



FIRE

Foundation for Individual
Rights and Expression

April 7, 2023

President Havidán Rodríguez
Office of the President
University at Albany
State University of New York
1400 Washington Avenue
Albany, New York 12222

Sent via U.S. Mail and Electronic Mail (presmail@albany.edu)

Dear President Rodríguez:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned by UAlbany canceling Turning Point USA's April 4 event featuring political commentator Ian Haworth in response to substantial disruption by protestors. The First Amendment requires public universities to protect student groups' free speech rights by making good faith efforts to address severe disruptions to expressive events as they occur. Canceling the event instead of addressing disruptors ratifies an unconstitutional "heckler's veto"² and will only incentivize more threats to students' free speech rights and deter students from hosting potentially controversial speakers on campus. We call on the university to ensure students are free to host speakers, even controversial ones, without substantial disruptions.

Haworth visited UAlbany on April 4 for an event about free speech on campus hosted by the TPUSA student group.³ Among the audience were those seeking to listen to Haworth's remarks and protesters opposed to TPUSA and Haworth.⁴ Before the event began, protesters loudly

¹ For more than 20 years, FIRE has defended freedom of expression, conscience, and religion, and other individual rights on America's college campuses. You can learn more about our recently expanded mission and activities at [thefire.org](https://www.thefire.org).

² A heckler's veto occurs when protestors substantially disrupt an event via violence or other means to prevent a speaker from speaking. *First Amendment Glossary*, FIRE, <https://www.thefire.org/first-amendment-library/glossary>; see also Zach Greenberg, *Rejecting the 'heckler's veto'*, FIRE (June 14, 2017), <https://www.thefire.org/rejecting-the-hecklers-veto>; Adam Goldstein, *Dear University of North Texas: The 'Heckler's veto' is not a good thing*, ETERNALLY RADICAL IDEA (Nov. 5, 2020), <https://www.thefire.org/dear-university-of-north-texas-the-hecklers-veto-is-not-a-good-thing>.

³ The recitation here reflects our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us.

⁴ Brad Polumbo, *Unhinged campus mob SHOUTS DOWN conservative speaker Ian Haworth at SUNY Albany*, BASED POLITICS (Apr. 5, 2023), <https://www.based-politics.com/2023/04/05/campus-mob-shouts-down->

chanted and yelled over TPUSA members as they sought to introduce Haworth. The yelling and chanting continued for approximately 90 minutes, preventing the audience from hearing Haworth’s opening remarks. During this disruption, campus police and administrators stood both in the back of the room and right outside the venue, but neither asked protestors to stop disrupting the event nor attempted to remove disruptors from the venue. After approximately two hours of nearly continuous disruption, police officers canceled the event and evacuated TPUSA members and Haworth to a different location.

It has long been settled law that the First Amendment binds public universities like UAlbany,⁵ which must, among other things, ensure student groups can exercise their expressive rights by hosting speakers.⁶ When those opposed to the speakers or their message target such events for disruption, educational institutions must respond not by removing the speaker, but rather with “bona fide efforts” to protect expressive rights “by other, less restrictive means.”⁷ Such efforts to address the disruption are “the proper response to potential and actual violence” and must proceed before authorities “suppress legitimate First Amendment conduct as a prophylactic measure.”⁸ In finding that even the violent reaction of a hostile mob cannot justify cutting off a speaker’s protected expression, a federal appellate court proclaimed that:

Maintenance of the peace should not be achieved at the expense of the free speech. The freedom to espouse sincerely held religious, political, or philosophical beliefs, especially in the face of hostile opposition, is too important to our democratic institution for it to be abridged simply due to the hostility of reactionary listeners who may be offended by a speaker’s message.⁹

tpusa-speaker-ian-haworth-at-suny-albany; Taylor Penley, *SUNY Albany protesters destroy Bible at free speech event: ‘The tolerant left, ladies and gentlemen’*, FOX NEWS (Apr. 6, 2023), <https://www.foxnews.com/media/suny-albany-protesters-destroy-bible-free-speech-event-tolerant-left-ladies-gentlemen>; Alexa Schwerha, *College Students Disrupt ‘Free Speech’ Event With Chants, Stolen Pizza And A Conga Line*, DAILY CALLER (Apr. 5, 2023), <https://dailycaller.com/2023/04/05/college-students-university-albany-shout-down-conservative-speaker-free-speech-event>.

