

Feedback to the proposed Expressive Activity Policy (June 27,2024)

Associate Professor

This proposal for campus stakeholders to hang up our first amendment and academic freedom rights at the Sample Gates cannot be rushed to an August 1 deadline. Such a date signifies only one thing: that the policy represents viewpoint discrimination against the protest encampment in Dunn Meadow. Any sincere policy change of this magnitude has to be deliberated with the same care as the initial policy was—care which has been amply [documented by former Provost Lauren Robel](#) and the students who [advised the task force](#) in 1989s, and which extended to the efforts to implement the policy without the shadow of suspicion that it was motivated by viewpoint discrimination. As written and as timed, this policy is fated to provoke campus violence (its movers are the same people who brought snipers, assault rifles, bearcats, and riot gear to arrest students and faculty). It is a vehicle for another predictable catastrophe.

Moreover, the General Assembly legislation that Prather cites to justify the policy change, HEA 1190 (<https://legiscan.com/IN/text/HB1190/id/2537391>) has an effective date of July 2022. Unless it has somehow appeared subsequently, there is nothing in the legislation about an August 1 deadline. Where does he get that from?

Not only Prather's false characterization of a rush, but his characterization of the legislation itself is misleading. HEA 1190 does NOT ban enhanced free speech areas. On the contrary, what it says is that "a state educational institution may not designate an outdoor area of campus as an area where protected expressive activities are prohibited"(Ch. 8, Sec 9 (a): <https://legiscan.com/IN/text/HB1190/id/2537391>) That's a big difference: the Dunn Meadow Policy ([BL-ACA-I18](#)) should apply to all outside areas of IU.

If Prather wants to contend that this ugly policy proposal is extending Dunn Meadow's protections to all open public forums at IU, then he has a heavy lift, since the burdens the policy imposes on free speech are justified by no events or interests—buffer zones, 10-day approval notification, no shared governance on approvals, narrowed time restrictions, noise restrictions, restrictions on expressive media, restrictions on surfaces and property, and broad wording that is **not** "narrowly tailored in service of a significant state educational institution's interest." Moreover, there are none of the existing policy's provisions against the use of physical force; and there are no provisions for alternative expressive venues or for stakeholder review of denials of approval. It fails HEA 1190 on every level.

This proposal reads more like a politically motivated injunction directed specifically at pro-Palestinian speech than like a policy. It cannot plausibly be interpreted as an extension of Dunn Meadow's protections to other outdoor areas on campus.

I do not believe this proposal fulfills IU's obligations under HEA 1190 nor that the timeline fulfills the trustees' obligations to shared governance under the IU Faculty Constitution ([comment on Sec. 2.1](#)).

We need time for sincere deliberation and discussion. A deadline before late September is not plausible. Without more time and broader engagement devoted to the policy, it will have no legitimacy and simply be a source of protest, litigation, outrage and potential violence that will continue to track the decline of our university under the current administration.

Comment on the BoT Expressive Activity Policy
Professor

As a faculty member at IU for 17 years, I am disheartened, to say the least, if not actually terrified by this draft policy. The policy is so broad as to prohibit and criminalize any expressive activity. It will shut the university down for any kind of expression of opinion. Consider these proposed pieces:

"Expressive Activity may not unreasonably interfere with or substantially disrupt official activities or the operations of the University and must not take place in areas that are used for instructional, administrative, or residential purposes..."

What areas on campus are there that are *not* used for instructional, administrative, or residential purposes?

"... or are not otherwise open to the general public, such as classrooms, studios, laboratories, residential space, or office areas."

This would prohibit classroom announcements about activities understood by any student to be "political" or even just "expressive." As a professor, I often allow students to announce upcoming activities. Would this no longer be allowed?

"The temporary installation of structures at any time, must be approved and if approved, must adhere to the guidelines provided by the University. The request for temporary structures must be requested 10 days in advance of proposed installation."

This essentially prohibits all protest encampments, because no activist will seek approval and no university body will grant it, overturning decades of policy and interrupting a longstanding tradition of protest activities. Does the BoT really intend to stifle all protest, because that is what this policy would do? Do we want this sort of authoritarian world in which people are not allowed to express dissent?

“Overnight camping, which includes the use of any item to create a shelter, is not a form of Expressive Activity.”

This is simply untrue, as any historian of social movements or observer of the recent past can easily affirm. By changing the definition of protest, the BoT simply shuts it down.

“Expressive Activity may not block ingress or egress to any building, facility, driveway, parking lot, or parking ramp, and must take place a minimum of twenty-five feet, or whatever space is necessary for public safety as determined by Public Safety personnel, from the entrance to any University building. Expressive Activity shall not impede or interfere with vehicular or pedestrian traffic.”

This truly would prohibit any march or assembly, which must take place near building doors. If Public Safety personnel are entitled to determine what is necessary, any protest is easily disallowed.

“Amplified Sound: Outdoor amplified sound is permitted so long as it does not disrupt the academic, living, or working environment of the University or its neighbors.”

Disruption is subjective. If this is determined by university personnel and neighbors, they could easily claim disruption if they disagree with the opinions expressed.

As a scholar, I am beyond dismayed at this policy. Freedom of expression is an essential part of becoming a citizen, something young people in college must be guided to and through as a part of normal maturation. Restricting it to this extent will create resentment, devious plots aimed at disruption, and much greater violence. Students who should be nurtured through what is for most people the period of greatest political activism will be criminalized instead of shepherded through this stage to mature political engagement. This policy is a disaster.

Please wait to pass a policy on expressive activity until it can go through regular administrative channels in the fall. The BoT should not be making such policy on its own, or rubber-stamping a policy that comes directly from the administration through the general counsel. This university has suffered enough public censure for its administration's disregard of faculty opinion. Please, do not exacerbate it and bring us further shame with this terrifying policy.

