



EMPIRE

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— 2018 —

**PRE-TRIAL
ORAL ARGUMENT**





The Pre-Trial Materials ("PTM") pack contains four (4) parts:

1. Order Setting the Oral Argument

2. Legal Memorandum - Summarizing key concepts and terms in First Amendment law

3. Closed Universe Case Law - Excerpts from the U.S. Constitution and real cases that you may use to craft your arguments.

- *Reed v. Town of Gilbert, Arizona*, 135 S.Ct. 2218 (2015) (content based local sign ordinance subject to strict scrutiny).
- *Christian Legal Soc. Chapter of the University of California, Hastings College of the Law v. Martinez*, 551 U.S. 661 (2010) (state law school's policy requiring religious group to accept all comers, irrespective of belief, was reasonable, viewpoint-neutral regulation in limited public forum).
- *Rosenberger v. Rector and Visitors of University of Virginia*, 515 U.S. 819 (1995) (state university's refusal to pay publication costs of student religious publication constituted impermissible viewpoint discrimination in a limited public forum).
- *Forsyth County, Ga. v. Nationalist Movement*, 505 U.S. 123 (1992) (parade fee ordinance unconstitutional because it granted unfettered discretion to government official over events in a public forum).
- *Ward v. Rock Against Racism*, 491 U.S. 781 (1989) (City's sound amplification rules for rock concerts were reasonable regulations of the place and manner of protected speech in a public forum).
- *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37 (1983) (public school system's internal mail system held not a public forum).
- *Widmar v. Vincent*, 454 U.S. 263 (1981) (state university's facilities use policy created public forum from which student religious group could not be excluded).
- *Healy v. James*, 408 U.S. 169 (1972) (analyzing state college's attempted denial of recognition for radical student group).
- *Terminiello v. City of Chicago*, 337 U.S. 1 (1949) (reversing speaker's conviction for disorderly conduct and establishing unconstitutionality of "heckler's veto").
- *Cox v. New Hampshire*, 312 U.S. 569 (1941) (affirming convictions of marchers in unlicensed parade).

4. Exhibits - Specific to the Pre-Trial Oral Argument:

- Exhibit 1a and 1b: Photographs of the Empirion State University Stoa and Quad
- Exhibit 2: Empirion State University Events Chart
- Exhibit 3: Empirion State University Event Safety and Security Protocols
- Exhibit 4: Empirion State University Notice of Assessment of Security Fees

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF EMPIRION**

HARRY McCARSON; EMPIRION
STATE UNIVERSITY FIRST
AMENDMENT CLUB

Plaintiffs
v.

EMPIRION STATE UNIVERSITY,
HOLMES BRANDEIS, in his official
capacity as Dean of Students for Empirion
State University Undergraduates; JANE/
JOHN DOES 1-25 in their official
capacities as University administrators
and campus security officials

Defendants

18-CV-8243-MT***

Hon. McCarthy Taylor

**Order Setting Oral Argument
on Stipulated Facts**

FILED

DATE: 2/9/18
Clerk : District Court
Empirion
By: 
Deputy Clerk

This matter comes before the Court on Plaintiffs' Emergency Motion for a Temporary Restraining Order.

Plaintiffs filed their Complaint and Emergency Motion on February 7, 2018, to seek equitable relief concerning Plaintiff McCarson's speaking appearance scheduled at Empirion University for February 19, 2018.

The United States District Court for the District of Empirion has jurisdiction under 28 U.S.C. §§ 1331 and 1343; venue is proper under 28 U.S.C. § 1391(b).

FACTUAL FINDINGS BASED ON STIPULATED FACTS

The decision to award equitable relief, such as a temporary restraining order or a preliminary injunction, "is often based on procedures that are less formal and evidence that is

less complete than in a trial on the merits.” *Mullins v. City of New York*, 626 F.3d 47 (2d Cir. 2010). These equitable measures are either temporary or preliminary, as their names imply, and may be entered only until the Court may consider whether to enter a permanent injunction.

To expedite these proceedings in light of the parties’ need for a speedy resolution, the parties submitted a Joint Statement of Stipulated Facts (Dkt. No. 4). For purposes of this Order only, the Court accepts those facts and finds as follows:

Empirion State University Description, Facilities, Protocol Adoption

1. Empirion State University (“University” or “ESU”) is a public university in the State of Empirion with an undergraduate enrollment of 12,500. It is located in downtown Pasquale, and intermingled with retail and commercial businesses within walking distance from the campus. ESU students and faculty frequently visit the various restaurants, bars, shops, and other businesses around the campus.
2. The University has limited resources. It funds its operations primarily through student tuition payments, state taxpayer support, investment income on its endowment, federal research grants, private foundation grants, and charitable donations.
3. Total annual cost of attendance in 2017-18, for State of Empirion residents living on campus, was \$27,211. Non-residents, from the U.S. mainland and elsewhere, paid \$51,981. Those figures include tuition, room and board, student activity fees, and textbooks.
4. Members of the general public walk through the ESU campus daily via walkways and plazas on their way to their homes, workplaces, etc.
5. Two noteworthy architectural features of the campus are the Quad and the Stoa.

(POA Ex. 1A, 1B.) The Quad contains an unusual combination of buildings. The northeast section of the Quad is an open brick plaza with modern administration and classroom buildings on the perimeter. The southwest section of the Quad includes a Neoclassical masterpiece, the Stoa. The Stoa has an open covered portico and a small inner amphitheater that seats about 100 people. The amphitheater is kept locked, except when staff from the campus facilities department open it for scheduled events.

6. At the two main pedestrian entrances to the Quad are two campus map stands, about 40 inches high, each with a prominent notice below the campus map: “Use of Quad facilities and spaces must be consistent with the University’s educational mission. First priority for use of facilities and spaces is given to regularly scheduled university activities. Permission to enter the Quad may be revoked at any time.” The University posted the map stands in 1968.
7. The Stoa was built in 1922. Since that time, a plaque posted on a stand at the base of the stairs has stated: “The Stoa is University property. To apply for Amphitheater access, contact the Office of University Facilities.”
8. Student groups often use the Quad and Stoa for various events and have done so since the Quad was built around the Stoa in the 1940s. See POA Ex. 2 for a list of recent groups and events. By longstanding University policy put in place during the Vietnam War era and published in various versions of the ESU student handbook thereafter, “Outside groups seeking to use ESU facilities must always have University sponsorship, and events to which the general public is invited must be sponsored by an administrative or academic unit of the University.”
9. Since 2014, the University’s website has stated: “Weddings, banquets, fun runs,

pep rallies, luncheons, plays, open houses, displays and art shows are just some of the events that have been held on the Quad or at the Stoa. To make sure that there are no conflicts with times and dates, and to ensure the facility's basic function is protected, each event must be approved by an academic or administrative unit and by the Committee on the Use of University Facilities (UUF). Some approvals may be contingent upon payment of use fees and security fees. All events must be consistent with the University's mission of teaching, research and public service.”

10. During 2016 and 2017, only one event on the Quad resulted in arrests. The Wollstonecraft (“Wolly”) Godwin incident occurred on August 1, 2017. Ms. Godwin is a famous feminist speaker and author who advocates for an anti-patriarchal agenda based in collective communitarianism. A student group, the Feminism Empowerment Movement (FEM), obtained permission to sponsor her appearance. In a nighttime speech on the Stoa steps, she read excerpts from her latest book, *Parthenogenesis, Not Patriarchy: Towards a World Without Men*. A male heckler from the crowd interrupted her occasionally with calls of, “Good golly, MISS Wolly, enough already!” and “Foucault you!” Nevertheless, she persisted. Cellphone video recorded her reading this passage: “Life sciences research also has an important role to play in tearing down the structures of male-dominated capitalist hegemony. Women do not want men. And women will not need men, once we achieve the goal of our parthenogenesis project – asexual reproduction.” She paused reading and led the crowd in a few chants of “No more men!” The video also shows that as she attempted to continue reading from her book, four male members of Mu Epsilon Nu fraternity, all wearing khakis and white polo shirts, marched up the steps. “Shut up,

you shrew!” one of them yelled as he grabbed the book. The fraternity brothers began ripping pages out of the book. One of them pulled out a lighter and lit the pages on fire. At that point, a crowd of about 20 men and women, most wearing FEM t-shirts, swarmed the fraternity members. The three ESU campus police officers present on scene attempted to break up the scuffles and fistfights that broke out. They handcuffed one of the fraternity brothers and pepper-sprayed two persons, out of the crowd that rushed toward the portico. The handcuffed fraternity brother and the two people who were pepper-sprayed were placed under arrest, transported to campus police headquarters, cited for disorderly conduct, and released later that night.

11. Defendant Holmes Brandeis, ESU’s Dean of Students for Undergraduates, has chaired the Committee on the Use of University Facilities since 2015. A joint meeting of the facilities committee and the University’s senior administrative team took place on September 15, 2017. The minutes (which are open public records under Empirion law) quote Brandeis as saying, “Bigots are bad news. We need a policy to deal with all of these professional provocateurs who are out there, whatever their politics.” The Summary section of the minutes states: “In response to various incidents involving guest speakers at public and private colleges and universities around the country, including the recent Godwin incident here at ESU, the University may take steps to limit facilities access to prevent disruptions and violence on campus.”

