

**VIA EMAIL (DOUGP@UMN.EDU)
& U.S. MAIL**

February 20, 2018

Office of the General Counsel
Attn: Doug R. Peterson
360 McNamara Alumni Center
200 Oak Street S.E.
Minneapolis, Minnesota 55455

Re: Viewpoint Discrimination

Dear Mr. Peterson,

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.

ADF's Center for Academic Freedom, 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 government censorship.¹

Background

In December 2017, the Students for a Conservative Voice (SCV), a student organization at the University of Minnesota Twin Cities, requested a venue on the Twin Cities campus for a campus lecture featuring *New York Times* bestselling author Ben Shapiro. Working with YAF, SCV scheduled the Shapiro lecture for February 26, 2018 at 7:00 pm.

SCV originally requested the Ted Mann Concert Hall because of its size and location on campus. The Ted Mann Concert Hall can accommodate up to 1,126 people. In an email dated,

¹ Alliance Defending Freedom has achieved successful results for its clients before the United States Supreme Court, including six victories before the highest court in the last six years. *See e.g. Trinity Lutheran Church of Columbia, Inc. v. Comer*, No. 15-577, 2017 WL 2722410 (U.S. June 26, 2017) (striking down state burden's on ADF's client's free-exercise rights); *Zubik v. Burwell*, 136 S. Ct. 1557 (2016) (per curium) (successful result for religious colleges' free exercise rights); *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218 (2015) (unanimously upholding ADF's client's free-speech rights); *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2759 (2014) (striking down federal burden's on ADF's client's free-exercise rights); *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014) (upholding a legislative prayer policy promulgated by a town represented by ADF); *Arizona Christian Sch. Tuition Org. v. Winn*, 131 S. Ct. 1436 (2011) (upholding a state's tuition tax credit program defended by a faith-based tuition organization represented by ADF).

December 20, 2017, Erik Dussault, assistant director of student unions and activities, informed SVC that the concert hall was unavailable.

SCV then requested Willey Hall for the Ben Shapiro lecture. Willey Hall can accommodate 800 people. However, the University inexplicably denied SCV's request for Willey Hall, citing "access to the skyway" as rationale for its denial. In an email dated December 21, 2017, Mr. Dussault, writing to SCV, stated:

I have one more venue to send you. Willey is not going to be a good option due to access from the skyway. I'm in a meeting, I'll send it out when I'm done.

But that "one more venue" wasn't even on the Minneapolis campus. From that point forward the University only offered the Students for a Conservative Voice space on the St. Paul campus, which bares the nickname "cow campus" because of its remoteness.

Lieutenant Troy Buhta of the University of Minnesota Police Department wrote to Mr. Dussault on December 21, 2017 to suggest the Continuing Education and Conference Center as a potential venue for the Shapiro lecture. However, the Continuing Education and Conference Center is much smaller than either of the venues that SCV originally requested; it only holds 392 people. It is also significantly less accessible to students. Lt. Buhta described the Continuing Education and Conference Center by writing:

...the best part is the building is all by itself and much easier to secure inside with ample room outside. There isn't any significant transportation routes nearby.

But SCV quickly ceased consideration of the Continuing Education and Conference Center after learning that the University planned to charge the students \$5,000 to reserve the space, an exorbitant fee for any college student.

North Star Ballroom, which is also on the St. Paul campus, became the one and only offered option for SCV. And while this venue too presents accessibility concerns because of its remoteness, it is also significantly smaller than either of the venues that SCV originally requested. The North Star Ballroom holds slightly more than 400 people. As a result, hundreds of students are going to miss out on the opportunity to hear from Mr. Shapiro.

As of February 13, 2018, Willey Hall remains available from 3:45 pm to 10:00 pm. No one has reserved it.

On December 22, 2017, Philip Hunter, Lead Event Scheduler, emailed SCV to alert the group that the University may impose a security fee on the Shapiro event. He wrote:

Also as with previous events, if you haven't done so already, please contact Student Unions and Activities (sao@umn.edu) when you are planning any large outreach events which include the potential for large crowds, media involvement

and/or high profile speakers...Student groups who host events in which the University deems additional services necessary are responsible for all costs associated with such services.

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.”² In fact, nowhere is the vigilant protection of constitutional rights more vital than in American schools.³ Unfortunately, rather than zealously defend the First Amendment rights of all of its students, the University of Minnesota is picking winners and losers. Some students are being afforded greater First Amendment freedoms than others.

I. The University of Minnesota employed a heckler’s veto by denying conservative students equal access to university facilities on the basis of the students’ viewpoint.

“A function of free speech under our system of government is to invite dispute.”⁴ Expressing unpopular viewpoints does not diminish one’s rights under the First Amendment; the ability to express diverse opinions and viewpoints is core to the First Amendment. “The right to speak freely and to promote diversity of ideas and programs is therefore one of the chief distinctions that sets us apart from totalitarian regimes.”⁵ Yet, by empowering protestors to relocate or severely restrict students’ peaceable and orderly expression, the University is trampling the rights of individual students to appease the demands of the intolerant majority.