⁵ *Healy v. James*, 408 U.S. 169, 180 (1972) (“[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, ‘the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.’”) (internal citation omitted).

⁶ *E.g.*, *Gay Students Org. of the Univ. of N.H. v. Bonner*, 367 F.Supp. 1088, 1096 (D.N.H. 1974) (The “right” of students “to hear speakers of their own choice” is one of the “activities traditionally protected by the First Amendment”); *Brooks v. Auburn Univ.*, 296 F.Supp. 188, 190–91 (M.D. Ala. 1969) (The First Amendment protects “the rights of students and faculty to hear a speaker invited to the campus.”); *Stacy v. Williams*, 306 F. Supp. 963, 975 (N.D. Miss. 1969) (finding that student group’s right to invite political candidates to campus is protected by the First Amendment); *see also Stanley v. Georgia*, 394 U.S. 557, 564 (1969) (It is “well established” that the First Amendment confers and protects the right to speak as well as “the right to receive information and ideas”).

⁷ *Bible Believers v. Wayne Cnty.*, 805 F.3d 228, 255 (6th Cir. 2018).

⁸ *Collins v. Jordan*, 110 F.3d 1363, 1371–72 (9th Cir. 1996); *Bible Believers*, 805 F.3d at 255 (“In a balance between two important interests—free speech on one hand, and the . . . power to maintain the peace on the other—the scale is heavily weighted in favor of the First Amendment.”).

⁹ *Bible Believers*, 805 F.3d at 252 (6th Cir. 2015).

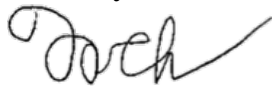
When protestors seek to shout down a speaker, “[p]unishing, removing, or by other means silencing a speaker due to crowd hostility will seldom, if ever, constitute the least restrictive means available to serve a legitimate government purpose.”¹⁰

Yet at UAlbany, police canceled the event despite making no attempt to limit disruptive conduct. Rather than address the source of the disruption—that is, audience members opposed to TPUSA and Haworth, who sought to prevent others from hearing him—UAlbany violated TPUSA’s expressive rights by canceling its event. By refusing to enforce the university’s Student Code of Conduct provisions designed to prevent disruptions to scheduled expressive events, UAlbany failed to protect its students’ First Amendment rights.¹¹

To deter disruptions to expressive events, ensure campus safety, and protect students’ First Amendment rights, FIRE calls on UAlbany to make bona fide efforts to address substantial disruptions to students’ expressive events as they occur, and to educate students on the distinction between protected protest and disruptive conduct that prevents others from exercising their own freedom of speech. We would be pleased to work with your university to ensure campus officials and students are clear about these concepts. To this end, we recommend that you adopt and implement FIRE’s “Free Speech at Freshman Orientation” materials, which aim to teach incoming students about their free speech rights from the beginning of their time at UAlbany.¹²

We request receipt of a substantive response to this letter no later than the close of business on April 21, 2023.

Sincerely,



Zachary Greenberg
Senior Program Officer, Student Organizations, Campus Rights Advocacy

Cc: Clarence L. McNeill, Dean of Students
Paul Burlingame, Chief of Police
Amanda Maleszweski, Chief Campus Counsel

¹⁰ *Id.* at 248.

¹¹ UAlbany’s Code of Student Conduct allows the university to address disruptive conduct that attempts to prevent individuals from engaging in expressive activity. UNIV. OF ALBANY, *Code of Student Conduct*, at §3(18) (Aug. 20, 2019), <https://www.albany.edu/dean-students/community-standards/community-rights-responsibilities> [<https://perma.cc/E2UZ-RFKL>] (banning “[o]bstructing or disrupting University activities” including “participation in campus demonstrations which disrupt the normal operations of the University and infringes on the rights of other members of the University community by leading or inciting others to disrupt scheduled and/or normal activities within any campus building or area”).

¹² *Free Speech at Freshman Orientation*, FIRE, <https://www.thefire.org/research-learn/free-speech-freshman-orientation>.