



# FIRE

Foundation for Individual  
Rights and Expression

June 30, 2022

President Neeli Bendapudi  
Office of the President  
The Pennsylvania State University  
201 Old Main  
University Park, Pennsylvania 16802

*Sent via U.S. and Electronic Mail (president@psu.edu)*

Dear President Bendapudi:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech, expression, and conscience, and other individual rights on campus, is concerned by Pennsylvania State University's imposition of significant security fees on the student group Uncensored America after it held an event featuring a debate between two political commentators.

Forcing Uncensored America to shoulder these security costs—particularly because they were imposed only after the event was held despite the group having repeatedly requested details about potential security fees to no avail—violates Uncensored America's First Amendment rights and puts freedom of expression at Penn State at risk. Penn State must immediately rescind or appropriately reduce the security fees it is charging Uncensored America in order to live up to its legal obligations to uphold the First Amendment rights of its students.

## **I. Uncensored America Holds Political Debate Without Interruption**

Based on our understanding of the pertinent facts—though we appreciate you may have additional information and invite you to share it—Uncensored America is a registered student organization “dedicated to fighting for freedom of speech” at Penn State,<sup>1</sup> that on April 27 hosted a debate between Elijah Schaffer, a reporter for The Blaze, and Steven “Destiny” Bonnell, an American political commentator and YouTube personality.

On February 12, Uncensored America submitted its first Event Request Form to Penn State. Because the debate initially involved controversial far-right activist Nick Fuentes, the group requested four security officers.<sup>2</sup> The group had not confirmed the number of security

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<sup>1</sup> *Uncensored America*, PENN STATE UNIV. PARK, available at <https://orgcentral.psu.edu/organization/uncensoredamerica> [<https://perma.cc/48RA-YZMC>].

<sup>2</sup> Form submission from: Event Request Form (Feb. 12, 2022, 9:04 p.m.) (on file with author).

officers that would be in attendance when it submitted a second event form with different details.

In that second event form, submitted on March 20, Uncensored America requested two police officers attend the event, noting that the group expected “protests against our organization.”<sup>3</sup> On April 11, the organization told Jeff Zapletal, Penn State’s Associate Director for Campus Programming, that the organization was anticipating less backlash and therefore less need for security than at a 2021 event featuring Milo Yiannapolous, but added that “at least 2 officers out of an abundance of caution” were necessary.<sup>4</sup> According to Penn State’s policies, event staffing levels are determined on a “case by case basis,” and forms must be submitted at least 45 days before an event.<sup>5</sup>

On April 26, one day before the event, Uncensored America emailed Zapletal asking whether “risk management and campus security [had] determined a specific need yet”<sup>6</sup> for the event. Zapletal told the event organizers that he didn’t think “a specific concern has been identified,” but rather there was “curiosity from University police if there was a plan.”<sup>7</sup>

Later that day, the organization emailed Terrell Cooper Hoffman Jr., Homecoming Advisor and Cocurricular Programs Coordinator, asking if Hoffman Jr. “had heard anything from risk management or campus security about a need for a security presence.”<sup>8</sup> The next morning, Hoffman Jr. responded and told the organization that “[a]s for the need of security presence I have not hear [sic] anything from either parties [sic]...”<sup>9</sup>

According to the student organizers, there were no protests and the event ran smoothly. However, Penn State later invoiced Uncensored America for \$1,808.52<sup>10</sup> —the cost for five officers to attend the event.<sup>11</sup>

## **II. The Imposition of Substantial Security Fees After the Event Violates Uncensored America’s First Amendment Rights**

It has long been settled law that the First Amendment is binding on public universities like Penn State.<sup>12</sup> Accordingly, the decisions and actions of a public university—including the

<sup>3</sup> Form submission from: Event Request Form (Mar. 20, 2022, 6:41 p.m.) (on file with author).

<sup>4</sup> Email from Luca Miraldi, student leader, Uncensored America, to Jeff Zapletal, Assoc. Dir. for Campus Programming (Apr. 11, 2022, 1:44 p.m.) (on file with author).

<sup>5</sup> *Special Event FAQs*, PENN ST. UNIV., available at <https://www.police.psu.edu/special-events-faqs> [<https://perma.cc/TAX2-XCMH>].

<sup>6</sup> Email from Miraldi to Zapletal (Apr. 26, 2022, 1:28 p.m.) (on file with author).

<sup>7</sup> Email from Zapletal to Miraldi (Apr. 26, 2022, 1:32 p.m.) (on file with author).

<sup>8</sup> Email from Miraldi to Terrell Cooper Hoffman Jr., Homecoming Advisor and Cocurricular Programs Coordinator (Apr. 26, 2022, 11:22 p.m.) (on file with author).

<sup>9</sup> Email from Hoffman Jr. to Miraldi (Apr. 27, 2022, 8:18 a.m.) (on file with author).

<sup>10</sup> *Id.*

<sup>11</sup> Invoice 1815, Attn: Natalie Hanson (due date May 19, 2022).

<sup>12</sup> *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

recognition and funding of student organizations<sup>13</sup> and maintenance of policies implicating student and faculty expression<sup>14</sup>—must be consistent with the First Amendment.

FIRE understands Penn State’s interest in taking reasonable and narrowly tailored security measures to ensure student-organized events occur without significant disruptions due to protest. In fact, in situations where such protests would become so disruptive as to prevent the event from occurring, we would call on Penn State to take action to ensure that the university does not capitulate to a “heckler’s veto,” where a speaker’s event is canceled because of actual or potential hostility of those ideologically opposed to the event.<sup>15</sup>

Penn State cannot, however, force student groups to shoulder excessive security costs simply because some students may choose to protest. Penn State’s policies and practices regarding event security do not supersede students’ and student organizations’ First Amendment rights.

