



Hawai'i

BY EMAIL AND U.S. MAIL

August 21, 2026

President Wendy F. Hensel  
University of Hawai'i System  
2444 Dole Street  
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**Re: University of Hawai'i Time, Place, and Manner Policy**

Dear President Hensel:

With the Fall 2026 semester beginning this Monday, the ACLU of Hawai'i ("ACLU-HI") writes to share concerns with the University of Hawai'i regarding its interim time, place, and manner restrictions, as embodied in Executive Policy EP 10.206 and Administrative Procedure AP 10.XXX<sup>1</sup> ("Interim TPM Policy"). Given the extensive tradition of protest at University of Hawai'i campuses and the broader nationwide rise in student protest movements, we urge the University to consider amending the interim policy to uphold the right to protest, as protected by the First Amendment to the U.S. Constitution and Article I, Section 4 of the Hawai'i Constitution.

We recognize the University's numerous interests and responsibilities as an academic environment, and we share this analysis in the spirit of our common commitment to public education and academic freedom. With the rise of authoritarianism across the continental United States and increased attacks under this presidential administration on free speech more broadly, it is more important than ever that the University of Hawai'i leads its academic peers with integrity and continues to honor the longstanding tradition of student protest in Hawai'i.

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<sup>1</sup> These concerns are based on the following versions of the policy as posted on the University of Hawai'i website: [EP 10.206, Time, Place, and Manner Restrictions on Expressive Activities on Campus](#) and [AP 10.XXX, Systemwide Implementation of Time, Place, and Manner Restrictions for Expressive Activities on University Property for Free Expression](#).

We have both process and substance concerns with the Interim TPM Policy.<sup>2</sup>

On process, we believe the University's decision to implement this policy on an interim basis in July 2026 was **premature**. We urge the University to continue a **meaningful consultation** process with students, faculty, and staff.

On substance, we are concerned about the **chilling effect** that a restrictive policy like this one will have on protests. We are especially concerned by the 25-foot buffer zones and the extremely restrictive policies regarding specific forms of protest, including chalking, sit-ins, and posting written materials. Taken together, **these policies will restrict most forms of student speech and likely discourage students from engaging in protest activity altogether**. Moreover, because it is unclear how the University will conform with the First Amendment's requirement to apply its restrictions in a content-neutral manner, the Interim TPM Policy risks **inconsistent implementation**.

The ACLU of Hawai'i strongly encourages the University to revise further the Interim TPM Policy and maintain leadership in its First Amendment protections for students—both now and for generations to come.

## **I. Process Concerns**

The ACLU of Hawai'i is concerned by the process the University used to establish the Interim TPM Policy. Over the past academic year, our organization has received a bevy of complaints from diverse University community members. The overarching theme is that input from students, faculty, and staff has not been fully integrated into the Interim TPM Policy. That fact is reflected by the Faculty Senate Resolution, Undergraduate Student Resolution, and Graduate Student Resolution—each of which were voted upon and opposed implementation of the Interim TPM Policy.<sup>3</sup> Beyond those groups, we have learned that many students were not even aware the University was developing this new policy, which is concerning given its broad impact. Given these strong community votes in disapproval—as well as our own concerns (described below)—we believe the University should **defer implementation** of the interim policy during this 2026-2027 school year. Instead, the University should (1) undertake greater publicity to educate the student body about the proposed policy, (2) more fully consider and make changes based on the above-named

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<sup>2</sup> The concerns we raise here are not exhaustive, but merely exemplary. We are also grateful that we had the chance to meet with Steven Hall from the General Counsel Office on June 17, 2026.

<sup>3</sup> See, e.g., *Resolution to Oppose Time, Place, and Manner Restrictions and Rectify Academic Freedom Policy*, Mānoa Faculty Senate (Feb. 18, 2026), <https://www.hawaii.edu/uhmfs/issues/resolution-to-oppose-time-place-and-manner-restrictions-and-rectify-academic-freedom-policy>.

Resolutions, and (3) continue to consult with student and faculty groups to amend the proposed policy.

## II. Substantive Concerns

As a general matter, we are concerned the Interim TPM Policy will have a **substantial chilling effect** on the ability of the student body—as well as staff and faculty—to exercise their First Amendment rights. **Even if someone can conduct a protest that is within the scope of the policy, they will undoubtedly be deterred from doing so given the Interim TPM Policy’s extensive, complex, and strict requirements.**

Further, through the policy, the University appears to take the position that no part of its campus is a traditional public forum under the proposed definition of Traditional Public Forum in II.K and III.B.3 of the EP. Considering the extensive history of protest in specific locations on the University campus—including Bachman Hall and McCarthy Mall<sup>4</sup>—we believe this definition is overly restrictive. It also suggests that the only authority who can decide whether someone can engage in speech on the University campus is the “President, or their designee” since the University would only consist of designated public forums, limited public forums, and non-public forums. But legal precedent does not support that scheme.<sup>5</sup>

The University should either (1) retain the prior policy’s scope, or (2) substantially reduce the scope of the Interim TPM Policy. More specifically, we believe the following components raise constitutional problems:

**25-foot buffer zone.** We are broadly concerned about the 25-foot buffer zone for general expressive activities. On University of Hawai‘i campuses, this zone will cover most areas of the campus—essentially banning expressive activities outside of Designated Public Forums. On a dense campus like Mānoa, this means that no expressive activity is possible (unless in a Designated Public Forum) in areas of campus where buildings are less than 50 feet apart. This buffer distance is far greater than necessary to maintain safety and preserve the academic environment. This is all the more so given the other restrictions that also address those concerns: Under III.A.1.a of the AP, students are already required to

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<sup>4</sup> See, e.g., *Maunakea sit in at Bachman Hall part of long history of sit ins*, University of Hawai‘i News (Sept. 17, 2019), <https://www.hawaii.edu/news/2019/09/17/maunakea-sit-in-at-bachman-hall> (describing “a long line of sit-in protests at Bachman that date back to the late 1960s”); Gordon Y.K. Pang, *APEC protest held at UH Manoa*, Honolulu Star-Advertiser (Oct. 26, 2011), <https://www.staradvertiser.com/2011/10/26/hawaii-news/apec-protest-held-at-uh-manoa> (describing protest march “from McCarthy Mall to Bachman Lawn”).

<sup>5</sup> See, e.g., *ACLU of Nevada v. City of Las Vegas*, 333 F.3d 1092, 1101 (9th Cir. 2003) (holding pedestrian mall to be a traditional public forum, over government’s contrary characterization).

maintain a path for entrances/egresses to buildings. Under III.F.1.b of the AP, students must keep expressive activities below 60 dBs. Finally, under III.F.1.c of the AP students are prohibited from using sound amplification without prior permission. A 25-foot buffer zone *on top of* those restrictive requirements would not meaningfully improve the academic environment—while dramatically infringing upon expressive activity.

The 25-foot buffer zone also restricts expressive activities that are silent—making the restriction broader than necessary to address noise concerns. The definition of “expressive activities” includes not just marches and rallies, but also “the distribution of written or printed materials, vigils, [and] the circulation of petitions.” These forms of protest are impactful, but are generally much quieter than other protest forms. But under this policy, a single student distributing written materials 24 feet from the wall of a building would be required to stop. This would restrict expressive activity on paths that run alongside buildings, in open areas in front of buildings, at building entrances and steps, in the breezeways and courtyards between buildings, and at outdoor tables and seating areas. Restricting expressive activity to occur more than 25 feet away from buildings overly restricts protesters’ ability to communicate with others on campus.

**Chalking restrictions.** While the policy allows for chalking on generally accessible outdoor sidewalks, it bans chalking “within 25 feet of any ingress or egress point, parking lot, building, or facility” and otherwise limits chalking “to exterior concrete or asphalt sidewalks that are fully exposed to the elements.” These restrictions in combination effectively ban chalking: 25 feet from any of those points covers a huge swath of campus, and most sidewalks run between ingress/egress points, alongside parking lots, or up to buildings. Considering how minimally disruptive chalking is, the University’s policy on this form of speech does not appear to achieve any safety or equity goals that might be associated with other protests. Instead, it unnecessarily chills legitimate speech.

**Sit-ins.** We are concerned by the total prohibition on sit-ins. Based on our reading of the policy, sit-ins appear to fall under Expressive Activities and are thus subject to the Location Related Restrictions, which would effectively lead to a total ban of sit-ins on campus. As discussed in materials that have been provided to you by University of Hawai‘i students and staff, an extensive history exists of civil rights activism involving sit-ins.<sup>6</sup> Considering that history and the importance of sit-ins as a protest tool both specifically at

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<sup>6</sup> *Resolution to Oppose Time, Place, and Manner Restrictions and Rectify Academic Freedom Policy*, Mānoa Faculty Senate (Feb. 18, 2026), <https://www.hawaii.edu/uhmfs/issues/resolution-to-oppose-time-place-and-manner-restrictions-and-rectify-academic-freedom-policy>.

the University and more generally, we recommend that the University draft separate, more-tailored policies on sit-ins.

**Encampments.** Relatedly, we are also concerned by the total prohibition on encampments. As with sit-ins, encampments have been central to the history of civil rights activism at the University of Hawai‘i. In the past few years, they have become an especially important tool for student protest and activism. Mandating both a lengthy and opaque approval process to erect symbolic structures and banning encampments entirely is constitutionally suspect. While we know safety concerns may exist, those can be addressed without entirely banning encampments.

**Printed Materials.** The ban on printed materials outside of community bulletin boards is also overly restrictive. To our knowledge, the University has not recently experienced issues regarding the posting of printed materials around campus. So it is unclear what interest this provision addresses. We understand that there may be legitimate restrictions regarding Non-affiliated Persons, but posting printed materials is a minimally disruptive form of expressive activity. The policy also is harsh in banning printed materials from being left on campus grounds or in classrooms, even if they were hypothetically sitting in a clean stack for people to voluntarily take. Critically, the policy’s ban on materials that are not “in support of a University function” is extremely limiting and arguably even viewpoint discriminatory: by only allowing posting of material “in support of a University function,” University-affiliated Persons would not be allowed to post printed material in *opposition* to a University function. Finally, the mandate that only one copy of a flyer may be placed on a bulletin board is too restrictive. If students cannot leave printed materials around campus, face excessive restrictions about handing out printed materials under the Expressive Activity policy, cannot post materials that are unrelated to a University function, and can only post one printed material, they effectively cannot use printed materials to protest or raise public awareness.

**Major Events.** Finally, we have concerns regarding the classification of “Major Events.” The provision that major events cannot cause noise levels over 60 dB from 50 feet away is overly restrictive. Since 60 dB is generally the sound level of a normal conversation, it is unlikely that loudness at 50 feet would be disruptive, particularly when Major Events are already required to secure reservations and are in locations chosen by the University. There is also ambiguity about the intended meaning of “Expected attendance exceeding 100 people” and whether that measures the number of people present at any given time or over the course of the entire duration of an event. Considering that there are over 50,000 students in the University system, 100 seems like an impractically low threshold triggering the permitting requirements under the Interim TPM Policy. Students should not face

higher restrictions simply because the topic of their protest is of such an important nature that they attract over 0.2% of the University's total student body to attend. We are also concerned by the reservation process as we do not have access to Executive Policy 10.201—for example, are Major Events restricted only to certain locations and for certain durations? If more than 100 students are concerned about a particular issue, we do not believe they should be required to conduct such protest only in an extremely narrow set of locations, thereby thwarting the entire purpose of the protest.

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We urge the University to delay the implementation of the Interim TPM Policy, and to continue engaging in community conversations that lead to substantive revisions to the policy. **Protest and dissent are a core part of how a university community learns.** As the University's own purpose statement affirms, "free inquiry, respectful debate, and the exchange of diverse perspectives" are among its central values. No matter the medium, whether through protest or paper writing, we hope the University fosters a safe space in which these values may be pursued without fear of undue restriction or penalty.

Even considering the University's campus safety and academic environment concerns, many aspects of the proposed policy overly restrict expressive activity. **We urge the University not to permanently adopt the Interim TPM Policy, and to address at least the specific issues identified above.** We look forward to continuing this conversation with the University this academic year.

If you have any questions or comments, please reach out to [wkim@acluhawaii.org](mailto:wkim@acluhawaii.org) or call us at 808-522-590

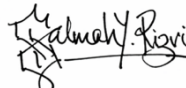
Sincerely,



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