

**COLLEGE CAMPUSES AS FIRST AMENDMENT COMBAT
ZONES AND FREE-SPEECH THEATRES OF THE ABSURD:
THE HIGH PRICE OF PROTECTING EXTREMIST SPEAKERS
FOR SHOUTING MATCHES AND INSULTS**

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On October 19, 2017, the free-speech circus rolled into Gainesville, Florida.¹ The contentious crowd—Richard Spencer and a cadre of alt-right white nationalists²—brought their traveling spectacle³ to a public university for the first time since deadly violence erupted in Charlottesville, Virginia—home to the University of Virginia—about two months earlier.⁴

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¹ See Editorial, *Open Carry + Protesters = A Recipe for Tragedy*, USA TODAY, Oct. 19, 2017, at 7A (“Today, white nationalist leader Richard Spencer is to deliver a speech at the University of Florida in Gainesville, an event that led Gov. Rick Scott to declare a state of emergency for the surrounding Alachua County to free up law enforcement resources.”).

² See Scott Calvert & Alexa Corse, *Alt-Right Leaders Brush Off Criticism*, WALL ST. J., Aug. 15, 2017, at A4 (reporting that Spencer is “considered the founder of the alt-right movement,” which “rejects mainstream conservatism, promotes nationalism and views immigration and multiculturalism as threats to white identity” and is “loosely organized”); Reid J. Epstein & Janet Hook, *A New Political Order*, WALL ST. J., Nov. 10, 2016, at A1 (“Among those trying to rise in the new Republican Party are people such as Richard Spencer, the president of the National Policy Institute, an organization that advocates race-based identity politics and was among Mr. Trump’s most enthusiastic supporters.”).

³ See Alan Blinder, *Roadshow of Hate: Travelers From Afar Fuel White Supremacist Rallies*, N.Y. TIMES, Oct. 29, 2017, at A21 (describing the traveling “roadshow aspect” of events like Spencer’s talk at the University of Florida, and asserting that “a reality of the alt-right movement” is “that it draws energy, and some of its most violent support, from out-of-town sympathizers who regularly travel hundreds of miles to public events starring figures like Mr. Spencer”).

⁴ See generally Joe Heim et al., *Charlottesville Protest Takes a Deadly Turn*, WASH. POST, Aug. 13, 2017, at A1 (reporting that “chaos and violence turned to tragedy” in Charlottesville, Virginia “as hundreds of white nationalists, neo-Nazis and Ku Klux Klan members . . . clashed with counterprotesters in the streets and a car plowed into crowds, leaving one person dead and 19 others injured,” and adding that “[w]hite nationalist leader Richard Spencer” spoke at the rally, which “was meant to protest the planned removal of a statue of Confederate General Robert E. Lee”); Sheryl Gay Stolberg & Brian M. Rosenthal, *White Nationalist Protest Leads to Deadly Violence*, N.Y. TIMES, Aug. 13, 2017, at A1 (reporting that “Charlottesville was engulfed by violence . . . as white nationalists and counterprotesters clashed in one of the bloodiest fights to date over the removal of Confederate monuments across the South,” and noting that Richard Spencer was scheduled to speak that day).

The University of Florida (“UF”) afforded Spencer access to a campus auditorium.⁵ But a trio of other public, land-grant institutions—Michigan State University,⁶ Ohio State University,⁷ and Pennsylvania State University⁸—did not. All three were sued for blocking Spencer and, in the process, attempting to bring his speaking tour to an inglorious finish.⁹

A major problem, however, for the schools currently battling Spencer is that his UF appearance demonstrated he can speak on campus without either inciting violence or using words directed to producing imminent lawless action. In other words, for an exceedingly exorbitant price tag,¹⁰ the circus may continue unimpeded, with the UF visit serving as Spencer’s Exhibit No. 1. It is a supreme irony. Whereas public universities once highlighted the violence in Charlottesville to justify banning him,¹¹ Spencer now can point to UF to illustrate why such censorship is unconstitutional.

