



**Foundation for Individual Rights in Education**

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March 24, 2011

President Susan A. Cole  
Montclair State University  
Office of the President  
College Hall 235  
Montclair, New Jersey 07043

**URGENT**

*Sent via U.S. Mail and Facsimile (973-655-7195)*

Dear President Cole:

The Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals from across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, freedom of conscience and, as in this case, freedom of speech on America's college campuses. Our website, thefire.org, will give you a greater sense of our identity and activities.

FIRE is deeply concerned about the free speech rights of the group Students for a Democratic Society (SDS) at Montclair State University (MSU). MSU intends to force SDS to pay for security costs incurred by the university as a result of a planned protest of a speaking engagement hosted by the group. The event, a lecture by former professor of education and former Weather Underground leader Bill Ayers, is scheduled for 8:00 p.m. this evening. MSU must immediately relieve SDS of this unconstitutional burden.

This is our understanding of the facts. Please inform us if you believe we are in error.

On February 14, 2011, SDS submitted a Function Request Form for a lecture event, "Bill Ayers on Education and the New Activism." The event was approved by MSU's Center for Student Involvement (CSI), and it was scheduled for 8:00 p.m. this evening in MSU's University Hall, Room 1030. As required by MSU policy, SDS applied for security.

On March 22, an unnamed representative from CSI emailed SDS to notify the group that "at least 2 officers" would be needed for its event and that no more

than 100 people would be allowed to attend the event, given the capacity of the room. The letter further stated,

[W]e have received a number of concerned phone calls and emails regarding this speaker, and are likely going to have University Police establish a protest area. You will be responsible for the cost of any additional officers assigned to that area.

In levying this additional charge for security, Montclair State University is requiring a student organization to provide funding for extra security because of the controversial content of the presentation and the fact that it may be unpopular with some in the community. However, any requirement that student organizations hosting controversial events pay for extra security provided by MSU due to the nature of the event is unconstitutional because it affixes a price tag to events on the basis of their expressive content. The Supreme Court addressed precisely this issue in *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 134–135 (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. Declaring the ordinance a violation of the First Amendment, the Court wrote that “[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.” In deciding that such a determination required county administrators to “examine the content of the message that is conveyed,” 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.**” (Emphasis added; citation omitted.) As a state university, MSU is legally bound by the *Forsyth* decision.

Making the rights violation in this instance still clearer, after SDS contested the extra security requirements, including those requiring that the group subsidize the protection of people protesting the event from outside the venue, CSI responded by e-mail on March 23 that “[i]t is not the event itself that would require additional officer [sic], but the number of people the event is bringing.” While SDS may in some cases be expected to pay for security costs directly related to the conduct of its event, the costs involved with the university’s choice to establish a protest area or otherwise deal with hostile protesters may not be assessed against SDS.

CSI’s e-mail further informed SDS that the cost of additional security is “always ... absorbed by the sponsoring organization,” without regard to the type of event being held. But the fact that this unconstitutional practice is applied to all groups is irrelevant. Indeed, MSU may *not* require that student groups pay the costs for extra security in any such cases, whether or not the groups agree with MSU’s assessment of extra security needs due to protesters. Otherwise, MSU would be free to impose prohibitively expensive security fees on student groups hosting allegedly 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. To be clear: MSU’s policies or practices regarding security for events do not supersede students’ and student organizations’ First Amendment rights, and as a public institution, MSU may not legally violate the First Amendment rights of its students and student organizations.

Making matters worse, SDS has no idea how much MSU may decide to bill it for extra security at the lecture. MSU might deem that the establishment and maintenance of an orderly protest area could require the presence of an additional five, ten, or fifteen police officers, costing SDS thousands of dollars—all without giving SDS any indication of how MSU determined such a force to be necessary. Such arbitrary determinations will inevitably be tied to the viewpoints of the speakers involved, and their perceived unpopularity. 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,” and 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.**” *Id.* at 133 (emphasis added; internal quotation marks omitted; citation omitted).

MSU does have one relevant and clear standard for events such as the Bill Ayers lecture. According to CSI policy, an event that has “over 100 Montclair State University students and is a seated event” is classified as “Type C.” The security requirement for Type C events is “1 officer per 100 guests.” FIRE is unaware of any other “narrowly drawn, reasonable and definite standards” guiding MSU’s hand in this case. Since the current event is strictly limited to 100 guests, MSU must follow its own policy and charge SDS for only one officer. If MSU chooses to include any additional officers because of the likelihood of hostile audience members, the costs involved—again, per the Supreme Court’s decision in *Forsyth*—may not constitutionally be charged to SDS.

By forcing student organizations to pay for security necessitated by protestors or hostile audience members, MSU effectively grants a “heckler’s veto” to those who disagree with the content of a speaker’s message, and thus provides a chilling incentive to the most disruptive members of the university community and its environs. Individuals wishing to silence speech with which they disagree merely have to threaten to protest, and student groups not able to furnish adequate funds for security will thereby be forced to cancel their events. In such a situation, the mere threat of disruption triumphs over responsible expressive activity. This is an unacceptable result in a free society and is especially lamentable on a public university campus.

If MSU does indeed hold SDS responsible for these extra charges, it will almost certainly violate the group’s right to legal equality. It is virtually certain that many events have been held on days and times similar to that of Ayers’ planned lecture in University Hall and have had little or no extra security. Thus, it will likely be virtually impossible for MSU to demonstrate that any added security fees levied on SDS are ordinary rather than extraordinary. Singling out this event for special treatment holds the group to a clear and unconstitutional double standard.

We trust that you understand that the First Amendment’s guarantees of freedom of expression and association fully extend to public universities like Montclair State University. See, e.g., *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); *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”). Accordingly, the requirements of *Forsyth* are directly applicable to the current situation.

To reiterate: Montclair State University cannot, consistent with its legal and moral obligations to uphold the First Amendment on campus, require student organizations like SDS to pay security costs for an event on the basis of the event’s expressive content or the reactions of others to that content. MSU must apply only reasonable, content-neutral criteria when assessing security costs, and it must apply the same reasonable, content-neutral criteria to all student organizations holding events on campus.

We hope to resolve this matter swiftly and amicably, but we are prepared to use all of the resources at our disposal to ensure a just resolution.

Due to the urgent nature of this case, FIRE requests that you immediately inform SDS that MSU will assess SDS no costs for extra security. FIRE also requests a response to our letter by April 7, 2011.

Sincerely,



Peter Bonilla

Assistant Director, Individual Rights Defense Program

cc:

Karen Pennington, Vice President for Student Development and Campus Life, Montclair State University

Fatima DeCarvalho, Assistant Dean for Student Life and Director, Center for Student Involvement, Montclair State University

Julie Fleming, Assistant Director for Student Involvement, Montclair State University

Rose Mary E. Howell, Dean of Students, Montclair State University