



January 26, 2022

Charlie B. Dennis
Chief of Police
Hanover Police Department
46 Lyme Road
Hanover, New Hampshire 03755

Sent via Electronic Mail (charlie.dennis@hanovernh.org)

Dear Chief Dennis:

The Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

We write to seek your department's clarification concerning its involvement in the events leading up to the cancellation of an in-person speaking appearance at Dartmouth College by conservative journalist Andy Ngo and activist Gabriel Nadasles on January 20, 2022. Dartmouth's administration asserts that the in-person event was cancelled due to "concerning information from Hanover police."

Freedom of expression is of indispensable importance to the students and faculty at our nation's institutions of higher education. As the Supreme Court of the United States has recognized, the "vigilant protection of constitutional freedoms is nowhere more vital" than in institutions of higher education, as the "classroom is peculiarly the marketplace of ideas."¹ These rights remain robust, even in the face of potential disruption or threats of violence, as our Supreme Court has made clear that the "need for order" does not negate students' expressive rights on campus.²

These essential rights are imperiled when institutions capitulate to the heckler's veto—that is, when they allow those who would threaten violence to decide what may be said or who may speak. Canceling in-person events because the speaker wishes to air "views unpopular with

¹ *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967) (cleaned up). Although Dartmouth is not a public institution bound by the First Amendment, it makes promises to its students that they enjoy expressive rights on campus. Accordingly, interpretations of the First Amendment's guarantee of "the freedom of speech" provide guidance as to what Dartmouth's institutional promise of that freedom means to its students.

² *Healy v. James*, 408 U.S. 169, 180 (1972).

bottle throwers”³ not only silences a current speaker, but invites future threats to the safety and expressive rights of students and faculty. Once an institution succumbs to the heckler’s veto, hecklers are incentivized to threaten violence to shut down unpopular speech. We are sure you will agree that we must remain vigilant against such threats, as they would imperil the ability of students and faculty to engage in the robust exchange of ideas which may be pointedly objectionable to others.

Because Dartmouth has asserted that your department’s involvement precipitated Dartmouth’s restrictions on Ngo’s appearance, it is important that your department clarify the nature of the “concerning information” that Dartmouth relied on to justify the restrictions, as well as what, if any, recommendations were made by your department.

Given the urgent nature of this matter,⁴ we ask that you respond to this letter by Monday, January 31, 2022, and that you include all relevant records. Providing transparency here will help the public evaluate whether Dartmouth’s decisions were prudent under the circumstances, and whether our institutions are appropriately responding to threats of violence intended to silence unpopular or controversial speakers.

Sincerely,



Sabrina Conza
Program Analyst, Individual Rights Defense Program

Encl.

³ *Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 134 (1992).

⁴ On January 20, FIRE’s Adam Steinbaugh requested records from the Hanover Police Department relating to its actions and communication with Dartmouth College leading up to the scheduled in-person event. The department responded that it would provide us with relevant records by February 10.



January 26, 2022

President Philip J. Hanlon
Office of the President
Dartmouth College
207 Parkhurst Hall
Hanover, New Hampshire 03755

Sent via U.S. and Electronic Mail (President's.Office@Dartmouth.edu)

Dear President Hanlon:

The Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

FIRE is concerned about the state of the freedoms of speech and assembly at Dartmouth College in light of your administration's cancellation of the College Republicans' in-person event featuring journalist Andy Ngo and activist Gabriel Nadas on January 20, 2022. While we appreciate that Dartmouth undertook efforts to allow the event to proceed in a virtual capacity, Dartmouth's commitment to free expression requires that it be transparent in identifying the basis for the alterations imposed—apparently over the student organizers' objections—in response to threats of violence targeting Ngo. Canceling in-person events because the speaker wishes to air “views unpopular with bottle throwers”¹ invites more threats to the safety and expressive rights of Dartmouth students. Dartmouth must explain in detail the circumstances of the cancellation and the steps it will take to uphold its students' expressive rights.

I. Dartmouth Cancels the College Republicans' Event

The following is our understanding of the pertinent facts, which we recognize are a source of disagreement between Dartmouth and the College Republicans. We appreciate that you may have additional information to offer and invite you to share it with us.

