

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

UB STUDENTS FOR LIFE, an expressive student organization at the University at Buffalo; **CHRISTIAN ANDZEL**; and **MATTHEW RAMSEY**,

Plaintiffs,

v.

SATISH K. TRIPATHI, in his official capacity as President of University at Buffalo, The State University of New York; **DENNIS R. BLACK**, individually and in his official capacity as Vice President for University Life and Services; **THOMAS R. TIBERI**, individually and in his official capacity as Director of Student Life; **GERALD W. SCHOENLE JR.**, individually and in his official capacity as Chief of Police; **RICHARD LINDE**, individually and in his official capacity as Assistant Chief of Police; **KERRY SPICER**, individually and in her official capacity as Associate Director of Student Unions and Activities; **ELIZABETH HLADCZUK**, individually and in her official capacity as Student Life Reservations Coordinator,

Defendants.

Case No.

VERIFIED COMPLAINT

Plaintiffs UB Students for Life, Christian Andzel, and Matthew Ramsey, by and through counsel, and for their Complaint against the Defendants, hereby state as follows:

INTRODUCTION

1. A public university is commonly known as the “marketplace of ideas.” That marketplace depends on free and vigorous debate between students – debate

that is silenced when university policies regulate speech based on content and viewpoint and vest administrators with unbridled discretion to impose fees for the exercise of speech.

2. This case arises from policies and practices of the University at Buffalo, The State University of New York (“UB”) and public officials employed by UB that restrict the expressive rights of students. UB policy and practice grants administrators unbridled discretion to deem student organization events “controversial” based on the content or viewpoint of the speech or the actual or potential reactions of listeners. Once student events are so designated, UB requires its police officers to attend the event at the expense of students. This UB policy and practice chills protected student speech and disables the speech of student groups that cannot afford the fees.

3. Plaintiffs UB Students for Life, Christian Andzel, and Matthew Ramsey (collectively “UB Students for Life”) held a pro-life debate on campus on April 18, 2013. UB feared hecklers would attend the debate and cause a disruption based on the Defendants’ assessment that the event involved “controversial” expression. So Defendants required University Police to attend the event and then charged UB Students for Life over \$600 in security fees for those police officers, even though one of the officers sat outside and read the newspaper.

4. This action is premised on the United States Constitution concerning the denial of Plaintiffs’ fundamental rights to freedom of speech, due process, and equal protection of law.

5. The aforementioned policies and practices are challenged on their face and as applied to Plaintiffs.

6. Defendants’ policy and practice has deprived and will continue to deprive Plaintiffs of their paramount rights and guarantees under the United States Constitution.

7. Each and every act of Defendants alleged herein was committed by Defendants, each and every one of them, under the color of state law and authority.

JURISDICTION AND VENUE

8. This civil rights action raises federal questions under the United States Constitution, particularly the First and Fourteenth Amendments, and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

9. This Court has original jurisdiction over these federal claims pursuant to 28 U.S.C. §§ 1331 and 1343.

10. This Court has authority to award the requested damages pursuant to 28 U.S.C. § 1343; the requested declaratory relief pursuant to 28 U.S.C. §§ 2201-02; the requested injunctive relief pursuant to 28 U.S.C. § 1343 and Fed. R. Civ. P. 65; and costs and attorneys fees under 42 U.S.C. § 1988.

11. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because the Defendants reside in this district and/or all of the acts described in this Complaint occurred in this district.

PLAINTIFFS

12. Plaintiff UB Students for Life is an unincorporated expressive student organization made up of UB students.

13. Since the 1980s, UB Students for Life has existed as an underground student organization on campus.

14. In February 2012, the UB student government granted UB Students for Life official recognition. UB Students for Life has maintained this status in every academic year since.

15. UB Students for Life brings this suit on behalf of itself as a registered student organization at UB and on behalf of its individual student members.

16. Plaintiff Christian Andzel is a student at UB. He is the past president and a current member of UB Students for Life.

17. Plaintiff Matthew Ramsey is a student at UB and the current president of UB Students for Life.

DEFENDANTS

18. Defendant Satish K. Tripathi is, and was at all times relevant to this Complaint, the President and Chief Administrative Officer of the University at Buffalo, The State University of New York, a public university organized and existing under the laws of the State of New York.

19. Defendant Tripathi is the final policymaker at UB.

20. Defendant Tripathi is responsible for enactment and enforcement of UB policies, including the policies and procedures challenged herein, and their application to UB Students for Life when Defendants charged the group security fees for its pro-life debate.

21. According to the Rules and Regulations of the State of New York, Defendant Tripathi “shall supervise the members of the professional and nonacademic staff of” UB. N.Y. Comp. Codes R. & Regs. tit. 8, § 333.2 (2013).

22. Defendant Tripathi possesses the authority and responsibility for operation and security of the UB campus.

23. Defendant Tripathi, or his designee, through the chief of university police, administers the operations of the university police department.

24. All changes in campus policy are made only with the prior approval of Defendant Tripathi.

25. As president and chief administrative officer of UB, Defendant Tripathi possesses the authority to change and enforce the security fee policy and procedure challenged herein.

