September 8, 2016

Rev. Dennis H. Holtschneider, C.M.
Office of the President
DePaul University
1 East Jackson Boulevard
Chicago, Illinois 60604

Sent via U.S. Mail and Electronic Mail (DePaulPresidentsOffice@depaul.edu)

Dear President Holtschneider:

As you know, the Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America’s college campuses.

FIRE writes to express serious concern regarding a series of events that pose a severe threat to freedom of expression at DePaul University. In the past semester, DePaul has banned any partisan political postings or chalking on campus and has twice prohibited student organizations from inviting controversial speakers to campus. These actions contradict DePaul’s promises of free expression, compromising the robust debate that the university claims to value.

I. Factual Background

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

A. Students Chalk Pro-Trump Messages on Campus

On the evening of April 4, 2016, the DePaul College Republicans, a registered student organization, chalked messages on DePaul’s Lincoln Park campus in support of Donald Trump’s presidential campaign, among other political issues. The messages included “Make DePaul Great Again,” “Blue Lives Matter,” and “Trump Train 2016.” DePaul’s campus grounds crew removed the chalk early the next day, in part because some of the crew members found the chalk to be “inflammatory.”¹ Some members of the DePaul
community took offense to the chalked messages and publicly condemned them. One student claimed to have filed a “hate-crime report” against the College Republicans, and DePaul’s Black Student Union allegedly distributed a document encouraging members to file reports against the College Republicans.²

In response to the chalking and the controversy it generated, Vice President for Student Affairs Eugene Zdziarski sent an email regarding the incident to all DePaul students on April 11. In his email, Zdziarski noted that many in the DePaul community “found the chalk messages offensive, hurtful, and divisive,” and that the “complex issues” raised by the incident warranted a clarification of DePaul’s policy on political activity. As part of this clarification, Zdziarski informed students that, due to DePaul’s status as a 501(c)(3) tax-exempt entity, “no partisan political advertising may be conducted on campus that could in any way be attributed to DePaul University.” Zdziarski further clarified that students:

- may not post partisan political flyers, posters, signs or images on University bulletin board, buildings, electronic message boards, forums or sidewalks. This includes chalking on campus property.

On April 19, members of the College Republicans met with the Office of Student Involvement, which confirmed that partisan messages, defined as messages relating to specific candidates, could not be chalked on campus, allegedly due to DePaul’s tax-exempt status.

B. College Republicans Invite Milo Yiannopoulos to Speak on Campus

In response to DePaul’s removal of its chalked messages, the College Republicans began planning a campus event featuring controversial activist and journalist Milo Yiannopoulos. The event was to be part of Yiannopoulos’ “Dangerous Faggot” speaking tour.

After securing funding for the May 24 event via crowdfunding platform GoFundMe, the College Republicans submitted a reservation request for two adjoining rooms in DePaul’s Lincoln Park Student Center with a combined capacity of 550 people, which was approved. The College Republicans initially arranged to pay for eight security officers to be present at the event, in accordance with DePaul’s Student Organizations Guide.³

Yiannopoulos’ planned appearance generated significant opposition on campus. Some students petitioned the university to cancel the event, claiming that it perpetuated “both

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³ “Security ratios are determined by a 1:50-75 person count.” Eight security officers fell within these guidelines for a maximum-capacity crowd.
hate speech and systemic oppression on campus.”\textsuperscript{4} According to the petition, you denied a “personal request” to cancel the event.\textsuperscript{5}

Less than two weeks before the event, Student Center Director Joe Mroczkowski informed the College Republicans that the university was altering the event in several ways. First, Mroczkowski informed the College Republicans that the university was revoking the reservation for one of the two rooms that the event was to occupy, capping attendance at 250 instead of 550. Second, Mroczkowski limited Yiannopoulos’ speaking time to 15–20 minutes, down from the 60–90 minutes, plus time for audience questions, that the College Republicans originally allotted him. Finally, Mroczkowski imposed an additional security requirement, informing the College Republicans that they would need to hire 12 additional security officers at a cost of nearly $1,500.

The College Republicans challenged DePaul’s last-minute changes, and at a May 18 meeting between administrators and the event organizers, DePaul agreed to allow the event to take place in both of the reserved rooms for the time period initially planned, but still demanded that the College Republicans hire eight additional security officers, resulting in a required ratio of one officer for every 34 attendees, at a cost of nearly $1,000.

\textbf{C. DePaul Acquiesces in Student Protesters’ Disruption of Yiannopoulos’ Speech}

After the College Republicans obtained the additional funding required to satisfy DePaul’s additional security requirement, Yiannopoulos spoke at DePaul on May 24. Less than 20 minutes after the event began, a group of students walked onto the stage and disrupted the event by blowing a whistle, chanting loudly, and stealing the microphone. One student protester swung her fist at Yiannopoulos’ face, while the security guards that DePaul forced the College Republicans to hire watched without intervening. This disruption was captured on video.\textsuperscript{6}

Eventually, after persistent disruptions, the event organizers called the Chicago Police Department, who later arrived at the scene but did not make any arrests. According to at least one media report, DePaul administrators instructed police officers arriving at the event to “stand and passively watch.”\textsuperscript{7} After both DePaul’s contracted security officers and the Chicago Police Department failed to remove the individuals disrupting the event, Yiannopoulos left the venue and led a march to your office to protest. Upon returning to resume the event, the security guards denied Yiannopoulos re-entry to the venue.

\textsuperscript{5} Id.
\textsuperscript{6} Level Nine Media, \textit{Milo Yiannopoulos assaulted and threatened by BLM ‘protesters’ at DePaul University, YOUTUBE} (May 24, 2016), https://www.youtube.com/watch?v=IawEMxTroBk
On Wednesday, May 25, you sent an email to the campus community condemning Yiannopoulos’ speech, but reiterating that the protesters who shut down the event were wrong to do so and that the College Republicans “deserved an opportunity to hear their speaker uninterrupted, and were denied it.”

Zdziarski also issued a statement noting that DePaul would pay the security costs “[b]ecause the university canceled the event for safety reasons.”

On June 2, you sent an additional message to the campus community apologizing to those who felt insufficiently supported by the university in their opposition to Yiannopoulos. In this message, you pledged to convene the Speech and Expression Taskforce for DePaul in the fall to answer questions including:

- Is there any person DePaul University would not permit to speak on campus?
- What would the criteria be? Who would decide? Is there a difference if university funds are used or an outside entity pays? What if the students hold the event off campus?

D. **DePaul Prohibits the College Republicans from Re-inviting Yiannopoulos**

In early July, the College Republicans invited Yiannopoulos to again speak at DePaul on September 20, 2016. In a July 7 email, Vice President for Student Affairs Zdziarski informed Brendan Newell, the DePaul College Republicans’ chairman emeritus, that the group would not be permitted to host Yiannopoulos again:

By this message, please be advised that the University is denying the request for the room and for Mr. Yiannopoulos to speak on our campus. Having consulted with Public Safety and having reviewed last Spring’s events, it is clear that it would not be possible for DePaul to provide the security that would be required for such an event.

Further, having reviewed a full-length video of the event, it is our opinion that Mr. Yiannopoulos’ words and behavior contained inflammatory-speech, contributed to a hostile environment, and incited similar behavior from the crowd in attendance. In addition, he led an unapproved march through campus that created a potentially dangerous situation.

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10 Ben Gartland, *DePaul President Holtschneider: ‘We can and must do a great deal better within DePaul’, THE DEPAULIA (June 2, 2016), http://depaulionline.com/2016/06/02/dePaul-president-holtschneider-can-must-great-deal-better-within-depaul.*
E. DePaul Prohibits Young Americans for Freedom from Inviting Ben Shapiro to Campus

In late June, Newell, acting in his capacity as chairman emeritus of DePaul’s Young Americans for Freedom (DYAF) chapter, submitted a room reservation request for an event featuring political commentator Pat Buchanan. Three weeks later, Student Center Director Joe Mroczkowski responded to the request, offering the Courtyard Commons on October 17 as a date and location for the event. Mroczkowski noted that the venue can accommodate 189 individuals, and that DYAF would have to hire eight security officers, one officer per 24 attendees, at a cost of $960.