Assistant Professor

Indiana University has invested many millions of dollars into the support of research; into the renovation and rebranding of the world class IM Pei- designed Eskenazi art museum, the modernizing of student and faculty studio art spaces, and the expansion of architectural design

and fashion facilities and educational offerings to tout its prominence as a state university that supports and aims to train the future leaders of the world. The Board of Trustees' current draft of the policy severely limiting our constitutional right to the freedom of expression in what they call "Expressive Activity" is a direct violation of the publicized and marketed investments of this research university's intended calls to future students, donors, educators, and scholars. In addition to the chilling effects this policy will have on the ability of students to learn and faculty to teach as outlined by my colleagues in their statements, this policy will enshrine a culture of fear, unconstitutionally restricted free speech, and will result in the alienation of generations of leaders and their associated cultural capital, thereby curtailing the ability of Indiana University to attract, enroll, and fulfill its budgetary horizons/goals: namely, its claim to be a R1 university that supports academic freedom, freedom of expression, and generations of leaders. This is unacceptable and humiliating. I already know of several internationally acclaimed thinkers who have turned down possible/potential art commissions and speaking invitations at Indiana University, Bloomington, as a result of the administration's cancelation of Samia Halaby's exhibition, and Pamela Whitten's authorizing of state trooper snipers on the roof of the IMU this spring. There is already a culture of fear simmering. The Board of Trustees may think that this latest policy will ensure safety, but it is diametrically opposed to that claimed goal. This policy is one that fosters amplified unsafety for all students, faculty, and staff, and for those rushing to approve it, they also make clear to all current and prospective students, faculty, and staff, as well as donors and granting organizations, that those in positions of power are prepared to silence and censor the community at every turn without even a semblance of shared governance.

Read the words about IU's outward facing investment in making itself known as a supporter of innovative research, and consider how the drafted policy opposing our constitutional rights to practice freedom of expression (now called by the BoT, "Expressive Activity") are at odds: "With a year-over-year increase of \$42 million from 2022, the sponsored research led by IU faculty is driving discovery, innovation and creative endeavors that are solving some of society's greatest challenges, while improving the quality of life in Indiana and beyond.

"This growth in the scope of research across IU is a testament to the hard work, creativity and expertise of our world-renowned faculty who are leading groundbreaking initiatives that will change the world and improve lives," IU President Pamela Whitten said. "Coupled with our significant commitments to new research institutes, initiatives and collaborations, these funds not only drive life-changing research but foster investment and economic activity that bolster the vitality of our state." (see source:

<https://news.iu.edu/live/news/33920-iu-secured-772m-in-sponsored-research-awards-in>)

Surely, the BoT does not mean to undermine this goal. And yet, the current policy wording that limits constitutional freedom of expression in arbitrary and shameful ways. We implore you to take this policy off the books and to reconsider the perilous trajectory this board is offering to this beloved cultural institution and intellectual and social community.

Comments on the draft Expressive Activity Policy

Professor

Line 35 IC 21-39-8, subsection 12 (which went into effect on 7/1) requires all public institutions of higher education in the state of Indiana to inform their communities about this law. This policy must be consistent with this law in its entirety.

Also important: UA-14 explicitly describes instruction and research as activities that are not regulated by that policy. That language should be mirrored in this one.

Line 46 IC 21-39-8 includes a definition of “substantial disruption” that is clear and specific. It is important to note that this term does **not** include any speech or conduct protected by the First Amendment.

IC 21-39-8-4 "Materially and substantially disrupt"

Sec. 4. (a) As used in this chapter, "materially and substantially disrupt" means the act of knowingly or intentionally doing one (1) or more of the following:

- (1) Significantly hindering the protected expressive activity of another individual or group.
- (2) Preventing the communication of a message of another individual or group.
- (3) Preventing the transaction of the business of a lawful meeting, gathering, or procession by:
 - (A) engaging in fighting, violence, or other unlawful behavior; or
 - (B) physically blocking or threatening violence to prevent an individual from attending, listening to, viewing, or participating in a protected expressive activity.

(b) The term does not include the following:

(1) Conduct that is protected under the First Amendment to the Constitution of the United States or Article 1, Section 9 of the Constitution of the State of Indiana. Except when an outdoor area of the campus has been reserved in advance of another event, protected conduct under this subdivision includes lawfully protesting in an outdoor area of campus that is generally accessible to the public.

(2) A minor, brief, or fleeting nonviolent disruption of an event that is isolated and short in duration.

Line 52 “Respect” is not mentioned anywhere in the law. This term is very subjective and opens a door for viewpoint discrimination.

Line 68 Legal restrictions on “light projections” are far from settled. See this article in the *Indiana Law Review* for more

information:

<https://mckinneylaw.iu.edu/practice/law-reviews/ilr/pdf/vol51p583.pdf>

Lines 85-89 IC 21-39-8 explicitly allows grassy areas and walkways to be used for protected First Amendment activities.

IC 21-39-8-6 "Outdoor area of a campus"

Sec. 6. (a) As used in this chapter, "outdoor area of a campus" means an outside area of the campus of a state educational institution where members of the campus community are commonly allowed.

(b) The term includes grassy areas, walkways, and similar common areas.

(c) The term does not include outdoor areas where access is restricted from a majority of the campus community.

Lines 90-92 Expressive activity is not an "event" that must be planned in advance. IC 21-39-8 describes how protected First Amendment activities must be allowed to occur "spontaneously and contemporaneously."

IC 21-39-8-9 Time, place, and manner regulation

Sec. 9. (a) A state educational institution may not designate an outdoor area of campus as an area where protected expressive activities are prohibited.