26. Defendant Tripathi has not instructed the Defendants to change or alter the security fee policy and procedure to comply with constitutional mandates.

27. As president and chief administrative officer of UB, Defendant Tripathi has the authority to review, approve, or reject the charge of security fees for student organization events.

28. Defendant Tripathi has not overturned the charge of security fees to UB Students for Life made by Defendants Tiberi, Schoenle, Linde, and Hladczuk.

29. Defendant Tripathi has failed to stop UB officials, including Defendants Tiberi, Schoenle, Linde, and Hladczuk, from applying the security fee policy based on the “controversial” nature of an event, including the pro-life debate hosted by UB Students for Life.

30. Defendant Tripathi is sued in his official capacity.

31. Defendant Dennis R. Black is, and was at all times relevant to this Complaint, Vice President for University Life and Services at the University at Buffalo, The State University of New York, a public university organized and existing under the laws of the State of New York.

32. Defendant Black is responsible for administration and policymaking for the university, as delegated to him by Defendant Tripathi, including the security fee policy and procedure challenged herein.

33. Defendant Black, in consultation with and the approval of Defendant Tripathi, is responsible for enactment and enforcement of UB policies, including the security fee policy and procedure challenged herein that were applied to UB Students for Life when Defendants charged the group security fees for its pro-life debate.

34. Defendant Black, pursuant to the powers delegated to him by Defendant Tripathi, is responsible for overseeing UB’s Division of Student Affairs, including the Student Life and University Police departments, and he creates, reviews, authorizes, and enforces the policies of those departments.

35. Defendant Black has failed to stop UB Student Affairs officials, including Student Life and University Police, from applying the security fee policy based on the “controversial” nature of the event.

36. Defendant Black possesses the authority to change and enforce the security fee policy and procedure challenged herein.

37. Defendant Black has not waived the charge of security fees for UB Students for Life’s pro-life debate.

38. Defendant Black is sued both in his individual and official capacities.

39. Defendant Thomas R. Tiberi is, and was at all times relevant to this Complaint, Director of Student Life at the University at Buffalo, The State University of New York, a public university organized and existing under the laws of the State of New York.

40. Defendant Tiberi is responsible for administration, policymaking for the UB Student Life department, including the security fee policy and procedure challenged herein.

41. Defendant Tiberi, in consultation with Defendants Tripathi, Schoenle, Linde, and Hladczuk, is responsible for enactment and enforcement of UB policies, including the security fee policy and procedure challenged herein that were applied to UB Students for Life when Defendants charged the group security fees for its pro-life debate.

42. Defendant Tiberi is responsible for overseeing UB’s Student Life department, and he creates, reviews, authorizes, and enforces the policies of that department.

43. Defendant Tiberi instructs the Student Life department when to charge or waive a security fee for a student organization event.

44. Defendant Tiberi has failed to stop UB’s Student Life department from applying the security fee policy based on the “controversial” nature of the event.

45. Defendant Tiberi possesses the authority to change and enforce the security fee policy and procedure challenged herein.

46. Defendant Tiberi has not waived the charge of security fees for UB Students for Life's pro-life debate.

47. Defendant Tiberi is sued both in his individual and official capacities.

48. Defendant Gerald W. Schoenle Jr. is, and was at all times relevant to this Complaint, Chief of Police at the University at Buffalo, The State University of New York, a public university organized and existing under the laws of the State of New York.

49. Defendant Schoenle is responsible for the planning, directing, coordinating, controlling, and staffing all University Police activities to include the protection of people, personal property, state property, and equipment and the enforcement of laws and regulation within its legal jurisdiction.

50. Defendant Schoenle, in consultation with Defendant Tripathi, is responsible for administration and policymaking for University Police, including the security fee policy and procedure challenged herein.

51. Defendant Schoenle is responsible for enactment and enforcement of UB policies, including the security fee policy and procedure challenged herein that were applied to UB Students for Life in charging it a security fee for the "controversial" nature of its pro-life debate.

52. Defendant Schoenle instructs University Police, including Defendant Linde, when to charge or waive a security fee for a student organization event.

53. Defendant Schoenle has failed to stop University Police from applying the security fee policy based on the "controversial" nature of the event.

54. Defendant Schoenle possesses the authority, with the authorization of Defendant Tripathi, to change and enforce the security fee policy and procedure challenged herein.

55. Defendant Schoenle has not waived the charge of security fees for UB Students for Life's pro-life debate.

56. Defendant Schoenle is sued both in his individual and official capacities.

57. Defendant Richard Linde is, and was at all times relevant to this Complaint, Assistant Chief of Police for Administration of University Police at University at Buffalo, The State University of New York, a public university organized and existing under the laws of the State of New York.

58. Defendant Linde is responsible for reviewing special events security requests, applying University Police policy governing special events, determining whether an event necessitates security, assigning police officers to an event, and imposing a security fee on the organization hosting the event.

59. Defendant Linde is responsible for enforcement of UB policies, including the security fee policy and procedure challenged herein that he applied to UB Students for Life in charging it a security fee for the "controversial" nature of its pro-life debate.

60. Defendant Linde has failed to stop University Police from applying the security fee policy based on the "controversial" nature of the event.

61. Defendant Linde has not waived the charge of security fees for UB Students for Life's pro-life debate.

62. Defendant Linde is sued both in his individual and official capacities.

63. Defendant Kerry Spicer is, and was at all times relevant to this Complaint, Associate Director of Student Unions and Activities at University at Buffalo, The State University of New York, a public university organized and existing under the laws of the State of New York.

64. Defendant Spicer is responsible for and in charge of overall operations of the Student Union and room reservations on North and South Campus, including Knox Lecture Hall.

65. Defendant Spicer is also responsible for interpreting and applying campus policies governing student organization activities.

66. Defendant Spicer is also responsible for helping students navigate and understand campus policies.

67. Defendant Spicer is also responsible for determining which student organization events might necessitate security, providing those organizations with the proper security forms, and applying UB policy on “controversial” events.

68. Defendant Spicer is responsible for enforcement of UB policies, including the security fee policy and procedure challenged herein that she applied to UB Students for Life when requiring it to submit a special events security request for its pro-life debate.

69. Defendant Spicer decided that UB Students for Life’s pro-life debate needed security present because the event was “controversial” in nature and because of how listeners’ reacted to prior UB Students for Life’s events.

70. Defendant Spicer knew of Defendant Elizabeth Hladczuk’s interactions with UB Students for Life regarding the pro-life debate and security fees, and directed Hladczuk that the event was too “controversial” and needed security.

71. Defendant Spicer is sued in both her individual and official capacities.

72. Defendant Elizabeth Hladczuk is, and was at all times relevant to this Complaint, Reservations Coordinator in the UB Student Life office at University at Buffalo, The State University of New York, a public university organized and existing under the laws of the State of New York.

73. Defendant Hladczuk is responsible for processing reservation requests for the Student Union, Harriman Student Center, and some classrooms/lecture halls on North and South Campus, including Knox Lecture Hall.

74. Defendant Hladczuk is also responsible for helping students navigate and understand campus policies.

75. Defendant Hladczuk is also responsible for determining which student organization events might necessitate security, providing those organizations with the proper security forms, and applying UB policy on “controversial” events.

76. Defendant Hladczuk is responsible for enforcement of UB policies, including the security fee policy and procedure challenged herein that she applied to UB Students for Life when requiring it to submit a special events security request for its pro-life debate.

77. Defendant Hladczuk decided that UB Students for Life’s pro-life debate needed security present because the event was “controversial” in nature and because of how listeners’ reacted to prior UB Students for Life events.

78. Defendant Hladczuk is sued in both her individual and official capacities.

FACTUAL BACKGROUND

79. UB is a public university organized and existing under the laws of the State of New York, and receives funding from the State of New York to operate.

80. UB recognizes that organized student groups are a valuable part of the student educational environment, because they further UB’s educational mission.

81. UB policy provides for the official recognition of student groups. A copy of UB’s University-Wide Recognition Student Club and Organization Policy is attached as Exhibit 1 to this Complaint.

82. Among other things, one of the benefits of official recognition is the “[a]bility to reserve/rent space on campus for events and meetings.” Ex. 1 at 3.

83. All recognized student organizations must adhere to UB policies and procedures.

84. Defendant Tiberi, as Director of Student Life, is responsible for enforcing UB policies and procedure governing the recognition of student organizations.

85. Defendant Black, in consultation with and the approval of Defendant Tripathi, is responsible for creating policies and procedures governing the recognition of student organizations.

86. Defendant Black, with the approval of Defendant Tripathi, created the University-Wide Recognition Student Club and Organization Policy.

87. Recognized student organizations may reserve UB rooms and facilities for their activities. A copy of the UB Rental Agreement Policy for classrooms and general campus space is attached as Exhibit 2 to this Complaint.

88. Defendants Tiberi, Spicer, and Hladczuk and employees in Student Life schedule room reservations.

89. Room reservations are available broadly to all UB departments, recognized student organizations, university groups, and non-university groups.

90. Requests for space are accepted or rejected on the basis of space availability, necessary services, review of the event for propriety, and timely and properly executed documents of authorization.

91. Defendant Tiberi retains final authority to approve or deny all reservation requests.

92. Only Defendant Tripathi has authority to resolve conflicts between academic and non-academic uses of UB facilities.

93. Room reservations for large events must complete and submit a Special Events Security Request. A copy of the Special Events Security Request is attached as Exhibit 3 to this Complaint.

94. University Police maintain the UB Special Events Procedures (hereinafter, the “Security Fee Policy”). A copy of the University Police Special Events Procedures is attached as Exhibit 4 to this Complaint.

95. Defendants Tripathi and Schoenle created the Security Fee Policy.

96. Defendants Tripathi, Schoenle, and Black decided to apply the Security Fee Policy to UB student organizations.

97. The Security Fee Policy states: “Special events are defined as those events held on university property and/or in university facilities where a concern for the protection of participants and/or property exists. Determination is made on a request by request basis.” Ex. 4 at 19.

