



October 31, 2024

Angela Lauer Chong and Yvette Alex-Assensoh
Division of Student Life
University of Oregon
164 Oregon Hall
Eugene, Oregon 21801

URGENT

Sent via U.S. Mail and Electronic Mail (alchon@uoregon.edu and vpinclusion@uoregon.edu)

Dear Vice Presidents Chong and Alex-Assensoh:

FIRE, a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned by your October 29 “Halloween Reminders” email to the student body, which impermissibly chills student expression and runs afoul of the University of Oregon’s obligation as a public university to protect free expression.² While dressing in costumes that depict other cultures or invoke stereotypes may be considered offensive by some, or even many, the right to engage in this form of expression is undoubtedly protected by the First Amendment. We therefore urge you to clarify to students that they will be neither investigated nor punished for wearing “offensive” or “unacceptable” costumes.

Your email to students reads, in relevant part:³

Costumes that reinforce negative stereotypes of cultures and groups [or] that reinforce racism, sexism, homophobia, or classism are offensive and unacceptable. It is unacceptable to

¹ For more than 20 years, FIRE has defended freedom of expression, conscience, and religion, and other individual rights on America’s university campuses. You can learn more about our mission and activities at thefire.org.

² *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 omitted).

³ Email from Angela Lauer Chong, Vice President for Student Life, and Yvette Alex-Assensoh, Vice President for Equity and Inclusion, to University of Oregon students (Oct. 29, 2024) (on file with author).

“dress up” as Native American, in Black face, as an immigrant, or inappropriately depict any other cultural, social, religious, or political identity. ... [W]e expect everyone at the UO to dress in ways that are respectful to all members of our community.

It is well established that freedom of expression “does not end at the spoken or written word” but includes conduct “intend[ed] to convey a particularized message” likely to “be understood by those who viewed it” as expressive.”⁴ This is what protects the act of saluting or refusing to salute a flag⁵ or wearing black armbands to protest a war.⁶ At UO, students have the expressive right to dress in costumes for Halloween, whether as a joke, to express a sincere opinion, or for any other expressive purpose—regardless of whether others find it offensive.

The Supreme Court has repeatedly, consistently, and clearly held that expression may not be restricted on the basis that others find it offensive—or even hateful.⁷ Courts have also found protected expression in “racially-charged emails” to a college listserv,⁸ “offensive and sophomoric” skits depicting women and minorities as derogatory stereotypes,⁹ and expression by student organizations that the public at the time viewed as “shocking and offensive.”¹⁰ The First Amendment’s protection of subjectively offensive expression applies even when the expression has only entertainment value,¹¹ such as “black face.”¹²

Since UO may not investigate or discipline students for protected expression, emails to students from high-level administrators telling them that certain costumes are flatly “unacceptable” creates an impermissible chill due to the implicit threat of discipline.¹³ UO may

⁴ *Texas v. Johnson*, 491 U.S. 397, 404, 406 (1989).

⁵ *W. Va. Bd. of Educ. v. Barnette*, 319 U.S. 624, 633–34 (1943).

⁶ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 505-06 (1969).

⁷ *Matal v. Tam*, 582 U.S. 218, 245 (2017) (refusing to uphold a limitation on speech viewed as “hateful” or demeaning “on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground” even under the relaxed scrutiny applied to commercial speech); *Johnson*, 491 U.S. at 414 (burning the American flag is protected); *Cohen v. California*, 403 U.S. 15, 25 (1971); *Cox v. Louisiana*, 379 U.S. 536, 557 (1965).

⁸ *Rodriguez v. Maricopa Cnty. Comm. Coll. Dist.*, 605 F.3d 703, 705 (9th Cir. 2009) (the First Amendment “embraces such a heated exchange of views,” especially when they “concern sensitive topics like race, where the risk of conflict and insult is high”).

⁹ *Iota Xi Ch. of Sigma Chi Fraternity v. George Mason Univ.*, 993 F.2d 386 (4th Cir. 1993).

¹⁰ *Gay Students Org. of Univ. of N.H. v. Bonner*, 509 F.2d 652, 661 (1st Cir. 1974).

¹¹ *Winters v. New York*, 333 U.S. 507, 510 (1948) (offensive magazine enjoyed First Amendment protection because “[t]he line between the informing and the entertaining is too elusive for the protection of that basic right. ... What is one man’s amusement, teaches another’s doctrine.”); see also *Matal*, 582 U.S. at 243 (“Giving offense is a viewpoint.”).

¹² *Berger v. Battaglia*, 779 F.2d 992, 999 (4th Cir. 1985).

¹³ *Levin v. Harleston*, 966 F.2d 85, 89 (2d Cir. 1992).

ask students to carefully consider their costume choices, but it may not imply that those choices violate university rules.¹⁴

Of course, none of this shields students from every consequence arising from their costume choices, including criticism by other students, faculty, or the broader community. Criticism is a form of “more speech,” the preferred remedy to offensive expression.¹⁵ Nor does it bar UO from offering supportive measures to students who may be offended or upset by certain costumes. But UO must not violate its constitutional obligations by using institutional punishment, or the implicit threat of punishment, to censor protected student expression.

Given the urgent nature of this matter, we request a substantive response by the end of the day on November 4, 2024, confirming UO clarified to its students that no one will be investigated or punished for wearing offensive” or “unacceptable” costumes.

Sincerely,



Aaron Corpora
Program Officer, Campus Rights Advocacy

Cc: Karl Scholz, President

¹⁴ Samantha Harris, *As Halloween Approaches, University Administrators Once Again Set Their Sights on “Offensive” Costumes*, FIRE (Oct. 29, 2013), <https://www.thefire.org/news/halloween-approaches-university-administrations-once-again-set-their-sights-offensive-costumes>.

¹⁵ *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring).