

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

TYLER NEWTON,
Plaintiff,

v.

Case No.

MOEZ LIMAYEM, President of the
University of South Florida, in his
official capacity, et al.,
Defendants.

**PLAINTIFF'S MOTION FOR A TEMPORARY RESTRAINING ORDER
AND MEMORANDUM IN SUPPORT**

MOTION

Plaintiff Tyler Newton, by and through undersigned counsel, hereby moves this Court for a temporary restraining order under Rule 65(b) of the Federal Rules of Civil Procedure. By this Motion, Mr. Newton asks the Court for a ruling no later than October 13, 2026, restraining and enjoining Defendants, their officers, agents, servants, employees, attorneys, and all others who are in active concert or participation with any of them, from the following:

(1) enforcing USF Policy 6-028 to preclude Mr. Newton from engaging in protected expressive activity at the USF Bull Market on October 14 and 21, 2026;

(2) enforcing Regulation USF4.0140 to preclude Mr. Newton from engaging in protected expressive activity at the USF Bull Market on October 14 and 21, 2026; and

(3) prospectively enforcing the No Trespass Order the USF Police Department issued to Mr. Newton on September 23, 2026, to prevent him from attending and engaging in protected expressive activity at the USF Bull Market on October 14 and 21, 2026.

Mr. Newton also respectfully asks the Court to grant him any other relief that the Court deems just and proper. Mr. Newton's requested relief would not prevent USF from enforcing valid, content-neutral rules against actual obstruction, material disruption, or other independently unlawful conduct.

The temporary restraining order Mr. Newton seeks would restore his access to the USF Bull Market—at least for the next two Markets (October 14 and 21)—which would allow Mr. Newton the time to file a Motion for Preliminary Injunction seeking broader relief.

This Motion is supported by the Verified Complaint and all its Exhibits, the following Memorandum in Support, any argument of counsel allowed at a hearing, and the entire record.

Counsel for Plaintiff notified USF's general counsel by email on October 8, 2026 that this Motion was forthcoming. USF's general counsel acknowledged

receipt of that email. Counsel for Plaintiff will email USF's general counsel a copy of this Motion and all supporting materials immediately after it is filed.

MEMORANDUM IN SUPPORT

INTRODUCTION

Plaintiff Tyler Newton engaged in protected speech in an outdoor area of the USF Tampa campus—at a place called MSC Plaza—that is set aside by Florida law as a traditional public forum. He stood off to the side of a sidewalk, held a sign, and spoke with passersby who engaged with him. He did not block a walkway, occupy a space reserved for anyone else, or disrupt any ongoing event. Yet USF Police arrested Mr. Newton, threw him in jail, and banned him from campus for a year.

That violates the Constitution. The First Amendment protects Mr. Newton's right to engage in protected speech at a traditional public forum. USF claims that, under its policies, the fact that another event was occurring at MSC Plaza—the USF Bull Market—converted the Plaza into a “limited public forum” because the Market's organizers did not want Mr. Newton to speak there. But that claim fails under the First Amendment and the Florida Campus Free Expression Act. MSC Plaza is—and remains—a traditional public forum while the Market is occurring. And the First Amendment does not permit a public university to exclude speakers from a traditional public

forum just because the event organizer would rather not hear what they have to say.

USF's exclusion of Mr. Newton from MSC Plaza, his arrest, and his banishment from campus were unlawful. By allowing the Market's organizers to determine whether Mr. Newton was allowed to speak there, USF engaged in content discrimination and violated the unbridled discretion doctrine. And even assuming Mr. Newton's exclusion was content neutral, it was not narrowly tailored to any significant government interest. Mr. Newton is thus substantially likely to prevail on his claim that USF's policies violate the First Amendment.

Mr. Newton wants to continue going to the Market each time it is held—the next one will take place on October 14, 2026—but he will not do so because USF would just arrest him again. Mr. Newton is thus suffering irreparable harm to his First Amendment rights because he cannot engage in future expressive activity at the Market—or, for that matter, anywhere on campus—without being subject to immediate arrest. And because the other temporary restraining order factors tip in his favor, Mr. Newton is entitled to a temporary restraining order preventing further violations of his constitutional rights.

