

F E B R U A R Y 1 2 2 0 0 9

Y F 0 0

February 12, 2009

Chancellor Robert I. Birgeneau  
Office of the Chancellor

[Redacted content]

Lechmanik stated that it was not up to Zornek to determine how much security would be necessary.

Further, Zornek was notified that the OCB would be responsible for paying for the event's security personnel. In a follow-up e-mail sent to Zornek on February 5, Lechmanik provided the following estimate:

2 Sergeants @ \$94.59 per hour for approximately 3.5 hours \$ 662.13  
10 Officers @ \$73.10 per hour for approximately 3.5 hours \$2,558.50

Total \$3,220.63.

Until we have further details, this is just an estimate. It is possible staffing will require 12 officers (or more) which would raise your total cost to approximately \$3732.33.

In order to host Journo's presentation, then, Berkeley is requiring OCB to provide somewhere between three and four thousand dollars in funding for security solely due to the content of the presentation and the potential reaction of audience members. Yet *any* requirement that student organizations hosting controversial events pay for extra security is clearly 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), by striking 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. The Court wrote that in the case of the Forsyth County ordinance, “[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.” Deciding that such a determination required county administrators to “examine the content of the message that is conveyed” (citation omitted), the Court wrote 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 in determining fees for campus events, Berkeley cannot and must not force student groups to pay more money for security protection because the event deals with controversial subjects by which others in the community might be offended and subsequently become violent.

Moreover, by holding student organizations hosting expressive events responsible for whatever disruptive activity results from the controversy of these events, Berkeley 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 protests win out over responsible expressive activity. Controversial speech cannot be unduly burdened simply because it is controversial.

FIRE reminds Berkeley that it cannot, consistent with the university's legal and moral obligation to uphold the First Amendment on campus, require OCB to pay for security fees for an event simply because of the event's expressive content. When OCB hosts its upcoming event, currently scheduled for March 3, Berkeley must not hold the group responsible for security costs.

FIRE hopes to resolve this situation amicably and swiftly; we are, however, prepared to use all of our resources to see this situation through to a just and moral conclusion. We request a response to this letter by Thursday, February 19, 2009.

Sincerely,



Will Creeley  
Director of Legal and Public Advocacy

cc:

Victoria L. Harrison, Associate Vice Chancellor/Chief of Police, University of California at Berkeley

Harry Le Grande, Vice Chancellor for Student Affairs, University of California at Berkeley

Jonathan Poullard, Dean of Students, University of California at Berkeley

Marcia Riley, Director, Student Involvement and Leadership Programs, University of California at Berkeley

John Lechmanik, Officer, University of California at Berkeley Police Department

Beth Karren, Attorney for Students, University of California at Berkeley