98. Prior to holding a special event, organizers must “contact University Police (Richard Linde, Assistant Chief of Administration),” “be prepared to identify speakers, entertainment groups, etc.,” and “know if they are *controversial* or encountered difficulty at last places of performance,” among other things. *See* Ex. 4 at 19 (emphasis added).

99. Organizers of special events must also “know estimates of expected attendance” and “know that University Police is the exclusive security provider on university property/facilities.” Ex. 4 at 19-20.

100. The Special Events Security Request form requires the applicant to provide billing information so that UB may charge the applicant for the costs of providing security at an event. *See* Ex. 3.

101. If UB decides that an event needs University Police as security, the event organizer is charged the costs incurred by University Police.

102. For student organization events, the University Police in conjunction with Student Life reviews all student organization special event requests prior to approval.

103. Within University Police, Defendant Richard Linde is responsible for reviewing and acting on special events security requests.

104. Within University Police, Defendant Schoenle is responsible ultimately for reviewing and acting on special events security requests.

105. When a student organization requests permission from Student Life to use UB rooms or facilities, Defendants Tiberi, Spicer, and Hladczuk are responsible for deciding whether the student organization must comply with the Security Fee Policy and submit a Special Events Security Request.

106. The Security Fee Policy contains no written narrow, objective, and definite standards to guide Defendants Tiberi, Spicer, Schoenle, Linde, and Hladczuk or their designees when deciding whether an event needs security.

107. On information and belief, UB does not possess any official policies that set forth narrow, objective, and definite standards officials in Student Life or University Police must apply when deciding whether security is necessary at a student organization event.

108. The Security Fee Policy contains no written narrow, objective, and definite standards to guide Defendants Tiberi, Spicer, Schoenle, Linde, and Hladczuk or their designees when deciding how many police officers are necessary at a given event and how much UB will charge for those officers' attendance.

109. On information and belief, UB does not possess any official policies that contain written narrow, objective, and definite standards to guide Defendants Tiberi, Spicer, Schoenle, Linde, and Hladczuk or their designees when deciding how many police officers are necessary at a given event and how much UB will charge for those officers' attendance.

110. The Security Fee Policy does not require Defendants Tiberi, Spicer, Schoenle, Linde, and Hladczuk or their designees to justify the reason for imposing a security fee or requiring police attendance at a student organization event.

111. On information and belief, UB does not possess any official policies that require UB officials to justify the reason for imposing a security fee or requiring police attendance at a student organization event.

112. The Security Fee Policy does not provide students with an appeal process through which they can seek the review of a UB decision to require police officers at an event.

113. On information and belief, UB does not possess any official policies that provide students with an appeal process through which they can seek the review of a UB decision to require police officers at an event.

114. The Security Fee Policy requires Defendants Tiberi, Spicer, Schoenle, Linde, and Hladczuk and their designees to evaluate the need for security at a student organization event based on the content or viewpoint of the speech being expressed.

115. The Security Fee Policy requires Defendants Tiberi, Spicer, Schoenle, Linde, Hladczuk and their designees to evaluate the need for security at a student organization event based on listeners' potential reactions to the speech being expressed.

116. Defendant Tripathi knows about the Security Fee Policy and its provisions allowing for the evaluation of "controversial" events, but has taken no action to repeal or change the Policy.

117. Defendant Black knows about the Security Fee Policy and its provisions allowing for the evaluation of "controversial" events, but has taken no action to prevent its application to student organizations events, like those of UB Students for Life.

Background on UB Students for Life

118. UB Students for Life is founded upon the undeniable truth that all human life from the point of conception until natural death is sacred and has inherited dignity.

119. The purpose of UB Students for Life is to peacefully sustain this dignity through the promotion and defense of the culture of life.

120. UB Students for Life expresses its pro-life message on UB's campus through a variety of means including flyers, signs, peaceful demonstrations, hosting tables with information, inviting speakers to campus, and talking with fellow students about pro-life ideas, just to name a few.

121. When engaged in these expressive activities, Students for Life discusses political, religious, social, cultural, and moral issues, events, and ideas.

122. UB Students for Life has extensive experience hosting successful speakers and events on and off campus.

123. Last year, UB Students for Life held a pro-life debate on campus. About 275 people attended last year's debate. Defendants did not require University Police to be present at that debate, nor did they charge UB Students for Life a security fee.

124. In the past, UB Students for Life has organized movie nights promoting pro-life issues, hosted pro-life speakers like Rebecca Kiessling, and attended out of town conferences and rallies.

Defendants' Unconstitutional Charge of a Security Fee for UB Students for Life's Pro-Life Debate

125. During the week of April 15, 2013, UB Students for Life planned several pro-life events on the UB campus.

126. One of the events involved hosting the Genocide Awareness Project (GAP) on campus and the other event was an abortion debate.

127. UB Students for Life submitted a room reservation request for the debate in February 2013.

128. The room request was approved in March 2013. At that time, Student Life office assistant Defendant Hladczuk informed Mr. Andzel that UB Students for Life needed to submit a Special Events Security Request for the debate.

