



November 18, 2015

Michael H. Schill  
Office of the President  
University of Oregon  
110 Johnson Hall  
1226 University of Oregon  
Eugene, Oregon 97403

**URGENT**

*Sent via U.S. Mail and Electronic Mail ([pres@uoregon.edu](mailto:pres@uoregon.edu))*

Dear President Schill:

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](http://thefire.org), will give you a greater sense of our identity and activities.

FIRE is deeply concerned about the threat to free expression at the University of Oregon (UO) posed by the Associated Students of the University of Oregon's (ASUO's) denial of funding for an event hosted by Young Americans for Liberty (YAL), as well as the UO Housing office's refusal to allow advertisements for the event to be posted in residence halls. Both of these actions are impermissibly based on the viewpoint of the student organization's expression in direct violation of YAL's clearly established First Amendment rights, and they must be immediately reversed.

The following is our understanding of the facts; please correct us if you believe we are in error.

The UO chapter of YAL, a registered student organization, has planned a "Liberty Poker Night" for November 20, 2015, with the goal of encouraging discussion regarding the ban on carrying concealed firearms on campus. The event is free to students, and features a poker tournament with prizes including three firearms donated by local gun dealers. The firearms will not be brought on campus by YAL; rather, they will be

transferred to the winning students in accordance with federal and Oregon state law by an establishment holding a Federal Firearms License. YAL hosted a similar event on January 30, 2015, drawing approximately 70 attendees. YAL expects that attendance at this year's event will increase dramatically to at least 150 participants.

On November 10, YAL's Brandon Clements submitted a promotional poster (Attachment A) to UO's University Housing office in order to receive approval to advertise in UO residence halls. Later that day, Director of Marketing and Communications for University Housing Leah Andrews informed Clements via email that the poster would not be approved, citing as her reasoning the fact that firearms themselves are prohibited from residence halls:

University Housing doesn't allow for advertising in the residence halls that encourages anything that is prohibited in our code of conduct. Possession of firearms is not allowed in the residence halls, since the prizes for the tournament are a hand gun and a rifle the posters will not be approved for display in the residence halls.

Clements replied to Andrews via email, inquiring whether any modifications to the poster could be made to render it acceptable. In response, Andrews stated that “[u]nless the prizes for the event are no longer firearms the posters won't be approved since the prize is something that is against our code of conduct.”

On November 11, YAL submitted a request to the ASUO for \$950 in funding for the event, \$600 of which was to be allocated for refreshments, and \$350 of which would cover the cost of the room and equipment rental.

During the ASUO meeting, several ASUO senators expressed discomfort with the nature and message of the event:<sup>1</sup>

Cerros- concerned about funding an event that is called poker night that has to do with guns and gun control.

YAL- the event is advertised well and people will know what it is about.

Nicholson- I am not going to vote yes on this because I think that the ASUO funding an event that gives away free guns . . . would make students to feel very uncomfortable.

Some senators further expressed that they felt students would feel “unsafe” due to the event:

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<sup>1</sup> All comments are taken directly from the ASUO's minutes from its November 11, 2015 meeting (Attachment B), and all grammar and punctuation from the minutes has been left intact.

President Shelegal- This request goes against the mission of the ASUO and making students feel safe. The I-Fee should not go to funding an event that makes students feel unsafe.

[. . .]

Lusby- In paying for a room for this event we are providing them the space where they can provide weapons to students. When we are actively creating this space, we are fostering an unsafe space. If you were really serious about this you would hold a panel not a poker night that gives out weapons.

President Schlegel- This is an unsafe space because there are people who are addicted to gambling who would not be able to attend. Gambling addiction negatively affects marginalized communities.

Finally, some in attendance argued that senators should not vote in favor of the funding request because their constituents would not support it:

Dobyns- As an elected official, I represent the students of this university and I do not feel that this is in the interests of my constituents. I feel that a lot of students would not support this event. I don't feel comfortable funding this because of that reason.

[. . .]

[Audience member] Joaquin- "references GTN" you have to support your constituents and if they don't want it they don't have to vote for it and their constituents.