(b) Subject to subsection (a), a state educational institution may enforce reasonable time, place, and manner restrictions on campus or in the state educational institution's domain that meet the following requirements:

- (1) The restrictions are narrowly tailored in service of a significant state educational institution's interest.
- (2) The restrictions employ criteria that are clear, published, and content and viewpoint neutral.
- (3) The restrictions provide ample alternative means of expression.
- (4) The restrictions allow members of the campus community to spontaneously and contemporaneously assemble and distribute literature.

Also, the city of Bloomington has a noise ordinance (14.09): (https://library.municode.com/in/bloomington/codes/code_of_ordinances?nodeId=TIT14PESA_CH14.09NOCO). If the university has some other reason for placing time limits on protected First Amendment activities, the administration should explain why in this document.

Lines 99-101 If this stipulation is to remain in this policy, it is **critical** to clarify that it does not include instruction and research. Otherwise, there will be no academic freedom at IU.

Lines 119-120 Protected First Amendment activity is not an “event” that must be planned in advance. See comment above about lines 90-92. This stipulation does not conform to IC 21-39-8.

1. Overnight Camping (Lines 77-84)

Issue: The policy states that "Overnight camping, which includes the use of any item to create a shelter, is not a form of Expressive Activity."

Rationale: According to U.S. law and Indiana Code 21-39-8, the prohibition of overnight camping as a form of expressive activity may not be entirely justifiable if it is applied in a way that disproportionately restricts expressive conduct protected by the First Amendment. While *Clark v. Community for Creative Non-Violence* (1984) allows for certain restrictions on overnight camping, these must be content-neutral and narrowly tailored to serve a significant government interest, such as public health or safety. The outright ban without any exceptions could be seen as overly broad.

2. Signs and Structures (Lines 54-71)

Issue: The requirement for temporary structures to be requested 10 days in advance may be seen as overly restrictive.

Rationale: While the university can regulate the use of its property, the requirement for a 10-day advance request may not always be reasonable, particularly for spontaneous demonstrations that are protected under the First Amendment. Courts have found that overly burdensome requirements on the timing and approval of expressive activities can constitute unconstitutional prior restraints on speech.

3. Amplified Sound (Lines 90-92)

Issue: The policy states that outdoor amplified sound is permitted as long as it does not disrupt the academic, living, or working environment of the University or its neighbors.

Rationale: The policy needs to ensure that restrictions on amplified sound are content-neutral, narrowly tailored, and leave open ample alternative channels for communication. The term "disrupt" should

be more clearly defined to avoid subjective enforcement that could lead to potential First Amendment violations.

4. Time Restrictions (Lines 93-95)

Issue: Expressive Activity must take place between the hours of 6:00 a.m. and 11:00 p.m.

Rationale: While time, place, and manner restrictions are permissible, they must be reasonable. The blanket restriction on expressive activities outside of these hours might be seen as too broad, especially for events that naturally occur at night or for certain forms of speech that require a nighttime setting.

1. Time Restrictions (Lines 92-95):

The policy states that "Expressive Activity must take place between the hours of 6:00 a.m. and 11:00 p.m." This blanket time restriction may be overly broad and could potentially violate the First Amendment and Indiana Code 21-39-8-1(b)(1), which states that outdoor areas of campus are public forums open on the same terms to any speaker. A complete ban on nighttime expressive activities might not meet the narrow tailoring requirement for time, place, and manner restrictions.

Rationale: While the university can impose reasonable time restrictions, a complete ban on nighttime expression might not be considered narrowly tailored to serve a significant government interest, especially for a public university where some students live on campus.

2. Amplified Sound (Lines 90-92):

The policy allows amplified sound "so long as it does not disrupt the academic, living, or working environment of the University or its neighbors." This language might be considered vague and could potentially lead to arbitrary enforcement, which could conflict with First Amendment principles and Indiana Code 21-39-8-1(b)(2), which requires that any restrictions be content and viewpoint neutral.

Rationale: The policy should provide more specific guidelines on what constitutes a disruption to ensure consistent and viewpoint-neutral enforcement.

3. Signs and Structures (Lines 53-71):

The policy requires advance approval for temporary structures and prohibits affixing signs to university property without permission. While some regulation is permissible, the 10-day advance notice requirement for temporary structures might be considered an unreasonable prior restraint, potentially conflicting with First Amendment principles and Indiana Code 21-39-8-1(b)(1).

Rationale: Courts have generally held that prior notice requirements for expressive activities should be as short as practicable to be considered reasonable.

4. Definition of Substantial Disruption (Lines 139-151):

While the definition generally aligns with legal standards, the inclusion of "hinders the protected Expressive Activity of another individual or group" could potentially be interpreted too broadly, potentially conflicting with First Amendment protections for counter-speech and Indiana Code 21-39-8-1(b)(1).

Rationale: Care should be taken to ensure that this provision is not used to suppress protected counter-speech or opposing viewpoints.

5. Commercial Activities Exclusion (Lines 135-137):

The blanket statement that "Commercial activities such as marketing or selling produces are not Expressive Activities and are generally prohibited" might be overly broad. Some forms of commercial speech are protected under the First Amendment.

Rationale: While the university can regulate commercial activities, a blanket prohibition without clear exceptions might not align with First Amendment protections for commercial speech.

Associate Professor

Reading the proposed policy, I am beyond dismayed. I fear that the definition of "expressive activity" is so expansive that it infringes on my academic freedom and my right to teach and conduct class as I see fit. These regulations would make it nearly impossible for me to teach without prior approval.

Worse, the definition becomes so broad as to be meaningless, with anything IU considers a "threat" to its safety or operations being inadmissible.

These changes amount to viewpoint discrimination. They are being rushed through, with faculty and students not given the opportunity to deliberate, making a mockery of shared governance.

Furthermore, we need a policy that allows for meaningful dissent and encourages speaking truth to power. The university should be a forum where students and others can challenge authority and voice their perspectives freely. This policy shreds those principles to bits, undermining the very foundation of academic freedom and open discourse.

