



ALLIANCE DEFENDING  
**FREEDOM**

FOR FAITH. FOR JUSTICE

February 22, 2016

**URGENT**

**VIA EMAIL**

Victor I. King  
University Counsel  
California State University, Los Angeles  
5151 State University Drive  
Los Angeles, California 90032  
*vking@cslanet.calstatela.edu*

**Re: Unconstitutional Assessment of Security Fees for the Young Americans for Freedom Event on February 25, 2016**

Dear Mr. King:

Young Americans for Freedom, chapter affiliate of Young America's Foundation ("YAF") and a registered student organization at California State University, Los Angeles ("University"), contacted Alliance Defending Freedom about a violation of its constitutional rights when the University assessed security fees for an expressive event scheduled for this Thursday. We ask that you immediately rescind the decision to assess the fees.

By way of introduction, Alliance Defending Freedom 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 religious and conservative students may exercise their rights to speak, associate, and learn on an equal basis with all other students.

**FACTUAL BACKGROUND**

YAF is hosting a speech by Ben Shapiro this Thursday, February 25, 2016 in the U-SU Theatre. Mr. Shapiro's speech is entitled "When Diversity Becomes a Problem," and will discuss trigger warnings, diversity, and microaggressions. YAF followed the University's policies and procedures for planning this event, and has been promoting this event via social media and flyers for several weeks.

On January 12, 2016, Frangelo Ayran, assistant director for student development, emailed YAF chapter president Mark Kahanding and asked about the expected attendance and publicity related to the event. During this time YAF began publicizing the event on social media, as is common with student organization events. In reaction, some University students commented on the social media posts and called the YAF chapter "intolerant," "racists," and

“white supremacists.” In particular, University Associate Professor of Sociology Robert Weide called the YAF students “white supremacists” and invited the YAF students to fight him in the U-SU gym.<sup>1</sup>

On January 24, 2016, YAF’s faculty advisor wrote to Dean of Students Jennifer Miller and Mr. Ayran and noted his “concerns” about the event given the reaction some University staff and students were posting on social media. Dean Miller responded and noted that the University was concerned as well and that she and Senior Associate Vice President Nancy Wada-McKee would explore ways to support the safety of students.

Eventually, Mr. Kahanding met with Student Union officials and received an email from Jonathan Avalos in the University Police Department on February 18, 2016, indicating that YAF must hire three Eagle Patrol Officers and one University police officer to provide security for the event. Attached to Mr. Avalos’s email was a Public Safety Work Request (enclosed), completed by Mr. Avalos and signed by John Ortiz, director of operations at the Student Union. Although the Request notes that Mr. Shapiro will provide his own security detail, it states that additional security must be provided by YAF because “Mr. Shapiro’s topics and views are controversial.” The University intends to charge YAF \$621.50 for security.

The University’s Security at Campus Events policy states that student organizations may request public safety at an event and must contact the Department of Public Safety for events expecting more than 75 attendees.<sup>2</sup> In addition, Administrative Procedure 505 requires the Department of Public Safety to “[p]erform a risk assessment of each event,” which “will take into account the type of event, profile of attendees, historical, or any other relevant considerations.”<sup>3</sup> It also requires staff to “[d]etermine [the] type of security necessary based on the type of event being held.”<sup>4</sup> The guidelines state that “Controversial activity” will require 3–All police officers, 0–2 parking officers, and 2–5 student assistants.<sup>5</sup>

### ANALYSIS

As you are well aware, “state colleges and universities are not enclaves immune from the sweep of the First Amendment.”<sup>6</sup> In fact, “the vigilant protection of constitutional freedoms is

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<sup>1</sup> See Kate Hardiman, *Professor challenges students defending conservative campus event to a fight*, The College Fix (Jan. 25, 2016), at <http://www.thecollegefix.com/post/25970/>; CSULA Professor Calls YAF ‘White Supremacists,’ Invites Them to Physically Fight Him (Jan. 24, 2016), at <http://www.yaf.org/update-csula-professor.aspx>.

<sup>2</sup> University Security at Campus Events, at <http://www.calstatela.edu/student-services/security-campus-events>.

<sup>3</sup> University Administrative Procedure 505 § 6.6.4, available at <http://www.calstatela.edu/sites/default/files/groups/Administration%20and%20Finance/Procedure/ap505.pdf>.

<sup>4</sup> *Id.* § 6.6.5.

