



March 28, 2014

President William Powers Jr.
University of Texas at Austin
Office of the President
P.O. Box T
Austin, Texas 78713

Sent via U.S. Mail and Facsimile (512-471-8102)

Dear President Powers:

The Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, freedom of speech, and freedom of conscience on America's college campuses. Our website, thefire.org, will give you a greater sense of our identity and activities.

FIRE is concerned by the recent actions of the University of Texas at Austin's (UT's) Events CoSponsorship Board (ECB), which denied a funding request submitted by the UT Objectivism Society for assistance with a planned on-campus debate. When asked to explain its reasons for denying the group's funding request, ECB replied that it was "unable to disclose any information" regarding its decision. This raises concerns that ECB may wrongly deny funding to student organizations by engaging in unconstitutional viewpoint discrimination without accountability to the students whose fees fund ECB's budget. FIRE hopes this letter can promptly clear up these concerns.

The following is our understanding of the facts. Please inform us if you believe we are in error. The mandatory fees paid by students to fund the Texas Union subsidize ECB's budget for the express purpose of providing financial support for programs put on by recognized UT student organizations.¹ ECB's nine voting members are drawn from the

¹ ECB's website states: "During the Spring semester of 1990, the Student Association proposed a referendum to raise the Student Programming Fee for the Texas Union by \$2. A stipulation of the fee raise was that \$70,000 would be dedicated as a resource fund to support non-Union student organizations to put on programs." The University of Texas at Austin, Events CoSponsorship Board, <https://www.utexas.edu/universityunions/events-and-entertainment/committees/ecb> (last visited Mar. 27, 2014).

student body. On March 6, 2014, the UT Objectivism Society (the “Society”) requested funding support in the amount of \$1,920.64 for a planned campus debate, titled “Inequality: Should We Care?” The debate is scheduled to take place on April 17, and will feature Yaron Brook, Executive Director of the Ayn Rand Institute, and James K. Galbraith, Lloyd M. Bentsen Jr. Chair in Government/Business Relations and Director of the University of Texas Inequality Project. The Society’s funding application broke down the requested amount into predicted costs for promotions, security, equipment rental, and travel fees for the speakers. The Society met with ECB on March 19 to discuss its proposal and its planned uses of the funds requested.

On March 22, ECB Chair Arjun Rawal emailed Society president Jonathan Divin, informing him, “The Events CoSponsorship board is unable to fund UT Objectivism Society at this time.” Divin responded to Rawal’s email on March 24, asking, “Is it possible to get a reason for the refusal, regarding any considerations that may have been discussed or anything along those lines?” Rawal responded to Divin later on March 24, stating, “Unfortunately, ECB is able to disclose any information regarding the deliberation process whether or not an event was funded.”

The opacity with which ECB conducts its deliberations—using mandatory fees paid by UT students—is unacceptable and raises substantial First Amendment concerns.

Foremost among FIRE’s concerns is the preservation of viewpoint neutrality in student group funding. As ECB’s budget is subsidized by mandatory activity fees paid by students, ECB is obligated to distribute all funds for student programming in a viewpoint-neutral manner, so that no student organization is discriminated against on the basis of its views and ideas. Multiple decisions from the Supreme Court of the United States in precisely this area of the law make ECB’s obligations as an agent of the university clear. *See Board of Regents of the University of Wisconsin System v. Southworth*, 529 U.S. 217, 233 (2000) (“When a university requires its students to pay fees to support the extracurricular speech of other students, all in the interest of open discussion, it may not prefer some viewpoints to others.”); *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819, 836 (1995) (“For the University, by regulation, to cast disapproval on particular viewpoints of its students risks the suppression of free speech and creative inquiry in one of the vital centers for the Nation’s intellectual life, its college and university campuses.”).

If ECB claims the right to withhold any information it wishes about its review process from student groups applying for funding support, it essentially grants itself license to discriminate against any group it pleases without any accountability to the student public. This is an unacceptable practice and an unethical use of the students’ fees. Additionally, ECB’s closed financial deliberations raise the issue of potential noncompliance with the Texas Open Meetings Act.

We remind UT that the First Amendment is fully binding on public universities. *See Widmar v. Vincent*, 454 U.S. 263, 268–69 (1981) (“With respect to persons entitled to be there, our cases leave no doubt that the First Amendment rights of speech and association

extend to the campuses of state universities.”); *Healy v. James*, 408 U.S. 169, 180 (1972) (internal citation omitted) (“[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, ‘the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.’”). Having delegated to ECB the distribution of the students’ fees to support student organization programming, UT must see to it, if ECB itself does not, that the distribution of such fees is carried out in a manner consistent with the university’s well-established responsibilities under the First Amendment.

UT students have the right to know what factors ECB takes into consideration in determining whether a funding request will be approved, and ECB has a responsibility to provide such information to them. FIRE calls on ECB to lift the veil of secrecy from its allocation process. It must make clear to student organizations the criteria by which their applications for funding will be considered, and that it will not unconstitutionally discriminate against them on the basis of viewpoint. If any such discrimination has in fact occurred in this instance, ECB must reconsider the UT Objectivism Society’s application using only reasonable content- and viewpoint-neutral guidelines.

The University of Texas at Austin’s policy on “Speech, Expression, and Assembly” admirably states, “The freedoms of speech, expression, and assembly are fundamental rights of all persons and are central to the mission of the University.” We hope to quickly resolve this matter and commend UT on reaffirming this ideal, in accordance with its moral and legal obligations under the First Amendment.

FIRE requests a response to this letter by April 11, 2014. We appreciate your attention to these important concerns.

Sincerely,



Peter Bonilla

Director, Individual Rights Defense Program

cc:

Gage E. Paine, Vice President for Student Affairs

Soncia Reagins-Lilly, Senior Associate Vice President for Student Affairs and Dean of Students

Mary Beth Mercatoris, Assistant Dean of Students