

AGREEMENT AND RELEASE

This Agreement and Release (“Agreement”) is entered into on the date of signature of the last signatory to this Agreement (“Effective Date”) by and between Speech First, Inc. on the one hand and Oklahoma State University (“University”) on the other (together, the “Parties”), as follows:

A. WHEREAS, by complaint filed on January 10, 2023, Speech First brought the matter styled *Speech First, Inc. v. Shrum*, No. 5:23-cv-00029 (W.D. Okla.) (“Action”) asserting claims against Kayse Shrum, in her individual capacity and official capacity as President of Oklahoma State University; Aleigha Mariott, in her individual capacity and official capacity as Director of Student Support and Conduct for Oklahoma State University; Doug Hallenbeck, in his individual capacity and official capacity as Vice President of Student Affairs for Oklahoma State University; Raj Murthy, in his individual capacity and official capacity as Chief Information Officer for Oklahoma State University; Jackson Landrum, in his individual capacity and official capacity as Director of Equal Opportunity for Oklahoma State University; Billy G. Taylor, Rick Davis, Jimmy Harrel, Joe Hall, Cary Baetz, Blayne Arthur, Rick Walker, Jason Ramsey, Jarold Callahan, and Trudy Milner, all in their individual capacities and official capacities as members of the OSU/A&M Board of Regents (“Defendants”);

B. WHEREAS, on January 10, 2023, Speech First moved for a preliminary injunction against the University’s harassment policy in the Code of Conduct (hereinafter “harassment policy”); the provision in the University’s “Appropriate Use Policy” concerning “transmitting political campaigning” messages sent by students (OSU Policy 3-0601) (hereinafter “computer policy”); and the University’s Bias Incident Response Team, *see* Doc. 3;

C. WHEREAS, on January 18, 2023, Speech First and Defendants filed a stipulated dismissal of Speech First’s claims against all Defendants other than Shrum, *see* Doc. 5;

D. WHEREAS, on January 18, 2023, Speech First and Defendants further stipulated that any injunctive or declaratory relief or attorney’s fees awarded in this action to Speech First against Shrum would apply to and be binding on Oklahoma State University, *see* Doc. 5;

E. WHEREAS, on February 7, 2023, Defendants responded to Speech First’s preliminary injunction motion and moved to dismiss Speech First’s complaint under Federal Rule of Civil Procedure 12(b)(1), *see* Docs. 24-25;

F. WHEREAS, on February 17, 2023, Speech First filed an amended complaint against Shrum, in her official capacity only, *see* Doc. 27;

G. WHEREAS, on March 3, 2023, Defendants moved to dismiss Speech First’s amended complaint under Rule 12(b)(1), *see* Doc. 29;

H. WHEREAS, on April 10, 2023, the United States District Court for the Western District of Oklahoma granted Defendants’ motion to dismiss and denied Speech First’s preliminary injunction motion as “moot,” *see* Doc. 35;

I. WHEREAS, on April 10, 2023, Speech First timely appealed the District Court's grant of Defendants' motion to dismiss, *see* Doc. 37;

J. WHEREAS, on June 16, 2023, the University changed the computer policy prohibition on "transmitting political campaigning" messages to apply to employees only and no longer to nonemployee students, *see* perma.cc/6CY6-SZ4M;

K. WHEREAS, on February 9, 2024, the United States Court of Appeals for the Tenth Circuit reversed the district court's judgment and remanded to the district court for further proceedings consistent with its opinion, *see* Judgment, No. 23-6054 (10th Cir. Feb. 9, 2024);

L. WHEREAS, on February 29, 2024, the parties settled the issues between them regarding the computer policy, which settlement is attached as Exhibit B, and jointly stipulated to the dismissal of Count III of the complaint with prejudice, *see* Doc.46;

M. WHEREAS, the Parties have determined that it is in their mutual interests to amicably resolve the issues between them;

NOW, THEREFORE, in consideration of the foregoing and of the mutual undertakings of the Parties set out herein, the Parties agree as follows:

1. The University will revise the harassment policy. Under the revised policy, "harassment" is defined as follows: "Harassment: Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity." The University will not revert to the version of the harassment policy in place at the time this Action was filed. The University will take reasonable steps to remove all references to that version of the harassment policy from its websites and other publications.

2. The University will disband the Bias Incidents Response Team. The University will not reinstate the Bias Incidents Response Team or create another similar entity with responsibility for "bias incidents." The University will take reasonable steps to remove all references to the Bias Incidents Response Team from its websites and other publications.

