



Foundation for Individual Rights in Education

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January 4, 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:

As you can see from the list of our Directors and Board of Advisors, FIRE (thefire.org) unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, due process, freedom of association, religious liberty and, as in this case, freedom of speech and legal equality on America's college campuses. You may be aware of FIRE's amicus brief in *DeJohn v. Temple University* in 2008, a lawsuit that produced a precedential ruling from the Third Circuit Court of Appeals against Temple's unconstitutional speech code.

FIRE is concerned about a new threat to freedom of expression and legal equality posed by Temple University's *post hoc* charge to Temple University Purpose (TUP), a registered student organization, of \$800 in extra security costs for a speech by Dutch politician Geert Wilders, who has expressed controversial views about Muslims and Islam. Temple University may not levy this charge for extra security without violating the constitutional rights of TUP.

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

Wilders spoke at Temple University on the evening of October 20, 2009, at Temple's Anderson Hall, sponsored by TUP. (A cosponsor, Temple College Republicans, withdrew sponsorship at the eleventh hour.) Given the controversial nature of Wilders' views, additional security was needed beyond the usual amount for that venue. Temple provided the extra security; I personally was present and observed some of the extra security measures, such as individual screening. There were no apparent disturbances during the event.

On December 3, 2009, however, TUP was surprised with a bill (enclosed) for \$800 for “Security Officer,” with the explanation that the charge was for the costs “to secure the room and building.” According to the bill, the funds were due by December 8. On December 11, according to TUP Interim President Brittany Walsh in an e-mail to Reservation Coordinator Alicia Q. Ferguson:

TUP paid the amount provided in the contract by you, which was taken by Ms. [Sharon] Lee[, Coordinator, Student Affairs]. Additionally, in my meeting with Jason [Levy, Director, Howard Gittis Student Center], Maureen [Fisher, Program Coordinator], and Gina [D’Annunzio, Director, Student Activities] on the 16th of October, Jason stated to me, that the university would have to eat the extra cost to hold the event; which the university did not have a problem doing according to him.

Five minutes later, Ferguson replied via e-mail to Walsh stating, “I will speak with Jason regarding the university eating the cost.” Walsh followed up with Ferguson via e-mail on December 22 but has received no response.

In levying this additional charge for security, Temple University is requiring a student organization to provide funding for extra security because of the controversial content of the presentation and the potentially hostile reaction of audience members. However, *any* requirement that student organizations hosting controversial events pay for extra security provided by Temple 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. Criticizing the ordinance, 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” (citation omitted), 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.)

In the interest of preserving content neutrality when determining fees for campus events, Temple University cannot and must not force student groups to pay more money for security protection because an event deals with controversial subjects or features controversial speakers, or because others in the community might feel offended by an event and subsequently become violent. Temple University policies or practices regarding security for events do not supersede students’ and student organizations’ First Amendment rights.

Moreover, by holding student organizations that host expressive events financially responsible for possible disruptive activity resulting from the controversial character of their events, Temple University 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 heckling triumphs over responsible expressive activity. This is an unacceptable result in a free society and is especially lamentable on a college or university campus. Controversial speech cannot be unduly burdened simply because it is controversial.

We trust that you understand that the First Amendment’s guarantees of freedom of expression and association fully extend to public universities like Temple University. See, e.g., *Keyishian v. Board of Regents*, 385 U.S. 589, 605–06 (1967) (“[W]e have recognized that the university is a traditional sphere of free expression so fundamental to the functioning of our society that the Government’s ability to control speech within that sphere by means of conditions attached to the expenditure of Government funds is restricted by the vagueness and overbreadth doctrines of the First Amendment”); *Healy v. James*, 408 U.S. 169, 180 (1972) (citation omitted) (“[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’”); *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”).

If the charge for extra security for the Wilders event is permitted to stand, it also will almost certainly be in violation of TUP’s right to legal equality. It is virtually certain that many events held on days and times similar to that of the Wilders event in Anderson Hall have had little or no security to speak of. The bill clearly notes that the charge is for “[a]dditional security.” Thus, it is virtually impossible for Temple University to demonstrate that the security costs demanded of TUP are ordinary rather than extraordinary. Singling out this event for special treatment holds the group to a clear and unconstitutional double standard.

We reiterate that Temple University cannot, consistent with its legal and moral obligation to uphold the First Amendment on campus, require student organizations to pay security costs for an event on the basis of the event’s expressive content. Temple University must apply only content-neutral criteria when assessing security costs, and it must apply the same content-neutral criteria to all student organizations holding events on campus.

In 2009 alone, FIRE wrote to four universities—University of Colorado at Boulder; University of Massachusetts Amherst, University of California, Berkeley; and University of Arizona—regarding this same violation of free speech rights. In all four instances, the universities acknowledged the *Forsyth* principle and dropped the extra security fees. In 2007, University of California, Los Angeles, did the same after receiving a similar letter from FIRE. Please follow their lead and spare Temple University the embarrassment of fighting against the Bill of Rights—and another potential loss in court in the wake of *DeJohn v. Temple University*.

FIRE hopes to resolve this situation amicably and swiftly. FIRE itself does not litigate, but we are 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 January 19, 2010.

Sincerely,



Adam Kissel

Director, Individual Rights Defense Program

cc:

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

Encl.