Professor

This memorandum may have been drafted with good intention, but it takes on a sinister aura.

Why would a policy on “expressive activity” be generated without any input from the people on campus who generate the ideas and work products that shape the reputation of the institution? Any such policy should be created with the input of the faculty and students whose work and lives represent the heart of Indiana University.

The general counsel’s memo of transmittal describes how **“Preservation of the health and safety of our university community in a manner consistent with the community’s free speech rights and our deep commitment to robust debate and academic freedom is of paramount importance to all of us, and it is a need made urgent by the events of recent months.”** In my experience at IUB, the university administration has offered no commitment to “robust debate,” and collaboration with the faculty and students has been virtually nonexistent. In addition to stifled speech, the unexplained censorship of student organizations and art exhibits, and the violent treatment of nonviolent protestors I have been stunned over the last several years to witness the disregard for open conversation, transparent policymaking, or the well-being of students, faculty, and the university’s reputation.

This proposed policy is aggressively policing free expression, and adding unnecessary new layers of administration to the day-to-day work of university staff, demanding more red tape as it requests ever more labor for less compensation.

The protocols are unclearly articulated, and the rough structure outlined in this draft policy creates a tangle of new hoops that must be jumped through by numerous people on campus.

The policy’s assertion that it defends the interests of the university community rings hollow. The United States of America emerged from the very types of activity the university administration seeks to control:

“132 Expressive Activity: For purposes of this Policy, any public display of individual or group
133 speech or other expression occurring on property owned or controlled by Indiana University or
134 at University-sponsored events. Examples of Expressive Activity may include but are not limited
135 to assemblies, speech, distribution of written material, carrying of signs, picketing, protests,
136 counter-protests, or sit-ins.”

Indiana University—a public resource supported by student tuition and fees, federal and state tax dollars, and the donations of alumni and members of the community—should not seek to stifle speech, free expression, and public discourse in the manner outlined in this proposal.

A far more appropriate mechanism for developing a policy stems from the long tradition of faculty governance embedded in the culture that once defined Indiana University.

An alternative to this proposal should be crafted during the academic year, with input from faculty, student, and staff stakeholders. There is no room for this sort of top-down, arbitrarily timed, overly censorious proposal at a moment of such crisis in higher education.

Associate Research Scholar

What is missing?

Regard for this university's tradition of deep commitment to free speech as evidenced by a deliberate process that considers not only our own institution's history with policy making in this area, the wisdom of past leaders, but also considers the fundamental nature of expressive activity as an agent of social change in our history.

A “bulldozer clause.” The policy should establish that riot police, military tactics, lethal weapons, or force should never be used in response to violations of the policy, unless those violations involve serious destruction of property or violence of substantial threat of violence toward others. (These situations are covered by another policy, right?)

A deliberate process for a wide range of faculty, students and staff to be included in the development of a policy and feedback loop during the academic year.

Knowledge and consideration that structures, including shelters and signs are part of expressive activity.

Other input?

The process, as outlined by IU OGC, to get a policy in place by August 1 precludes robust faculty and student involvement and is unwarranted.

The rationale given by General Counsel for the August 1 deadline and the process to meet that deadline represent a complete disregard for the University's tradition of a deep commitment to free speech and include several misrepresentations of the facts. The Indiana law referenced does not preclude the university from establishing an assembly ground, it states that the university may not designate a space where expressive activity is prohibited. Further, the law does not grant the university the right to use “all” lawful means, but states “lawful means” and such granting of rights is not cause for rushed policy decisions. Further, it is completely unclear what issues are referenced in the stated rationale, “the need to address in 2024 issues associated with Expressive Activities that were not considered in 1969 or in subsequent reports.” Are the issues the increased involvement of uninformed legislators making accusations of which they have not knowledge? Or is it that the current expressive activities call for divestment from efforts that have supported the murdering of tens of thousands of innocent women and children in Gaza?

The General Counsel states that the policy governing the assembly ground passed by the trustees in 1969 did not address structures. Apparently, the counsel recognizes that what is currently posted as BL-ACA-I18 is not the policy approved by the trustees, even though it is identified as such. And though the policy was changed by an “ad hoc committee,” this change is not reflected in BL-ACA-I18. There was no mention of any committee in the 1969 policy, yet the administration stated that formation of the ad hoc committee was allowed per policy. I’m sure you know what is happening here—BL-ACA-I18 is the policy when it suits the administration and it isn’t the policy when it does not. More dishonesty.

Associate Professor

I can only interpret the Board of Trustees’ desire to impose the “Expressive Activity Policy” upon members of the IU community in a completely unilateral fashion as a sign that the members of the Board of Trustees are intent on creating an extremely authoritarian environment on our campus, whereby all faculty, students and staff are intimidated into silence. This may seem politically expedient in the short run, but in the long run, it will destroy IU’s reputation as an institution of higher education. Students and faculty alike will leave IU in large numbers because this policy threatens anybody who expresses anything that can be remotely interpreted as controversial with suspension or termination of employment. If students and faculty don’t feel free to express themselves because somebody else may deem their speech to be “disruptive” to the operations of the University, how will we have any real form of learning or teaching in our classrooms? I am baffled that this policy is actually being considered.

Professor

Response to Proposed Expressive Activity Policy

First, just a small introduction to who I am and why it is important for me to provide feedback on this proposed policy. I joined the faculty at Indiana University in the fall 200[]. I have deep commitments, roots, and history to both IU and the Bloomington community. Both of my children took classes at IU while they were still in high school. My daughter worked as a research assistant at the law school in [] and my son earned a master’s degree from the Jacobs School in []. I love this university and have spent much of my career contributing to it through my scholarship, teaching, and service. I have been policy council chair in the School of [] and served on policy committees during much of my time at IU. I have participated in university-wide protests and encampments.

