

July 11, 2014

President Robert W. Kustra
Boise State University
By fax to (208) 426-3779
By email to bobkustra@boisestate.edu

**Re: Boise State University speech and event policies, and
the May 16, 2014, Young Americans for Liberty event**

Dear President Kustra:

AMERICAN CIVIL
LIBERTIES UNION OF
IDAHO
P.O. BOX 1897
BOISE, ID 83701
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The Idaho Freedom Foundation and the Foundation for Individual Rights in Education shared with me their recent letters to you (dated June 30, 2014, and July 3, 2014, respectively) calling for a refund of "security fees" charged to the Young Americans for Liberty and for Boise State University to revise some of its policies impacting events and expression on campus.

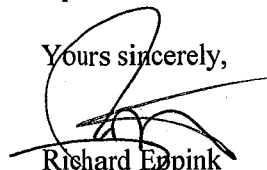
The policies and the charges that BSU imposed on the YAL group are especially troubling because of how clearly they seem to violate established *First Amendment* requirements. The ACLU of Idaho litigated similar State of Idaho policies just last year and prevailed. In a case called *Watters v. Otter*, Chief Judge Lynn Winmill of Idaho's federal district court held that a rule providing that "[i]ndividuals, entities, and organizations *may* be charged for direct costs . . . including . . . security services" was unconstitutional. ___ F. Supp. 2d ___, ___, No. 1:12-CV-00076-BLW, 2013 WL 6446251, at *11 (D. Idaho Dec. 9, 2013). A rule that used the word "may," the court held, allows officials "to encourage some speech by not imposing costs while discouraging other views through the arbitrary application of costs." *Id.* Boise State University's policies have the same serious problem.

Worse, other of BSU's policies appear to allow officials to censor signs and publicity materials with unlimited discretion. Content-based restraints on speech like these are presumptively unconstitutional and almost never survive a court challenge. The ACLU of Idaho prevailed earlier this year against a content-based speech restriction that the City of Boise tried to impose, in a case decided by Judge Edward Lodge titled *ACLU of Idaho v. City of Boise*, ___ F. Supp. 2d ___, ___, No. 1:13-CV-00478-EJL, 2014 WL 28821, at *5 (D. Idaho Jan. 2, 2014).

The ACLU of Idaho joins in IFF's and FIRE's call for BSU to fix its policies and refund the money it forced YAL to pay under those policies. The refund should be given promptly, and then the policies should be revised after IFF, FIRE, the ACLU of Idaho, the BSU community, and the general public have a meaningful opportunity for comment. Would you meet with IFF, FIRE, and the ACLU of Idaho to discuss those policies soon?

I hope so. And I look forward to seeing BSU's response to IFF's and FIRE's letters, also.

Yours sincerely,



Richard Eppink
Legal Director

cc: Geoff Talmon, IFF
Ari Cohn, FIRE