



November 6, 2023

VIA EMAIL ONLY

Ms. Tabitha Oman
General Counsel
Pennsylvania State University
227 West Beaver Avenue, Suite 507
State College, PA 16801
generalcounsel@psu.edu

Re: Demand to Cease Discriminatory Treatment of Penn State YAF in Connection With James Lindsay Event

Dear Ms. Oman,

The Center for American Liberty represents the Young America's Foundation ("YAF") and the Pennsylvania State University Chapter of Young Americans for Freedom ("Penn State YAF"), the local chapter affiliate of YAF. I am writing to inform you of unlawful treatment against Penn State YAF by Pennsylvania State University (the "University") regarding a planned event on campus next week and to demand that you remedy the situation without delay. **This demand requires your immediate attention to avoid litigation.** Please direct all future correspondence regarding this matter to me (harmeet@libertycenter.org), Josh Dixon (jdixon@libertycenter.org), and Eric Sell (esell@libertycenter.org).

I. Factual Background

YAF's mission is to ensure "young Americans understand and are inspired by the ideas of individual freedom, a strong national defense, free enterprise, and traditional values."¹ YAF has chapters at colleges across the country.

Penn State YAF is a properly Registered Student Organization ("RSO") with the University. Penn State YAF advances its mission by, among other things, inviting influential speakers to campus to discuss pressing issues of the day. This dispute involves one of these events.

¹ YAF Mission Statement, available online at <https://yaf.org/about-us/> (last accessed Nov. 6, 2023).



On Thursday, November 16, 2023, Penn State YAF is hosting nationally renowned speaker and author James Lindsay on campus from 7:00-8:00 p.m.² The purpose of the event is to expose students and members of the public to robust discussion about topical social and political issues. Penn State YAF anticipates the event will attract approximately 50 attendees. Tickets are not required, and the event is open to the public.³

The University informed Penn State YAF that the only venue available for the event was the Bryce Jordan Center (“BJC”), which is on the far edge of campus—away from where students typically congregate. Upon learning of this location, Penn State YAF chapter president Jack Kentner emailed Jeff Zapletal, Interim Director of Student Leadership and Involvement, to request that the event take place at a centrally located space on campus so it could gain a larger attendance. *See* Emails between Jack Kentner and Jeff Zapletal, attached as Exhibit A. Given the variety of event spaces near the center of campus, this request was not out of the ordinary. Indeed, the Penn State College Democrats routinely host speakers in Wartick Hall, which is near the center of campus. *See* College Democrat Flyers, attached as Exhibit B. Mr. Kentner informed Mr. Zapletal that there were several centrally located venues—including but not limited to a room in Wartick Hall—that are available on November 16 that would be suitable for the Lindsay event. *See* Exhibit A. Despite the availability of these venues, Mr. Zapletal informed Mr. Kentner that the University has “evaluated the event” and has determined that the “BJC is the venue that is available for this event.” *Id.* Mr. Zapletal provided no additional explanation for why the University will not allow the event to take place near the center of campus.

Unfortunately, this is not the first time the University has attempted to suppress Penn State YAF’s views on campus. Earlier this year, Penn State YAF was forced to cancel an on-campus event with Dr. Lindsay because then, like now, the University insisted that the event take place at the BJC.⁴ Penn State YAF was concerned that attendance for the event would be significantly reduced if it took place on the far side of campus, away from students. Penn State YAF ultimately canceled the event due the University’s actions.

² The event was originally planned from 8:00 p.m. to 9:00 p.m., but Penn State YAF wishes to change the start time of the event to 7:00 p.m. to attract a larger audience.

³ Penn State YAF has followed, and will continue to follow, all proper University procedures for planning the event. This includes all required meetings with University safety personnel to coordinate event security.

⁴ Colleen Nersten, *James Lindsay, Alex Stein Lectures Postponed Indefinitely*, Onward State, (April 21, 2023) <https://onwardstate.com/2023/04/21/james-lindsay-alex-stein-lectures-postponed-indefinitely/> (last accessed Nov. 6, 2023).