12. The University adopted its “Safety and Security Protocols for Events Sponsored by Student Organizations, Non-Academic University Users, and Approved Non-

University Users with Potential to Disrupt Campus Security, Safety and Operation” (“Protocols”) on September 25, 2017. (POA Ex. 3.)

13. In the years before the Protocols were adopted, student groups seeking authorized access to the University facilities at issue here (Quad and Stoa) submitted a calendar request to the Office of Facilities Management. Requests were routinely granted, and facilities use permits were typically issued on a first-come, first-served basis. If the facilities manager determined that additional security was necessary for a particular event, she and the student group would come to a mutually agreeable fee arrangement on a case-by-case basis.

14. Before the Protocols were adopted, each Notice of Assessment was a simple itemized invoice showing the date, location, number of ESU PD officers, number of hours, and billing rate. It was printed on the back of the facilities use permit. After adopting the Protocols, ESU retitled the document “Notice of Assessment of Security Fees.” Each student group applying for a permit now receives an individualized written response. See POA Ex. 4, the Notice provided to Plaintiff First Amendment Club.

Plaintiff Harry McCarson Background, STTH Involvement, Invitation to ESU

15. Plaintiff Harry McCarson is one of the leaders of Stay True to History (STTH), an organization that some argue promotes white nationalism. He is independently wealthy, thanks to royalties from his grandmother’s patent on the turbo encabulator device.

16. McCarson tours the country at his own expense speaking to various groups who want to hear his views. His book, *Freedom for the Thought We Hate*, has been

heavily promoted on certain talk-radio shows and was ranked as high as ninth for several months on nonfiction bestseller lists in 2017. He also espouses his views on his weekly podcast and his YouTube channel.

17. The Empirion Poverty Law Center has designated STTH a hate group. On its website's Media Mentions tab, STTH specifically denies EPLC's accusation, saying, "We're not a hate group. We promote the values of Euro-Caucasian heritage. But thanks for the publicity."

18. Members of STTH committed assault while protesting the removal of Confederate monuments in Charlottesville, Virginia, in August 2017. McCarson was not present in Charlottesville, but four members of the STTH group, all from Maryland, were convicted of assault and disorderly conduct. When arrested, two of the STTH group were carrying pepper spray, knives, PVC pipe, and wooden batons. A woman was killed during the protests when a driver unaffiliated with STTH deliberately ran into a crowd of counter-protestors. STTH formally disavowed these members of the group, and their actions.

19. In October 2017, Plaintiff Empirion State University's First Amendment Club (hereafter "the Club"), an official undergraduate student group, began internal discussions about inviting McCarson to speak at the University. The Club has about 35 active members. Its annual budget from member dues and a share of university-collected student activity fees is \$5,000.

20. McCarson spoke at Brun University in Providence, Long Island on Halloween, 2017. A crowd of about 75 attended his speech in a small lecture hall. Only 14 of the online tickets were emailed to a brun.edu email address. A campus official stated

after the event, “It appeared that most of the attendees were not Brun students.” The Brun University police erected security barriers to create a pathway to the entrance to the hall where he spoke. Outside the hall, a crowd of Brun students and community members estimated at 1,500 chanted, sang, and held signs condemning McC Carson and STTH. Most were wearing Halloween costumes. About 30 minutes after McC Carson began speaking, seven protesters wearing ski masks emerged from the crowd. Shouting slogans like “Melt McC Carson!” and “Harry Is an Adversary!”, they began using portable blow-torches to attempt to cut through the security barriers protecting the entrance to the hall. Forty police in full riot gear from the Providence PD arrived and dispersed the crowd before the protesters entered the building. The individuals in ski masks disappeared in the unruly crowd and were never identified. (For a complete account, see *Report to Board of Overseers on Recent Campus Unrest, Brun University*, 2018, available at <http://brun.edu/campuslife>.)

21. The Club emailed McC Carson on November 15, 2017, inviting him to speak at the University. He accepted by email on November 18. The Club president’s email, in pertinent part, said, “Mr. McC Carson – Here at ESU, you will find a safe space for the full, free, and frank exchange of ideas. We want to hear what you have to say, in order to become better informed voters and citizens. The First Amendment Club believes you have a constitutional right to offend, a constitutional right to provoke, to challenge, to stir people to anger. Please do so.” He replied, “Can do, will do.”
22. The Club and McC Carson eventually decided upon Presidents Day, February 19, 2018, as the scheduled date for his appearance at Empirion State University.

Fee Assessment, TRO Lawsuit

23. On January 15, 2018, the first day after winter break, members of the Club met with University officials about McC Carson’s upcoming campus appearance. Referencing the University’s “Safety and Security Protocols,” Club members told the University about the Charlottesville and Brun incidents and provided copies of the Club’s email exchange with McC Carson. Defendant Brandeis attended that meeting.
24. At the January 15 meeting, the Club requested use of the Stoa porch and amphitheater for McC Carson’s February 19 appearance. The Club informed the University that the Club intended to raise money by selling tickets to the amphitheater seats at the door for \$10 each. Tickets would be available to anyone, including members of the general public, on a first-come, first-sold basis.
25. After consultations with counsel, trustees, and senior University leadership, University officials held a follow-up meeting with the Club on January 22. Defendant Brandeis informed the Club that, under the Safety and Security Protocols, the Club would have to pay substantial fees to cover the costs of increased security for use of the Stoa. The University provided the Club with a copy of the Notice of Assessment of Security Fees. (POA Ex. 4.)
26. Club members reviewed the Notice during the January 22 meeting and protested it as burdensome, onerous, draconian, and unnecessary. University officials, including Defendant Brandeis, reiterated the statements set forth in the Notice and declined to negotiate.
27. Although McC Carson can afford to do so, he refuses to pay fees that he believes are unconstitutional. He does not discourage his supporters from doing so on his behalf.

28. On January 23, the Club filed an expedited public information request with the University asking for recent data about security fees, specifically “all Notices of Assessment served on all student organizations within the past 12 months.” Because of the limited time available, the Club did not request, and the school did not provide, security fee information about events sponsored by the ESU administration itself (e.g. athletic events, the April 2017 Spring Weekend Concert, etc.). No persons unaffiliated with the University were charged security fees during the relevant time period because the facilities use manager determined that none of those events posed a security risk. Those five events were three June weddings on the Stoa portico, one Campfire Girls candy sale on the Quad, and one Girl Scouts cookie sale on the Quad. The University’s Community Liaison Office arranged for and sponsored facilities access for those community groups.

29. On January 30, the University provided a complete list of security fee assessments on 15 student organizations, with additional information. POA Ex. 2 is an excerpt of records kept in the University’s regular course of business.

30. The following day, January 31, 2018, counsel for the Club informed counsel for the University of the Club’s intent to seek a court order barring assessment of the security fee for McCarson’s appearance. Counsel for both sides met, conferred at length, and agreed to stipulate to the foregoing material facts, without waiver of the right to supplement or correct the record later if necessary. Because both Plaintiffs and Defendants seek a prompt resolution of the dispute, the University has agreed to waive a defense that Plaintiff had failed to exhaust administrative remedies.

LEGAL DISCUSSION AND ORDER SETTING ORAL ARGUMENT

31. Plaintiffs filed their Complaint and Emergency Motion for Temporary Restraining Order on February 7, 2018.
32. The Complaint alleges that the University's proposed fee of \$21,265.20 violates the First Amendment to the U.S. Constitution (made applicable to Empirion by way of the Fourteenth Amendment) because the fee functions as an unconstitutional prior restraint in that it is manifestly unreasonable, chills free speech, is content based, is not necessary to achieve a compelling governmental interest, and is not narrowly tailored. It asks this Court to enjoin payment of any fee before pretrial discovery and a trial on the merits. Defendants deny these allegations.
33. The standards for the equitable relief Plaintiffs seek are well established. See, e.g., *Winter v. Natural Resources Defense Council*, 555 U.S. 7 (2008). To obtain such relief, Plaintiffs have the burden to show: (1) a strong likelihood of success on the merits at trial, (2) a likelihood that before trial they will suffer irreparable harm in the absence of preliminary relief, (3) that the balance of hardships is in their favor, and (4) that the requested relief is in the public interest. *Id.*
34. The Court hereby finds as a matter of law that Plaintiffs have satisfied prong (2) of the standards for equitable relief. Loss or chilling of First Amendment freedoms constitutes irreparable injury, an injury Plaintiffs will suffer if McCarson's proposed speech is canceled or burdened with an unconstitutionally unreasonable fee. *Elrod v. Burns*, 427 U.S. 347 (1976); *Klein v. City of San Clemente*, 584 F.3d 1196 (9th Cir. 2009).
35. The Court will defer ruling on prong (3), the balancing of hardships, until the

conclusion of oral argument and further development of the factual record. Whether the University (a taxpayer-funded public institution with limited resources) or Plaintiffs (a club of undergraduates) is the more appropriate party to bear the security costs pending final resolution of this matter depends primarily on whether Plaintiffs can obtain funding to cover such costs in time to satisfy the requirements set forth in the University's Notice of Assessment of Security Fees. The University has required payment by February 15, 2018, four business days from the issuance of this Order.