Throughout the ASUO's deliberations, YAL leaders repeatedly clarified that the funding would not be used for purchasing the firearms to be given away, and that the firearms would at no time be present on campus. Additionally, despite the repeated reminders that they were entitled to a viewpoint-neutral decision on their funding request, the YAL leaders present were constantly questioned about their stance on campus firearms policies. YAL leaders further report that the ASUO conducted a symbolic hand vote on whether those present believed that allowing guns on campus would increase safety (YAL members were three of the mere handful of students to answer in the affirmative) in order to demonstrate opposition to the message of Liberty Poker Night.

At the conclusion of its discussion, the ASUO voted to deny funding for Liberty Poker Night. YAL has resubmitted its funding request for reconsideration, which will be considered at tonight's ASUO session.

That the First Amendment applies in full force on public university campuses is settled law. *See, e.g., 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) (“[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.”) (internal citation and quotation marks omitted).

Furthermore, student organizations such as YAL enjoy fundamental First Amendment freedoms. As ASUO’s budget is subsidized by mandatory fees paid by students, ASUO 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. *See 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.”); *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.”).

The ASUO has demonstrably failed in adhering to this obligation. Because UO has delegated authority with respect to the distribution of mandatory student fees, the ASUO acts as an agent of the university. In turn, UO is therefore both legally and morally responsible for any violations of the First Amendment perpetrated by the ASUO.

Foremost, the statements of certain ASUO senators that they would vote against the funding because they did not believe that their constituents would support the event invites precisely the type of viewpoint discrimination prohibited by the Supreme Court’s rulings. *See Southworth*, 529 U.S. at 235 (“To the extent the referendum [for student organization funding] substitutes majority determinations for viewpoint neutrality it would undermine the constitutional protection the program requires. The whole theory of viewpoint neutrality is that minority views are treated with the same respect as are majority views. Access to a public forum, for instance, does not depend upon majoritarian consent. That principle is controlling here.”). Put simply, popular support (or lack thereof) for a student organization’s event is an impermissible basis for funding allocation decisions.

Nor may the ASUO deny funding to YAL’s event on the basis that it may make others feel subjectively “uncomfortable.” Freedom of expression exists precisely to protect speech that some members of a community may find controversial, uncomfortable, and deeply offensive. The Supreme Court stated in *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949) that speech “may indeed best serve its high purpose when it induces a condition of unrest . . . or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for

acceptance of an idea.” *See also Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667, 670 (1973) (“[T]he mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of ‘conventions of decency.’”). Indeed, much expression facilitated by student organizations is likely to make others uncomfortable. Can a pro-life organization be denied funding for its event on the basis that it makes students who are pro-choice, or those who have terminated a pregnancy, uncomfortable? Can an event supporting the cause of Palestinians be denied funding due to the discomfort it might inflict on students who support Israel’s policies? Clearly, the answer is “no.” Were it otherwise, funding for student organizations would be limited to the most banal events that avoid discussing any matter of social or political import. Such a result is both legally and morally untenable.

Similarly inappropriate as a basis for denying funding for Liberty Poker Night are the specious concerns regarding “safety” expressed by some members of the ASUO. There is simply no credible fear for the physical safety of UO students posed by Liberty Poker Night. YAL has repeatedly reassured the ASUO that the firearm prizes will at no time be present on campus, in accordance with UO policy, and that all federal and state laws regarding their transfer will be strictly followed. Rather than any legitimate fears for the immediate safety of UO students, underlying these objections based on “discomfort” and “safety” appears to be the pernicious idea that students have a right to be protected from encountering ideas with which they disagree—an argument that our national commitment to freedom of expression utterly rejects. A true commitment to the free and unfettered exchange of ideas—a commitment necessary at institutions that, like UO, seek to provide students a modern liberal arts education—is completely incompatible with any recognition of an illusory right to be free at all times from expression that offends our sense of right and wrong. Those who argue otherwise hurt the students they claim to be helping by indulging this mistaken notion.

Finally, the various other concerns reportedly devised by the ASUO during the debate over YAL’s funding request—such as the claims that the event is discriminatory because there is an age limit for gun ownership and that it creates an “unsafe space” for students with a gambling addiction—are not only without merit, but appear to be pretextual in nature. The ASUO’s minutes, as well as the accounts from those who were present, make clear that the body’s decision was—inappropriately—founded on its members’ opposition to the expressive content of the event. To be perfectly clear: the ASUO may not dictate to a student organization what viewpoints it may adopt, and in what manner to express those views, by wielding its power over funding allocations as a coercive tool.

**If the ASUO is unwilling to comply with its constitutional obligations as an agent of UO, the university is obligated to step in to uphold the First Amendment rights of its students.** The decision to deny funding for Liberty Poker Night on the basis of its protected expression must be vacated immediately, and UO must instruct the ASUO to reconsider YAL’s request in a content- and viewpoint-neutral manner.

University Housing's refusal to allow YAL to advertise Liberty Poker Night on residence hall bulletin boards is similarly unacceptable.

Preliminarily, the policy of requiring all groups to submit their materials for approval runs contrary to established Supreme Court jurisprudence disapproving of prior restraint on speech. *See Shuttlesworth v. Birmingham*, 394 U.S. 147, 150–51 (1969) (holding that “subjecting the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority, is unconstitutional”). Indeed, First Amendment jurisprudence is marked by a disapproval of prior review in all but the most severe and exigent circumstances—none of which is met by YAL's desire to post its materials on campus. *See, e.g., CBS v. Davis*, 510 U.S. 1315, 1317 (1994) (observing that “prior restraints are particularly disfavored” and are permissible only in “exceptional cases” where “the evil that would result . . . is both great and certain and cannot be mitigated by less intrusive measures”); *Near v. Minnesota*, 283 U.S. 697, 713 (1931) (noting that a “chief purpose” of the First Amendment is “to prevent previous restraints upon publication”).

Andrews' assessment that Liberty Poker Night “encourages anything prohibited in [the] code of conduct” is factually baseless. UO's policies forbid possessing a firearm on campus property—not possession of a firearm generally. As has been repeatedly made clear, the firearms remain off-campus, in accordance with university policy, and will be transferred to the winners by a local firearms dealer in strict adherence with all applicable laws. To restrict a student organization's expression on the baseless speculation that the winning student might then disregard campus policy and bring the firearm on to campus property is unacceptable. UO may not ban expression related to entirely legal off-campus conduct by citing the mere possibility that a third party will independently violate a campus policy.

Moreover, the advertising policy cited by Andrews is unconstitutionally overbroad. A statute or law regulating speech is unconstitutionally overbroad “if it sweeps within its ambit a substantial amount of protected speech along with that which it may legitimately regulate.” *Doe v. University of Michigan*, 721 F. Supp. 852, 864 (E.D. Mich. 1989) (enjoining enforcement of university discriminatory harassment policy on First Amendment grounds) (citing *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973)). As written, this policy effectively bans advocacy in residence halls that is aimed at *revising* the code of conduct. For instance, a student organization advocating for the repeal of the prohibition of marijuana on campus in light of its legalization in Oregon could be barred for “encouraging” marijuana use in contravention of UO policies. Such expression, much like YAL's advertising, is unambiguously protected by the First Amendment. Again, UO may not censor such expression on the basis of its viewpoint out of unsubstantiated fears that listeners may then violate the UO code of conduct.

We call upon UO to reverse this unwise and unconstitutional ban on student expression in university residence halls and to revise its policies to comport with the First Amendment. We further urge UO to assure all students that expressive activity on campus will not be

subject to viewpoint-based discrimination on campus by university administrators, or by the ASUO in executing its delegated authority to distribute student activity fees.

FIRE is committed to using all of the resources at our disposal to see this matter through to a just conclusion.

Due to the impending nature of the Liberty Poker Night event, we request a response to this letter by November 20, 2015.

