

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

CAMERON PADGETT,

Plaintiff,

v.

**BOARD OF TRUSTEES OF THE
PENNSYLVANIA STATE UNIVERSITY,**

In their official capacities,

and

ERIC J. BARRON,

In his personal and official capacities,

Defendants.

Case No.

Hon.

Mag.

RANDAZZA LEGAL GROUP, PLLC

By: A. Jordan Rushie

PA ID: 209066

1010 N. Hancock St.

Philadelphia, PA 19123

(P): (215) 268-3978

(F): (215) 525-0909

(E): ajr@randazza.com

Lead Trial Attorney for Cameron Padgett

BRISTOW LAW, PLLC

Kyle Bristow (Pro Hac Vice Forthcoming)

P.O. Box 381164

Clinton Twp., MI 48038

(P): (248) 838-9934

(E): BristowLaw@gmail.com

Attorney for Cameron Padgett

PLAINTIFF'S COMPLAINT
(JURY DEMAND ENDORSED HEREON)

NOW COMES Cameron Padgett ("Plaintiff"), by and through Attorney A. Jordan Rushie, and hereby propounds upon Board of Trustees of the Pennsylvania State University ("PSU Trustees"), Eric J. Barron ("Barron") (collectively "Defendants"), and this Honorable Court Plaintiff's Complaint:

I. INTRODUCTION

1. Plaintiff sues Defendants—by invoking 42 U.S.C. § 1983—for Defendants having wantonly violated Plaintiff’s right to free speech as guaranteed by the First and Fourteenth Amendments to the United States Constitution by prohibiting Plaintiff from hosting Richard Spencer (“Spencer”) of the National Policy Institute (“NPI”) as a speaker on the campus of Pennsylvania State University (“PSU”).

II. PARTIES

2. Plaintiff is an adult natural person, a citizen by birth of the United States of America, and a domiciliary of the State of Georgia.

3. PSU Trustees is the governing body of PSU, which is a public university principally located in City of University Park, Commonwealth of Pennsylvania. PSU Trustees are sued in their official capacities only. At all times relevant to the instant controversy, PSU Trustees acted under the color of state law.

4. Barron is an adult natural person who is the president of PSU. Upon information and belief, Barron is a domiciliary of the Commonwealth of Pennsylvania. Barron is sued in his personal and official capacities. At all times relevant to the instant controversy, Barron acted under the color of state law.

III. JURISDICTION AND VENUE

5. This Court enjoys subject matter jurisdiction over the instant civil action because the controversy involves both a federal question about Plaintiff’s constitutional right to free speech being violated by Defendants and diversity jurisdiction since no defendant resides in the same state as Plaintiff and the sum in controversy exceeds seventy-five thousand dollars (\$75,000.00). 28 U.S.C. §§ 1331, 1332, and 1343.

6. This Court enjoys personal jurisdiction over Defendants because Defendants are subject to the jurisdiction of a court of general jurisdiction within the Commonwealth of Pennsylvania since Defendants are located in the Commonwealth of Pennsylvania and Defendants did and caused tortious injury to Plaintiff in the Commonwealth of Pennsylvania. Fed. R. Civ. P. 4(k)(1)(A).

7. Venue is appropriate with this Court because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in the Court's jurisdictional district. 28 U.S.C. 1391(b)(2).

IV. STATEMENT OF FACTS

8. Plaintiff is 29-year-old senior at Georgia State University who subscribes to identitarian philosophy. Plaintiff has never been arrested for, charged with, or convicted of a violent crime, and Plaintiff does not advocate criminal conduct.

9. Identitarian philosophy is a Eurocentric political ideology which advocates the preservation of national identity and a return to traditional Western values.

10. Although Plaintiff does not consider himself Alt-Right, Plaintiff is a supporter of Spencer and Plaintiff is the organizer of Spencer's collegiate speaking tour.

11. Alt-Right—an abbreviation of alternative right—is a Eurocentric political ideology which advocates the preservation of national identity, a return to traditional Western values, and advances European racial interests. Race-based preferential treatment for non-Europeans (a/k/a affirmative action), non-European immigration to European countries and their former colonies, international free trade agreements, radical feminism, sexual deviancy, and the ideology of multiculturalism are strongly criticized by adherents of Alt-Right philosophy.

