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**URGENT**

*Sent via U.S. Mail and Electronic Mail (iupres@iu.edu)*

Dear President Whitten:

FIRE<sup>1</sup> is deeply concerned that Indiana University changed its Outdoor Spaces policy, suddenly and under the cloak of night, in anticipation of a student-planned April 25 Gaza solidarity protest on Dunn Meadow. Our understanding, based on public information, is that the day before the protest, IU formed a late-night ad hoc committee to address protestors' predicted viewpoints. The committee modified the policy to restrict signage and tents, which IU had previously permitted without advance notice.<sup>2</sup> These actions violate not only IU's binding First Amendment obligation but also its institutional promises to keep Dunn Meadow open as an "assembly ground" for people to exercise their constitutional rights.<sup>3</sup> We are further concerned by IU's implementation of the policy through disproportionate use of riot police to forcibly disperse peaceful protestors, despite clear policy statements that "the University should not use physical force to enforce these rules" but "should use the legal process" to address non-

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<sup>1</sup> As you may recall from previous correspondence, the Foundation for Individual Rights and Expression (FIRE) is a nonpartisan nonprofit dedicated to defending freedom of speech. You can learn more about our expanded mission and activities at [thefire.org](http://thefire.org).

<sup>2</sup> *Policies & Accountability*, On Campus Event Policies and Guidelines, Outdoor Spaces, IND. UNIV., <https://studentlife.indiana.edu/get-involved/student-organizations/manage-organization/policies/index.html> [<https://perma.cc/2XSJ-UDK4>]. We appreciate that you may have additional information that bears on our understanding of the pertinent facts, and if so, we invite you to share it with us.

<sup>3</sup> *Policy for the Use of Indiana University Assembly Ground*, IND. UNIV. (Jan. 1, 1969), <https://vpfaa.indiana.edu/policies/bl-aca-i18-use-assembly-ground/index.html> [<https://perma.cc/P5TL-HECQ>].

compliance.<sup>4</sup> We therefore urge IU to reverse the policy change and any punishments effectuated under it.

For more than five decades, IU has designated and held open an “assembly ground” for student and faculty expression at Dunn Meadow, which has hosted numerous rallies, protests, and gatherings. IU’s Assembly Ground policy specifically notes:<sup>5</sup>

Effective communication sometimes requires the use of signs, symbols or structures, as well as the spoken or printed word. We recognize the use of these signs, symbols or structures as an appropriate exercise of the right of expression in the Assembly Ground and call upon all to respect these forms of expression. The construction of enduring signs, symbols or structures in the Assembly Ground may enhance the effective communication of a particular idea or point of view.

Recognizing that permanent structures in the assembly ground have “at least the potential of limiting the use of the Dunn Meadow by others,” the policy establishes reasonable time, place, and manner restrictions, allowing tents and other structures, *with or without advance notice*, so long as they are continually carried or taken away between 11:00 pm and 6:00 am.<sup>6</sup>

Since 1969, students have taken advantage of this permissive approach to structures on Dunn Meadow, even occasionally violating the restriction on overnight camping, with IU notably taking no action in response. For example, as recently as 2014, volunteers at a homeless shelter camped in Dunn Meadow to raise awareness about homelessness and to collect donations.<sup>7</sup> In 2010, a group of students erected a tent to raise awareness of poverty by living on \$2 a day for two days.<sup>8</sup> In 2002, a non-student resident of Bloomington, joined by several students, camped in Dunn Meadow for at least two-and-a-half weeks to protest U.S. bombings in Afghanistan.<sup>9</sup> In 1991, demonstrators protesting U.S. involvement in the Persian Gulf camped in Dunn Meadow for nearly two months.<sup>10</sup>

Your letter to IU faculty on April 25, the day of the targeted Gaza solidarity protest, underscores our concerns: you stated administrators learned on April 24 of students’ plans to protest and install tents on Dunn Meadow the next day, and that, in anticipation, IU changed its Outdoor

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> IDS Staff, *Winter shelter to close, volunteers raise awareness*, IND. DAILY STUDENT (March 27, 2014, 11:41 AM), <https://www.idsnews.com/article/2014/03/winter-shelter-to-close-volunteers-raise-awareness>.

