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**Via Email and Certified Mail**

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***Re: Unlawful Assessment of Security Fee and Damages from April 18, 2023  
“Should Transgenderism Be Regulated by Law?” Event***

Dear Ms. Washington:

We write on behalf of Intercollegiate Studies Institute (“ISI”) and the University of Pittsburgh College Republicans (“College Republicans”) in connection with the event on transgenderism that they held at the University of Pittsburgh (the “University”) on April 18, 2023. The University has violated ISI’s and College Republicans’ constitutional rights by (i) assessing an improper security fee on the event, (ii) deliberately fomenting unrest designed to shut down the event, and (iii) failing to control the riotous crowd and instead urging termination of the event before it even concluded. In light of these constitutional violations, we ask that the University immediately rescind its assessment of the security fee, revise its policies governing security fees, and reimburse ISI and College Republicans for the costs of the event.

By way of introduction, ISI is a non-profit organization that seeks to introduce college students throughout the country to the American tradition of liberty so that they become articulate voices for the principles that made America free and prosperous. College Republicans is a student organization duly registered with the Division of Student Affairs at the University. College Republicans advocates for conservative viewpoints and supports Republican candidates and issues at the University. Alliance Defending Freedom (“ADF”) is a non-profit legal organization 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 censorship or retaliation.<sup>1</sup>

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<sup>1</sup> ADF has consistently achieved successful results for its clients, including fourteen victories before the Supreme Court since 2011. See, e.g., *Americans for Prosperity Found. v. Bonta*, 141 S. Ct. 2373 (2021) (representing Thomas

### Background

On April 18, 2023, ISI and College Republicans hosted an event sponsored by ISI on the topic “Should Transgenderism Be Regulated By Law?” in the O’Hara Student Center Ballroom (the “April 18 Event”). The April 18 Event was to include a moderated debate featuring the well-known conservative speaker Michael Knowles and Brad Polumbo, 30 minutes of audience Q&A, and a 40-minute meet-and-greet for audience VIPs to meet Mr. Knowles. College Republicans planned the event months in advance and followed all University policies and procedures for scheduling it. Although the University earlier advised ISI that it would be responsible for only a couple thousand dollars in security costs, just six days before the event the University insisted that ISI pay an estimated \$16,925 in security fees. On May 19, the University assessed ISI a total of \$18,734 for event security, and on June 1 it demanded ISI “process this transfer very soon.”

The University’s security fees policies and practices are fraught with problems. First, the University improperly gives administrators wide and boundless discretion to determine the amount of any security fee. The contract for the April 18 Event provided that “the University will provide all house personnel necessary for the Event,” including “all . . . security personnel **deemed necessary by the university.**” (Emphasis added). The University’s guidelines identify non-exhaustive factors—for example, anticipated audience size, location, and other events taking place on or near campus—but they also license administrators to consider any other “similar viewpoint and content neutral considerations relevant to assessment of campus safety, security and service.” Event Scheduling Guidelines § 2.a. Indeed, Pitt Policy AO 08 (formerly 04-01-02) simply says “[t]he Chief of the University Police Department is responsible for establishing additional security costs involved,” without any reference to how that determination is made.

Second, the University’s assessment of security fees is often based on the extent of disruption—e.g., the number of hecklers—it expects. When the University provided ISI with its \$16,925 estimate, it revealed that the estimate was “based on the staffing Pitt police used for two previous lectures presented by Turning Point”—an organization whose recent events have

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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 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 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) (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 legislative prayer policy promulgated by town represented by ADF); *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125 (2011) (upholding state tuition tax credit program defended by faith-based tuition organization represented by ADF).

themselves been the subject of substantial controversy. *See, e.g.*, “At Pitt, Protestors Outnumber Turning Point USA Attendees by More than 12 to 1,” *The Tartan* (Mar. 27, 2023). Of course, the use of police staffing at recent Turning Point events to determine staffing for the April 18 Event necessarily means expected community reaction *was* considered in determining security fees, contrary to the University’s claim that it does not take “expected reaction to the event” into account in determining security fees. *See* Event Scheduling Guidelines § 2.e. And the University’s anticipation of substantial community disruption explains why it planned to staff the event with a total of 39 additional police personnel, consisting of 28 officers and 11 supervisors.

Third, we understand the University does not uniformly require all student groups to pay all security costs incurred in connection with expressive events, and that instead this determination is made on a case-by-case basis. Our understanding is based on reports of other student groups that they were not charged any fee. The fact that the standard boilerplate language in the contract for the April 18 Event was expressly supplemented to state “[a]ll event-related police and security expenses will be paid by ISI” supports this understanding. It thus appears the University has unbridled discretion as to whether to impose a security fee on a student group holding an expressive event and what amount to charge.

