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**VIA EMAIL (VPLA@AUSTIN.UTEXAS.EDU)
& U.S. MAIL**

January 9, 2018

Ms. Patricia C. Ohlendorf, Esq.
Vice President for Legal Affairs
P.O Box R
Austin, Texas 78713

Re: Discriminatory Assessment of Security Fee

Dear Ms. Ohlendorf,

Young America's Foundation (YAF) is the principal outreach organization of the Conservative Movement, inspiring thousands of young Americans by the ideas of individual freedom, a strong national defense, free enterprise, and traditional values. Through its essential conferences, seminars, educational materials, internships, and its unparalleled campus lecture program, YAF introduces young people to these conservative ideas. The *New York Times* recently called YAF the "Conservative Force" on campuses.

This past semester, YAF partnered with the Young Conservative of Texas (YCT) student organization to bring former United States Senator Rick Santorum to the University of Texas at Austin (UT-Austin) for a campus lecture. The lecture was a tremendous success – the students enjoyed the opportunity to engage in thoughtful dialogue with Senator Santorum on the topic of moral governance. However, the students who organized this event are now being charged a \$654.00 security fee, which is being applied in a viewpoint discriminatory manner.

Background

On November 1, 2017 YCT Chairman, Ashley Vaughan, met with UTPD to discuss security for the Santorum lecture. During this consultation, UTPD asked Ms. Vaughan numerous questions. Most notably, UTPD asked: "What is the topic of Senator Santorum's lecture?" "Is he controversial" And, "have been incidents related to any of Senator Santorum's lectures at other schools?" UTPD then informed Ms. Vaughan that the University would be imposing a security fee on this particular event.

Ms. Vaughan disagreed with UTPD's assessment that security would be necessary. And after her meeting with UTPD, she emailed Elisa Ramos. Ms. Ramos is the assistant director of student activities. In her email, Ms. Vaughan asked whether YCT would be required to pay for security for its event. Ms. Vaughan wrote:

Earlier today I met with UTPD about the two upcoming events. One question I had was are we required security at our event? I only ask because the fees for security are more than we can afford.

Ms. Ramos responded to Ms. Vaughan on November 2, 2017 affirming, without hesitation, UTPD's decision to charge YCT a security fee for its campus lecture featuring Senator Santorum. Ms. Ramos wrote:

As you know, it is campus policy and practice for UTPD to make the determination as to whether or not security is required for a campus event and, if it is, how many officers are required. Student Activities defers to their expertise. If UTPD has determined that security is necessary, then your event cannot move forward without it.

Fearing that the event would not happen without security, Ms. Vaughan reluctantly submitted an "Event Security Request Form" per the direction of UTPD. However, for financial reasons, she only requested the services of one officer. On November 9, 2017 Lt. Stephenson emailed Ms. Vaughan to inquire why she did not request two officers as he had directed. In his email, Lt. Stephenson informed Ms. Vaughan that two officers would be needed for the Santorum lecture. He cited two justifications for his assessment: (1) he believes Senator Santorum to be "high profile," and (2) "the current political climate." Specifically, Lt. Stephenson wrote:

We received your Security Request form and I noticed it only has one officer requested whereas my notes show that we discussed the event needing two officers. Given the high profile of the Senator and the current political climate, I think it is best we stick with the original number and staff two officers.

Ms. Vaughan replied to Lt. Stephenson's email to remind him that school policy prohibits assessing a security fee on a perceived "political controversy." She also informed him that YCT could only afford to pay for one officer. Ms. Vaughan wrote:

We are only able to afford one officer, and there has been no indication of any protest. UT policy says that the university cannot charge us for extra officers due to "political controversy", and our room has been moved to Painter Hall 2.480, which only hold 138 people.

On November 27, 2017 The University of Texas at Austin Police Department (UTPD) sent YCT a security invoice (#57687). The invoice is attached to this letter.

Surprisingly, the invoice reflected the services of five UTPD personnel (one sergeant and four officers), not one or two – each billing the students for two hours of work. In total, the students of YCT are being charged \$654.00 in security fees.

This fee assessment is unconstitutional. As such, Young America’s Foundation requests that invoice #57687 immediately be fully rescinded.

