



October 2, 2024

Via email and mail

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Re: University of Memphis allows mob to shut down Kyle Rittenhouse event

Dear Dr. Hardgrave, Ms. Carlson, Dr. Lawhead, and Ms. Murry:

On March 20, the University of Memphis allowed a mob to shut down a speaking event featuring Kyle Rittenhouse. Outside the auditorium, hundreds of protestors shouted, played music, and loudly denounced Mr. Rittenhouse's presence on campus.

The scene inside the auditorium wasn't much different. Hostile students—allowed to disrupt the event by the University's last-minute changes to the ticketing system—shouted Mr. Rittenhouse down. As University administrators and police

looked on, Mr. Rittenhouse took the stage with many students walking out while others booed and jeered him. Students shouted at and booed him throughout. Because the heckling made it impossible for him to deliver his remarks, he prematurely moved to question and answer. But that didn't stop the disruption.

After about 30 minutes of ongoing hostility, Mr. Rittenhouse's private security rushed him off stage as disruptors cheered. Not to be outdone, a mob chased the Turning Point USA at the University of Memphis (TPUSA) members who organized the event to the parking garage. The mob threatened to kill TPUSA members, spit on their cars, and blocked their cars from leaving. After all that, the University still charged TPUSA \$1,600 for security.

The University failed to meet its constitutional and statutory obligations. It failed to remove the disruptors and instead forced Mr. Rittenhouse to cut his remarks short. And it failed to provide adequate security. The First Amendment and Tennessee's Campus Free Speech Protection Act don't allow the University to engage in this viewpoint discrimination.

Alliance Defending Freedom (ADF) writes to you on behalf TPUSA.¹ We ask that you remedy this situation as set forth in our Demand below. Student-disruptors claimed to give Mr. Rittenhouse a "Memphis welcome." Now, the University must offer Mr. Rittenhouse a *true* Memphis welcome—this time allowing him to express his message.

¹ ADF is an alliance-building, non-profit legal organization that advocates for the right of people to freely live out their faith and beliefs. We are dedicated to ensuring that students can exercise their rights to speak, associate, and learn on an equal basis with all other students regardless of their viewpoints. Alliance Defending Freedom has consistently achieved successful results for its clients, including numerous free speech victories before the United States Supreme Court. *E.g.*, *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023); *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595 (2021); *Uzuegbunam v. Preczewski*, 592 U.S. 279 (2021). It has also successfully represented students and student groups against shutdowns of their events on college campuses and unconstitutional security fees. *E.g.*, *At ADF's request, VA university gives pro-life event a proper do-over*, <https://adflegal.org/press-release/adfs-request-va-university-gives-pro-life-event-proper-do-over> (May 2, 2023); *ADF letter prompts TX university to cancel \$28k charge for conservative events*, <https://adflegal.org/press-release/adf-letter-prompts-tx-university-cancel-28k-charge-conservative-events> (May 10, 2023).

Facts

Disruption even before event

In February, TPUSA, a registered student organization, scheduled an event with the University to feature Kyle Rittenhouse. Mr. Rittenhouse intended to give his *Rittenhouse Recap* talk about the importance of individual rights and self-defense. The University approved the use of the UC Theater for the March 20 event. But administrators informed the chapter that it would have to pay fees for security and that it was “up to the U[niversity] Police to determine how many officers will need to be present.”

With approval from the University, TPUSA issued tickets for the event through its publicly available online registration system. The group made tickets free and open to all students.

News of Mr. Rittenhouse’s upcoming event “caused an uproar on social media.”² Some labeled Mr. Rittenhouse a “racist” and “murderer.”³ Disruptors created an Instagram account that “encourage[d] people to reserve tickets for the event but not show up.”⁴ But the University didn’t address those abuses. Instead, just 24 hours before the event, the University accused TPUSA’s ticketing system of not being “fair and equitable.” It threatened canceling the event unless TPUSA switched to the University’s ticketing system, despite the University not having any policy requiring use of its system. And the University said it would only reserve 50 tickets (out of 300) for the chapter’s members and supporters.