The Dartmouth College Republicans, Turning Point USA, and the Network of Enlightened Women scheduled to host an in-person panel discussion and question-and-answer session by

¹ Forsyth Cnty. v. Nationalist Movement, 505 U.S. 123, 134 (1992).

journalist Andy Ngo and activist Gabriel Nadasles at 7:00 pm on January 20, 2022, at Filene Auditorium in Moore Hall on Dartmouth's campus.

On January 18, event organizers shared with Dartmouth administrators online statements from groups identifying themselves as “Dartmouth Anarchists,” “Northeast Antifa,” and other organizations, indicating a plan to protest and disrupt this event.²

Gene Thompson, Police Lieutenant in the Department of Safety and Security, thanked the organizers for sharing this information and assured them that “[o]ur dept and HPD [Hanover Police Department] had a meeting yesterday and we have a plan in place.” Lieutenant Thompson added that both Dartmouth's Department of Safety and Security and the Hanover Police Department “understand your concerns and we will provide the safest environment possible for a successful event.”³ The following day, Director of Institutional Events & Logistics Jim Alberghini responded to the group's message by discussing the safety protocols that Dartmouth and the group would adopt to ensure a successful event, noting that “the best way to alleviate your concerns is to move this event virtual or limit it to Dartmouth-only. We continue to recommend this course.”⁴ Alberghini warned the group: “As previously discussed, the College Republicans—and you as its leaders—are responsible for the smooth execution of this event. The College will assist in enforcing College policy, but as hosts you are responsible for the guests you invite to campus—including crowd behavior, violations of College policies, and any associated damage.” He also said, “If information changes or more becomes available, the College reserves the right to change the format of this event to best ensure the safety of our community and compliance with College policy.”⁵ The organizers say they insisted to Dartmouth administrators that the event remain in person.

On January 19, the same day as Alberghini's message, Dartmouth's Associate Vice President for Communications Diane Lawrence responded to media inquiries by reassuring that Dartmouth had “made all necessary preparations to facilitate this event in a safe manner.”⁶

On January 20, the day of the event, Dartmouth arranged for the deployment of campus security, state troopers, Hanover police officers, Lebanon police officers, and New Hampshire SWAT members in and around Moore Hall.⁷ Officers conducted a “routine sweep” of the venue, an action that Dartmouth described to journalists as “standard procedure” and “not initiated because of specific information.”⁸ In the hours leading up to the event, there were no

² Email from Chloe Ezzo, College Republicans, to Gene Thompson, Police Lieutenant and Department of Safety and Security, Jim Alberghini, Director Institutional Events & Logistics, and Anna Hall, Senior Assistant Dean for Student Life (Jan. 18, 2022, 10:02 AM) (on file with author).

³ Email from Thompson to Ezzo (Jan. 18, 2022, 10:14 AM) (on file with author).

⁴ Email from Alberghini to Ezzo (Jan. 19, 2022, 4:43 PM) (on file with author).

⁵ *Id.*

⁶ NewsNHJ, *Antifa Threatens to Disrupt Dartmouth Appearance by Conservative Journalist*, NH J. (Jan. 19, 2022), <https://nhjournal.com/antifa-threatens-to-disrupt-dartmouth-appearance-by-conservative-journalist>.

⁷ Griffin Mackey, *Dartmouth's Decision to Cancel Ngo Promotes Political Violence*, NH J. (Jan. 23, 2022), <https://nhjournal.com/mackey-dartmouths-decision-to-cancel-ngo-promotes-political-violence>.

⁸ Jacob Strier & Arizbeth Rojas, *Virtual anti-Antifa event hosted by College Republicans moved online due to safety, logistical issues*, THE DARTMOUTH (Jan. 25, 2022), <https://www.thedartmouth.com/article/2022/01/virtual-anti-antifa-event-hosted-by-college-republicans-moved-online-due-to-safety-logistical-issues>.

large protests or violence,⁹ and *The Dartmouth*, the college newspaper, reported that there were “no protesters” gathered at the auditorium that evening.¹⁰

Minutes before the event was set to begin, Dartmouth unilaterally canceled it and offered to move it to a virtual format. The event proceeded virtually, on campus, without any live in-person audience members.

