



FIRE

Foundation for Individual
Rights and Expression

October 25, 2022

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

URGENT

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

Dear President Bendapudi:

FIRE¹ writes today to request clarification about the events² that led to the cancellation³ of last night's Uncensored America comedy event, and about apparent violence against peaceful protesters that was not met with arrests by campus police.

We deeply appreciate Pennsylvania State University's repeated and explicit commitment to upholding the First Amendment rights⁴ of the event's hosts, the invited speakers, and peaceful protesters. We appreciate Penn State weathered intense public pressure not to proceed with the event, and we understand that the university appropriately deployed what appeared to be a significant police presence to ensure the event could proceed peacefully.

¹ As you may recall from recent correspondence, the Foundation for Individual Rights and Expression (FIRE) is a nonpartisan nonprofit dedicated to defending free speech on campus and beyond. You can learn more about our newly-expanded mission and activities at thefire.org.

² CDT Staff Reports, *Penn State event featuring Proud Boys founder canceled due to 'threat of escalating violence'*, CENTRE DAILY TIMES (Oct. 24, 2022), <https://www.centredaily.com/news/local/education/penn-state/article267799667.html>. The recitation of facts here reflects our understanding of the publicly available pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us.

³ Mike Ives, *Penn State Cancels Event by Proud Boys Founder, Citing Threat of Violence*, N.Y. TIMES (Oct. 24, 2022), <https://www.nytimes.com/2022/10/25/us/proud-boys-penn-state-gavin-mcinnis.html>.

⁴ See *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 omitted).

However, since the event’s eventual cancellation last night “[d]ue to the threat of escalating violence” and the Penn State University Police Department’s “determin[ation] that it was necessary to cancel the speaking event in the interest of campus safety,”⁵ FIRE has not seen evidence of a threat significant enough to warrant cancellation. Rather, reports indicate that minor skirmishes broke out in the crowd of protesters,⁶ which may reasonably be expected at large gatherings of this nature. Without evidence of a threat sufficient to require the event’s cancellation, police should have intervened when a few individuals were acting unlawfully so the event—and concurrent peaceful protest—could move forward.

Police must respond appropriately to protect expressive activity. When individuals violently disrupt protests, the university has a responsibility to remove them to protect protesters’ First Amendment rights.

Likewise, canceling in-person events because the speaker wishes to air “views unpopular with bottle throwers”⁷ only invites more threats to students’ safety and expressive rights. The Supreme Court has held that public universities may not deny groups expressive rights even when those groups are associated with “widespread civil disobedience on some campuses, accompanied by the seizure of buildings, vandalism, and arson.”⁸ 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.⁹ 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 reimagined and repackaged as a means for protecting the public, or the speaker himself, from actual or impending harm.”¹⁰

Universities must act where there are credible threats of violence. But in situations where expressive rights are implicated, they must do so in a way that maximally protects students’ free speech rights. Today, that means providing complete transparency about last night’s events. We ask Penn State to detail the circumstances that led to last night’s cancellation so students can have confidence that their right to host expressive events—and peacefully protest them without being subjected to violence—remains protected on your campus.

⁵ *Threat of violence causes University Police to cancel tonight’s event*, PA. STATE UNIV. (Oct. 24, 2022), <https://www.psu.edu/news/story/threat-violence-causes-university-police-cancel-tonights-event>; PSU Alert UPark, (@PSUAlertUP), TWITTER (Oct. 24, 2022, 6:07 PM), <https://twitter.com/PSUAlertUP/status/1584682916726153216> (“01PSU Alert U-P: Avoid Thomas Building area. Crowd at Thomas bldg. is an unlawful disturbance. Leave the area or be subject to arrest.”).

⁶ See e.g. CDT Staff Reports, *supra* note 2.

⁷ *Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 134 (1992).


⁸ *Healy*, 408 U.S. at 171, 181.

⁹ *Id.* at 253.

¹⁰ *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.”).

Given the urgent nature of this matter, we request a response by close of business tomorrow, Wednesday, October 26.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alex Morey', with a stylized flourish at the end.

Alex Morey
Director, Campus Rights Advocacy

Cc: Charlie Noffsinger, Associate Vice President for University Police & Public Safety
Frank T. Guadagnino, Interim Vice President and General Counsel