36. The Court hereby orders oral argument on the First Amendment issues and prongs (1) and (4) of the equitable relief standards. (The Court recognizes, without deciding, that the facts set forth above could raise additional constitutional questions, including Equal Protection and Due Process claims, but in the interests of an expedited ruling on the core free speech issues and the parties' agreed views on the exigent circumstances necessitating a resolution of the preliminary equitable question at hand, the parties should focus on the matters set forth in the following paragraph.)

37. Specifically, the parties should address the following issues in oral argument, in any sequence, based on the case law and stipulated facts:

- a. Is the Quad a public forum? If so, what type? Is the Stoa a public forum, in whole or in part? If so, what type?
- b. Are the University's actions subject to strict scrutiny, or to a less rigorous level of review?
- c. As applied to the Club's application for the February 19, 2018 event, are the Protocols and the fee assessment reasonable, valid, viewpoint-neutral, and content-neutral regulations of speech? Or are the Protocols, in reality, a pretext

for viewpoint-based discrimination? Motivation matters, in this context, and the parties are encouraged to cite to facts bearing on whether the University's actions were impermissibly motivated by a desire to suppress or burden a particular point of view.

- d. In light of the foregoing, how likely are Plaintiffs to succeed on the merits of their claims that the University has acted unconstitutionally?
- e. Is a restraining order against the fees in the public interest insofar as it may threaten aspects of the University's educational mission, given that the University has limited resources and may have to curtail or eliminate student groups' ability to conduct certain types of events if it cannot assess fees proportionate to the perceived security risk of an event?

38. The Court will hear oral argument on February 12, 2018, seven days before McCarson's scheduled appearance at the University.

SO ORDERED, this 9th day of February, 2018.

A handwritten signature in blue ink, appearing to read "McCarthy Taylor", is written over a horizontal line.

Hon. McCarthy Taylor

MEMORANDUM

TO: Jean Bernard, lead counsel for our client in *McCarson v. ESU*
FROM: Ryan Nolan, firm associate
DATE: February 10, 2018
RE: Summary of Key Concepts and Terms in First Amendment Law

In preparation for the upcoming oral argument in *McCarson v. ESU*, you have asked for a summary of the relevant law. This memorandum begins with a brief explanation of the court's power to grant equitable relief. It then discusses fundamental principles of the United States Constitution, with particular focus on key terms in First Amendment free speech law.

EQUITABLE RELIEF: In civil cases such as McCarson's claim against the University, courts have the power to award various types of remedies and relief to the parties. Although monetary damages are a common form of remedy for a wrong, in some cases the plaintiff demands that the court issue an order to the defendant to do (or not do) a particular act. Here, McCarson and the First Amendment Club want the court to order the University and its administrators not to impose the security fee. These types of non-monetary claims are often referred to as "claims for equitable relief." The judge's authority to rule on such claims comes from the court's inherent power to do what is "equitable," i.e. fair and just under the circumstances.

Short-term court orders barring a defendant from doing something are called "temporary restraining orders" and may be issued quickly, sometimes even before the defendant has the opportunity to contest the order. With input from both sides, a court may issue a "preliminary injunction" when appropriate. If the case proceeds to trial, the court may issue a "permanent injunction" as part of its final ruling.

As the District Court's Order explains, claims for equitable relief are often decided under rules of evidence and procedure that are not as strict as those that would apply at trial. Paragraph 33 of the court's Order lays out the four-part test that typically apply in claims for equitable relief. Plaintiffs have the burden to show: (1) a strong likelihood of success on the merits at trial, (2) a likelihood that before trial they will suffer irreparable harm in the absence of preliminary relief, (3) that the balance of hardships is in their favor, and (4) that the requested relief is in the public interest. In our case, the Court has asked for oral argument on prong 1 and prong 4 of the test as a way to focus the parties on the core First Amendment issues raised in this case. Paragraph 37 of the Order identifies specific questions for the parties to address. As applied to our case, prong 1 is about which side has the better First Amendment argument; prong 4 is about the difficult public policy questions concerning the cost of guest speakers at public universities and the allocation of that cost among parties with limited resources.

The remainder of this memorandum discusses constitutional law and the First Amendment.

CONSTITUTIONAL LAW BASICS: The written United States Constitution is the supreme law of the land. Under the doctrine of “judicial review,” courts have the power to review the government’s laws and actions to determine if the government’s conduct comports with the Constitution. In most situations, a person claiming that the government has violated a constitutional right, such as the First Amendment’s right to free speech, can ask a court to intervene. Although the first phrase of the First Amendment refers to Congress (“Congress shall make no law … abridging the freedom of speech”), the Free Speech clause also applies to state and local governments and to state-run institutions like a public university. The Constitution regulates the government’s conduct, not the conduct of private individuals.

CONTENT BASED / CONTENT NEUTRAL: A content-based law targets speech based on its substantive content, i.e. because of the ideas, information, or general subject matter expressed.

Content-based laws are “presumptively unconstitutional,” meaning that courts will assume the speech restriction is unconstitutional unless the government can come forward with sufficient reasons to justify the restrictive law. The level of scrutiny the courts will use on the speech restriction is the most demanding standard used to analyze constitutional questions. The analysis is called strict scrutiny (see below). A law restricting specific speech content will not survive strict scrutiny unless it regulates categories of unprotected speech, such as perjury, fraud, defamation, “fighting words,” obscenity, disclosure of national security secrets, false trademark claims, etc. In other words, content-based speech regulations are generally not found to be constitutional unless they regulate forms of speech that have little or no First Amendment protection.

On the other hand, content-neutral speech restrictions are less likely to be found to violate the First Amendment because content-neutral laws regulate speech for reasons independent of the speech’s substantive content. Typically, content-neutral laws regulate the *time, place, or manner* of how speech is expressed, regardless of its content.

Example: The courthouse for this case does not allow lawyers to bring along an interpretive dance team to court to make their arguments for them, as that would be distracting and inappropriate for the proceedings. This is a restriction on the *manner* of speech, without respect to the content of the speech.

Example: A municipality’s sign ordinance that had different regulations for Political Signs, Ideological Signs, and Temporary Directional Signs was content-based and therefore unconstitutional.

VIEWPOINT-BASED / VIEWPOINT-NEUTRAL: A viewpoint-based law goes beyond content-based discrimination and regulates speech based upon agreement or disagreement with the particular position the speaker wishes to express.

Viewpoint-based regulations are considered to be an egregious type of content regulation.

Example: If a public university's facilities-use policy permitted Republican and Presbyterian student groups to use classrooms after hours for political and religious meetings, but forbade access to Democrats and Baptists, that would be an obvious example of viewpoint discrimination. The policy impermissibly promotes the viewpoints of one political party and one religious group over others.

TIME, PLACE, OR MANNER RESTRICTIONS: Time, place, or manner restrictions do not regulate what is said, but rather when, where, or how loudly the speech takes place, regardless of its content.

Example: A city ordinance banning all amplification devices from public places if the devices emit "loud and raucous noises" is constitutional. The ordinance targets the volume and manner of noise, not the content of the speech itself.

STRICT SCRUTINY: This phrase refers to the most rigorous type of judicial review of a governmental restriction on speech. Courts use the strict scrutiny standard when examining laws that infringe upon fundamental rights such as freedom of speech and freedom of religion; strict scrutiny also applies to laws that classify individuals based on race.

When reviewing whether a law that restricts conduct is constitutional under a strict scrutiny standard of review, courts require (1) that the restriction must be "necessary" to achieve a "compelling" governmental objective, and (2) the law must be "narrowly tailored" to restrict the least speech possible.

In other circumstances -- including time, place or manner restrictions -- the courts review speech regulations under less rigorous standards, upholding them if they are "substantially relate" to an "important" governmental objective, or if they are "reasonable." Notice how strict scrutiny differs: under strict scrutiny, the governmental objective must be "compelling," not merely "important"; and the restriction must be "necessary" to achieve the objective, not merely "substantially related" to it.

As the cases indicate, courts reviewing speech restrictions may consider other factors as well, such as whether alternative methods of communicating the message are available to the speaker.

Example: A Texas statute prohibiting the burning of the American flag was struck down as unconstitutional. Under the strict scrutiny standard, the state's interest in preserving the flag as a symbol of national unity was not compelling enough to override the political protester's right to engage in expressive conduct by burning the flag, a form of "speech" protected under the First Amendment.

LEAST RESTRICTIVE MEANS / NARROWLY TAILORED: These terms are two different formulations of the concept that when a regulation limits speech, it should aim to limit as little speech as possible.

In other words, the government must avoid choosing means of restricting speech that are substantially broader than necessary to achieve the purpose of the restriction. Some cases say that

the government passes strict scrutiny by showing that it has chosen “the least restrictive means” of limiting speech in order to achieve its goals. Other cases say that a speech restriction must be “narrowly tailored,” which means that it promotes a substantial governmental interest and does so more effectively than the absence of the regulation would.

Example: A ban on handing out leaflets on a public street restricts more speech than necessary in furtherance of the government’s goal of preventing littering; the government can achieve its objective by punishing those who actually litter.