II. Failure to Provide Equal Access to University Event Space is Unlawful

The University's failure to provide equal access to event space for the Lindsay event would violate the constitutional rights of Penn State YAF and its members. The First and Fourteenth Amendments to the United States Constitution prohibit public universities from discriminating against student organizations based on viewpoint. *See Healy v. James*, 408 U.S. 169, 184 (1972) (“[S]tate colleges and universities are not enclaves immune from the sweep of the First Amendment.”). This prohibition includes failing to provide equal access to limited public fora, *Christian Legal Soc’y Chapter of the Univ. of Cal., Hastings Coll. of the Law v. Martinez*, 561 U.S. 661, 679 n.11 (2010), and failing to provide equal security for the event based on a discriminatory purpose, *see Forsyth County, Ga. v. Nationalist Movement*, 505 U.S. 123, 133 (1992). Moreover, the University may not foist security costs onto Penn State YAF. *Id.* at 134–35. (“Speech cannot be financially burdened, any more than it can be punished or banned, simply because it might offend a hostile mob.”).

The campus event spaces available for reservation by RSOs are limited public fora. The University has opened these spaces up to RSOs to host speaking events similar to the Lindsay event. The University routinely allows individuals and organizations with liberal viewpoints to use the event space. *See* Exhibit B. The University's failure to provide equal access to this event space to Penn State YAF violates the First and Fourteenth Amendment. *Martinez*, 561 U.S. at 679 n.11; *Ne. Pennsylvania Freethought Soc’y v. Cnty. of Lackawanna Transit Sys.*, 938 F.3d 424, 436 (3d Cir. 2019) (“[T]he government violates the First Amendment when it denies access to a speaker solely to suppress the point of view he espouses on an otherwise includible subject.”); *Donovan ex rel. Donovan v. Punxsutawney Area Sch. Bd.*, 336 F.3d 211, 225 (3d Cir. 2003) (observing that public schools “may not discriminate against speech on the basis of viewpoint, and the restriction must be reasonable in light of the purpose served by the forum”).

In addition, the University is authorizing a heckler's veto by forcing Penn State YAF to use an inferior venue. *See, e.g., Bible Believers v. Wayne Cnty.*, 805 F.3d 228, 253 (6th Cir. 2015) (en banc). By prohibiting Penn State YAF from using a more centrally located venue due to concerns that some students might react negatively to Dr. Lindsay's speech, the University is engaging in a content-based regulation of speech that must satisfy strict scrutiny. *See Ne. Pennsylvania Freethought Soc’y*, 938 F.3d at 436 (observing the “heckler's veto” is a content-based restriction on speech). Even if silencing protected speech in the face of a hostile crowd were a compelling government interest, relegating Penn State YAF to the outskirts of campus is not a narrowly tailored way to achieve that interest. The University's actions are therefore unconstitutional.

The University's failure to provide equal access for the Lindsay event is a blatant violation of the First and Fourteenth Amendments that can subject the University and / or its employees to injunctive relief, civil damages, and attorney's fees. *Ne. Pennsylvania Freethought Soc’y*, 938 F.3d



at 436; *Intervarsity Christian Fellowship/USA v. Univ. of Iowa*, 5 F.4th 855, 867 (8th Cir. 202); 42 U.S.C. § 1988.

III. The University Must Provide Equal Access to Designated Event Spaces

The University's sustained attempts to exclude Penn State YAF and Dr. Lindsay from speaking at a centrally located event space on campus is an egregious attempt to suppress certain viewpoints among the student body. By forcing Penn State YAF to host its speaker on the far side of campus away from where students typically congregate, the University is reducing the turnout for the event and thereby suppressing what the speaker has to say. Indeed, it appears precluding the Lindsay event from obtaining a large audience is the University's *intended* result. If so, the University's actions would not only be unlawful, but disgraceful.

The Penn State YAF students are at the University to learn. In addition to their studies, they engage with their peers through their student organization to debate the topics of the day. Rather than settling for a life of apathy, these students are involved. Yet the University is treating these students with contempt and disrespect. Such conduct is unacceptable—these students should be commended for organizing this event despite the potential that a hostile mob may attempt to disrupt it.

To avoid litigation, I demand that you notify me, in writing, by 5:00 p.m. Eastern Time on Thursday, November 9, 2023, that you will allow the Lindsay event to take place at one of the venues identified in Mr. Kentner's email to Mr. Zapletal of Thursday, November 2, 2023. See Exhibit A. If Penn State YAF is forced to use an inferior event space due to the University's discriminatory actions, we will have no choice but to institute legal proceedings against the University.

I look forward to hearing from you.