Newell responded to Mroczkowski, informing him that, due to the delay in responding to the reservation request, Buchanan was unavailable and that DYAF would like to invite conservative journalist Ben Shapiro instead. On July 25, Vice President for Facilities Operations Bob Janis informed Newell that DYAF would not be permitted to invite Ben Shapiro to campus, stating in part:

Given the experiences and security concerns that some other schools have had with Ben Shapiro speaking on their campuses, DePaul cannot agree to allowing him to speak on our campus at this time. If DYAF would like to invite Mr. Shapiro to speak, it will need to pursue off-campus location options.

DePaul’s actions with respect to all of the events described above have gravely undermined the promises of freedom of expression and intellectual freedom that it makes to students, stripping the university of any claim to the intellectual vitality flowing from the free exchange of ideas and robust debate inherent to institutions of higher education. If DePaul wishes to remain worthy of the title “university,” it must rectify these errors immediately.

II. Analysis

DePaul is a private university and thus not legally bound by the First Amendment. Nevertheless, it is both morally and contractually bound to honor the explicit, repeated, and unequivocal promises of freedom of expression it has made to its students. For example, the DePaul University Guiding Principles on Speech and Expression document states, in part:

DePaul is committed to fostering a community that welcomes open discourse. We believe that intellectual inquiry is enriched immeasurably by robust debate and exposure to differing points of view. By remaining open to a broad range of ideas and opinions, we foster mutual understanding, test our beliefs, and create the most effective conditions for seeking knowledge.

[...]
We believe that views and beliefs can be tested – should be tested – as part of the intellectual mission that we serve, but always in furtherance of the goals of education, intellectual enrichment, and preparation for citizenship.

[...]

DePaul affirms the right of speakers to voice their viewpoints, even at the risk of controversy.\textsuperscript{11}

In his statement regarding the chalked messages in April, Vice President Zdziarski similarly noted the importance of permitting disparate and conflicting viewpoints to the academic enterprise:

In a campus community in which we are dedicated to fostering an inclusive educational environment, but also to the right of everyone to express themselves freely, it is imperative that we acknowledge disparate views and intentionally create forums where issues can be discussed and debated to foster mutual understanding.

DePaul has inextricably bound itself to the principles of freedom of expression at the heart of a university’s mission. Having assured its community of this commitment, DePaul may not abandon them when logistically convenient or politically expedient.

A. DePaul’s Tax-Exempt Status Does Not Require a Ban on Partisan Chalking

Zdziarski’s justification that a ban on partisan chalking is required due to DePaul’s tax-exempt status is without merit. While DePaul, as a 501(c)(3) tax-exempt entity, is itself prohibited from participating in a political campaign,\textsuperscript{12} students and student organizations are presumed to speak as private individuals and not as representatives of the university. Provided that students and student organizations comply with relevant policies applied in a content-neutral manner to all individuals and groups, the university does not face a threat to its tax-exempt status by permitting them to engage in partisan political speech, including chalking.

Because of the frequency of improper university restrictions on students’ and professors’ political activity, FIRE published a \textit{Policy Statement on Political Activity on Campus}, last updated for the 2016 election cycle. In our 2016 \textit{Policy Statement} (enclosed), we addressed the issue of private universities wrongly censoring political expression and activity out of concern for their tax-exempt status:

\textsuperscript{11} \textsc{DePaul University Guiding Principles on Speech and Expression} (2009), https://policies.depaul.edu/documents/Speech_andExpression.pdf.

\textsuperscript{12} \textit{See} 26 C.F.R. 1.501(c)(3)-1(c)(3)(ii)–(iii).
Despite the seeming severity of the restrictions on political activity imposed by the requirements of Section 501(c)(3), however, it is extremely important to note that these prohibitions apply to the institution itself and those reasonably perceived to be speaking on its behalf, not to individual students, faculty, or staff engaged in clearly individual, unaffiliated activity. In 2002 continuing education materials, the IRS made clear that “[i]n order to constitute participation or intervention in a political campaign . . . the political activity must be that of the college or university and not the individual activity of its faculty, staff or students.”

[...]

In sum, to determine the potential impact of student and faculty political activity on a university’s tax-exempt status, some important guidelines should be remembered. First, the political activity of students and faculty, unless reasonably perceived as communicating an official institutional position, generally does not impact tax-exempt status. Second, the use of institutional resources and facilities by student groups for partisan purposes is allowable as long as the groups pay the normal fee (if any) and obtain the use of the resources and facilities through the same process used by all student groups.

