

FIRE

Foundation for Individual
Rights and Expression

December 7, 2023

Santa J. Ono
Office of the President
University of Michigan
1109 Geddes Ave
Ann Arbor, Michigan, 48109-1079

Sent via U.S. Mail and Electronic Mail (presoff@umich.edu)

Dear President Ono:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned by the University of Michigan's failure to address the substantial disruption of a recent campus event held by its Young Americans for Freedom chapter featuring political commentator Josh Hammer. The First Amendment requires public universities to protect students' free speech rights by making good faith efforts to prevent severe disruptions to expressive events as they occur. Refusing to address disruptors ratifies an unconstitutional "heckler's veto"² and will only incentivize more threats to students' free speech rights, deterring students from expressing themselves and/or from hosting potentially controversial speakers on campus.

Our concerns arise from U-M's apparent inaction at the November 16 event, "Israel's Righteous Fight Against Jihadism."³ In the audience were those seeking to listen to Hammer's remarks

¹ For more than 20 years, FIRE has defended freedom of expression, conscience, and religion, and other individual rights on America's college campuses. You can learn more about our recently expanded mission and activities at [thefire.org](https://www.thefire.org).

² A heckler's veto occurs when protestors substantially disrupt an event via violence or other means to prevent a speaker from speaking. *First Amendment Glossary*, FIRE (last visited Dec. 6, 2023), <https://www.thefire.org/research-learn/first-amendment-glossary>; see also Zach Greenberg, *Rejecting the 'heckler's veto'*, FIRE (June 14, 2017), <https://www.thefire.org/rejecting-the-hecklers-veto>; Adam Goldstein, *Dear University of North Texas: The 'Heckler's veto' is not a good thing*, ETERNALLY RADICAL IDEA (Nov. 5, 2020), <https://www.thefire.org/dear-university-of-north-texas-the-hecklers-veto-is-not-a-good-thing>.

³ *Josh Hammer at the University of Michigan*, YOUNG AMERICANS FOR FREEDOM (last visited Nov. 29, 2023), <https://yaf.org/events/josh-hammer-at-the-university-of-michigan>. The following is our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us.

and about 25 protesters opposed to his or YAF's expressed views. Several university police officers and administrators were also present.⁴

Soon after Hammer started speaking, protesters first began coughing loudly and then ultimately shouting to prevent audience members from hearing the speech.⁵ This substantial disruption continued for approximately 30 minutes, during which Hammer strained to be heard over the din.⁶ When YAF asked U-M officials present to address the disruption, they said they lacked the authority to instruct the protestors to leave or to remove them from the venue.⁷ Instead, officials suggested YAF pause the event to allow the protest to continue.⁸ At one point, a U-M administrator did attempt to announce that the disruptors' conduct violated university policy, but the noise was too loud for the announcement to be heard.⁹ The disruption lasted approximately 35 minutes of the scheduled hour-long event, forcing the event to conclude around 8:15 PM and cutting short the planned Q&A session.¹⁰

As a public university bound by the First Amendment,¹¹ U-M must ensure student groups can exercise their expressive rights, including hosting speakers.¹² When disruptors target such events, state educational institutions must make "bona fide efforts" to protect the group's expressive rights.¹³ Such efforts to address the disruption are "the proper response to potential

⁴ Josh Hammer, *The University of Michigan Failed To Protect My Right To Free Speech*, NEWSWEEK (Nov. 24, 2023), <https://www.newsweek.com/university-michigan-failed-protect-my-right-free-speech-opinion-1846259>.

⁵ Jaryn Crouson, *Violent Protesters Disrupt Speech Condemning Hamas; University Police Sit Back & Do Nothing*, YOUNG AMERICANS FOR FREEDOM (Nov. 17, 2023), <https://yaf.org/news/violent-protesters-disrupt-speech-condemning-hamas-university-police-sit-back-do-nothing>; Josh Hammer (@Josh_hammer), X (Nov. 16, 2023, 10:57 PM), https://twitter.com/josh_hammer/status/1725362378332676431 [<https://perma.cc/Y3GE-ZHAT>] (briefly depicting the protestors' disruption of the event). Young Americans for Freedom (@YAF), X, (Nov. 16, 2023, 7:30 PM), <https://twitter.com/yaf/status/1725310282031865872?s=20> [<https://perma.cc/F49D-58A9>] (same).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Hammer, *supra* note 4.

¹¹ *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 quotations and citation omitted).

¹² *E.g.*, *Gay Students Org. of the Univ. of N.H. v. Bonner*, 367 F. Supp. 1088, 1096 (D.N.H. 1974) (the "right" of students "to hear speakers of their own choice" is one of the "activities traditionally protected by the First Amendment."); *Brooks v. Auburn Univ.*, 296 F. Supp. 188, 190–91 (M.D. Ala. 1969) (the First Amendment protects "the rights of students and faculty to hear a speaker invited to the campus."); *Stacy v. Williams*, 306 F. Supp. 963, 975 (N.D. Miss. 1969) (finding that student group's right to invite political candidates to campus is protected by the First Amendment); *see also Stanley v. Georgia*, 394 U.S. 557, 564 (1969) (It is "well established" that the First Amendment confers and protects the right to speak as well as "the right to receive information and ideas.").

¹³ *Bible Believers v. Wayne Cnty.*, 805 F.3d 228, 255 (6th Cir. 2018).

and actual violence” and must take place before authorities “suppress legitimate First Amendment conduct as a prophylactic measure.”¹⁴ The United States Court of Appeals for the Sixth Circuit, whose decisions bind U-M, has explained, in holding that even violent the reaction of a hostile mob cannot justify cutting off a speaker’s protected expression, that:¹⁵

Maintenance of the peace should not be achieved at the expense of the free speech. The freedom to espouse sincerely held religious, political, or philosophical beliefs, especially in the face of hostile opposition, is too important to our democratic institution for it to be abridged simply due to the hostility of reactionary listeners who may be offended by a speaker’s message.

Yet at U-M, officials ratified an impermissible “heckler’s veto” by making only insubstantial efforts to address the disruptions of YAF’s speaker. These efforts did not dispel the disruption, and U-M’s acquiescence to the interference rewarded the disruptors and prevented YAF from exercising its First Amendment rights. This lack of action will incentivize threats to future events and discourage students from bringing politically diverse speakers to campus, putting both the expressive rights and the safety of U-M students in jeopardy.

U-M has both the authority and the obligation to address disruptions to expressive events.¹⁶ Its own policies clearly state that: “Canceling, stopping an event, adjourning to another time or place, or allowing protracted interruption of a speech, meeting, or performance *is inconsistent with full respect for the rights of free expression* and communication of those present.”¹⁷ And contrary to averments at the event, U-M empowers its police to remove protestors from a venue if they “do not stop their undue interference” with an event.¹⁸ While U-M must allow forms of protest that do not cause substantial disruption, such as holding signs or fleeting remarks, it must enforce its policies by promptly removing those who prevent the audience from hearing the speaker.

At this time of heightened tension on campus, it is vitally important that university leaders deter disruptions to expressive events, ensure campus safety, and protect students’ First Amendment rights. FIRE calls on U-M to make bona fide efforts to address substantial disruptions to students’ expressive events as they occur, and to educate students on the

¹⁴ *Collins v. Jordan*, 110 F.3d 1363, 1371–72 (9th Cir. 1996); *Bible Believers*, 805 F.3d at 255 (“In a balance between two important interests—free speech on one hand, and the . . . power to maintain the peace on the other—the scale is heavily weighted in favor of the First Amendment.”).

¹⁵ *Bible Believers*, 805 F.3d at 252.

¹⁶ U-M’s policy on Freedom of Speech and Artistic Expression requires the university address disruptive conduct that attempts to prevent individuals from engaging in expressive activity. *Freedom of Speech and Artistic Expression*, UNIV. OF MICH. (updated Apr. 1, 1993), <https://spg.umich.edu/sites/default/files/policies/601x01.pdf> [<https://perma.cc/E5N8-F7AE>].

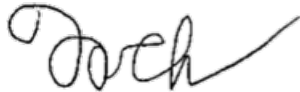
¹⁷ *Id.* (emphasis added).

¹⁸ *Id.*

distinction between protected protest and disruptive conduct that prevents others from exercising their own freedom of speech.

FIRE would be pleased to work with U-M to protect campus free speech, and we hope this letter can serve as useful start to that process—we request receipt of your response no later than close of business December 22, 2023.

Sincerely,

A handwritten signature in black ink, appearing to read "Zach", with a long, sweeping flourish extending to the right.

Zachary Greenberg
Senior Program Officer, Student Organizations, Campus Rights Advocacy

Cc: Laura Blake Jones, Associate Vice President and Dean of Students
Eddie L. Washington, Executive Director, Department of Public Safety and Security