

THE CAVALIER DAILY

New 'unaffiliated persons' policies could suppress speech at U.Va., experts say

With its restrictions and ambiguity, the rules could have a 'chilling effect' on outside voices

By News Editor Jake Gold

Bruce Kothmann was confronted by two University Police Department officers Tuesday afternoon for reading a passage from the Bible on the steps of the Rotunda without a permit. He was interrupted halfway through Isaiah 40, Kothmann said, but it's not a big deal. He had told the University Counsel's office in advance he'd be there. He said he just wanted to make a point.

That's because Kothmann — a University alumnus with a daughter in the College — is now an unaffiliated person, and he does not like it.

"When I got the email announcing the University's new policy yesterday, I was upset because I think the legacy of Thomas Jefferson is as close to absolute on free speech as can be," Kothmann said in an interview with The Cavalier Daily.

Kothmann said he was frustrated by the University's **new rules** for unaffiliated persons, as individuals not associated with the University — people who are neither students nor employees — must register at least seven days in advance before gathering in one of nine locations on Grounds. Speakers can only register for one two-hour block each week.

Alumni and independent contractors are included as unaffiliated persons.

"As an alumnus, I feel like it's my right to come back to this space and speak," Kothmann said. "And I understand that means Richard Spencer has the right to come back and speak, but we should fight that with speech, and make sure he speaks safely, but you can't restrict his ability to come speak ... That doesn't seem like the right answer."

But University alumni aren't the only unaffiliated individuals concerned by the new regulations. Some students, activists and lawyers believe the rules might have a chilling effect on speech around Grounds.

"The University plays a very big role in this community," said Jeff Fogel, a Charlottesville-area civil rights attorney. "It's the biggest economic employer, it's the biggest economic engine, it's just all kinds of things intimately connected with the community, and now somehow we're not part of that community when it comes to being able to engage in free speech."

The new policies, modeled after those adopted by the University of Maryland in 2003, were first proposed by the Deans Working Group in February as a response to the white nationalist rallies at the University and in Charlottesville last August.

University Spokesperson Anthony de Bruyn said in an email to The Cavalier Daily the policy revisions will increase security on Grounds.

“The University believes the revised policy strengthens its commitment to the principles of free speech and assembly while also further enhancing the safety and security of our environment,” de Bruyn said.

But Pam Starsia — a lawyer with the National Lawyers Guild representing several activists in lawsuits surrounding the white nationalist rallies — said the policies are an unnecessary addition to the University’s policies for handling white nationalist violence.

“It’s important to remember that on August 11, U.Va. had everything it needed in the current policies to prevent that torch rally,” Starsia said in an interview with The Cavalier Daily. “There was already a clear policy prohibiting open flames, U.Va. knew that these people were going to be marching with open flames and didn’t prevent it. So I don’t see why we have any reason to think adding another policy is going to cause them to take white supremacist violence more seriously, or to protect people from white supremacists.”

Laura Beltz, a senior program officer in the policy reform department at the Foundation for Individual Rights in Education, said the actual policy is legally appropriate, but it could be enforced unfairly.

“We will be watching to make sure the policy is enforced without committing viewpoint discrimination,” Beltz said in an interview. “Because a policy that’s fine on its face like this could be enforced in an arbitrary way — say they stop certain speakers on campus, but they don’t stop others, that kind of thing. So whether or not they enforce it equally remains to be seen.”

Starsia agreed, saying she believes the policies will be used to suppress speech from left-leaning and anti-racist protesters. She cited instances of past trespassing arrests — including that of **Eric Martin** at the School of Law in April and **three students** at a Bicentennial celebration in October — where nonviolent protesters were arrested under past policies.

“Everything about U.Va.’s history gives us cause to believe it will be used to suppress speech on the left, instead,” Starsia said.

Despite concerns with the policy’s execution, the written policy would likely be upheld in the courts — a similar policy adopted by UMD was upheld in 2005 by the U.S. Court of Appeals for the Fourth Circuit. The court **opinion** says UMD is a “limited public forum,” meaning any policies must only be “viewpoint neutral and reasonable in light of the objective purposes served by the forum.”

