

F I R E

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January 4, 2010

Ann Weaver Hart, President
Temple University
200 Sullivan Hall
1330 West Berks Street
Philadelphia, Pennsylvania 19122-6087

Sent by U.S. Mail and Facsimile (215-204-5600)

Dear President Hart:

As you can see from the list of our Directors and Board of Advisors, FIRE (thefire.org) unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, due process, freedom of association, religious liberty and, as in this case, freedom of speech and legal equality on America's college campuses. You may be aware of FIRE's amicus brief in *DeJohn v. Temple University* in 2008, a lawsuit that produced a precedential ruling from the Third Circuit Court of Appeals against Temple's unconstitutional speech code.

FIRE is concerned about a new threat to freedom of expression and legal equality posed by Temple University's *post hoc* charge to Temple University Purpose (TUP), a registered student organization, of \$800 in extra security costs for a speech by Dutch politician Geert Wilders, who has expressed controversial views about Muslims and Islam. Temple University may not levy this charge for extra security without violating the constitutional rights of TUP.

This is our understanding of the facts; please inform us if you believe we are in error.

Wilders spoke at Temple University on the evening of October 20, 2009, at Temple's Anderson Hall, sponsored by TUP. (A cosponsor, Temple College Republicans, withdrew sponsorship at the eleventh hour.) Given the controversial nature of Wilders' views, additional security was needed beyond the usual amount for that venue. Temple provided the extra security; I personally was present and observed some of the extra security measures, such as individual screening. There were no apparent disturbances during the event.

On December 3, 2009, however, TUP was surprised with a bill (enclosed) for \$800 for “Security Officer,” with the explanation that the charge was for the costs “to secure the room and building.” According to the bill, the funds were due by December 8. On December 11, according to TUP Interim President Brittany Walsh in an e-mail to Reservation Coordinator Alicia Q. Ferguson:

TUP paid the amount provided in the contract by you, which was taken by Ms. [Sharon] Lee[, Coordinator, Student Affairs]. Additionally, in my meeting with Jason [Levy, Director, Howard Gittis Student Center], Maureen [Fisher, Program Coordinator], and Gina [D’Annunzio, Director, Student Activities] on the 16th of October, Jason stated to me, that the university would have to eat the extra cost to hold the event; which the university did not have a problem doing according to him.

Five minutes later, Ferguson replied via e-mail to Walsh stating, “I will speak with Jason regarding the university eating the cost.” Walsh followed up with Ferguson via e-mail on December 22 but has received no response.

In levying this additional charge for security, Temple University is requiring a student organization to provide funding for extra security because of the controversial content of the presentation and the potentially hostile reaction of audience members. However, *any* requirement that student organizations hosting controversial events pay for extra security provided by Temple is unconstitutional because it affixes a price tag to events on the basis of their expressive content.

The Supreme Court addressed precisely this issue in *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 134–135 (1992), when it struck down an ordinance in Forsyth County, Georgia, that permitted the local government to set varying fees for events based upon how much police protection the event would need. Criticizing the ordinance, the Court wrote that “[t]he fee assessed will depend on the administrator’s measure of the amount of hostility likely to be created by the speech based on its content. Those wishing to express views unpopular with bottle throwers, for example, may have to pay more for their permit.” In deciding that such a determination required county administrators to “examine the content of the message that is conveyed” (citation omitted), the Court stated that “[l]isteners’ reaction to speech is not a content-neutral basis for regulation.... **Speech cannot be financially burdened, any more than it can be punished or banned, simply because it might offend a hostile mob.**” (Emphasis added.)

In the interest of preserving content neutrality when determining fees for campus events, Temple University cannot and must not force student groups to pay more money for security protection because an event deals with controversial subjects or features controversial speakers, or because others in the community might feel offended by an event and subsequently become violent. Temple University policies or practices regarding security for events do not supersede students’ and student organizations’ First Amendment rights.

Moreover, by holding student organizations that host expressive events financially responsible for possible disruptive activity resulting from the controversial character of their events, Temple University grants a “heckler’s veto” to the most disruptive members of the university

community. Individuals wishing to silence speech with which they disagree merely have to threaten to protest and student groups not able to furnish adequate funds for security will be forced to cancel their events. In such a situation, disruptive heckling triumphs over responsible expressive activity. This is an unacceptable result in a free society and is especially lamentable on a college or university campus. Controversial speech cannot be unduly burdened simply because it is controversial.

We trust that you understand that the First Amendment's guarantees of freedom of expression and association fully extend to public universities like Temple University. See, e.g., *Keyishian v. Board of Regents*, 385 U.S. 589, 605–06 (1967) (“[W]e have r