⁵ Spencer’s talk occurred at the “the 1,700-seat Curtis M. Phillips Center for the Performing Arts,” which is located “in the southwestern part of campus.” Rachel Axon, *It’s Basically a Powder Keg Right Now’; Florida Braces for Speech by Prominent White Nationalist*, USA TODAY, Oct. 19, 2017, at 3A.

⁶ Plaintiff’s Verified Complaint, Padgett v. Bd. of Trustees of Mich. State Univ., No. 1:17-cv-00805 (W.D. Mich. filed Sept. 3, 2017), <http://dailycaller.com/wp-content/uploads/2017/09/Padgett-v-Michigan-State.pdf> [hereinafter Michigan State Complaint].

⁷ Complaint, Padgett v. Bd. of Trustees of the Ohio State Univ., No. 2:17-cv-00919-ALM-KAJ (S.D. Ohio filed Oct. 22, 2017), <https://mgtvcmh.files.wordpress.com/2017/10/osu-complaint.pdf> [hereinafter Ohio State Complaint].

⁸ Plaintiff’s Complaint, Padgett v. Bd. of Trustees of the Pa. State Univ., No. 4:17-cv-01911-MWB (M.D. Pa. filed Oct. 19, 2017), <http://www.almcms.com/contrib/content/uploads/documents/402/4903/Richard-Spencer-PSU.pdf> [hereinafter Penn State Complaint].

⁹ See *supra* notes 6–8 (citing the complaints filed against each of the three universities). In January, 2018, Michigan State University agreed to let Spencer speak on campus, thereby bringing to a close the lawsuit filed against it. David Jesse, *White Supremacist Richard Spencer Will Speak at Michigan State After All*, DET. FREE PRESS (Jan. 18, 2018, 12:24 PM), <https://www.freep.com/story/news/local/michigan/2018/01/18/richard-spencer-michigan-state-university/1044354001/>. Kyle Bristow, the attorney who filed the lawsuit against Michigan State on behalf of Spencer, called it both “a resounding First Amendment victory for people of the right-wing or alternative-right political persuasion” and a “stab[] at the very heart of left-wing censorship in academia.” Susan Svrluga, *After Suit, Michigan State to let Spencer Speak*, WASH. POST, Jan. 22, 2018, at A13.

¹⁰ See *infra* note 12 and accompanying text (noting that it cost more than \$600,000 in security measures to host Spencer at UF).

¹¹ For example, in denying Richard Spencer access to campus, Michigan State University asserted its “decision was made due to significant concerns about public safety in the wake of the tragic violence in Charlottesville.” David Jesse, *Group Decries Antifa’s ‘Heckler’s Veto’*, USA TODAY, Sept. 5, 2017, at 6B. Similarly, Pennsylvania State University President Eric Barron denied Spencer access to the University Park campus “[i]n light of the recent violence and tragedy in Charlottesville.” Press Release, Eric J. Barron, President, Penn. State Univ., Richard Spencer is Not Welcome to Speak at Penn State (Aug. 22, 2017),

Indeed, the UF-Spencer spectacle, thanks to more than \$600,000 in taxpayer-funded security costs, the presence of 500-plus law enforcement personnel, and a state of emergency declared by Sunshine State Governor Rick Scott,¹² went off with only minor on-campus violence.¹³ As the *Miami Herald* reported, “[w]hat conflict did occur—pepper spraying, punching, chasing—was largely instigated by anti-fascist protesters.”¹⁴

Furthermore, Spencer’s words were nowhere close to meeting the high threshold for unlawful incitement to violence—one of the rare categories of speech unprotected¹⁵ by the First Amendment¹⁶—created by the United States Supreme Court nearly fifty years ago in *Brandenburg v. Ohio*.¹⁷ Instead, the speech devolved into a futile shouting match between Spencer and “a boisterous audience packed with opponents”¹⁸ who came not to praise him, but to bury Spencer with a raucous

<http://news.psu.edu/story/478590/2017/08/22/administration/richard-spencer-not-welcome-speak-penn-state>.

¹² See Paige Fry, *Alt-Right Speech at UF Relatively Peaceful*, PALM BEACH POST (Fla.), Oct. 20, 2017, at 1A (“The state’s flagship public university spent more than \$600,000 on security on and near its campus to prepare for Richard Spencer’s appearance and brought in more than 500 uniformed officers to police streets and control crowds under a state of emergency declared by Gov. Rick Scott.”).

¹³ See Cindy Swirko & Daniel Smithson, *Behind-Scenes Logistics at Protest Let Officers Control Chaos*, GAINESVILLE SUN (Fla.), Oct. 21, 2017, at A1, A6 (“Few incidents occurred on the University of Florida campus when Spencer, who espouses white nationalist beliefs, spoke.”).

A shooting later transpired off campus, approximately ninety minutes after the conclusion of Spencer’s talk. Susan Svrluga & Lori Rozsa, *Three Men Charged in Shooting After White Nationalist’s Speech in Florida*, WASH. POST, Oct. 22, 2017, at A18. Three men, identified by police as white nationalists who attended the Spencer event, were charged with attempted homicide. *Id.*

¹⁴ Alex Harris & Martin Vassolo, *UF Drowns out Spencer with ‘Peace and Unity’*, MIAMI HERALD, Oct. 20, 2017, at 1A.

¹⁵ See *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 245–46 (2002) (“The freedom of speech has its limits; it does not embrace certain categories of speech, including defamation, *incitement*, obscenity, and pornography produced with real children.”) (emphasis added).

¹⁶ The First Amendment to the U.S. Constitution provides, in pertinent part, that “Congress shall make no law . . . abridging the freedom of speech, or of the press.” U.S. CONST. amend. I. The Free Speech and Free Press Clauses were incorporated more than ninety years ago through the Fourteenth Amendment Due Process Clause as fundamental liberties to apply to state and local government entities and officials. See *Gitlow v. New York*, 268 U.S. 652, 666 (1925).

¹⁷ 395 U.S. 444 (1969). The Court in *Brandenburg* held that “that the 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.” *Id.* at 447.

¹⁸ Rick Neale, *Spencer’s Words Wasted on Unwelcoming Ears in Fla.; Protesters Outside, Hecklers Inside: White Nationalist’s Speech Flops at University*, USA TODAY, Oct. 20, 2017, at 2A.

cacophony of chants and jeers.¹⁹ In that endeavor, they certainly succeeded and “mostly drowned out his speech.”²⁰

As one newspaper succinctly encapsulated it, “[s]houting and booing from the protesters in the hall—which included plenty of empty space and a small contingent of his supporters in the first few rows—left Spencer unable to make a sustained speech. Instead, he traded insults with the crowd.”²¹ Indeed, the protestors greeted “Spencer with mocking chants and raised fists, denying the provocateur an unchallenged platform to share his widely derided views on race in America.”²²

Bluntly put, more than half a million dollars was wasted in the name of the First Amendment on an event featuring neither a formal speech nor anything close to serious dialogue and discussion. If the massive police presence at UF prevented a so-called heckler’s veto²³ and allowed Spencer to talk without being physically assaulted by a hostile mob, it also didn’t forestall a tsunami of counter speech²⁴ that swamped Spencer. It

¹⁹ See Joe Heim et al., *Spencer Speech Met by Protests*, WASH. POST, Oct. 20, 2017, at A3 (reporting that Spencer was “drowned out . . . by a hailstorm of chants, shouting and mockery,” noting that “[t]he protest and chants in the auditorium began as soon as the event began and continued until Spencer finally walked offstage 90 minutes later,” and quoting Spencer as calling the audience “shrieking and grunting morons”).

