



April 25, 2023

Via Email

Mike McCord
Captain, UTA Police Department
202 E. Border Street
Arlington, TX 76010

RE: Unconstitutional Security Fees at UTA

Dear Captain McCord,

We represent TPUSA at University of Texas Arlington. TPUSA recently received a bill from you for over \$26,000 for security at a small event it held last Fall, as well as an additional smaller bill for a subsequent event. These charges were due to concerns about *others* protesting at TPUSA's events. Because the charges are content and viewpoint-based, as explained below, these bills violate the First Amendment. We request that these bills be immediately rescinded and that the University implement policies to prohibit viewpoint-based security fees in the future.

By way of introduction, Alliance Defending Freedom's Center for Academic Freedom (CAF) is an alliance-building legal organization dedicated to ensuring that all students may speak and associate freely. CAF has been instrumental in revising over 400 policies at campuses across the country and has achieved victory in more than 91% of our cases. However, when possible, we prefer to work together with universities like yours to address unconstitutional policies upfront and avoid prolonged litigation.¹

¹ We have a track record of successful litigation. Alliance Defending Freedom has consistently achieved successful results for its clients before the United States Supreme Court, including fourteen victories before the highest court since 2011. *See, e.g., Americans for Prosperity Found. v. Bonta*, 141 S. Ct. 2373 (2021) (representing Thomas More Law Center in consolidated case; striking down state law requiring charities to disclose identities of donors to government authorities); *Uzuegbunam v. Preczewski*, 141 S. Ct. 792 (2021) (student free speech); *March for Life Educ. & Def. Fund v. California*, 141 S. Ct. 192 (2020); *Thompson v. Hebdon*, 140 S. Ct. 348 (2019) (overturning ruling upholding a law limiting political contributions); *Nat'l Inst. of Fam. & Life Advocates v. Becerra*, 138 S. Ct. 2361 (2018) (upholding ADF client's free speech rights against the State of California); *Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rights Comm'n*, 138 S. Ct. 1719 (2018) (upholding ADF client's First Amendment rights); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017) (upholding ADF client's First Amendment rights); *Zubik v. Burwell*, 578 U.S. 403 (2016)

Background

The facts alleged in this letter are based on our review of the University's policies, communications that were provided by current students, and direct communication with students with knowledge of these events. We welcome any clarification you wish to provide.

Based on communications with members of TPUSA we understand the following facts to be accurate²:

1. On or about November 10, 2022, TPUSA hosted Jeff Younger to speak on campus in College Hall Room 101.
2. Less than 50 people attended the event in the Hall.
3. Prior to the event, TPUSA discussed security concerns with UTA Police Sergeant Thomas Savage as well as other campus administrators.
4. On October 24, 2022, Sergeant Savage emailed TPUSA Vice-President Mr. Carlos Turcios regarding security for the event. In this email, Sergeant Savage stated the following:
 - a. Because Mr. Younger had been protested at a different event at UNT "we are going to require this event to have off-duty officers there to provide security."
 - b. The number of officers would "likely be 2-4" but discussions were still ongoing.
 - c. "Historically, this cost (paying the officers) is borne by the organization sponsoring the event."
5. On October 20, Mr. Turcios emailed Sergeant Savage asking for a quote for two officers for three hours (after Sergeant Savage had told Mr. Turcios that private security was not an option). Sergeant Savage indicated that the rates were variable but averaged \$72.82/hour per officer.
6. Mr. Turcios and University representatives never agreed on the number of officers or that TPUSA would pay for however many officers the

(representing Geneva College and Southern Nazarene University in two consolidated cases; upholding ADF clients' First Amendment rights); *Reed v. Town of Gilbert*, 576 U.S. 155 (2015) (unanimously upholding ADF client's free-speech rights); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014) (representing Conestoga Wood Specialties Corp. in consolidated case; striking down federal burdens on ADF client's free-exercise rights); *Town of Greece v. Galloway*, 572 U.S. 565 (2014) (upholding a legislative prayer policy promulgated by a town represented by ADF); *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125 (2011) (upholding a state's tuition tax credit program defended by a faith-based tuition organization represented by ADF).

² I have attached copies of most of the emails and bills referenced for your convenience.

- University decided to send to any of the events discussed. However, based on Sergeant Savage's October 20 email, four officers hired for three hours at \$72.84 per hour should have costed \$873.84.
7. On March 29, 2023, Mr. Turcios received a bill from you for \$26,807.56 for "staffing costs allocated to your organization for the [November 10th] event."
 8. On April 19, 2023, Mr. Turcios received another bill ("due upon receipt") for \$1,844.18 for a subsequent event attended by approximately 20 students about combating human trafficking.
 9. The need for security arose only from anticipated actions by third parties that were not under the control of TPUSA.