The University then forced TPUSA to notify all people who had a confirmed ticket that it was no longer valid and that they would have to register for a new ticket. Ms. Carlson informed the chapter that the new ticketing system would go live at 9 a.m. the morning of the event. Though the go-live time was not public knowledge, word somehow made it to the disruptors the night of March 19. Shortly after 9 a.m. on March 20, the event reached maximum capacity, with many people relegated to the waiting list.

In the lead-up to the event, a Memphis student doxed TPUSA’s president by publicly posting his name, phone number, email address, and home address. The

² *Community Expresses Outrage/Support at Announcement of Kyle Rittenhouse U of M Appearance*, MemphisFlyer (Mar. 11, 2024), <https://perma.cc/UYP2-DED9>.

³ *Id.*

⁴ *Id.*

president raised this issue with administrators and campus police officers. An officer recommended he not stay on campus that night. Yet no University official took any steps to protect the president. When TPUSA members identified that student to police at the Rittenhouse event, University administrators and police responded that they wouldn't ask him to leave.

The event disrupted

Before the event began, hundreds of students gathered outside the UC Theater.⁵ The students hurled insults against Mr. Rittenhouse and TPUSA and played loud music.⁶ But police kept the protestors separate from the entrance to the theater.

Inside the theater, the disruptors prevailed while University administrators and police officers stood by. Only 50 to 60 attendees made it into the purportedly sold-out event.⁷ Students “drowned [Mr. Rittenhouse] out as soon as he took the stage.”⁸ He began his speech while many attendees booed and jeered him while others walked out.⁹ The boos, shouts, and insults made it impossible for Mr. Rittenhouse to deliver his planned remarks.¹⁰ Because the disruptive audience members “obviously [did] not want to hear [Mr. Rittenhouse] talk,” he moved to a Q&A format shortly after starting.¹¹ That didn't help. Disruptors continued to boo and jeer him throughout.¹² As the disruption continued, Mr. Rittenhouse's private security ushered him off the stage while disruptors cheered. Mr. Rittenhouse was on stage for only 30 minutes.¹³ Dean Lawhead and other administrators, along with several police officers, attended the event, but they refused to stop the hecklers.

⁵ *Rittenhouse's visit to University of Memphis cut short by students, protestors*, Action News 5 (Mar. 20, 2024), <https://perma.cc/4Y9D-EYTX>.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Campus Reform, *Students walk out of Kyle Rittenhouse event at University of Memphis*, YouTube (Mar. 21, 2024), <https://perma.cc/953S-KCEV>.

¹⁰ *See id.*

¹¹ WREG News Channel 3, *Kyle Rittenhouse speaks at University of Memphis*, YouTube at 2:55 (Mar. 20, 2024), <https://perma.cc/42NH-Z4KP>.

¹² ABC 7 Chicago, *Kylie Rittenhouse cuts Memphis event short, leaves stage amid student backlash*, YouTube (Mar. 22, 2024), <https://perma.cc/GBG6-WPUM>.

¹³ *See id.*

Not content with running Mr. Rittenhouse off the stage, disruptors then chased TPUSA members and supporters from the theater to their cars—a distance of some 500 feet.¹⁴ The hostile mob threatened to kill TPUSA members and screamed insults at them, forcing them into a run to the parking garage.¹⁵ When police blocked a stairway to the parking garage, the mob ran to the parking garage exit to prevent TPUSA members' cars from leaving.¹⁶ As TPUSA members slowly left the garage, disruptors spit on their cars, hit their cars, continued jeering them, and even invited them to hit them with their cars.¹⁷ The ongoing hostility caused TPUSA members to duck while inside their cars for their safety.¹⁸ When all was said and done, the disruptors applauded themselves for giving Mr. Rittenhouse a “Memphis welcome.”¹⁹

To TPUSA's knowledge, no students received either University discipline or criminal charges for their misconduct. Nor did any University official check in with TPUSA members after the event. But the University did send TPUSA a bill for \$1,600 in security costs, which the organization paid.

Analysis

The University violated both the First Amendment and Tennessee's Campus Free Speech Protection Act.

“State colleges and universities are not enclaves immune from the sweep of the First Amendment.” *Healy v. James*, 408 U.S. 169, 180 (1972). In fact, “the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American” colleges, which serve as the quintessential marketplaces of ideas. *Id.* (quoting *Shelton v. Tucker*, 364 U.S. 479, 487 (1960)). Of course, “[i]t is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys.” *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995).