Sincerely,

A handwritten signature in blue ink that reads "Ari Z. Cohn". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Ari Z. Cohn  
Senior Program Officer, Legal and Public Advocacy

Encls.

cc:

Leah Andrews, Director of Marketing and Communications for University Housing  
Dr. Robin Holmes, Vice President for Student Life  
Becky Girvan, ASUO Leadership Adviser  
Dr. Michael Griffel, Director of University Housing  
Executive Cabinet, Associated Students of the University of Oregon  
Student Senate, Associated Students of the University of Oregon

# Attachment A

YOUNG AMERICANS  
*for* **LIBERTY**  
PRESENTS



**LIBERTY**  
**POKER**  
NIGHT

TEXAS HOLD'EM

FREE FOOD AND PRIZES

PRIZES INCLUDE BRAND NEW HANDGUN & WEATHERBY RIFLE + SCOPE



REGISTER FOR FREE @ [WWW.BIT.DO/GAMBLEFORGUNS](http://WWW.BIT.DO/GAMBLEFORGUNS)  
FRIDAY NOVEMBER 20 @ 5PM IN THE EMU BALLROOM

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Old & New  
Gun Shop



Project  
Liberty

# **Attachment B**

## Senate 11/11/15 Minutes

All present except: Senator Mor, Senator Burns

7:02 Meeting called to order

7:04 Introductions

7:05 Agenda approved

7:07 Announcements

Senator Selby- Loco for Latkes philanthropy! 5:30-9:00

Johnson- Black Lives Matter event in Ford Alumni Center.

Senator Cerros- solidarity walk for the events at Missouri

Announcement from Teach for America.

7:11 Public forum

7:19 Confirmations

Presentation of Savannah Harrell

Confirmed unanimously to Seat 22.

Presentation of Keegan William Thomas

Davies moves to confirm Williams-Thomas to Senate Seat 24

Confirmed unanimously

Presentation of Edward Szczepanski for DFC

Haaga moves to confirm Edward Szczepanski

Confirmed unanimously

7:47 Surplus update

VSA special request

7:50 Senator Lilley moves to move funds from line item food for fall event to line item food for winter event in the amount of \$550.

Seconded Senator Dobyns

7:54 Discussion about the special request for the conference.

Davies moves to allocate funds to line item off campus summit retreat

Approved by vote by acclamation.

7:50 Young Americans for Liberty special request presentation.

Davies- how does playing poker raise awareness for gun safety awareness?

YAL- It is the means for discussion. We are having speakers and welcome discussion.

Snook- how do you give guns as prizes?

YAL- the gun store has them on site and the winner will go there to receive the gun.

Selby- I don't see how poker is relevant to the situation.

YAL- It helps with registration numbers.

Cerros- could you break down cost of food?

YAL- linen is 150. We are buying Costco pizza.

Cerros- concerned about funding an event that is called poker night that has to do with guns and gun control.

YAL- the event is advertised well and people will know what it is about.

Nicholson- I am not going to vote yes on this because I think that the ASUO funding an event that gives away free guns and this would make students to feel very uncomfortable.

Cerros- Remember to remain viewpoint neutral and questions funding food since people already have an incentive to be there.

President Shelegal- This request goes against the mission of the ASUO and making students feel safe. The I-Fee should not go to funding an event that makes students feel unsafe.

Snook- is this a recruitment event as well?

YAL- It was really helpful last year.

Williams-Thomas- how does this event foster conversation?

YAL- the act of giving the gun as a prize instigates conversation.

Williams- Thomas- so feel that the attractiveness of this event is that it is polarizing?

YAL- yes

Dobyns- As an elected official, I represent the students of this university and I do not feel that this is in the interests of my constituents. I feel that a lot of students would not support this event. I don't feel comfortable funding this because of that reason. I would be in favor of this request if the firearms were not a part of this event.

Selby- I can't vote for something that the people that I represent would not be in favor of. I can't vote in favor of this if the fire arms are being raffled off.

Rentcheler -Student government is supposed to fund student viewpoints no matter how much of a minority they are.

Dante- I do not want people going to an event to acquire a gun and get training about how to use a gun and then coming to campus and doing something with it.

Lilley- I am not a pro gun advocate but it is important for us as students to have these events. We need to look at this from a neutral stand point. How did you learn from last year?

YAL- we are bringing in speakers.

Lilley- it is important to have a place where this conversation takes place.

Lusby- In paying for a room for this event we are providing them the space where they can provide weapons to students. When we are actively creating this space, we are fostering an unsafe space. If you were really serious about this you would hold a panel not a poker night that gives out weapons.

President Schlegel- This is an unsafe space because there are people who are addicted to gambling who would not be able to attend. Gambling addiction negatively affects marginalized communities.

