



April 5, 2023

Via Email Only

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Re: Students for Life at VCU: March 29, 2023 Event

Dear Dr. Rao, Dr. Hart, and Ms. Hamlett:

We write on behalf of Students for Life at VCU (“SFL-VCU”) and Students for Life of America (“SFLA”) in connection with the pro-life event they scheduled on campus last week that was forcibly attacked by an angry mob. By failing to provide security for this event, by failing to respond to the disruption in a timely manner, and by failing to remove the disruptors and instead removing the students hosting the event, VCU egregiously violated SFL-VCU’s and SFLA’s clearly established constitutional rights. We ask that you act immediately to remedy this situation, including by taking each of the steps set forth in our Demand below.

By way of introduction, Alliance Defending Freedom is an alliance-building, non-profit legal organization that advocates for the right of people to freely live out

their faith and beliefs.<sup>1</sup> We are dedicated to ensuring that students may exercise their rights to speak, associate, and learn on an equal basis with all other students regardless of their viewpoints.

### Facts

SFL-VCU, a Registered Student Organization, scheduled an event—“*Lies Pro-Choicers Believe*,” featuring SFLA President Kristan Hawkins—to be held in the Student Commons on Wednesday, March 29. Although SFL-VCU and SFLA intended the event to be a peaceful discussion on abortion, they were concerned about the potential for disruption. So they attempted to engage with VCU to discuss the need for and provision of adequate security. VCU ignored these concerns and downplayed the need for any security. VCU claimed the protesters were not “a reasonable security threat” and provided no protection, even though VCU police had been called to prior SFL-VCU events that were substantially disrupted and VCU was made aware of Twitter posts planning a protest of the March 29 event. Despite being on notice of this potential disruption, VCU provided no security at all for this event, leaving it protected only by the two private security guards whom SFLA had hired.

On March 29, before the event began, a disruptive mob—many adorned with signs or words identifying themselves as “Antifa”—began to form and block the doors to the event. When the doors were opened, the mob quickly filled the room and began shouting “Fascists Go Home,” “Nazis Go Home,” and “F\*\*k Pro-Lifers,” in an endless loop to drown out any conversation. Within seconds of the SFL-VCU President beginning the event, violent protesters began disrupting her speech. Campus police were called repeatedly, but they did not respond promptly; indeed, they failed to

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<sup>1</sup> Alliance Defending Freedom has consistently achieved successful results for its clients, including fourteen victories before U.S. Supreme Court since 2011. *See, e.g., Americans for Prosperity Found. v. Bonta*, 141 S. Ct. 2373 (2021) (representing Thomas More Law Center in consolidated case; striking down state law requiring charities to disclose identities of donors to government authorities); *Uzuegbunam v. Preczewski*, 141 S. Ct. 792 (2021) (student free speech); *March for Life Educ. & Def. Fund v. California*, 141 S. Ct. 192 (2020); *Thompson v. Hebdon*, 140 S. Ct. 348 (2019) (overturning ruling upholding law limiting political contributions); *Nat’l Inst. of Fam. & Life Advocates v. Becerra*, 138 S. Ct. 2361 (2018) (upholding ADF client’s free speech rights against State of California); *Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rights Comm’n*, 138 S. Ct. 1719 (2018) (upholding ADF client’s First Amendment rights); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017) (upholding ADF client’s First Amendment rights); *Zubik v. Burwell*, 578 U.S. 403 (2016) (representing Geneva College and Southern Nazarene University in two consolidated cases; upholding ADF clients’ First Amendment rights); *Reed v. Town of Gilbert*, 576 U.S. 155 (2015) (unanimously upholding ADF client’s free-speech rights); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014) (representing Conestoga Wood Specialties Corp. in consolidated case; striking down federal burdens on ADF client’s free-exercise rights); *Town of Greece v. Galloway*, 572 U.S. 565 (2014) (upholding legislative prayer policy promulgated by town represented by ADF); *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125 (2011) (upholding state tuition tax credit program defended by faith-based tuition organization represented by ADF).

respond for more than 27 minutes. By that time, the protesters had turned violent—with the mob continuing angry chants, destroying audio-visual equipment, and even shoving and assaulting numerous SFL-VCU members, including the group's student leader and a staff member filming the event. EMTs were called to the scene, as multiple students sustained physical injuries.