Example: A District of Columbia statute forbids displaying signs near foreign embassies if the signs tend to bring a foreign government into disrepute. The statute is too broad. A ban on harassing foreign diplomats would have promoted the government’s interest in preserving the dignity of diplomats.

FORUM: A location where speech takes place. A forum can be a physical place (a public park, a public school’s internal mailing system), or it can be an abstract policy of some kind that creates opportunities for speech to take place on public property, e.g. bestowing official recognition on student clubs; or funding the cost of student publications.

TRADITIONAL PUBLIC FORUM: A public place traditionally used for discussion of public questions, e.g. city parks, sidewalks, etc. Restrictions on the content of speech in a traditional public forum are typically subject to strict scrutiny.

DESIGNATED PUBLIC FORUM: A public place that the government “designates” as a location for discussion, debate, performance, etc., such as a municipal theater owned by the city, or a school facilities-use policy that opens classrooms after hours to all student groups or all community organizations. As with a traditional public forum, speech restrictions are typically subject to strict scrutiny.

LIMITED PUBLIC FORUM: A type of designated public forum, but open only to certain types of speakers or subjects. Speech restrictions must be “reasonable” and not based on the speaker’s “viewpoint.” For example, a public high school could probably open classrooms after hours for “community political discussions,” but ban meetings by professional sports fan clubs. However, it could not require that all attendees at the political discussions be registered Republicans -- that would constitute “viewpoint discrimination.” Similarly, if it permitted professional sports fan clubs to meet, it could not allow Yankee fans but ban Cubs fans.

NONPUBLIC FORUM: Public property that is not typically used as a place for expression, such as governmental offices during the workday, prisons, military bases, and airports. Speech restrictions must be “reasonable” and not based on viewpoint, but the reasonableness test is easily met if the location is classified as a nonpublic forum.

PRIOR RESTRAINT: A regulation which, if enforced, prevents speech from taking place at all. Prior

restraints are strongly disfavored. Prior restraints can take various forms, e.g., statutes prohibiting publication of certain content, court orders banning discussion of certain information, or parade license policies that provide wide discretion to local officials.

Sources consulted, in addition to case law:

Emanuel, Steven. *Constitutional Law*, 27th ed. Austin: Wolters Kluwer, 2009.

Smolla & Nimmer on Freedom of Speech. Thompson Reuters, 2018.



PRE-TRIAL ORAL ARGUMENT: CASE LAW

The cases are in reverse chronological order. Most citations, most footnotes, and some internal quotations are omitted from these edited versions, as are concurring and dissenting opinions.

U.S. Const. Am. I

"Congress shall make no law ... abridging the freedom of speech."

Reed v. Town of Gilbert, Arizona, 135 S.Ct. 2218 (2015).

The town of Gilbert, Arizona (or Town), has adopted a comprehensive [sign] code governing the manner in which people may display outdoor signs.... One of the [Sign Code] categories is "Temporary Directional Signs Relating to a Qualifying Event," loosely defined as signs directing the public to a meeting of a nonprofit group. The Code imposes more stringent restrictions on these signs than it does on signs conveying other messages. We hold that these provisions are content-based regulations of speech that cannot survive strict scrutiny.

[The Sign Code prescribes rules for various other categories of signs, including Ideological Signs and Political Signs. The town cited a church group for violating the Sign Code by posting and leaving up signs to its Sunday services, the location of which varied from week to week.]

Under [the First Amendment], a government... has no power to restrict expression because of its message, its ideas, its subject matter, or its content. Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests. Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. This commonsense meaning of the phrase "content based" requires a court to consider whether a regulation of speech "on its face" draws distinctions based on the message a speaker conveys.... [D]istinctions drawn based on the message a speaker conveys...are subject to strict scrutiny.

The Town's Sign Code is content based on its face....

The restrictions in the Sign Code that apply to any given sign...depend entirely on the communicative content of the sign. If a sign informs its reader of the time and place a book club will discuss John Locke's Two Treatises of Government, that sign will be treated differently from a sign expressing the view that one should vote for one of Locke's followers in an upcoming election, and both signs will be treated differently from a sign expressing an ideological view rooted in Locke's theory of government. More to the point, the Church's signs inviting people to attend its worship services are treated differently from signs conveying other types of ideas. On its face, the Sign Code is a content-based regulation of speech [and is therefore] subject to strict scrutiny.

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A law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of animus toward the ideas contained in the regulated speech....

Because strict scrutiny applies either when a law is content based on its face or when the purpose and justification for the law are content based, a court must evaluate each question before it concludes that the law is content neutral and thus subject to a lower level of scrutiny.

The First Amendment requires no less. Innocent motives do not eliminate the danger of censorship presented by a facially content-based statute, as future government officials may one day wield such statutes to suppress disfavored speech. That is why the First Amendment expressly targets the operation of the laws—*i.e.*, the “abridg[ement] of speech”—rather than merely the motives of those who enacted them. U.S. Const., Amdt. 1. The vice of content-based legislation...is not that it is always used for invidious, thought-control purposes, but that it lends itself to use for those purposes.

[O]ne could easily imagine a Sign Code compliance manager who disliked the Church’s substantive teachings deploying the Sign Code to make it more difficult for the Church to inform the public of the location of its services....

[T]he fact that a distinction is event based does not render it content neutral.

Because the Town’s Sign Code imposes content-based restrictions on speech, those provisions can stand only if they survive strict scrutiny, which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest. Thus, it is the Town’s burden to demonstrate that the Code’s differentiation between temporary directional signs and other types of signs, such as political signs and ideological signs, furthers a compelling governmental interest and is narrowly tailored to that end.

The Town cannot do so....

The signs at issue in this case, including political and ideological signs and signs for events, are ... facially content based and are neither justified by traditional safety concerns nor narrowly tailored.

[The Supreme Court held that the Town’s ordinance violated the First Amendment.]

Christian Legal Soc. Chapter of the University of California, Hastings College of the Law v. Martinez, 561 U.S. 661 (2010).

In a series of decisions, this Court has emphasized that the First Amendment generally precludes public universities from denying student organizations access to school-sponsored forums because of the groups’ viewpoints. See *Rosenberger; Healy* [both excerpted below]. This case concerns a novel question regarding student activities at public universities: May a public law school [Hastings] condition its official recognition of a student group [Christian Legal Society, “CLS”] —and the attendant use of school funds and facilities—on the organization’s agreement to open eligibility for membership and leadership to all students?....

In accord with the District Court and the Court of Appeals, we reject CLS’s First Amendment challenge. Compliance with Hastings’ all-comers policy, we conclude, is a reasonable, viewpoint-neutral condition on access to the student-organization forum.

[CLS sought an exemption from the law school’s non-discrimination policy, which bars discrimination

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on various grounds, including religion and sexual orientation. CLS's bylaws require adherence to the belief that sexual activity should not occur outside of marriage between a man and a woman; CLS excludes] anyone who engages in "unrepentant homosexual conduct" [and] students who hold religious convictions different from [CLS].

[In 2004], CLS filed [a federal civil rights] suit against various Hastings officers and administrators.... Its complaint alleged that Hastings' refusal to grant the organization RSO [residential student organization] status violated CLS's First and Fourteenth Amendment rights to free speech, expressive association, and free exercise of religion.

[T]his Court has employed forum analysis to determine when a governmental entity, in regulating property in its charge, may place limitations on speech. [See fn. 11, quoted at the end of this opinion.] Recognizing a State's right "to preserve the property under its control for the use to which it is lawfully dedicated," the Court has permitted restrictions on access to a limited public forum, like the RSO program here, with this key caveat: Any access barrier must be reasonable and viewpoint neutral. *Rosenberger; Perry* [both excerpted below].

In [*Healy, Widmar, Rosenberger*, all excerpted below], we ruled that student groups had been unconstitutionally singled out because of their points of view. "Once it has opened a limited [public] forum," we emphasized, "the State must respect the lawful boundaries it has itself set." The constitutional constraints on the boundaries the State may set bear repetition here: "The State may not exclude speech where its distinction is not reasonable in light of the purpose served by the forum,...nor may it discriminate against speech on the basis of...viewpoint."...

This Court is the final arbiter of the question whether a public university has exceeded constitutional constraints, and we owe no deference to universities when we consider that question. Cognizant that judges lack the on-the-ground expertise and experience of school administrators, however, we have cautioned courts in various contexts to resist substitut[ing] their own notions of sound educational policy for those of the school authorities which they review.....

The Law School's policy is all the more creditworthy in view of the "substantial alternative channels that remain open for [CLS-student] communication to take place." *Perry*. If restrictions on access to a limited public forum are viewpoint discriminatory, the ability of a group to exist outside the forum would not cure the constitutional shortcoming. But when access barriers are viewpoint neutral, our decisions have counted it significant that other available avenues for the group to exercise its First Amendment rights lessen the burden created by those barriers....

Instead, we have repeatedly stressed that a State's restriction on access to a limited public forum need not be the most reasonable or the only reasonable limitation....

The [all-comers] policy is vulnerable to constitutional assault, CLS contends, because "it systematically and predictably burdens most heavily those groups whose viewpoints are out of favor with the campus mainstream." Cf. (ALITO, J., dissenting in this case) (charging that Hastings' policy favors "political[ly] correc[t]" student expression). This argument stumbles from its first step because a regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others.....