This Court should grant the Motion, enjoin enforcement of USF's unconstitutional policies against Mr. Newton, and allow him to engage in protected expression at the Market on October 14, 2026 and October 21, 2026.

Mr. Newton will seek additional relief once the temporary restraining order expires.

FACTUAL BACKGROUND

MSC Plaza and the USF Bull Market

MSC Plaza sits immediately behind (south of) the Marshall Student Center on USF's Tampa campus. Compl. ¶ 49; *see also id.* at Exhibit A. It has sidewalks, a grassy area, a tree-lined area with plants and benches, and the Bull Fountain, a popular focal point representing USF's mascot. *Id.* ¶ 49. MSC Plaza is generally open to the campus community, and it is not surrounded by a fence or any other physical barrier. *Id.* People freely walk, gather, and converse there. *Id.*

The USF Bull Market is a recurring, open-air tabling event held at MSC Plaza. *Id.* ¶ 50. At the Market, student groups, non-profits, and vendors set up tents and promote their organizations, services, and wares to attendees. *Id.* ¶ 50. The Market is held from 9:00 a.m. until 2:00 p.m. most Wednesdays (outside of exams and breaks) between late September and April. *Id.* ¶ 52.

The Incident at the USF Bull Market

Mr. Newton is a Christian. *Id.* ¶ 32. He believes that he is called by God to proclaim his faith publicly and to advocate for the protection of preborn human life. *Id.*; *see also id.* ¶¶ 33–46. On September 23, 2026, Mr. Newton—who is not a USF student—went to the Market to engage in expressive activity

consistent with his religious views. *Id.* ¶ 12, 54. Mr. Newton stood in a tree-lined area off to the side of a sidewalk in MSC Plaza; held a sign with a photograph of a human fetus and the words, “What about her body and her rights?”; and engaged in conversation with passersby who were willing to speak with him. *Id.* ¶¶ 54–55; *see also id.* at Exhibit B. He did not use a table, a display, or an amplification device; he did not block any pathway or occupy any space that was allocated for participants at the Market; and he did not yell at passersby or otherwise disrupt the Market. *Id.*¹

Approximately twenty minutes after Mr. Newton began speaking, Matt Marshall—the Director of the Marshall Student Center—approached Mr. Newton. *Id.* ¶¶ 14, 56. Invoking USF Policy 6-028, Mr. Marshall told Mr. Newton that the area where he was standing was “reserved” for the Market, that the Market was a “limited public forum,” and that he (Mr. Newton) would have to move to a different location, outside the Market. *Id.* ¶ 56; *see also id.* at Exhibit D. According to Mr. Marshall, he was telling Mr. Newton to leave because the Market’s organizers did not “want [Mr. Newton’s expressive activity] happening within their reservation and they have that choice.” *Id.* ¶ 56; *see also id.* ¶¶ 57–61. Mr. Marshall did not give any other reason for his order for Mr. Newton to leave the Market.

¹ Mr. Newton recorded himself during the incident. A copy of the video is attached to the Complaint as Exhibit C and also available at <https://bit.ly/4ybbjIO>.

Mr. Newton did not leave. *Id.* ¶ 62. Instead, he invoked his rights under the First Amendment to speak in a traditional public forum. *Id.* USF Police Officers arrived on the scene and ultimately arrested Mr. Newton, handcuffed him, put him in the back of a squad car, and took him to jail, where he stayed until approximately 2:30 a.m. the next morning. *Id.* ¶¶ 63–68, 77. The USF Police also cited Mr. Newton for two crimes under Florida law and issued a No Trespass Order to him under Regulation USF4.0140. *Id.* ¶¶ 67–71; *see also id.* at Exhibits E and F. The No Trespass Order is not a judicial document; it is an internal USF document that informs Mr. Newton that he is subject to arrest if he sets foot anywhere on the USF Tampa campus for one year. *Id.* ¶¶ 71–76. Under Regulation USF4.0140, Mr. Newton may not seek internal review of the No Trespass Order before it expires. *Id.* ¶ 73; *see also id.* at Exhibit G.²