129. On information and belief, Defendants Tiberi and Spicer instructed Defendant Hladczuk to ask UB Students for Life to fill out the Special Events Security Request.

130. On April 15 and 16, 2013, UB Students for Life hosted GAP on campus.

131. GAP is a traveling photo-mural exhibit that compares the contemporary genocide of abortion to historically recognized forms of genocide.

132. GAP partners with student organizations on university campuses around the country to show as many students as possible what abortion actually does to preborn children and get them to think about abortion in a broader historical context.

133. GAP event spawned great interest on campus. A group of people protested the event by holding signs with different points of view, and, at one point, tried to block other people from viewing the GAP signs. One person, a UB professor, engaged in disorderly conduct and University Police arrested her after she screamed at people associated with GAP and UB Students for Life.

134. On or about April 15 and 16, 2013, Defendant Spicer told Mr. Andzel that if he did not submit the Special Events Security Request for the pro-life debate on April 18, UB would cancel the debate, including the room reservation.

135. On information and belief, Defendant Spicer previously instructed Defendant Hladczuk that UB Students for Life must submit a complete Special Events Security Request.

136. On information and belief, Defendants Tiberi, Spicer, and Hladczuk required UB Students for Life to submit a security request form because of the campus reaction to the GAP event and the “controversial” topic of the debate.

137. On April 16, 2013, Mr. Andzel submitted the Special Events Security Request for the debate on April 18. Mr. Andzel submitted the form to Student Association Treasurer Justin Neuwirt to sign off on the request.

138. Mr. Neuwirt signed the request because if UB Students for Life did not have enough money in its student organization account to pay for the security, the student government would pay for it and require UB Students for Life to reimburse student government.

139. After Mr. Neuwirt signed the Special Events Security Request, he gave the request to an administrator in the Student Life office who then submitted the request to Defendants Schoenle and Linde at University Police.

140. Later on April 16, Mr. Andzel went to the Student Life office and spoke to Defendant Hladczuk.

141. Mr. Andzel expressed his concerns that UB Students for Life should not have to pay the security fees for University Police to attend the debate.

142. Defendant Hladczuk said it was standard practice to submit a Special Event Security Request for all student club events that estimate over 100 people in attendance.

143. Defendant Hladczuk also said that the University Police needed to attend the debate due to the campus reactions to the GAP event.

144. On information and belief, Defendants Tiberi and Spicer told Defendant Hladczuk to get a Special Events Security Request from UB Students for Life because they decided that the content and viewpoint of UB Students for Life’s debate was “controversial.”

145. On information and belief, Defendants Tiberi and Spicer decided that UB Students for Life needed to submit the Special Events Security Request based on student and faculty reactions to the GAP event and the content and viewpoints expressed during that event.

146. Mr. Andzel requested to speak with Defendant Tiberi and left his contact information with Defendant Hladczuk, but Defendant Tiberi never contacted him.

147. UB Students for Life was forced to choose between submitting the Special Events Security Request and possibly pay for security for its debate, or not submit the form and risk UB cancelling the debate.

148. UB Students for Life did not want its speech to be shut down if UB cancelled the debate, so it submitted the Special Events Security Request under protest.

149. On April 18, 2013, UB Students for Life's debate on whether abortion is moral or immoral took place in UB's Know Lecture Hall, and was scheduled to last from 6:30 p.m. to 9:00 p.m.

150. Mr. Andzel from UB Students for Life and Anna Franzonello from Americans United for Life presented the viewpoint that abortion is immoral.

151. Rachel Stern, a teaching assistant for global studies, and Christian Malloy, a freshman, presented the viewpoint that abortion is moral.

152. Student Association President Travis Nemmer moderated the debate.

153. Mr. Andzel noticed two policemen at the debate.

154. The debate officially began at 6:50 p.m.

155. Towards the beginning of the debate someone turned off the lights in the room, which lasted for about fifteen seconds. University Police did not intervene.

156. After this incident, a student member of UB Students for Life went to the bathroom and saw a University Police officer in the hallway of Knox Lecture Hall reading the newspaper.

157. At times during the debate, there were minor verbal interruptions from people in the audience expressing other points of view and criticizing the arguments made by the pro-abortion debaters, Ms. Stern and Mr. Malloy, but University Police did not intervene.

158. The interruptions were not made by the debaters or moderator.

159. There were no other issues at the debate.

160. About 225 people attended the debate.

161. While UB Students for Life was hosting its debate, at the same time and in the same building, InterVarsity Christian Fellowship and UB Freethinkers, student groups at UB, along with EIS Apologetics, an off-campus organization, hosted a debate between a Christian and an atheist. A copy of an advertisement for this debate is attached as Exhibit 5 to this Complaint.

162. The debate between the Christian and the atheist, entitled "Right, Wrong and Religion," occurred in Knox Lecture Hall Room 110 and started at 6:30 p.m.

163. On information and belief, the organizers of the Right, Wrong and Religion debate submitted a Special Events Security Request for the debate, but were not charged a security fee.