I have organized this response into three sections: (1) general over-arching responses to the proposed policy, (2) what I find missing in the proposed policy, and (3) comments on specific text within the policy. I am assuming that we share the goal of fostering a learning environment of inclusion, diversity, and

global citizenry befitting a public university. This document is surely flawed as it inevitably reflects the rushed process we are in. I am likely to have inadvertently made mistakes.

Overarching Responses to the Proposed Policy

The process that is being engaged to bring this proposed policy into effect by August 1, 2024 does not seem legitimate to me. It breaks all manner of shared governance structures and practices, especially for a policy with such broad reach. I ***strongly recommend*** following our regular, and accepted, process for the debate, editing, and passing of policy during the terms when the BFC and the UFC are holding meetings and setting committees.

Because the policy is being atypically rushed and handed down autocratically from above, one is left with two plausible impressions:

- That the university is in a state of threat or crisis of such magnitude that a rushed policy is necessary for imminent safety and repair; AND/OR
- That this policy conforms to a pattern of anti-shared governance suppression and/or suppression that reflects both anti-Palestinian and anti-Semitic biases.

The first of those impressions cannot be reasonably substantiated, while the second one can. Neither current, nor past protests/encampments/shantytowns have been dangerous to the IU community. The kind of threats/crisis that have been experienced on our campus have largely been the effect of the administrative weakness not policy failures. The only evidence of physical danger to the IU community connected with the current Pro-Palestinian protest was at the hands of the State Police called in as they have never been called in to respond to peaceful protest on Dunn Meadow. The rise of Islamophobia and anti-Semitism reported on our campuses and many campuses around the country are not resolved through new policy implementations, but through existing policy engagement and dialogue. For example, students have filed religious-based bias reports that have seemingly landed on mute and ineffectual administrators. Students report that there has been no response. This establishes a climate of potential violence and fear that is not created by protests or expressive activity, but rather created by the university officials failing to address direct concerns of safety. Therefore, I find that the policy has no compelling need. Proposers have not justified the need for the policy in terms that are evidenced-based.

The policy is punitive in nature rather than educative. It seeks to police future activities deemed by an administrator to be too political or risky. There are alternative responses. The IU community could be a beacon of examples of how to engage in educative dialogue around the differences we find across expressive activities. We have the expertise on this campus to do this. The policy is an anti-educational approach and therefore, in radical ways, departs from our primary goals as public university. The policy reflects the reckless policing of the current protest in ways that have been damaging to the IU community when instead the administration could have followed Hermann B. Wells example and engaged in restorative, educational, and impactful dialogue with the protestors.

Lastly, in terms of overarching comments, the policy reaches too far in scope and is inconsistent with already existing policy and state mandates. First and foremost, it casts global and political expressive activity (including, but not limited to, protests) as fundamentally non-educational and destructive. This is just simply counter-factual and unproductive. Expressive activity protected as free speech should be cherished by public universities.

What is Substantively Missing from the Proposed Policy

The proposed policy lacks a historical perspective of both our own institution and the nature of university protests in the context of social change nationally. There is no balance in the perspective of the policy that there is any positive and educative value to expressive activity. All of the IUB campus tours make a stop the Hermann B. Wells statue in Bloomington and retell famous stories depicting his accessibility to students and engagement with student concerns. He took himself down to Dunn Meadow specifically to speak with and support student protestors. He did not characterize student protestors as threats to the campus, but rather as passionate people who had something to offer the world and the university in terms of their views and understandings of the complexities of modern social life. For our own university this is but one of many examples of seeing the positive side of protests and expressive activity. Any policy on the topic of expressive activities should be balanced in its appreciation of the merits and educational potential of said activity. By leaving this out of the policy, such positive possibilities are not leaned into—the policy does not help move us closer to those positive outcomes. Provost Robel wrote an exacting letter on this point in May 2024. While Dunn Meadow is mentioned at the start of the document it is not delineated as having a special historically protected function. In fact as universities in this state go, HEA 1190 stipulates that free speech/expressive activity cannot be limited to one such space of university properties—basically extending what we have allowed at Dunn Meadow to other part of the campus. The policy largely treats expressive activity and free speech as anti-thetical to education, learning, and residential life. Such treatment belies both (a) the main functions of free expressive activity and (b) the difficult, but valuable potential for expressive activity to foster dialogue. Strong leadership can contribute to the educational value and merits of student-led free speech and expressive activities. Thus, policy as proposed is, therefore, unbalanced in its focus and punitive ways of characterizing expressive activities and their allowance at our university.

The policy should limit the use of force and punishment, particularly eliminating the unprovoked use of Indiana State Police in riot gear with heavy weapons and snipers. Such limits should be clearly spelled out in the policy. The policy places way too much leniency and trust on administrators without setting limits on the manner and extent to which force can be used in response to expressive activity. In other words, the right to bodily safety to peaceful expression is not ensured by the policy. The unprecedented, recent use of ISP on Dunn Meadow makes clear that we cannot trust the safety or our expressive activity to any one particular leader. The use of such force needs to be restricted to the most armed and dangerous of situations and should not be used in response to peace expressive activity. The policy does not control administrative risks. We have seen first-hand an untrusted administration with whom most of us lack confidence will recklessly and needlessly bring harm to our precious campus in the form of state force.

Responses to Particular Elements of the Proposed Policy

Policy Statement: “Dunn Meadow remains as an area in which Indiana University Community Members may engage in freedom of expression and peaceful demonstrations in accordance with applicable laws and Indiana University policies and procedures. This policy applies to all allowable areas on all Indiana University campuses.”

- It is unclear, then, if the proposed policy DOES NOT apply to Dunn Meadow.

- The spirit of HEA 1190 is to make it clear that free speech CANNOT BE BANNED from outdoor spaces and, thus, that free speech expressive activity SHOULD NOT be confined to one part of campus property i.e. Dunn Meadow.
- The policy should be consistent with HEA 1190 allowance and if that is what is meant by “allowable areas” it should be spelled out. The examples provided in this policy are inconsistent with HEA 1190.
- The “time, manner, and place” characterization of the university right to create to policy, must adhere to the stipulations of IC21-39-8 which specifically mandates that restrictions be “narrowly tailored” (much of this policy is too broad and ill-defined), “viewpoint neutral,” with “ample alternatives” for expressive activity. This policy does not spell out what is acceptable expressive activity and includes vague (e.g. “substantial disruption”) and unbounded/unclear descriptors of activities.

Policy Statement: 1. Rights of Others

- This statement allows for a variety of interpretational and inadvertent mistakes to be penalized unnecessarily. For example, the free speech tactic of standing and facing backwards during a public address, such as a graduation speech, would have the immediate effect of blocking visual access to the speaker for a handful of people. Spontaneous booing or clapping during a speech can auditorily block the sound of a speaker momentarily. Does IU really want to punish these kinds of activities? During the recent Pro-Palestinian protest, a loud-speaker projected music from Chabad House to Dunn Meadow with the specific intent to counter the Pro-Palestinian chants and activities. What if in response to the Chabad-based counter protest, the Pro-Palestinian protestors utilized a larger speaker? You see where I am going with this. How are Protestors and Counter-protestors expected to co-exist with a policy like this?
- The policy as written treats all such forms of disruption as safety issues. Blocking access to speech and visuals is not by-and-large a safety problem. If the point of this statement is to promote safety, then how it does that should be made clearer. If it is promote the unfettered access of an audience/potential audience to the views and speech of the speaker, then it is unreasonable. If the intention is to specifically target expressive activities that blocking or impeding the capacity of a person to engage in expressive activity, particularly if that imposition is carried out in unsafe ways, then this should be more precisely articulated as the current proposal is too broad.

Policy Statement: 2. University Operations

- The phrase “substantially disrupt” is used and it is not clear what is meant. The meaning should explicitly align with state policy defining “substantial disruption” or it should clarify why it fails to do that. State law exempts peaceful free speech activities from its definition of substantial disruption.
- The phrase “unreasonably interfere with” is used too broadly, giving enforcers too much latitude of interpretation while failing to give enough credit to the value of peacefully disruptive protest (an historical hallmark of this university and the country, in general). One can imagine all sorts of minor “interferences” in the name of free speech that the university ought to allow and cherish. For example, if there is a student sit-in that does not stop the flow of movement in and out of an office and does not verbally disrupt the activities that go on in said office, could someone

consider this an “unreasonable interference”? We could value such peaceful protesting strategies that actively encourage those in power to meet with protestors and talk rather than punish those activities. They are neither necessarily unsafe or “unreasonably interfering with.” The proposed policy leaves such activities up for interpretation in ways that require the university community to trust the administrators of the policy. This is not always a fair expectation. To that point, the faculty of IU have decidedly expressed their lack of confidence in the university administration so expecting that we can rest on a bond of trust in the implementation of vague policy is not reasonable.

- Demarcating “general public” spaces as non-instructional, non-residential, and non-administrative is bereft of fact and non-functional. For example, plenty of instruction has taken place through teach-ins on Dunn Meadow—teach-ins facilitated by (but not exclusively) faculty sharing their scholarly expertise. The limitations on engaging in “expressive activity” within our classrooms and residential centers is also non-functional. It levies the idea that the community of expressive actors sits outside our classroom walls and student living spaces. Such an idea is factually inaccurate, non-functional, and so broadly sweeping as to be impossible to implement. It is, also, largely undesirable in its reach. People bring their whole selves, passions and commitments to their teaching/learning. To pretend otherwise is to ignore a century of education scholarship. The idea of respect depends on the notion of difference and the belief that we can create learning opportunities that are inclusive and beneficiaries of differences across those passions, commitments, life histories, and needs. We should create policies that make this kind of respect possible rather than policies that untenably angle “respect” as a form of instructional, residential, and administrative silencing.
- IC 21-39-8 explicitly allows grassy areas and walkways to be used for protected First Amendment activities.
- Legal restrictions on “light projections” are far from settled. See this article in the *Indiana Law Review* for more information:
<https://mckinneylaw.iu.edu/practice/law-reviews/ilr/pdf/vol51p583.pdf>

Policy Statement: 3. Signs and Structures.

- This policy puts into place a 10-day approval process of temporary structures and signs which directly conflicts with the spirit of HEA 1190 Section 9b. Prohibiting temporary structures writ general is not viewpoint neutral—for example, the shantytown protest against university ties to apartheid South Africa involved shanties as a specific aspect of the viewpoint. The same could be said for the current encampment as a direct reflection of Palestinian conditions in Gaza. The approval of signs as an aspect of assembly and the passing out of materials both reflect the broad distribution of a perspective in assemblage and literature is not consistent with the spirit of the law to “allow members of the campus community to spontaneously and contemporaneously assemble and distribute literature.”
- Expressive activity is not an “event” that must be planned in advance. IC 21-39-8 describes how protected First Amendment activities must be allowed to occur “spontaneously and contemporaneously.”
- Signs may neither (a) be affixed to already existing university structures or (b) posted on any temporary structure without 10 days notice. This is a significant change of long policy allowing

people to post signs and notices on structures around campuses. Moreover, it makes it nearly impossible to have signs at all.

- If the sign is anti-IU, anti-American (and so forth) is there a guarantee that there will not be viewpoint bias? How will that potential for bias be scrutinized in the implementation practices?