Despite his treatment by USF, Mr. Newton wants to continue attending the Market and engaging in the same or similar expressive activity there. *Id.*

² Although the criminal charges against Mr. Newton remain pending, this lawsuit does not seek to enjoin, dismiss, or otherwise interfere with those proceedings. Instead, it challenges the prospective application of the USF policies under which USF excluded Mr. Newton from the Market and gave him a No Trespass Order. Because Mr. Newton does not seek to “enjoin[] [an] ongoing . . . state” judicial proceeding, *Younger* abstention does not apply. *See Schultz v. Alabama*, 42 F.4th 1298, 1312 (11th Cir. 2022).

And while Mr. Newton does seek to enjoin enforcement of the No Trespass Order, that Order is an executive action by USF officials, not an ongoing state judicial proceeding. It is thus not the type of proceeding to which *Younger* abstention applies. *See Sprint Communications, Inc. v. Jacobs*, 571 U.S. 69, 77–81 (2013) (holding that *Younger* abstention applies to ongoing criminal proceedings, certain quasi-criminal civil enforcement proceedings, and proceedings involving orders uniquely necessary to a state court’s judicial functions).

¶¶ 80–86. Personal conversations are an important part of how Mr. Newton expresses and communicates his views, and the Market offers a unique setting for him to engage in those conversations with an audience that, Mr. Newton believes, does not regularly hear the views he is expressing. *Id.* ¶¶ 36, 43, 53. But because of the No Trespass Order and the threat of future arrest and criminal prosecution, he will not do so. *Id.* ¶ 81.

Regulatory Background

Policy 6-028

Mr. Marshall expressly based his directive for Mr. Newton to leave the Market on Policy 6-028, which is entitled “Activities, Signage, and Use of Public Space.” *Id.* ¶¶ 57–58; *see also id.* at Exhibit D. Policy 6-028 generally treats “Public Space” like MSC Plaza as open: “Public Space is open to the public and may be used for non-commercial and unamplified expression without registration or approval.” *Id.* at Exhibit D § VII.A.5. Policy 6-028 also provides, however, that “[a]ny areas . . . reserved as Reserved Activities . . . will be considered a USF location that is not a Public Space during that reserved . . . time.” *Id.* Policy 6-028 defines “Reserved Activity” as “[a] use of space for a designated purpose. (This includes the designated use of space including events, tabling, programs, or use of space modifications.)” *Id.*

In other words, under Policy 6-028, USF reserves campus space for the sole use of a reserved event—like the Market—unless the event organizers

determine that other First Amendment activities are also allowed there. *Id.* ¶ 59–60. USF Policy 6-028 contains no standards purporting to govern how the event organizers determine whether to allow other First Amendment activities at their event. Instead, that decision is left to the unfettered discretion of the event organizers, and their decision is enforced by USF personnel and police. *Id.* And as Mr. Marshall told Mr. Newton, because the Market’s organizers had reserved MSC Plaza and did not want him to engage in his expressive activity during the event, Mr. Newton was not welcome to speak there. *Id.* ¶¶ 57, 60–61.

Regulation USF4.0140

Regulation USF4.0140, entitled “No Trespass and Loitering,” governs No Trespass Orders, which—in addition to arrests—serve as the enforcement mechanism for violations of Policy 6-028. *Id.* ¶ 71; *see also id.* Exhibit G. A No Trespass Order informs recipients that if they return to campus while the Order is in effect, they are subject to immediate arrest. *Id.* at Exhibit F.