After the cancellation, Dartmouth stated:

In light of concerning information from Hanover police regarding safety issues, similar concerns expressed by the College Republican leadership, and challenges with the student organization’s ability to staff a large public event and communicate effectively (including dissemination of the visitor policy and a prohibition on bags in the building), the College has requested that the Extremism in America panel be moved online. The event was not canceled. The College has supported the event virtually.¹¹

In a subsequent statement, Dartmouth clarified that there had been “no bomb threats.”¹²

In response, the College Republicans attested that security officials deployed to the event said they did not make the decision to cancel the event.¹³ The group also stated that there were no logistical, communication, or policy issues that would have prevented the event from going on as planned. Dartmouth’s security officials declined to comment when asked why the event was moved online.¹⁴

II. Upholding Free Speech Requires Protecting Expressive Activity Against Threatened Disruption

Colleges committed to upholding students’ free speech rights, like Dartmouth,¹⁵ must ensure that student groups are able to exercise their expressive rights by hosting speakers. When

⁹ Damien Fisher, *Free Speech Org to Investigate Dartmouth Cancellation of Ngo Appearance*, NH J. (Jan. 21, 2021), <https://nhjournal.com/free-speech-org-to-investigate-dartmouth-cancellation-of-ngo-appearance> (“There was no visible presence of protesters Thursday night. A pair of men turned away at the doors, who appeared to be in their 30s and 40s, respectively, said they were on the college campus to attend the event.”).

¹⁰ Strier & Rojas, *supra* note 8. Even if protesters had appeared, protest is protected expression and a form of “more speech,” the remedy the First Amendment prefers to censorship. *See, e.g., Whitney v. California*, 274 U.S. 357, 377 (1927).

¹¹ Mackey, *supra* note 7.

¹² Strier & Rojas, *supra* note 8.

¹³ *Id.* (“First, we spoke to several police officers during and after the event. They took it as a personal affront that Dartmouth cited safety concerns as a reason for the cancellation. . . . Those officers were more than capable of maintaining security and, as several told us, never advised Dartmouth to cancel Ngo’s live appearance in the few hours leading up to the event.”).

¹⁴ *Id.*

¹⁵ Dartmouth promises students robust expressive rights consistent with the First Amendment in its official policies, which it is morally and legally bound to uphold. *See, e.g.,* Policy Statement on Freedom of Expression and Dissent, Dartmouth Principles of Community, <https://students.dartmouth.edu/student->

such events are targeted for disruption by those opposed to the speakers or their message, colleges must respond not by canceling the event, but rather by making “bona fide efforts” to protect expressive rights “by other, less restrictive means.”¹⁶ Restricting expressive activity in response to threatened disruption violates Dartmouth’s promises to protect its students’ rights and incentivizes more threats to future events, putting both the expressive rights and the safety of students in jeopardy.

The chief justification Dartmouth put forth for canceling the in-person event is “concerning information from Hanover police regarding safety issues” and “similar concerns expressed by the College Republican leadership.” Dartmouth has not elaborated on the nature or severity of these safety concerns, when that “information” was provided to Dartmouth, whether security officials or administrators made the decision to cancel the event, or exactly why Dartmouth could not host the event as planned with the substantial security that had been arranged. According to the College Republicans, security officers did not have a role in the decision to cancel the event and were surprised by the announcement, which casts doubt on the extent to which legitimate safety concerns factored into Dartmouth’s decision.¹⁷

To the extent that Dartmouth relied on safety concerns raised by the College Republicans, Dartmouth’s cancellation *disincentivizes* students from reporting threats to their safety, as groups will instead refrain from reporting such concerns to universities to avoid the possibility that administrators will unilaterally cancel their events. This is why “[t]he proper response to potential and actual violence is for the government to ensure an adequate police presence . . . and to arrest those who actually engage in such conduct, rather than to suppress legitimate First Amendment conduct as a prophylactic measure.”¹⁸ As one court aptly observed, “In a balance between two important interests—free speech on one hand, and the . . . power to maintain the peace on the other—the scale is heavily weighted in favor of the First Amendment.”¹⁹

