



October 23, 2017

URGENT

VIA EMAIL

Gene Block
Chancellor
University of California, Los Angeles
2147 Murphy Hall
Los Angeles, California 90095
chancellor@ucla.edu

**Re: Unconstitutional Assessment of Security Fees for the Bruin Republicans’
Event on November 13, 2017**

Dear Chancellor Block:

We represent Bruin Republicans, a registered student organization at University of California, Los Angeles (the “University”). The University violated the Bruin Republicans’ constitutional rights when the University assessed security fees for an expressive event scheduled for November 13, 2017. We ask that you immediately rescind the decision to assess the fees and correct the unconstitutional policy that permitted this discrimination.

By way of introduction, ADF’s Center for Academic Freedom is dedicated to ensuring freedom of speech and association for students and faculty so that everyone can freely participate in the marketplace of ideas without fear of government censorship.¹

¹ Alliance Defending Freedom has achieved successful results for its clients before the United States Supreme Court, including six victories before the highest court in the last six years. *See e.g. Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S.Ct. 2012 (2017) (striking down state burden on ADF’s client’s free exercise rights); *Zubik v. Burwell*, 136 S. Ct. 1557 (2016) (per curiam) (successful result for religious colleges’ free exercise rights); *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218 (2015) (unanimously upholding ADF’s client’s free-speech rights); *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2759 (2014) (striking down federal burdens on ADF’s client’s free-exercise rights); *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014) (upholding a legislative prayer policy promulgated by a town represented by ADF); *Arizona Christian Sch. Tuition Org. v. Winn*, 131 S. Ct. 1436 (2011) (upholding a state’s tuition tax credit program defended by a faith-based tuition organization represented by ADF).

FACTUAL BACKGROUND

Bruin Republicans is hosting a speech by Ben Shapiro, a conservative commentator and UCLA alumnus, on November 13, 2017 in the Ackerman Grand Ballroom (the “Event”). Mr. Shapiro’s speech is entitled “Rise of Campus Fascism,” and will discuss the increasing intolerance towards freedom of speech on college campuses. Bruin Republicans has followed the University’s policies and procedures for scheduling the Event, and has been planning it for months.

Recently, the University unexpectedly informed Bruin Republicans that the University has decided that extra security would be required for the Event and that Bruin Republicans is obligated to pay for the security costs. The University explained that it chose to assess security costs on Bruin Republicans based on the University’s evaluation of the campus climate and anticipated reactions towards Shapiro and his speech.

As a result of the University’s unilateral determination to assess security fees on Bruin Republicans, the University asked Bruin Republicans to sign a contract stating that it will comply with the terms of the UCLA Policy on Costs of Safety Services at Campus Events Sponsored by Registered Campus Organizations (the “RCO Policy”). In short, the contract provides that if at least 70% of the attendees at the event are students, faculty or staff of UCLA, then the University will cover the costs of security. Otherwise, Bruin Republicans are required to pay the entire costs of security. And its individual officers will be personally responsible for such costs. The University has not provided an estimate of the security costs but has stated that they will be substantial and that there is “no way” that Bruin Republicans will be able to afford the entire costs of security. In sum, the University has presented Bruin Republicans with a Hobson’s choice: pay the entire costs of security (which the University acknowledges will be so large that Bruin Republicans will be unable to pay), or sign a contract agreeing to pay the entire costs of security (including assumption of personal liability by its officers), unless Bruin Republicans are fortunate enough to comply with the terms of the RCO Policy which are wholly outside of their control.

Further, by signing the contract, Bruin Republicans will be obligated to pay for a third party to manage the event in an effort to comply with the 70/30 requirement – while still maintaining financial responsibility for the full cost of security should that ratio not be met. Indeed, individual officers of Bruin Republicans would be financially responsible for all security costs should the student organization not be able to cover those costs. Thus, even by signing the agreement, Bruin Republicans would be required to pay additional fees for their event and the chapter and its officers would be taking on substantial financial risk.

The University’s security fees policies and practices are fraught with unbridled discretion. UCLA Regulations on Activities, Registered Campus Organizations, and Use of Properties (the “Activities Policy”) provides simply that “[c]ampus fees or charges may apply to certain activities and/or services.” Activities Policy § IV.A.13. The Activities Policy further provides that “[u]sers requiring special facility arrangements, equipment or staffing may be assessed charges.” *Id.* at § IV.F.6. The Activities Policy does not contain any objective criteria to

guide University administrators in deciding whether to assess security fees on student groups. Instead, the University is free to assess security fees in its sole discretion. Pursuant to this unbridled discretion, the University assessed a security fee on Bruin Republicans based upon the content and viewpoint of Shapiro's speech and listeners' potential reactions.

