

FIRE

Foundation for Individual
Rights and Expression

April 13, 2023

Garnett S. Stokes
Office of the President
MSC05 3300
1 University of New Mexico
Albuquerque, New Mexico 87131-0001

URGENT

Sent via U.S. Mail and Electronic Mail (presidentstokes@unm.edu)

Dear President Stokes:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned that the University of New Mexico has imposed \$8,140 in security fees on UNM's Students for Life chapter for an event featuring Students for Life of America President Kristan Hawkins.² UNM's campus police appears to have affixed the exorbitant price tag to Hawkins' speech because they expect the event to draw protest.³ Yet, UNM knows that as a public university bound by the First Amendment,⁴ it cannot tax student speech because it disfavors the views expressed. FIRE wrote UNM in 2017 about a near-identical situation when the university applied its then-policy governing security fees for controversial speakers to a student event featuring conservative firebrand Milo Yiannopoulos.⁵ UNM reversed course the next day and ultimately amended the policy to avoid

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 Caroline Wharton, *University Slaps \$8,000 Price Tag on SFLA President Kristan Hawkins Event*, STUDENTS FOR LIFE OF AMERICA <https://studentsforlife.org/2023/04/11/university-slaps-8000-price-tag-on-sfla-president-kristan-hawkins-event/>. The recitation of facts here reflects our understanding of the pertinent facts, which is based on public information. We appreciate that you may have additional information to offer and invite you to share it with us.

³ *Id.*

⁴ *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).

⁵ FIRE Letter to the University of New Mexico, Jan. 24, 2017, <https://www.thefire.org/research-learn/fire-letter-university-new-mexico-january-24-2017>.

these situations in the future.⁶ However, a constitutional policy on its face may still be unconstitutionally applied,⁷ as appears to be happening here with Students for Life.

UNM’s policy lays out reasonable, viewpoint-neutral criteria used to determine the costs of security services:⁸

- An accurate estimate of the number of attendees at the event
- The venue’s size and location
- The number of entrances and exits, within the venue, and access to restrooms and other facilities near the venue
- Whether the event will be open to the public
- Whether there will be a ticketing process and what type
- Length of time scheduled for the event
- Whether the event will occur during daylight or evening hours
- Whether a fee will be charged for entry, goods, or services
- Whether alcohol will be served at the event

The policy states that the special event sponsor is responsible for the costs, and later states that UNM police will collaborate with the Special Events Committee and the event sponsor “with regard to the number of police officers, security officers, or combination of officers required to reasonably address the safety and security of participants at the special event.”⁹ So while UNM may charge reasonably determined security fees, it cannot impose *excessive* fees because of expected protests or controversy.

The Supreme Court addressed precisely this issue when it invalidated a Forsyth County, Georgia, ordinance that permitted the local government to set varying fees for events based on how much police protection the event would need.¹⁰ In declaring the ordinance a violation of the First Amendment, the Court noted “[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.”¹¹

The Court also held that “[any] 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.”¹²

⁶ VICTORY: University of New Mexico Suspends Speech Code, Waives Speech Tax for Milo Yiannopoulos Speech, FIRE (Jan. 26, 2017) <https://www.thefire.org/news/victory-university-new-mexico-suspends-speech-code-waives-speech-tax-milo-yiannopoulos-speech>.

⁷ *Dambrot v. Central Mich. Univ.*, 55 F.3d 1177 (6th Cir. 1995).

⁸ *Need for Security Services, Special Events and Rental of Facilities to External Users*, UNIV. OF NEW MEX. POLICY OFFICE <https://policy.unm.edu/university-policies/2000/2230.html> [<https://perma.cc/E7EZ-G7T8>].

⁹ *Id.* at Payment for Security Services.

¹⁰ *Forsyth County v. Nationalist Movement*, 505 U.S. 124, 134-35 (1992).

¹¹ *Id.*

¹² *Id.*

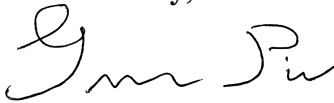
The court held Forsyth County’s implementation of the ordinance did not rely on “narrowly drawn, reasonable and definite standards guiding the hand of the Forsyth County administrator,” such that “[n]othing in the law or its application prevents the official from encouraging some views and discouraging others through the arbitrary application of fees.”¹³

Accordingly, when UNM applies its security fees policy to a student group, it must adhere to narrowly drawn, viewpoint- and content-neutral, and otherwise reasonable standards that guard against viewpoint discrimination. Allowing the subjectively determined controversial nature of Students for Life UNM’s invited speakers to form the basis for exorbitant fees effectuates a heckler’s veto, allowing the anticipated audience reaction to price speakers out of the marketplace of ideas.¹⁴

Because UNM is a government entity committed to free expression, it – not student groups – must foot the bill to ensure a broad range of viewpoints can be heard on campus. With a nearly \$600 million endowment,¹⁵ we’re confident UNM can pay the \$8,000 security bill for this speech without issue.

Given the urgent nature of this matter, we request a substantive response to this letter no later than the close of business on Thursday, April 20, confirming that UNM will lift the imposition of these fees and ensure the event can proceed.

Sincerely,



Graham Piro
Program Officer, Campus Rights Advocacy

Cc: Joseph Silva, Chief of Police
Jeff McDonald, Security Operations Director

¹³ *Id.*

¹⁴ *See, e.g., Watson v. Memphis*, 373 U.S. 526, 535 (1963) (“[C]onstitutional rights may not be denied simply because of hostility to their assertion of exercise.”).

¹⁵ National Association of College and University Business Officers and TIAA. *U.S. and Canadian Institutions Listed by Fiscal Year (FY) 2021 Endowment Market Value, and Change* in Endowment Market Value from FY20 to FY21*, <https://www.nacubo.org/-/media/Nacubo/Documents/research/2021-NTSE-Public-Tables--Endowment-Market-Values--REVISED-February-18-2022.ashx?la=en&hash=FA57411CC4244B7D49C25377165FEC42FFBDEB56>.