Policy Statement: 7. Amplified Sound

- The City of Bloomington has a noise policy. Is this section of the current policy necessary. Does it apply around the clock? This policy does not fit the standard of IC 21-39-8 criterion “narrowly tailored” because nearly any place on campus that one would use amplified sound there is a nearby office or academic space. And, in some ways, all spaces are academic. Moreover, it assumes that amplified sounds are not educative or valuable in their own right. Spontaneous rallies would automatically breach this stipulation effectively making rallies an unavailable type of free speech and expressive activity on campus. That does not seem reasonable.

Policy Statement: 8. Time Restrictions.

- There is no justification offered for limiting free speech to the hours of 6am to 11pm. If the idea is to continue historical guidance, without justifying why, the policy falls short. Please provide a rationale for this limitation.

“In the event of a conflict between the terms of this Policy and any other policy or procedure, the terms of this enterprise-wide Policy shall control and supersede any such conflict, ambiguity, or inconsistency.”

- This gives a policy developed in haste without proper process precedence over policies that were developed through a methodically inclusive, shared governance structure.

Reason given for the policy: “This Policy provides the time, place, and manner guidelines for Expressive Activity on property owned or controlled by the University. It ensures the University’s educational mission is actualized while preserving the rights guaranteed to Indiana University Community Members under the U.S. Constitution and IC 21-39-8 [which went into effect July 1, 2024].”

- We already have both historical practices and policy governing what this policy seeks to govern. There is no evidence that explains why the current policy is no longer useful. This policy pretends as if no other policy exists or precedes it, specifically the 1969 policy.
- This rationale pits expressive activity against an educational mission. These two are not anti-thetical.
- Moreover, the proposed policy is not consistent with the state policy IC21-39-8 in its entirety. Specifically,
 - IC21-39-8 requires notification of the law—this is not elaborated on in the current policy.
 - UA IC21-39-8 provides a clear definition of “substantial disruption” which designates substantial disruption as specifically not free speech and as related to violence and inciting violence. The proposed policy is not precise enough about substantial disruption as distinct from activities protected by the First Amendment and implies that any form of operational disruption is unacceptable. The law does not suggest that minor, fleeting non-violent disruption of events should be thought of as substantial disruptions, for example.

Definitions:

- The definition of Expressive Activity includes activity usually associated with First Amendment rights/free speech and fails therefore to protect free speech activities despite claiming that is an aim of the policy in the first sentence. The policy constrains non-violent free speech in ways that are inconsistent with the histories and rights of university community members and are aimed only at a narrow set of protections of doing business as usual administratively (not educationally or scholarly).
- The definition of substantial disruption is unnecessarily broad and is not consistent with IC21-39-8.

Sanctions:

- The statement begins with “Violations of this policy can result in health, safety, and security concerns, and damage to University property and University operations” while the policy itself does not limit its reach to activities which result in health, safety and security concerns and damage to IU property and operations. This ipso facto statement in the sanctions section does not correspond with the ways in which expressive activity is characterized earlier in the policy.
- There should be limits as to the ways/sanctions that the University can invoke in response to non-violent expressive activities. Excessive use of weaponry and force should be explicitly prohibited as a form of sanction.
- Violations of this policy “WILL result in” a sanction contradict the policies of considering alternatives to sanction and promote a climate of fear by necessitating sanctions. Moreover, the list of necessary sanctions does not include enough less severe sanctions such as those that can be currently found on the student code of conduct webpage (like writing letters of apology). Allowing the extreme sanctions of student expulsion and employee termination without stipulating differences across multiple or singular infractions is dangerous in its potential for biased application and puts too much trust in the administrators who would wield such sanctions.

Professor

There are many points of concern that deserve critique, and many have been identified and discussed by other colleagues in their feedback comments. The five issues I find most problematic and in need of broad discussion and reconsideration include the following:

1. Timing of this proposed policy and the extremely short timeframe for providing feedback before policy implementation
 - a. The rush to implement restrictions on protest by August 1 prohibits any meaningful dialogue and actual consideration and serious implementation of stakeholder feedback. It makes solicitation of input by stakeholders appear merely pro forma.

- b. The August 1 deadline clearly is meant to shut down the pro-Palestine encampment on Dunn Meadow in advance of the beginning of fall semester, thus arguably constituting viewpoint discrimination
- 2. The definition of “Expressive Activity” in the proposed policy is highly problematic.
 - a. “Examples of Expressive Activity **may include but are not limited to**” (line 134, emphasis added) is the very dangerous clause that swallows the rule.
 - i. Who gets to decide what “other” forms of speech, assembly, etc. constitute “Expressive Activity?” No procedures for determining this are laid out. Surely such determinations should not be left to cover-of-night “ad hoc” committees devoid of stakeholder representation.
 - ii. Other sections of the proposed policy imply that invited speakers (which could be guest speakers in a class, for example) fall under the category of “Expressive Activity,” but that is not mentioned in the definition here (lines 132-137)
 - iii. Under this murky non-definition of “Expressive Activity” (with its “include but are not limited to” clause on line 134), could instructional lectures by faculty at any point be labeled “Expressive Activity” and thus subject to the regulations of this policy? That possibility has a very chilling effect on faculty’s free speech.
- 3. Various restrictions in the policy are obviously intended to target and dismantle the current pro-Palestine encampment. They thus could be considered viewpoint discrimination and may therefore be unconstitutional from the get-go. These include:
 - a. a 10-day mandatory window to request approval for structures (lines 56-57);
 - b. a flawed premise that “overnight camping...is not a form of Expressive Activity” (lines 77-78; this is just wrong, as anyone familiar with protest history is aware), and
 - c. arbitrary time restrictions limiting “expressive activity” to the hours between 6:00am and 11:00pm (lines 93-95)
- 4. On a more practical note, the procedure for Faculty and Staff to request approval of temporary structures proposed to be installed is unclear and seems highly cumbersome:
 - a. FOUR individuals/units are responsible for approving Faculty and Staff requests for approval of temporary structures (lines 60-62).
 - b. Are requests to be made to ALL FOUR persons/units simultaneously?
 - c. Can a decision really be expected within 10 days, given the bureaucratic red tape that this procedure will inevitably entail?
- 5. The proposed policy outlines what are the restrictions on “Expressive Activity” for the “campus community,” without laying out the responsibilities and promises of campus leadership to protect said “campus community.”