164. On May 29, 2013, Mr. Andzel called the Student Association Finance Department to ask if UB Students for Life had been charged a security fee for the debate.

165. Later that same day, someone from the Student Association Finance Department emailed Mr. Andzel and attached the Interdepartmental Invoice from

University Police charging UB Students for Life \$649.63 in security fees. A copy of the Interdepartmental Invoice is attached as Exhibit 6 to this Complaint.

166. The security fee was automatically deducted from UB Students for Life's student organization account.

167. UB Students for Life receives \$500 in funding from the UB Student Association each year. UB Students for Life must raise money to support activities and events that cost more than its \$500 budget.

168. The security fee charge is more than the entire amount of funding that UB Students for Life receives from the Student Association each year.

169. Due to the loss of funds, UB Students for Life will not be able to engage in as many expressive activities next year.

170. On information and belief, Defendants Tiberi, Spicer, Schoenle, Linde, and Hladczuk reviewed UB Students for Life's room reservation request and Special Events Security Request and decided, pursuant to the Security Fee Policy, that the debate's abortion topic was too "controversial" and that UB Students for Life must have security at the debate.

171. On information and belief, Defendants Tiberi, Spicer, Schoenle, Linde, and Hladczuk considered the reaction of listeners to UB Students for Life's Genocide Awareness Project and decided that UB Students for Life must have security at the debate.

172. On information and belief, Defendants Tiberi, Spicer, Schoenle, Linde, and Hladczuk decided that two uniformed University Police officers would attend the debate as required security.

173. On information and belief, Defendants Tiberi, Spicer, Schoenle, Linde, and Hladczuk decided, pursuant to the Security Fee Policy, that UB Students for Life would pay the costs of these two police officers.

174. UB Students for Life is aware of other student organization events that were attended by large numbers of people but did not have University Police present.

175. UB Students for Life is already planning several pro-life activities for the fall 2013 semester, including a human rights conference with speakers; a cemetery of the innocent that displays small white crosses on UB lawns to commemorate the number of children killed by abortion; and The Planned Parenthood Project, an event that displays small pink flags for lives lost at Planned Parenthood facilities.

176. UB Students for Life fears that if it submits reservations to use UB facilities for any of these events, Defendants will impose security fees based on the “controversial” nature of the speech that the group will not be able to afford.

177. UB Students for Life cannot afford to pay security fees for these upcoming events.

178. UB Students for Life has cancelled plans for some activities next year because of the security fees UB charged it for the pro-life debate.

ALLEGATIONS OF LAW

179. At all times relevant to this Complaint, each and all of the acts alleged herein were attributed to the Defendants who acted under color of a statute, regulation, custom, or usage of the State of New York.

180. Defendants knew or should have known that charging a security fee for Plaintiffs’ expressive activity on campus violated their constitutional rights.

181. Plaintiffs are suffering irreparable harm from the policy and practice of Defendants.

182. Plaintiffs have no adequate or speedy remedy at law to correct or redress the deprivation of their rights by Defendants.

183. Unless the conduct of Defendants is enjoined, Plaintiffs will continue to suffer irreparable injury.

FIRST CAUSE OF ACTION
Violation of Plaintiffs' First Amendment Right
to Freedom of Speech
(42 U.S.C. § 1983)

184. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–183 of this Complaint.

185. Speech is entitled to comprehensive protection under the First Amendment.

186. Religious and political speech is also fully protected by the First Amendment.

187. The First Amendment rights of free speech and press extend to campuses of state colleges.

188. University campus rooms, when not in use for academic or university-sponsored events, are designated public forums.

189. UB has designated rooms and facilities to be public forums for students when not in use for university-sponsored events.

190. The First Amendment's Free Speech Clause, incorporated and made applicable to the states by the Fourteenth Amendment to the United States Constitution, prohibits content and viewpoint discrimination in the public forums for student speech and expression on the campus of a public college.

191. A public college's ability to restrict speech – particularly student speech – in a public forum is limited.

192. The First Amendment's Free Speech Clause prohibits censorship of religious and political expression.

193. Under the First Amendment's Free Speech Clause, a prior restraint on citizens' expression is presumptively unconstitutional, unless it (1) does not

delegate overly broad licensing discretion to a government official, (2) contains only content and viewpoint neutral reasonable time, place, and manner restrictions, (3) is narrowly tailored to serve a significant governmental interest, and (4) leaves open ample alternative means for communication.

194. Defendants' Security Fee Policy and their practice of charging student organizations a security fee for "controversial" events violates the First Amendment facially and as applied because it is a prior restraint on speech in areas of campus that are traditional or designated public fora for UB students.

195. Unbridled discretion to discriminate against speech based on its content or viewpoint violates the First Amendment regardless of whether that discretion has ever been unconstitutionally applied in practice.

196. Defendants' Security Fee Policy and their practice of charging student organizations a security fee for "controversial" events or based on listeners' reactions violates the First Amendment facially and as applied because they grant UB officials unbridled discretion to discriminate against speech based on its content or viewpoint.