For the foregoing reasons, we affirm the Court of Appeals' ruling that the all-comers policy is constitutional and remand the case for further proceedings consistent with this opinion.

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[Fn. 11 of the Court's opinion stated:] In conducting forum analysis, our decisions have sorted government property into three categories. First, in traditional public forums, such as public streets and parks, any restriction based on the content of...speech must satisfy strict scrutiny, that is, the restriction must be narrowly tailored to serve a compelling government interest. Second, governmental entities create designated public forums when government property that has not traditionally been regarded as a public forum is intentionally opened up for that purpose; speech restrictions in such a forum are subject to the same strict scrutiny as restrictions in a traditional public forum. Third, governmental entities establish limited public forums by opening property limited to use by certain groups or dedicated solely to the discussion of certain subjects.... [I]n such a forum, a governmental entity may impose restrictions on speech that are reasonable and viewpoint-neutral.

[The Supreme Court held that the law school's student organization policy to accept all comers comported with the First Amendment.]

Rosenberger v. Rector and Visitors of University of Virginia, 515 U.S. 819 (1995).

The University of Virginia... authorizes the payment of outside contractors for the printing costs of a variety of student publications. It withheld any authorization for payments on behalf of petitioners [a Christian student group] for the sole reason that their student paper "primarily promotes or manifests a particular belie[f] in or about a deity or an ultimate reality."

[In federal district court, petitioners] alleged that [the University's regulation and] refusal to authorize payment of the printing costs of the publication, solely on the basis of its religious editorial viewpoint, violated their rights to freedom of speech and press...

It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys. Other principles follow from this precept. In the realm of private speech or expression, government regulation may not favor one speaker over another. Discrimination against speech because of its message is presumed to be unconstitutional. These rules informed our determination that the government offends the First Amendment when it imposes financial burdens on certain speakers based on the content of their expression. When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant. Viewpoint discrimination is thus an egregious form of content discrimination. The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction....

These principles provide the framework forbidding the State to exercise viewpoint discrimination, even when the limited public forum is one of its own creation. In a case involving a school district's provision of school facilities for private uses, we declared that "[t]here is no question that the District, like the private owner of property, may legally preserve the property under its control for the use to which it is dedicated." The necessities of confining a forum to the limited and legitimate purposes for which it was created may justify the State in reserving it for certain groups or for the discussion of certain topics. Once it has opened a limited forum, however, the State must respect the lawful boundaries it has itself set. The State may not exclude speech where its distinction is not "reasonable in light of the purpose served by the forum," nor may it discriminate against speech on the basis of its viewpoint. Thus, in determining whether the State is acting to preserve the limits of the forum it has created so that the exclusion of a class of speech is legitimate, we have observed a distinction between, on the one hand, content discrimination, which may be permissible if it preserves the purposes of that limited forum, and, on the other hand, viewpoint discrimination, which is presumed impermissible when directed against speech otherwise within the forum's limitations....

Vital First Amendment speech principles are at stake here. The first danger to liberty lies in granting the State the power to examine publications to determine whether or not they are based on some ultimate idea and, if so, for the State to classify them. The second, and corollary, danger is to speech from the chilling of individual thought and expression. That danger is especially real in the University setting, where the State acts against a background and tradition of thought and experiment that is at the center of our intellectual and philosophic tradition.... For the University, by regulation, to cast disapproval on particular viewpoints of its students risks the suppression of free speech and creative inquiry [on] its college and university campuses....

[The Supreme Court held that the University's publication policy was unconstitutional.]

Forsyth County, Ga. v. Nationalist Movement, 505 U.S. 123 (1992).

In this case, ... we must decide whether the free speech guarantees of the First and Fourteenth Amendments are violated by an assembly and parade ordinance that permits a government administrator to vary the fee for assembling or parading to reflect the estimated cost of maintaining public order.

Petitioner Forsyth County is a primarily rural Georgia county.... It has had a troubled racial history. ... In 1987, the county population remained 99% white.

[In January 1987, two highly publicized marches and confrontations took place between civil rights activists and members of The Nationalist Movement, which was affiliated with the Ku Klux Klan. The second march cost over \$670,000 in police protection.]

[The county then passed an ordinance to create a permitting process for parades, demonstrations, and similar events by private persons and organizations.] The board of commissioners justified the ordinance by explaining that "the cost of necessary and reasonable protection of persons participating in or observing said parades,...demonstrations, road closings and other related activities exceeds the usual and normal cost of law enforcement for which those participating should be held accountable and responsible." The ordinance required the permit applicant to defray these costs by paying a [daily fee of not more than \$1000], the amount of which was to be fixed "from time to time" by the Board. In addition, the county administrator was empowered to "adjust the amount to be paid in order to meet the expense incident to the administration of the Ordinance and to the maintenance of public order in the matter licensed."

In January 1989, respondent The Nationalist Movement proposed to demonstrate in opposition to the [Martin Luther King, Jr.] federal holiday. In Forsyth County, the Movement sought to "conduct a rally and speeches for one and a half to two hours" on the courthouse steps on a Saturday afternoon. The county imposed a \$100 fee. The fee did not include any calculation for expenses incurred by law enforcement authorities, but was based on 10 hours of the county administrator's time in issuing the permit.

The Movement did not pay the fee and did not hold the rally. Instead, it [sued in federal court for] a temporary restraining order and permanent injunction prohibiting Forsyth County from interfering with the Movement's plans....

We granted certiorari to resolve a conflict among the Courts of Appeals concerning the constitutionality of charging a fee for a speaker in a public forum.

The Forsyth County ordinance requiring a permit and a fee before authorizing public speaking, parades,

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or assemblies in the archetype of a traditional public forum [such as the courthouse steps] is a prior restraint on speech. Although there is a heavy presumption against the validity of a prior restraint, the Court has recognized that government, in order to regulate competing uses of public forums, may impose a permit requirement on those wishing to hold a march, parade, or rally, see *Cox v. New Hampshire* [excerpted below]. Such a scheme, however, must meet certain constitutional requirements. It may not delegate overly broad licensing discretion to a government official. Further, any permit scheme controlling the time, place, and manner of speech must not be based on the content of the message, must be narrowly tailored to serve a significant governmental interest, and must leave open ample alternatives for communication.

Respondent contends that the county ordinance is facially invalid because it does not prescribe adequate standards for the administrator to apply when he sets a permit fee. A 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. To curtail that risk, a law subjecting the exercise of First Amendment freedoms to the prior restraint of a license must contain narrow, objective, and definite standards to guide the licensing authority. The reasoning is simple: If the permit scheme involves appraisal of facts, the exercise of judgment, and the formation of an opinion, by the licensing authority, the danger of censorship and of abridgment of our precious First Amendment freedoms is too great to be permitted.

Based on the county's implementation and construction of the ordinance, it simply cannot be said that there are any narrowly drawn, reasonable and definite standards, guiding the hand of the Forsyth County administrator. The decision how much to charge for police protection or administrative time—or even whether to charge at all—is left to the whim of the administrator. There are no articulated standards either in the ordinance or in the county's established practice. The administrator is not required to rely on any objective factors. He need not provide any explanation for his decision, and that decision is unreviewable. Nothing in the law or its application prevents the official from encouraging some views and discouraging others through the arbitrary application of fees. The First Amendment prohibits the vesting of such unbridled discretion in a government official....

In order to assess accurately the cost of security for parade participants, the administrator must necessarily examine the content of the message that is conveyed, estimate the response of others to that content, and judge the number of police necessary to meet that response. The 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.

The costs to which petitioner refers are those associated with the public's reaction to the speech. Listeners' reaction to speech is not a content-neutral basis for regulation.... Speech cannot be financially burdened, any more than it can be punished or banned, simply because it might offend a hostile mob. See *Terminiello* [excerpted below].

[The Court distinguished *Cox v. New Hampshire*, excerpted below.] Nothing in this Court's opinion suggests that the statute [in *Cox*] ... called for charging a premium in the case of a controversial political message delivered before a hostile audience. In light of the Court's subsequent First Amendment jurisprudence, we do not read *Cox* to permit such a premium....

[The] level of the fee is irrelevant. A tax based on the content of speech does not become more constitutional because it is a small tax....

[T]he provision of the Forsyth County ordinance relating to fees is invalid because it unconstitutionally ties the amount of the fee to the content of the speech and lacks adequate procedural safeguards; no limit on such a fee can remedy these constitutional violations.

[The Supreme Court held that the County's ordinance violated the First Amendment.]

Ward v. Rock Against Racism, 491 U.S. 781 (1989).

This case arises from [New York City's] attempt to regulate the volume of amplified music at the [Central Park] bandshell so the performances are satisfactory to the audience without intruding upon those who use [a designated quiet area known as] the Sheep Meadow or live on Central Park West and in its vicinity. The city's regulation requires bandshell performers to use sound-amplification equipment and a sound technician provided by the city. The challenge to this volume control technique comes from the sponsor of [an annual] rock concert....