Analysis

The security fee assessment against TPUSA violates the First Amendment's prohibition on the "heckler's veto" and against viewpoint discrimination—including the prohibition on "unbridled discretion."

"It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys."³ Nor may the government engage in viewpoint discrimination, which is "an egregious form of content discrimination."⁴ One way in which the government engages in viewpoint discrimination is by granting unbridled discretion to an administrator to choose when a burden on speech (such as a security fee) applies without being limited by an exclusive list of content and viewpoint neutral criteria. The Supreme Court held in *Forsyth County v. Nationalist Movement* that "[t]he First Amendment prohibits the vesting of such unbridled discretion" to discriminate between viewpoints "in a government official."⁵ According to the Court, "[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."⁶ Specifically relevant to this matter, **the "decision [of] how much to charge for police protection . . . or even**

³ *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995).

⁴ *Id.* at 829.

⁵ *Forsyth Cty., Ga. v. Nationalist Movement*, 505 U.S. 123, 133 (1992).

⁶ *Id.* (quotation marks and citation omitted); see also *Long Beach Area Peace Network v. City of Long Beach*, 574 F.3d 1011, 1042 (9th Cir. 2009) (noting that unbridled discretion to impose security fees indicated possible content-based discrimination).

whether to charge at all” cannot be left up to administrators, or their evaluation of how hecklers might respond to speech.⁷

As the Supreme Court held, “[l]isteners’ reaction to speech is not a content-neutral basis for regulation,”⁸ and “[t]his Court has held time and again: ‘Regulations which permit the Government to discriminate on the basis of the content of the message cannot be tolerated under the First Amendment.’”⁹

In that case, the court noted that “the county offers only one justification for this ordinance: raising revenue for police services. While this undoubtedly is an important government responsibility, it does not justify a content-based permit fee.”¹⁰

As other courts have noted in similar contexts, speech that is “met by violence or threats or other unprivileged retaliatory conduct by persons offended by [it] cannot lawfully be suppressed because of that conduct. Otherwise, free speech could be stifled by the speaker’s opponents’ mounting a riot”¹¹ Charging security fees based on the content of speech is exactly the type of “suppression” the First Amendment does not permit.¹² Such security fees are an unconstitutional heckler’s veto.

Here, UTA has assessed security fees based on the content of TPUSA’s expression in violation of the First Amendment. While imposing security fees based on objective criteria regardless of the content of the speech *might* be permissible (e.g., every reservation no matter the content must pay, for example, \$200), UTA does not have a set security fee for the use of College Hall Room 101. Nor does it have a set security fee based on the number of seats to be filled. The fee here, like in *Forsyth County*, is based on subjective evaluations of how *hecklers and protestors may respond* to TPUSA’s speech. That is a content and viewpoint-based evaluation prohibited by the First Amendment.¹³

Charging TPUSA over \$26,000 for police personnel at the event is prohibitively “expensive speech” not “free speech.”

⁷ *Forsyth Cnty.*, 505 U.S. at 133.

⁸ *Id.* at 134.

⁹ *Id.* at 135.

¹⁰ *Id.* at 135-36.

¹¹ *Zamecnik v. Indian Prairie Sch. Dist. No. 204*, 636 F.3d 874, 879 (7th Cir. 2011).

¹² *Cf. Forsyth Cnty.*, 505 U.S. at 133.

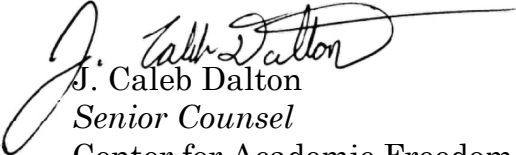
¹³ *Forsyth Cnty.*, 505 U.S. at 133-36; *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995).

Conclusion

In sum, the security costs assessed against TPUSA violate well-established First Amendment principles. In order to avoid immediate legal action, we request the University rescind all security bills issued to TPUSA and revise its policies to prohibit charging security fees based on the heckler's veto in the future.

Your response is requested by no later than close of business on April 27, 2023. You may contact me via the phone or email address listed in my email to you.

Regards,


J. Caleb Dalton
Senior Counsel
Center for Academic Freedom at
Alliance Defending Freedom

cc:

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UTA Chief Legal Officer

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