To be clear: As long as partisan political activity on campus by students and student groups is neither privileged nor hindered by the institution, and as long as partisan political speech by students and faculty does not overcome the strong presumption that they do not speak for the institution, then the tax-exempt status of universities and colleges will not be affected.

Internal Revenue Service training materials reiterate this understanding, drawing a distinction between “the individual political campaign activities of students” and their universities, and the agency has noted that “[t]he actions of students generally are not attributed to an educational institution unless they are undertaken at the direction of and with authorization from a school official.”

DePaul’s guidelines on political activity, as clarified by Zdziarski’s email, appear to recognize the distinction between institutional and individual speech. Students are permitted, for example, to wear partisan political paraphernalia and register partisan

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13 Judith E. Kindell & John Francis Reilly, Election Year Issues, EXEMPT ORGANIZATIONS CONTINUING PROFESSIONAL EDUCATION TECHNICAL INSTRUCTION PROGRAM FOR FISCAL YEAR 2002, 365 (2002), http://www.irs.gov/pub/irs-tege/eotopic02.pdf; see also Ada Meloy, Legal Watch: Political Activity on Campus, AMERICAN COUNCIL ON EDUCATION (Spring 2012), http://www.acenet.edu/the-presidency/columns-and-features/Pages/Legal-Watch-Litigation-and-regulation-in-academe.aspx (former ACE general counsel noting that “even openly partisan student groups may use an institution’s facilities without violating any rules” because such activities “further the goal of fostering students’ civic engagement while avoiding the perception of institutional bias.”).
student organizations. But DePaul's ban on partisan speech “that could in any way be attributed to DePaul University” is also troublingly overinclusive in that it prohibits chalking or posting political content, and displaying partisan materials in dormitories if in any way visible from outside of a student’s room.

Campus chalking is widely understood to be a forum for students and student organizations to disseminate their varying messages. DePaul’s campus, like many others, is regularly chalked by a diverse array of students and student organizations. There is simply no credible reason to fear that campus chalking will be conflated with official university speech or political positions. Otherwise, universities allowing chalking would find themselves in the untenable position of being officially associated with varying messages that directly contradict one another. The Supreme Court of the United States adopted this commonsense approach when it held that granting religious student organizations access to facilities did not violate the Court’s Establishment Clause jurisprudence. See *Widmar v. Vincent*, 454 U.S. 263, 274 (1981) (allowing religious student groups to utilize facilities “would no more commit the University . . . to religious goals than it is now committed to the goals of the Students for a Democratic Society”) (quoting *Chess v. Widmar*, 635 F.2d 1310, 1317 (8th Cir. 1980)) (internal quotation marks omitted).

Just as no reasonable person would conclude that DePaul adopts the positions of both the DePaul Students for Life and the DePaul Law Students 4 Reproductive Justice by allowing both to communicate their messages on campus, it strains credulity to assert that partisan chalking would be interpreted as institutional rather than student speech.

FIRE is further concerned that this policy pronouncement is pretextual, and a direct result of the offense and discomfort allegedly caused by the College Republicans’ chalking on April 4. Shutting out partisan political discourse altogether during election season does a disservice to all students, both those who wish to be civically engaged and those who might become more so by encountering such engagement.14 We urge you to adhere to the sensible and logical approach that can be derived from Internal Revenue Service materials and Supreme Court precedent and maintain an open forum for student chalking and posting regardless of viewpoint or political content.

**B. DePaul May Not Prohibit Student Groups From Inviting Speakers on the Grounds That Their Speech is Inflammatory**

DePaul’s decisions to bar the College Republicans from hosting Yiannopoulos a second time, and to prohibit the Young Americans for Freedom from hosting Shapiro, are similarly unsupportable. By denying these student groups’ requests on the grounds that Yiannopoulos’ previous presentation was “inflammatory” and “contributed to a hostile

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14 That the policy applies on its face to partisan chalking regardless of ideological position does not alleviate FIRE’s concerns. As the Supreme Court has stated, “[i]t is as objectionable to exclude both a theistic and an atheistic perspective on the debate as it is to exclude one, the other, or yet another political, economic, or social viewpoint.” *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819, 829–31 (1995).
environment,” and that other campuses have seen students protest Shapiro’s appearances, DePaul has engaged in precisely the type of viewpoint discrimination that the principles of free expression forbid.