First Amendment

It is a bedrock principle of Constitutional Law that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”¹ In fact, nowhere is the vigilant protection of constitutional rights more vital than in American schools.² Yet, instead of protecting – vigilantly – the constitutional rights of all of its students, the University of Texas at Austin targeted and violated the rights of conservative students when it selectively imposed an unconstitutional security fee upon them.

I. UT-Austin violated its students’ rights by imposing a viewpoint discriminatory security fee upon a group of conservative students.

“The government offends the First Amendment when it imposes financial burdens on certain speakers based on the content of their expression.”³ The Court in *Forsyth County v. Nationalist Movement* struck down a county ordinance that permitted county administrators to impose varying fees based on an “administrators measure of the amount of hostility likely to be created by the speech based on its content.”⁴ In doing so, the Court stated, “Listeners reaction to speech is not a content-neutral basis for regulation.”⁵

Applied here, by predicating a security fee on the basis of whether a speaker is “controversial,” “high profile,” and upon the “political climate,” UT-Austin discriminated in the same impermissible manner as did Forsyth County – on the basis of listeners’ reaction. Lt. Stephenson’s email to Ms. Vaughan, dated November 9, 2017 admits this much. He stated, “*Given the high profile of the Senator and the current political climate, I think it is best we stick with the original number and staff two officers.*” (*emphasis added*).

II. UTPD’s unbridled discretion, in assessing security fees, resulted in an abridgment of students’ First Amendment rights.

School administrators may not assess security fees in an arbitrary or amorphous manner; rather, they must apply “narrowly drawn, reasonable and definite standards”⁶

¹ *Tinker v. Des Moines* 393 U.S. 503, 506 (1969).

² *Shelton v. Tucker*, 364 U.S. 479, 487 (1960).

³ *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 828 (1995).

⁴ *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 134 (1992).

⁵ *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 134 (1992).

⁶ *Niemotko v. Maryland*, 340 U.S. 268, 271 (1951).

in their decision-making process. In *Niemotko v. Maryland*, the Court held a licensing system unconstitutional that afforded government officials unbridled discretion over the issuance of reservations to use a public park. In that case, local officials rejected a religious group's permit request without employing any identifiable standards in their decision-making process.⁷ The Court reasoned that the absence of "narrowly drawn, reasonable and definite standards"⁸ created the "possibility of abuse."⁹

In *Forsyth County*, the Court cited to *Niemotko*, reinforcing the importance "narrowly drawn, reasonable and definite standards." But the Court expounded, stating that definite standards should have "guid[ed] the hand of Forsyth County administrator[s]"¹⁰ fee assessment.

Unfortunately, no such definite standards guided the hand of UTPD in assessing a security fee upon YCT. Through a public records request as part of YAF's *Censorship Exposed!* project, YAF discovered that UTPD asks students a list of standard questions. However, many of these questions impermissibly inquire into the content of students' speech creating a taint of viewpoint discrimination. At least six of these questions violate students' rights:

- Will there be any special guests (politicians, or anyone controversial)?
- What is the topic of the event?
- Do you believe that a conflict could arise at the event?
- Have you ever hosted this speaker before? If so, were there any issues at that event?
- Have you asked him/her or their security detail if there were any issues at their past events?
- Have you had any issues at any of your past events?

But even if these questions did not create a taint of viewpoint discrimination, these are merely questions on a list. There is no indication, anywhere, as to the weight of any of these questions. Similar to *Niemotko*, "no standards appear anywhere; no narrowly drawn limitations; no circumscribing of this absolute power; no substantial interest of the community to be served."¹¹

And what is worse is the willful blindness exhibited UT-Austin administrators who deny students any actual appeal. In her email to Ms. Vaughan, Ms. Ramos confirmed that UTPD exercises limitless discretion in assessing security fees for student-organized events. Ms. Ramos stated, "it is campus policy and practice for UTPD to make the

⁷ *Niemotko v. Maryland*, 340 U.S. 268, 271 (1951).

⁸ *Niemotko v. Maryland*, 340 U.S. 268, 271 (1951).