Under Regulation USF4.0140, USF Police Officers have the authority to give a No Trespass Order to, among others, “[a]ny person who, in the opinion of University Officials, . . . is not using University Facilities in an appropriate manner or who is creating an atmosphere not conducive to the use of [University] facilities by other[s].” *Id.* at Exhibit G § III. For Non-University

Persons—like Mr. Newton—No Trespass Orders are not internally reviewable by USF for one year after they are entered. *Id.* at Exhibit G § V.C.

Florida’s Campus Free Expression Act

Policy 6-028 and Regulation USF4.0140 are inconsistent with Florida law. In 2018, the Florida legislature enacted the Campus Free Expression Act. Fla. Stat. § 1004.097. Among other things, the Act governs the forum classification of outdoor areas of public institutions of higher education, like USF. Under the Act, “[o]utdoor areas of campus are considered traditional public forums for individuals, organizations, and guest speakers.” Fla. Stat. § 1004.097(3)(c). The Act defines “outdoor areas of campus” as “generally accessible areas of a campus of a public institution of higher education in which members of the campus community are commonly allowed, including grassy areas, walkways, or other similar common areas.” Fla. Stat. § 1004.097(2)(d).

MSC Plaza is a generally accessible outdoor area with a grassy area, walkways, and other similar common areas. Compl. ¶ 49. Under the Act, it is thus a traditional public forum, open to everyone, including Mr. Newton.

ARGUMENT

To prevail on a motion for a temporary restraining order, the movant must show (1) a substantial likelihood of success on the merits; (2) irreparable injury unless the order issues; (3) that the threatened injury outweighs the harm the order would cause the opposing party; and (4) that the order would

not be against the public interest. *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1268, 1271–72 (11th Cir. 2006).

Mr. Newton makes each of these showings. He is thus entitled to a temporary restraining order enjoining Policy 6-028 and Regulation USF4.0140 against him and allowing him to engage in protected expression at the Market.

I. MR. NEWTON IS SUBSTANTIALLY LIKELY TO SUCCEED ON HIS FIRST AMENDMENT CLAIM

The Court applies a three-part test to determine the constitutionality of speech restrictions on government property. The Court must assess (1) whether the speech is protected, (2) the nature of the forum, and (3) whether the restriction satisfies the applicable forum rules. *See Cornelius v. NAACP Leg. Def. Fund*, 473 U.S. 788 (1985); *Gay Lesbian Bisexual All. v. Pryor*, 110 F.3d 1543 (11th Cir. 1997). Under this test, Mr. Newton is substantially likely to show that USF’s application of Policy 6-028 and Regulation USF4.0140 against him is unconstitutional.

A. Mr. Newton’s speech is protected.

Mr. Newton’s speech is protected. He communicates ideas on abortion and related issues by spoken words and a sign. Compl. ¶¶ 54–55. Speech on matters of public concern lies at the core of the First Amendment, and a sign is a traditional medium of that speech. *See, e.g., Snyder v. Phelps*, 562 U.S. 443, 451–55 (2011) (public concern); *Boos v. Barry*, 485 U.S. 312, 318 (1988)

(signs). Mr. Newton’s speech also does not fall within any exceptions to the First Amendment that would render it unprotected, like fighting words, incitement, or true threats. The First Amendment thus applies.

B. MSC Plaza is a traditional public forum.

MSC Plaza is a traditional public forum. In evaluating the forum status of government property, courts look at the nature of the property, its compatibility with expressive activity, and the government’s intent. *See Cornelius*, 473 U.S. at 803. Traditional public forums are those places “that traditionally have been held open to the public for expressive activities.” *United States v. Grace*, 461 U.S. 171, 179 (1983). The Supreme Court has held that “[s]treets, sidewalks, parks, and other similar public places are so historically associated with the exercise of First Amendment rights” that they are presumptive traditional public forums. *Carey v. Brown*, 447 U.S. 455, 460 (1980); *see also Naturist Soc., Inc. v. Fillyaw*, 958 F.2d 1515, 1522 (11th Cir. 1992).

