees.

FIFTH CAUSE OF ACTION

Section 1983 *Monell* Claim (Defendant University of Hawaii System)

86. Plaintiff repeats and realleges each of the foregoing allegations in Paragraphs 1-85 of this Complaint.

87. A government body such as the UH System here may be held liable under 42 U.S.C. § 1983, when the execution of government policy or custom that may be fairly said to represent its official policy inflicts injury on a plaintiff. Section 1983 also allows liability for constitutional violations committed by government employees if the government body itself is responsible for causing constitutional deprivations. *Monell* liability can further rest on ratification by a final policymaker, or for damages caused by a failure to train employees that leads to the deprivation of constitutional rights.

88. In prohibiting Ms. Burch and Mr. Vizzone from distributing copies of the Constitution on the UH Hilo campus without obtaining prior approval and limiting their activities to the "free speech areas," Defendants violated Ms. Burch's

and Mr. Vizzone's clearly established rights under the First and Fourteenth Amendments to the United States Constitution.

89. Defendants Kusano and Bergknut interfered with and prevented Ms. Burch and Mr. Vizzone from freely distributing written materials on the UH Hilo campus. And further, the UH System and UH Hilo promulgated policies limiting student speech activities to designated "free speech areas," and required prior approval to use other limited facilities.

90. The UH System fails to train its administrators and employees adequately with respect to the First Amendment rights of college students, displaying deliberate indifference to the student body's constitutional rights.

91. On information and belief, the UH System failed to supervise and discipline its administrators and employees for unlawfully interfering with the First Amendment right of students to engage in expressive activities and distribute written materials in the public areas of a state college without obtaining advance permission from government officials, displaying deliberate indifference to its students' constitutional rights.

92. These unconstitutional policies, customs, and practices of the UH System were the moving force behind the violation of constitutional rights by Defendant Kusano and Defendant Bergknut.

93. As a direct and proximate result of the UH System's unconstitutional policies, customs and practices, Ms. Burch's and Mr. Vizzone's First Amendment rights have been curtailed, resulting in significant emotional pain and anguish. Plaintiffs are thus entitled to a declaration that Defendants violated their First Amendment rights. Additionally, Plaintiffs are entitled to damages in an amount to be determined by the Court, and the reasonable costs of this lawsuit, including their reasonable attorneys' fees.

SIXTH CAUSE OF ACTION

Declaratory Judgment and Injunction (28 U.S.C. § 2201, et seq.)

94. Plaintiffs repeat and reallege each of the foregoing allegations in Paragraphs 1-93 of this Complaint.

95. An actual controversy has arisen and now exists between Plaintiffs and Defendants concerning Plaintiffs' rights under the United States Constitution. A judicial declaration is necessary and appropriate at this time as to Counts I through V above.

96. Plaintiffs desire a judicial determination of their rights against Defendants as they pertain to Plaintiffs' right to speak, assemble, and distribute literature on the outdoor campus areas of the University of Hawaii at Hilo without being subjected to a prior restraint or "time, place, and manner" regulations that are

unreasonable, that are not narrowly tailored to serve a substantial governmental interest, and that do not leave open ample alternative channels of communication.

97. To prevent further violation of Plaintiffs' constitutional rights by Defendants, it is appropriate and proper that a declaratory judgment issue, pursuant to 28 U.S.C. § 2201 and Fed. R. Civ. P. 57, declaring the UH System's and the University's policies unconstitutional.

98. Furthermore, pursuant to 28 U.S.C. § 2202 and Fed. R. Civ. P. 65, it is appropriate and hereby requested that this Court issue a permanent injunction prohibiting the Defendants from enforcing their restrictions on Plaintiffs' expressive activities to the extent they are unconstitutional, to prevent the ongoing violation of Plaintiffs' constitutional rights. Plaintiffs and their fellow students are suffering irreparable harm from continued enforcement of the UH System's and University's unconstitutional policies, monetary damages are inadequate to remedy their harm, and the balance of equities and public interest both favor a grant of injunctive relief.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Merritt Burch and Anthony Vizzone respectfully request that the Court enter judgment against Defendants and provide Plaintiffs the following relief:

A. A declaratory judgment stating that Defendants' speech codes are unconstitutional facially and as-applied and that they violate the Plaintiffs' rights as guaranteed under the First and Fourteenth Amendments to the United States Constitution;

B. A permanent injunction restraining enforcement of Defendants' unconstitutional speech codes and enforcement practices;

C. A declaratory judgment that Defendants' censorship of expressive activity of distributing copies of the U.S. Constitution without prior approval and outside the "free speech zone" violated the First and Fourteenth Amendments;

D. Monetary damages in an amount to be determined by the Court to compensate for the Defendants' application of the illegal speech codes to interfere with expressive activity of distributing copies of the U.S. Constitution without prior approval and outside the "free speech zone;"

E. Plaintiffs' reasonable costs and expenses of this action, including attorneys' fees, in accordance with 42 U.S.C. § 1988, Cal. Code Civ. Proc. § 1021.5, and other applicable law; and

F. All other further relief to which Plaintiffs may be entitled.

VIII. DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury of all issues properly triable by jury in this action.

DATED: April 24, 2014

Robert Corn-Revere (*pro hac vice application
concurrently filed*)

Ronald G. London (*pro hac vice application
concurrently filed*)

Lisa B. Zycherman (*pro hac vice application
concurrently filed*)

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By: /s/David B. Rosen
DAVID B. ROSEN

Attorneys for Plaintiffs
Merritt Burch and Anthony Vizzone

EXHIBIT A



UNIVERSITY of HAWAII
HILO

Main Campus • 200 W. Kawili Street • Hilo, HI 96720-4091

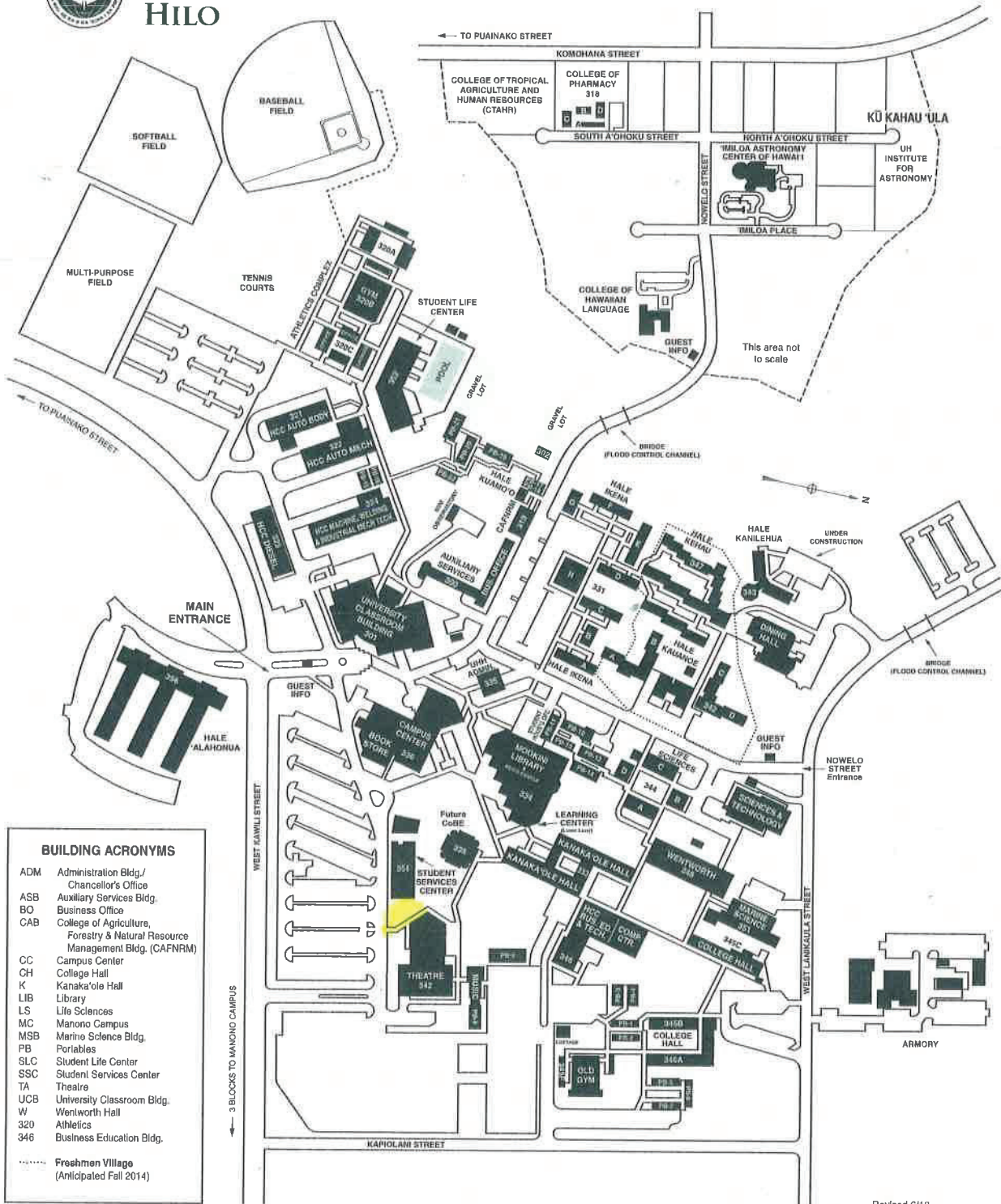










EXHIBIT B

CHAPTER 13

USE OF UNIVERSITY-OWNED FACILITIES

- §20-13-1 Purpose
- §20-13-2 Delegation of authority
- §20-13-3 Statement of policy
- §20-13-4 Use by registered student, faculty or staff organizations
- §20-13-5 Use by organizations without university affiliation
- §20-13-6 Speech and assembly
- §20-13-7 Solicitation
- §20-13-8 Other uses
- §20-13-9 Severability

§20-13-1 Purpose. The University of Hawaii is a multi-campus system of post-secondary education conducting education, research, and public service programs for the State, the nation and the world community. The responsibility of the board of regents to operate and maintain an effective and efficient university system dedicated to these pursuits requires that the facilities of the various component institutions be regulated to insure the uninterrupted conduct of their affairs. This chapter establishes guidelines for the short-term occasional use of facilities under the control of the board of regents and delegates authority to adopt practices and procedures, as appropriate, for implementation. [Eff. AUG 26 1982] (Auth: HRS §§304-2, 304-4) (Imp: HRS §§304-2, 304-4)

§20-13-2 Delegation of authority. The board delegates its authority to promulgate practices and procedures governing the use of university owned or operated facilities in accordance with this chapter to the president. The president may delegate so much of this responsibility to the chief executive officers of the institutions within the University of Hawaii system as the president deems to be within the best interest of the university. [Eff. AUG 26 1982] (Auth: HRS §§304-2, 304-4) (Imp: HRS §§304-2, 304-4)

§20-13-3 Statement of policy. The University of Hawaii is committed to furthering the educational development of the university community. In this regard, the university recognizes the importance of a wide range of student, faculty, and staff activities.

§20-13-3

This does not mean that the university endorses the philosophy or views of the organizations or individuals conducting or participating in those activities.

[Eff. AUG 26 1982] (Auth: HRS §§304-2, 304-4) (Imp: HRS §§304-2, 304-4)

§20-13-4 Use by university-affiliated organizations. Registered student, faculty, or staff organizations and other university-affiliated organizations may use an institution's buildings or grounds or both in compliance with reasonable and nondiscriminatory institutional policies that shall specify the procedures under which those organizations may reserve the institution's buildings or grounds, or both, for their use. [Eff. AUG 26 1982] (Auth: HRS §§304-2, 304-4) (Imp: HRS §§304-2, 304-4)

§20-13-5 Use by organizations without university affiliation. (a) The university, as a public institution, is not in competition with other institutions or commercial enterprises in the rental of facilities. There are circumstances, however, in which the nature of the activity is particularly appropriate to a campus facility. In these cases, the university may enter into rental agreements with organizations without university affiliation. Use of university grounds and physical facilities by such organizations shall be subject to this chapter.

(b) Organizations without university affiliation which intend to operate charitable, civic, community, cultural, or educational activities on a not-for-profit basis and whose activities are appropriate for designated university owned facilities may use the designated facilities where the use does not infringe upon, delay, or conflict with the normal operation of the university's campuses.

(c) The availability of the institution's facilities for functions other than the institution's own activities shall be strictly subject to the needs and the convenience of the institution, which is always to have priority in the scheduling of facilities. In the event of conflicting demands for use of the institution's facilities by organizations without university affiliation, scheduling priority shall be given to those activities which further university purposes.

(d) Organizations without university affiliation authorized to use university-owned or operated facilities shall be required to:

§20-13-7

- (1) Observe established university and campus rules and policies.
- (2) Indemnify, defend, and hold harmless the university and the State of Hawaii from any liability arising out of the actions of the organization or its agents incidental to the use of the facilities by the organization.
- (3) Reimburse the university for any damage (beyond normal wear and tear) to the facilities resulting from their use.
- (4) Compensate the university according to the terms provided in the agreement for use of university owned facilities.
- (5) Provide evidence of appropriate and adequate insurance protection covering property damage, personal injury, or death arising out of the use of university owned facilities. The president or a designee may waive this requirement upon an adequate showing of responsibility by the organization.
[Eff. AUG 26 1988] (Auth: HRS §§304-2, 304-4)
(Imp: HRS §§304-2, 304-4)

§20-13-6 Speech and assembly. (a) The president or a designee shall designate one or more appropriate public forum areas on campus where individuals may assemble and engage in public speech activities.

(b) Individuals utilizing a designated public forum area on campus must comply with university and campus rules and policies.

(c) When a location other than a designated public forum area is utilized for public speech activities, the practices and procedures governing the time, place, and manner of such activities to be established shall be observed. [Eff. AUG 26 1988] (Auth: HRS §§304-2, 304-4) (Imp: HRS §§304-2, 304-4)

§20-13-7 Solicitation. (a) No solicitation shall be conducted in any building, structure, facility, or on any grounds, sidewalks, or streets on the campus of any institution.

(b) The following activities shall not be deemed solicitations prohibited by this section:

- (1) Sale or offer for sale of any newspaper, magazine, or other publications by means of a vending machine in an area designated by the institution, or the sale or offer for sale of such materials by individuals which is conducted in compliance with the practices and

§20-13-7

- procedures governing the time, place, and manner of such activities to be established.
- (2) Sale or offer for sale of any food or drink items by means of a vending machine operated by the institution or its subcontractor in an area designated by the institution.
 - (3) The operation by the institution or its subcontractor of any bookstore, specialty store, laundry, cafeteria, bank, barber shop, or other service facility maintained for the convenience of the students, faculty or staff.
 - (4) The collection of tuition, fees, and charges in connection with the operation of the institution.
 - (5) The collection of membership fees or dues by registered student, faculty or staff organizations.
 - (6) The collection of admission fees for the exhibition of movies, speakers, or other programs that are conducted or sponsored by the institution, or a registered student, faculty or staff organization.
 - (7) Fundraising activities sponsored by and intended to support a registered student, faculty, or staff organization or other university affiliated organizations.
 - (8) Fundraising activities sponsored or co-sponsored by the institution.
 - (9) The sale or offer for sale of any publication of the institution or of any book or other printed material to be used in the regular academic work of the institution.
 - (10) The sale of goods or services, admission charges, fees, or other solicitation of funds in conjunction with an activity authorized under §20-13-5 when it is established to the satisfaction of the institution that the proceeds therefrom are to be used exclusively to defray the expenses of conducting that activity.

(c) The president may except other forms of solicitation from section 20-13-7(a) if the president determines this to be in the best interest of the university. [Eff. AUG 26 1982] (Auth: HRS §§304-2, 304-4) (Imp: HRS §§304-2, 304-4)

§20-13-8 Other uses. The president or a designee shall establish practices and procedures for uses of university owned or operated facilities not covered by this chapter. [Eff. AUG 26 1982] (Auth: HRS §§304-2, 304-4) (Imp: HRS §§304-2, 304-4)

§20-13-9

§20-13-9 Severability. If any provision of this rule, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are severable.

EXHIBIT C

FACILITIES USE

PRACTICES & PROCEDURES

University of Hawai'i at Hilo

July 1995

UNIVERSITY OF HAWAI'I
FACILITIES USE POLICY
UNIVERSITY OF HAWAI'I AT HILO

1. Purpose

To implement Chapter 13 of the Board of Regents Bylaws and Policies on the Use of University-owned Facilities and to establish practices and procedures for the use of campus facilities at the University of Hawai'i at Hilo in accordance with Executive Policy E10.201.

2. Objective

To regulate the short-term occasional use of campus facilities at the University of Hawai'i at Hilo, including grounds, by organizations with and without university affiliation to insure compliance with Board of Regents Policy.

3. Applicability/Responsibility

The established practices and procedures shall apply to organizations affiliated with the university and organizations without university affiliation.

4. Definitions. As used herein:

Sr. V.P. & Chancellor means the chief executive officer of the University of Hawai'i at Hilo.

"CHARTERED ORGANIZATIONS" means organizations holding a charter from the Board of Regents of the University of Hawai'i.

"DESIGNEE" means an individual of the University of Hawai'i at Hilo specifically designated by the Sr. V.P. & Chancellor to act on behalf of University of Hawai'i at Hilo.

"DEPARTMENT" means any unit, program, or office authorized by the Board of Regents of the University of Hawai'i.

“EXTRAORDINARY CHARGES” means assessments for expenses not covered by the established rate schedule.

“FACILITIES” means all buildings, grounds and a waterway owned and/or controlled by the University of Hawaii and includes the streets, sidewalks, malls, parking lots, roadways, canals, docks and estuaries within the boundaries of property owned or controlled by the University of Hawai‘i.

“GENERAL FACILITIES” means facilities which are available for use which are not restricted or special.

“RESTRICTED FACILITIES” means facilities which are restricted for University use only and are not available for any use. Restricted facilities include, but are not limited to, libraries, offices, laboratories, maintenance and storage areas, bookstores, food preparation areas and certain staff, faculty and student lounges.

“SPECIAL FACILITIES” means facilities for which separate procedures governing the use and scheduling have been developed. Special facilities include but are not limited to, theater, athletic facilities, campus center, etc.

“FUND RAISING” or “ADMISSION CHARGE EVENTS” means activities or events where individuals are required or requested to pay, contribute or donate in order to participate in or attend the event before goods or services are provided.

“REGISTERED ORGANIZATIONS” means organizations which are comprised of current students, faculty, and staff appropriately approved and registered.

“SOLICITATION” means the sale or offer for sale of any goods or services.

“SPONSORSHIP” means the assuming of all responsibilities in conducting an event or activity.

“CO-SPONSORSHIP” means the assuming of equal responsibilities (including financial) by a University-affiliated organization with an

organization without University affiliation in conducting an event or activity.

“UNIVERSITY” and “CAMPUS” means the University of Hawai‘i at Hilo.

5. User Categories

a. University Organizations

Organizations or individuals of the University of Hawai‘i confers rights and benefits. The responsibility and authority for on-campus activities of institutional users shall reside with students or employees of the University.

1) University departments, colleges, offices and programs.

2) Registered student, faculty or staff organizations.

3) University chartered organizations.

b. Other Organizations

The University of Hawai‘i, as a public institution, is not in competition with other institutions or commercial enterprises in the rental of facilities. There are circumstances, however, in which the nature of the activity is particularly appropriate to a campus facility and in the best interest of the University. In these circumstances, the University of Hawai‘i may enter into facilities use agreements with other organizations.

6. Types of Use

a. Chartered/registered student, faculty and staff organizations and other University-affiliated organizations may use designated University facilities for activities and events related to their function and purpose.

- b. Other organizations may use designated University facilities for charitable, civic, community, cultural, or educational activities which are operated on a not-for-profit basis and whose activities are appropriate for such facilities where the use does not infringe upon, delay, or conflict with the normal operations of the University.
- c. Other organizations shall not be allowed to use facilities where such use is in competition with privately-owned facilities.

7. Use Priorities

- a. Campus facilities, including campus grounds, are provided primarily for the support of the regular educational functions of the University of Hawai'i and the activities necessary in support of these functions. The functions of the University of Hawai'i shall take precedence over any other activities for the use of campus facilities.
- b. Chartered/registered student, faculty and staff organizations and other University-affiliated organizations shall have priority over organizations without University affiliated in the use of campus facilities.
- c. The availability of campus facilities for use by other organizations shall be subject to the needs and the convenience of the University of Hawai'i.

8. Use Application Procedures

- a. The use of campus facilities by all organizations shall be by reservations on a first-come, first-served basis subject to the scheduling priorities listed in Section 7, Use Priorities.
- b. No reservations shall exceed one (1) week in length without prior written approval from the Designee.
- c. University-affiliated organizations may not reserve general facilities in excess of (campus specific) in advance. Non-

University affiliated organizations may not reserve University facilities prior to thirty (30) days before the scheduled event.

- d. The scheduling of campus facilities for use by organizations is coordinated by the Designee.
- e. Organizations shall obtain and complete a use application form to reserve campus facilities.
- f. General procedures governing the application and reservation for use of campus facilities.
 - 1) An organization requests the use of a campus facility by completing a use-application form and submitting it to the proper scheduling officer.
 - 2) Scheduling officer shall determine the appropriateness of the application, the charges for use and services, and any special requirements, such as parking, security, utilities, custodial services and insurance.
 - 3) The organization shall be notified as to the availability of the facility requested and the charges to be assessed.
 - 4) Prior to the scheduled event, the organization shall be required to make a payment in full for the use and services. Checks are to be made payable to the "University of Hawai'i."
 - 5) The organization shall receive a copy of the completed application form which will list the charges and the arrangements made for the event with the scheduling officer. The organization shall not assume that a reservation has been confirmed until a copy of the completed application form has been received.
 - 6) The University has authority and reserves the right to cancel, postpone, or alter arrangements for any event, if necessary.