Moving to the April 18 Event itself, the University’s own communications before April 18 gratuitously incited many in the Pitt Community to violence and substantially contributed to the disruption that caused the event to be prematurely terminated. On March 10, the University issued a Press Release calling the April 18 Event “toxic and hurtful for many people in our University community.” On March 16, Provost Cudd referred to a recent speech by Michael Knowles as “repugnant” and “hate-filled rhetoric” in a message she sent the Pitt Community. And on April 14, Professor Mahoney advised her students that “[t]he Theatre Arts department, along with many other departments, students, faculty, and staff at Pitt, strongly condemns this event and has called on the University to cancel Knowles’ appearance due to his history of spreading hate speech and inciting violence against trans people.” She added, “Unfortunately, it looks as though the event is still scheduled to take place,” and invited students to participate in “several events planned for Tuesday April 18 in response to Knowles’ unwelcome presence on campus.” After these provocative communications, signs were posted throughout campus calling on students to “Shut Down Michael Knowles” by showing up at Cathedral Lawn on April 18 at 6:45 pm – *i.e.*, one of the events Professor Mahoney urged her students to attend.

Given the University’s incitement, it is no wonder an angry mob of hundreds assembled on campus to shut down the April 18 Event with unlawful, violent behavior. In response, Pitt police were wholly ineffective. They failed to keep O’Hara Street clear of protesters, which was the original plan. Instead, they allowed rioters to occupy the street and come within striking distance of attendees peacefully entering the event space. This proximity allowed the mob to push and shove those attending the April 18 Event and throw smoke bombs and other incendiary devices

into the crowd (including a road flare used to burn Michael Knowles in effigy).<sup>2</sup> It prevented the police from keeping the O'Hara Student Center free of threats. And it ultimately caused Pitt police to urge ISI to end the April 18 Event before it concluded because the situation was “deteriorating.” The Q&A period was cut short, and the 40-minute “meet and greet” with Michael Knowles—a contractually required part of the event performance—did not occur at all.

### ANALYSIS

As you are well aware, “state colleges and universities are not enclaves immune from the sweep of the First Amendment.”<sup>3</sup> In fact, “the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools,”<sup>4</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>5</sup>

Here, the University has violated the First Amendment rights of ISI and College Republicans in three distinct ways: by imposing an unconstitutional security fee; by inciting students to disrupt the April 18 Event; and by failing to provide adequate security for the Event and instead deciding to shut it down before it even concluded.

#### **I. The University’s Security Fee is Unconstitutional.**

The University’s assessment of more than \$18,000 as a security fee for the April 18 Event is unconstitutional both because University administrators have unbridled discretion on whether and how much to charge as a security fee and because the fee was determined by the expected negative reaction of the University community to the April 18 Event, especially since the University incited this behavior in the first instance. This is not the first time the University has imposed an unconstitutional security fee on an expressive event hosted by a conservative student group. Our organization wrote your office in December 2018 to demand that a \$5,500 security fee imposed on College Republicans and Young America’s Foundation be rescinded, which it ultimately was.

“It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys.”<sup>6</sup> Nor may the government engage in viewpoint discrimination, which is “an egregious form of content discrimination.”<sup>7</sup> 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 to an

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<sup>2</sup> See <https://fillerpgh.wordpress.com/2023/04/23/these-queers-bash-back-pittsburgh-anarchists-organize-in-response-to-transphobic-hate/>

<sup>3</sup> *Healy v. James*, 408 U.S. 169, 180 (1972).

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

<sup>5</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>6</sup> *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995).

<sup>7</sup> *Id.* at 829.

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.”<sup>8</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>9</sup> Specifically relevant to this matter, the **“decision [of] how much to charge for police protection . . . or even whether to charge at all”** cannot be left up to administrators.<sup>10</sup>

The Supreme Court has also made clear that “[l]isteners’ reaction to speech is not a content-neutral basis for regulation.”<sup>11</sup> In *Forsyth County* it stated, “[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.’”<sup>12</sup> In that case, the Court noted that “[t]he 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.”<sup>13</sup>

In short, “[s]peech cannot be financially burdened, any more than it can be punished or banned, simply because it might offend a hostile mob.”<sup>14</sup> 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 . . . .”<sup>15</sup> Charging security fees based on the content of the speech is exactly the type of “suppression” the First Amendment does not permit.<sup>16</sup> Such security fees are an unconstitutional heckler’s veto.

Here, the University failed to set forth an exclusive list of content-neutral criteria by which the security fee would be determined and instead left up to administrators whether and how much to charge. Moreover, University Police determined the security fees based on the expected reaction of the crowd. Imposing security fees based on the perspective offered by ISI, College Republicans, and their event speaker Mr. Knowles is viewpoint discrimination.<sup>17</sup>

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<sup>8</sup> *Forsyth Cty., Ga. V. Nationalist Movement*, 505 U.S. 123, 133 (1992).