MSC Plaza is akin to a park. It has sidewalks, a grassy area, and a tree-lined area with plants and benches. Compl. ¶ 49. It is thus presumptively a traditional public forum. MSC Plaza is also generally open; it is not surrounded by a fence or any other physical barrier; and individuals can and often do freely walk, gather, and converse there. *Id.* And under the Campus Free Expression Act, the Florida legislature treats MSC Plaza and similar outdoor areas on

public university campuses as a traditional public forum. Fla. Stat. § 1004.097(3)(c). On these facts, MSC Plaza is a traditional public forum.

Even if MSC Plaza were not a traditional public forum, it is at least a designated public forum. A designated public forum is public property that the government “has opened for use by the public as a place for expressive activity.” *Perry Educ. Ass’n v. Perry Loc. Educators’ Ass’n*, 460 U.S. 37, 45 (1983). Under the Campus Free Expression Act, the Florida legislature has designated outdoor spaces like MSC Plaza as traditional public forums. Even if that designation and the other characteristics of MSC Plaza did not render it a traditional public forum for purposes of federal constitutional law (and they do), the Florida legislature has opened MSC Plaza and similar outdoor places for use by the public as a place for expressive activity. MSC Plaza is thus at least a designated public forum.

During the incident, Mr. Marshall told Mr. Newton that, under Policy 6-028, MSC Plaza was a “limited public forum.” But that conclusion—and Policy 6-028 more generally—is flatly inconsistent with the Campus Free Expression Act. The Act does not permit a public university to recharacterize a generally accessible outdoor area as something less than a public forum simply by holding an event there. The Act says that outdoor areas of campus “are considered traditional public forums” unless they are areas “to which access is restricted.” Fla. Stat. §§ 1004.097(3)(c), (2)(d). Because the Market is generally

open to the public, access to MSC Plaza is not “restricted” during the Market. The fact that the Market is occurring thus cannot convert MSC Plaza into a “limited public forum,” even if event organizers want to exclude Mr. Newton.

Mr. Marshall’s statement that MSC Plaza is a “limited public forum” is also inconsistent with the First Amendment. Courts routinely hold that the government may not alter the status of a traditional public forum at events that are free and open to the public by mere edict, even if the event organizers want to exclude certain speakers. *See Dietrich v. John Ascuaga’s Nugget*, 548 F.3d 892, 899 (9th Cir. 2008); *Parks v. City of Columbus*, 395 F.3d 643, 652 (6th Cir. 2005); *McMahon v. City of Panama City Beach*, 180 F. Supp. 3d 1076, 1102–04 (N.D. Fla. 2016); *Jankowski v. City of Duluth*, No. CIV. 11-3392, 2011 WL 7656906, at *7 (D. Minn. Dec. 20, 2011), *amended*, No. CIV. 11-3392 MJD/LIB, 2012 WL 6044414 (D. Minn. Dec. 5, 2012). Because MSC Plaza is a traditional public forum, the fact that the Market—which is free and open to the public—is occurring there does not alter the forum status of the Plaza.

C. The Policy and Regulation fail constitutional scrutiny.

Policy 6-028 and Regulation USF4.0140 violate the First Amendment in three ways. First, they are content based and fail strict scrutiny. Second, they violate the unbridled discretion doctrine. Third, they fail intermediate scrutiny.

1. The Policy and Regulation are content based and fail strict scrutiny.

As applied to Mr. Newton, Policy 6-028 and Regulation USF4.0140 are content based and fail strict scrutiny. In traditional and designated public forums, content-based restrictions on speech are subject to strict scrutiny. *See United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 813 (2000); *see also Perry*, 460 U.S. at 44 (noting that the legal standards governing speech restrictions in traditional and designated public forums are the same). To satisfy strict scrutiny, the government must prove that the restriction is “narrowly tailored to promote a compelling Government interest.” *Playboy*, 529 U.S. at 813. The government must also show that the restriction is the “least restrictive means [available] to further the [government’s] articulated interest.” *Id.* (cleaned up).