12. Spencer is arguably the foremost advocate for Alt-Right philosophy in the world and is rapidly becoming a major figure in contemporary American politics. Spencer graduated from the

University of Virginia with a Bachelor of Arts degree, the University of Chicago with a Master of Arts degree, and pursued a Ph.D. in modern European intellectual history at Duke University. Spencer has never been arrested for, charged with, or convicted of a violent crime, and Spencer does not advocate criminal conduct.

13. NPI is a think-tank based in City of Alexandria, Commonwealth of Virginia, for which Spencer serves as its figurehead. NPI promotes Alt-Right philosophy through its publications and private and public events. NPI does not advocate criminal conduct.

14. Due to the viewpoint of Spencer and NPI, people who are politically left-of-center find Spencer's and NPI's constitutionally-protected political views to be objectionable. Radical leftists affiliated with the Antifa political movement have previously violently attacked Spencer and Spencer's supporters at venues at which Spencer and Spencer's supporters peacefully assembled with the explicit goal of shutting down Spencer's events.

15. Antifa—an abbreviation of antifascist—is an unincorporated and international collective of communists and anarchists who resort to violence as a matter of practice to try to oppress people of a right-of-center political persuasion. Usually clothed in black and wearing masks to cowardly conceal their identities, Antifa activists routinely show up to politically right-of-center events with baseball bats, knives, sticks, pepper spray, and other weapons to attack their political opponents. Antifa activists often throw water balloons filled with urine and other harmful objects at politically right-of-center people without lawful justification.

16. In or about July of 2017, Plaintiff attempted to rent a conference room or lecture hall at PSU at which Spencer would have been a speaker to share with attendees Spencer's Alt-Right philosophy. Plaintiff was—and is still—prepared to pay for the conference room or lecture hall.

17. On August 22, 2017, Barron released a statement on behalf of Defendants on Barron's PSU-provided webpage about Spencer speaking on PSU's campus at <http://news.psu.edu/story/478590/2017/08/22/administration/richard-spencer-not-welcome-speak-penn-state>:

Richard Spencer is not welcome to speak at Penn State

In light of the recent violence and tragedy in Charlottesville, Penn State has evaluated a request for Richard Spencer, who is president of the National Policy Institute, to speak on the University Park campus this fall.

I disagree profoundly with the content that has been presented publicly about this speaker's views which are abhorrent and contradictory to our University's values. There is no place for hatred, bigotry or racism in our society and on our campuses.

As stated last week, Penn State is an institution of higher education, and fully supports the right of free speech and encourages its expression in thoughtful and respectful ways, even when we strongly disagree with the opinions expressed. But the First Amendment does not require our University to risk imminent violence.

After critical assessment by campus police, in consultation with state and federal law enforcement officials, we have determined that Mr. Spencer is not welcome on our campus, as this event at this time presents a major security risk to students, faculty, staff and visitors to campus. It is the likelihood of disruption and violence, not the content, however odious, that drives our decision.

As we enter the new semester with a national climate of great uncertainty, Penn State continues to foster an inclusive climate for all races, ethnicities, religions, sexual orientations, genders and other differences. Our University strives to create an environment where everyone can teach, learn and live in an atmosphere of safety and mutual respect.

18. Defendants' decision to prohibit Plaintiff from renting a conference room or lecture hall on PSU's campus due to violence implicitly or explicitly threatened by Antifa and not by the speaker constitutes unconstitutional content discrimination in the form of a heckler's veto. See *Bible Believers v. Wayne County*, 805 F.3d 228 (6th Cir. 2015) (en banc).

19. Defendants have no reason to believe that Plaintiff, Spencer, or Spencer's supporters will in fact engage in and/or advocate offensive criminal misconduct should Spencer be permitted to speak on PSU's campus in a conference room or lecture hall rented by Plaintiff.

20. The instant controversy is virtually identical to *Padgett v. Auburn University*, Case No. 3:17-cv-00231-WKW-WC, at the United States District Court for the Middle District of Alabama. In said case, the same plaintiff as the one of the instant civil action sued a public university for prohibiting Plaintiff from hosting Spencer as a speaker in a rented conference room or lecture hall to talk about Alt-Right philosophy. The defendants in that case alleged that Spencer's appearance on the campus of the public university would cause lawless action. Chief Judge W. Keith Watkins awarded Plaintiff a preliminary injunction so that Spencer could speak in a rented room—the defendants were court-ordered to not only protect Spencer and Spencer's supporters from Antifa via the university's police department, but to de-mask Antifa protesters to dissuade violence—, Spencer peacefully spoke on campus without advocating criminal misconduct, and Plaintiff and the defendants settled the controversy for twenty-nine-thousand-dollars (\$29,000.00). (Exhibit A – *Padgett v. Auburn University* Opinion). Just like Auburn University, the PSU defendants of the instant civil action must permit Plaintiff to rent a conference room or lecture hall for Spencer to speak about Alt-Right philosophy on PSU's campus if the First and Fourteenth Amendments to the United States Constitution are to be respected.

21. Plaintiff is entitled to an award of punitive damages against Defendants because Defendants caused harm to Plaintiff that was malicious, oppressive, and/or in reckless disregard of Plaintiff's rights.

22. Defendants do not enjoy qualified immunity for Defendants' tortious conduct against Plaintiff, because the right of a citizen of the United States of America to speak about controversial

political subject matter at a public forum or limited public forum is clearly established constitutional law.

V. CAUSES OF ACTION

COUNT I DEFENDANTS VIOLATED PLAINTIFF'S FIRST AND FOURTEENTH AMENDMENT RIGHT TO FREE SPEECH 42 U.S.C. § 1983

23. The foregoing paragraphs of this Complaint are incorporated by reference as if each is fully set forth herein.

24. Plaintiff is guaranteed the right to free speech pursuant to the First and Fourteenth Amendments to the United States Constitution.

25. Defendants violated Plaintiff's right to free speech by prohibiting Plaintiff from renting a conference room or lecture hall to host Spencer as a speaker on the campus of PSU to share with attendees of the planned event Spencer's Alt-Right philosophy.

26. Defendants' decision to prohibit Spencer from speaking about Spencer's Alt-Right philosophy due to Defendants finding Alt-Right philosophy to be objectionable constitutes unconstitutional viewpoint discrimination.

27. Defendants' decision to prohibit Spencer from speaking due to the threat of violence that Antifa leftists pose constitutes unconstitutional content discrimination in the form of a heckler's veto. See *Bible Believers, supra*.

28. Defendants acted under the color of state law when Defendants prohibited Plaintiff from hosting Spencer in a rented conference room or lecture hall as a speaker on the campus of PSU.

29. Due directly and proximately to Defendants having violated Plaintiff's right to free speech, Plaintiff has and will continue to suffer injuries.

WHEREFORE, Plaintiff prays that this Honorable Court will enter judgment in Plaintiff's favor against Defendants, jointly and severally, by awarding Plaintiff: (1) a money judgment in excess of seventy-five thousand dollars (\$75,000.00) for general and punitive damages; (2) the reasonable attorney's fees and costs incurred by Plaintiff to prosecute the instant civil action pursuant to 42 U.S.C. § 1988(b); and (3) any and all further relief that can be awarded by law or equity.

COUNT II
DECLARATORY AND INJUNCTIVE RELIEF

30. The foregoing paragraphs of this Complaint are incorporated by reference as if each is fully set forth herein.

31. The Court can and should decree that Defendants violated Plaintiff's right to free speech by prohibiting Plaintiff from renting a conference room or lecture hall at which Spencer would lecture about Alt-Right philosophy. See 28 U.S.C. §§ 2201 and 2202.

32. This Court can and should issue preliminary and permanent injunctions against Defendants whereby Defendants are ordered to permit Plaintiff to rent a conference room or lecture hall on the campus of PSU for a fee to host Spencer as a speaker without Plaintiff paying for police protection or posting bond or providing insurance for the event and which requires PSU to maintain law and order via the use of law enforcement officers of its police department so as to protect Spencer's right to safely speak in a meaningful manner. See Fed. R. Civ. P. 65; *Bible Believers, supra*; *Forsyth County v. Nationalist Movement*, 505 U.S. 123 (1992) (holding that a price-tag cannot be attached to the right to free speech by making controversial speakers pay for police protection due to the threatened violence of their adversaries); *Ohio Republican Party v. Brunner*, 543 F.3d 357, 361 (6th Cir. 2008) (describing elements for injunctive relief to be awarded).

