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COMMENTS ON PROPOSED UNIVERSITY OF RHODE ISLAND BOARD OF TRUSTEES REGULATIONS REGARDING USE OF UNIVERSITY PROPERTY

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The American Civil Liberties Union of Rhode Island appreciates the opportunity to offer comments on the Board of Trustees' proposed regulations regarding University Property. We understand that they are designed to convey the University of Rhode Island's commitment to quality education through the use and protection of its University Property. Some provisions in these proposed regulations, however, also have a deleterious effect, even if unintentional, on the University's concomitant commitment to protecting academic freedom and the First Amendment rights of students. It is with the goal of safeguarding those rights that we offer the following comments for consideration.

The Proposed Regulations

- 1. Section 2(a). Individual Rights:** This section prevents using University Property "in a manner that impinges upon the rights of another person under the United States or Rhode Island Constitution; any federal, state, or local law; or any University policy." While one cannot argue with this goal in the abstract, we are concerned about its potential misuse in implementation. On university campuses across the country, we have recently seen conflicts where student speech on political matters is said – often unfairly, in our view – to impinge on the rights of other students to feel safe or free from discrimination. We believe

this provision must better define when use of University Property “impinges upon the rights of another person” in order to avoid confusion and disputes about its potential application to unpopular, but constitutionally protected, opinions or speech by either faculty or students.

2. **Section 2(e). Endangerment:** This section prohibits the use of University Property to “endanger” others. The word “endanger” is undefined, which leaves it open to wide interpretation and, again, potentially applicable to protected speech. We would urge that the wording be clarified to explicitly refer to *physical* endangerment.
3. **Section 2(f). Leafletting and Distribution of Literature:** This section would allow the university to bar leafletting or distribution of literature if it “create[s] litter.” This is extremely problematic and should be stricken. The exercise of free speech rights cannot be prohibited because of the improper behavior of others. Littering by students who receive a leaflet is out of the control of the distributor, yet this provision would allow for the denial of the leafleteer’s First Amendment rights on the basis of a third party’s actions. For close to a century, the U.S. Supreme Court has rejected such efforts.¹

Also, while leafletters should not be allowed to block access to buildings or walkways while engaged in this quintessential First Amendment activity, we are concerned that the rule’s ban on “impeding” the flow of pedestrian traffic could be interpreted in an overly restrictive manner. After all, any distribution of literature has the potential to contribute to temporary bottlenecks, but that should not serve as a basis for prohibiting it.

¹ As far back as 1939, the Court noted: “We are of opinion that the purpose to keep the streets clean and of good appearance is insufficient to justify an ordinance which prohibits a person rightfully on a public street from handing literature to one willing to receive it. . . . There are obvious methods of preventing littering. Amongst these is the punishment of those who actually throw papers on the streets.” *Schneider v. State*, 308 U.S. 147, 162 (1939).

We urge that this wording be modified so as to bar, for example, leafletting only if it “significantly” impedes the flow of traffic.

This section also gives Housing and Residential Life and Dining Services the ability to develop additional leafletting restrictions for areas under their control. This provision should require those departments to explicitly articulate their rationale for any additional restrictions and ensure that they are narrowly crafted to address the specific issue warranting these extra limitations. Indeed, from our perspective, one might expect residential facilities at the school to have fewer, not greater, restrictions.

4. **Section 2(g). Signs, Postings, Banners:** This section limits the posting of signs to designated areas of University Property, specifically “designated bulletin boards or other areas identified for positing [sic].” In line with our comments on Section 2(f), we would urge that this be clarified to exempt dormitory rooms and related areas within those buildings. For example, a student who wishes to display a banner from a window either inside or outside their dorm room, or to post a political sign on their door, should be allowed to do so without fear of punishment. The University should not have the discretion to determine whether such areas are “designated” for posting signs.

In addition, if the locations that the University “designates” for sign posting are insufficiently prevalent or unduly restrictive, this rule could severely impact communication between students for purposes of noticing meetings, rallies or other events. We recommend that the rules provide a process to allow students to formally petition to have a location be deemed a designated area for posting information beyond those set out initially by the University.

5. **Section 2(i). Erection of Structures:** This section prohibits erecting both permanent and temporary structures without specific written permission. The scope of “temporary structures” should be defined and limited. If a “structure” is erected for a minimum period of time in concert with a political protest or similar activity, written permission should not be required any more than the temporary use of open university space itself for a spontaneous protest or rally. These situations are very different from the type of encampment concerns that this rule seems to be aimed at, but they would be treated identically as this rule is presently worded.
6. **Section 2(k). Building Access:** This section grants the University the right to ask guests in residential buildings “to leave at any time.” This completely standardless authority to order guests to leave is quite inappropriate. The policy should have a “good cause” requirement and specify the types of conduct that would authorize the University to remove a guest from a residential building. A broad “in loco parentis” standard is simply anachronistic and unwarranted in the university setting.
7. **Section 3. Enforcement and Violations:** This section states that violations of any of these policies can result in various disciplinary actions, including the imposition of fines. The section specifies that the Board of Trustees derives authority to impose fines from RIGL §16-32-2. However, that statute allows a “district or police court,” not the University, to impose fines for violations of school policies.

Furthermore, under this section, the user of the University Property is deemed responsible for any property damage that is incurred, even if the user did not cause the damage. For example, if a protest takes place on campus and a counter-protester throws a

rock through a window, the organizer – and not the protester who threw the rock – would be held responsible under this section. It should be revised to avoid any such scenario.

In sum, the ACLU believes it is important that these rules be revised to be more mindful of their potential impact and infringement on the exercise of First Amendment rights, and that they make clear that they can be applied to speech activity only in accordance with the time, place and manner restrictions appropriate for a public or limited public forum.

Thank you for your consideration of our views. We trust that they will be given your careful consideration.

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