Mr. Newton’s exclusion from the Market and subsequent ban from campus under the No Trespass Order were based on the content of his speech. Under Policy 6-028, USF allows the Market’s organizers to decide whether to allow speech that is not affiliated with the Market to occur on MSC Plaza during the Market’s operation. And as Mr. Marshall explained to Mr. Newton, the reason he was directing Mr. Newton to leave the Market is because the Market’s organizers did not “want [Mr. Newton’s expressive activity] happening within their reservation.” Compl. ¶ 57. On these facts, “it is difficult

to conceive that [Mr. Newton’s] removal was based on something other than the content of his speech.” *Parks*, 395 F.3d at 654.

The fact that Mr. Marshall said it was the Market’s organizers—and not him—who was discriminating against Mr. Newton’s speech is irrelevant. Even if Mr. Marshall did not personally discriminate against Mr. Newton’s speech, by enforcing Policy 6-028, USF “supported the . . . scheme that ostensibly provided a [reservation] holder with unfettered discretion to exclude someone exercising his constitutionally protected rights” at a public forum. *Id.* at 653. And it was USF—not the Market’s organizers—that arrested Mr. Newton for refusing to leave the Market, gave him a criminal citation, and issued a No Trespass Order to him. On these facts, USF “endorsed the unfettered discretion” of the Market’s organizers, making USF responsible for the Market’s organizers’ content discrimination. *Id.*; *see also McMahon*, 180 F. Supp. 3d at 1102; *Jankowski*, 2011 WL 7656906, at *4. As the Supreme Court has stated in a related context, “[i]f there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” *Texas v. Johnson*, 491 U.S. 397, 414 (1989). By allowing organizers of reserved events to exclude speech they don’t like, Policy 6-028 violates this principle.

Strict scrutiny thus applies, and USF cannot demonstrate that Policy 6-028 or Regulation USF4.0140 satisfy strict scrutiny. To date, the only

justification apparent in the record for USF's exclusion of Mr. Newton from the Market and subsequent ban is its determination that the Market is a "limited public forum" under Policy 6-028. As discussed, however, that conclusion is wrong as a matter of law. A reservation for an event that is free and open to the public does not, by itself, give the event's organizers authority to silence unrelated speech in a traditional public forum. USF bears the burden of proving an *actual* reason to ban Mr. Newton; merely stating that it is adopting the preferences of an event organizer is not a constitutionally permissible justification.

To the extent USF contends that it has a compelling interest in ensuring that the Market's message—assuming it has one—is not diluted or muddled by Mr. Newton's speech, that argument also fails. "Merely being present at a public event does not make one part of the organizer's message for First Amendment purposes." *Gathright v. City of Portland*, 439 F.3d 573, 577 (9th Cir. 2006); *see also Wickersham v. City of Columbia*, 481 F.3d 591, 600–01 (8th Cir. 2007); *Parks*, 395 F.3d at 654. Rather, the question is whether Mr. Newton's speech could be perceived as "part of"—and thus attributable to—the Market. *Gathright*, 439 F.3d at 578. On the facts here, there is no reasonable possibility that Market attendees would think that Mr. Newton's message was attributable to the Market.

In any event, there are numerous less restrictive means USF has to achieve this interest, including requiring organizations that are part of the Market to wear official buttons or stickers, posting a notice on the Market's webpage stating that the Market does not endorse the speech of third parties at the event, giving announcements over the loudspeakers informing Market attendees that only official participants have tents, or taking similar measures to distinguish official Market participants from other speakers. In short, the answer to concerns of misattribution is more speech, not less. And because Mr. Newton's protected speech is not disruptive and does not otherwise interfere with the Market in any constitutionally significant way, USF may not proscribe it. *Gathright*, 439 F.3d at 578; *Parks*, 395 F.3d at 654. His exclusion and ban thus fail strict scrutiny.