VP Johnson- Second points that have been made. Recently we had a campus safety forum and we are fielding a campaign and I want to value your perspective and invite you to this forum.

Audience member- the reason they are asking for food is because people will not attend without it.

Joaquin- "references GTN" you have to support your constituents and if they don't want it they don't have to vote for it and their constituents.

8:37 Dunn- Poker doesn't foster the discussion.

Snook- the act of having a gun changes the activity a lot.

Cerros- last year the poker event was a lot different. And had a different focus.

Norfield- moves to table indefinitely.

Rentchler- viewpoint neutrality is designed to protect this group and event exactly. This group at least deserves a vote.

Cerros- how will this effect your event if we table?

YAL- we have the EMU ballroom.

Roth- moves to authorize spending from surplus to YAL in the amount of \$350 to event liberty poker night and food for liberty poker night \$600.

Lilley seconds

Snook(me)-Will vote no due to nature of not being an educational event

Rentschler-Viewpoint neutrality meant to defend minority groups

Dunn-CPSA gambling event was also cultural

(Audience Member) Tullis- Discussion is inherent to event

8:57- Vote, 5 ayes, 11 nays, 2 abstentions

Davies- Motion to table indefinitely

Robin- Senate should discuss why the motion was not passed earlier

Dobyns- Would like to have the event without firearms, would not like to be tied to responsibility over guns

Rentschler- People should abstain if they feel uncomfortable, tough conversations are part of viewpoint neutral

VP Johnson- Second Amendment and speech is not equal to gun ownership

(Audience Member) Tullis – Students have a right to have difficult conversations, and hypotheticals can be on either side. Policy is irrelevant for pizza money, we just want funding for 200 people to get together and eat. We are in the ideological minority but the point of the event is to challenge people ways of thinking.

Williams-Thomas- The rejection of the event does not silence speech but the event is not about speech, it is about poker and winning 21.

(Audience Member) Samara – Prizes not accessible to younger campus member which is ageist.

(Audience Member) Tullis- Event will go on either way, surprised that senate did not vote in favor.

9:20 - Vote to Table-7 yes, 3 no, 7 abstain

9:22- Divsi – Event in Berkeley, Fundraised housing and food, money for transportation and vans, through UO. West Coast Acappella showcase is a chance for West Coast groups to perform for showcase

Cerros- Question on timing with controllers

Divsi- Would pay and would be reimbursed

Dunn- Moves to authorize surplus request to Divsi

9:34- Vote- Unanimous

BSU- Conference hosted by BSU's for BSU at primarily white universities. Includes training, career opportunities, networking opportunities, and grad-student fair.

Taking 7 members. Fundraising fell through, but hotel is funded by MCC and fees paid for by someone else.

Dunn- This is a great presentation and a great event,

Martin-Santoyo- Great event, agenda has long days and the event is really important to POC on the campus

Cerros- Question on the where the flight if flying from Portland is ok, would like to give them extra funding for that cushion.

Dobyns- MCC does not count as fundraising, still in support of event.

Selby- Question about conference standing rule

Rentschler- 2/3's rule for this type of request

Martin-Santoyo- Moves to authorize spending

9:48 – Vote – 16 yes, 0 no, 0 abstentions

Pres. Dobyms – Dr. Holmes sent I-fee projections out, will forward them along to Senate

VP Haaga – Must notify in 24 hours before if going to be absent from Senate

Treasurer Martin-Santoyo - \$374,768.92 unofficial surplus update

Academic Chair –Academic Senators meeting soon

Exec VP Johnson – CC training on Friday

PFC Chair Haaga – PFC passed benchmarks

ACFC Chair Dunn – Completed Benchmarks at 0.9% increase without competitive bid for lawyers, that process could drive benchmark up. Athletics proposed 0% with more student tickets

DFC Zach-Will schedule DFC meeting with newfound quorum

EMU Board - Passed benchmark

Selby- Discussed new conference resolution

Rentschler- Seeks creation of rollover working group

10:01 - Dobyms- Calls for approval of minutes from 10/28/15 and 11/4/15, Both approved unanimously

10:01 Meeting Adjourned