



Foundation for Individual Rights in Education

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David French
PRESIDENT

February 11, 2005

Greg Lukianoff
DIRECTOR OF LEGAL AND
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President Dave Frohnmayer
President's Office
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URGENT

Sent by U.S. Mail and Facsimile (541-346-3017)

Dear President Frohnmayer:

As you can see from our Directors and Board of Advisors, FIRE unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, due process, legal equality, voluntary association, freedom of speech, and religious liberty on America's college campuses. Our webpage, www.thefire.org, will give you a greater sense of our identity and activities.

We are gravely concerned about a recent incident at the University of Oregon that threatens your students' freedom of expression. We understand that the Associated Students of the University of Oregon (ASUO) Programs Finance Committee (PFC) has rejected the mission statement of a student magazine, the *Oregon Commentator*, thereby making it ineligible for funding. Members of the PFC have demonstrated an alarming misunderstanding of the university's obligation to uphold the First Amendment when distributing funds to student organizations. As a state institution, the university and its administrators should understand that **it has a non-delegable duty to ensure that the First Amendment rights of its students are protected**, and that no federal, state, local, or university rule, policy, or regulation can trump the exercise of rights guaranteed by the United States Constitution.

This is our understanding of the facts, according to student reports and articles printed in the *Oregon Daily Emerald*. Please correct any factual errors, if they exist. According to its editor-in-chief, the *Commentator* has had the same mission statement for the past 21 years. Yet in early December

2004, the PFC decided to reject the *Commentator*'s mission statement after a transgendered student senator, Toby Hill-Meyer, complained of being offended by content published in the magazine. Among the content in question were (1) a made-up, satirical "man on the street" type article entitled "What Did You Do This Summer?" featuring a response attributed to Hill-Meyer stating, "I got sick of my penis oppressing me"; and (2) the *Commentator*'s awarding Hill-Meyer the "Ze Can Fuck Hirsself Award." The "award" mocks Hill-Meyer's apparent desire to have the pronouns "he" or "she" substituted with "ze" and "him" or "her" substituted with "hir" when people refer to Hill-Meyer.

Later in December, the PFC decided to recall its decision because of "a lack of clarity among PFC members about why exactly the mission statement was not approved." During the PFC's February 1, 2005, meeting, only two committee members voted to approve the mission statement, while other members publicly stated that the PFC did not have to be viewpoint neutral in distributing funds and that "to provide funds to a publication is a form of sponsorship" of the publication's viewpoints.

According to an article in the *Emerald*, PFC member Mason Quiroz stated that to be recognized, the PFC must "determine for itself whether the program or activity meets the statutory standard of ORS 351.070(3)(d), which authorizes the [Oregon State Board of Higher Education] to collect fees to fund programs for the cultural and physical development of students." Quiroz then stated that the PFC therefore had the power to review the *Commentator*'s content, and that it should not fund the magazine because it was not promoting the development of students. At the end of the discussion, a motion to approve the *Commentator*'s mission statement failed to pass. This deeply troubling decision is directly at odds with decades of Supreme Court cases, including *Healy v. James*, 408 U.S. 169 (1972), and *Board of Regents v. Southworth*, 529 U.S. 217 (2000).

Quiroz and other PFC members have demonstrated either ignorance or misunderstanding of the constitutional principle of "viewpoint neutrality." As the agent of a state university, the PFC has an obligation to distribute student funds to student organizations in a viewpoint-neutral manner. This constitutional duty overrides any university or state statutory requirement that a funded group's mission or content fit the PFC's interpretation of what enhances the "cultural and physical development of students." In other words, **the PFC must distribute funds to student organizations based on objective criteria and regardless of the viewpoints espoused, whether or not they find those points of view objectionable.** Disregarding this principle in student-publication funding decisions is not only morally wrong, but unconstitutional. Indeed, the PFC's misunderstanding of and lack of regard for this principle has resulted in the committee's granting itself the power to censor arbitrarily—a result the First Amendment does not permit on a public campus.

Even highly offensive material, including profanity, is fully protected under the First Amendment. We strongly encourage you and the members of the PFC to read the landmark U.S. Supreme Court cases of *Cohen v. California*, 403 U.S. 15 (1971), and *Hustler Magazine, Inc., et al. v. Jerry Falwell*, 485 U.S. 46 (1988). In *Cohen v. California*, the Court ruled that a Vietnam War protester’s jacket bearing the words “Fuck the Draft” was constitutionally protected expression even when worn in a courthouse. Similarly, in *Hustler Magazine v. Falwell*, the Court ruled that the First Amendment protects even extraordinarily offensive satire and parody—in that case, a cartoon suggesting that the Reverend Jerry Falwell lost his virginity in a drunken encounter with his mother in an outhouse. Taken together, these cases decisively and clearly protect offensive material, farce, profanity, and exaggeration, and, in fact, even recognize that the “right to offend” serves a vital societal function. The *Commentator*’s expression is clearly and fully protected, and no UO administrator, student, or faculty member may punish the magazine because of its content. Nor may those in charge of funding decisions falsely characterize the *Commentator*’s content as “threatening” in order to derecognize its mission statement.

On February 9, 2005, Vice President for Student Affairs Anne Leavitt and Vice Provost for Institutional Equity and Diversity Greg Vincent issued a “Statement re Oregon Commentator and ASUO Program Finance Committee” in response to the recent controversy. Leavitt and Vincent wrote:

We applaud the leaders of the ASUO for supporting a vigorous dialogue, for recognizing that the Commentator’s subject matter has deeply concerned a number of students, and for encouraging **PFC members to preserve our right to speech and to properly fund the Commentator**. We support student leaders who have expressed their concerns about this subject matter, and its chilling impact on our campus climate. We support students, both from the Commentator and others, who have reminded us of important protections to free speech, even as we react to speech that offends us. [Emphasis added.]

While we appreciate the administrators’ recognition of the importance of freedom of speech on campus, we must repeat that the University of Oregon cannot delegate its obligation to uphold the constitutional rights of all members of the university community to students. According to the *Emerald*, Quiroz has admitted that “the PFC lacks clear information from the administration about how to deal with ‘some issues that come up along the way’ in the PFC process.” UO cannot leave this institutional failure unaddressed and uncorrected.

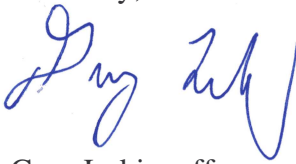
FIRE therefore asks that you immediately reinstate official recognition of the *Commentator* and restore the magazine’s funding eligibility. We also ask that UO

administrators and student government officials fully comply with their obligations to the First Amendment and stop evaluating the viewpoint of student organizations when making student-fee funding decisions.

If, on the other hand, the university decides to continue to allow such infringement on the rights of its students, we are committed to using all of our resources in support of students' expressive rights and toward seeing this matter through to a just and moral conclusion.

We look forward to hearing from you soon.

Sincerely,

A handwritten signature in blue ink, appearing to read "Greg Lukianoff". The signature is fluid and cursive, with the first name "Greg" being larger and more prominent than the last name "Lukianoff".

Greg Lukianoff
Director of Legal and Public Advocacy

cc:

John Moseley, Senior Vice President and Provost, University of Oregon
Daniel A. Williams, Vice President for Administration, University of Oregon
Anne Leavitt, Vice President for Student Affairs & Dean of Students, University of Oregon
Gregory J. Vincent, Vice Provost for Institutional Equity & Diversity, University of Oregon
George Pernsteiner, Interim Chancellor, University of Oregon System
Adam Petkun, President, Associated Students of the University of Oregon
Dan Atkinson, Publisher, *Oregon Commentator*