¹⁴ FOX13 Memphis, *Kyle Rittenhouse faces crowd of protestors during controversial speech at University of Memphis*, YouTube (Mar. 21, 2024), <https://perma.cc/Q6R9-3T3R>.

¹⁵ Anne-Elizabeth Matheny (@rightwingAE), X (Mar. 21, 2024, 5:17 AM), <https://perma.cc/XD63-ECMS>.

¹⁶ FOX13 Memphis, *supra* note 14.

¹⁷ Julio Rosas (@Julio_Rosas11), X (Mar. 20, 2024, 9:22 PM), <https://perma.cc/R9Y96-CJRW>.

¹⁸ Thunderb4lightnin, TikTok (Mar. 21), <https://perma.cc/P75N-NSJ6>.

¹⁹ FOX13 Memphis, *supra* note 14.

Colleges cannot effectuate a heckler's veto. *Bible Believers v. Wayne Cnty.*, 805 F.3d 228, 252 (6th Cir. 2015) (en banc). Speech “does not lose its protection under the First Amendment due to the lawless reaction of those who hear it.” *Id.* Thus, “[w]hen a peaceful speaker, whose message is constitutionally protected, is confronted by a hostile crowd, the state may not silence the speaker as an expedient alternative to containing or snuffing out the lawless behavior of the rioting individuals.” *Id.* Neither can police “sit idly on the sidelines—watching as the crowd imposes, through violence, a tyrannical majoritarian rule—only later to claim that the speaker’s removal was necessary for his or her own protection.” *Id.* at 253. Instead, the “police may go against the hecklers, cordon off the speakers, or attempt to disperse the entire crowd if that becomes necessary.” *Id.* At bottom, a police officer “must take reasonable action to protect from violence persons exercising their constitutional rights.” *Glasson v. City of Louisville*, 518 F.2d 899, 906 (6th Cir. 1975). “[I]n the absence of a speaker’s exhortation to violence, in carefully defined circumstances, state officials are not entitled to rely on community hostility as an excuse not to protect, by inaction or affirmative conduct, the exercise of fundamental rights.” *Id.* (cleaned up).

Security fees based on the content or viewpoint of speech also impose a heckler’s veto. Policies that allow University administrators to charge security fees without “narrow, objective, and definite standards” grant unbridled discretion. *Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 131 (1992). That’s unconstitutional because “such discretion” provides “a means of suppressing a particular point of view.” *Id.* at 130. “The decision how much to charge for police protection or administrative time—or even whether to charge at all—[cannot be] left to the whim of the administrator.” *Id.* at 133; *accord New Century Found. v. Robertson*, 400 F. Supp. 3d 684, 701 (M.D. Tenn. 2019) (“[G]rant[ing] authority to a government official to determine a security fee based on the anticipated hostile reaction to a group’s gathering... and the attendant cost of providing law enforcement officers” licenses unconstitutional viewpoint discrimination.)

Tennessee’s Campus Free Speech Protection Act also forbids colleges from effecting a heckler’s veto. Intending to promote “commitment to the freedom of speech,” the general assembly mandated that colleges, including the University of Memphis, implement a policy protecting speech. Tenn Code. § 49-7-2403(b). That policy must “maintain[] a campus as a marketplace of ideas for all students ... in which the free exchange of ideas is not to be suppressed because the ideas put forth are thought by some or even by most members of the institution’s community to be offensive.” *Id.* § 49-7-2405(a)(3). The policy must also prohibit students and faculty from “substantially obstruct[ing] or otherwise substantially interfer[ing] with the freedom of others to express views they reject or even loathe.” *Id.* § 49-7-2405(a)(7). At all times, a college “has a responsibility to promote a lively and fearless freedom of debate and deliberation and protect that freedom.” *Id.*

Neither does Tennessee law allow heckler's vetoes through viewpoint-discriminatory security fees. The Campus Free Speech Protection Act prohibits universities from "charg[ing] students security fees based on the content of their speech, the content of the speech of guest speakers invited by students, or the anticipated reaction or opposition of listeners to speech." *Id.* § 49-7-2405(a)(15).

