FIRE Foundation for Individual Rights in Education

January 26, 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:

Unfortunately, FIRE must write Temple University a second time regarding the unconstitutional fee levied against the student group Temple University Purpose (TUP) to defray extra security costs for the October 20, 2009, presentation by controversial Dutch politician Geert Wilders. FIRE first wrote you on January 4, 2010, and received a response from Associate University Counsel Valerie I. Harrison on January 21, 2010. We appreciate the university's willingness to waive the security fee charged to TUP, but Harrison's response misrepresents Temple's responsibilities under the First Amendment and controlling legal precedent; demonstrates the arbitrary, indefinite standards used for assessing security fees at Temple; and misrepresents as a "request" TUP's notification of Temple that extra security for the event would likely be needed.

Temple Must Pay for Extra Security Necessitated by Program Content

level of security for an event, Temple is under no obligation to provide the requested level of security unless Temple itself deems that level of security to be necessary. However, if Temple decides to provide or require extra security for an event because of the content of that event, it may not then pass the increased costs along to the student group hosting the event.

The Wilders event may have confused Temple regarding this principle, given that Harrison asserts that TUP may fairly be charged for the extra security because of its "request" for that security. The December 3 invoice for the event suggests that TUP left the level of need for extra security entirely unspecified, stating only that "[a]dditional security will be required to secure the room and building." Once TUP had alerted the university to a likely but unspecified need for extra security, in fact provided.

In her response, Harrison relies on the assertion th

for an unexplained portion of the extra security provided. Temple administrators thus have acted arbitrarily and without explanation in charging TUP for the extra security.

The *Forsyth* Court noted that "[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**." *Forsyth* at 130 (emphasis added) (internal quotation marks omitted). In *Forsyth*, "the administrator **based the fee on his own judgment of what would be reasonable**." *Id*. at 132 (emphasis added). The Court found that the county's implementation of the ordinance showed no "narrowly drawn, reasonable and definite standards guiding the hand of the Forsyth County administrator." *Id.* at 132–33 (citation omitted) (internal quotation mark

cc:
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Theresa A. Powell, Vice President for Student Affairs
Betsy Leebron Tutelman, Senior Vice Provost and Dean of Students
Andrea Caporale Seiss, Associate Dean of Students
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