33. Plaintiff has a likelihood of success on the merits of Plaintiff's claim that Defendants violated Plaintiff's right to free speech.

34. Plaintiff will suffer irreparable harm in the form of Plaintiff's right to free speech being denied to him should the Court not grant Plaintiff injunctive relief.

35. The issuance of an injunction to permit Plaintiff to rent a conference room or lecture hall on the campus of PSU for a fee to host Spencer as a speaker without Plaintiff paying for police protection or posting bond or providing insurance for the event and which requires PSU to maintain law and order via the use of law enforcement officers of its police department so as to protect Spencer's right to safely speak in a meaningful manner will not cause Defendants to suffer substantial harm because Defendants are required by constitutional law to do the same anyways.

36. The issuance of an injunction to permit Plaintiff to rent a conference room or lecture hall on the campus of PSU for a fee to host Spencer as a speaker without Plaintiff paying for police protection or posting bond or providing insurance for the event and which requires PSU to maintain law and order via the use of law enforcement officers of its police department so as to protect Spencer's right to safely speak in a meaningful manner will serve the public interest because it is in the public's interest for the First and Fourteenth Amendments to the United States Constitution to be honored and not disregarded by governmental actors.

WHEREFORE, Plaintiff prays that this Honorable Court will award Plaintiff declaratory relief by decreeing that Defendants violated Plaintiff's right to free speech and will award Plaintiff preliminary and permanent injunctive relief whereby Defendants are ordered to permit Plaintiff to rent a conference room or lecture hall on the campus of PSU for a fee to host Spencer as a speaker without Plaintiff paying for police protection or posting bond or providing insurance for the event

and which requires PSU to maintain law and order via the use of law enforcement officers of its police department so as to protect Spencer's right to safely speak in a meaningful manner.

JURY TRIAL DEMAND

Pursuant to Fed. R. Civ. P. 38, Plaintiff hereby respectfully demands a trial by jury as to all triable issues of fact in the instant civil action.

Respectfully submitted,

RANDAZZA LEGAL GROUP, PLLC

/s/ A. Jordan Rushie

A. Jordan Rushie

PA ID: 209066

1010 N. Hancock St.

Philadelphia, PA 19123

(P): (215) 268-3978

(F): (215) 525-0909

(E): ajr@randazza.com

Lead Trial Attorney for Cameron Padgett

Dated: October 19, 2017

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

CAMERON PADGETT)
)
Plaintiff,)
)
v.)
)
AUBURN UNIVERSITY,)
JAY GEORGE, in his official and)
individual capacity as President of)
Auburn University,)
CHANCE CORBETT, in his official)
and individual capacity as Director of)
Auburn University Public Safety)
Department, and)
ANDREA CONTI-ELIKINS, in her)
official and individual capacity as)
Supervisor of Student Center)
Reservations and James E. Foy)
Information Desk, Division of Student)
Affairs,)
)
Defendants.)

CASE NO. 3:17-CV-231-WKW
(WO)

PRELIMINARY INJUNCTION

Before the court is Plaintiff’s motion for temporary restraining order, which is construed as a motion for preliminary injunction. (Doc. # 2.) This is a civil rights action brought pursuant to 42 U.S.C. § 1983. Plaintiff alleges that he had a contract with Auburn University to rent a room for the purpose of allowing Richard Spencer to speak at 7:00 p.m. on April 18, 2017 (today’s date). On April 14, 2017, Defendants, on behalf of Auburn University, cancelled the event. (Doc. # 1-3.) The

court takes judicial notice that Richard Spencer is a white nationalist member of the far right who subscribes to what he describes as “identitarian” politics. While Mr. Spencer’s beliefs and message are controversial, Auburn presented no evidence that Mr. Spencer advocates violence. Upon consideration of the motion and the evidence presented at the April 18, 2017 hearing on the motion, the court concludes that the motion is due to be granted.

