

Committee for Open Expression report

Title: Review of Respect for Open Expression Policy August 2024 Addendum

Name and title of the Persons preparing the Report: Prof. Ilya Nemenman, Professor of Physics and Biology, CFOE Chair; Ms. Melissa Shane, ECAS Student

Committee members voting for report:

Travis Blalock, SOM
Ben Brodsky, ECAS
Jonathan Craig-Mendes, School of Theology
Cleo Lyles, Campus Life
Ilya Nemenman, ECAS
Melissa Shane, ECAS
Kylie Smith, School of Nursing

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Summary: On August 27, 2024, Emory University’s Office of the President introduced an Addendum to the Respect for Open Expression Policy without consultation with the University Senate or the Committee For Open Expression (CFOE), which introduced new prohibitions on certain forms of protest and expression. Following concerns about the lack of consultation, the CFOE was tasked with reviewing the Addendum. The CFOE has conducted a thorough analysis of the new prohibitions, focusing on their consistency with the existing policy, their clarity and enforceability, and their alignment with First Amendment law, and their effects on the Open Expression climate on campus.

Our review found that, while the Addendum is textually consistent with the broader policy, it lacks sufficient detail and clear definitions, which will likely cause confusion in enforcement. Additionally, although the Addendum generally aligns with First Amendment principles as a set of time, place, and manner restrictions, certain provisions—particularly the blanket ban on protests between midnight and 7 a.m.—place undue burdens on the expressive rights of community members. The CFOE recommends revising the Addendum to address these issues and developing a more flexible system for managing university property, including multi-day and overnight reservations.

1. Introduction:

This report presents the Committee for Open Expression’s (CFOE) analysis of the recent Addendum to Emory University’s Respect for Open Expression Policy, as announced by the Office of the President on August 27, 2024. The CFOE was tasked with reviewing the substantive changes outlined in the Addendum following a meeting of University President Gregory L. Fenves and other representatives of the University Administration with the University Senate President Shepherd, President-Elect McAfee, and CFOE Chair Nemenman on

August 28, 2024. While the manner, in which the addendum was introduced—without consultation with the Senate and the CFOE—was a point of concern during the meeting, this report focuses solely on assessing the reasonableness of the specific prohibitions introduced. These prohibitions include the bans on overnight outdoor camping and sleeping, encampments, building occupations, and protests between midnight and 7:00 a.m. Our aim is to evaluate whether these changes align with the principles of open expression and the university’s commitment to fostering a robust environment for free speech.

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 version of the Policy that ruled before Aug 27, 2024, was accepted on September 21, 2018.

On August 27, 2024, the Emory University Office of the President published a new version of the Policy, which introduced an Addendum to the Policy, outlining new restrictions on certain types of protest activities. The specific four specific prohibitions are (italicized text is a quote):

- *Overnight outdoor camping and overnight outdoor sleeping are prohibited on Emory property.*
- *Encampments are prohibited on Emory property.*
- *Building occupations and/or building takeovers are prohibited.*
- *Protests are prohibited between the hours of midnight and 7:00 a.m.*

The full text of the Policy, including the Addendum, is attached for reference. Since the Policy acknowledges that the University has a responsibility to “promote open expression within the Community”. It states that “it is the responsibility of administrators of space on campus to ensure policies and procedures promote open expression.” Thus, this report analyses these new prohibitions, evaluating whether they (a) align with First Amendment protections and (b) whether they support or unduly chill the spirit of open expression at Emory.

3. Scope of the Investigation:

CFOE identified four key areas of analysis in reviewing the newly introduced Addendum to the Policy. Our investigation will focus on the following questions:

- **Textual consistency with the existing Policy:** Does the new Addendum align with the language of the rest of the Policy?

- **Detail and implementability:** Does the Addendum provide sufficient clarity and detail to ensure consistent enforcement? Can it be implemented in a content-neutral manner that is predictable and clear for all members of the Emory community?
- **Consistency with First Amendment law:** Are the restrictions in the addendum consistent with First Amendment protections, particularly as they apply to public universities and their obligations to uphold free speech and expression?
- **Promotion of Open Expression:** Does the Addendum strike the right balance between promoting Open Expression and other interests of the University?