<sup>8</sup> Vanessa Valentin, *Students experience poverty during challenge*, IND. DAILY STUDENT (Apr. 28, 2010, 12:58 AM), <https://www.idsnews.com/article/2010/04/students-experience-poverty-during-challenge>.

<sup>9</sup> Alexandra R. Moses & Ed DeLaney, *Cold weather, discomfort can’t silence local protestor*, IND. DAILY STUDENT (July 25, 2002, 4:23 PM), <https://www.idsnews.com/article/2002/07/cold-weather-discomfort-cant-silence-local-protester>; Rachel Kipp, *Students set up ‘peace camp’ in Dunn Meadow*, IND. DAILY STUDENT (July 25, 2002, 4:23 PM), <https://www.idsnews.com/article/2002/07/students-set-up-peace-camp-in-dunn-meadow>.

<sup>10</sup> *One-man vigil: Tent City*, IND. DAILY STUDENT (2010), <https://www.idsnews.com/article/2010/11/one-man-vigil-tent-city>.

Spaces policy to require advance approval for structures.<sup>11</sup> You explained that while the pre-existing 1969 Board of Trustees policy had permitted tents on Dunn Meadow without approval, it also empowered IU’s provost to assemble “an ad hoc committee at any time to address specific changes.”<sup>12</sup> Per your letter, after consideration of “similar events” on campuses nationwide, IU assembled such a committee overnight to add the new advance approval requirement.<sup>13</sup> In a subsequent letter, you confirmed the decision came amid concerns about the content and views that might be expressed at the April 25 protest given its alleged connection to “a national movement on numerous college campuses ... [which] coincides with a troubling rise in antisemitism nationally and on college campuses” and “antisemitic episodes” that you claimed were linked to this movement.<sup>14</sup>

Signs displaying the revised policy alerted protestors arriving at Dunn Meadow the morning of April 25 that IU had pushed through this overnight policy change.<sup>15</sup> Though this same-day notice did not give protestors enough time to request advance approval to carry on their protest as planned, you later claimed protestors were told they could stay and protest but must dismantle any tents.<sup>16</sup>

Despite your assurances at the time of your letter to faculty that the protests continued peacefully without the use of structures,<sup>17</sup> reports indicate that at about 4 p.m., the university sent in police officers—armed with assault weapons, riot shields, and pepper spray.<sup>18</sup> These officers began forcefully removing protestors from tents, dragging them across a field, and zip-tying their hands.<sup>19</sup> Further reports indicate police snipers held positions atop university buildings at various times during the protest and the following weekend.<sup>20</sup> All told, police arrested more than 30 protestors—many of whom they charged with criminal trespass—and issued them written trespass warnings banning them from IU property for at least a year.<sup>21</sup> Officers returned on April 27, removed additional tents, and arrested another 23 protestors.<sup>22</sup>

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<sup>11</sup> Letter from Pamela Whitten, president, to faculty (Apr. 25, 2024) (on file with author).

<sup>12</sup> *Id.* Based on information from longstanding faculty, no such committee has ever existed before April 24, 2024.

<sup>13</sup> *Id.*

<sup>14</sup> Letter from Whitten to Members of the IUB Community (Apr. 28, 2024) (on file with author).

<sup>15</sup> Marissa Meador, *Utterly unprincipled: Policy created on eve of protest used to make arrests*, IND. DAILY STUDENT (Apr. 26, 2024, 10:21 AM), <https://www.idsnews.com/article/2024/04/policy-created-on-eve-of-protest-to-make-arrests>.

<sup>16</sup> Letter from Pamela Whitten, *supra* note 11.

<sup>17</sup> *Id.*

<sup>18</sup> Meador, *supra* note 15. Officers from the IU Police Department and the Indiana State Police responded to the scene.

<sup>19</sup> *Id.*

<sup>20</sup> Marissa Meador et al., *IU protests and police action draw criticism, defense*, IND. CAP. CHRONICLE (Apr. 29, 2024, 6:30 AM), <https://indianacapitalchronicle.com/2024/04/29/iu-protests-and-police-action-draw-criticism-defense/>.

<sup>21</sup> *Id.*

<sup>22</sup> Deja Studdard, *23 people arrested after clashes with police on 3rd day of protests at IU*, FOX59 (Apr. 27, 2024, 3:17 PM), <https://fox59.com/indiana-news/23-individuals-charged-for-resisting-law-enforcement-criminal-trespass-at-indiana-university/>.

IU's last-minute policy change based on what appear to be content- and viewpoint-based reasons, coupled with enforcement of the altered policy with only the most limited of notice raise serious constitutional concerns. As a public institution, any restriction IU places on student expression must comport with viewpoint neutrality, which the U.S. Supreme Court has called the First Amendment's "bedrock principle."<sup>23</sup> The university may establish and enforce reasonable restrictions on the time, place, and manner of expressive activity, but these rules cannot be enacted to target a particular viewpoint, nor may they be selectively enforced based on a speaker's viewpoint.<sup>24</sup>

It appears the ad hoc committee authored the new policy the evening before the protest to give administrators an excuse to shut down the planned encampment the next morning, knowing protestors would be unable to receive advance approval for any structures on such short notice. When protestors proceeded to install structures and tents without approval, administrators had police on hand to forcefully remove, punish, and silence them for violating the new ban.

Whether or not administrators believed the former version of the policy left the university open to a safety threat, an overnight rush to change a 55-year-old institutional free expression policy on the eve of a major protest leads to an inescapable conclusion that IU specifically intended to disadvantage viewpoints presented by those protestors. Even more damning, in your letter from the evening of the protest and your statement a few days after, you *admitted* IU changed the policy because of fears about antisemitic speech and incidents you associated with Gaza solidarity protests at other campuses, not any particularized threats at IU. These sweeping assumptions about the nature of the protest and the rush to target attendees based on perceived guilt-by-association call into question the security of free expression at IU.

Further, according to IU disciplinary policy, interim suspensions may only be issued if there is "reasonable cause to believe that a student's presence poses a continuing danger to person or property, or ongoing threat of disrupting the academic process."<sup>25</sup> Because IU has offered no evidence that any of the students suspended under the newly revised policy posed such a danger, the university has violated its own policy.

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<sup>23</sup> See, e.g., *Snyder v. Phelps*, 562 U.S. 443, 458 (2011); *Iancu v. Brunetti*, 588 U.S. 388, 393 (2019); cf., *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).

<sup>24</sup> *Frederick Douglass Found., Inc. v. District of Columbia*, 82 F.4th 1122, 1142 (D.C. Cir. 2023) ("Neutral regulations may reasonably limit the time, place, and manner of speech, but ... cannot be enforced based on the content or viewpoint of speech."); *Bus. Leaders In Christ v. Univ. of Iowa*, 991 F.3d 969, 985–86 (8th Cir. 2021) (selective enforcement of facially neutral non-discrimination policy against student group based on its views violated its free speech rights); *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (time, place, and manner rules must also be content-neutral, narrowly tailored to serve a significant government interest, and leave open ample alternative channels for communication).

<sup>25</sup> *Code of Student Rights, Responsibilities & Conduct*, Appendix E, Interim Suspension, IND. UNIV., <https://studentcode.iu.edu/procedures/bloomington/discipline/appendix-e.html> [<https://perma.cc/W57D-VYHK>].

Any commitment to free speech, fundamental fairness, and due process presupposes administrators will not call committees to change university policy under cover of night to bar students from exercising constitutional rights the next morning. IU's actions left protestors unable to install structures to employ the very type of "effective communication" the Assembly Ground policy not only anticipated, but encouraged.<sup>26</sup> Simply put, IU's last-minute policy change, disproportionate show of force, and subsequent arrest and punishment of protestors in response to a peaceful gathering make clear IU has abdicated its constitutional obligations.

To correct course, IU must withdraw its new prior approval requirement for temporary and permanent structures, and reinstitute its prior viewpoint-neutral time, place, and manner policy such that all students and faculty may express themselves in IU's "public forum for expression on all subjects."<sup>27</sup> Justice further demands IU cease pursuing any pending institutional or criminal charges against students and faculty for peaceful protest that the former policy would have permitted just hours before, and allow all formerly charged individuals to return to campus immediately.

Given the urgent nature of this matter, FIRE requests a substantive response to this letter no later than the close of business Monday, May 13.

Sincerely,



Amanda Nordstrom  
Program Officer, Campus Rights Advocacy

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<sup>26</sup> *Policy for the Use of Indiana University Assembly Ground*, supra note 3.

<sup>27</sup> *Policy for the Use of Indiana University Assembly Ground*, supra note 3.