197. Defendants' Security Fee Policy and associated practice provide no narrow, objective, or definite standards to limit the discretion of UB officials in deciding whether to require security at a student organization event.

198. Defendants' Security Fee Policy and associated practice do not require UB officials to provide written justification for their decision to impose a security fee on student speech.

199. Defendants' Security Fee Policy and associated practice provide no appeal process that students may utilize when charged security fees for events.

200. These grants of unbridled discretion to UB officials violate the First Amendment because they create a system in which speech is reviewed without any

standards, thus giving students no way to prove that a denial, restriction, or relocation of their speech was based on unconstitutional considerations.

201. Because Defendants have failed to establish narrow, objective, and definite standards governing the imposition of security fees on student organization events, there is a substantial risk that UB officials will engage in content and viewpoint discrimination when addressing those applications.

202. Defendants used the unbridled discretion granted them under the Security Fee Policy to impose a security fee on Plaintiffs' speech because Defendants deemed it "controversial" based on the content and viewpoint of the speech and the potential reactions of listeners.

203. The First Amendment's prohibition against content and viewpoint discrimination requires Defendants to provide adequate safeguards to protect against the improper exclusion, restriction, or relocation of student speech based on its content or viewpoint.

204. Defendants' Security Fee Policy and associated practice of charging student organizations a security fee for "controversial" events requires content- and viewpoint-based discrimination facially and as-applied.

205. Defendants engaged in content- and viewpoint-based discrimination by examining whether Plaintiffs' speech was "controversial" and how listeners might react to the speech.

206. Defendants engaged in content- and viewpoint-based discrimination by deeming Plaintiffs' speech "controversial" or listeners' reaction too volatile, and requiring security to be present at the debate.

207. Defendants' Security Fee Policy and associated practice of charging student organizations a security fee for "controversial" events is an unconstitutional "time," "place," and "manner" restriction that violates Plaintiffs' and other students' right to freedom of speech and expression.

208. Defendants' Security Fee Policy and associated practice are neither reasonable nor valid time, place, and manner restrictions on speech because they are not content-neutral, they are not narrowly tailored to serve a significant government interest, and they do not leave open ample alternative channels of communication.

209. While Defendants have an interest in maintaining a safe campus, the assessment of security fees on "controversial" speech but not other speech is not narrowly tailored to Defendants' interest.

210. Under Defendants' Security Fee Policy, "controversial" events have no alternative channels of communication because they must pay security fees everywhere on campus.

211. The First Amendment's Freedom of Speech Clause prohibits a public university from imposing fees on student speech based on overbroad regulations.

212. Defendants' Security Fee Policy and associated practice are overbroad because they prohibit and restrict protected expression.

213. Defendants' Security Fee Policy and associated practice unconstitutionally impose fees on all private student speech that occurs on campus that Defendants, in their unbridled discretion, designate "controversial."

214. The overbreadth of Defendants' policies and related practice chill the speech of students not before the Court who seek to engage in private expression on campus.

215. Defendants' Security Fee Policy and associated practice chill, deter, and restrict Plaintiffs from freely expressing their religious and political beliefs.

216. Defendants' Security Fee Policy and associated practice violate Plaintiffs' right to free speech as guaranteed by the First Amendment to the United States Constitution.

217. Because of Defendants' actions, Plaintiffs have suffered, and continue to suffer, economic injury and irreparable harm. They are entitled to an award of monetary damages and equitable relief.

218. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to a declaration that Defendants violated their First Amendment right to freedom of speech and an injunction against Defendants' policy and actions. Additionally, Plaintiffs are entitled to damages in an amount to be determined by the evidence and this Court and the reasonable costs of this lawsuit, including their reasonable attorneys' fees.

SECOND CAUSE OF ACTION
Violation of Plaintiffs' Fourteenth Amendment Right
to Due Process of Law
(42 U.S.C. § 1983)

219. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–183 of this Complaint.

220. The Fourteenth Amendment to the United States Constitution guarantees Plaintiffs the right to due process of law and prohibits Defendants from promulgating and employing vague standards that allow for viewpoint discrimination in Defendants' handling of Plaintiffs' on campus expression.

221. The government may not regulate speech based on policies that permit arbitrary, discriminatory, and overzealous enforcement.

222. The government may not regulate speech based on policies that cause persons of common intelligence to guess at their meaning and differ as to their application.

223. Defendants' Security Fee Policy and associated practice contain no criteria to guide administrators when deciding whether security is necessary at a student organization event.

224. Defendants' Security Fee Policy and associated practice are impermissibly vague and ambiguous and are thus incapable of providing meaningful guidance to Defendants.

225. The lack of criteria, factors, or standards in Defendants' Security Fee Policy and associated practice renders the policy and practice unconstitutionally vague and in violation of Plaintiffs' right to due process of law under the Fourteenth Amendment.

226. Defendants required Plaintiffs to have security at their debate based on Defendants assessment of the "controversial" nature of the event and listeners' potential reactions to the speech being expressed at the event.

227. Because of Defendants' actions, Plaintiffs have suffered, and continue to suffer, economic injury and irreparable harm. They are entitled to an award of monetary damages and equitable relief.

228. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to a declaration that Defendants violated their Fourteenth Amendment right to due process of law and an injunction against Defendants' policy and actions. Additionally, Plaintiffs are entitled to damages in an amount to be determined by the evidence and this Court and the reasonable costs of this lawsuit, including their reasonable attorneys' fees.

THIRD CAUSE OF ACTION
Violation of Plaintiffs' Fourteenth Amendment Right
to Equal Protection of the Law
(42 U.S.C. § 1983)

229. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–183 of this Complaint.

230. The Fourteenth Amendment to the United States Constitution guarantees Plaintiffs the equal protection of the laws, which prohibits Defendants from treating Plaintiffs differently than similarly situated students.

231. The government may not treat someone disparately as compared to similarly situated persons when such disparate treatment burdens a fundamental right, targets a suspect class, or has no rational basis.

232. Plaintiffs are similarly situated to other students and student organizations at UB.

233. Defendants did not charge other students and student organizations security fees for their expressive activities, but charged Plaintiffs for their pro-life debate.

234. Defendants treated Plaintiffs disparately when compared to similarly situated students by charging Plaintiffs a security fee for their pro-life debate.

235. Defendants' Security Fee Policy and associated practice violate various fundamental rights of Plaintiffs, such as their freedom of speech and due process of law.

236. When government regulations, like Defendants' Security Fee Policy and associated practice challenged herein, infringe on fundamental rights, discriminatory intent is presumed.

237. Defendants' Security Fee Policy and associated practice have also been applied to discriminate intentionally against Plaintiffs' rights to freedom of speech and due process of law.

238. Defendants lack a rational or compelling state interest for such disparate treatment of Plaintiffs.

239. Defendants' Security Fee Policy and associated practice are not narrowly tailored as applied to Plaintiffs because Plaintiffs' speech does not implicate any of the interests Defendants' might have.

240. Defendants have applied the Security Fee Policy and associated practice to Plaintiffs in a discriminatory and unequal manner, allowing other students to speak freely without security fees when Defendants say Plaintiffs

cannot do the same, in violation of Plaintiffs' right to equal protection of the laws under the Fourteenth Amendment.

241. Defendants required Plaintiffs to fill out a Special Events Security Request for a pro-life debate in 2012 that discussed the same issues as the pro-life debate in 2013, but no University Police attended the 2012 event and no money was withdrawn from Plaintiffs' student organization account.

242. Defendants required security for Plaintiffs' 2013 debate because Defendants deemed the event "controversial" and because Defendants feared listeners' reactions to the speech.

243. Because of Defendants' actions, Plaintiffs have suffered, and continue to suffer, economic injury and irreparable harm. They are entitled to an award of monetary damages and equitable relief.

244. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to a declaration that Defendants violated their Fourteenth Amendment right to equal protection of law and an injunction against Defendants' policy and actions. Additionally, Plaintiffs are entitled to damages in an amount to be determined by the evidence and this Court and the reasonable costs of this lawsuit, including their reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment against Defendants and provide Plaintiffs with the following relief:

- (A) A declaratory judgment that Defendants' Security Fee Policy and associated practice, facially and as-applied, violate Plaintiffs' rights under the First Amendment;
- (B) A declaratory judgment that Defendants' Security Fee Policy and associated practice, facially and as-applied, violate Plaintiffs' rights under the Fourteenth Amendment;

- (C) A declaratory judgment that Defendants' requirement that Plaintiffs pay for security to engage in protected expression violated Plaintiffs' rights under the First and Fourteenth Amendments;
- (D) A preliminary and permanent injunction prohibiting Defendants, their agents, officials, servants, employees, and any other persons acting in their behalf from enforcing the Security Fee Policy and associated practice challenged in this Complaint;
- (E) Actual damages in the amount of \$649.63 for infringing Plaintiffs' exercise of their First and Fourteenth Amendment rights;
- (F) Nominal damages for the violation of Plaintiffs' First and Fourteenth Amendment rights;
- (G) Plaintiffs' reasonable attorneys' fees, costs, and other costs and disbursements in this action pursuant to 42 U.S.C. § 1988; and
- (H) All other further relief to which Plaintiffs may be entitled.

Respectfully submitted this 28th day of June, 2013,

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*Application for admission submitted.

**Application for admission forthcoming.

ATTORNEYS FOR PLAINTIFF

DECLARATION UNDER PENALTY OF PERJURY

I, CHRISTIAN ANDZEL, a citizen of the United States and a resident of the State of New York, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Executed this 19th day of June, 2013, at Buffalo, New York.

/s/Christian Andzel
CHRISTIAN ANDZEL, 2012-2013 PRESIDENT
UB STUDENTS FOR LIFE

DECLARATION UNDER PENALTY OF PERJURY

I, MATTHEW RAMSEY, a citizen of the United States and a resident of the State of New York, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Executed this 25th day of June, 2013, at Buffalo, New York.

/s/Matthew Ramsey
MATTHEW RAMSEY, 2013-2014 PRESIDENT
UB STUDENTS FOR LIFE