4. Process:

At the request of the CFOE Chair, Ms. Shane, a member of the Committee with recent experience at the Foundation for Individual Rights and Expression (FIRE), led the review of the new policy Addendum. FIRE is a nonpartisan, nonprofit organization that focuses on defending free speech, due process, and academic freedom on college campuses. Given her expertise and connections at FIRE, Ms. Shane was able to gather a collection of relevant recent changes to Open Expression and similar policies at other universities for comparison. These materials, along with the Emory Policy Addendum, were reviewed and discussed by CFOE members both over email and during a regularly scheduled meeting. Based on these discussions, Chair Nemenman and Ms. Shane compiled the Committee’s consensus opinion on the Addendum and its potential implications. Opinion was reviewed and further edited by other Committee members, and it was approved by an electronic vote.

5. Findings:

Consistency with the existing Policy

The Addendum starts with re-affirming Emory’s commitment to Open Expression, and states that it clarifies “Time, place, and manner restrictions” of the main Policy, listing an abbreviated version of these restrictions from Section 8.14.5.5 of the Policy. The restrictions are not copied verbatim: the text from the Policy offers more clarification and details that the Addendum text omits for brevity. However, there are no meaningful differences in terms of the overall content or intent of the preamble to the Addendum and the main Policy. The Addendum does not contradict the language of other sections of the Policy, and the new restrictions are framed as clarification of “Time, place, and manner” regulations on Open Expression.

Detail and implementability

One of the key concerns with the new Addendum to the Policy is the lack of clarity in some of its terms, which leaves certain prohibitions ambiguous and open to interpretation. For example, words such as “encampment” and “protest” are not clearly defined, which creates uncertainty about what constitutes prohibited behavior under points 2 and 4 of the Addendum.

- **Encampment:** The Addendum prohibits encampments on Emory property, but it does not specify how many tents or structures would qualify as an “encampment.” Would a single tent or a couple of people gathering with temporary shelters be considered an

encampment? This ambiguity creates challenges for students or groups attempting to follow the rules.

- **Protest:** Similarly, the term “protest” remains undefined. For instance, does a single person wearing a t-shirt with a political message constitute a protest, or does a protest require a specific number of participants? The lack of clarity leaves room for varying interpretations that could lead to inconsistent enforcement.
- **Overnight outdoor camping:** It is also unclear whether students resting or sleeping on a lawn in front of a fraternity house or elsewhere on campus would be classified as “overnight outdoor camping.” Without a clear definition, normal student activities could potentially be misconstrued as violations of the policy.
- **Building occupation:** The term “building occupation” is also vague. For example, if students are protesting in a reservable common space in the Student Center, would that be considered a “building occupation”? Historically, OE observer directed protests to these spaces as a contingency for bad weather. It’s unclear if this practice will be allowed under the new rules, adding confusion about how these spaces will be treated moving forward.

These are just some of the examples of ambiguities in the Addendum that pose significant challenges to both enforcement and compliance. Unclear definitions leave content-neutral enforcement open to interpretation, creating risks for all members of the Emory Community. This lack of precision also poses potential conflicts by allowing too much discretion in how the rules are applied, which can undermine the very principles of open expression that the policy seeks to protect.

Other universities, such as the University of Arizona, have introduced much less ambiguous policy changes. For example, in their [Campus Use Policy](#), terms like “camping” and “demonstration” are explicitly defined, leaving little room for misinterpretation. This approach ensures both the community and administration are clear on what is permissible and what is not, which could serve as a useful model for improving Emory’s Policy.

Consistency with First Amendment law

Since Emory University’s Respect for Open Expression Policy is viewed as an equivalent to First Amendment protections, we must evaluate whether the new prohibitions outlined in the Addendum align with the body of applicable First Amendment law. Specifically, the new regulations function as *Time, Place, and Manner* restrictions. It is well understood that protection of dissent under the First Amendment is subject to such regulations, provided they are reasonable and content neutral.