Sincerely,

Harmeet K. Dhillon

Enclosures as stated

cc: Mr. Jeff Zapletal
Interim Director of Student Leadership and Involvement
Penn State University
Jeff@psu.edu

EXHIBIT A

Subject: FW: James Lindsay Event

Date: Monday, November 6, 2023 at 5:22:58 PM Eastern Standard Time

From: [REDACTED]

To: [REDACTED]

On Nov 3, 2023, at 1:42 PM, Kentner, Jack Jameson <[REDACTED]> wrote:

From: Zapletal, Jeff <jeff@psu.edu>

Sent: Friday, November 3, 2023 11:56 AM

To: Kentner, Jack Jameson [REDACTED]

Subject: Re: James Lindsay Event

Jack,

Your event has been evaluated and the BJC is the location that is available that supports the needs of this event while minimizing the possibility of disruption to your event and other campus activities.

-Jeff

Jeff Zapletal

Interim Director

Student Leadership and Involvement

Penn State University

814/865-6654

jeff@psu.edu

Ut Prosim

From: Kentner, Jack Jameson [REDACTED]

Sent: Thursday, November 2, 2023 3:48 PM

To: Zapletal, Jeff <jeff@psu.edu>

Subject: James Lindsay Event

Hi Jeff, hope your week is going well. Recently my team and I have been looking over rooms that are available on the day of the James Lindsay event and we have found that the following rooms are available/untaken:

UP: Leonhard Bldg 102 (Max capacity is 89 people)

UP: Wartik Lab 111 (Max capacity is 175 people)

UP: Henderson Bldg 110 (Max capacity is 100 people)

UP: Health and Hum Dev 254 (Max capacity is 100 people)

UP: Business Atrium (Max capacity is 125 people)

UP: HUB 132 Flex Theater (Max capacity is 142 people)

UP: HUB 302 (Max capacity is 150 people)

There are more rooms that aren't listed, but we find all of the above to be a more preferable option than the BJC in terms of accessibility to the student body. Can we use one of these instead? If not could you explain why? Also, because the event is happening soon, please let me know by noon tomorrow for our planning purposes. Thank you.

Subject: FW: Renegotiate The James Lindsay Contract
Date: Monday, November 6, 2023 at 5:23:39 PM Eastern Standard Time
From: [REDACTED]
To: [REDACTED]

From: Zapletal, Jeff <jeff@psu.edu>
Sent: Wednesday, November 1, 2023 10:29 AM
To: Kentner, Jack Jameson [REDACTED]
Subject: Re: Renegotiate The James Lindsay Contract

The reservation in 25Live was originally made for 8:00, so that's what is being planned for. What would be the reason for changing?

Jeff Zapletal
Interim Director
Student Leadership and Involvement
Penn State University
814/865-6654
jeff@psu.edu
Ut Prosim

From: Kentner, Jack Jameson [REDACTED]
Sent: Tuesday, October 31, 2023 4:52 PM
To: Zapletal, Jeff <jeff@psu.edu>
Subject: Re: Renegotiate The James Lindsay Contract

Is it at least possible to move the event from 8:00 to 7:00?

From: Zapletal, Jeff <jeff@psu.edu>
Sent: Tuesday, October 31, 2023 11:51 AM
To: Kentner, Jack Jameson [REDACTED]
Subject: Re: Renegotiate The James Lindsay Contract

Jack,

I appreciate your preference for a different venue, but the BJC is the venue that is available for this event on November 16.

Jeff Zapletal
Interim Director
Student Leadership and Involvement
Penn State University
814/865-6654
jeff@psu.edu
Ut Prosim

From: Kentner, Jack Jameson [REDACTED]
Sent: Monday, October 30, 2023 2:02 PM
To: Zapletal, Jeff <jeff@psu.edu>
Subject: Re: Renegotiate The James Lindsay Contract

Dear Jeff,

Thank you for your response to my email. I would like to reiterate our excitement to hear Dr. Lindsay on the Penn State campus and are extremely grateful for the amount of funding we have received.

We feel strongly that a different venue on campus would better suit our event. What other venues are available that day besides the Bryce Jordan Center?

The College Dems and other club orgs have hosted events hosting their speakers at The Hub and regular rooms in the past, so we would strongly prefer any of these venues.

Thank you for your consideration!

From: Zapletal, Jeff <jeff@psu.edu>
Sent: Saturday, October 28, 2023 5:02 PM
To: Kentner, Jack Jameson [REDACTED]
Subject: Automatic reply: Renegotiate The James Lindsay Contract

I will be out of the office and away from email until Monday, October 30. If you need assistance before Oct 30, please reach out to Student Leadership and Involvement at 814/863-4624.