- g. In addition to other requirements which may be imposed, organizations without University affiliation which have been authorized to use designated University facilities shall be required to:
- 1) Observe established University and campus rules and policies.
 - 2) Indemnify, defend, and hold harmless the University of Hawai'i and the State of Hawai'i and all its agents and employees from any liability arising out of the actions of the organization or its agents arising out of the use of the facilities by the organization.
 - 3) Reimburse the University for any damage (normal wear and tear excluded) to the facilities resulting from their use.
 - 4) Compensate the University according to the terms provided in the agreement for the use of University-owned facilities.
 - 5) Provide evidence of appropriate and adequate insurance protection covering property damage, personal injury, or death arising out of the use of University-owned facilities. The President or a designee may waive this requirement upon an adequate showing of responsibility by the organization.

9. Charges for the Use of University-Owned Facilities

- a. In general, University departments are not charged for the use of University facilities when meetings or activities are a direct part of their program. Charges may be assessed for extraordinary expenses associated with the use of a facility.
- b. Chartered/registered organizations shall not be assessed the facilities use charge. However, charges shall be assessed for extraordinary expenses associated with the use of a facility.

- c. Organizations without University affiliation shall be charged the facilities use charge pursuant to the established rate schedule.
- d. When engaging in fund-raising/admission-charged activities, all University-affiliated organizations, including University departments, shall be charged according to a formula to cover the direct and indirect expenses and any extraordinary expenses associated with the use of the facility.
- e. The Designee may at his/her discretion waive or reduce the charges for the use of University-owned facilities.

10. Public Forum Area

The lawn area between Student Services Building and the Theater (see Attachment C) is designated as the public forum area for the University where individuals may assemble and engage in public speech activities.

11. Practices and Procedures Governing Time, Place, and Manner of Public Speech Activities

- a. Speech and Assembly
 - 1) The use of the public forum area(s) for public speech activities shall be on a first-come, first-served basis with proper clearance from the Designee.
 - 2) Public speech activities may be conducted in the public forum area provided that such activities are conducted in an orderly manner and do not interfere with classroom instruction, office or student privacy, study conditions, meetings and ceremonies, pedestrian or vehicular traffic, or other functions of the University.

12. Posting and/or Display of Written Material

- a. Posting of Notices and Other Written Material

- 1) The posting of notices, posters, and other printed and written material is permitted only on designated bulletin boards located in or at campus buildings. Bulletin boards are classified as general or reserved.
- 2) Notices, posters, announcements and other printed and written material shall not be attached to any structure or natural feature on campus, including, but not limited to, the sides or doors of building, the surface of walkways or streets, posts, waste receptacles, benches and trees.
- 3) Notices may be posted two (2) weeks prior to an event and shall be removed within twenty-four (24) hours after the event.
- 4) No poster shall exceed 14" x 22" in size. Oversized posters shall be removed unless prior written approval has been obtained. For chartered/registered organizations, requests may be made and approvals granted by the Designee.
- 5) Posters which are improperly identified or placed in unauthorized locations on campus shall be removed.

b. Banners and Displays

- 1) Banners, displays and large signs require Facilities Use approval.
- 2) All banners and displays shall be adequately secured and shall not exceed 3' x 6' in size.
- 3) Requests for exceptions as to location and size are to be addressed to the Designee.

13. Solicitation

- a. No solicitation shall be conducted in any building, structure, facility, or on any grounds, sidewalks, or streets of the University.

- b. Student representatives of commercial enterprises and employees of the University shall not post nor solicit business on campus.
- c. The following activities shall not be deemed solicitations prohibited by this section:
 - 1) Sale or offer for sale of any newspaper, magazine, or other publications by means of a vending machine in an area designated by the University or the sale or offer for sale of such materials by individuals which is conducted in compliance with the practices and procedures governing the time, place, and manner of such activities.
 - 2) Sale or offer for sale of any food or drink items by means of a vending machine operated by the University or its subcontractor in an area designated by the University.
 - 3) The operation by the University or its subcontractor of any bookstore, specialty store, laundry, cafeteria, bank, barber shop, or other service facility maintained for the convenience of the students, faculty or staff.
 - 4) The collection of tuition, fees, and charges in connection with the operation of the University of Hawai'i.
 - 5) The collection of membership fees or dues by registered student, faculty or staff organizations.
 - 6) The collection of admission fees for the exhibition of movies, speakers, or other programs that are conducted or sponsored by the University, or a registered student, faculty or staff organization.
 - 7) Fund-raising activities sponsored by and intended to support chartered/registered student and faculty/staff organizations.
 - 8) Fund-raising activities sponsored or co-sponsored by the University.

- 9) The sale or offer for sale of any publication of the University of Hawai'i or of any book or other printed material to be used in the regular academic work of the University of Hawai'i.
 - 10) The sale of goods or services, admission charges, fees, or other solicitation of funds in conjunction with an authorized activity by an organization without University affiliation when it is established to the satisfaction of the University that the proceeds therefrom are to be used exclusively to defray the expenses of conducting that activity.
- d. The President or his/her designee may accept other forms of solicitation if the President determines this to be in the best interest of the University of Hawai'i.
- e. Procedures Governing Solicitation Activities
- 1) Organizations desiring to solicit funds or stage events for fund-raising purposes must receive express prior written approval. For chartered/registered organizations, prior application shall be made and approval granted by the Designee. Where fund-raising involves the sale of food products on campus, additional written approval shall be obtained from the Designee. The sale and handling of food products shall be in compliance with state and local health requirements.
 - 2) In all cases of fund-raising, a written application shall be filed indicating the purpose(s) of the funds to be raised and the anticipated income and expenses.
 - 3) Organizations authorized to sell products or services shall comply with all state and federal rules and regulations.
 - 4) Arrangements for fund-raising activities shall be made at least three (3) weeks in advance.

14. Co-Sponsorship

- a. University-affiliated organizations may co-sponsor events or activities with other organizations or individuals.
- b. In a co-sponsored event or activity, the co-sponsoring organizations shall be responsible for all damages resulting from the use of the facility. In addition, the co-sponsoring organizations shall agree to comply with all University and campus rules and regulations.

15. Liability, Insurance, and Indemnification

- a. In accordance with Executive Policy E8.207 which establishes the University's risk management program, the University of Hawai'i is required to protect itself and the State of Hawai'i from claims and suits for personal injury, death, and property damage through use of University facilities by departments, organizations, and individuals.
- b. The following procedures and guidelines outlined in Administrative Procedures A8.370, "Risk Management," will apply to University-affiliated organizations and organizations without University affiliation using campus facilities for events and activities.
 - 1) In all advertised or negotiated formal contracts with inherent hazards and in similar negotiated services, performer, or consultant contracts with independent contractors, the Indemnity/Insurance clause shall be incorporated as a part of such contract. (Attachment C.)
 - 2) For University-sponsored activities involving large groups, e.g., spectators, etc., of 50 or more, liability insurance to protect the University of Hawai'i shall be obtained if the rates are not prohibitive and funds are available.
 - 3) For group events regardless of size, involving other institution(s) with participating staff and students, the participants shall be required to execute an Assumption of Risk and Release. (Attachment D.)

- 4) Registered organizations and organizations without University affiliation requesting and assigned the use of/or the right to sponsor events on University facilities shall be required to execute an agreement containing the following indemnification statement.

“Undersigned shall indemnify, defend and hold harmless the University of Hawai‘i and the State of Hawai‘i, its officers, agents, employees or any person acting on its behalf (1) from and against any claim or demand for loss, liability or damage, including but not limited to, claims for property damage, personal injury or death, by whomsoever brought, arising from any accident or incident arising out of or connected with the performance of this agreement and will reimburse the University of Hawai‘i for all attorney’s fees, costs and expenses in connection with the defense of such claims, suits, and damages by whomever brought or made by reason of the non-observance or non-performance of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments.”

All non-affiliated organizations are required to provide evidence of adequate insurance protection.

- c. The President may waive the insurance requirement upon adequate showing of financial responsibility by the organization.

16. Extraordinary Charges

- a. Organizations shall be assessed the cost for special arrangements and/or extra staffing, e.g., electricians or custodians, which may be required to accommodate a program or event.
- b. The amounts and kinds of extraordinary expenses to be charged shall be determined by the Designee.

17. Violation

- a. The violation of any University of campus rules and policies, any of the practices and procedures contained herein, or the terms of any executed use or rental agreement shall be grounds to terminate or deny the right of an organization or individual to use campus facilities at the University.
- b. In the event a violation occurs, every effort shall be made to settle the question in consultation with the organization before any action is taken.

18. Severability

If the provision of these practices and procedures, or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the practices and procedures which can be given effect without the invalid provision or application, and to this end the provisions of these practices and procedures are severable.

EXHIBIT D

REGISTERED INDEPENDENT STUDENT ORGANIZATIONS HANDBOOK

University of Hawai'i at Hilo
2013-2014

It takes just 6 students with a common interest to form a Registered Independent Student Organization AKA a club!

The University of Hawai'i at Hilo welcomes your interest in forming and being a registered independent student organization (RISO)! Participating in programs and activities outside the classroom is an integral part of your total collegiate learning experience. The University is committed to providing a full range of co-curricular programs, services and activities that meet your academic or personal interests. This handbook is a resource guide to assist in developing and registering your organization so it can be an official University of Hawai'i at Hilo (UH Hilo) registered independent student organization (RISO).

Contact the Student Leadership Coordinator, Leomi Bergknut, in Campus Center (CC), Rm 309 or call 808-933-1907 or email her at bergknut@hawaii.edu when you have a question or need help with any aspect of your RISO. The Student Leadership Development Program will assist in organizing your group, in planning activities, and in providing leadership development training.

Each RISO is expected to read this Handbook. Officers and advisors are expected to be familiar with and abide by the rules governing RISOs as presented in this Handbook. **The annual RISO registration form requires the RISO President and Advisor(s) to agree to all rules in this Handbook. A RISO member and Advisor must attend a mandatory Orientation meeting to be officially registered. For those seeking funding from CSO's (UHHSA, SAC, BOSP, BOMB) – the Budget training is also a mandatory requirement.**

GENERAL POLICY

Co-curricular learning, through various programs, activities and services, is integral to a student's total higher education experience. This learning prepares students for the transition towards independence and self-responsibility as well as to support career and life changes.

RISOs provide opportunities for students to acquire leadership skills, to interact with other people and to participate in civic, recreational, social and academically-related activities.

DEFINITION OF A REGISTERED INDEPENDENT STUDENT ORGANIZATION (RISO)

Any group of six (6) or more students currently enrolled at UH Hilo wishing to pursue a common educational, civic, social, cultural or recreational interest may become a RISO by completing the registration application and submitting the required documents. RISO officers must be registered UH Hilo students with 6 or more credits. RISO officers are: President, Vice-President, Secretary, Treasurer and 2-Board members.

A minimum membership of six (6) students must be maintained throughout the period of registration. In addition to the six student members, membership may include associate members who are faculty, staff, community college students or community members (including alumni). Associate members cannot vote, become officers or serve as official representatives of the RISO. At all times, 75% of the membership must be currently enrolled students of UH Hilo. 25% of the membership can include Hawai'i Community College students, faculty, staff, and community members.

RELATIONSHIP TO THE UNIVERSITY

All RISOs assume responsibility for their activities including debts incurred, insurance coverage, legal defense, risk management and relationships with third parties.

The RISO must include the following disclaimer on all publications and communications with third parties:

"Although the RISO has members who are University of Hawai'i students, faculty or staff, the RISO is independent of the University. The RISO is solely responsible for all its contracts, debts, acts and omissions."

The RISO name shall not include "University of Hawai'i" as deemed by the University Board of Regents Chapter 7 ruling. A RISO name may include the following affiliation with being "at the University of Hawaii Hilo." The following are examples of allowable names:

Ex: University Ping Pong Club or
Ping Pong Club at the University of Hawaii Hilo
Ping Pong Club at UH Hilo

Not allowed: University of Hawaii at Hilo Ping Pong Club or
University of Hawaii Ping Pong Club
UHH Ping Pong Club

Being a RISO at UH Hilo **does not permit usage of the UH Hilo logo** due to RISO's being independent of the University of Hawaii.

The University views its relationship with the RISOs as consistent with the University's philosophy of education and student self-governance. RISO leaders and advisors assume responsibility for the organization's activities and the conduct of its members. The University has staff available to provide educational services to support the effective functioning of RISOs.

HOW TO FORM A RISO

Students with common interests are encouraged to form RISOs to bring together others who share those interests, to provide involvement activities and to have fun. RISOs, although independent of the University, have basic responsibilities which include:

1. Abiding by all State and County laws.
2. Operating within the policies and procedures of the University of Hawaii system.
3. Adhering to their Constitution and By-Laws.
4. Keeping an accurate accounting of funds.
5. Filing the annual RISO registration form.
6. Avoiding any policy or practice that discriminates against any person by reason of race, creed, color, age, national origin, ethnic background, gender, sexual orientation or religion, except as exempted by federal, state, and county laws.
7. Retaining an Advisor who is a member of the UH Hilo faculty or staff, an alumni or community member.

Any student interested in forming or registering a RISO should:

1. Read the full text of this Handbook and complete the annual RISO registration form. Printed copies of the Handbook and registration form are no longer available.
2. First time RISOs need to write a Constitution and By-Laws. If assistance is needed to write or revise a constitution, contact the Student Leadership Development Coordinator.
3. Read this Handbook to be sure the RISO is in compliance with all rules.
4. RISO authorized representative/contact person **MUST be a UH Hilo student member of the RISO.**
5. Return the completed RISO form to the Student Leadership Development Program at Campus Center Rm 309 and email requested forms as directed to bergknut@hawaii.edu.

6. After the registration has been approved, the RISO's president and advisor will receive a confirmation. If there are any questions, the Student Leadership Development Coordinator will inform the group of what needs to be done to complete the registration process.

The Campus Center Director or other staff as directed will distribute the list of registered organizations to the various University departments and units who interact regularly with RISOs. These include the chartered student organizations, the Library, Student Housing, Intramurals, the Athletic Dept, Sodexo Campus Services, the Theater, Auxiliary Services and Administration. The RISO president, advisor and authorized representative persons will be on the distributed list. Approved RISOs will be listed on the RISO webpage.

WRITING A CONSTITUTION AND BY-LAWS

Webster's Collegiate Dictionary defines a constitution as "the system of fundamental principles according to which a nation, state or group is governed". Robert's Rules of Order, Newly Revised, states that a constitution of an organization:

1. defines its primary characteristics
2. prescribes how it functions and
3. includes all rules that the organization considers so important that the rules cannot be changed without previous notice to members

The constitution of an organization, as its basic road map, defines the limits of its authority, establishes the structure through which it achieves organizational goals, and provides a sense of order and practice. By keeping all provisions of a topic under one heading in a single document there will be fewer problems of redundancy and internal inconsistency. The constitution and by-laws should be easy to read and understand.

SAMPLE #1 is an outline of a constitution and by-laws that you can follow in developing your RISO. The constitution should contain statements and provisions concerning the enduring aspects of your organization. Items that detail more specific operational procedures and/or rules that are subject to more frequent revision should be included in the by-laws. The Student Leadership Program Coordinator can provide you with advice as needed.

BANKING AND TAX INFORMATION

Each RISO will need to have a Federal ID number to open a bank account, or to receive payments from SAC, UHSA or any other University source. Internal Revenue Service application forms can be found on at, <http://www.irs.gov/Forms-&-Pubs> . Having a Federal ID number is not the same thing as having IRS non-profit status.

Please Remember:

- **RISOs are advised to use their own mailing address or a RISO PO Box.**
- **RISO's are to avoid using the University of Hawai'i in the name of the account.**
- **University addresses cannot be used for the account's address.**

All fundraisers are taxable, even those for non-profit organizations, so when planning a fundraiser, be sure to:

1. Pick up an application for General Excise Tax license from the Tax Office at the State Building on Aupuni Street or online at http://www.state.hi.us/tax/a1_forms.htm.
2. Fill the form out carefully.
3. Return the form, with the required fee, to the Tax Office and they will issue the license.

Call the State Tax Office, 808-974-6321, for further information.

APPROVAL FOR RISO USE OF CAMPUS FACILITIES AND SERVICES

RISOs planning to use campus facilities, vehicles, media services, security services and any other campus services where charges may be incurred, must have the request for use approved by the Campus Center Director. This policy has been established due to a few RISOs leaving unpaid and uncollectible campus financial obligations at the end of each year. These debts have been paid by the Campus Center to ensure that the services and facilities remain available for RISOs. RISOs leaving such debts unpaid **shall be denied registration until the Campus Center is reimbursed and a financial obligation may be placed on members of the RISO.**

USE OF CAMPUS FACILITIES

Whenever you plan an event using campus facilities, one of the first steps should be to contact the person in charge of the facility you wish to use. An early contact will give you the best chance of having a successful event on the date you want it. Most campus facilities have fees for staff, technical and other special services.

Sodexo Campus Services is the exclusive food contractor for the campus. If you plan to have food or refreshments at your event, you must arrange it through their catering department or **obtain a food waiver** if you plan to bring your own food. **Contact them at 808-974-7303.** Use of campus facilities is a privilege and is at the discretion of each facility manager or of Auxiliary Services. **Each RISO is responsible to follow the specific rules for each facility.**

Campus Center

The Campus Center offers meeting rooms, a gameroom, lanais and lounges for RISOs use. The gameroom, lounges and lanais may be reserved for RISOs use in the evenings and on weekends. There is no room fee for use, however, regular gameroom and staff time fees will be charged.

The RISO advisor or other designated faculty or staff must be present throughout the entire event or activity. In order to ensure fair use and availability of rooms, RISOs are limited to six consecutive reservations at a time. Further reservations may be made after the fifth use. There are certain other conditions that may apply so contact the Student Leadership Development Coordinator when planning your event. Events that deal with intramural activities will need further approval from the Student Life Center Director.

The Campus Center Plaza (covered area between the Campus Center and UCB) is now available for general campus use. Groups requiring amplified sound and/or food must use the Plaza instead of the Library Lanai.

To reserve Campus Center spaces, go to <http://hilo.hawaii.edu/campuscenter/roomres/> . Call the Campus Center Office, 808-974-7499, to arrange use of the lanais, lounges and the gameroom.

Athletic Complex

The Athletic Complex has several facilities which can be reserved for RISO use. There are classrooms, a weight room, tennis courts, a baseball field, multipurpose field and two gyms. Contact the Intramural Director at 974-7702 for information, procedures and reservations.

Campus Center Dining Room

The Dining Room can be reserved for major events which take place after Sodexo's regular food service hours. The Sodexo office is near the handicapped entrance/exit of the main dining room. Call 808-974-7303 for inquiries or reservations; go to <http://www.uhh.hawaii.edu/depts/sodexho/index.php> for your event.

Library Lanai

The Library Lanai is a popular spot for open-air, yet covered events. There are restrictions limiting use of the Library Lanai to non-amplified events without any food. For further use rules and to reserve the Lanai,

go to <http://hilo.hawaii.edu/campuscenter/roomres/> .

Theater

The UH Hilo Performing Arts Department has priority use of the Theater; however RISOs may also use the Theater pending availability. Many community groups use the Theater so it's very important to plan far in advance when considering an activity in the Theater. The Theater Lanai is another popular performance area that can be used by the RISOs when use is not in conflict with other events in the Theater. There are fees for use, technical and special services. To reserve the Theater, go to <http://performingarts.net/Theater/use/index.html> .

College of Agriculture, Forestry and Natural Resource Management Farm Pavilion

An excellent, but little known venue for activities and major events is the pavilion at the CAFNRM Farm in Panaewa. This open-air, covered facility, tucked away in the forest, can hold very large groups. Contact the College, at 808-974-7393, to arrange programs and events at the Farm. Fees may be charged for use.

Notice to Public (Signage)

Whenever RISOs use campus facilities, you are required to have a banner or visible sign with your organization's name on it. In addition, you will also need a sign indicating the activity you are undertaking.

For example, if you are fundraising, recruiting members, providing information, taking a survey, you need to let people know this without their having to actually go to your table or booth. When using a public venue, RISOs may not approach people to solicit them. Although we support a diverse intellectual and social atmosphere on campus, we also believe that each person should be able to freely choose whether to listen to your solicitation or not. At all times, during a RISO's use of any campus facility, there shall be RISO members present.

Some of our RISOs have community members as well as students and we welcome such involvement with our students. However, a RISO is a student organization and therefore, we expect that community affiliates of RISOs will work together with our students in all on-campus activities.

The Campus Center Director reserves the authority to close down any RISO's activity or display if there is no sign with the club's name or activity on it, if there are no student members present, and if a complaint is made on not adhering to the guidelines in this handbook.

Security arrangements

Campus security officers or off-duty police officers are required for dances and major events open to the public that are held on campus. Security requirements vary for campus facilities – please ask what they are when making your reservation. Consult with the Campus Center Director or the Director of Campus Security prior to your event to determine what appropriate security measures are needed.