The principle of freedom of speech does not exist to protect only non-controversial expression; it exists precisely to protect speech that some members of a community may find controversial or 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.” The Court reiterated this fundamental principle in *Snyder v. Phelps*, 562 U.S. 443, 461 (2011), proclaiming that “[a]s a Nation we have chosen . . . to protect even hurtful speech on public issues to ensure that we do not stifle public debate.” The Supreme Court has explicitly held, in rulings spanning decades, that speech cannot be restricted simply because it offends people. See *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.’”)

In discussing matters of societal importance, many of which are highly controversial, one would be hard-pressed to find an opinion that does not deeply offend someone. Indeed, offensive, disrespectful, and charged speech can often be singularly effective in disseminating a particular message—a fact noted by U.S. Magistrate Judge Wayne Brazil in a ruling prohibiting the California State University System from imposing a “civility” requirement on students:

There also is an emotional dimension to the effectiveness of communication. Speakers, especially speakers on significant or controversial issues, often want their audience to understand how passionately they feel about their subject or message. . . . Civility connotes calmness, control, and deference or responsiveness to the circumstances, ideas, and feelings of others. . . . Given these common understandings, a regulation that mandates civility easily could be understood as permitting only those forms of interaction that produce as little friction as possible, forms that are thoroughly lubricated by restraint, moderation, respect, social convention, and reason. The First Amendment difficulty with this kind of mandate should be obvious: the requirement “to be civil to one another” and the directive to eschew behaviors that are not consistent with “good citizenship” reasonably can be understood as prohibiting the kind of communication that it is necessary to use to convey the full emotional power with which a speaker embraces her ideas or the intensity and richness of the feelings that attach her to her cause. . . . In sum, there is a substantial risk that the civility requirement will inhibit or deter use of the forms and means of communication that, to many speakers in circumstances of the greatest First Amendment sensitivity, will be the most valued and the most effective.
College Republicans at San Francisco State University v. Reed, 523 F. Supp. 2d 1005, 1018–20 (N.D. Cal. 2007).

Moreover, to the extent Zdziarski’s assertion that Yiannopoulos’ speech “contributed to a hostile environment” is an attempt to justify the ban based on discriminatory harassment law, this justification is also meritless.

In Davis v. Monroe County Board of Education, 526 U.S. 629 (1999), the Supreme Court set forth a strict definition of student-on-student (or peer) harassment. In order for student conduct (including expression) to constitute actionable harassment, it must be (1) unwelcome, (2) discriminatory on the basis of gender or another protected status, (3) directed at an individual, and (4) “so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school.” Id. at 650. By definition, this includes only extreme and typically repetitive behavior—conduct so serious that it would prevent a reasonable person from receiving his or her education. The Department of Education’s Office for Civil Rights (OCR), the federal agency responsible for implementing and enforcing federal anti-discrimination laws on our nation’s campuses, made clear in its 2001 Revised Sexual Harassment Guidance that its definition of harassment is “consistent” with and “intended to capture the same concept” as the Court’s definition in Davis.

Further, in a July 28, 2003, “Dear Colleague” letter sent to the presidents of public and private universities nationwide, former OCR Assistant Secretary Gerald S. Reynolds made clear to colleges that “in addressing harassment allegations, OCR has recognized that the offensiveness of a particular expression, standing alone, is not a legally sufficient basis to establish a hostile environment under the statutes enforced by OCR.” Reynolds further cautioned:

Some colleges and universities have interpreted OCR’s prohibition of “harassment” as encompassing all offensive speech regarding sex, disability, race or other classifications. Harassment, however, to be prohibited by the statutes within OCR’s jurisdiction, must include something beyond the mere expression of views, words, symbols or thoughts that some person finds offensive. Under OCR’s standard, the conduct must also be considered sufficiently serious to deny or limit a student’s ability to participate in or benefit from the educational program.15

A 2010 “Dear Colleague” letter regarding bullying from former OCR Assistant Secretary Russlynn H. Ali explicitly reaffirmed the 2003 “Dear Colleague” letter’s understanding of the relationship between the First Amendment and harassment.16

OCR’s repeated guidance and warnings make clear that Yiannopoulos’ speech does not constitute discriminatory harassment. Yet, as Zdziarski’s email makes clear, Yiannopoulos was banned expressly because some found his views offensive. Additionally, because anyone who did not want to hear Yiannopoulos speak could simply avoid attending the event, his speech could not possibly have been pervasive enough to deny any DePaul student the ability to participate in educational programs. Although his expression may have been upsetting to some or even many, Yiannopoulos’ speech did not come close to creating a hostile educational environment for students or in any way cross the threshold from protected expression into discriminatory conduct. Invoking the phrase “hostile environment” as a talisman to justify banning the College Republicans from re-inviting Yiannopoulos is unjustifiable and unsupported by the law.

If speakers are to be banned from DePaul’s campus on the basis that their views are “inflammatory,” campus dialogue will be reduced to banality, at best. Moreover, students of all ideological stripes have been sent a message: if they wish to prevent their ideological opponents from hosting a speaker on campus, they need only disrupt the event to induce administrators to prevent future appearances. In order to eliminate this perverse incentive, and uphold its advertised commitment to freedom of expression, DePaul must immediately and forcefully inform its student population that student organizations will not be prohibited from inviting controversial speakers simply because some on campus are offended by the speakers’ views and caused disruption at previous events.

C. DePaul’s Abuse of its Event Security Policy Violates Students’ Expressive Rights

From May 2016 to the present, DePaul has wielded its event security policy to stifle controversial speech, to the detriment of the expressive rights it promises students.

i. Last-minute requirements imposed on the College Republicans

By requiring that the College Republicans, less than two weeks before the event, pay nearly $1,000 for additional security officers, DePaul unacceptably affixed a price tag to the group’s expression. By conditioning the financial burden imposed on a student group on the anticipated reaction to the viewpoints expressed at an event, DePaul allows for the exercise of a “heckler’s veto” by anyone wishing to cause difficulties for a student group engaging in controversial or unpopular expression.

DePaul’s event security policy for the Lincoln Park Student Center establishes that security may be required within the ratios of one officer per 50 attendees to one officer per 75 attendees. DePaul contracts security officers; student organizations do not have the ability to select their own security provider. When the College Republicans initially reserved space for Yiannopoulos’ presentation, they arranged for eight security officers to staff the event, in accordance with policy. Only after the event generated significant controversy on campus did DePaul require the College Republicans to hire additional officers at a cost of nearly $1,000, bringing the ratio down to one officer per 34 attendees—a significantly higher ratio than contemplated by DePaul’s policy.

The imposition of additional security fees based on the controversial nature of a speaker is exactly what the Supreme Court forbade when it admonished that “[s]peech cannot be financially burdened, any more than it can be punished or banned, simply because it might offend a hostile mob.” *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 134–35 (1992).

DePaul has provided a dangerous blueprint to those who would suppress the viewpoints of groups whose views they dislike in just the manner *Forsyth* sought to prohibit. Any student or community member could muster public opposition to an event and declare their intent to protest forcefully, in the hope that DePaul would respond by financially burdening the group to the point that it can no longer afford to exercise its right to free speech. This kind of heckler’s veto is a perverse and unacceptable outcome entirely at odds with DePaul’s stated commitment to its students’ expressive rights.

This abuse is made possible by the fact that DePaul’s policies grant administrators nearly unchecked discretion to impose security fees as they see fit. DePaul policy fails to specify exactly how its administrators determine whether and how many security officers are required for an event. The lack of clear, viewpoint-neutral guidelines allows for an unacceptable degree of administrative discretion and arbitrary, viewpoint-based determinations.