[Concerts at the bandshell require a city permit. After several years of disputes, litigation, and "abusive and disruptive" crowds complaining about sound levels], [t]he city then undertook to develop comprehensive New York City Parks Department Use Guidelines for the Naumburg Bandshell. A principal problem to be addressed by the guidelines was controlling the volume of amplified sound at bandshell events....

[T]he city concluded that the most effective way to achieve adequate but not excessive sound amplification would be for the city to furnish high quality sound equipment and retain an independent, experienced sound technician for all performances at the bandshell. [The city hired a skilled private sound company.]

We granted certiorari to clarify the legal standard applicable to governmental regulation of the time, place, or manner of protected speech....

[T]he city justifies its guideline as a regulatory measure to limit and control noise. Here the bandshell was open, apparently, to all performers; and we decide the case as one in which the bandshell is a public forum.... Our cases make clear, however, that even in a public forum the government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions "are *justified* without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information."...

The principal inquiry in determining content neutrality, in speech cases generally and in time, place, or manner cases in particular, is whether the government has adopted a regulation of speech because of disagreement with the message it conveys. The government's purpose is the controlling consideration. A regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others. Government regulation of expressive activity is content neutral so long as it is justified without reference to the content of the regulated speech.....

The principal justification for the sound-amplification guideline is the city's desire to control noise levels at bandshell events, in order to retain the character of the Sheep Meadow and its more sedate activities, and to avoid undue intrusion into residential areas.... This justification for the guideline has nothing to do with content, and it satisfies the requirement that time, place, or manner regulations be content neutral.

Respondent argues further that the guideline, even if not content based in explicit terms, is nonetheless

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invalid on its face because it places unbridled discretion in the hands of city officials charged with enforcing it....

The city's guideline states that its goals are to "provide the best sound for all events" and to "insure appropriate sound quality balanced with respect for nearby residential neighbors and the mayorially decreed quiet zone of [the] Sheep Meadow." While these standards are undoubtedly flexible, and the officials implementing them will exercise considerable discretion, perfect clarity and precise guidance have never been required even of regulations that restrict expressive activity....

The city's goal of ensuring that "the sound amplification [is] sufficient to reach all listeners within the defined concert ground" serves to limit further the discretion of the officials on the scene.

The city's regulation is also narrowly tailored to serve a significant governmental interest. ... [T]he government may act to protect even such traditional public forums as city streets and parks from excessive noise....

We think it also apparent that the city's interest in ensuring the sufficiency of sound amplification at bandshell events is a substantial one [because the sound problems had caused an adverse effect on the enjoyment of concert-goers and park users].

[We] reaffirm today that a regulation of the time, place, or manner of protected speech must be narrowly tailored to serve the government's legitimate, content-neutral interests but that it need not be the least restrictive or least intrusive means of doing so. Rather, the requirement of narrow tailoring is satisfied so long as the...regulation promotes a substantial government interest that would be achieved less effectively absent the regulation....Since the guideline allows the city to control volume without interfering with the performer's desired sound mix, it is not substantially broader than necessary to achieve the city's legitimate ends, and thus it satisfies the requirement of narrow tailoring.

The final requirement, that the guideline leave open ample alternative channels of communication, is easily met. Indeed, in this respect the guideline is far less restrictive than regulations we have upheld in other cases, for it does not attempt to ban any particular manner or type of expression at a given place or time.

[The Supreme Court held that the City's sound guidelines were valid under the First Amendment.]

Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37 (1983).

[The case arose from a dispute between two rival teachers' unions in Perry, Indiana. Perry Educational Association (PEA) was the recognized union. Under PEA's union contract with the school system, PEA was the only union that had access to interschool mail delivery and the teachers' mailboxes. The rival union, Perry Local Educators' Association (PLEA), sued, claiming that its First Amendment rights were violated because PEA had exclusive access to the interschool mail system and teachers' mailboxes.]

The exclusive access policy applies only to use of the mailboxes and school mail system. PLEA is not prevented from using other school facilities to communicate with teachers. PLEA may post notices on school bulletin boards; may hold meetings on school property after school hours; and may, with approval of the building principals, make announcements on the public address system. Of course, PLEA also may communicate with teachers by word of mouth, telephone, or the United States mail.

The primary question presented is whether the First Amendment... is violated when [an elected teachers'] union is granted access to certain means of communication, while such access is denied to a rival union. There is no question that constitutional interests are implicated by denying PLEA use of the interschool mail system. "It can hardly be argued that either students or teachers shed their

constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker*¹; *Healy* [excerpted below]. The First Amendment's guarantee of free speech applies to teacher's mailboxes as surely as it does elsewhere within the school, *Tinker*, and on sidewalks outside. But this is not to say that the First Amendment requires equivalent access to all parts of a school building in which some form of communicative activity occurs. "Nowhere [have we] suggested that students, teachers, or anyone else has an absolute constitutional right to use all parts of a school building or its immediate environs for... unlimited expressive purposes." The existence of a right of access to public property and the standard by which limitations upon such a right must be evaluated differ depending on the character of the property at issue.

In places which by long tradition or by government fiat have been devoted to assembly and debate, the rights of the state to limit expressive activity are sharply circumscribed. At one end of the spectrum are streets and parks which have immemorially been held in trust for the use of the public, and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. In these quintessential public forums, the government may not prohibit all communicative activity. For the state to enforce a content-based exclusion it must show that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end. The state may also enforce regulations of the time, place, and manner of expression which are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.

A second category consists of public property which the state has opened for use by the public as a place for expressive activity. The Constitution forbids a state to enforce certain exclusions from a forum generally open to the public even if it was not required to create the forum in the first place. *Widmar* (university meeting facilities) [excerpted below]; [citation] (school board meeting); [citation] (municipal theater). Although a state is not required to indefinitely retain the open character of the facility, as long as it does so it is bound by the same standards as apply in a traditional public forum. Reasonable time, place and manner regulations are permissible, and a content-based prohibition must be narrowly drawn to effectuate a compelling state interest. *Widmar*.

Public property which is not by tradition or designation a forum for public communication is governed by different standards. We have recognized that the "First Amendment does not guarantee access to property simply because it is owned or controlled by the government." In addition to time, place, and manner regulations, the state may reserve the forum for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view. The State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated.

The school mail facilities at issue here fall within this third category [i.e. either a limited or a nonpublic forum] The internal mail system, at least by policy, is not held open to the general public. It is instead PLEA's position that the school mail facilities have become a "limited public forum" from which it may not be excluded because of the periodic use of the system by private non-school connected groups, and PLEA's own unrestricted access to the system prior to PEA's certification as exclusive representative. Neither of these arguments is persuasive. The use of the internal school mail by groups not affiliated with the schools is no doubt a relevant consideration. If by policy or by practice the Perry School District has

¹ *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969) is the well known "black armbands" case holding that public school students can exercise First Amendment rights in school, to some extent, as long as they do not disrupt the learning environment.

opened its mail system for indiscriminate use by the general public, then PLEA could justifiably argue a public forum has been created. This, however, is not the case. As the case comes before us, there is no indication in the record that the school mailboxes and interschool delivery system are open for use by the general public. Permission to use the system to communicate with teachers must be secured from the individual building principal.... We can only conclude that the schools do allow some outside organizations such as the YMCA, Cub Scouts, and other civic and church organizations to use the facilities. This type of selective access does not transform government property into a public forum. In [a prior case] the fact that other civilian speakers and entertainers had sometimes been invited to appear at Fort Dix did not convert the military base into a public forum....

Moreover, even if we assume that by granting access to the Cub Scouts, YMCAs, and parochial schools, the school district has created a "limited" public forum, the constitutional right of access would in any event extend only to other entities of similar character. While the school mail facilities thus might be a forum generally open for use by the Girl Scouts, the local boys' club and other organizations that engage in activities of interest and educational relevance to students, they would not as a consequence be open to an organization such as PLEA, which is concerned with the terms and conditions of teacher employment....

There is...no indication that the school board intended to discourage one viewpoint and advance another.... Implicit in the concept of the nonpublic forum is the right to make [reasonable] distinctions in access on the basis of subject matter and speaker identity. These distinctions may be impermissible in a public forum but are inherent and inescapable in the process of limiting a nonpublic forum to activities compatible with the intended purpose of the property.

[T]he internal mail system is not a public forum. As we have already stressed, when government property is not dedicated to open communication the government may—without further justification—restrict use to those who participate in the forum's official business.

Finally, the reasonableness of the limitations on PLEA's access to the school mail system is also supported by the substantial alternative channels that remain open for union-teacher communication to take place. These means range from bulletin boards to meeting facilities to the United States mail....

When speakers and subjects are similarly situated, the state may not pick and choose. Conversely on government property that has not been made a public forum, not all speech is equally situated, and the state may draw distinctions which relate to the special purpose for which the property is used. As we have explained above, for a school mail facility, the difference in status between the exclusive bargaining representative and its rival is such a distinction.

[The Supreme Court upheld PEA's exclusive access to the mailboxes and the school system's internal mail delivery.]

Widmar v. Vincent, 454 U.S. 263 (1981).

This case presents the question whether a state university, which makes its facilities generally available for the activities of registered student groups, may close its facilities to a registered student group desiring to use the facilities for religious worship and religious discussion. It is the stated policy of the University of Missouri at Kansas City to encourage the activities of student organizations. The University officially recognizes over 100 student groups. It routinely provides University facilities for the meetings of registered organizations....