When VCU police finally did arrive, they refused to do their duty to enforce the law. They refused to protect the students who were being assaulted and whose rights were being violated. They refused to enforce University policy. They refused to enforce Virginia state law. They refused to protect the constitutional rights of the students who had properly reserved the room for their event. They refused to arrest the violent thugs intent on assaulting students engaged in peaceful dialogue.

Instead, inexplicably, they asked the main speaker, SFLA President Kristan Hawkins, to leave the event, which she refused to do. VCU made no effort to protect its students or those invited by its students to speak on campus. City of Richmond police eventually arrived; but they broke up the event by detaining SFL-VCU members in a separate locked room for nearly two hours while permitting the activists who caused the disruption to leave or continue to disrupt as they saw fit. VCU and Richmond police thus both addressed the disruption by removing the speakers, not the hecklers.

To add insult to injury, Dr. Rao's April 2 message concerning the disruption could not be any more at odds with reality. In it, he stated "VCU is committed to promoting a safe environment for our students, faculty, staff and visitors so that the rights of everyone to gather and speak freely in a civil manner are protected," but VCU utterly failed to protect SFL-VCU's and SFLA's rights to gather and speak freely. Dr. Rao also stated "VCU supports words with action," but VCU took absolutely no action to quell the violent disruption that prevented the March 29 event from taking place. Rather than protect the right of free speech, VCU facilitated the disruption and then ratified and condoned it by detaining the hosts rather than the disruptors and by breaking up the event entirely.

VCU's actions in response to the March 29 disturbance also stand in marked contrast to its policy on "Reservation and Use of Space" (approved May 29, 2018). That policy notes VCU's commitment "to creating an environment that fosters the exercise of protected speech and other expressive activity on university property while maintaining an atmosphere free of disruption to the mission of the university." But in responding to the March 29 disturbance, VCU wholly failed to create such an environment and indeed permitted activists to maintain a destructively disruptive atmosphere.

### Analysis

“State colleges and universities are not enclaves immune from the sweep of the First Amendment.”<sup>2</sup> In fact, “the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.”<sup>3</sup> Of course, “[i]t is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys.”<sup>4</sup>

The Supreme Court has repeatedly affirmed the principle that “constitutional rights may not be denied simply because of hostility to their assertion or exercise.”<sup>5</sup> Thus, “[w]hen a peaceful speaker, whose message is constitutionally protected, is confronted by a hostile crowd, the state may not silence the speaker as an expedient alternative to containing or snuffing out the lawless behavior of the rioting individuals. *Nor can an officer sit idly on the sidelines—watching as the crowd imposes, through violence, a tyrannical majoritarian rule—only later to claim that the speaker’s removal was necessary for his or her own protection.*”<sup>6</sup>

Moreover, “[t]he federal Civil Rights Act, 42 U.S.C. § 1983, ‘imposes on the states and their agents certain obligations and responsibilities. A police officer has a duty not to ratify and effectuate a heckler’s veto nor may he join . . . [those] intent on suppressing ideas.’”<sup>7</sup> Instead, a police officer “*must take reasonable action to protect . . . persons exercising their constitutional rights.*”<sup>8</sup>

Here, VCU failed in its constitutional duties to protect free speech in at least three major ways:

First, VCU wholly failed to take “reasonable action” to protect the free speech rights of SFL-VCU and SFLA by choosing not to provide any security for the March 29 expressive event. This failure is even more pronounced in light of the notice that VCU received from SFL-VCU and SFLA regarding expected disruptions. Rather than take action to protect students’ rights to gather and speak freely—as VCU suggests

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<sup>2</sup> *Healy v. James*, 408 U.S. 169, 180 (1972).

