



January 24, 2017

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University of New Mexico
Office of the President
MSC05 3300
1 University of New Mexico
Albuquerque, N.M. 87131

URGENT

Sent via U.S. Mail and Electronic Mail (unmpres@unm.edu)

Dear Acting President Abdallah:

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

FIRE is concerned for the threat to freedom of speech at the University of New Mexico presented by UNM's policy governing security fees for controversial speakers. The policy, which invites arbitrary enforcement, is currently being applied to require a student organization to pay for police to provide security during an appearance by Milo Yiannopoulos.

The following are the pertinent facts as we understand them. Please inform us if you believe we are in error.

On January 27, 2017, Milo Yiannopoulos is scheduled to appear at UNM at the invitation of the UNM College Republicans¹ and the UNM chapter of Young Americans for Liberty,² both recognized student organizations. Yiannopoulos' stop at UNM is part of a tour of campuses across the United States.³ Yiannopoulos' public speaking appearances have often been met by protests from students, faculty, and the public. The vast majority of these

¹ Chris Quintana, *UNM Tries to Levy 'Free Speech Fine,' GOP Group Says*, ALBUQUERQUE JOURNAL, Jan. 17, 2017, <https://www.abqjournal.com/929818/unm-group-protests-3400-security-fee-to-host-breitbart-news-writer.html>.

² Chris Quintana, *Alt-Right Breitbart Columnist to Speak at UNM*, ALBUQUERQUE JOURNAL, Nov. 28, 2016, <https://www.abqjournal.com/897457/columnist-to-speak-at-unm.html>.

³ Hyunky Michael Lee, *Berkeley College Republicans Required to Raise up to \$10,000 to Host Milo Yiannopoulos*, DAILY CALIFORNIAN, Dec. 26, 2016, <http://www.dailycal.org/2016/12/26/berkeley-college-republicans-required-raise-10000-host-milo-yiannopoulos/>.

protests have involved peaceful, albeit vociferous, protests—the use of more speech to counter speech the protesters find offensive. Some have resulted in civil disobedience, violence, or true threats of violence. This conduct has been largely, if not entirely, a *reaction* to Yiannopoulos’ speech, often intended to prevent him from speaking.⁴ Students at UNM have indicated interest in protesting Yiannopoulos’ appearance,⁵ and one organization has pledged to “deny [Yiannopoulos] a platform at UNM by taking the room, the stage, and the mic.”⁶

Sometime between January 10 and 13, 2017, UNM advised the UNM College Republicans that the student organization would have to pay \$3,400 in security fees for Yiannopoulos’ appearance.⁷ A UNM spokeswoman suggested that the university may require “additional security” based on anticipated protests.⁸ These charges are apparently imposed pursuant to Policy 2230 (“Police and Security Services”) of UNM’s Administrative Policies and Procedures Manual.⁹

Policy 2230 provides, in relevant part, and with emphasis added:

A special event is any non-routine, non-academic event that may require security due to the large number of attendees, public role of guests, ***controversial nature of speakers or subjects***, or involvement of dignitaries. Any department, group, or organization hosting a special event or renting a facility to external users must complete a Special Event Notification form and submit it to the UNM Police Department[.]

[...]

After an analysis of the event, program, or facility rental based on currently available information the UNM Police Department will determine the number of police officers, security officers, or combination of officers required to reasonably address the safety and security of participants, and the UNM Police Department will contract for such services. In extraordinary circumstances if the

⁴ See, e.g., Emma Krupp et al., *Protesters Shut Down Yiannopoulos Speech*, THE DEPAULIA, May 24, 2016, <http://depauliaonline.com/2016/05/24/depaul-protesters-shut-down-yiannopoulos/> (describing protesters who disrupted Yiannopoulos’ appearance at DePaul University); see also, e.g., Al Pefley, *Controversial Milo Event Cancelled at FAU After Death Threats*, WPEC CBS 12, Sept. 29, 2016, <http://cbs12.com/news/local/controversial-milo-event-cancelled-at-fau-after-death-threats> (Yiannopoulos appearance at Florida Atlantic University cancelled after FBI investigated a “credible” threat against the event).

⁵ Cathy Cook, *Concerned Students Group Meet With UNM Administrators Over Upcoming Yiannopoulos Visit*, DAILY LOBO, Jan. 20, 2017, <http://www.dailylobo.com/article/2017/01/milo-admin-meeting>.

⁶ *Shut Down Milo Yianoppoulos UNM – ¡No Parasàn!*, FACEBOOK, https://www.facebook.com/events/563463163847561/?active_tab=about (last visited Jan. 22, 2017).

⁷ Quintana, *supra* note 1.

⁸ *Id.*

⁹ *Policy 2230: Police and Security Services*, UNIV. OF N.M., Mar. 15, 2007, <https://policy.unm.edu/university-policies/2000/2230.html>.

security risk to the University is too high, the Chief of Police is authorized to cancel the event, program, or facility rental.