<sup>9</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>10</sup> *Forsyth Cnty.*, 505 U.S. at 133 (emphasis added).

<sup>11</sup> *Id.* at 134.

<sup>12</sup> *Id.* at 135.

<sup>13</sup> *Id.* at 135-36.

<sup>14</sup> *Id.* at 134-35.

<sup>15</sup> *Zamecnik v. Indian Prairie Sch. Dist. No. 204*, 636 F.3d 874, 879 (7th Cir. 2011).

<sup>16</sup> *Cf. Forsyth Cnty.*, 505 U.S. at 133

<sup>17</sup> *Rosenberger*, 515 U.S. at 828-29.

## II. The University's Incitement of the Crowd Was Unconstitutional.

Of course, “[t]he government may not discriminate against speech based on the ideas or opinions it conveys.”<sup>18</sup> And it “may not induce, encourage or promote private persons to accomplish what it is constitutionally forbidden to accomplish.”<sup>19</sup> Thus, a public university may neither take action to censor disfavored speech nor induce or encourage others to do so.

Here, the University did both. By referring to Michael Knowles’s speech as “toxic,” “repugnant” and containing “hate-filled rhetoric,” the University directly sought to censor viewpoints to be expressed at the April 18 Event. And by circulating such provocative comments throughout the Pitt community, including its suggestion that students react to Mr. Knowles’ “unwelcome presence on campus,” the University was at the very least encouraging others to take action to suppress speech it disfavored. For both these reasons, or either one of them, the University violated ISI’s and College Republicans’ First Amendment rights to free speech and is therefore responsible for the unconstitutional consequences—which includes the early termination of the April 18 Event.

## III. The University's Failure to Provide Adequate Police Protection and Its Decision to Terminate the Event Was Unconstitutional.

Finally, the Supreme Court has repeatedly affirmed that “constitutional rights may not be denied simply because of hostility to their assertion or exercise.”<sup>20</sup> 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. *Nor can an officer 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.*”<sup>21</sup>

Moreover, “[t]he federal Civil Rights Act, 42 U.S.C. § 1983, ‘imposes on the states and their agents certain obligations and responsibilities. A police officer has a duty not to ratify and effectuate a heckler’s veto nor may he join . . . (those) intent on suppressing ideas.’”<sup>22</sup> Instead, a police officer “*must take reasonable action to protect . . . persons exercising their constitutional rights.*”<sup>23</sup>

Here, the University failed in its responsibilities to take reasonable action to protect ISI and College Republicans in the exercise of their First Amendment rights. It decided not to intervene

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<sup>18</sup> *Iancu v. Brunetti*, 139 S. Ct. 2294, 2299 (2019).

<sup>19</sup> *Norwood v. Harrison*, 413 U.S. 455, 465 (1973).

<sup>20</sup> *Watson v. City of Memphis*, 373 U.S. 526, 535 (1963).

<sup>21</sup> *Bible Believers v. Wayne County, Mich.*, 805 F.3d 228, 253 (6th Cir. 2015) (citing *Watson*, 373 U.S. at 535-36) (emphasis added).

<sup>22</sup> *Manfredonia v. Barry*, 401 F. Supp. 762, 767-68 (E.D.N.Y. 1975) (quoting *Glasson v. City of Louisville*, 518 F.2d 899, 906 (6th Cir. 1975)).

<sup>23</sup> *Glasson*, 518 F.2d at 906 (emphasis added).



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against or arrest any of the rioters, choosing instead to allow them to gather right next to the event so that they could threaten and assault the peaceful attendees. And ultimately Pitt police urged ISI to cut short the April 18 Event, because they claimed the situation was “deteriorating.” Through its actions and inactions, the University imposed a heckler’s veto on ISI’s and College Republicans’ April 18 Event, and again must take responsibility for the consequences, including the event’s disruption and early termination.

**DEMAND**

In light of these constitutional violations, we ask that the University (1) immediately rescind its demand that ISI pay over \$18,000 in security fees for the April 18 Event; (2) revise its Event Scheduling Guidelines, Pitt Policy AO 08, and standard event contracts to spell out *all* criteria used to determine security fees, ensure that fees are not prohibitively expensive, and absolutely forbid fees based on expected listener reaction and the content and viewpoint of speech; and (3) compensate ISI for the costs of the April 18 Event outlined in Appendix A. We also ask that you take immediate steps to preserve any and all documents connected with, discussing, or relevant to the incidents described herein.

We thank you for your prompt consideration of this letter. We would appreciate hearing back from you by June 12, 2023. Otherwise, we will have no option but to advise our clients to pursue other avenues of relief.

Very truly yours,



Philip A. Sechler

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cc (by email only): John Burtka, Intercollegiate Studies Institute  
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