Beltz said the new University policies are in line with the U.S. Court of Appeals ruling.

“That’s a pretty easy bar to clear, so in light of that direct precedent, the University of Virginia ... can decide to more strictly regulate the speech of outsiders,” Beltz said. “This is because the University does have a reasonable interest to keep the University safe from disruptions to their educational mission.”

But in places, Beltz said, the amendments may go beyond what UMD attempted in 2005.

“I do think that the regulations here are pretty strict in the grand scheme of things — the fact that outsiders need to wait seven days before being able to speak, and that they can only speak in a two-hour block once a week — that’s pretty strict,” Beltz said. “So I do question whether students will be limited to a certain extent from outside opinions. But, the University of Virginia is well within its legal rights to do this.”

While conceding the policy has judicial backing, Fogel said that doesn’t make the policy correct — to Fogel, the First Amendment is the bare minimum to which the University should adhere. Previously, unaffiliated groups were allowed to gather in any outdoor space on Grounds with minor regulations on the time, place and manner of the expression such as no amplified sound or interfering with University activities.

“These are not gods sitting in Washington or Richmond announcing the truth,” Fogel said. “They announce whatever they believe in, and we don’t have to buy it. And certainly when it comes to the First Amendment, the University ought to be a place that’s experimenting way beyond what it is that the courts are willing to require.”

In some areas, the policy is unclear — it does not address “mixed” groups, where some but not all individuals gathering are considered unaffiliated, nor does it address spontaneous reactions to breaking events. Starsia says this ambiguity could suppress protests and gatherings.

“Any time we’re talking about speech, any area of vagueness and confusion is going to be something that chills speech, chills protected speech, so that’s concerning in itself,” Starsia said.

De Bruyn did not respond to questions about either of these potential issues.

Additionally, the policy limits unaffiliated gatherings to nine locations — including Mad Bowl and Nameless Field. Under Virginia **code § 23.1-401**, universities are limited in imposing restrictions on locations for students to gather, but this same protection is not granted to unaffiliated groups.

According to de Bruyn, the locations designated in the policy are spread across the University and “accessible by the University community and the general public.”

Starsia said the limited list of locations — sometimes informally dubbed “free speech zones” — could be an attempt by the University to limit certain types of speech. The north side of the Rotunda, where white nationalists surrounded counter-protesters on Aug. 11, is not included. This area, Starsia said, is traditionally a public forum for both the University and the Charlottesville community.

“It's been a place where the community has gathered to protest the impacts of U.Va. on life in the community,” Starsia said. “I'm having a hard time imagining what the content-neutral justification is for putting that area off-limits, other than wanting to suppress certain types of speech ... Yes, the Nazis were there one day, but community members — and particularly anti-racist community members — have frequently rallied at that site to protest U.Va.'s legacy and continued complicity in white supremacy.”

The Board of Visitors, the University's regulatory board appointed by the governor, hosts its meetings in the Rotunda four times per year. Legal precedent requires protesters be allowed to be within “sight and sound” of the object of their protest, Fogel said, which may be limited by the areas designated for outside protest by the University.

As an alternative, Fogel said there should be no restrictions on where unaffiliated groups should be able to gather.

“I don't think there should be any exclusions, except for places where you really would interfere,” Fogel said. “I think it's appropriate to exclude people from classrooms and buildings where there are things going on, that it's inappropriate there to carry on free speech. But other than that, there should be no exclusions.”

While current students are generally unaffected by the direct implications of the new policy, second-year College student Julia Kothmann — formerly, an intern with FIRE — sees the cultural repercussions of the change impacting the entire University community.

“It doesn't directly affect what students are allowed to do or say, but I think that it affects the culture of the University in an important way that students really should care about,” Kothmann said. “It affects what the University stands for and the principles that we stand for as a community.”