**A. *Penn State Cannot Levy Disproportionately Burdensome Security Costs on Uncensored America After Its Event***

By forcing Uncensored America to pay more than \$1,800 in security fees after holding its event, Penn State has unconstitutionally affixed a viewpoint-based price tag to the group’s expression. The Supreme Court addressed precisely this issue when it struck down an ordinance in Forsyth County, Georgia, which permitted the local government to set varying fees for events based upon how much police protection the event would need.<sup>16</sup> Declaring the ordinance a violation of the First Amendment, the Court wrote “[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.”<sup>17</sup>

The Court also held that “[any] government regulation that allows arbitrary application is inherently inconsistent with a valid time, place, and manner regulation because such

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constitutional freedoms is nowhere more vital than in the community of American schools.”) (internal citation omitted).

<sup>13</sup> *Bd. of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 221 (2000).

<sup>14</sup> *Dambrot v. Central Mich. Univ.*, 55 F.3d 1177 (6th Cir. 1995).

<sup>15</sup> See, e.g., Zach Greenberg, *Rejecting the ‘heckler’s veto,’* FIRE (June 14, 2017), <https://www.thefire.org/rejecting-the-hecklers-veto/> (detailing trends concerning the increased use of violence and other disruptive tactics to silence speakers on college campuses); Greenberg, *New audio shows severe disruption of Yale Federalist Society panel – which the university did little to prevent*, FIRE (March 29, 2022) <https://www.thefire.org/new-audio-shows-severe-disruption-of-yale-federalist-society-panel-which-the-university-did-little-to-prevent/> (recapping how Yale University acquiesced to a ‘heckler’s veto’ and failed to intervene to stop the disruption of a Federalist Society event), FIRE, *Campus police no match for heckler with cowbell who hijacked speech at Portland State*, FIRE (March 12, 2019) <https://www.thefire.org/campus-police-no-match-for-heckler-with-cowbell-who-hijacked-speech-at-portland-state/> (explaining how Portland State University allowed hecklers or would-be hecklers to shut down campus expression twice in 2019).

<sup>16</sup> *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 134-35 (1992).

<sup>17</sup> *Id.*

discretion has the potential for becoming a means of suppressing a particular point of view.”<sup>18</sup> The Court found that Forsyth County’s implementation of the ordinance did not rely on “narrowly drawn, reasonable and definite standards guiding the hand of the Forsyth County administrator,” and thus ruled that “[n]othing in the law or its application prevents the official from encouraging some views and discouraging others through the arbitrary application of fees.”<sup>19</sup>

Likewise, Penn State’s application of its event security policy is impermissibly arbitrary. The event proceeded without disruption, making the imposition of a burdensome security fee more egregious. Even if significant disruption had occurred, allowing the controversial nature of Uncensored America’s invited speakers to form the basis for the group’s exorbitant fees effectuates a heckler’s veto, allowing the anticipated audience reaction to price the speakers out of the marketplace of ideas.<sup>20</sup> The lack of clarity from Penn State administrators prior to the event could reasonably suggest that no significant security threat was anticipated, thus making the imposition of significant security fees afterwards even more violative of student rights.

### ***B. The Burdensome Fees Jeopardize Students’ Ability to Exercise Their First Amendment Rights***

Any administrative imposition of security fees on a student group must be guided by narrowly drawn, viewpoint- and content-neutral, reasonable, definite, and clearly communicated standards in order to comply with Penn State’s obligations under the First Amendment. The unclear communication prior to the event concerning the number of security officers that would attend, followed by the imposition of significant surprise fees after the event, exacerbates the rights violation at issue here. Uncensored America made a clear effort to communicate security needs to Penn State, initially requesting four officers, then adjusting that request to two officers, and were met with no specificity from Penn State administrators regarding security concerns or the number of officers required at the event.

Penn State prevents student groups with unpaid fee balances from holding future events; therefore, should Uncensored America fail to pay these excessive fees, their First Amendment rights will be further infringed.<sup>21</sup> This outcome is unacceptable at a public university bound to uphold the First Amendment rights of its students.

### **III. Conclusion**

Restricting Uncensored America’s ability to hold future events on campus because of its inability to pay overly burdensome security fees violates both the rights of the student leaders of Uncensored America and other Penn State students interested in attending events held by

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *See, e.g., Watson v. Memphis*, 373 U.S. 526, 535 (1963) (“[C]onstitutional rights may not be denied simply because of hostility to their assertion or exercise.”)

<sup>21</sup> *General Information about the Suspension of an ASA Accounts*, PENN ST. STUDENT, available at <https://studentaffairs.psu.edu/involvement-student-life/student-organizations/student-organization-finance-funding/ASA-Treasurer#> [<https://perma.cc/6Y5W-X9S3>].

the group. The university must act to prevent such a result. Indeed, Penn State should not have charged such excessive fees in the first place, as doing so can effectuate a “heckler’s veto” and infringe on the expressive rights of student groups. If Penn State declines to rescind the fees altogether, it must calculate a more reasonable fee for the group, and must do so before the start of the fall semester, when Uncensored America will presumably plan to hold more events.

We request receipt of a response to this letter no later than the close of business on Friday, July 15, 2022, confirming that Penn State will rescind, or significantly lessen, the security fees, and commit to upholding the First Amendment rights of its students.

Sincerely,

A handwritten signature in black ink, appearing to read "Graham Piro". The signature is fluid and cursive, with the first name "Graham" and last name "Piro" clearly distinguishable.

Graham Piro

Program Officer, Individual Rights Defense Program

Cc: Jeff Zapletal, Associate Director, Campus Programming  
Terrell Hoffman, Homecoming Advisor and Cocurricular Programs Coordinator