The *Forsyth* Court noted that “[a] government regulation that allows arbitrary application is inherently inconsistent with a valid time, place, and manner regulation because such discretion has the potential for becoming a means of suppressing a particular point of view.” *Forsyth*, 505 U.S. at 130 (emphasis added) (internal quotation marks omitted). Indeed, in *Forsyth*, “the administrator based the fee on his own judgment of what would be reasonable.” *Id.* at 132 (emphasis added). The Court found that the county’s implementation of the ordinance did not rely on “narrowly drawn, reasonable and definite standards guiding the hand of the Forsyth County administrator,” and thus ruled that “[n]othing in the law or its application prevents the official from encouraging some views and discouraging others through the arbitrary application of fees.” *Id.* at 133 (emphasis added) (internal citations and quotation marks omitted).

If DePaul truly values its students’ right to invite and hear speakers of their choosing, any administrative imposition of security fees upon a student group must be guided by
narrowly-drawn, viewpoint- and content-neutral, reasonable, definite, and published standards.

**ii. DePaul’s Bans on Yiannopolous and Shapiro**

DePaul cites the inability to provide sufficient security, drawing on past experiences, as a justification for prohibiting student groups from inviting Yiannopoulos and Shapiro to speak on campus in the future.

In addition to the above-noted reason that such a decision violates the expressive rights of the College Republicans and Young Americans for Freedom, that DePaul would forbid these organizations from inviting the speakers of their choice on the grounds that it would be unable to provide adequate security is shockingly unfair.

The College Republicans were forced to pay nearly $1,000 for eight more security guards than DePaul initially required. When protesters began to disrupt the event, the security guards that the organization had no option but to pay for, refused to act. When the College Republicans called the police, DePaul administrators allegedly instructed them to do nothing as well. DePaul simply may not force students to pay for security officers of the university’s choosing, allow those officers to refuse to provide the service they were paid for, and then use the ineffectiveness of the security officers to justify prohibiting future speaking engagements. If DePaul is truly committed to freedom of expression, it can and must ensure that students are permitted to invite and hear speakers without the type of disruption that the university allowed to occur in May.

**III. Conclusion**

DePaul’s actions in these matters stand in stark opposition to your own statements made to FIRE over a decade ago. On December 12, 2005, you wrote to then-president of FIRE David French defending DePaul’s decision to prohibit the College Republicans from posting flyers criticizing Ward Churchill, who had been invited to speak on campus. In that letter, you explained DePaul’s reasoning as follows:

Advertisements of speakers are posted. Denunciations of speakers are not posted. Disagreements with invited speakers may be expressed in other venues, such as the student newspaper, dialogue sessions, and public protest opportunities, all of which Mr. Hahn or his colleagues, to their great credit, used to good effect.

DePaul welcomes speakers of a wide variety of positions on a wide variety of topics every year. The university is committed to working with any student group in bringing speakers to campus. Students have the opportunity to hear these ideas first-hand from the women and men - sometimes famous and at other times infamous - who advocate them. In many cases, students will reject these ideas, and rightly so. But they will do so after having heard them
first-hand. DePaul has a long history of supporting academic freedom and free speech. It would be a mistake to characterize the campus otherwise, based on the factually incorrect report you have received. We ardently support an open marketplace of ideas but insist that our faculty, staff and students adhere to the responsibility for maintaining an atmosphere of civilized and tolerant discourse, regardless of the speaker’s affiliations and opinions.

If DePaul University is truly insistent that its community allow invited speakers to express their views regardless of affiliations or opinions, your administration has not shown it over the course of these events. Your university may not lay claim to the intellectual vitality that results from freedom of expression and the marketplace of ideas while simultaneously burdening and banning controversial speech. If its promises of freedom of expression and inquiry are to mean anything, **DePaul must immediately rectify these grave errors by:**

1. Amending its security fee policies to include objective, content-neutral criteria and to state clearly that events featuring controversial speakers will not be saddled with prohibitive security requirements;
2. Permitting the College Republicans and Young Americans for Freedom to proceed with their events featuring Milo Yiannopoulos and Ben Shapiro, respectively; and
3. Clarifying to the entire DePaul University community that student organizations may invite speakers of their choosing regardless of the speaker’s viewpoint.

FIRE is committed to using all of the resources at our disposal to see this matter through to a just conclusion. We request a response to this letter by September 22, 2016.

Sincerely,

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

cc:
Eugene L. Zdziarski, Vice President of Student Affairs
Joe Mroczkowski, Student Center Director
Robert Janis, Vice President of Facilities Operations
Robert Wachowski, Director of Public Safety