

Committee for Open Expression report

Title: Campus Reform Flyers Incident (September 9, 2024)

Name and title of the Person preparing the Report: Prof. Ilya Nemenman, Professor of Physics and Biology, CFOE Chair

Committee members voting for report:

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Duration of the investigation: 09/10/2024 – 10/11/2024

Summary: The Committee for Open Expression (CFOE) investigated the case of flyers distributed by the outside group “Campus Reform” on Emory’s campus on September 9, 2024. The flyers, which targeted specific members of the university community, raised concerns due to violations of Emory’s Posting Guidelines, the accuracy of the content, and questions about whether such actions constitute doxing. Following a review, the CFOE concluded that while outside groups are generally allowed to post flyers on campus, the removal of these particular flyers was justified due to violations of posting rules and the dissemination of factually inaccurate information. The committee also noted that what constitutes doxing and whether doxing should be protected speech remains a debated topic. However, the present case can be resolved based on other considerations without a broader ruling on doxing. The CFOE recommends improved education around the Respect for Open Expression Policy but has no specific policy recommendations for this incident.

1. Introduction:

On Monday, September 9, 2024, multiple flyers attributed to the group Campus Reform were posted across the Emory University campus. These flyers (see Attachment) contained content targeting specific members of the Emory community, identifying them as “anti-Israel students, professors, and faculty” under a “Security Alert” title. The flyers were posted in unapproved spaces (see Attachment) and contained factually inaccurate information about individuals involved in a recent encampment protest on campus.

Upon the appearance of the flyers, the Lead Open Expression Observer contacted the Chair of the Committee for Open Expression (CFOE), seeking guidance on whether the flyers could be removed. Based on their placement in unapproved spaces and the perceived factually untruthful nature of the content, the Chair approved their removal. Following this, multiple reports and

requests for review the incident were communicated to the CFOE, including one from Senate President-Elect McAfee, who was personally targeted in the flyers.

This report presents the CFOE’s investigation and findings regarding the case.

2. Background:

Emory University is a private institution, and thus the First Amendment does not necessarily apply immediately. However, the University has adopted the Respect for Open Expression Policy, Policy 8.14 (hereafter, Policy), which governs expression, protest, and dissent on campus. The Policy states that “Emory University . . . is committed to an environment where the open expression of ideas and open, vigorous debate and speech are valued, promoted, and encouraged. As a community of scholars, we affirm these freedoms of thought, inquiry, speech, and assembly.” The Policy states that “Emory University respects the Constitutional rights of free speech and assembly.” This has been interpreted by CFOE consistently as the University providing the same protection to its community members as afforded by the First Amendment to the U.S. Constitution to community members of U.S. public universities. The policy further emphasizes the university’s responsibility to foster an open expression environment by ensuring that other university policies do not conflict with this commitment.

The Policy lays out the responsibilities, the composition, and the procedures of the University Senate Committee for Open Expression (CFOE), which “is a working group of community members—faculty, staff, and students—who seek to promote and protect the rights and responsibilities of community members related to issues and controversies involving speech, debate, open expression, protest, and other related matters.” The CFOE is empowered to mediate and resolve conflicts arising from issues of open expression, as well as to offer guidance on matters related to free speech and its boundaries.

The Committee frequently handles cases where expression overlaps with university regulations, such as campus policies on acceptable behavior and the usage of university property. For example, the Emory Posting Guidelines state: “*Posters, flyers, and banners may not be placed on trees, windows, trash cans, elevators, stairwells, light posts, or any other vertical surface not expressly designated for such purposes.*” These regulations govern where and how community members can express their views through physical postings on university property.

The CFOE has addressed similar cases in the past, such as in its opinion “*In Re Displays Naming Specific People*” and its “*Investigation into Reported Written Open-Expression Violations during Fall of 2023*”, which provided guidance on permissible forms of expression when specific individuals or community members are targeted by expressive acts, and on how flyers and other nonverbal expression should be handled. These prior opinions have additionally informed the committee’s approach to balancing free speech with other concerns, such as safety, civility, and adherence to university’s content-neutral time, place, and manner guidelines.

This case regarding the “Campus Reform” flyers, which targeted specific individuals within the Emory community, raised several concerns, including violations of the university’s Posting Guidelines and the factual accuracy of the information in the flyers. The CFOE was asked to evaluate whether the flyers violated Emory’s open expression policies, whether their removal was justified, and whether the act of posting such flyers constitutes doxing, a practice that might require further regulatory consideration. These concerns necessitated a review of both the content of the flyers and the context in which they were distributed.

This background sets the stage for the investigation, as the committee seeks to determine whether the flyers' removal was justified, how the university's open expression principles apply to external groups like Campus Reform, and whether any future regulatory changes are needed to clarify Emory's stance on contentious forms of expression that some may classify as doxing.

3. Scope of the Investigation:

The CFOE was asked to and agreed to investigate and report on the following key questions:

1. Can an outside group such as Campus Reform post flyers on campus?
2. Was the removal of these flyers justified?
3. Some considered the flyers to be a form of doxing. Does doxing receive protection under the Respect for Open Expression policy?

4. Investigation Process:

The committee discussed these questions through the CFOE mailing list and in-person meetings. A draft report was written by the Chair of the CFOE and subsequently reviewed and voted on by the full committee during in-person meetings and via email.

5. Findings:

Outside Group Flyers: We found that nothing in the Respect for Open Expression Policy explicitly prohibits outside groups from posting flyers on campus, even if they target community members. Various outside entities, such as restaurants or clubs, regularly post flyers without issue. Thus, Campus Reform should enjoy the same protections under the content-neutral policy.

Justification for Removal: Deciding whether to remove someone's expression is always complex, requiring careful balancing of competing rights. In this case, however, we find the balance favors removal of the flyers for the following reasons:

- The majority of the flyers were posted in violation of the Emory Posting Guidelines, which prohibit posting on unapproved vertical surfaces and with various adhesives. Therefore, their removal was warranted.
- Additionally, the flyers falsely claimed that all the named individuals were directly involved in the encampment protest, which is inaccurate based on publicly available videos. For example, some of those named were not active participants in the protest but interfered with police arrests of participants. As outlined in our *Opinion on Displays Naming Specific People* and is generally accepted by the First Amendment case law, the protection afforded to speech or expression weakens when the content is factually inaccurate, further supporting the decision to remove the flyers

We also note that some flyers were distributed directly to passersby rather than being posted. Open Expression observers reported that individuals distributing the flyers did so forcefully, blocking foot traffic and disturbing individuals who had not expressed interest in receiving them. This behavior violates campus guidelines on appropriate distribution and respectful conduct.

Doxing: Whether these flyers constitute doxing is a matter of ongoing debate, especially as definitions of doxing continue to evolve with technology. It's important to note that there is no clear national consensus on what doxing is, nor is it evident that conduct labeled as doxing should be regulated any differently from other forms of speech. While particularly egregious cases of doxing might not be protected under the Respect for Open Expression policy due to its

various exceptions rooted in federal and state laws, such as discriminatory harassment exceptions, the threshold for proving such harassment is high. Demonstrable, bona fide harm must be shown, rather than speculative damage. In this case, we believe that none of the complaints reported to CFOE have shown that the flyers meet that standard. We anticipate that these issues will require further consideration in the future, but they do not need to be resolved for this specific case, since this case can be resolved based on narrower arguments.

6. Conclusions:

In summary, we found that:

1. Outside groups, including Campus Reform, are allowed to post flyers on campus, as long as they adhere to Emory's Posting Guidelines and other time, place, and manner regulations.
2. The removal of the flyers was justified based on violations of posting guidelines and the factually untruthful nature of some of the content targeting individuals.
3. Whether or not the flyers constitute doxing, or whether doxing should be protected by the Policy, remains a debated issue, but this case can be resolved without making a determination on that matter.

7. Recommendations:

We recommend improving education around the Respect for Open Expression Policy and various time, place, and manner regulations to ensure all community members and outside groups understand the guidelines. Specifically, assembling all such policies and guidelines on the Open Expression web site, <https://openexpression.emory.edu/>, would be useful.

8. Confidentiality:

N/A

9. Attachments:

The flyer in question and an example of its posting on a pole violating the Guidelines.

SECURITY ALERT

Arrested

 Professor Emil' Keme (53)	 David Meer (25)	 Arianna Mbuuwe (24)	 Shankar Bhat(24)	 D' Marquis Allen (30)
 Sarah Al Adballatif (27)	 Martin Berg (25)	 Univ. Dept. Chair Nicole McAfee (63)	 Prof. Caroline Fohlin (57)	 Akshay Padala (19)
 Kimberly Pi (22)	 Jaanaki Babakrishnan (19)	 River Somerville (18)	 Nohra Juan Nur (26)	

The above anti-Israel students, professors and faculty were arrested after setting up an encampment at Emory University and refusing to leave.

Learn More here:




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