When arranging for security, **you must identify the RISO contact person and advisor who will be in charge of the event.** The person must identify him /herself to the officers prior to the event. Plan for the officers to report at least ½ hour before your event begins and to remain at least ½ hour after the event ends. This start/end time may vary depending on the nature of the event. Security is there to assist the RISO in having a safe and disruption-free event. Communicate any concerns and requirements to them to enable them to give you the best assistance possible.

UHH security cost varies from \$16.72-\$17.37/hour. Hawaii Police Officer cost vary from \$36.00 to \$32.00/hour; additional \$10.00/hour for vehicle. The UH Hilo has a contract for security services and campus security officers are arranged by calling Campus Security at 808-933-3131.

Janitor Arrangements

Janitors are required for dances and major events open to the public that are held on campus. Janitorial requirements vary for campus facilities so ask what they are when making your reservation. Consult with the Campus Center Director or the Director of Auxiliary Services Director prior to your event to determine what your janitorial needs are. When arranging for janitorial services, you must identify the RISO authorized person and advisor who will be in charge of the event. Plan for the janitors to report at the start of your event and to remain at least ½ hour after the event ends. This start-end time may vary depending on the nature of the event. Campus Center will schedule for janitorial services for your event. The RISO will be charged for this service. UHH janitor cost \$25.00/hours. If you have questions contact Auxiliary Services at 808-974-7369.

CAMPUS CENTER SERVICES

RISOs may request assistance from the Campus Center Student Leadership Development Program, the Campus Center Director or other staff as directed for any aspect of their planning, training or organizational needs. The Director and staff at Campus Center are committed to providing the services that RISOs need for their success.

Campus Center Bulletin Boards

RISO flyers and announcements about upcoming events may be posted in the kiosk bulletin boards outside Lava Landing

The Campus Center also has sign boards that can be suspended over the dining room balcony or from the 3rd floor balcony. Contact the Campus Center office to reserve a board for your event or announcement. SAC (808-974-7518) and UHSA (808-974-7500) may be willing to post your items on their bulletin boards – contact them with your request. Anything posted at/in the Campus Center must be approved before posting. **Bring your flyers, posters, banners to the Campus Center office for approval.**

News and Events Calendar

To view and post events, go to http://www.uhh.hawaii.edu/news/ann_submit.php. RISOs are encouraged to check the calendar before planning events to see what else is happening at the same time. RISOs should post your activities as soon as dates are set so others may see what you're doing. There is no fee for posting.

Ke Kalahea Kalendar

RISOs are invited to submit news releases and photos of their activities and events to Ke Kalahea, the student newspaper. RISO members interested in submitting news releases should contact the Editor to find out requirements and editing practices. Subject to space availability, Ke Kalahea will print announcements of upcoming events. This service is free to RISOs. Items need to be submitted two weeks prior to publication. Call 808-974-7504 or visit <http://www.kekalahea.com/> for more information and the current year's publication deadlines.

Student Activities Council (SAC)

SAC is always interested in supporting UH Hilo and RISO activities. If your organization would like to have SAC co-sponsor an event, you should drop by the SAC office at CC Rm 301-A, to discuss the possibility with any SAC member. You will need to complete a request for co-sponsorship form. Any event that is co-sponsored by SAC must be open to all students of UH Hilo. SAC does not fund activities that are for RISO members only (UHSA, however, does make grants to RISOs for such activities). RISOs may use SAC paints and paper for posters for RISO events in their office only. Please coordinate use

with a SAC member as paints will not be loaned to RISOs. Contact SAC, at 808-974-7518, to find out how they may help your RISO!

OTHER CAMPUS SERVICES

Media - AV equipment

RISOs may request use of AV equipment through their advisor. An equipment request form must be submitted a minimum of five (5) working days prior to the requested date. Equipment is loaned on a first come, first reserved basis so get your request in early. An equipment request must be signed by your advisor.

Media - Graphics/Duplication

If your RISO needs graphic design and layout assistance with a major, campus-wide event or with making tickets and large poster prints or with duplicating materials, the Media/Graphics department may be able to help you. Media/Graphics' first work priority is for academic needs. It's important to remember this and get your order in as early as possible. It is unlikely that last minute requests will be accepted.

For graphic design work, orders should be in at least six (6) weeks prior to your desired receipt date. Duplicating work orders must be in at least one week prior to need. All work orders and duplication orders must be approved by the Campus Center Director.

FUNDING YOUR RISO

Membership Dues

The most common way organizations fund their basic operating expenses is to assess membership dues. The RISO may decide to collect dues per month, semester or any other time period. If the RISO decides to assess dues, it should be stated in the group's Constitution (the amount should be in the By-Laws). When determining whether to assess dues or not, the group should consider what its basic expenses will be and how they will be paid if dues are not assessed. When determining the amount of the dues, the RISO should keep in mind an amount that would be reasonable for most members to pay.

Fundraising

A RISO can raise money by selling goods or services, by charging admission for an event, or by soliciting donations. Such fundraising activities should be for the benefit of the RISO and funds should be used for RISO sponsored activities. RISOs must inform the Campus Center Director of fundraising activities by submitting the fundraising information sheet prior to the first day of fundraising. **RISOs who are fundraising through UHSA and SAC do not need to submit the information sheet.** The Campus Center Director does not approve or disapprove RISOs' fundraising activities. The information sheet enables the Director to respond to any inquiries about RISO fundraising.

Any RISO selling food on-campus must contact the Sodexo Director to obtain a special food waiver. The RISO is also responsible for obtaining a temporary food permit from the Dept. of Health (DoH) for any food sales, on or off-campus. RISOs attempting to sell food on campus, without the Sodexo waiver and the temporary DOH permit, will have their fundraiser stopped immediately. RISOs not complying with Sodexo or DOH regulations related to food preparation and handling are at risk of being held liable for any illness or death due to poor food preparation and handling.

Campus Center is currently gathering information about fundraising sources which will be added to the RISO website. The list will be continually updated. If any RISO has fundraising information to share on the list, please contact the Student Leadership Coordinator at bergknut@hawaii.edu.

UH at Hilo Student Association (UHSA) Funding

In addition to generating your own funds, RISOs may request funding from the UH at Hilo Student Association (UHSA). The UHSA Senate represents all UH Hilo students and its decision to approve funds is determined by many factors. These include the significance of the program, project or activity; the probability of success; the benefit to all students; the availability of funds; and, the appropriateness of UHSA funding the request. Programs with inherent cultural, social, economic impact and those which strive to manifest the Senate's goals are most likely to receive funding.

UHSA can also provide seed money for a RISO's fundraising effort. Senate guidelines for RISO funding change from year to year and RISO's should contact the UHSA Senator in charge of RISOs for current information. Applications for funding are available at the UHSA office, CC Rm 211 or Campus Center, Rm 210. Call the UHSA office at 808-974-7500 for more information about ways that UHSA can support your RISO.

RISK MANAGEMENT

When your RISO is planning its activities, it is important to consider the risks involved with those activities. Although it is unrealistic for an activity to be completely risk-free, it is also unrealistic to plan events without considering risks.

For all of your organization's activities, appropriate rules of safety should be shared with everyone involved and present. A list of possible risks should be discussed with all participants. If potentially dangerous or hazardous conditions exist, consider what safety personnel might be needed, i.e. hiring a lifeguard for a beach trip or a guide for hiking near the volcano. The RISO may even consider obtaining event insurance if the situation warrants it. It is highly recommended that events and activities have a designated certified First Aide/CPR person. While the University is not responsible for the activities of RISOs, we will assist whenever possible with risk management concerns. If you have any questions, contact the Campus Center Student Leadership Coordinator at bergknut@hawaii.edu.