- a. The policy should state that Indiana State Police will NOT be called in to brutalize and arrest members of the “campus community,” as happened on April 25 and 27, 2024.
- b. The policy is full of requirements and restrictions for members of the campus community wishing to engage in “Expressive Activity.” But what ways does university leadership pledge to PROTECT these constituents’ rights and physical safety? I see nothing in this proposed policy to assure “expressive activity-ers” that the university will protect THEM.

Professor

I am very concerned. I have been following the broader discussion of attacks on higher education in general and faculty and student speech in particular. I believe that all of these regulations should be discussed in the broader debates taking place especially, the clarification of the rights and responsibilities of faculty which have been highlighted recently in the statement by Dean Bobo at Harvard:

https://www.chronicle.com/article/a-harvard-deans-frontal-on-faculty-speech?bc_nonce=a0dgyfaefgutnqesf34r5&cid=reg_wall_signup

My fear is that this very bureaucratic process which is a response in part to the Sinno event as well as the encampment will stifle our ability to bring experts to classes and campus more generally. The bureaucracy, lead times, and mosaic of regulation make it hard to even bring in speakers to class, especially if we are going to open those events to the interested community. I have frequently invited colleagues and coauthors to join my classes to speak on relevant topics and inviting other interested students and faculty to join. Since this work usually involves topics that are now debated (unthinkably) like Russia’s War in Ukraine or Putin’s and Orban’s authoritarian practices, I would not invite anyone without getting permissions. I can imagine that the regulation will lead to self-censorship and an abundance of caution. For me, the simple burden of bureaucracy in an increasingly bureaucratic task driven environment will limit invitations, especially since faculty have limited support to deal with regulations. More timely or spontaneous invitations are virtually impossible. For example, often when international scholars attend conferences it is possible to tack on an extra trip to bring them to campus at a lower cost but lead times (45 days) and costs will definitely preclude some of these synergies and place an unnecessary burden on faculty.

While this may not be the intent of the policy, there is no doubt that it will limit intellectual activity as departmental officers and Deans seek to avoid conflict with university officials. The go along attitude will facilitate obstruction. At the very least, department Chairs and Deans should issue a statement about classroom visitors and speakers on campus and develop clear processes, such as delegating department support, for dealing with the bureaucracy. I would strongly argue that risk averse departmental leadership could create a new layer of limitations on intellectual events and further divide the faculty from the people who should be advocates.

As is true of most autocratic systems, this policy is nestled in a complex mosaic of regulation, so it is difficult to understand its full implications but here is what I see given what I know about how Putin and other contemporary autocrats limit speech and action through evolved regulatory policy.

- The statement argues that the policy is advanced due the need to regulate expressive action across campus, but the imperative does not imply that eliminating the free spaces on campuses – at IUB Dunn Meadow and painting on the Eagleston Bridge – is necessary. The policy could maintain those free spaces as exceptions and regulate other areas.
- On the compliance question – penalties and sanctions, warnings, procedures – the linked documents are equally opaque and establish significant administrative power to circumscribe speech and action. The processes for faculty sanctions is particularly opaque as it involves multiple offices.
- There is no specific information about approval processes or how approval criteria will be developed (see below)
- Moreover, the process through THIS policy or institution will be adopted by the BoT and discussed in Spring 2025 is deceptive. The discussion will be bounded by the existing policy rather than a more thoughtful exploration of the role of expressive action in campus life, higher education, and community rights and responsibilities. There is no clear regulation on policy updates and change once it is adopted (something that is generally true of university policies).

It is a common practice of autocrats to generalize language to selectively apply regulations and sanctions. The language in the memo and draft policy uses vague words such as objectionable act and unreasonable interference or substantial disruption without any clear definition. Is objectionable constituted politically, ethnically, morally or in such vague terms to be broadly applied in an ad hoc and strategic manner by university officials? It seems left to the administrators who staff these offices and are unqualified to make clear judgements about intellectual content or value. The issue of criteria are exacerbated by vague nature of approval processes and the role of different university offices in approval of actions. Here are some questions I would ask:

- Will the approval of speakers and events now come with onerous policing costs and other administrative rules that will defacto give officials the power to block events strategically based on politics or contention? The policies are being updated without public discussion and carry a good deal of weight.
- It seems Event Management has a good deal of power and discretion so a deep dive into those policies is important.

Look for provisions that can be interpreted broadly and provide a foundation for denying permits, or criminalizing activity. Authoritarians rarely enact laws that directly limit public action or speech, they create administrative hurdles that make action untenable or write vague policies. Here are some examples:

- Attachment of signs to buildings (students' window displays, signs in offices, Information placards of unapproved action or hanging in public spaces to inform or educate on an issue)
- Amplification of sound and disruption (one person can complain?)
- The policy notably does not regulate or discuss online expressive actions

- Many common types of peaceful action such as standing up and turning one's back to a speaker may block a view and therefore be a violation of IU rules.

Professor

As the brain trust of Indiana University and the people who engage with expressive activity reflectively literally all the time as teachers, faculty should be not just core stakeholders, but the actual force behind creating any such policy. We are not just employees, and refusing to listen to our collective wisdom, you are shortchanging the institution of the best possible outcome from this complex issue. Whatever "win" you believe this is on the short run, you are failing as stewards of the university's standing and mission. We very much hope that you will at some point return to consulting with the faculty in a serious and not just pro forma fashion in these matters.