²⁰ Associated Press, *Ohio State Sued Over Refusal to Let White Nationalist Speak*, ST. LOUIS POST-DISPATCH, Oct. 23, 2017, at A8.

²¹ Andrew Pantazi & Nate Monroe, *Shouting Match; Hostile Audience Drowns Out White Nationalist’s Speech*, FLA. TIMES-UNION, Oct. 20, 2017, at A-1.

²² *Id.*

²³ See generally DON R. PEMBER & CLAY CALVERT, MASS MEDIA LAW 42 (19th ed. 2015) (asserting that a heckler’s veto transpires “when a crowd or audience’s reaction to a speech or message is allowed to control and silence that speech”); Brett G. Johnson, *Heckler’s Veto: Using First Amendment Theory and Jurisprudence to Understand Current Audience Reactions Against Controversial Speech*, 21 COMM. L. & POL’Y 175, 215–19 (2016) (explaining that “[i]n hostile audience cases, the referees are the police who provide protection for unpopular speakers, as well as the jurists who continue to uphold the principle that these speakers are deserving of such protection,” and contending that the heckler’s veto doctrine “stand[s] for the principle that state actors have a duty to protect speakers from hostile audiences who would seek to either do harm to speakers, or threaten to do harm and thereby force law enforcement to silence speakers”).

²⁴ Justice Louis Brandeis famously explained the counter speech doctrine ninety years ago, asserting that “[i]f there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.” *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring); see also Robert D. Richards & Clay Calvert, *Counterspeech 2000: A New Look at the Old Remedy for “Bad” Speech*, 2000 BYU L. REV. 553, 553–54 (“Rather than censor allegedly harmful speech and thereby risk violating the First Amendment protection of expression, or file a lawsuit that threatens to punish speech perceived as harmful, the preferred remedy is to add more speech to the metaphorical marketplace of ideas.”).

was all very much theatre of the absurd, with a complete breakdown of coherent communication.²⁵

At least two intriguing issues arise from the UF experience. The first is the collapse of on-campus, civilized conversations when an audience is confronted by a speaker who espouses offensive, disquieting viewpoints. The second is the exploitation by extremist speakers of public universities to garner high-profile stages from which to gain the media spotlight they crave. These twin issues are addressed below.

I. THE COLLAPSE OF CAMPUS CONVERSATIONS: EITHER SHUT UP OR WE'LL SHUT YOU UP

Richard Spencer has no one to blame but himself for allowing protestors into the auditorium where he spoke at UF. After all, it was his organization—the National Policy Institute—that distributed the tickets to the event.²⁶ But the spectacle that ensued in the auditorium raises larger cultural questions about whether, in the era of Twitter rants and instant outrage, it is even possible for people to respectfully listen to discomfiting messages on a college campus.

Columbia University Professor Tim Wu recently lamented the deterioration of the expressive environment in the United States.²⁷ Although Wu focused on what he aptly called “[t]he angry, censorial online mob”²⁸ and “abusive online mobs,”²⁹ similar attention must be paid to abusive, real-world

²⁵ See Martin Esslin, *The Theatre of the Absurd*, 4 TUL. DRAMA REV. 3, 5 (1960) (noting, in the seminal article on the topic, that theatre of the absurd is characterized, among other things, by a “futility and pointlessness of human effort” and the “impossibility of human communication” that “shows the world as an incomprehensible place”).

²⁶ See Noah Feldman, *Richard Spencer Has Only Himself to Blame for Hecklers*, BLOOMBERG: VIEW (Oct. 19, 2017, 4:40 PM), <https://www.bloomberg.com/view/articles/2017-10-19/richard-spencer-has-only-himself-to-blame-for-hecklers> (noting that the hecklers “held tickets distributed by Spencer’s own National Policy Institute”); Janae Muchmore, *National Policy Institute Takes Over Ticket Distribution For Richard Spencer*, WUFT (Oct. 17, 2017), <https://www.wuft.org/news/2017/10/17/national-policy-institute-takes-over-ticket-distribution-for-richard-spencer/> (describing how the National Policy Institute took over distribution of all tickets after it “caught wind of local organizations and businesses intent to encourage locals to get tickets and not show up”).