“[T]he government violates the First Amendment when it denies access to a speaker solely to suppress the point of view he espouses on an otherwise includible subject.”⁶ “[C]onstitutional rights may not be denied simply because of hostility to their assertion or exercise.”⁷

Here, the University of Minnesota is depriving SCV of their First Amendment right of expression by denying the group equal access to Willey Hall. The community’s potential reaction to SCV’s speech does not justify the University in restricting SCV’s speech. “Listeners’ reaction to speech is not a content-neutral basis for regulation.”⁸

SCV has a right to use Willey Hall for expressive activity because the University purposefully availed Willey Hall for student expression. Other student organizations are

² *Tinker v. Des Moines* 393 U.S. 503, 506 (1969).

³ *Shelton v. Tucker*, 364 U.S. 479, 487 (1960).

⁴ *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949).

⁵ *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949).

⁶ *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 806 (1985).

⁷ *Cox v. Louisiana*, 379 U.S. 536, 551 (1965).

⁸ *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 134 (1992).

permitted to reserve Willey Hall for their expressive activities. It is SCV who is being treated disparately.

In his email to SCV dated December 21, 2017, Mr. Dussault reasoned that SCV could not reserve Willey Hall for the Ben Shapiro lecture because of the existence of the skyway. In a separate email Lieutenant Buhta stated that the Continuing Education and Conference Center would be a good location for the Shapiro lecture because of the absence of “any significant transportation routes nearby.” While the existence of the skyway and of “significant transportation routes” may impact how the University would secure Willey Hall, they do not justify denying SVC access to it.

Denying access on this basis is a pretext. The University has repeatedly demonstrated its ability to secure Willey Hall for high-profile events. In 2014 the University hosted Supreme Court Justice Ruth Bader Ginsburg in Mondale Hall, which is connected to Willey Hall and presents identical security challenges. The University also hosted Ann Coulter in Willey Hall. Multiple debates and roundtable events have also been hosted in Willey Hall. If the University wants to secure Willey Hall for an event, it can.

II. The University threatened SCV with a viewpoint discriminatory “security fee.”

“The government offends the First Amendment when it imposes financial burdens on certain speakers based on the content of their expression.”⁹ The Court in *Forsyth County v. Nationalist Movement* struck down a county ordinance that permitted county administrators to impose varying fees based on an “administrator’s measure of the amount of hostility likely to be created by the speech based on its content.”¹⁰ In doing so, the Court stated, “Listeners’ reaction to speech is not a content-neutral basis for regulation.”¹¹

Here, Mr. Hunter stated that the university may impose a security fee on the Shapiro event if the University “deems additional services necessary.” He also explained that a “high profile speaker” triggers SUA to evaluate the necessity of additional security for an event.

However, if the University deems “additional services necessary” and imposes a security fee on SCV for the Shapiro event, it would be an unconstitutional action on behalf of the University. State actors, or in this case the University of Minnesota, may not vary security fees based on listeners’ reaction to speech. It is another form of a heckler’s veto and unconstitutionally burdens speech.

Furthermore, administrators must apply “narrowly drawn, reasonable and definite standards”¹² in their assessment of security fees. In *Niemotko v. Maryland*, the Court held a

⁹ *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 828 (1995).

¹⁰ *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 134 (1992).

¹¹ *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 134 (1992).

¹² *Niemotko v. Maryland*, 340 U.S. 268, 271 (1951).

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.¹³ The Court reasoned that the absence of "narrowly drawn, reasonable and definite standards"¹⁴ created the "possibility of abuse."¹⁵

In *Forsyth County*, the Court cited to *Niemotko*, reinforcing the importance of "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]"¹⁶ fee assessment.

Conclusion

It is fundamentally unfair to deny SCV equal access to a university facility because those critical of SCV may protest the content of their speech. Others' reaction to the content of SCV's speech does not give the University the authority to restrict or place limitations on SCV's speech, at least not constitutionally.

And it was also unsettling to learn that the University, through the University's Office for Equity and Diversity" is sponsoring a "counter event" to the SCV's lecture featuring Ben Shapiro. It is ironic that the University's Office for Equity and Diversity would sponsor an event to counter a lecture that will advance ideological diversity.

"The vitality of civil and political institutions in our society depends on free discussion."¹⁷ It is not too late for the University of Minnesota to correct its error and to respect the First Amendment rights of all of its students, not just those professing favored viewpoints.

On behalf of SCV, we demand that the University of Minnesota respect the First Amendment rights of all of its students, regardless of viewpoint, by allowing Ben Shapiro to speak in Willey Hall on February 26, 2018 at 7:00pm. We also demand that this event be allowed to proceed without the imposition of a security fee based on the actions, or potential actions, of those critical of Mr. Shapiro and SCV. You are on notice of potential imminent litigation and are required to abide by all relevant preservation of evidence rules. If you wish to discuss this matter further, please contact either of us.

Regards,

¹³ *Niemotko v. Maryland*, 340 U.S. 268, 271 (1951).

¹⁴ *Niemotko v. Maryland*, 340 U.S. 268, 271 (1951).

¹⁵ *Niemotko v. Maryland*, 340 U.S. 268, 272 (1951).

¹⁶ *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 133 (1992).

¹⁷ *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949).


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