Risk Release Waivers

To protect your organization, its officers and advisor(s), participants in all off-campus activities and some on-campus activities should be required to sign an "Assumption of Risk and Release" form (Sample #2) prior to the activity. Your list of potential risks must be included on this form. The release form doesn't mean your organization can't get sued. However, it does mean that you can show that the participant was informed of risks and chose to assume the risks and responsibilities associated with the particular activity.

Alcohol and Substances

We very strongly recommend that all RISO activities be alcohol-free and that RISOs adopt a policy prohibiting use of the RISO's funds for purchase of alcohol. To limit the RISO's risk, there should always be a specific time period placed on any activity. Activities members may engage in before or after the event is not the RISO's responsibility. Student fees may not be used to purchase alcohol nor can student organizations (UHSA, SAC or publications) sponsored events, held on or off campus include alcohol.

UNIVERSITY POLICIES

RISOs are expected to follow major University policies and procedures including, but not limited to the following:

Americans with Disabilities Act (ADA)

Many of our students, faculty and staff have disabilities that may affect their participation in RISO activities. Events, on or off campus, must be accessible to students, and other participants, including the general public. We want everyone to be able to equally enjoy and benefit from various campus activities. To become familiar with our campus' policy and procedures related to persons with disabilities, contact Susan Shirachi, UH Hilo University Disability Services Director at 808-933-1836. She is willing to meet

with any group to share information and answer your questions. When publicizing your events, please use the following statement on your flyers, posters, news releases and announcements:

"Anyone requiring auxiliary aids or special accommodations to participate in this event should contact (club person) at (phone or email), 933-3334 (TTY) by (date at least 10 days prior to the event)."

Sexual Harassment and Sexual Assault

The University is committed to providing a safe and comfortable campus for all of our students. RISOs, in its on-campus and off-campus activities, are expected to observe the UH Hilo's Sexual Harassment and Sexual Assault policies. For information and assistance, contact the Vice-Chancellor for Student Affairs, Dr. Luoluo Hong, at 808-974-7334.

Student Conduct Code

All UH Hilo students participating in RISOs are expected to behave in a civil manner that respects the rights of others while supporting an environment of learning and mutual enjoyment of student life programs, activities and services. Students who choose to violate the rights of others and disrupt activities through impermissible behavior will be subject to disciplinary action under the UH Hilo Student Conduct Code. Copies of the Conduct Code are available in the Campus Center office, Rm 210.

CONTACT US!

If you have any questions, need help or want leadership training, please contact Leomi Bergknut, the Student Leadership Coordinator. You may email her at bergknut@hawaii.edu or call 808-933-1907 or come to Campus Center, Rm 309.

HAVE A GREAT YEAR!

EXHIBIT E

THE CHRONICLE OF HIGHER EDUCATION

Faculty

January 15, 2009

Group Tells Public-College Presidents They May Be Personally Liable for Speech Codes

By Peter Schmidt

A group that advocates free speech on campuses has sent the top officials of 266 public colleges certified letters warning them that they might be sued as individuals if their institutions do not lift certain speech restrictions.

The Foundation for Individual Rights in Education, based in Philadelphia, mailed the letters to college presidents and chancellors in mid-December in an effort to pressure their institutions to alter their speech policies voluntarily. The letters cite several court rulings that the group regards as prohibiting one or more speech policies in place at the colleges, and they argue that the administrators, having been apprised of such developments, will have difficulty claiming legal immunity from liability for their actions.

"When the law is so clearly established with regard to unconstitutional speech codes, claims of immunity from liability on the part of individual administrators will likely fail," the letters say.

The letters cite a 1982 Supreme Court ruling, in the case *Harlow v. Fitzgerald*, which held that government officials have immunity from personal liability for their actions only "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."

In an interview on Wednesday, William Creeley, who signed the letters as the organization's director of legal and public advocacy,

said their primary objective "is kind of a practical one, from our standpoint—to put schools on notice in a legally cognizable way."

"This is something we can point to to say, 'You should have known. You were warned,'" he said.

In a later e-mail message, Mr. Creeley said, "We believe that once administrators are made aware of the fact that they may risk personal liability by maintaining unconstitutional speech codes, changes will occur more quickly on public campuses."

Although the group, known as FIRE, does not itself litigate cases, it has assembled a network of like-minded lawyers whom it taps to mount lawsuits against campus speech policies that it views as objectionable. A campaign it calls the Speech Code Litigation Project has already scored court victories in cases involving San Francisco State University, Temple University, and Texas Tech University.

Ada Meloy, general counsel for the American Council on Education—an umbrella organization representing colleges and higher-education associations—said her group's members have been in touch with her about the FIRE mailing. "It certainly sounds like FIRE is putting a lot of incendiary language in a form letter," she said. "I don't think FIRE is a disinterested observer."

Citing a recent FIRE report, the letters say that 77 percent of the 260 public colleges that the group recently surveyed have at least one policy that clearly and substantially restricts freedom of speech.

Ms. Meloy, however, said, "We believe that the majority of campus policies are within the bounds of the law, and that the campuses do their best to see that a broad range of views and opinions can be heard, and that the nuances of what is acceptable speech and what is not are not always easy to define."

Officials of several colleges that had received the FIRE letters said Wednesday they were unprepared to comment.

Mr. Creeley, the advocacy director at FIRE, said his group has heard back from more than 15 colleges so far, with some denying any violation of speech rights and others asking for more information regarding the group's objections. He declined to share any of the letters with *The Chronicle* because, he said, he did not want to complicate his organization's efforts to work with the colleges to get them to change their policies on their own.

FIRE expects to post a full list of colleges that received its letter on its Web site today. Among them are several campuses of the Universities of California, North Carolina, and Wisconsin, and the State University of New York, as well as a handful of community colleges.

HID 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)	
<i>Plaintiff</i>)	
)	
v.)	Civil Action No.
)	
_____)	
<i>Defendant</i>)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

HID 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)	
<i>Plaintiff</i>)	
v.)	Civil Action No.
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If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

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Signature of Clerk or Deputy Clerk

Civil Action No. _____

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_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

HID 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)	
<i>Plaintiff</i>)	
)	
v.)	Civil Action No.
)	
_____)	
<i>Defendant</i>)	

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To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

HID 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)	
<i>Plaintiff</i>)	
v.)	Civil Action No.
)	
_____)	
<i>Defendant</i>)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

HID 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)	
<i>Plaintiff</i>)	
)	
v.)	Civil Action No.
)	
_____)	
<i>Defendant</i>)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
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_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify):* _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Merritt Burch and Anthony Vizzone

(b) County of Residence of First Listed Plaintiff Hawaii County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

SEE ATTACHMENT

DEFENDANTS

University of Hawaii System, David Lassner, Donald Straney, Ellen Kusano, and Leomi Bergknut

County of Residence of First Listed Defendant N/A (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. § 1983 and 1988. Brief description of cause: Civil rights action to vindicate constitutional free speech rights

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: X Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 04/24/2014 SIGNATURE OF ATTORNEY OF RECORD /s/David B. Rosen

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

ROBERT CORN-REVERE
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