<sup>3</sup> *Id.* (quoting *Shelton v. Tucker*, 364 U.S. 479, 487 (1960)).

<sup>4</sup> *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995).

<sup>5</sup> *Watson v. City of Memphis*, 373 U.S. 526, 535 (1963).

<sup>6</sup> *Bible Believers v. Wayne County, Mich.*, 805 F.3d 228, 253 (6th Cir. 2015) (citing *Watson*, 373 U.S. at 535-36) (emphasis added).

<sup>7</sup> *Manfredonia v. Barry*, 401 F. Supp. 762, 767-68 (E.D.N.Y. 1975) (quoting *Glasson v. City of Louisville*, 518 F.2d 899, 906 (6th Cir. 1975)).

<sup>8</sup> *Glasson*, 518 F.2d at 906 (emphasis added).

it does—VCU sat idly by and watched angry activists disrupt and take over an expressive event.

Second, having decided to take no action to protect SFL-VCU's March 29 event, VCU police compounded VCU's failure by taking 27 minutes to respond to the calls it received concerning an ongoing, violent disturbance at the event. Not only did this undue delay prolong the period of disruption but also it permitted the fracas to escalate into an uncontrollable melee—during which period personal injuries and property damage were sustained. VCU's lack of urgency in responding to a serious and dangerous disruption demonstrates the apathy with which VCU and its police regard their constitutional duties to protect free speech from a heckler's veto.

Third, even when VCU police did arrive on the scene, they failed to take any action to quell the disruption and protect SFL-VCU's and SFLA's rights to speak freely. Rather, they sat “idly on the sidelines—watching as the crowd impose[d], through violence, a tyrannical majoritarian rule.”<sup>9</sup> And, then, they removed the speakers and their sponsors, rather than the disruptors—“claim[ing] that the speaker[s] removal was necessary for [their] own protection.”<sup>10</sup> These actions only further compounded VCU's violations to the rights of free speech.

Any one of these failures would be grounds for imposing liability on VCU for an egregious violation of SFL-VCU's and SFLA's clearly established rights to free speech guaranteed by the First Amendment. Taken together, they prove beyond question that VCU ratified and condoned the violent acts that Antifa activists perpetrated to silence pro-life views they did not want to hear. As a result, VCU is fully responsible for the cancellation of the March 29 expressive event and all resulting harm.

### Demand

In light of VCU's responsibility for the cancellation of their March 29 event and all resulting damages, SFL-VCU and SFLA request that VCU act promptly to remediate the situation by taking each of the following steps:

- 1). Invite the March 29 speakers (Kristan Hawkins and Isabel Brown) back to campus to give their presentation before the end of the Spring 2023 semester, and provide adequate security to SFL-VCU and SFLA to prevent any disruption;

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<sup>9</sup> *Bible Believers*, 805 F.3d at 253.

<sup>10</sup> *Id.*

2). Pay for all losses sustained as a result of the March 29 disruption, including the value of the displays and audio-visual equipment that was destroyed, the damages sustained by the students who were physically injured, and the cost of extra security that SFL-VCU arranged for personal protection after the March 29 event;

3). Affirm VCU's unwavering commitment to freedom of speech with a written statement of principles similar to The Woodward Report issued by Yale University on December 23, 1974, the Chicago Statement on free speech, or the March 22, 2023 letter from Dean Jenny S. Martinez to the Stanford Law School community;

4). Require all VCU students, faculty, and staff, including VCU police and administrators with oversight of student life and campus security, to receive training on the freedom of speech and university rules on disruption of events; and

5). Immediately begin an investigation into the role that the Young Democratic Socialists of America ("YDSA") played in prompting and facilitating the March 29 attack and impose appropriate punishment if it is determined that they violated any University policy or state or federal laws.

We appreciate your careful attention to this matter. We ask that you respond to our request by no later than Monday, April 10, so that SFL-VCU and SFLA may promptly consider appropriate next steps.

Very truly yours,



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