Here, the University of Memphis failed three times in its constitutional and statutory duties. First, the University wholly failed to take "reasonable action" to protect the free speech rights of TPUSA and Mr. Rittenhouse. *See Glasson*, 518 F.2d at 906. The University and police (who were present in force) sat "idly" by while the crowd imposed its will on the event for 30 minutes and ultimately prevented Mr. Rittenhouse from delivering his message. *Bible Believers*, 805 F.3d at 253. The University did not prevent students from substantially interfering with the event. *See* Tenn. Code § 49-7-2405(a)(7). Nor did it discipline such students afterwards. It did not "go against the hecklers."²⁰ *See Bible Believers*, 805 F.3d at 253. And then—despite the hostile crowd of hundreds outside the auditorium—police escorted TPUSA members to the parking garage in full view of the mob. Nothing separated the members from the mob, allowing disruptors to chase TPUSA members, threaten to kill them, spit on their cars, and otherwise jeer them. The University refused to "snuff[] out the lawless behavior of the rioting individuals." *Id.* at 252.

Second, the University's last-minute changes to the ticketing system and the leak of that information to the disruptors signal unlawful viewpoint discrimination. TPUSA used its own ticketing system—with the University's consent—and made tickets free and available to all students. But after a social media backlash to the event and disruptors claiming many of the tickets, the University belatedly conditioned the event on changing to its ticketing system. And the University would only reserve 50 seats for people who wanted to attend the event without disrupting. The leak of the ticketing change allowed disruptors, in accord with their publicly released plan, to snap up more seats. That led to only 50–60 people out of a possible 300 to attend the event, with the majority of attendees either prematurely leaving or disrupting the event. All that suggests that the University sought to minimize a message with which it disagreed.

²⁰ A subsequent *Rittenhouse Recap* event at Clemson University shows what the University should have done here. When disruptors chanted as Mr. Rittenhouse began to speak, Clemson police officers escorted them out of the auditorium. *See* Josiah Sullivan, *Protestors removed from Kyle Rittenhouse event hosted by Clemson TPUSA*, *The Tiger* (Apr. 27, 2024), <https://perma.cc/QN2Y-CDKJ>. The event then proceeded without issue.

Third, the University imposed a large security fee based on “the anticipated reaction or opposition of listeners to speech.” Tenn. Code § 49-7-2405(a)(15). The University allowed the police department—in its sole discretion—to determine how many officers to assign to the event. That unbridled discretion licensed the police to consider Mr. Rittenhouse’s views—and the social media outcry about them—when allocating officers. That’s not free speech; it’s prohibitively expensive speech. And to add insult to injury, the University charged the security fee even after failing to protect the speech in question.

Demand

Based on the University’s constitutional and statutory violations, TPUSA requests that the University promptly remedy the situation by:

1). Inviting Mr. Rittenhouse back to campus to give his *Rittenhouse Recap* before the end of the Fall 2024 semester. Mr. Rittenhouse is available November 13;

2). Providing a ticketing system that will open at least two weeks in advance of the event and that reserves at least half of the available seats for TPUSA, its members, and its supporters. The ticketing system should limit tickets to one per person. Alternatively, the University can allow TPUSA to use its ticketing system.

3). Stopping disruptors from interfering with Mr. Rittenhouse delivering his message at the rescheduled event. That includes a public warning before the event that any disruptors will be asked to leave and then escorted out if they continue with their disruption;

4). Providing adequate security to prevent any disruption. Security must include a plan for TPUSA members and supporters to enter and exit the event without coming into contact with any disruptors;

5) Refunding the \$1,600 charged to TPUSA in security fees for the March 20 event and revising its policy to require the use of narrow, objective, and definite criteria when charging fees for security; and

5). Requiring all University of Memphis students, faculty, staff, and police to receive training on the freedom of speech under the First Amendment and Tennessee’s Campus Free Speech Protection Act and University rules on disruption of events.

We appreciate your careful attention to this matter. We ask that you respond to this request no later than October 16, so that TPUSA at the University of Memphis may promptly consider appropriate next steps. Please immediately place a litigation

Dr. Hardgrave, Ms. Carlson, Dr. Lawhead, and Ms. Murry

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hold on all email accounts, document collections, social media accounts, and all other sources of information or communications (including electronically stored information and video recordings) that relate in any way to the facts discussed above or to TPUSA at the University of Memphis.

Very truly yours,

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