²⁷ Tim Wu, *Is the First Amendment Obsolete?*, in EMERGING THREATS 2 (David Pozen ed., 2017), <https://knightcolumbia.org/sites/default/files/content/Emerging%20Threats%20Tim%20Wu%20Is%20the%20First%20Amendment%20Obsolete.pdf> (“We live in a golden age of efforts by governments and other actors to control speech, discredit and harass the press, and manipulate public debate. Yet as these efforts mount, and *the expressive environment deteriorates*, the First Amendment has been confined to a narrow and frequently irrelevant role.”) (emphasis added).

²⁸ *Id.* at 14.

²⁹ *Id.* at 11.

mobs that, as the University of California, Berkeley witnessed in 2017, sometimes resort to violence to squelch speech to which they object.³⁰

Even when physical violence does not occur, speakers are still not permitted to talk when hostile students take over a venue. For instance, at William & Mary in October 2017, members of the college's Black Lives Matter chapter, chanting "[l]iberalism is white supremacy," rushed the stage and thwarted an attorney from the American Civil Liberties Union from making a presentation innocuously called "Students and the 1st Amendment."³¹ Also in October 2017, a chanting group of students at the University of Oregon in Eugene "stormed the stage as President Michael Schill was to give his annual State of the University speech. The students, some holding signs, including one that said 'Take back our campus,' were protesting Schill's leadership, including the treatment of minority students and tuition increases."³² The speech was cancelled and "Schill walked out of the auditorium without ever taking the podium."³³

Lurking behind such incidents are shifting cultural views, as well as divisions along racial and political lines, about the importance of protecting free expression. The Cato Institute's 2017 survey of Americans' attitudes toward free speech and tolerance reveals the following:

- The vast majority—76%—of those surveyed felt "that recent campus protests and cancellations of controversial speakers are part of a 'broader pattern' of how college students deal with offensive ideas."³⁴ Put bluntly, if an idea offends you, then shut up the speaker. Why bother listening?

³⁰ See Thomas Fuller & Stephanie Saul, *Latest Battle at Berkeley: Free Speech Versus Safety*, N.Y. TIMES, Apr. 22, 2017, at A10.

³¹ Editorial, *Let Campus Speakers Speak*, L.A. TIMES, Oct. 17, 2017, at A10; Editorial, *Free Speech Besieged*, N.Y. POST, Oct. 6, 2017, at 24; Francesca Truitt, *Black Lives Matter Protests American Civil Liberties Union*, FLAT HAT (Oct. 2, 2017), <http://flathatnews.com/2017/10/02/black-lives-matter-protests-american-civil-liberties-union/>.

³² Associated Press, *Students Disrupt Speech by Oregon President*, SPOKESMAN REV. (Spokane, Wash.), Oct. 7, 2017, at C6.

³³ Therese Bottomly, *Student Protesters Disrupt University of Oregon's Announcement of \$50 Million Gift*, OREGONIAN (Oct. 6, 2017), http://www.oregonlive.com/education/index.ssf/2017/10/protesters_disrupt_announcement.html.

³⁴ Emily Ekins, *The State of Free Speech and Tolerance in America: Attitudes About Free Speech, Campus Speech, Religious Liberty and Tolerance of Political Expression*, CATO INST. 1, 3 (2017), <https://object.cato.org/sites/cato.org/files/survey-reports/pdf/the-state-of-free-speech-and-tolerance.pdf>.