<sup>5</sup> *Id.* § 6.6.5.1.

<sup>6</sup> *Healy v. James*, 408 U.S. 169, 180 (1972).

nowhere more vital than in the community of American schools,”<sup>7</sup> because “the core principles of the First Amendment ‘acquire a special significance in the university setting, where the free and unfettered interplay of competing views is essential to the institution’s educational mission.’”<sup>8</sup> The University’s assessment of a security fee for YAF’s February 25 event is unconstitutional because administrators assessed the fee based on the viewpoint of YAF’s speech and based on the potential negative reactions of listeners.

### **I. The University Is Discriminating Against YAF Based on the Viewpoint of its Speech.**

“It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys.”<sup>9</sup> Nor may the government engage in viewpoint discrimination, which is “an egregious form of content discrimination.”<sup>10</sup>

Here, the University assessed the security fees based on the viewpoint of YAF’s event and speaker. Messrs. Ortiz and Avalos are requiring YAF to pay over \$600 for security at the February 25 event because the presenter’s “topics and views are controversial.” They are acting pursuant to University policy because Administrative Procedure 505 permits the University to assess security fees based on the “controversial” nature of the activity.

The Supreme Court has said, “[s]peech cannot be financially burdened, any more than it can be punished or banned, simply because it might offend a hostile mob.”<sup>11</sup> Imposing security fees based on the perspective offered by YAF and its speaker is viewpoint discrimination.<sup>12</sup> Thus, the University is violating YAF’s First Amendment rights.

### **II. The University Assessment of Security Fees Is an Unconstitutional Heckler’s Veto that Violates the First Amendment.**

By requiring YAF to pay security fees based on the potential reaction of students who are planning a counter-protest and a faculty member who is proposing physical violence, the University is using the unbridled discretion inherent in the Security at Campus Events policy to impose an unconstitutional heckler’s veto.

In *Forsyth County v. Nationalist Movement*, the Supreme Court held that a county ordinance allowing a government official unbridled discretion to establish a fee for speaking

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<sup>7</sup> *Id.* (quoting *Shelton v. Tucker*, 364 U.S. 479, 487 (1960)).

<sup>8</sup> *Coll. Republicans at S.F. State Univ. v. Reed*, 523 F. Supp. 2d 1005, 1016 (N.D. Cal. 2007) (quoting *Doe v. Univ. of Mich.*, 721 F. Supp. 852, 863 (E.D. Mich. 1989)).

<sup>9</sup> *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995).

<sup>10</sup> *Id.* at 829.

<sup>11</sup> *Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 134-35 (1992).

<sup>12</sup> *Rosenberger*, 515 U.S. at 828-29.

based on the estimated costs of security was unconstitutional under the First Amendment.<sup>13</sup> 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.”<sup>14</sup> Because the “decision [of] how much to charge for police protection . . . or even whether to charge at all” was “left to the whim of the administrator,” without any consideration of “objective factors” or any requirement for “explanation,” the ordinance was an unconstitutional prior restraint on speech.<sup>15</sup>

The University’s Security at Campus Events policy and Administrative Procedure 505, like the ordinance in *Forsyth County*, vest administrators with unbridled discretion to charge student groups security fees for their events. The policy states student organizations may request public safety at any event and must contact the Department of Public Safety for events expecting more than 75 attendees.<sup>16</sup> The administrative procedure provides guidelines for Public Safety, indicating that police are required for “controversial activity,”<sup>17</sup> but grants administrators broad discretion to perform a risk assessment and evaluate the type of event, profile of attendees, historical information, or any other relevant considerations. These considerations are too broad to provide administrators with any meaningful guidance when deciding whether to assess security fees or any justification for charging the fees to registered student organizations like YAF.

Not only does the lack of specific criteria for the security fee policy and procedures permit administrators to charge fees based on the content and viewpoint being expressed, but it also allows the assessment of fees based on the potential negative reactions of listeners, both issues that led the Supreme Court to declare unconstitutional the permit policy in *Forsyth County*. “Listeners’ reaction to speech is not a content-neutral basis for regulation.”<sup>18</sup> The University’s policy violates the First Amendment rights of YAF and all students on campus.

### DEMAND

In light of these clear constitutional violations, we ask that you immediately rescind the security fees assessed to YAF for the February 25 event. We also ask that you take all steps necessary to preserve any documents connected with, discussing, or relevant to the incidents described herein.

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<sup>13</sup> *Forsyth Cnty.*, 505 U.S. at 130.

<sup>14</sup> *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).

<sup>15</sup> *Forsyth Cnty.*, 505 U.S. at 133.

<sup>16</sup> See *supra* note 2.

<sup>17</sup> See *supra* note 5.

<sup>18</sup> *Forsyth Cnty.*, 505 U.S. at 134; see also *Bachellar v. Maryland*, 397 U.S. 564, 567 (1970) (“[I]t is firmly settled that under our Constitution the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers, or simply because bystanders object to peaceful and orderly demonstrations.”).

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Since YAF's event is scheduled for this Thursday at 2 p.m., please respond in writing by close of business on Tuesday, February 23.

Very truly yours,

/s/David J. Hacker

David J. Hacker  
Senior Counsel  
Director of Center for Academic Freedom  
ALLIANCE DEFENDING FREEDOM

Enclosure



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### Public Safety Work Request

<b>Instructions:</b> Please type or print and complete all unshaded areas. Work and billing will be initiated when Approval of Expenditure is checked & Account Number & Department Head Approvals are completed.	<input checked="" type="checkbox"/> Estimate Only <input type="checkbox"/> Approve Expenditure (Sign or initial Department Head Approval)
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Project/Event/Job Title When Diversity Becomes a Problem w/ speaker Ben Shapiro	Department Head Approval	Date
Project/Event/Job Location (BLDG & RM #) U-SU, Theatre- Thursday, February 25, 2016, from 2 PM - 4 PM	Department	Dept. Ext.
Requested By John Ortiz, University-Student Union, x3-2457	Account Number	

**Special Events** Alcoholic Beverages:  Present/Permitted  Not Present/Not Permitted Total Estimated Attendance: 200  
 Has event occurred before?  Yes  No If yes, when: \_\_\_\_\_  
 Describe the project/event to include specific details such as type of event, activities planned, parking requirements, etc.  
 Student organization Young Americans for Freedom will be hosting guest speaker Ben Shapiro. Mr. Shapiro's topics and views are controversial therefore University Police will be assigned to this event. Ben Shapiro will have his own security detail as well that must be sanctioned by the Chief of Police. Doors open at 1:30 PM and event starts at 2 PM.

**Additional Information:** Describe the requirements of the job and include justification for request, if applicable.  
 Several University Police Officer will be utilized for this event.  
 3 Eagle Patrol personnel will be needed to mitigate the line and assist University Police.  
 Student organization will only be charged for 1 Police personnel.

Received By	Date	Scheduled By	Date
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Estimated Costs			Actual Costs		
University Police	Hours	Cost	University Police	Hours	Cost
Police Officers (\$85/hr) 1	4.5	\$382.50	Police Officers		
Student Assistants (\$14/hr) 3	4.5	\$189.00	Student Assistants		
Dispatchers			Dispatchers		
<b>Total University Police</b>	<b>9</b>	<b>\$571.50</b>	<b>Total University Police</b>		

Parking	Hours	Cost	Parking	Hours	Cost
Parking Officers (\$45/hr)			Parking Officers		
Student Assistants (\$14/hr)			Student Assistants		
Lot(s) (\$6.45/space)			Lot(s) (\$6.00/space)		
Materials			Materials		
<b>Total Parking</b>	<b>0</b>	<b>\$0.00</b>	<b>Total Parking</b>		

Lock Shop	Hours	Cost	Lock Shop	Hours	Cost
Locksmith			Locksmith		
Materials			Materials		
<b>Total Lock Shop</b>	<b>0</b>	<b>\$0.00</b>	<b>Total Lock Shop</b>		

Fire Alarm Service	Hours	Cost	Fire Alarm Service	Hours	Cost
Fire Alarm Technician			Fire Alarm Technician		
Materials			Materials		
<b>Total Fire Alarm Service</b>	<b>0</b>	<b>\$0.00</b>	<b>Total Fire Alarm Service</b>		

<b>Planning/Processing</b> Total x 7.5% (\$50 min.) \$50.00	<b>Planning/Processing</b> Total x 7.5% (\$50 min.)
<b>ESTIMATED COSTS - TOTAL</b>	<b>ACTUAL COSTS - TOTAL</b>

Refer to Administrative Procedure #505	Approved By - Public Safety 
Completed By Jonathan Avalos	Date 2/18/2016