Through its policy of accommodating their meetings, the University has created a forum generally

open for use by student groups. Having done so, the University has assumed an obligation to justify its discriminations and exclusions under applicable constitutional norms. [Fn. 5, quoted at end of this opinion.] The Constitution forbids a State to enforce certain exclusions from a forum generally open to the public, even if it was not required to create the forum in the first place....

In order to justify discriminatory exclusion from a public forum based on the religious content of a group's intended speech, the University must therefore satisfy the standard of review appropriate to content-based exclusions. It must show that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end....

The University has opened its facilities for use by student groups, and the question is whether it can now exclude groups because of the content of their speech.... Our holding [in favor of the student religious organization] in no way undermines the capacity of the University to establish reasonable time, place, and manner regulations. Nor do we question the right of the University to make academic judgments as to how best to allocate scarce resources.... Finally, we affirm the continuing validity of cases [such as *Healy*, excerpted below] that recognize a University's right to exclude even First Amendment activities that violate reasonable campus rules or substantially interfere with the opportunity of other students to obtain an education.

The basis for our decision is narrow. Having created a forum generally open to student groups, the University seeks to enforce a content-based exclusion of religious speech. Its exclusionary policy violates the fundamental principle that a state regulation of speech should be content-neutral, and the University is unable to justify this violation under applicable constitutional standards.

[Fn. 5 of the majority opinion said:] This Court has recognized that the campus of a public university, at least for its students, possesses many of the characteristics of a public forum. "The college classroom with its surrounding environs is peculiarly 'the marketplace of ideas.'" *Healy*. Moreover, the capacity of a group or individual "to participate in the intellectual give and take of campus debate...[would be] limited by denial of access to the customary media for communicating with the administration, faculty members, and other students." *Id.* We therefore have held that students enjoy First Amendment rights of speech and association on the campus, and that the "denial [to particular groups] of use of campus facilities for meetings and other appropriate purposes" must be subjected to the level of scrutiny appropriate to any form of prior restraint. *Id.*

At the same time, however, our cases have recognized that First Amendment rights must be analyzed "in light of the special characteristics of the school environment." *Tinker*.... A university differs in significant respects from public forums such as streets or parks or even municipal theaters. A university's mission is education, and decisions of this Court have never denied a university's authority to impose reasonable regulations compatible with that mission upon the use of its campus and facilities. We have not held, for example, that a campus must make all of its facilities equally available to students and nonstudents alike, or that a university must grant free access to all of its grounds or buildings.

[The Supreme Court held that the University's exclusionary policy was unconstitutional.]

Healy v. James, 408 U.S. 169 (1972).

This case, arising out of a denial by a state college of official recognition to a group of students who desired to form a local chapter of Students for a Democratic Society (SDS) [a radical left wing political and antiwar group], presents this Court with questions requiring the application of well-established First Amendment principles....

As the case involves delicate issues concerning the academic community, we approach our task with

special caution, recognizing the mutual interest of students, faculty members, and administrators in an environment free from disruptive interference with the educational process. We also are mindful of the equally significant interest in the widest latitude for free expression and debate consonant with the maintenance of order. Where these interests appear to compete, the First Amendment, made binding on the States by the Fourteenth Amendment, strikes the required balance....

[T]he [Student Affairs] Committee ultimately approved the application [of the SDS] and recommended to the President of the College, Dr. James, that the organization be accorded official recognition. In approving the application, the majority indicated that its decision was premised on the belief that varying viewpoints should be represented on campus and that since the Young Americans for Freedom, the Young Democrats, the Young Republicans, and the Liberal Party all enjoyed recognized status, a group should be available with which "left wing" students might identify....

Several days later, the President rejected the Committee's recommendation.... Denial of official recognition posed serious problems for the organization's existence and growth.... [N]onrecognition barred them from using campus facilities for holding meetings. [The President later reaffirmed his decision because he believed] that the group would be a "disruptive influence" at CCSC [the college] and that recognition would be "contrary to the orderly process of change" on the campus....

[S]tate colleges and universities are not enclaves immune from the sweep of the First Amendment. "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker*. Of course, First Amendment rights must always be applied "in light of the special characteristics of the environment" in the particular case. *Tinker*. And, where state-operated educational institutions are involved, this Court has long recognized "the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools." Yet, the 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." The college classroom with its surrounding environs is peculiarly the "marketplace of ideas," and we break no new constitutional ground in reaffirming this Nation's dedication to safeguarding academic freedom.

But the Constitution's protection is not limited to direct interference with fundamental rights....[In] this case, the group's possible ability to exist outside the campus community does not ameliorate significantly the disabilities imposed by the president's action.... Freedoms such as these are protected not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference.

While a college has a legitimate interest in preventing disruption on the campus, which under circumstances requiring the safeguarding of that interest may justify such [prior] restraint, a heavy burden rests on the college to [justify the rejection].

[The Supreme Court remanded the case for further factual development of the record. Explaining the remand, the majority opinion stated:] [The college president indicated] that he based rejection on a conclusion that this particular group would be a "disruptive influence at CCSC...." If this reason, directed at the organization's activities rather than its philosophy, were factually supported by the record, this Court's prior decisions would provide a basis for considering the propriety of nonrecognition. The critical line heretofore drawn for determining the permissibility of regulation is the line between mere advocacy and advocacy "directed to inciting or producing imminent lawless action and . . . likely to incite or produce such action." *Brandenburg v. Ohio*, 395 U.S. 444 (1969)....In the context of the "special

characteristics of the school environment," the power of the government to prohibit "lawless action" is not limited to acts of a criminal nature. Also prohibitable are actions which "materially and substantially disrupt the work and discipline of the school." *Tinker*. Associational activities need not be tolerated where they infringe reasonable campus rules, interrupt classes, or substantially interfere with the opportunity of other students to obtain an education....

[Based on the record before it, the Supreme Court found] that there was no substantial evidence that these particular individuals [SDS] acting together would constitute a disruptive force on campus. Therefore, insofar as nonrecognition flowed from such fears, it constituted little more than the sort of "undifferentiated fear or apprehension of disturbance [which] is not enough to overcome the right to freedom of expression." *Tinker*.

We hold that a college has the inherent power to promulgate rules and regulations; that it has the inherent power properly to discipline; that it has power appropriately to protect itself and its property; that it may expect that its students adhere to generally accepted standards of conduct.

Just as in the community at large, reasonable regulations with respect to the time, the place, and the manner in which student groups conduct their speech-related activities must be respected.

[The Supreme Court remanded the case for a determination of whether SDS was willing to abide by reasonable campus rules and regulations.]

Terminiello v. City of Chicago, 337 U.S. 1 (1949).

Petitioner after jury trial was found guilty of disorderly conduct in violation of a city ordinance of Chicago and fined. The case grew out of an address he delivered in an auditorium in Chicago under the auspices of the Christian Veterans of America. The meeting commanded considerable public attention. The auditorium was filled to capacity with over eight hundred persons present. Others were turned away. Outside of the auditorium a crowd of about one thousand persons gathered to protest against the meeting. A cordon of policemen was assigned to the meeting to maintain order; but they were not able to prevent several disturbances. The crowd outside was angry and turbulent.

Petitioner in his speech condemned the conduct of the crowd outside and vigorously, if not viciously, criticized various political and racial groups whose activities he denounced as inimical to the nation's welfare....

[T]he statutory words "breach of the peace" were defined in instructions to the jury to include speech which "stirs the public to anger, invites dispute, brings about a condition of unrest, or creates a disturbance...."

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.

Accordingly a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute, [citing *Chaplinsky v. New Hampshire*, which established the "fighting words" exception], is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far

above public inconvenience, annoyance, or unrest....²

The ordinance ... permitted conviction of petitioner if his speech stirred people to anger, invited public dispute, or brought about a condition of unrest. A conviction resting on any of those grounds may not stand.

[The Supreme Court reversed Terminiello's conviction for disorderly conduct.]

Cox v. New Hampshire, 312 U.S. 569 (1941).

Appellants are five "Jehovah's Witnesses" who....were convicted in the municipal court for violation of a state statute prohibiting a "parade or procession" upon a public street without a special license....

The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of safeguarding the good order upon which they ultimately depend. The control of travel on the streets of cities is the most familiar illustration of this recognition of social need.... As regulation of the use of the streets for parades and processions is a traditional exercise of control by local government, the question in a particular case is whether that control is exerted so as not to deny ... the opportunities for the communication of thought and the discussion of public questions immemorially associated with resort to public places....

It was with this view of the limited objective of the statute that the state court considered and defined the duty of the licensing authority and the rights of the appellants to a license for their parade, with regard only to considerations of time, place and manner so as to conserve the public convenience. The obvious advantage of requiring application for a permit was noted as giving the public authorities notice in advance so as to afford opportunity for proper policing. And the [state] court further observed that, in fixing time and place, the license served "to prevent confusion by overlapping parades or processions, to secure convenient use of the streets by other travelers, and to minimize the risk of disorder." But the court held that the licensing board was not vested with arbitrary power or an unfettered discretion; that its discretion must be exercised with "uniformity of method of treatment upon the facts of each application, free from improper or inappropriate considerations and from unfair discrimination...."