- Demonstrating support for a heckler's veto,³⁵ 58% of those surveyed by Cato think that "colleges should cancel controversial speakers if administrators believe the students will stage a violent protest otherwise,"³⁶ with the figure rising to a whopping 74% among Democrats surveyed.³⁷ In stark contrast, 54% of Republicans surveyed said that colleges should not cancel the speaker if students threaten violence.³⁸
- Reflecting both racial and political divisions, the survey found that "[s]trong liberals (52%), African Americans (54%), and Latinos (54%) stand out with slim majorities who believe it's more important for colleges to prohibit offensive and biased speech on campus. Conversely, majorities of regular liberals (66%), conservatives (73%), and white Americans (73%) think colleges need to expose students to a wide variety of perspectives even if they are offensive or prejudiced."³⁹

A 2017 survey of college students conducted by YouGov on behalf of the Foundation for Individual Rights in Education revealed divisions along the lines of political affiliation when it comes to disinviting controversial speakers. "Democratic students are 19 percentage points more likely than their Republican peers to agree that there are times a speaker should be disinvited," the report notes.⁴⁰ Specifically, "[a]lmost half of Republicans (47%) and two-thirds of Democrats (66%) support disinvitations in some instances."⁴¹

A 2016 survey conducted by Gallup for the Knight Foundation and the Newseum Institute reflected differences in beliefs among college students based on race. Specifically, 41% of black students surveyed believed that colleges should be able to restrict the expression of "political views that are upsetting or

³⁵ See *supra* note 23 and accompanying text (discussing the concept of a heckler's veto).

³⁶ Ekins, *supra* note 34, at 4.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 41.

⁴⁰ Kelsey Ann Naughton, *Speaking Freely: What Students Think About Expression at American Colleges*, FOUND. FOR INDIVIDUAL RIGHTS IN EDUC. 1, 15 (Oct. 2017), <https://d28htnjz2elwuj.cloudfront.net/wp-content/uploads/2017/10/11091747/survey-2017-speaking-freely.pdf>.

⁴¹ *Id.*

offensive to certain groups.”⁴² In contrast, only 24% of white students felt colleges should restrict such political views.⁴³

Perhaps the growing intolerance in college for hearing disagreeable speech is simply generational. As Erwin Chemerinsky and Howard Gillman recently wrote, the current crop of college students “is the first generation of students educated, from a young age, not to bully. For as long as they can remember, their schools have organized ‘tolerance weeks.’”⁴⁴ Ironically, of course, the only thing that some of them seem unable to do is tolerate the intolerant speech of others.

Ultimately, and regardless of why it occurred, what transpired at UF when Richard Spencer attempted to speak there was disappointing. As a columnist for one Florida newspaper put it, “As much as I hate what Spencer has to say, he should have been able to say it. The danger in not allowing free speech is the tide during these contentious times can turn quickly and take aim at different beliefs tomorrow.”⁴⁵

Lata Nott, executive director of the First Amendment Center of the Newseum Institute, stresses another problem with shouting down speakers. “It demonstrates a visceral fear of ideas, as if it’s not enough to disagree with someone’s opinion, or even vehemently oppose it—instead, *they must not be allowed to express it in the first place*,” she writes.⁴⁶ She adds that:

Shouting down a speaker like Richard Spencer makes students feel like they’ve defeated a neo-Nazi—but it’s uncertain what kind of impact this has on the white supremacist movement as a whole. Sometimes we forget that freedom of speech doesn’t just refer to the right to talk; it also encompasses the right to hear others speak. The rising antagonism toward speech we disagree with doesn’t necessarily violate the First Amendment, but this attitude can be corrosive to its spirit.⁴⁷

⁴² GALLUP, INC., FREE EXPRESSION ON CAMPUS: A SURVEY OF U.S. COLLEGE STUDENTS AND ADULTS 13 (2016), https://www.knightfoundation.org/media/uploads/publication_pdfs/FreeSpeech_campus.pdf.

⁴³ *Id.*

⁴⁴ ERWIN CHEMERINSKY & HOWARD GILLMAN, FREE SPEECH ON CAMPUS 10 (2017).

⁴⁵ Ron Littlepage, *Richard Spencer’s Supremacist Views are Terrible, but He Should be Allowed to Speak*, FLA. TIMES-UNION, Oct. 25, 2017, at A-7.

⁴⁶ Lata Nott, *Shouting Down Free Speech*, NEWSEUM INST. (Oct. 27, 2017) <http://www.newseuminstitute.org/2017/10/26/shouting-down-free-speech/>.

⁴⁷ *Id.*

Thus, it is readily evident that free speech advocates and, in particular, free speech educators now face a daunting task of promoting ideals of civil discourse and discussion when speakers with disagreeable viewpoints come to campus. It is not mere hyperbole to believe that the very notion of a public university as a marketplace of ideas—something embraced by the U.S. Supreme Court⁴⁸—lies in the balance.

II. EXPLOITING PUBLIC UNIVERSITIES: THE BILL FOR COVERING COSTS OF EXTREMIST CIRCUSES

Beyond the collapse of conversation, Richard Spencer's UF visit highlights another issue. Specifically, a critical problem today, as UF President Kent Fuchs opined in the pages of the *Wall Street Journal* shortly after Richard Spencer's UF visit, is that public universities "may become hostage to Nazis or other extremists—forced to stand by as these groups capitalize on their university's visibility and prestige to amplify their vile messages."⁴⁹ In brief, Richard Spencer is causing the militarization—recall the more than 500 law enforcement personnel to keep the peace at UF⁵⁰—and weaponization of government property. A *Tampa Bay Times* article crisply captured Spencer's exploitation and hijacking of the First Amendment this way:

Spencer and other fringe-right provocateurs have seized on prestigious public universities as launching pads for their viral stunts. Beyond a built-in audience of students and press, these speakers get to stand upon the First Amendment, which makes it difficult for public institutions to push away speakers with even the vilest of beliefs, and with even the most hostile of potential audiences.⁵¹

It's an issue now spilling over from the halls of academia to the chambers of the U.S. Capitol. As Senator Lamar Alexander, R-Tenn., chairman of the Senate Committee on

⁴⁸ See *Healy v. James*, 408 U.S. 169, 180 (1972) (opining that "[t]he college classroom with its surrounding environs is peculiarly the 'marketplace of ideas'" (quoting *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967))).

⁴⁹ Kent Fuchs & Glenn C. Altschuler, *How White Supremacists Exploit Higher Education*, WALL ST. J., Oct. 23, 2017, at A17.

⁵⁰ *Supra* note 12 and accompanying text.

⁵¹ Claire McNeill & Kathryn Varn, *Richard Spencer Speaks, and Gainesville Emerges Weary but at Peace*, TAMPA BAY TIMES, Oct. 20, 2017, at 1.

Health, Education, Labor & Pensions, asserted during an October 2017 hearing:

there is the question of deliberately inflammatory speakers, and the protests and riots in response that push the freedom of speech to a limit that creates chaos. Sometimes these demonstrations turn into tragedy as we saw recently in Charlottesville. And just last week at the University of Florida, when the white supremacist Richard Spencer was speaking, his supporters and protestors caused the university to spend \$600,000 on security, bring in over 1000 law enforcement officers and cause the governor to declare a state of emergency. It is a familiar problem in a country that prizes freedom. If you're a university president, what do you do about this?⁵²

The answer to Senator Alexander's question, of course, varies. As noted above, some university presidents have denied Spencer access and now face lawsuits.⁵³ But for those like UF President Kent Fuchs that grant him access, the price tag is high, and their campuses are turned into militarized zones. UF had to cover the cost of the security, rather than shifting it to Spencer, because the U.S. Supreme Court held in *Forsyth County v. Nationalist Movement*⁵⁴ that "[s]peech cannot be financially burdened, any more than it can be punished or banned, simply because it might offend a hostile mob."⁵⁵ But as UF spokeswoman Janine Sikes explained, "[p]ublic institutions cannot continue to pay this kind of money."⁵⁶