Finally, even if USF could show that it had a compelling interest in precluding Mr. Newton from speaking at the Market on September 23, 2026 (and it cannot), it has no interest in banning Mr. Newton from setting foot on campus for an entire year, nor is such a ban narrowly tailored or the least restrictive means of accomplishing that interest. Mr. Newton wants only to engage in constitutionally protected speech; he presents no threat to campus safety that could justify any ban from a traditional public forum, much less one for an entire year.

2. The Policy and Regulation violate the unbridled discretion doctrine.

Relatedly, Policy 6-028 and Regulation USF4.0140 violate the unbridled discretion doctrine. A licensing scheme that confers unbridled discretion to a decisionmaker to determine whether speech goes forward is facially invalid. *See City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 757 (1988). To avoid this problem, the scheme must contain “narrow, objective, and definite standards” to guide the licensor’s decision making. *Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 133 (1992). The danger of unbridled discretion is not limited to proven instances of content-based discrimination. Rather, the absence of standards itself chills speech, because a speaker must guess what will be treated as disqualifying and self-censor his speech in advance. *Lakewood*, 486 U.S. at 757–58.

Here, for the same reasons Policy 6-028 and Regulation USF4.0140 are content based, they also violate the unbridled discretion doctrine. They confer unbridled discretion on the Market’s organizers to determine whether speech occurs at the Market. They contain “no articulated standards” governing that decision, the Market’s organizers are not required to “provide any explanation for [their] decision,” their decision is “unreviewable,” and the USF Police may ban individuals from campus simply based on the Market organizers’ say-so.

Forsyth Cnty., 505 U.S. at 133. This unbridled discretion—even absent actual content discrimination—renders Policy 6-028 facially unconstitutional. *Id.*

Moreover, Regulation USF4.0140 suffers from its own unbridled discretion failures. The Regulation, for example, allows USF Police to ban speakers from campus who officers determine are not acting in “an appropriate manner” or who are “creating an atmosphere not conducive to the use of [campus] facilities” by others. Compl. at Exhibit G § III. And for non-university persons like Mr. Newton, the Regulation does not provide a mechanism of review for an entire year. *Id.* § V.C. Regulation USF4.0140 thus independently violates the unbridled discretion doctrine. *Forsyth Cnty.*, 505 U.S. at 133.

3. The Policy and Regulation fail intermediate scrutiny.

Policy 6-028 and Regulation USF4.0140 would fail even if intermediate scrutiny applied. Intermediate scrutiny applies to content-neutral speech restrictions in a traditional public forum or designated public forum. *McCullen v. Coakley*, 573 U.S. 464, 486 (2014); *see also Perry*, 460 U.S. at 44. Under intermediate scrutiny, the government bears the burden of establishing that its restrictions are “narrowly tailored to serve a significant governmental interest” and leave open “adequate alternative channels of communication.” *McCullen*, 573 U.S. at 486. Unlike strict scrutiny, the government does not have to show that its regulations are the least restrictive means. But the government must still show that “alternative measures that burden

substantially less speech would fail to achieve [its] interests.” *Id.* Even assuming USF’s actions were content neutral, it cannot satisfy this test.

For the same reasons Policy 6-028 and Regulation USF4.0140 fail strict scrutiny, they also fail intermediate scrutiny. USF does not have a substantial interest in excluding peaceful, nondisruptive speakers from an otherwise open public forum or banning them from campus, such exclusion is not narrowly tailored to that purpose, and a year-long ban is far longer than necessary to achieve any interest USF might have. *Gathright*, 439 F.3d at 577–78 (assuming without deciding that restriction was content neutral and concluding that restriction failed intermediate scrutiny); *McMahon*, 180 F. Supp. 3d at 1106–07 (same); *Jankowski*, 2011 WL 7656906, at *9 (same). Thus, whether Policy 6-028 and Regulation USF4.0140 are deemed content based or content neutral, the result is the same—Mr. Newton is substantially likely to succeed on the merits of his First Amendment claim.