The law of speech in this country is well-settled:

[A]ll fundamental rights comprised within the term liberty are protected by the federal Constitution from invasion by the states. The right of free speech, the right to teach and the right of assembly are, of course, fundamental rights. These may not be denied or abridged. But, although the rights of free speech and assembly are fundamental, they are not in their nature absolute.

Whitney v. California, 274 U.S. 357, 373 (1927) (Brandeis, J., concurring) (internal citations omitted), *overruled on other grounds*, *Brandenburg v. Ohio*, 395 U.S. 444 (1969). “[T]he constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.” *Brandenburg*, 395 U.S. at 447. Auburn did not produce evidence that Mr. Spencer’s speech is likely to incite or produce imminent lawless action.

The court finds that Auburn University cancelled the speech based on its belief that listeners and protest groups opposed to Mr. Spencer’s ideology would react to

the content of his speech by engaging in protests that could cause violence or property damage. However, discrimination on the basis of message content “cannot be tolerated under the First Amendment,” and “[l]isteners’ reaction to speech is not a content-neutral basis for regulation.” *Forsyth Cty., Ga. v. Nationalist Movement*, 505 U.S. 123, 134–35 (1992). Moreover, counsel for Auburn represented that Auburn University and local police, having been made aware of the risks many weeks ago, are prepared to provide security in the event that this injunction issued. Mr. Spencer has provided \$2 million in insurance and has paid for the extra security necessary to cover this event. Auburn’s attempted cancellation of the event, in violation of its contract with Plaintiff and four days before the event, was not narrowly tailored to protect the right to free speech while still addressing its own security concerns.

Accordingly, Plaintiff is entitled to a preliminary injunction by demonstrating (1) a substantial likelihood of success on the merits; (2) that, if the relief is not granted, he will suffer irreparable injury in the form of deprivation of his right to freedom of speech and freedom of association, *see Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”); (3) that the threatened injury outweighs the harm the relief would inflict on Defendants; and (4) that entry of the

relief would serve the public interest. *See Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1225 (11th Cir. 2005).

For the foregoing reasons, it is ORDERED that Plaintiff's Motion (Doc. # 2) is GRANTED as follows:

1. Defendants and their agents and any person acting on Defendants' behalf are RESTRAINED and ENJOINED from cancelling, prohibiting, or preventing listeners from attending the speech by Mr. Spencer on April 18, 2017.

2. The contract (Doc. # 1-1) for the room in which Mr. Spencer was scheduled to speak is reinstated.

3. To the extent necessary to provide security, and in a manner that will ensure compliance with Alabama's anti-mask law, Ala. Code 1975 § 13A-11-9(a)(4), and the rights guaranteed by the United States Constitution, law enforcement may prohibit attendees or protesters on the campus from wearing masks.¹

4. Defendant Auburn University, through its Police Department shall take all necessary and appropriate steps, within their available resources, to provide security for Mr. Spencer, event attendees, peaceful protestors, and all other persons on the Auburn University campus on April 18, 2017. Security personnel may not cut off the free speech of Mr. Spencer or other persons except as a last resort to

¹ The uncontradicted evidence presented at the hearing establishes that a group called "Anti-fa," known for donning masks and engaging in violent protests, intends to engage in non-peaceful protest at Mr. Spencer's speech at Auburn.

ensure security or to prevent violence or property damage, and only after first making “*bona fide* efforts to protect the speaker from . . . hostility by other, less restrictive means.” *Bible Believers v. Wayne Cty., Mich.*, 805 F.3d 228, 255 (6th Cir. 2015).

5. In light of the insurance procured by Mr. Spencer, Mr. Spencer’s payment of fees for the provision of security, and Defendants’ representation that they do not wish to request a bond, no bond is required.

6. At or before **6:30 p.m. on April 18, 2017**, Mr. Spencer shall tender to Auburn the \$700.00 balance owed for facility rental.

DONE this 18th day of April, 2017.

/s/ W. Keith Watkins

CHIEF UNITED STATES DISTRICT JUDGE

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE