



October 17, 2024

Jonathan R. Alger  
Office of the President  
American University  
4400 Massachusetts Avenue  
Washington, DC 20016-8060

*Sent via U.S. Mail and Electronic Mail (president@american.edu)*

Dear President Alger:

FIRE<sup>1</sup> is concerned by the chill on student expression posed by American University administrators summoning the AU College Republicans to a meeting to discuss a complaint filed against AUCR for posting a meme referencing former President Donald Trump's recent allegations that Haitian immigrants are eating pets. While Trump's allegations, and thus AUCR's post, are deeply offensive to many, the post does not fall into any of the narrow exceptions to AU's free expression policy. We urge AU to publicly assure students that they will not be subject to investigation or discipline for protected political advocacy on social media, and revise its procedure for handling complaints about protected student speech to ensure it is not unnecessarily chilling student expression.

AUCR shared the political meme on Instagram on September 17.<sup>2</sup> The meme featured an AI-generated image of Trump holding a cat and a duck in each arm captioned, "Trump will save the ducks and kittens!"<sup>3</sup> Originally posted on X by the House Judiciary GOP with the caption, "Protect our ducks and kittens in Ohio!"<sup>4</sup> the meme likely refers to an allegation raised by Trump during September's presidential debate that Haitian immigrants in Springfield, Ohio

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<sup>1</sup> For more than 20 years, the Foundation for Individual Rights and Expression has defended freedom of expression, conscience, and religion, and other individual rights on America's college campuses. You can learn more about our mission and activities at [thefire.org](https://thefire.org).

<sup>2</sup> The recitation here reflects our understanding of the pertinent facts based on public information. We appreciate that you may have additional information and invite you to share it with us.

<sup>3</sup> Tyler Davis, *American University College Republicans criticized for sharing harmful rhetoric about Haitians*, THE EAGLE (Oct. 2, 2024, 8:00 AM), <https://www.theeagleonline.com/article/2024/10/american-university-college-republicans-criticized-for-sharing-harmful-rhetoric-about-haitians>.

<sup>4</sup> AUCR's Instagram post sharing the meme no longer appears on its profile. The original X post is available at House Judiciary GOP (@JudiciaryGOP), X (Sep. 9, 2024, 10:44 AM), <https://x.com/JudiciaryGOP/status/1833154509222129884> [<https://perma.cc/H4GX-QCFG>].

are eating pets.<sup>5</sup> According to the student newspaper *The Eagle*, AU student Phia Joseph reported AUCR’s post to you and other AU administrators via email because it “is not freedom of speech, but blatant racism.”<sup>6</sup> The Center for Student Involvement reviewed the complaint and determined it did not violate AU policy.<sup>7</sup> In accordance with AU’s procedure for handling complaints that do not allege misconduct,<sup>8</sup> CSI administrators met with AUCR to relay Joseph’s concerns, and AUCR agreed to voluntarily delete the post.<sup>9</sup>

AU correctly concluded that the meme constitutes protected expression. Nonetheless, summoning the group to meet with administrators contravenes AU’s stated commitment to “protecting free expression for all members of its community,” including on social media,<sup>10</sup> as well as its obligation to respect free expression as a university accredited by the Middle States Commission on Higher Education.<sup>11</sup> AU’s free speech promises represent a legal and moral duty, the contours of which students will reasonably look to First Amendment principles to understand.<sup>12</sup> AU’s regulation of student expression must therefore comport with the First Amendment’s “bedrock principle” of viewpoint neutrality.<sup>13</sup> Adherence to this principle—that in a free society, it simply is not up to those in positions of authority to determine what and how issues may be discussed—is *most* critical when faced with speech that may be unpopular or that may offend some, many, or even all listeners.<sup>14</sup> If AU’s commitment to “protecting free

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<sup>5</sup> Mike Catalini et al., *Trump falsely accuses immigrants in Ohio of abducting and eating pets*, AP (Sept. 11, 2024, 6:16 PM), <https://apnews.com/article/haitian-immigrants-vance-trump-ohio-6e4a47c52b23ae2c802d216369512ca5>.

<sup>6</sup> Davis, *supra* note 3. Joseph also reported AUCR’s post to administrators at the Center for Student Involvement and the Center for Diversity and Inclusion.

<sup>7</sup> Email from Sarah G. Baldassaro, Chief of Staff, to Connor Murnane, Campus Advocacy Chief of Staff (Oct. 10, 2024, 12:42 PM).

<sup>8</sup> *Recognized Student Organization Manual*, Recognized Student Organization Accountability and Resolution Procedure, AMER. UNIV. CENTER FOR STUDENT INVOLVEMENT (rev. Aug. 28, 2024), <https://www.american.edu/student-affairs/student-involvement/upload/csi-recognized-student-organizations-manual-final-2024.pdf> [<https://perma.cc/S95L-XSZ9>].

<sup>9</sup> Email from Baldassaro to Murnane, *supra* note 7; *see also* Davis, *supra* note 3 (reporting that Matt Galewski, a senior associate director in the Center for Student Involvement, confirmed in an email to Joseph that the administration was “meeting with College Republicans to address the matter”).

<sup>10</sup> *University Policy: Freedom of Expression and Expressive Conduct*, Policy Statement, AMER. UNIV. 1 (rev. Aug. 29, 2022), <https://www.american.edu/policies/au-community/upload/freedom-of-expression-and-expressive-conduct-policy.pdf> [<https://perma.cc/X28C-2XEY>] (“Members of the AU community retain their rights to free expression within the campus community and in non-University settings, including on their personal social media accounts.”).

<sup>11</sup> *Standards for Accreditation and Requirements of Affiliation*, MIDDLE STATES COMM. ON HIGHER EDUC. (14th ed. 2023), <https://www.msche.org/standards/fourteenth-edition/> [<https://perma.cc/E7HB-DGXN>].

<sup>12</sup> *See Chenari v. George Washington Univ.*, 847 F.3d 740, 744 (D.C. Cir. 2017) (confirming that “the relationship between a university and its students is contractual in nature”); *Doe v. Am. Univ.*, No. 19-CV-03097, 2020 WL 5593909, at \*11 (D.D.C. Sept. 18, 2020) (holding that “the Student Code of Conduct and the Discrimination and Sexual Harassment Policy form a part of that [contractual] relationship” which exists between the student and the university).

<sup>13</sup> *Texas v. Johnson*, 491 U.S. 397, 414 (1989).

<sup>14</sup> *Snyder v. Phelps*, 562 U.S. 443, 458 (2011); *Iancu v. Brunetti*, 139 S.Ct. 2294, 2301 (2019); *see also 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

expression for all members of its community” means anything, it means that AU may not punish a member of that community “simply because it finds the views expressed by any group to be abhorrent.”<sup>15</sup>

As commentary about immigration, an issue of clear political and social importance, AUCR’s social media post falls squarely within any reasonable understanding of protected political advocacy—the area in which protection for speech “is at its zenith.”<sup>16</sup> Indeed, it is difficult to imagine a clearer such case than that of a campus political group reposting a message from members of the Judiciary Committee of the United States House of Representatives regarding a recent presidential debate. Such speech is protected unless otherwise accompanied by expression or conduct falling within one of the recognized, narrowly defined categories of unprotected speech, such as incitement,<sup>17</sup> true threats,<sup>18</sup> or discriminatory harassment.<sup>19</sup> AU policy reflects the First Amendment standard.<sup>20</sup> As AU acknowledges, AUCR’s post clearly falls well short of any category of unprotected speech.<sup>21</sup>

Nor does the veracity of the factual assertions underlying the meme render the speech unprotected.<sup>22</sup> False and misleading speech is “inevitable in free debate” and remains broadly protected,<sup>23</sup> with very limited exceptions, such as in cases of defamation and fraud.<sup>24</sup> Even if the imputed claim about Haitian migrants is factually wrong, AUCR’s Instagram post does not involve the type of material gain or legally cognizable harm that sometimes justifies regulation of false speech.<sup>25</sup>

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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 omitted).

<sup>15</sup> *Healy*, 408 U.S. at 187–88.

<sup>16</sup> *Meyer v. Grant*, 486 U.S. 414, 425 (1988); see also, e.g., *Snyder*, 562 U.S. at 452 (“[S]peech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.”).

<sup>17</sup> *Brandenburg v. Ohio*, 395 U.S. 444, 447–48 (1969) (incitement is speech advocating violence that is both intended and likely to produce imminent lawless action by others).

<sup>18</sup> *Counerman v. Colorado*, 600 U.S. 66, 74 (2023) (“True threats are ‘serious expression[s]’ conveying that a speaker means to ‘commit an act of unlawful violence.’”) (quoting *Virginia v. Black*, 538 U.S. 343, 359 (2003)).

<sup>19</sup> *Davis v. Monroe Cnty. Bd. of Ed.*, 526 U.S. 629, 650 (1999) (punishable harassment is unwelcome, discriminatory on the basis of gender or another protected status, and “so severe, pervasive, and objectively offensive that it can be said to deprive the victim[] of access to the educational opportunities of benefits provided by the school”).

<sup>20</sup> *University Policy: Freedom of Expression and Expressive Conduct*, Limitations on the Right to Free Expression, *supra* note 10 at 4 (excepting from the free expression policy threats, incitement, and discriminatory harassment).

<sup>21</sup> Email from Baldassaro to Murnane, *supra* note 7.

<sup>22</sup> “Humor is an important medium of legitimate expression .... Despite its typical literal ‘falsity,’ any effort to control it runs severe risks to free expression as dangerous as those addressed to more ‘serious’ forms of communication.” *Moore*, 548 F. Supp. 3d at 346 (quoting Robert D. Sack, SACK ON DEFAMATION: LIBEL, SLANDER, AND RELATED PROBLEMS § 5:5.2, at 5-121 (5th ed. 2017)).

<sup>23</sup> *Hustler Mag. V. Falwell*, 485 U.S. 46, 52 (1988).

<sup>24</sup> *United States v. Alvarez*, 567 U.S. 709, 718 (2012) (rejecting argument that “false statements, as a general rule, are beyond constitutional protection”).

<sup>25</sup> See *id.* (explaining that the Court has historically recognized false speech as unprotected only in those instances where there is reliance or resulting harm, such as found in perjury, fraud, or defamation).

Despite AU sharing with us the view that AUCR did not violate policy, and that the group’s post is protected by the university’s free expression policies, administrators nonetheless summoned AUCR to a meeting to discuss the complaint.<sup>26</sup> This meeting, regardless of whether it leads to formal discipline, chills student expression, as even the implicit threat of discipline is likely to silence a student of ordinary firmness from engaging in similar speech in the future.<sup>27</sup> Where complaints appear to allege no more than protected speech, the correct approach, under AU’s free expression promises, is to have administrators conduct a brief internal review, as was done here. If the review confirms the speech is solely protected expression, as it did in this case, AU must close the case without ever notifying the speaker—thus avoiding a chilling effect—while offering any appropriate support to the aggrieved complainant.<sup>28</sup> AU’s resolution process does not follow this approach. Instead, it requires administrators to address complaints directly with the speaker and “develop an action plan to ... prevent future occurrences,” which “may include required educational interventions, attendance at educational workshops, training, constitution reviews, or other appropriate measures.”<sup>29</sup> Student organizations are required to “implement the action plan within the agreed timeframe” and may be disciplined if they fail to comply.<sup>30</sup> These actions are inappropriate for complaints that concern only protected speech, risk unnecessarily chilling future student speech, and are inconsistent with AU’s free speech promises.

We request a substantive response to this letter by October 31, confirming that AU will honor its laudable commitments to free expression by publicly assuring students that they will not be subject to investigation or discipline for protected political advocacy and amending its procedures for handling complaints about protected student speech to ensure it does not chill protected expression.

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<sup>26</sup> See Email from Baldassaro to Murnane, *supra* note 7.

<sup>27</sup> *Mendocino Env’tl. Ctr. v. Mendocino Cty.*, 192 F.3d 1283, 1300 (9th Cir. 1999); see also *Levin v. Harleston*, 966 F.2d 85, 89 (2d Cir. 1992) (holding threat of discipline implicit in college president’s creation of ad hoc committee to study whether professor’s outside speech could be considered misconduct “was sufficient to create a judicially cognizable chilling effect on [the professor’s] First Amendment rights”); *White v. Lee*, 227 F.3d 1214, 1228 (9th Cir. 2000). Of course, none of this shields AUCR or its members from criticism by students, faculty, and the broader community, such as the criticism expressed by several students quoted in *The Eagle*. See Davis, *supra* note 3. Criticism is a form of “more speech,” the remedy to offensive expression preferred to censorship. *Whitney v. California*, 274 U.S. 357, 377 (1927); see also *Alvarez*, 567 U.S. at 727 (“The remedy for speech that is false is speech that is true. ... The response to the unreasoned is the rational; to the uninformed, the enlightened; to the straight-out lie, the simple truth.”).

<sup>28</sup> See Graham Piro & Alex Morey, *Report: Stanford student may need to ‘take accountability,’ ‘acknowledge harm’ for reading Hitler’s ‘Mein Kampf’*, FIRE, Jan. 25, 2023, <https://www.thefire.org/news/report-stanford-student-may-need-take-accountability-acknowledge-harm-reading-hitlers-mein>; Haley Gluhanich, *VICTORY: Stanford adopts FIRE recommendation, will no longer notify students accused of engaging in protected speech*, FIRE, Apr. 18, 2023, <https://www.thefire.org/news/victory-stanford-adopts-fire-recommendation-will-no-longer-notify-students-accused-engaging>.

<sup>29</sup> See *Recognized Student Organization Manual*, *supra* note 8.

<sup>30</sup> *Id.*

Sincerely,

A handwritten signature in black ink that reads "Jessie Appleby". The signature is written in a cursive, flowing style.

Jessie Appleby  
Program Officer, Campus Rights Advocacy

Cc: Raymond Ou, Vice President of Student Affairs  
Matt Galewski, Senior Associate for Training and Development, Center for Student  
Involvement  
Traevena Byrd, Vice President, General Counsel and Board Secretary