There remains the question of [the reasonableness of the] license fees.... "The charge," said the court, "for a circus parade or a celebration procession of length, each drawing crowds of observers, would take into account the greater public expense of policing the spectacle, compared with the slight expense of a less expansive and attractive parade or procession, to which the charge would be adjusted." The fee was held to be "not a revenue tax, but one to meet the expense incident to the administration of the act and to the maintenance of public order in the matter licensed." There is nothing contrary to the Constitution in the charge of a fee limited to the purpose stated. The suggestion that a flat fee should have been charged fails to take account of the difficulty of framing a fair schedule to meet all circumstances, and we perceive no constitutional ground for denying to local governments that flexibility of adjustment of fees which in the light of varying conditions would tend to conserve rather than impair the liberty sought.

[Because there was no evidence of discriminatory administration of the statute, the Supreme Court affirmed the convictions.]

² *Brandenburg v. Ohio* (1969), cited above, established the current standard, that advocacy becomes incitement when the speech is likely to produce imminent lawless action.







Events February-December, 2017

POA EXHIBIT

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Event Date	Event Title	Sponsoring ESU Student Group	Venue	Number of ESU PD Officers Deployed	Estimated Attendees	Amount Invoiced
2/14/17	Greek Grope Valentine's Day Dance	U Tappa Keg Fraternity	Fraternity house and backyard	2 @ 3 hours	1250	\$945.12
3/21/17	Outdoor Equinoctial Festival	Associated University Wickens	Quad	1 @ 1 hour	17	\$157.52
4/15/17	Taxation is Theft "Steal this Book" Protest March	Hoffman Society of Libertarian Librarians	Quad, campus streets and walkways	3 @ 1 hour	420	\$472.56
6/29/17	Stonewall Anniversary Pride March	LGBTQ - Straight Alliance	Quad, campus streets and walkways	2 @ 2 hours	8000	\$630.08
7/23/17	Robert's Rules of Order Training Workshop	Anarchist Organization	Stoa Amphitheater	1 @ 1 hour	165	\$157.52
8/1/17	Wollstonecraft Godwin Speech	Feminism Empowerment Movement	Stoa steps	3 @ 2 hours	500	\$945.12

Event Date	Event Title	Sponsoring ESU Student Group	Venue	Number of ESU PD Officers Deployed	Estimated Attendees	Amount Invoiced
8/13/17	Save the Earth Rally and March	Radical Environmental Activist Alliance	Stoa steps, Quad, campus streets and walkways	2 @ 2 hours	5300	\$630.08
9/6/17	"Go Steady?" Mixer	Family Values Coalition	Stoa Amphitheater	6 @ 4 hours	42	\$3780.48
9/21/17	Autumn Leaves Event and Teach-In	Climate Change Deniers	Stoa Amphitheater	4 @ 5 hours	30	\$3150.40
10/12/17	Columbus Day Turnaround Dance	Flat Earth Society	Stoa Amphitheater	1 @ 3 hours	480	\$472.56
10/15/17	Fall Bacchanalia	Free Love Society	Stoa Amphitheater	6 @ 4 hours	40	\$3780.48
10/20/17	Veganism Festival	Nutrition and Dietary Science Department	Quad, and Beatrix Potter Memorial Root Vegetable Garden	1 @ 1 hour	400	\$157.52
11/18/17	Wild Turkey & Tufted Snipe Hunt	Second Amendment Foundation	Campus Poultry and Waterfowl Preserve	8 @ 3 hours	150	\$3780.48

Event Date	Event Title	Sponsoring ESU Student Group	Venue	Number of ESU PD Officers Deployed	Estimated Attendees	Amount Invoiced
12/15/17	Venture Capital Pitch Parade	Private Equity Entrepreneurs of EU	Stoa steps, campus walkways	3 @ 1 hour	500	\$472.56
12/17/17	Anti-Racism Festivus Party	Rainbow Club	Stoa porch	1 @ 2 hours	310	\$315.04
12/31/17	4Rs March (Rage Against Racism Rally)	EU Black Lives Matter chapter	Stoa porch, campus streets and walkways	10 @ 4.5 hours	330	\$7088.40



**Safety and Security Protocols for Events
Sponsored by Student Organizations,
Non-Academic University Users, and Approved
Non-University Users with Potential to Disrupt
Campus Security, Safety and Operation**

Empirion State University allows student organizations and school-sponsored outside groups to use campus facilities for approved events. Campus rules and policies that govern these events are designed to support and facilitate safe and successful activities in venues owned and operated by the University.

It is the goal of Empirion State University to create a culture where every student and every community member feels secure and valued. It is also the University's goal to create a safe space for the full, free, and frank exchange of ideas and ideologies, even when those ideas and ideologies are divergent and controversial. Public discourse at Empirion State University should be robust, uninhibited, and wide open, while conducted in a spirit of empathic dialogue, in humble recognition that no one has a monopoly on truth.

Because the safety, security, and physical well-being of our campus community is of paramount concern to the University, it is the responsibility of any person or organization requesting the use of university facilities to comply with all applicable University policies, procedures, rules and regulations, and applicable local, state and federal laws.

When the use of campus facilities involves events, activities, and programs that are likely to significantly affect campus safety, security, and operation, the University will perform an analysis of all event factors. This could result in additional conditions and requirements placed on the host organization in order to maintain the safety and security of all organizing parties, guests attending, and the broader campus community. Safety and security concerns may include, but are not limited to, history or examples of violence, bodily harm, property damage, significant disruption of campus operations, and those actions prohibited by the campus code of conduct and state and federal law.

During the planning process, host organizations or groups are responsible for making the University aware of any known histories and/or issues of safety and security concerns. The University may review all event details and logistics to determine necessary safety and security protocols. Additionally, if previously unknown or new safety and security concerns arise during the planning process, the University will review the event details and may alter any conditions and requirements. Any determination by authorized campus officials will be based on an assessment of credible information other than the content or viewpoints anticipated to be expressed during the event. Other events taking place on or near campus will be taken into consideration in the security review. Required security measures may include, but are not limited to, adjusting the venue, date, and timing of the event; providing additional law enforcement; imposing access controls or security checkpoints; limiting costumes or items carried; and/or creating buffer zones around the venue.

The host organization or group will be required to pay, in advance, costs of reasonable event security as determined in advance by the University. These costs include, but are not limited to, security personnel, costs to secure the venue from damage, and special equipment as determined by law enforcement. Security fees will be based on standard and approved recharge rates for Empirion University Campus Police, other security personnel, and associated equipment costs or rentals. Should the University place supplementary security protocols prior to or during the event to provide adequate security to help mitigate any originally unforeseen security concerns, additional security fees may be charged to host organizations or groups. Host organizations are financially responsible for damage, inside or outside of the venue, caused by members of their organization or their invitees.

The University reserves the right, in rare circumstances, to cancel an event if based on information available it is reasonably believed that there is a credible threat which unreasonably places the campus community at risk of harm.

Established 9/25/17



NOTICE OF ASSESSMENT OF SECURITY FEES

To:
Empirion State
University First
Amendment Club

From:
Holmes Brandeis,
Dean of Students,
Undergraduates

Date:
January 22, 2018

Re:
Harry McCarson
Appearance, Proposed
for February 19, 2018,
7:00 p.m.

The University, in consultation with ESU Campus PD, has determined that the proposed appearance of Harry McCarson at the Stoa on campus is likely to significantly affect campus safety, security, and operation. Having analyzed publicly available information about McCarson and having consulted with administrators at Brun concerning the October 31, 2017 unrest there, the University has determined that it is necessary to impose additional conditions and requirements on the First Amendment Club "in order to maintain the safety and security of all organizing parties, guests attending, and the broader campus community," in accordance with the Safety and Security Protocols.

Those conditions will include, but are not necessarily limited to, the following: payment of an event fee of \$21,265.20 to the University treasurer, by certified check, no less than two business days before McCarson's February 19, 2018 appearance. The fee covers the cost of 30 uniformed armed officers for 4.5 hours, at the standard rate of \$157.52 per hour, and includes overhead costs, set-up and break-down of barricades and metal detectors, event surveillance, and post-event processing of anyone taken into custody. (The standard hourly rate for officer time is billed to all student organizations, including clubs, fraternities, and sororities, whenever a police presence is deemed necessary.) The \$21,265.20 is a good faith estimate of fees to be assessed; actual costs billed may be higher.

This determination is based on factors and analysis of information other than the content or viewpoints anticipated to be expressed during the event.

A crowd of approximately 1,000 persons is expected, many of whom are likely to be protesters. The 30 officers will be deployed to ensure the safety of all persons in the Quad, and to impose access zones, buffer zones, weapons checkpoints, and other appropriate measures necessary to promote safety and security at the event. Two other campus events that evening, within a half mile of the Quad, will have large crowds in attendance that pose additional security challenges for an event in the Quad: (1) the women's hockey game against arch-rival Pangea University; and (2) the Linguistics Department's Heritage Language Conference.

This document shall serve as a conditional facilities use permit, subject to satisfaction of the conditions set forth herein.

/s/ HB

Dean of Students, Undergraduates