[...]

The event, program, or facility rental sponsor is responsible for security costs based on the number of police and/or security officers required and the length of event, program, or rental. The UNM Police Department will provide a cost estimate, but actual fees will be determined after the event, program, or rental based on actual circumstances. In exceptional situations, the ***Chief of Police is authorized to waive a portion of the security fees if it is determined the event, program, or rental is in the public's best interest.***

Policy 2230 abridges the First Amendment, and UNM cannot utilize it as a vehicle to impose a tax on controversial events, including Yiannopoulos' appearance. A 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, and on the expectation that others will protest the event.

It is well-settled law that the First Amendment applies with full force on public university campuses. *See, e.g., 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.”); *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667, 670 (1973) (“[T]he mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of ‘conventions of decency.’”); *Healy v. James*, 408 U.S. 169, 180 (1972) (“[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.”) (internal citation and quotation marks omitted).

In *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 134–135 (1992), the Supreme Court struck down an ordinance permitting the local government to set varying fees for events, including public demonstrations, based on how much police protection the event would require. *Id.* at 126–127. The Supreme Court, in striking down the ordinance, explained that “[s]peech cannot be financially burdened, any more than it can be punished or banned, simply because it might offend a hostile mob.” *Id.* at 134–135. Imposition of fees related to public speech must be based upon content-neutral criteria, but “[l]isteners’ reaction to speech is not a content-neutral basis for regulation.” *Id.* at 134.

UNM’s Policy 2230 is, in comparison to the ordinance in *Forsyth*, more direct in its reliance upon the content of speech. The *Forsyth* ordinance imposed a fee on organizers to defray the costs of providing security, implicitly inviting administrators to consider how

controversial the speech might be.¹⁰ Policy 2230, in comparison, *explicitly* directs administrators to impose the fee if they determine the speech to involve “controversial [...] speakers or subjects[.]” This determination requires that administrators “must necessarily examine the content of the message that is conveyed,” then “estimate the response of others to that content, and judge the number of police necessary to meet that response.” *Forsyth*, 505 U.S. at 134.

By calling upon administrators to impose a fee for “controversial” speakers, UNM offers a “heckler’s veto” to the members of the university community who have threatened to disrupt the event. Individuals wishing to silence speech with which they disagree merely have to threaten disruption and student groups unable to furnish adequate funds for security will be forced to cancel their events. This is an unacceptable result in a free society and is especially lamentable on a college or university campus.

Policy 2230 also violates *Forsyth* in that it grants the UNM Chief of Police unfettered discretion to *waive* some or all of the costs imposed upon the students or speaker, if doing so is, in the chief’s subjective view, “in the public’s best interest.” This is not an objective standard, but one which turns upon a law enforcement official’s view of what speech should be supported—or, conversely, burdened with a security fee. This standard invites unfettered viewpoint discrimination, with the effect of imposing such fees when UNM officials dislike the speaker or her message. This is precisely the result that the Supreme Court has prohibited:

The decision how much to charge for police protection or administrative time—or even whether to charge at all—is left to the whim of the administrator. There are no articulated standards either in the ordinance or in the county’s established practice. The administrator is not required to rely on any objective factors. He need not provide any explanation for his decision, and that decision is unreviewable. Nothing in the law or its application prevents the official from encouraging some views and discouraging others through the arbitrary application of fees. The First Amendment prohibits the vesting of such unbridled discretion in a government official.

Forsyth, 505 U.S. at 133.

In order to comply with its obligations under the First Amendment, UNM must withdraw its demand that the UNM College Republicans pay security fees for Yiannopoulos’ appearance and rescind Policy 2230. Indeed, Policy 2230 itself permits UNM to do exactly that—imposing the fees would violate students’ First Amendment rights, so waiver of the fees is squarely “in the public’s best interest.” UNM must further clarify to its campus

¹⁰ The *Forsyth* ordinance did not reference the content of the message or explicitly call upon administrators to consider the possibility of protests. Rather, it merely assessed a fee to cover “the cost of necessary and reasonable protection of persons participating in or observing” the event if the cost “exceeds the usual and normal cost of law enforcement for which those participating should be held accountable and responsible.” *Forsyth* at 126, 134.

community that expression on campus will not be burdened, financially or otherwise, simply because it may be controversial.

Because of the urgent nature of these concerns, we respectfully request a response to this letter no later than January 26, 2017.

Sincerely,

A handwritten signature in blue ink, appearing to read 'AS', with a long horizontal flourish extending to the right.

Adam B. Steinbaugh
Program Officer, Individual Rights Defense Program

cc:

Chief Kevin McCabe, University of New Mexico Police Department
Elsa Kircher Cole, University Counsel