



November 23, 2009

Via U.S. Mail & Facsimile at 615-898-5112

Dr. Debra Sells
Vice President for Student Affairs & Vice Provost for Enrollment and Academic Services
Keathley University Center, Rm. 212
Middle Tennessee State University
Murfreesboro, TN 37132

Re: Violation of First Amendment Rights of Pro-Life Collegians

Dear Dr. Sells:

Pro-Life Collegians ("PLC"), a registered student group at Middle Tennessee State University ("University" or "MTSU"), and its members have requested that the Alliance Defense Fund ("ADF") notify you of a violation of their First Amendment rights by University officials. ADF is a non-profit public interest law and educational group. ADF's Center for Academic Freedom seeks to ensure that religious and pro-life students enjoy rights to speak, associate, and learn on an equal basis as all other students on campus. When necessary, we proceed to litigation to secure our clients' rights.

I. Statement of the Facts

As you may know, PLC desires to display the Justice For All ("JFA") pro-life exhibit at various locations on campus from March 17-18, 2010. (See attached event application.) JFA is a non-profit, educational organization that provides exhibits and literature for student organizations seeking to convey the pro-life message on college campuses.

PLC submitted a properly executed application to deliver its carefully planned and coordinated message on the University campus. The University approved PLC's application, but added a precondition to approval that we believe to be unacceptable. Specifically, Dr. Gene Fitch expressly stated that PLC would be required to pay for security at the event "[g]iven the history with events such as this and the recent incident with a visiting evangelist." Dr. Fitch did not state what the price for security would be, however, he directed the students to immediately begin applying for student activity funds to cover the cost.

It is apparent that MTSU is charging PLC to cover the costs of security related to onlookers' potentially hostile reaction to the JFA exhibit. The precondition that PLC pay for security due to the nature of its message and the effect it may have on an audience is an unconstitutional burden on PLC's First Amendment rights. Requiring a student group to pay government officials in order to gain access to a public forum clearly has an impermissible chilling effect upon free speech. Moreover, that there are no written standards governing when MTSU can charge for security raises the specter that MTSU officials can apply or waive the fee requirement based upon their agreement or disagreement with a

student group's message. And because the fee is uncapped, University officials can charge disfavored groups as much as they see fit. This type of prior restraint on speech clearly violates the Constitution.

II. Relevant Law

The Supreme Court has made it abundantly clear that the government cannot charge for the security costs associated with listeners' response to a speaker's speech.¹ "Speech cannot be financially burdened, anymore than it can be punished or banned, simply because it might offend a hostile mob."² This mandate is based on the self-evident principle that "the government may not regulate speech based on its substantive content or the message it conveys."³ Thus, when the University charges a speaker for the security presence necessary to control a potentially hostile audience, it runs afoul of this constitutional command, because "listeners' reaction to speech is not a content-neutral basis for regulation."⁴

Furthermore, it is axiomatic "that the First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others."⁵ Regulating speech because of the University community's possible reaction to the speech—as the University has done to PLC—is a blatant violation of this fundamental principle of constitutional law. Indeed, the Supreme Court has soundly rejected the idea that speech may be excluded simply because it is offensive to a group of people:

[A]bove all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content. . . . The essence of this forbidden censorship is content control. . . . Necessarily, then, under the Equal Protection Clause, not to mention the First Amendment itself, government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views.⁶

Instead, the appropriate response to provocative expression is for the offended viewers to "avert their eyes,"⁷ and the University to "maintain order"⁸ at its expense, not to charge the speakers for speaking.

The prior restraint doctrine is also implicated by the University's apparent power to deny approval of PLC's event if it does not agree beforehand to pay a fee for police protection. Prior restraints are government regulations that give "public officials the power to deny use of a forum in advance of actual expression."⁹ The danger with prior restraints, of course, is that they give

¹ *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 134-35 (1992).

² *Id.*

³ *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995).

⁴ *Forsyth County*, 505 U.S. at 134.

⁵ *Lamb's Chapel v. Ctr. Moriches Sch. Dist.*, 508 U.S. 384, 394 (1993).

⁶ *Police Dep't v. Mosley*, 408 U.S. 92, 95-96 (1972) (citations omitted and emphasis added).

⁷ *Cohen v. California*, 403 U.S. 15, 21 (1971) (viewers who dislike a message have a responsibility to "avoid further bombardment of their sensibilities simply by averting their eyes").

⁸ *Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 516 (1939) (noting the "duty to maintain order in connection" with First Amendment expression.)

⁹ *Ward v. Rock Against Racism*, 491 U.S. 781, 795 n.5 (1988) (internal quotation marks and citation omitted).

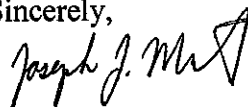
Dr. Debra Sells
November 23, 2009
Page 3 of 3

government officials the power to “decide who may speak and who may not based upon the content of the speech or the viewpoint of the speaker.”¹⁰ As the Supreme Court has explained, “because of their potential use as instruments for selectively suppressing some points of view, this Court has condemned licensing schemes that lodge broad discretion in a public official to permit speech-related activity.”¹¹ Under clear precedent, MTSU’s requirement that speakers agree to pay a fee for police protection before being allowed into a public forum simply because a government official determines the contemplated speech may incite a hostile response is constitutionally impermissible.

III. Conclusion

The violation of an individual’s constitutional rights, even for a moment, results in “irreparable injury.”¹² Requiring PLC to pay for security prior to the event is an unconstitutional prior restraint and violates PLC’s First Amendment rights. Therefore, we hereby demand that MTSU drop this condition immediately—as required by law—since our clients have no intention of paying an unconstitutional fee. We respectfully request that you respond to this letter in writing by **4 p.m CST on Wednesday, December 2, 2009**, setting forth the University’s position on this matter. I look forward to a timely and amicable resolution of this issue.

Sincerely,



Joseph J. Martins
Litigation Staff Counsel
ADF Center for Academic Freedom

Enclosure

Cc: Dr. Gene Fitch, Associate Vice President for Student Affairs & Dean of Student Life

¹⁰ *City of Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750, 757, 763-64 (1988).

¹¹ *Mosley*, 408 U.S. at 97.

¹² *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

AREA REQUESTED & ACTIVITY DESCRIPTION

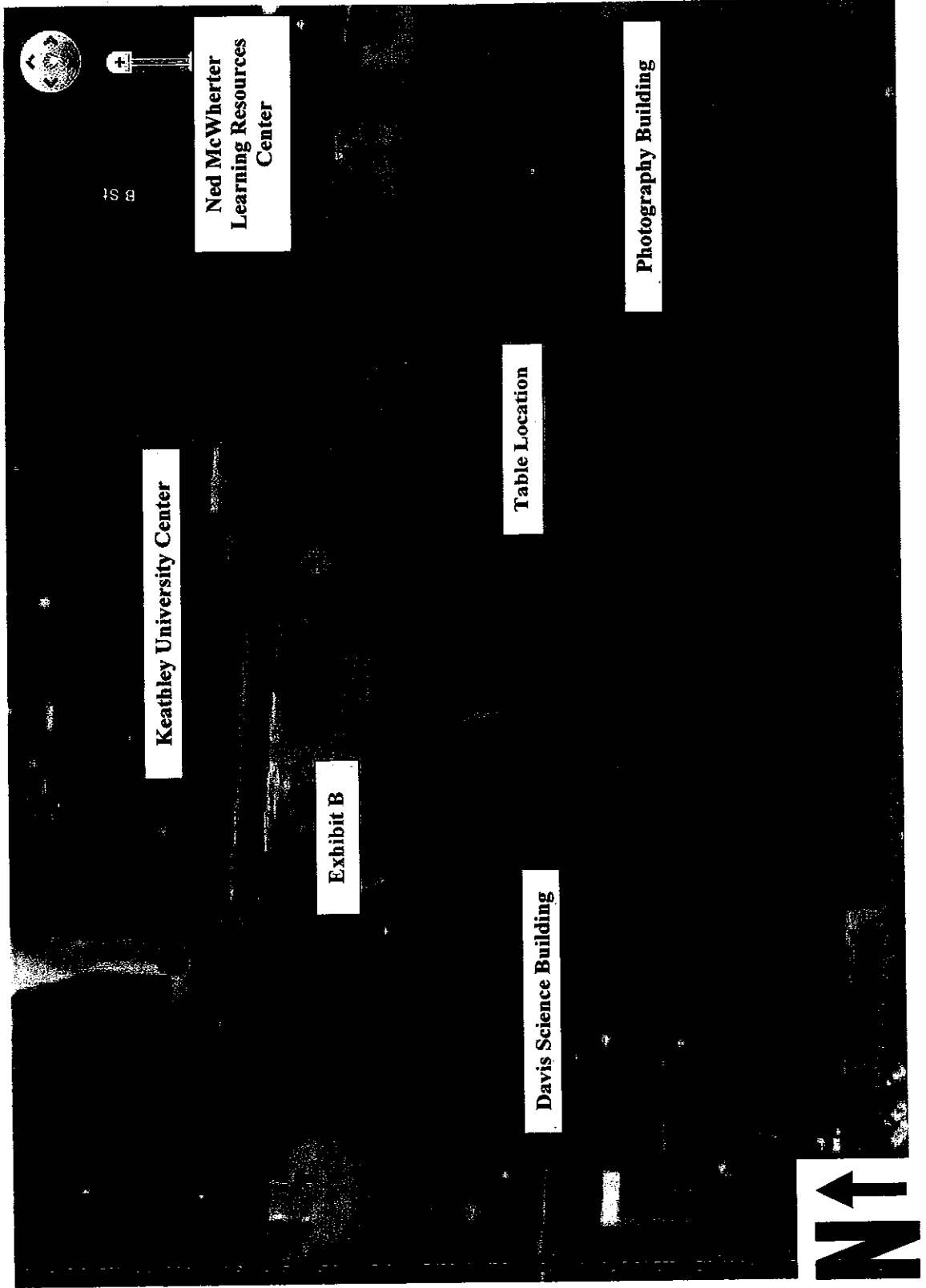
General Overview:

- The exhibit we are planning will occur over a 2-day period, Wednesday, March 17, 2010 through Thursday, March 18, 2010.
- There is one (1) "exhibit structure" that will be set up over this two-day period. It is referred to in this application as "Exhibit B".
 - See **Attachment #1B** for a description of Exhibit B
- Wednesday and Thursday (March 17-18)
 - Exhibit B will be set up on the grassy area south of the Keathley University Center (KUC). See **Attachment #1, Pages 3 and 4 for the location requested.**
- Wednesday and Thursday (March 17-18)
 - A table will be set up on the grassy area south of the Keathley University Center (KUC). See **Attachment #1, Page 3 and 4 for the location requested.**
- This is an outdoor exhibit designed to promote justice and the right to life for the unborn, the disabled, the infirm, the aged, and all vulnerable people; to help women and men in crisis pregnancies find support services for themselves and for their unborn children; to promote programs designed to assist in abortion recovery needs; to promote discussion of related bio-ethical issues like stem cell research, in-vitro fertilization, RU 486, and "emergency contraception".
- We will set up the exhibit structures each morning and take them down each afternoon. During the day, we will talk with people who stop to look at the special exhibit and who wish to engage in conversation. We will pass out literature. Our off-campus speakers will provide presentations and opportunities for questions to be asked.
- Notification signs:
 - Eight signs, each measuring 3 feet by 4 feet, will be placed at distances from the exhibit structures, with one side of each sign providing notification to passersby that the exhibit is ahead, and with the other side of each sign providing information related to that contained on the exhibit structures, for viewing as people leave the main exhibit area.
 - Each sign is weighted with a 40-50 pound sandbag placed on the cross-pole between the two legs.

ATTACHMENT #1
Page 2 of 4
Justice For All Exhibit
Pro-Life Collegians at MTSU

- The sign frames and legs are constructed of ¾" aluminum pipe and aluminum fittings.
- Each sign will be placed within 50 yards of an exhibit structure. Care will be taken not to block sidewalks or entrances/exits to buildings.
- **See Attachment 2** for a diagram of the notification signs.
- **Free Speech Boards:**
 - Two "free speech boards", measuring approximately 5 feet by 7 feet, will be in the general area of the exhibit structures.
 - Passersby are free to express their thoughts by writing on the boards with magic markers.
 - Each sign is weighted down with two to four 40-50 pound sandbags placed at the ends of the legs.
 - The signs' frames and legs are made of 1.25" aluminum pipe and aluminum fittings.
 - The writing surface of each board, upon which paper is placed, is made of 1/8" plastic and attached securely to the sign frame.
 - **See Attachment 3** for a diagram of these structures.
- **Services Requested: See Attachment #4.**

