



Foundation for Individual Rights in Education

601 Walnut Street, Suite 510 • Philadelphia, Pennsylvania 19106
T 215-717-3473 • F 215-717-3440 • fire@thefire.org • www.thefire.org

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March 18, 2009

Phil DiStefano
Interim Chancellor
Office of the Chancellor
University of Colorado at Boulder
914 Broadway Street
Boulder, Colorado 80309

Sent by U.S. Mail and Facsimile (303-492-8866)

Dear Chancellor DiStefano:

As you can see from the list of our Directors and Board of Advisors, FIRE unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, due process, legal equality, freedom of association, religious liberty and, in this case, freedom of speech on America's college campuses. Our website, www.thefire.org, will give you a greater sense of our identity and activities.

FIRE is concerned about the threat to freedom of expression posed by the University of Colorado at Boulder's (CU-Boulder's) decision to charge student organizations prohibitively high security fees for bringing controversial speakers to campus.

This is our understanding of the facts; please inform us if you believe we are in error. According to CU-Boulder spokesman Bronson Hilliard, as reported at thedenverchannel.com on March 4, 2009, CU-Boulder recently charged the campus' College Republicans, a student organization, \$4,800 in security fees for "an event featuring two men who claimed to be former members of the Palestinian Liberation Organization."

We also have learned that Students for True Academic Freedom, one of the CU-Boulder student groups that sponsored a March 5, 2009, event that included controversial speakers Ward Churchill and William Ayers, is to be billed \$2,203.42 for security for the event. We also understand that two additional student groups, 180 Degree Shift at the 11th Hour and the Student Environmental Action Coalition, cosponsored the event.

In order to host controversial events, CU-Boulder is requiring student organizations to provide thousands of dollars in funding for security because of

the content of the presentation and the potentially hostile reaction of audience members. Yet *any* requirement that student organizations hosting controversial events pay for extra security is unconstitutional because it affixes a price tag to events on the basis of their expressive content.

The Supreme Court addressed precisely this issue in *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 134–135 (1992), when it struck down an ordinance in Forsyth County, Georgia, that permitted the local government to set varying fees for events based upon how much police protection the event would need. Criticizing the ordinance, the Court wrote that “[t]he fee assessed will depend on the administrator’s measure of the amount of hostility likely to be created by the speech based on its content. Those wishing to express views unpopular with bottle throwers, for example, may have to pay more for their permit.” Deciding that such a determination required county administrators to “examine the content of the message that is conveyed” (citation omitted), the Court wrote that “[l]isteners’ reaction to speech is not a content-neutral basis for regulation.... **Speech cannot be financially burdened, any more than it can be punished or banned, simply because it might offend a hostile mob.**” (Emphasis added.) In the interest of preserving content neutrality in determining fees for campus events, CU-Boulder cannot and must not force student groups to pay more money for security protection because an event deals with controversial subjects or features controversial speakers or because others in the community might feel offended by an event and subsequently become violent.

Moreover, by holding student organizations that host expressive events financially responsible for possible disruptive activity resulting from the controversial character of their events, CU-Boulder grants a “heckler’s veto” to the most disruptive members of the university community. Individuals wishing to silence speech with which they disagree merely have to threaten to protest and student groups not able to furnish adequate funds for security will be forced to cancel their events. In such a situation, disruptive heckling triumphs over responsible expressive activity. This is an unacceptable result in a free society and is especially lamentable on a college or university campus. Controversial speech cannot be unduly burdened simply because it is controversial.

FIRE reminds CU-Boulder that it cannot, consistent with the university’s legal and moral obligation to uphold the First Amendment on campus, require student organizations to pay for security fees for an event on the basis of the event’s expressive content. CU-Boulder must apply only content-neutral criteria when assessing security costs for the event featuring Churchill and Ayers. Moving forward, CU-Boulder must apply the same content-neutral criteria to all student organizations holding events on campus.

Finally, let me note that after FIRE wrote the University of California at Berkeley regarding precisely this issue on February 12, 2009, the school acknowledged its legal responsibility not to burden controversial speech. The University of California at Berkeley subsequently agreed to apply only content-neutral criteria when assessing the security charge for events, regardless of the expected audience reaction and the university’s assessment of the amount of security needed. Such criteria reportedly include the expected number of attendees, the nature of and number of exits from the room for the event, whether money is to be exchanged, and so on.

FIRE hopes to resolve this situation amicably and swiftly; we are, however, prepared to use all of our resources to see this situation through to a just and moral conclusion. Since CU-Boulder should not delay in determining the security charge for the March 5 event, we request a timely response to this letter by Wednesday, March 25, 2009.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Kissel". The signature is fluid and cursive, with the first name "Adam" being more prominent than the last name "Kissel".

Adam Kissel
Director, Individual Rights Defense Program

cc:

Julie M. Wong, Vice Chancellor for Student Affairs, University of Colorado at Boulder
Deborah J. Coffin, Associate Vice Chancellor and Dean of Students, University of Colorado at Boulder
Marc C. Heyart, Commander, Department of Public Safety, University of Colorado at Boulder
J. Tim McGraw, Commander, Department of Public Safety, University of Colorado at Boulder