Dartmouth’s decisions demand transparency. While authorities may take steps to advance “legitimate” public safety concerns, that authority is not endless, and must be the “least restrictive with respect to” expressive rights of the speaker.²⁰ Otherwise, a “heckler’s veto” will prevail, and authorities would have broad authority to limit speech under dubious security rationales, as actions taken to limit speech “will nearly always be susceptible to being

life/policy/principles-community; Policy Statement on Freedom of Expression, Dartmouth Information Technology Policy, <https://policies.dartmouth.edu/policy/dartmouth-information-technology-policy>. See also *Gill v. Franklin Pierce Law Ctr.*, 899 F. Supp. 850 (D.N.H. 1995) (a university’s Academic Rules and Regulations governing students constituted a contract); *Gamble v. Univ. Sys. of N.H.*, 610 A.2d 357 (N.H. 1992) (analyzing contractual relationship between students and university system).

¹⁶ *Bible Believers v. Wayne Cnty.*, 805 F.3d 228, 255 (6th Cir. 2018). While Dartmouth is not directly bound by the First Amendment, interpretations of the First Amendment’s guarantee of “the freedom of speech” provide guidance as to what Dartmouth’s institutional promise of that freedom means to its students.

¹⁷ Mackey, *supra* note 7.

¹⁸ *Collins v. Jordan*, 110 F.3d 1363, 1371–72 (9th Cir. 1996).

¹⁹ *Bible Believers*, 805 F.3d at 228.

²⁰ *Id.* at 253.

reimagined and repackaged as a means for protecting the public, or the speaker himself, from actual or impending harm.”²¹

The on-site reports—that no protesters appeared, that the police presence was robust, and that law enforcement sweeps beforehand were “routine” and not the result of “specific information”—suggest that relegating Ngo’s appearance to a virtual forum may not have been justified by legitimate security interests. Dartmouth has cited unidentified “information” from law enforcement to justify its decision. It must share that information, together with any facts that would provide Dartmouth students and the public with the ability to ascertain whether Dartmouth’s cancellation of the in-person event was the least restrictive means of protecting expressive rights. As a college that promises students robust free speech rights, Dartmouth must demonstrate that there was no action short of canceling the event that would have ameliorated any security concerns.

Dartmouth also cites “challenges with the student organization’s ability to staff a large public event and communicate effectively (including dissemination of the visitor policy and a prohibition on bags in the building)” as a reason for cancellation. The group denies any such challenges. It strains credulity to suggest that logistical and communication issues resulted in the event’s cancellation considering that Dartmouth mobilized a large security presence to ensure safety, and that the event was set to go on as planned minutes before its scheduled start time.

III. Dartmouth Must Provide a Transparent Explanation for Canceling the Event and Commit to Protecting Its Students’ Rights

FIRE calls upon Dartmouth to publicly explain the circumstances of this cancellation. In particular, Dartmouth should answer the following questions:

1. Which specific threats or security risks were considered in the decision to cancel the event?
2. Who made the decision to cancel the event?
3. Who was consulted before (or about) the decision to cancel the event?
4. Did any police departments direct or advise Dartmouth to cancel the event? If so, which ones?
5. Why were the previously arranged security measures insufficient for the event to proceed?
6. What options to preserve public safety, short of canceling the meeting and making the event virtual, were considered? Why, in particular, was each option unsuccessful or not taken?
7. What steps will Dartmouth take to ensure students and groups can express themselves on campus without fear of violence or substantial disruption from outside parties?

²¹ *Id.* at 255. See also *Cox v. Louisiana*, 379 U.S. 536, 557 (1965) (“lodging of such broad discretion in a public official allows him to determine which expressions of view will be permitted and which will not[, which] thus sanctions a device for the suppression of . . . ideas and permits the official to act as a censor.”).

We request answers to these questions by the close of business on February 2, 2022.

Sincerely,

A handwritten signature in black ink, appearing to read "Zach", with a long, sweeping flourish extending to the right.

Zachary Greenberg
Senior Program Officer, Individual Rights Defense Program

Cc: Jennifer Shepherd, Office of the President Senior Executive Assistant and Manager of
Special Projects
Gene Thompson, Police Lieutenant and Department of Safety and Security
Jim Alberghini, Director, Institutional Events & Logistics