

Appellate court hears ASU free-speech case

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An attorney representing a former Arkansas State University student argued Thursday for a court ruling that enforcement of a previous university policy violated the student's free-speech rights.

Arguments in the case continue in the 8th U.S. Circuit Court of Appeals despite the ASU System in March 2019 dropping its free-expression policy that said campuses were to designate "Free Expression Areas for speeches and demonstrations."

The dropping of the policy led a federal district judge in August to dismiss as moot a free-speech rights lawsuit filed against ASU.

National leaders have raised concerns about whether college campuses have been too restrictive with speech on campus.

President Donald Trump and Education Secretary Betsy DeVos have both warned college campuses about violating students' First Amendment free-speech rights, with DeVos referring specifically to ASU in a September 2018 speech.

Advocacy groups and lawmakers -- including in Arkansas -- have pushed for policy changes.

The Alliance Defending Freedom, a nonprofit legal advocacy group, represents former ASU student Ashlyn Hoggard and a chapter of the conservative organization Turning Point USA in their legal challenge. The dismissed lawsuit, filed in 2017, alleged the violation of free-speech and due-process rights, which the university has denied.

But the dismissal has been appealed.

Chris Schandavel, an attorney representing Hoggard and the Turning Point USA chapter, on Thursday said the old ASU policy allowed for "unbridled discretion" when it came to enforcement, which interfered with Hoggard's free-speech rights when she attempted to speak in an area of campus.

The lawsuit claims that in October 2017 an ASU official and a police officer ordered Hoggard and a representative of Turning Point USA, who had set up a recruiting table, to leave Heritage Plaza and stop speaking with students. The lawsuit states that a police officer "informed Ashlyn that she had violated the Student Conduct Code by engaging in speech outside of the speech zones."

Jeff Puryear, an attorney for ASU, on Thursday said the issue involved Hoggard trying to set up when the plaza was reserved for student organizations registered with the university.

"It was simply her setting up the table in the area that was reserved for others," Puryear said. He said "her content had nothing to do with the actions of the university officials."

Schandavel said Thursday that he was not making a legal claim that actions were taken against Hoggard because of her viewpoint.

"All that's required under the unbridled discretion doctrine is that there's an opportunity for that viewpoint-based discrimination to occur," Schandavel said, arguing that this, along with "arbitrary enforcement" of the ASU's old policy against Hoggard, makes the policy unconstitutional.

Schandavel also said enforcement of ASU's former policy imposed a "prior restraint" on speech. He cited a friend-of-the-court brief filed by a public policy research organization in asking for a ruling from the court.

"An amicus brief filed by the Cato Institute urges this court, and we would do the same, to at least rule on the constitutionality of prior restraints on speakers on college campuses and unbridled discretion and hold that those policies are unconstitutional," Schandavel said.

The appeal also states that trustees and two ASU administrators should be held liable rather than be given what's known as qualified immunity, a legal term referring to government officials being shielded from liability for civil damages unless they violated clearly established laws or rights that they should have known about.

Schandavel said "the personal responsibility for the policies themselves goes all the way back to the trustees members."

Puryear said no finding was made in federal district court that there was any constitutional violation with the old ASU policy.

"Judge [Leon] Holmes did not resolve the constitutional question," Puryear said. But the judge did grant summary judgment to the board members based on qualified immunity, Puryear said.

"The board members are entitled to make reasonable judgments and the law must be apparent on its face to them," Puryear said.