The University compounds this problem through its completely discretionary and discriminatory enforcement of its RCO Policy. According to its terms, the RCO Policy "applies to all On-Campus programs and events that are organized and sponsored by Registered Campus Organizations." In other words, the RCO Policy applies to every campus event hosted by every student organization. Since the policy was enacted more than 8 years ago and the University has more than 1,200 student organizations that host thousands of events every year, the policy should have been applied to tens of thousands of events since its enactment. Yet, astoundingly, the University has applied the RCO Policy only four previous times. And two of those times it was applied to Bruin Republican events. Instead of applying the policy as written, the University exercises complete discretion in deciding whether to apply the policy to a student group's event. In fact, Mike Cohn, Director of Student Organizations, Leadership & Engagement, acknowledged that the policy had been "dormant" for a while. But like a ghoul in the night, the University decided to resurrect² the policy so that it can haunt its favorite target, Bruin Republicans, because the University has determined that other members of the campus community may object to the content and viewpoint to be expressed at the Event.

ANALYSIS

As you are well aware, "state colleges and universities are not enclaves immune from the sweep of the First Amendment."³ In fact, "the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools,"⁴ 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.'"⁵ The University's assessment of a security fee for Bruin Republicans' Event is unconstitutional because administrators assessed the fee based on the viewpoint of Bruin Republicans' speech and based on the potential negative reactions of listeners.

² The link to the policy on the University's website was not even active through last week, but appears to now have come back to life.

³ *Healy v. James*, 408 U.S. 169, 180 (1972).

⁴ *Id.* (quoting *Shelton v. Tucker*, 364 U.S. 479, 487 (1960)).

⁵ *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)).

I. The University Is Discriminating Against Bruin Republicans 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.”⁶ Nor may the government engage in viewpoint discrimination, which is “an egregious form of content discrimination.”⁷

Here, the University assessed the security fees based on the viewpoint of Bruin Republicans’ event and speaker. Mr. Cohn is requiring Bruin Republicans, and its officers, to agree to pay some unspecified amount--which he acknowledges will be so large that they will be unable to pay--because he considers Shapiro’s topics and views to be controversial. The University’s policies and practices authorize the University to assess security fees based on the controversial nature of the activity and listeners’ potential reactions.

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.”⁸ Imposing security fees based on the perspective offered by Bruin Republicans and its speaker is viewpoint discrimination.⁹ Thus, the University is violating Bruin Republicans’ First Amendment rights.

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

By requiring Bruin Republicans to pay security fees based on the potential reaction of students, the University is using the unbridled discretion inherent in the Activities Policy and the RCO 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 based on the estimated costs of security was unconstitutional under the First Amendment.¹⁰ 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.”¹¹ Because the “decision [of] how much to charge for police protection . . . or even whether to charge at all” was

⁶ *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995).

⁷ *Id.* at 829.

⁸ *Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 134-35 (1992).

⁹ *Rosenberger*, 515 U.S. at 828-29.

¹⁰ *Forsyth Cnty.*, 505 U.S. at 130.

¹¹ *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).

“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.¹²

The University’s Activities Policy and its practice of applying the RCO Policy in its sole discretion, like the ordinance in *Forsyth County*, vest administrators with unbridled discretion to charge student groups security fees for their events. The Activities Policy states simply that the University “may apply” charges for certain activities or services. The policy does not 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 Bruin Republicans. Further, in this instance, the University admits that it is applying the event based upon the views to be expressed by Shapiro at the Event. The University’s application of the RCO Policy also demonstrates its unbridled discretion in applying its security fees policies. Out of the thousands of events that have been held since its enactment, the University has applied the policy 5 times. And, including the event at issue here, three of those applications were on Bruin Republican events.

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.”¹³ The University’s policy and practice violates the First Amendment rights of Bruin Republicans and all students on campus.

DEMAND

In light of these clear constitutional violations, we ask that you (1) immediately rescind the security fees assessed to Bruin Republicans for the upcoming Event and confirm that they will not be required to sign the contract or comply with the RCO Policy; (2) revise the Activities Policy to require the assessment of security fees only when specified objective criteria are satisfied and forbid the assessment of fees based upon the content or viewpoint of an event or based upon listeners’ reactions; and (3) either revoke the RCO Policy or revise the University’s practice to apply the policy as it is written to all student organization events. We also ask that you take all steps necessary to preserve any documents connected with, discussing, or relevant to the incidents described herein.

Since the Event is scheduled for November 13, please respond in writing by close of business on Friday, October 27, 2017.

¹² *Forsyth Cnty.*, 505 U.S. at 133.

¹³ *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.”).

Chancellor Gene Block
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Very truly yours,

/s/Tyson C. Langhofer

Tyson C. Langhofer
Senior Counsel