



## Foundation for Individual Rights in Education

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January 26, 2010

Ann Weaver Hart, President  
Temple University  
200 Sullivan Hall  
1330 West Berks Street  
Philadelphia, Pennsylvania 19122-6087

*Sent by U.S. Mail and Facsimile (215-204-5600)*

Dear President Hart:

Unfortunately, FIRE must write Temple University a second time regarding the unconstitutional fee levied against the student group Temple University Purpose (TUP) to defray extra security costs for the October 20, 2009, presentation by controversial Dutch politician Geert Wilders. FIRE first wrote you on January 4, 2010, and received a response from Associate University Counsel Valerie I. Harrison on January 21, 2010. We appreciate the university's willingness to waive the security fee charged to TUP, but Harrison's response misrepresents Temple's responsibilities under the First Amendment and controlling legal precedent; demonstrates the arbitrary, indefinite standards used for assessing security fees at Temple; and misrepresents as a "request" TUP's notification of Temple that extra security for the event would likely be needed.

### **Temple Must Pay for Extra Security Necessitated by Program Content, Regardless of "Request" Status**

Temple may not burden a student group with an extra security fee simply because of the controversial nature of an event. While student groups may request any level of security for an event, Temple is under no obligation to provide the requested level of security unless Temple itself deems that level of security to be necessary. However, if Temple decides to provide or require extra security for an event because of the content of that event, it may not then pass the increased costs along to the student group hosting the event.

The Wilders event may have confused Temple regarding this principle, given that Harrison asserts that TUP may fairly be charged for the extra security because of its "request" for that security. The December 3 invoice for the event suggests that TUP left the level of need for extra security entirely unspecified, stating only that "[a]dditional security will be required to secure the room and building." Once TUP had alerted the university to a likely but unspecified need for extra security, the university evidently agreed that security was necessary, as extra security was in fact provided.

In her response, Harrison relies on the assertion that TUP issued a “request” for extra security in order to declare that “the \$6,000 could have legally been imposed upon TUP because it was based not upon program content, but upon the request of the student organization.” This analysis is incorrect. Temple is prohibited by the First Amendment from imposing a financial burden on TUP for hosting a controversial speaker whether or not TUP requested the extra security, since that security was *ultimately deemed necessary by Temple*. Otherwise, Temple would be free to impose prohibitively expensive security fees on student groups hosting controversial speakers based solely on the university’s perception of the need for security, thus unfairly penalizing student groups for inviting certain speakers to campus.

As we pointed out in our first letter to you, the Supreme Court addressed precisely this issue in *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 134 (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. The Court wrote that “[i]n order to assess accurately the cost of security ... the administrator must necessarily examine the content of the message that is conveyed.” *Id.* (citations omitted) (internal quotation marks omitted). The county argued that the ordinance was “content neutral because it is aimed only at a secondary effect—the cost of maintaining public order.” *Id.* In response, the Court wrote that because of this assessment, “it cannot be said that the fee’s justification has nothing to do with content.” *Id.*

Similarly, having made a determination about the need for security at the event, Temple cannot then impose this fee—which is necessarily a product of Temple’s assessment of the potential reaction to the content of Wilders’ speech—on TUP. As we wrote in our first letter to you, 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.**” *Id.* at 134–35 (emphasis added). By insisting on charging TUP for security that Temple itself deemed necessary, the university—although bound by the First Amendment like Forsyth County was—is imposing precisely this kind of financial burden on controversial speech.

Furthermore, by claiming that security fees are assessed simply because a student organization alerts the university to a potential security need, Harrison’s response suggests that Temple’s policy gives student organizations a significant incentive to hide security needs from the university in order to avoid paying the security fee. Such a policy is not only unconstitutional, but it also threatens the safety of the Temple community by encouraging student groups to request less security than is actually needed for events, lest they be subjected to an undue fee that they might not be able to afford.

### **Temple Relies on Unchecked Administrative Discretion When Assessing Fees**

Harrison asserts that the actual cost of the added security “amounted to more than \$6,000.” Although TUP was charged \$576, “the standard charge for an event of this type regardless of program content,” and subsequently paid this amount to Temple, TUP later received a bill for \$1,000 minus a 20% discount—much less than the actual cost. Subsequently, TUP learned that the bill was in error in that it did not show the \$576 payment. Temple still seeks the \$224 balance

for an unexplained portion of the extra security provided. Temple administrators thus have acted arbitrarily and without explanation in charging TUP for the extra security.

The *Forsyth* Court noted that “[a] government regulation that allows arbitrary application is inherently inconsistent with a valid time, place, and manner regulation because **such discretion has the potential for becoming a means of suppressing a particular point of view.**” *Forsyth* at 130 (emphasis added) (internal quotation marks omitted). In *Forsyth*, “the administrator **based the fee on his own judgment of what would be reasonable.**” *Id.* at 132 (emphasis added). The Court found that the county’s implementation of the ordinance showed no “narrowly drawn, reasonable and definite standards guiding the hand of the Forsyth County administrator.” *Id.* at 132–33 (citation omitted) (internal quotation marks omitted). The Court found 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.**” *Id.* at 133 (emphasis added).

Temple’s conduct here demonstrates that student organizations like TUP have no idea how much they will be asked to pay for extra security, even after they fulfill their financial obligations as previously agreed upon. Temple’s bill is arbitrary, unexplained, and unconstitutional.

### **Temple May Not Cap Such Security Fees in the Future**

In *Forsyth*, the county contended that its \$1,000 cap on fees in the ordinance was constitutional because the cap would not result in content-based discrimination. The Court, however, found that “[n]either the \$1,000 cap on the fee charged, nor even some lower nominal cap, could save the ordinance because in this context, the level of the fee is irrelevant. **A tax based on the content of speech does not become more constitutional because it is a small tax.**” *Id.* at 136 (emphasis added).

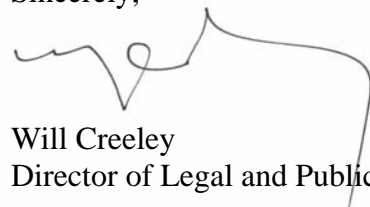
Even if Temple were to assess all student groups the same fee of only \$224 for extra security, this relatively small “tax” would be unconstitutional because it would burden the speech of all groups whose events need extra security because of the content of the speech presented therein.

### **Conclusion**

Temple University must withdraw its request that TUP pay the balance of \$224. Temple also must revise its policy that student organizations may be charged for extra security simply when they ask for it and Temple agrees that such security is necessary. Furthermore, Temple must revise its policy providing that administrators may act with apparently unlimited discretion and without explanation when they assess fees for extra security.

FIRE will continue to pursue the vindication of the First Amendment rights of Temple University’s students. We request a response by February 9, 2010.

Sincerely,

A handwritten signature in black ink, appearing to read "Will Creeley". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Will Creeley  
Director of Legal and Public Advocacy

cc:

Valerie I. Harrison, Associate University Counsel

Theresa A. Powell, Vice President for Student Affairs

Betsy Leebron Tutelman, Senior Vice Provost and Dean of Students

Andrea Caporale Seiss, Associate Dean of Students

Carl S. Bittenbender, Executive Director of Campus Safety Services

Jason Levy, Director, Howard Gittis Student Center

Alicia Q. Ferguson, Reservation Coordinator