⁹ *Niemotko v. Maryland*, 340 U.S. 268, 272 (1951).

¹⁰ *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 133 (1992).

¹¹ *Niemotko v. Maryland*, 340 U.S. 268, 272 (1951).

determination as to whether or not security is required for a campus event and, if it is, how many officers are required. Student Activities defers to their expertise.”

Like the local officials in *Niemotko* who while exhibiting unbridled discretion inquired into and discriminated on the basis of the content of a religious group’s expression, UTPD has unbridled discretion in how it imposes security fees. As such, Invoice #57689 is not the product of “narrowly drawn, reasonable and definite standards” as prescribed in *Niemotko* and *Forsyth County* and should be rescinded.

III. Public Records Show that UTPD levied a higher security fee on YCT for the Santorum lecture than any other student-organized event last year.

As mentioned above, YAF sent UT-Austin a public records request, on November 2, 2017, as part of YAF’s *Censorship Exposed!* project. Specifically, YAF requested –

All public records relating to the assessment of security fees for events sponsored by registered student organizations during the 2016-2017 academic year. Specifically, please provide any invoices, logs, emails, or other relevant documents that show either (1) a security fee being assessed to a registered student organization in relation to a registered student organization event, or (2) the methodology, rubric, worksheet, list of questions, procedure, or any other document that reflects the factors considered when assessing a security fee for a registered student organization’s event.

The invoices, produced by UT-Austin, are revealing. UTPD only issued eight security fees during the 2016-2017 academic year. Of those eight, none reflected a security fee as high as the fee levied upon YCT for the Santorum lecture. This is noteworthy for many reasons.

UTPD determined that the Santorum lecture merited more police presence than any of these eight aforementioned events from the 2016-2017 academic year. YCT is being charged for the services of five officers. Compare this to the eight events where UTPD levied a security fee in the 2016-2017 academic year. UTPD determined that five of those events merited the services of only one officer. Two of those events merited the services of two officers. And one event merited the services of three officers. No other event required four officers, much less five officers.

Furthermore, expected attendance for the Santorum lecture was substantially smaller than any of these other events, only further begging the question as to why UTPD levied such a hefty, and disproportionate, security fee on YCT. As Ms. Vaughan explained in her email to Lt. Stephenson, YCT reserved Painter Hall 2.480 for the Santorum lecture. This room holds 138 people. Yet, when UTPD expected 1,000 people in attendance for the “25th Annual Non-Greek Step Show,” UTPD only required the organizing student club to pay for the services of two officers. And when UTPD expected 500 people in attendance

for the “Fest Africa” event, only one officer was needed. When UTPD expected 800 people in attendance for the “Taste of Taiwan” event, the University only charged the organizing student group for the services of one officer.

The duration of these events does not account for the disparity in security fees either. YCT scheduled the Santorum lecture as a two-hour event. In contrast, each of these eight events, where UTPD levied security fees in the 2016-2017 academic year, were longer events, in duration, than YCT’s campus lecture featuring The Honorable Rick Santorum.

Conclusion

UT-Austin discriminated against YCT, on the basis of viewpoint, when it issued an exorbitant security fee in connection with the November 14, 2017 campus lecture featuring former United States Senator Rick Santorum. UTPD failed to employ any “narrowly drawn, reasonable and definite standards” when it imposed a \$654 fee upon students. And while UTPD expressly justified this arbitrary fee on the basis of listeners’ reaction to the content of Senator Santorum’s speech, which itself is an unconstitutional practice, UT-Austin administrators blindly deferred to UTPD’s judgment.

Therefore, Young America’s Foundation demands that you immediately rescind invoice #57687 in full. YCT should not be charged any security fee for this event. Furthermore, in order to ensure that this problem does not occur again in the future, Young America’s Foundation requests that you review your University’s practice of issuing security fees because the current security fee system abuses the First Amendment freedoms of UT-Austin students – the same kind of abuse that the Court warned of in *Niemotko*.

Thank you for your time and consideration. **Please respond to this letter by Friday, January 19, 2018.** I look forward to speaking with you.

Sincerely,



Mark Trammell
Associate General Counsel
Young America’s Foundation