A relevant case in this regard is *Clark v. Community for Creative Non-Violence* (1984), where the Supreme Court ruled that, since sleeping in public spaces is not an inherently expressive activity, then the regulation forbidding sleeping met the requirements of a reasonable time, place, or manner restriction of expression, balancing the interests of protestors against the government’s (or, in this case, Emory’s) interests in maintaining control over how its property is used. This precedent supports the notion that prohibiting certain forms of protest, such as overnight camping, does not inherently violate the principles of open expression.

Thus, the new prohibitions in the Addendum — including bans on overnight camping, encampments, building occupations, and protests during specific hours — are within the canon of First Amendment law. These are legitimate time, place, and manner regulations that aim to balance Emory’s interests in maintaining order, safety, and normal operations on campus with the rights of the community to engage in open expression.

However, the key question remains whether the balance achieved by these regulations is fair, and if these restrictions support Open Expression by being the *least restrictive means* of enforcing the University’s interests. Under First Amendment jurisprudence, time, place, and manner regulations must not burden more speech than necessary to achieve the government’s legitimate objectives.

Promotion of Open Expression

In view of the above, the CFOE explored whether the prohibitions in the Addendum are tailored narrowly enough to protect the university’s interests while allowing the maximum possible room for free expression of community members. We believe that the Addendum places unnecessary burdens on open expression by outright banning practices that could be regulated more effectively.

CFOE has no objections to prohibiting building occupations and takeovers (subject to clearer definitions of these terms), as the balance here is clearly in favor of preventing interference with other University functions. However, the balance in the other three prohibitions is less clear.

While the University has a legitimate need to manage the use of its land, the difficulties in defining what constitutes an “encampment,” and the fact that the University itself often erects tents on its property for its own functions, suggest there are better ways to balance this need with the Open Expression rights of community members. For instance, other universities have adopted less restrictive approaches. [Virginia Commonwealth University](#) and [Georgia Tech](#), for example, allow individuals to seek approval for encampments or camping based on content-neutral criteria. Additionally, VCU bans “sleeping” rather than just any overnight activity. This addresses the University’s concerns without necessitating they outright ban tents. Such policies provide flexibility while ensuring safety and minimizing disruption.

The CFOE believes that Emory should adopt a similar system, one that allows overnight and multi-day reservations of University spaces, with decisions to approve or deny encampments or camping requests based on anticipated disruption or the resources needed to ensure safety and security during the event. For example, a single tent set up on Asbury Circle that requires no special accommodations should likely be more protected under the Open Expression policy than a month-long encampment of dozens of tents that could damage the property and require cleanup, security, and other resources. Such a tailored approach would better balance the University’s interests with the rights of students and community members to express themselves. Parenthetically, CFOE Chair has argued for such flexible system in multiple discussions with the Dean of Campus Life Enku Gelaye since the April 2023, protests on the Quad, which first revealed the inability or unwillingness of the University to handle overnight Open Expression events.

Our most significant concern lies with the prohibition on protests between midnight and 7 a.m. There are situations where legitimate reasons exist to protest during these early hours, particularly when the timing has symbolic importance to a specific cause, such as when the event being remembered occurred at that time. Additionally, the line between a protest and normal activity at these hours is difficult to draw. For instance, how does one distinguish a protest at 12:01 a.m. from a group of students walking across university property while wearing politically themed t-shirts? During the preparation of this report, the CFOE Chair conducted such an activity without any intervention by the Emory PD, underscoring how subjective and unclear enforcement of this time-based restriction can be. This lack of clarity is likely to result in inconsistent and content-based enforcement, which raises significant concerns.

As with the encampment prohibition, the CFOE suggests replacing the blanket ban on protests between midnight and 7 a.m. with regulations that limit activities based on the amount of university resources needed to sustain them. Rather than prohibiting protests entirely, the University could regulate such activities based on criteria like the number of participants, the expected level of disruption, or the need for safety measures, providing flexibility without unduly chilling Open Expression.

Overall, the CFOE believes that the blanket prohibitions in the Addendum unnecessarily chill the climate for Open Expression on campus. There are more nuanced and effective ways of balancing the University's operational needs with the rights of community members to engage in meaningful expression. The policies of other universities provide useful models for creating a more open and balanced approach, and we urge Emory to consider adopting similar frameworks.

6. Conclusions:

CFOE analysis of the Addendum revealed the following.

1. **Consistency with the existing Policy:** The Addendum is textually consistent with the rest of the Respect for Open Expression Policy.
2. **Detail and implementability:** The Addendum severely lacks sufficient detail and clear definitions, which will likely lead to confusion during enforcement and potentially content-based enforcement.
3. **Consistency with First Amendment Law:** The Addendum is generally consistent with First Amendment law. As a set of time, place, and manner restrictions, the prohibitions are within the established legal framework for balancing the rights of free speech with institutional interests.
4. **Promotion of Open Expression:** Certain aspects of the Addendum, particularly the time-based prohibitions on protests, place an undue burden on the open expression rights of community members. Instead of outright bans, more flexible and content-neutral regulations would better serve the University's goals without unnecessarily limiting the rights of its community members to engage in meaningful protest and expression.

7. Recommendations:

CFOE makes the following recommendations as a result of this review:

1. **Addendum Revision:** The CFOE recommends revising the Addendum to address the issues identified in this report, particularly the lack of clear definitions and the overly broad prohibitions on certain types of expressive activities. The revisions should aim to better balance the University's operational needs with the Open Expression rights of community members, ensuring that restrictions are clearly defined, enforceable, and do not unduly chill open expression.
2. **Flexible Property Management System:** CFOE also recommends the development of a system for more flexible management of university property. This system should allow for multi-day and overnight reservations of buildings and grounds, with approvals based on content-neutral criteria such as the anticipated level of disruption or the resources required to maintain safety and security. Multiple universities have successfully employed such criteria, with [Colorado State University](#) being a good example. Such a system would provide a balanced approach, protecting the University's interests while preserving the community's right to engage in Open Expression activities.

8. Confidentiality:

N/A

9. Attachments:

August 27, 2024, Respect for Open Expression Policy with the Addendum

Addendum to Respect for Open Expression Policy (8.14)

Principles

Emory re-affirms its commitment to open expression and rigorous debate, while simultaneously ensuring that Emory protects the safety of community members, minimizes disruption to the operations of the university, and provides an environment free of discrimination and harassment. As set forth in the Respect for Open Expression Policy (“Policy”), the University affirms the rights of members of the Emory Community to assemble and demonstrate peaceably within the limits of the Policy, as it also affirms the rights of others to pursue their normal activities.

This Addendum provides clarity and guidance to the Emory University community.

Time, place, and manner restrictions

Section 8.14.5.5 of the Policy states that Community members may be in violation of other university policies and thus no longer operating within the spirit of Open Expression. Examples include conduct that:

- violates any federal, state, local or other applicable law (including gaining unauthorized access to restricted areas, refusing to leave restricted areas if instructed, defacing of public and/or private property, etc.);
- interferes unreasonably with the activities or rights of other persons;
- interferes unreasonably with the general operations of the University;
- endangers health or safety;
- knowingly interferes with unimpeded movement in a University location;
- causes injury to persons or property or threatens to cause such injury;
- uses or threatens violence or force, or encourages others to do so;
- causes harassment; or
- violates reasonable noise levels.

Specific examples of these types of violations include, without limitation, the following:

- Overnight outdoor camping and overnight outdoor sleeping are prohibited on Emory property.
- Encampments are prohibited on Emory property.
- Building occupations and/or building takeovers are prohibited.
- Protests are prohibited between the hours of midnight and 7:00 am.