



Foundation for Individual Rights in Education

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February 12, 2009

Chancellor Robert J. Birgeneau
Office of the Chancellor
University of California at Berkeley
200 California Hall #1500
Berkeley, California 94720-1500

URGENT

Sent by U.S. Mail and Facsimile (510- 643-5499)

Dear Chancellor Birgeneau:

As you can see from the list of our Directors and Board of Advisors, FIRE unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, due process, legal equality, freedom of association, religious liberty and, in this case, freedom of speech on America's college campuses. Our website, www.thefire.org, will give you a greater sense of our identity and activities.

FIRE is concerned about the threat to freedom of expression posed by the University of California at Berkeley's decision to charge a student group, the Objectivist Club of Berkeley (OCB), over \$3,000 for security for a speech by Elan Journo of the Ayn Rand Institute to be held on campus on Tuesday, March 3.

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

Dave Zornek, OCB president, desired to bring Journo to campus to deliver a speech entitled "America's stake in the Arab-Israeli conflict." Zornek observed appropriate university procedure in reserving room space and registering the event.

However, according to Zornek, he was orally notified by Officer John Lechmanik of the UC Berkeley Police Department that security in the form of uniformed officers would be needed for the event. In a meeting with Lechmanik, Zornek was informed that security was required due to the subject matter of Journo's presentation, the size of the event and, most importantly, previous tension between Israeli and Palestinian student groups. Zornek replied by telling Lechmanik that none of the OCB's previous events had been problematic, but

Lechmanik stated that it was not up to Zornek to determine how much security would be necessary.

Further, Zornek was notified that the OCB would be responsible for paying for the event's security personnel. In a follow-up e-mail sent to Zornek on February 5, Lechmanik provided the following estimate:

2 Sergeants @ \$94.59 per hour for approximately 3.5 hours \$ 662.13
10 Officers @ \$73.10 per hour for approximately 3.5 hours \$2,558.50

Total \$3,220.63.

Until we have further details, this is just an estimate. It is possible staffing will require 12 officers (or more) which would raise your total cost to approximately \$3732.33.

In order to host Journo's presentation, then, Berkeley is requiring OCB to provide somewhere between three and four thousand dollars in funding for security solely due to the content of the presentation and the potential reaction of audience members. Yet *any* requirement that student organizations hosting controversial events pay for extra security is clearly unconstitutional because it affixes a price tag to events on the basis of their expressive content.

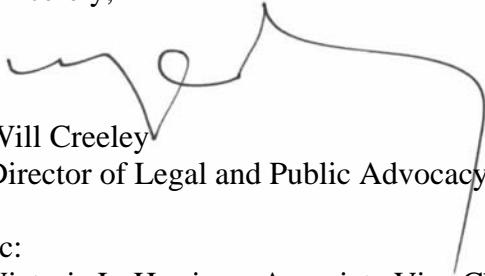
The Supreme Court addressed precisely this issue in *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 134–135 (1992), by striking down an ordinance in Forsyth County, Georgia, that permitted the local government to set varying fees for events based upon how much police protection the event would need. The Court wrote that in the case of the Forsyth County ordinance, “[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.” Deciding that such a determination required county administrators to “examine the content of the message that is conveyed” (citation omitted), the Court wrote 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.) In the interest of preserving content-neutrality in determining fees for campus events, Berkeley cannot and must not force student groups to pay more money for security protection because the event deals with controversial subjects by which others in the community might be offended and subsequently become violent.

Moreover, by holding student organizations hosting expressive events responsible for whatever disruptive activity results from the controversy of these events, Berkeley grants a “heckler’s veto” to the most disruptive members of the university community. 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 be forced to cancel their events. In such a situation, disruptive protests win out over responsible expressive activity. Controversial speech cannot be unduly burdened simply because it is controversial.

FIRE reminds Berkeley that it cannot, consistent with the university's legal and moral obligation to uphold the First Amendment on campus, require OCB to pay for security fees for an event simply because of the event's expressive content. When OCB hosts its upcoming event, currently scheduled for March 3, Berkeley must not hold the group responsible for security costs.

FIRE hopes to resolve this situation amicably and swiftly; we are, however, prepared to use all of our resources to see this situation through to a just and moral conclusion. We request a response to this letter by Thursday, February 19, 2009.

Sincerely,

A handwritten signature in black ink, appearing to read 'Will Creeley', with a long, sweeping underline that extends to the right and then curves down.

Will Creeley
Director of Legal and Public Advocacy

cc:

Victoria L. Harrison, Associate Vice Chancellor/Chief of Police, University of California at Berkeley

Harry Le Grande, Vice Chancellor for Student Affairs, University of California at Berkeley

Jonathan Poullard, Dean of Students, University of California at Berkeley

Marcia Riley, Director, Student Involvement and Leadership Programs, University of California at Berkeley

John Lechmanik, Officer, University of California at Berkeley Police Department

Beth Karren, Attorney for Students, University of California at Berkeley