Approximate Exhibit Locations

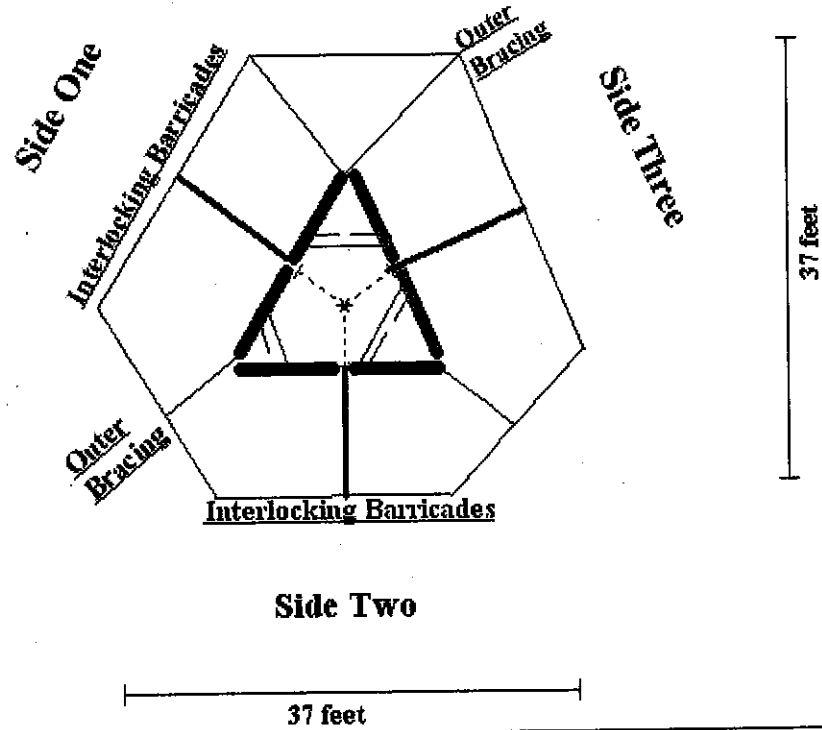


"EXHIBIT B" DESCRIPTION

- This is a large outdoor First Amendment exhibit.
- Exhibit A is made up of what can be viewed as two parts: 1) the barricades and 2) the panels. See **Attachment #1B, p. 2** for footprint and side view diagrams.
- The barricades are interlocking steel police-type barricades (50 lbs. each) that ring the panels.
- Each panel is approximately 8 feet wide and approximately 16-18 feet in height.
- The panels are made of a tough vinyl, and the frame for each panel is aluminum pipe. The panel frames are composed of aluminum fittings attached to 1.25" aluminum pipe.
- There are 3 main panel sides to Exhibit B, with each side made up of 2 panels that are interlocked by using 1.25" aluminum poles and aluminum fittings.
- The panel sides are also interlocked and braced by using 2 levels of support poles (1.25" aluminum poles) in the interior of the Exhibit (see **Attachment #1B, p. 2.**)
- Each of the 3 main panel sides is approximately 17 feet long.
- The panels are attached to the ring of barricades by at least three 1.25" aluminum pipes extending from the top of the panels (18 feet high) to the base of the barricades.
- Exhibit B rests entirely above ground and is weighted down with between sixteen and thirty-one 40-50 pound sandbags (the number depends on wind.) Therefore, Exhibit B requires no digging or pegs driven into the ground.
- The barricades provide a buffer between the panels and viewers, so that viewers are kept away from the panels.
- The barricades also provide structural integrity for the Exhibit by adding the weight of the barricades (which can be as much as one ton) to the Exhibit and by lowering the center of gravity of the Exhibit to protect against wind gusts.
- We request to use amplified sound at allowed times of the day if it is permitted in this location.

Exhibit FOOTPRINT

Upper interior bracing
Lower interior bracing
Vertical interior bracing



SIDE VIEW

Exhibit consists of three sides of identical dimension

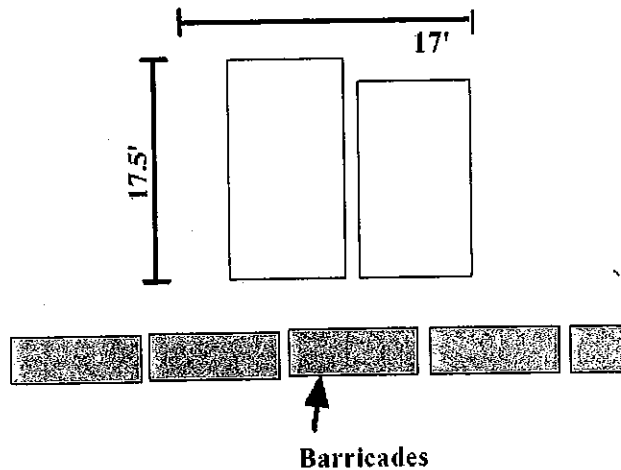
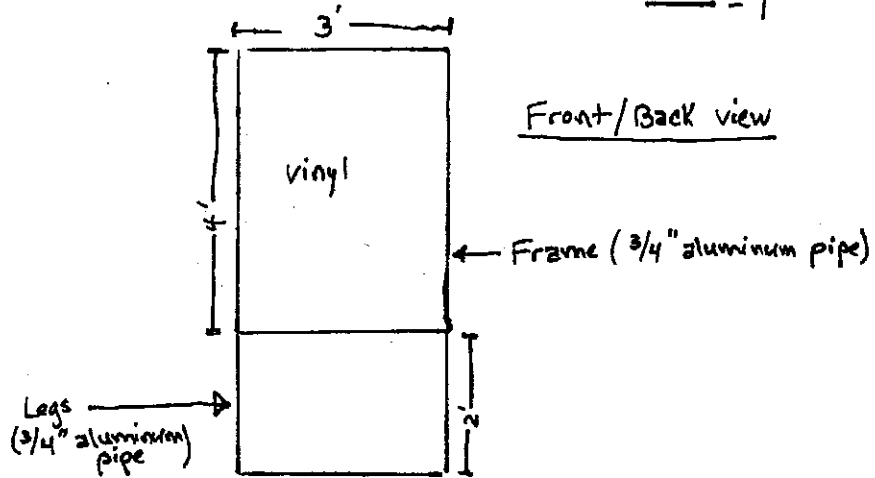


Diagram of Notification Signs

— = 1'



Side view

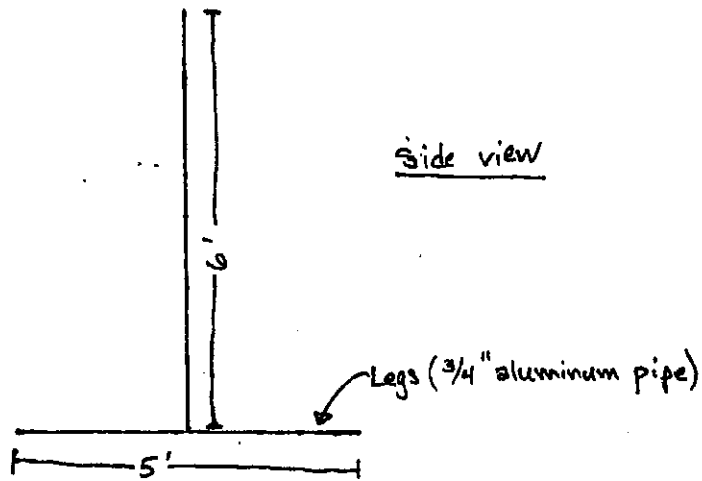


Diagram of Notification Signs

— = 1'

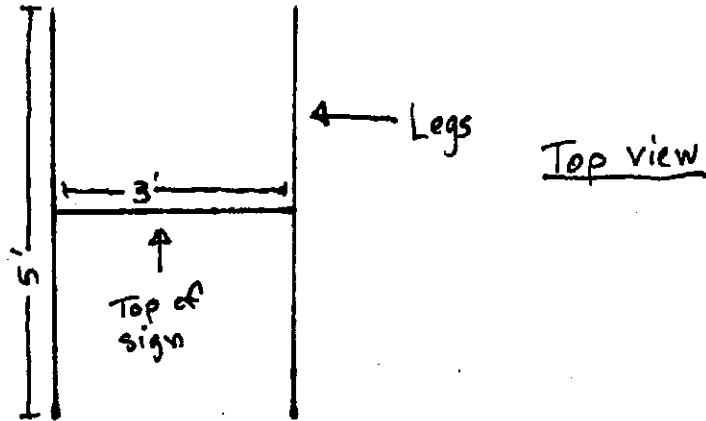


Diagram of Free Speech Boards
— = 1'

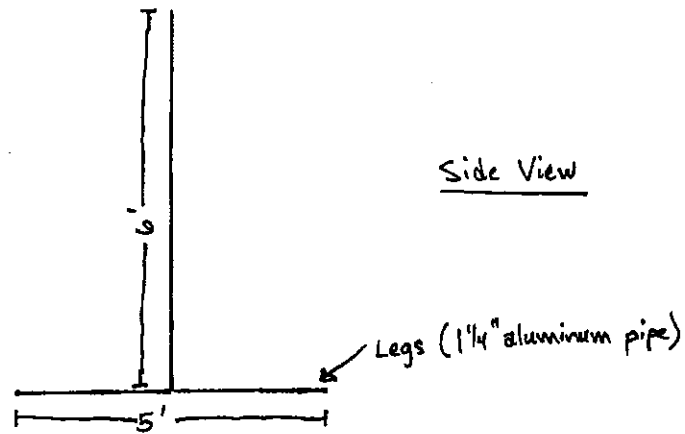
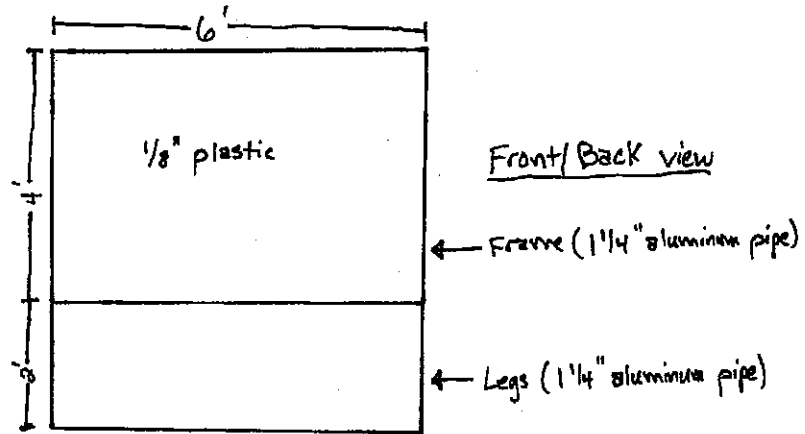
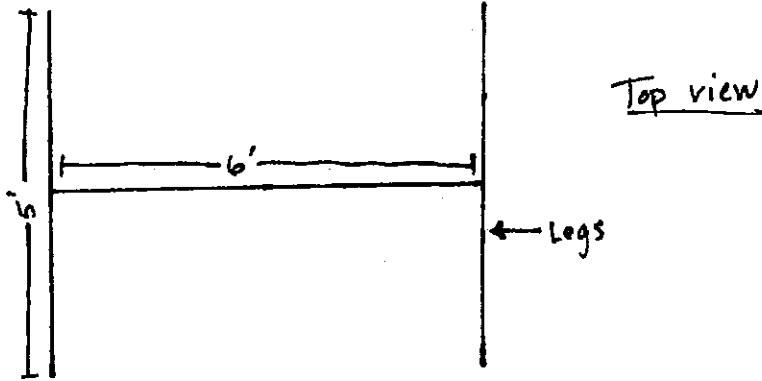


Diagram of Free Speech Boards

— = 1'



ATTACHMENT #4
Page 1 of 1
Justice For All Exhibit
Pro-Life Collegians at MTSU

SERVICES REQUESTED

Traffic & Parking

The Exhibit will be brought to campus in a 30 foot gooseneck trailer, towed by an F-350 pickup.

We will need assistance in bringing the truck and trailer close to the exhibit sites for loading and unloading.