3. For and in consideration of the University's undertakings set forth in paragraphs 1 and 2, the sufficiency of which is hereby acknowledged, and intending to be legally bound, Speech First does hereby remise, release, and forever discharge and completely and absolutely release the University and Defendants (collectively, the "Released Parties") from the claims, causes of action, and requests for relief that were brought or could have been brought to challenge the harassment policy and Bias Incidents Response Team in the Action. The Released Parties are each entitled to enforce this Agreement against Speech First without regard for whether the Released Party is a party to this Agreement. In the event that the University revises the policies or practices challenged in the Action in the future, Speech First and its members do not release any right to challenge the revised policies or practices.

4. Within three (3) business days of the Effective Date, Speech First will file a joint stipulation of dismissal in the form attached as Exhibit A to this Agreement, dismissing the Action with prejudice.

5. The University shall pay Speech First's costs, expenses, and attorneys' fees in the amount of \$18,000 within thirty (30) days of Speech First's filing of the joint stipulation of dismissal.

6. Speech First did not challenge, in this Action, the definition of sexual harassment in section 1.02(o) of the University's Interim Title IX – Sexual Misconduct Policy (hereinafter "Title IX sexual-harassment definition"). Should the University change that definition to mirror the governing definition promulgated by the United States Department of Education via notice-and-comment rulemaking under Title IX or the Violence Against Women Act, Speech First will not challenge that revised definition in any claim or suit against the Released Parties.

7. Nothing contained in this Agreement shall be deemed as an admission of any liability or lack of merit in any claim or defense by any Party.

8. This Agreement represents the full and complete agreement between the Parties to resolve their dispute regarding the harassment policy, Bias Incidents Response Team, and Title IX sexual-harassment definition. Any representations, warranties, promises, or conditions, whether written or oral, not specifically incorporated into this Agreement shall not be binding on the Parties. All other discussions, negotiations, and writings have been and are merged into this Agreement.

9. Neither this Agreement nor any terms or provision hereof may be changed, waived, discharged, or terminated except by an instrument in writing duly signed by the Party against which enforcement of the change, waiver, discharge, or termination is sought.

10. This Agreement shall be governed and construed in accordance with the laws of the State of Oklahoma applicable to contracts made and to be performed wholly within the State of Oklahoma, without regard to its conflict-of-laws provisions. All Parties agree that this Agreement and any disputes arising therefrom arise out of the same transaction or occurrence that is the subject matter of the Action and further agree that any disputes with respect to this Agreement are properly heard by the district court in the Action.

11. The Parties agree that, in the event of any ambiguity or dispute regarding the interpretation of this Agreement, the Agreement will be interpreted as if each Party participated equally in its drafting.

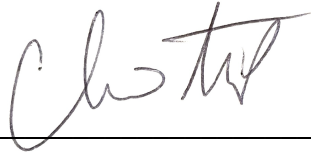
12. The Parties represent, knowing that all other Parties will rely on such representation, that each signatory has the right, power, and authority to: (i) sign this Agreement and Release; (ii) bind itself to the terms of this Agreement and Release; (iii) with respect to Speech First, to so bind its members, successors, and assigns; and (iv) to receive the consideration set forth in this Agreement and Release.

13. This Agreement can be signed in two original counterparts, each of which shall for all purposes be considered an original of this Agreement. Execution and delivery of this Agreement by electronic means (including via e-mail or .pdf) shall be sufficient for all purposes and shall be binding on any person or Party who so executes.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Date: 4/15/24

SPEECH FIRST, INC.

By: 
Cherise Trump, Executive Director

Date: 04/03/24

OKLAHOMA STATE UNIVERSITY


By: 
Kayse M. Shrum, D.O., President

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

SPEECH FIRST, INC.,

Plaintiff,

v.

Case No. 5:23-cv-29-J

KAYSE SHRUM, in her official capacity as
President of Oklahoma State University,

Defendant.

JOINT STIPULATION OF DISMISSAL

Per Federal Rule of Civil Procedure 41(a)(1)(A)(ii), Plaintiff and Defendant jointly stipulate to the dismissal of this case with prejudice. The University will pay Speech First's costs under the terms of their settlement agreement.

Dated: April 3, 2024

Respectfully submitted,

/s/ Steve Stephens

Steve Stephens, OBA #10479
Clinton W. Pratt, OBA #21329
Gaylan Towle II, OBA #32884
Kinsey Wyatt, OBA #32778
Lyman G. Lenker, IV OBA #33219
Board of Regents for the Oklahoma
Agricultural and Mechanical Colleges
5th Floor, Student Union Building
Stillwater, OK 74078
(405) 744-6494 (phone)

Counsel for Defendant Kayse Shrum

/s/ Cameron T. Norris

J. Michael Connolly (*pro hac vice*)
Cameron T. Norris (*pro hac vice*)
James F. Hasson (*pro hac vice*)
Thomas S. Vaseliou (*pro hac vice*)
CONSOVOY MCCARTHY PLLC
1600 Wilson Blvd., Suite 700
Arlington, VA 22209
(703) 243-9423
cam@consovoymccarthy.com

Ryan Haynie, OBA No. 32796
1401 N. Lincoln Blvd.
Oklahoma City, OK 73104
(405) 590-6070
ryan@ocpathink.org

Counsel for Plaintiff Speech First, Inc.

EXHIBIT B

AGREEMENT AND RELEASE

This Agreement and Release (“Agreement”) is entered into on the date of signature of the last signatory to this Agreement (“Effective Date”) by and between Speech First, Inc. on the one hand and Oklahoma State University (“University”) on the other (together, the “Parties”), as follows:

A. WHEREAS, by complaint filed on January 10, 2023, Speech First brought the matter styled *Speech First, Inc. v. Shrum*, No. 5:23-cv-00029 (W.D. Okla.) (“Action”) asserting claims against Kayse Shrum, in her individual capacity and official capacity as President of Oklahoma State University; Aleigha Mariott, in her individual capacity and official capacity as Director of Student Support and Conduct for Oklahoma State University; Doug Hallenbeck, in his individual capacity and official capacity as Vice President of Student Affairs for Oklahoma State University; Raj Murthy, in his individual capacity and official capacity as Chief Information Officer for Oklahoma State University; Jackson Landrum, in his individual capacity and official capacity as Director of Equal Opportunity for Oklahoma State University; Billy G. Taylor, Rick Davis, Jimmy Harrel, Joe Hall, Cary Baetz, Blayne Arthur, Rick Walker, Jason Ramsey, Jarold Callahan, and Trudy Milner, all in their individual capacities and official capacities as members of the OSU/A&M Board of Regents (“Defendants”);

B. WHEREAS, on January 10, 2023, Speech First moved for a preliminary injunction against the University’s harassment policy in the Code of Conduct; the provision in the University’s “Appropriate Use Policy” concerning “transmitting political campaigning” messages sent by students (OSU Policy 3-0601) (hereinafter “computer policy”); and the University’s Bias Incident Response Team, *see* Doc. 3;

C. WHEREAS, on January 18, 2023, Speech First and Defendants filed a stipulated dismissal of Speech First’s claims against all Defendants other than Shrum, *see* Doc. 5;

D. WHEREAS, on January 18, 2023, Speech First and Defendants further stipulated that any injunctive or declaratory relief or attorney’s fees awarded in this action to Speech First against Shrum would apply to and be binding on Oklahoma State University, *see* Doc. 5;

E. WHEREAS, on February 7, 2023, Defendants responded to Speech First’s preliminary injunction motion and moved to dismiss Speech First’s complaint under Federal Rule of Civil Procedure 12(b)(1), *see* Docs. 24-25;

F. WHEREAS, on February 17, 2023, Speech First filed an amended complaint against Shrum, in her official capacity only, *see* Doc. 27;

G. WHEREAS, on March 3, 2023, Defendants moved to dismiss Speech First’s amended complaint under Rule 12(b)(1), *see* Doc. 29;

H. WHEREAS, on April 10, 2023, the United States District Court for the Western District of Oklahoma granted Defendants’ motion to dismiss and denied Speech First’s preliminary injunction motion as “moot,” *see* Doc. 35;

I. WHEREAS, on April 10, 2023, Speech First timely appealed the District Court's grant of Defendants' motion to dismiss, *see* Doc. 37;

J. WHEREAS, upon Speech First filing the Action, the University began the process to change the computer policy prohibition on "transmitting political campaigning" messages to apply to employees only and no longer to nonemployee students;

K. WHEREAS, on June 16, 2023, the University's governing Board approved changes to the computer policy prohibition on "transmitting political campaigning" messages to apply to employees only and no longer to nonemployee students, *see* perma.cc/6CY6-SZ4M;

L. WHEREAS, on February 9, 2024, the United States Court of Appeals for the Tenth Circuit reversed the district court's judgment and remanded to the district court for further proceedings consistent with its opinion, *see* Judgment, No. 23-6054 (10th Cir. Feb. 9, 2024);

M. WHEREAS, the Parties have determined that it is in their mutual interests to amicably resolve the issues between them regarding the computer policy;

NOW, THEREFORE, in consideration of the foregoing and of the mutual undertakings of the Parties set out herein, the Parties agree as follows:

1. With respect to the computer policy, the University will not reinstate the version of the policy that Speech First challenged in this Action. The University will take reasonable steps to remove all references to that version of the policy from its websites and other publications.