In his *Wall Street Journal* column, Fuchs suggested that a "partial solution could entail a new Federal Extremist Speakers Fund to help universities with their exorbitant security costs. That would shift the financial burden of following the First Amendment to the government that requires universities to do

⁵² *Exploring Free Speech on College Campuses: Hearing Before the S. Comm. on Health, Educ., Labor & Pensions*, 115th Cong. (2017) (opening statement of Sen. Lamar Alexander, Chairman, S. Comm. on Health, Educ., Labor & Pensions), <https://www.alexander.senate.gov/public/index.cfm?p=SpeechesFloorStatements&id=43BEFB1D-1CBF-4460-8CEA-DB9C2D09BA69>.

⁵³ See *supra* notes 6–8 (citing the complaints filed on behalf of Spencer against Michigan State University, Ohio State University, and Pennsylvania State University).

⁵⁴ 505 U.S. 123 (1992).

⁵⁵ *Id.* at 134–35.

⁵⁶ Douglas Belkin, *U.S. News: Colleges Face High Security Expenses*, WALL ST. J., Oct. 23, 2017, at A3.

so.”⁵⁷ Such a proposal, however, merely moves the burden from one governmental entity (a public university) to another (the federal government), with taxpayers ultimately paying in the end.

The fact, of course, is that Richard Spencer could just as easily rent space in a ballroom at a Hilton or Hyatt hotel and, in turn, have total control over the audience. Such venues, however, would not allow Spencer to invoke the First Amendment and play the role of victim when he is denied access to a public university campus. They also would not provide him with the large, angry crowds that generate massive news media coverage for his message. For now, then, public universities are being exploited for events that carry little educational value.

III. CONCLUSION

One of the more interesting tidbits of data gleaned by the Cato Institute survey cited earlier is that “51% of strong liberals say it’s ‘morally acceptable’ to punch Nazis.”⁵⁸ Outside the auditorium where Richard Spencer spoke at UF, white nationalist Randy Furniss—wearing a shirt festooned with swastikas—was punched in the face by an unknown assailant.⁵⁹ Furniss, who wasn’t speaking and was merely walking through the crowd when he was punched, told the *Gainesville Sun* that people “were hitting me on the back of the head and sitting on me It wasn’t black people, it was white people, they were getting everybody riled up.”⁶⁰

Indeed, the presence of extremist speakers on college campuses certainly has many riled up. As this Essay suggested, a larger issue raised by Spencer’s UF appearance is whether the riling up and agitation he provokes also reflects a societal change in how people respond to messages with which they vehemently disagree. The collapse of conversations on public university campuses and the rise of attitudes in favor of stifling speakers are profoundly troubling developments for the future of the First Amendment freedom of speech. Yet at the same

⁵⁷ Fuchs & Altschuler, *supra* note 49, at A17.

⁵⁸ Ekins, *supra* note 34, at 1.

⁵⁹ Mary Hui, *A Black Protester Hugged a White Nationalist Outside Richard Spencer’s Talk. ‘Why Do You Hate Me?’ He Asked*, WASH. POST (Oct. 20, 2017) https://www.washingtonpost.com/news/inspired-life/wp/2017/10/20/a-black-protester-hugged-a-white-nationalist-outside-richard-spencers-talk-why-do-you-hate-me-he-asked/?utm_term=.bebdb4d5820.

⁶⁰ Sara Marino, *After Punch at Richard Spencer Protest, an Unlikely Friendship*, GAINESVILLE SUN (Oct. 21, 2017, 1:31 PM), <http://www.gainesville.com/news/20171021/after-punch-at-richard-spencer-protest-unlikely-friendship>.

time, as this Essay pointed out, it is equally worrisome that educational institutions are being exploited and held financially hostage in the name of the First Amendment by extremist speakers. There are no easy solutions to either problem, but starting to examine them now, as the Richard Spencer circus raucously rolls on, is critical.