



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

Greg Lukianoff
PRESIDENT

June 10, 2009

Robert L. Shibley
VICE PRESIDENT

Robert N. Shelton, President
University of Arizona
Administration Building, Room 712
1401 East University Boulevard
P.O. Box 210066
Tucson, Arizona 85721-0066

William Creeley
DIRECTOR OF LEGAL AND
PUBLIC ADVOCACY

Alan Charles Kors
CO-FOUNDER AND
CHAIRMAN EMERITUS

Sent by U.S. Mail and Facsimile (520-621-9323)

Dear President Shelton:

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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, legal equality, due process, freedom of association, religious liberty and, as 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 and legal equality posed by the University of Arizona's (UA's) last-minute decision to charge the College Republicans student organization \$384.72 in extra security costs for a speech by author and conservative activist David Horowitz.

This is our understanding of the facts; please inform us if you believe we are in error.

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Early in 2007, Horowitz generated vigorous debate at UA after authoring an article entitled "Abusive Academics: The University of Arizona," which criticized UA professors by name for teaching "courses in radicalism that are political rather than academic." In the spring term of 2009, the College Republicans fulfilled all administrative requirements for bringing Horowitz to speak on campus on April 7, 2009, in the Kiva Auditorium of the Education Building, a room that holds approximately 200 people. Less than a week before the scheduled speech, however, College Republicans President Ryan Ellison was contacted by Commander Robert Sommerfeld of the UA Police Department (UAPD) and was asked to meet with him regarding security for the event.

Ellison and Sommerfeld met on April 3. Sommerfeld notified Ellison that the Dean of Students Office had called him to inquire about the planned security for the event. According to Ellison, Sommerfeld stated that if the College Republicans did not request two UAPD officers for the event, he would recommend to the Dean of Students Office that the event be cancelled.

The College Republicans had not filled out a Request for Special Event Security, knowing that many similar events on campus are held without security and that Horowitz was planning to bring his own bodyguard. According to the form, requests for security normally must be submitted ten days before the event, but shorter notice is acceptable “under special circumstances where public safety is paramount.” After Sommerfeld’s ultimatum, however, the College Republicans submitted the form for approval later on April 3, “requesting” the two officers demanded by Sommerfeld.

An April 8 article on the Horowitz event in the *Arizona Daily Wildcat* made special mention of the police presence, but did not record any security incidents. On April 19, UAPD sent the College Republicans an invoice for \$384.72 for the two officers for three hours of attendance each. On June 8, Anjelica Yrigoyen, Special Event Coordinator for the UAPD, specifically linked the security charges to the controversial nature of the event: “If you’re planning on having an event in the future which involves someone who may be controversial, please notify us so we can assess what security needs to be present.”

In levying this additional charge, UA is requiring a student organization to provide funding for extra security because of the controversial content of the presentation and the potentially hostile reaction of audience members. However, *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.” In deciding that such a determination required county administrators to “examine the content of the message that is conveyed” (citation omitted), the Court stated 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 when determining fees for campus events, UA 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. UA policies or practices regarding security for events do not supersede students’ and student organizations’ First Amendment rights.

Moreover, by holding student organizations that host expressive events financially responsible for possible disruptive activity resulting from the controversial character of their events, UA 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.

We trust that you understand that the First Amendment’s guarantees of freedom of expression and association fully extend to public universities like UA. See, e.g., *Keyishian v. Board of Regents*, 385 U.S. 589, 605–06 (1967) (“[W]e have recognized that the university is a traditional sphere of free expression so fundamental to the functioning of our society that the Government’s ability to control speech within that sphere by means of conditions attached to the expenditure of Government funds is restricted by the vagueness and overbreadth doctrines of the First Amendment”); *Healy v. James*, 408 U.S. 169, 180 (1972) (citation omitted) (“[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, ‘the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools’”); *Widmar v. Vincent*, 454 U.S. 263, 268–69 (1981) (“With respect to persons entitled to be there, our cases leave no doubt that the First Amendment rights of speech and association extend to the campuses of state universities”).

If the charge for extra security for the Horowitz event is permitted to stand, it not only will be unconstitutional but also will almost certainly be in violation of the group’s right to legal equality. College Republicans members have reported that other, similar events on campus have not included any security at all. For instance, a speaking event on October 16, 2008, featured Ahmed Rehab, Executive Director of the Chicago Office of the Council on American-Islamic Relations, whose speech was entitled “Dialogue Shatters the Myth that Silence Creates: Stereotypes and the Muslim Community.” Rehab spoke in the School of Music’s Holsclaw Recital Hall, another venue that holds approximately 200 people. The event was well-advertised to the public as part of UA’s “UAdiscusses ...” Distinguished Speaker Series. On June 4, 2009, College Republicans Treasurer Jessica Hermann personally talked with Rehab and verified that no security officer was present at the event.

Moreover, it is likely that many events held on days and times similar to that of the Horowitz event in the Kiva Auditorium itself also have had no security officer present. It is particularly relevant that the College Republicans had been cleared to hold its event without security until less than a week before the event. Thus, it is very unlikely that UA can demonstrate that the security costs demanded of the College Republicans are ordinary rather than extraordinary. Singling out the Horowitz event for special treatment holds the group to a clear and unconstitutional double standard.

We reiterate that UA cannot, consistent with its 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. UA must apply only content-neutral criteria when assessing security costs, and it must apply the same content-neutral criteria to all student organizations holding events on campus.

Let me note that this year alone FIRE has written to three universities—the University of Colorado at Boulder, the University of Massachusetts at Amherst, and the University of California, Berkeley—regarding this same violation of free speech rights. In all three instances, the universities acknowledged the *Forsyth* principle and dropped the extra security fees. In 2007, the University of California, Los Angeles, did the same after receiving a similar letter from FIRE. Please follow their lead and spare the University of Arizona the embarrassment of fighting against the Bill of Rights.

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. We request a response to this letter by June 30, 2009.

Sincerely,



Adam Kissel

Director, Individual Rights Defense Program

cc:

Melissa Vito, Vice President for Student Affairs

Carol Thompson, Assistant Vice President for Student Affairs & Dean of Students

Keith Humphrey, Associate Dean of Students & Interim Director of LGBTQ Affairs

Robert Sommerfeld, Commander, UAPD

Anjelica Yrigoyen, Special Event Coordinator, UAPD