2. For and in consideration of the University's undertakings set forth in paragraph 1, the sufficiency of which is hereby acknowledged, and intending to be legally bound, Speech First does hereby remise, release, and forever discharge and completely and absolutely release the University and Defendants (collectively, the "Released Parties") from the claims, causes of action, and requests for relief that were brought or could have been brought to challenge the computer policy in the Action. The Released Parties are each entitled to enforce this Agreement against Speech First without regard for whether the Released Party is a party to this Agreement. In the event that the University revises the policies or practices challenged in the Action in the future, Speech First and its members do not release any right to challenge the revised policies or practices.

3. Within three (3) business days of the Effective Date, Speech First will file a joint stipulation of dismissal in the form attached as Exhibit A to this Agreement, dismissing the claim concerning the computer policy in the Action with prejudice.

4. Speech First's remaining claims in this action are not affected by this Agreement.

5. The parties shall bear their respective attorneys' fees, costs, and expenses relating to Speech First's claim against the computer policy. The Parties reserve the right to seek attorney's fees, costs, and expenses relating to Speech First's remaining claims in the Action.

6. Nothing contained in this Agreement shall be deemed as an admission of any liability or lack of merit in any claim or defense by any Party.

7. This Agreement represents the full and complete agreement between the Parties to resolve their dispute regarding the computer policy. Any representations, warranties, promises, or conditions, whether written or oral, not specifically incorporated into this Agreement shall not be binding on the Parties. All other discussions, negotiations, and writings have been and are merged into this Agreement.

8. Neither this Agreement nor any terms or provision hereof may be changed, waived, discharged, or terminated except by an instrument in writing duly signed by the Party against which enforcement of the change, waiver, discharge, or termination is sought.

9. This Agreement shall be governed and construed in accordance with the laws of the State of Oklahoma applicable to contracts made and to be performed wholly within the State of Oklahoma, without regard to its conflict-of-laws provisions. All Parties agree that this Agreement and any disputes arising therefrom arise out of the same transaction or occurrence that is the subject matter of the Action and further agree that any disputes with respect to this Agreement are properly heard by the district court in the Action.

10. The Parties agree that, in the event of any ambiguity or dispute regarding the interpretation of this Agreement, the Agreement will be interpreted as if each Party participated equally in its drafting.

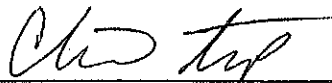
11. The Parties represent, knowing that all other Parties will rely on such representation, that each signatory has the right, power, and authority to: (i) sign this Agreement and Release; (ii) bind itself to the terms of this Agreement and Release; (iii) with respect to Speech First, to so bind its members, successors, and assigns; and (iv) to receive the consideration set forth in this Agreement and Release.

12. This Agreement can be signed in two original counterparts, each of which shall for all purposes be considered an original of this Agreement. Execution and delivery of this Agreement by electronic means (including via e-mail or .pdf) shall be sufficient for all purposes and shall be binding on any person or Party who so executes.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Date: 02/24/2024

SPEECH FIRST, INC.

By: 

Date: 02/26/24

OKLAHOMA STATE UNIVERSITY


By: 
Kayse M. Shrum, D.O.
President

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

SPEECH FIRST, INC.,

Plaintiff,

v.

Case No. 5:23-cv-29-J

KAYSE SHRUM, in her official capacity as
President of Oklahoma State University,

Defendant.

JOINT STIPULATION OF DISMISSAL

Per Federal Rule of Civil Procedure 41(a)(1)(A)(ii), Plaintiff and Defendant jointly stipulate to the dismissal of Count III of the amended complaint (computer policy) with prejudice. Each side will bear its own costs.

Dated: February 26, 2024

Respectfully submitted,

/s/ Steve Stephens

Steve Stephens, OBA #10479
Clinton W. Pratt, OBA #21329
Gaylan Towle II, OBA #32884
Kinsey Wyatt, OBA #32778
Lyman G. Lenker, IV OBA #33219
Board of Regents for the Oklahoma
Agricultural and Mechanical Colleges
5th Floor, Student Union Building
Stillwater, OK 74078
(405) 744-6494 (phone)

Counsel for Defendant Kayse Shrum

/s/ Cameron T. Norris

J. Michael Connolly (*pro hac vice*)
Cameron T. Norris (*pro hac vice*)
James F. Hasson (*pro hac vice*)
Thomas S. Vaseliou (*pro hac vice*)
CONSOVOY MCCARTHY PLLC
1600 Wilson Blvd., Suite 700
Arlington, VA 22209
(703) 243-9423
cam@consovoymccarthy.com

Ryan Haynie, OBA No. 32796
1401 N. Lincoln Blvd.
Oklahoma City, OK 73104
(405) 590-6070
ryan@ocpathink.org

Counsel for Plaintiff Speech First, Inc.