II. MR. NEWTON IS SUFFERING IRREPARABLE HARM

“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1271–72 (11th Cir. 2006) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion)); *see also Cate v. Oldham*, 707 F.2d 1176, 1188–89 (11th Cir. 1983).

Mr. Newton is suffering irreparable harm. He wants to go back to MSC Plaza to speak at the Market. Yet if he does so, he will be subject to immediate arrest. Every day Policy 6-028, Regulation USF4.0140, and the No Trespass Order remain in place, he cannot return to the MSC Plaza or to any other public area of campus to speak. And later speech cannot make up for the opportunity to engage in speech now, nor will damages restore Mr. Newton's lost ability to speak. *KH Outdoor*, 458 F.3d at 1272.

III. THE BALANCE OF THE EQUITIES FAVORS MR. NEWTON

The balance of equities favors Mr. Newton. USF's actions continue to deprive him of his right to be present and speak in an outdoor area that Florida law designates as a public forum. The temporary restraining order he seeks would restore that access—at least for the next two Markets (October 14 and 21)—which would allow Mr. Newton the time to file a Motion for Preliminary Injunction seeking broader relief. And Mr. Newton does not seek to prevent USF from enforcing content-neutral rules against unprotected speech, actual disruption, obstruction, or threats to safety.

USF, by contrast, has no legitimate interest in enforcing its policies and a ban that excludes peaceful speech from a traditional public forum. *KH Outdoor*, 458 F.3d at 1272. Allowing Mr. Newton to stand to the side of a sidewalk in MSC Plaza with a sign, talking with people who will speak to him, does not impair the Market, classroom instruction, or campus security.

Because USF lacks any cognizable legal interest or evidence of actual, countervailing disruption to University functions that could justify Mr. Newton's continued exclusion from the Market, the equities favor Mr. Newton.

IV. THE TEMPORARY RESTRAINING ORDER IS IN THE PUBLIC INTEREST

Mr. Newton's proposed temporary restraining order is in the public interest. "The public has no interest in enforcing an unconstitutional ordinance." *KH Outdoor*, 458 F.3d at 1272. And the public is served by allowing robust discourse and dialogue in the outdoor areas the Campus Free Expression Act designates as traditional public forums.

V. THE COURT SHOULD NOT REQUIRE A BOND

The Court should not require Mr. Newton to post a bond to exercise his First Amendment rights. "[T]he amount of security . . . is a matter within the discretion of the trial court," which "may elect to require no security at all." *BellSouth Telecomms., Inc. v. MCI metro Access Transmission Servs., LLC*, 425 F.3d 964, 971 (11th Cir. 2005) (cleaned up). And bond waiver "is particularly appropriate where a plaintiff alleges the infringement of a fundamental constitutional right." *Complete Angler, LLC v. City of Clearwater, Fla.*, 607 F. Supp. 2d 1326, 1335 (M.D. Fla. 2009) (collecting cases). Because Mr. Newton seeks to vindicate his First Amendment rights and there is no risk of monetary loss to Defendants, the Court should not require him to post a bond.

CONCLUSION

Mr. Newton asks the Court to GRANT this Motion and enter the concurrently filed proposed temporary restraining order.

Respectfully submitted,

/s/ Joshua W. Dixon
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October 9, 2026

LOCAL RULE 3.01(G) CERTIFICATE

Under Local Rule 3.01(g)(1), Plaintiff's Motion for a Temporary Restraining Order is exempt from the prefiling conferral requirement applicable to civil motions because it seeks injunctive relief.

/s/ Joshua W. Dixon
JOSHUA W. DIXON

CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2026, a true and correct copy of the foregoing was served by electronic mail upon Joanne M. Adamchak, General Counsel for the University of South Florida, at jadamcha@usf.edu, the University of South Florida Office of the General Counsel at USFLegal@usf.edu and the Florida Attorney General's Office at oag.civil.eserve@myfloridalegal.com.

/s/ Joshua W. Dixon
JOSHUA W. DIXON