EXHIBIT B



psu collegedemocrats
State College (Pensilvania)



MEETING TONIGHT!



Amber Concepcion

Mark Higgins

Robert Zeigler

County Commissioners Amber Concepcion and Mark Higgins will be joining us at our meeting, along with Robert Zeigler, candidate for Centre County Recorder of Deeds.

See you there!

WARTIK 108 - 8 PM



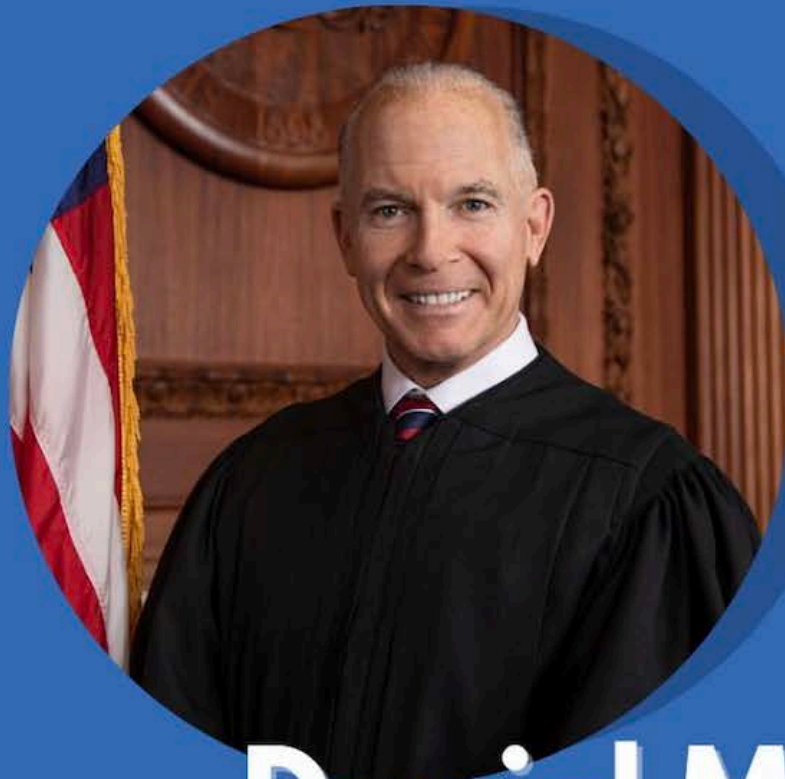
Les gusta a [alison._.patton](#) y otros

psu collegedemocrats We're looking forward to hearing from our County Commissioners and candidate for Recorder of Deeds tonight! Hope to see you there!

11 de septiembre · [Ver traducción](#)



The PSU College Dems are hosting special guest...



Judge Daniel McCaffery is a candidate for Pennsylvania Supreme Court justice

Daniel McCaffery

Join us on Monday, October 2, in Wartik 108 at 8 PM!



Les gusta a [kuwomeninpolitics](#) y otros

[psucollegedemocrats](#) Join us tomorrow for our meeting where we host PA Supreme Court Justice candidate Judge McCaffery!

1 de octubre · [Ver traducción](#)



psucollegedemocrats



THE PSU COLLEGE DEMS ARE HOSTING SPECIAL GUESTS...



**TIMIKA
LANE**



**JILL
BECK**



Join us on Monday, October 30, in Wartik 108 at 8 PM!



Les gusta a fredfaylona y otros

psucollegedemocrats Join us tomorrow for our meeting where we host PA Superior Court Candidates Jill Beck and Timika Lane!

Hace 3 días · [Ver traducción](#)



THIS WEEK

PSU College Dems are Hosting



Paul Takac



Scott Conklin

Join us on Monday, October 9, in Wartik 108 at 8 PM!



Les gusta a **taylorroot107** y otros

psucollegedemocrats Tomorrow, we are hosting Representatives Paul Takac and Scott Conklin! Hope to see you there :)

8 de octubre · [Ver traducción](#)



PSU COLLEGE DEMS ARE HOSTING



COLLEEN KENNEDY
Centre County Treasurer



JASON MOSER
Centre County Controller



25 SEPTEMBER, 2023
MONDAY 8:00 PM
108 WARTIK



Les gusta a **amicklemore** y otros **psucollegedemocrats** Join us tomorrow for our meeting where we hear from our Centre County Controller and Treasurer! Hope to see you there!

24 de septiembre · [Ver traducción](#)