



Foundation for Individual Rights in Education

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November 3, 2008

President James B. Milliken
Office of the President
University of Nebraska
103 Varner Hall
Lincoln, Nebraska 68583-0745

Sent by U.S. Mail and Facsimile (402-472-1237)

Dear President Milliken:

As you can see from the list of our Directors and Board of Advisors, FIRE unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, due process, legal equality, freedom of association, religious liberty, and, in this case, freedom of speech on America's college campuses. Our website, www.thefire.org, will give you a greater sense of our identity and activities.

FIRE is concerned about the threat to freedom of expression and academic freedom posed by the University of Nebraska–Lincoln's (UNL's) recent decision to cancel a scheduled speaking appearance by University of Illinois at Chicago professor William Ayers.

This is our understanding of the facts; please inform us if you believe we are in error.

In March, a faculty committee from UNL's College of Education and Human Sciences invited Ayers, a professor of curriculum and instruction at the University of Illinois at Chicago, to speak at a November conference on education policy. As you know, Ayers was also a founding member of the Weather Underground, a group responsible for bombing the Pentagon, the U.S. Capitol, and other government buildings in the 1960s and 1970s. In recent months, Ayers' past has been the subject of national conversation due to his interactions with Senator Barack Obama of Illinois in the 1990s, when the two served as board members for two nonprofit organizations dedicated to educational reform and anti-poverty efforts in Chicago.

According to a press release issued by UNL on Thursday, October 16, Ayers was to deliver the conference's keynote address, titled "We are Each Other's Keepers: Research to Change the World." The press release also made clear that "no state

money is being used for the private lecture and no students or faculty are required to attend.” Marjorie Kostelnik, dean of the College of Education and Human Sciences, added that “the controversy that has erupted during the election is unfortunate but it is not part of what [Ayers] is asked here to Nebraska to discuss.”

Early on the afternoon of Friday, October 17, however, Ayers’ scheduled appearance was criticized in separate statements issued by Nebraska Governor Dave Heineman and Attorney General Jon Bruning. Governor Heineman called the invitation to Ayers an “embarrassment to the University of Nebraska and the State of Nebraska.” Attorney General Bruning also deemed Ayers’ speech an “embarrassment,” stating further that “[a]cademic freedom doesn’t require us to lose our good judgment and common sense.” According to reporting by InsideHigherEd.com, a number of alumni and donors echoed these sentiments, and Chuck Hassebrook, the Chair of Nebraska’s Board of Regents, publicly called for Ayers to be disinvited.

Late Friday afternoon, UNL cancelled Ayers’ speech. In a statement announcing the decision, UNL cited unspecified “safety concerns” as grounds for the move. According to UNL’s statement, the school’s “threat assessment group” had been monitoring e-mails and had received “other information” suggesting a potential threat to security.

The decision to cancel Ayers’ scheduled address raises troubling issues with regard to UNL’s commitment to academic freedom and freedom of expression.

First, a speaker’s right to free expression, however unpopular or controversial the speaker or his or her expression, must not be contingent upon the expected reaction of his or her audience. By silencing speakers on the basis of how harshly, violently, or unreasonably others may react to a speaker’s words, UNL is creating an incentive for those who disagree to react violently, knowing that doing so will rid from campus the expression of particular speakers or viewpoints. Such a result confers an illiberal and unacceptable “heckler’s veto” on speech that benefits only the *least* tolerant members of the UNL community.

In a free society like ours, this dynamic is destructive. Indeed, if the cancellation of Ayers’ speech at UNL was due to fears of a violent reaction on campus, as it purportedly was, UNL has failed to meet its legal obligation to uphold the First Amendment on campus. The Supreme Court addressed this issue in *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 134–135 (1992), holding that expression cannot be burdened, punished, or banned “simply because it might offend a hostile mob.”

Equally worrisome, however, is the possibility that UNL has cited security concerns as pretext for cancelling Ayers’ speech in response to the substantial political pressure applied on the school by elected officials, system administrators, donors, and alumni. While FIRE is, of course, not privy to the details known to UNL’s “threat assessment group,” it is difficult to believe that security for Ayers’ speech could not have been arranged. If the University of Nebraska–Kearney, a significantly smaller institution, was able to host a speech by a sitting President of the United States, as it did in December of 2000, surely UNL could make arrangements for a distinguished professor of education, no matter how controversial.

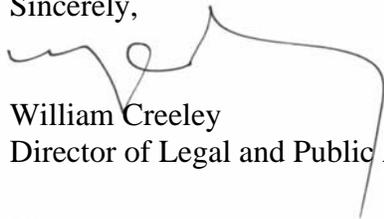
If UNL decided that hosting Ayers' speech was politically untenable, the university should have publicly admitted as much. But if UNL is instead citing "safety concerns" merely to avoid criticism for allowing political pressure to dictate who may speak on campus, UNL is setting a dangerous precedent. Invoking the threat of violence where it does not actually exist serves only to trivialize the gravity of real security concerns. Further, doing so grants far too much power to administrators to cite vague and unverifiable threats any time the university wants to silence unpopular or controversial speech or speakers. The safety of a university community should never be cited to provide cover for political decisions.

As a public institution of higher learning, UNL has a duty to ensure that truly free expression is facilitated. Indeed, the Supreme Court has declared that a college campus is "peculiarly the 'marketplace of ideas.'" *Healy v. James*, 408 U.S. 169, 180 (1972). Significantly, the Court made clear in *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957) that "[t]he essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation."

We ask for further explanation regarding your decision to cancel Ayers' speech, as well as a public recommitment to the fundamental principles of freedom of expression and academic freedom that UNL, as a state actor, is bound to uphold.

We request a response to this letter by Thursday, November 20, 2008.

Sincerely,



William Creeley
Director of Legal and Public Advocacy

cc:

Dr. Linda R. Pratt, Vice President and Provost
Joel D. Pedersen, General Counsel
Harvey S. Perlman, Chancellor