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Toyia Younger  
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Iowa State University  
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Re: Unconstitutional First Amendment Policy on Campus: Tabling Policy

Dear Dr. Younger:

We are writing to you regarding Iowa State University's policy titled, "MU Booth/Table Request." We are concerned that the policy infringes on students' First Amendment rights because it is an unreasonable restriction on the time, place, and manner of speech, and it imposes a prior restraint on freedom of expression. As such, we demand that the University revise this unconstitutional policy.

Southeastern Legal Foundation is a national, nonprofit legal organization dedicated to defending liberty and Rebuilding the American Republic<sup>®</sup>. Through our 1A Project, we educate the public about students' First Amendment rights on college campuses and take legal action on behalf of students whose rights are violated. This letter seeks to inform Iowa State University that this policy stifles free expression and violates longstanding precedent.

### **Factual Background**

On its website, Iowa State University maintains a tabling policy called "MU Booth/Table Request."<sup>1</sup> The policy provides guidelines for students who want to reserve a table to hand out flyers or engage in other speech activities in Memorial Union, a popular student hub. The guidelines include restrictions on the time when tabling can occur (between 8:00 a.m. and 5:00 p.m.) and the location of available tables (two by a staircase and one by the bookstore). The policy also states that student organizations may only make eight reservations per semester, with four consecutive days allowed per reservation.<sup>2</sup>

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<sup>1</sup> <https://www.mu.iastate.edu/offices/mu-marketing-and-graphics-department/mu-marketing-resource/booths-and-tables-in-the-mu/>.

<sup>2</sup> *Id.*

## Analysis

It is well-settled that a college campus is the “marketplace of ideas” where students are exposed “to that robust exchange of ideas which discovers truth.”<sup>3</sup> Indeed, freedom of speech and academic inquiry are “vital” on college campuses, because only through thoughtful debate and discourse can real education occur.<sup>4</sup> The tabling policy undermines this bedrock principle and raises serious First Amendment concerns because it imposes unreasonable restrictions on the time, place, and manner of speech on campus.

### I. Iowa State University’s tabling policy imposes unreasonable restrictions on the time, place, and manner of student speech.

As the University recognizes on its Freedom of Speech webpage, “The First Amendment protects speech even when the ideas put forth are thought by some or even by the majority of individuals to be illogical, offensive, immoral, or hateful.”<sup>5</sup> A university may restrict a few very narrow categories of speech—including obscenity,<sup>6</sup> inciting others to imminent lawless action,<sup>7</sup> true threats of physical violence,<sup>8</sup> and defamation.<sup>9</sup> It also may place reasonable limits on the time, place, and manner of expression, so long as those restrictions “are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.”<sup>10</sup>

By limiting the number of tables students may reserve a semester, the University fails to meet the standard for time, place, and manner restrictions. First, it is hardly reasonable to limit how often a student organization can engage in speech activities. If a club is particularly interested in engaging in speech, and if a university is meant to encourage the exchange of ideas, why should the university limit that club to only eight opportunities for expression? Second, limiting the number of reservations a student organization can make per semester is not narrowly tailored to serve a significant government interest. A significant government interest generally refers to

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<sup>3</sup> *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967).

<sup>4</sup> *Healy v. James*, 408 U.S. 169, 180 (1972).

<sup>5</sup> <https://www.studentconduct.dso.iastate.edu/know-the-code/resources/resources-for-students/harassment-and-free-speech/free-speech#:~:text=Iowa%20State%20supports%20full%20freedom,presentation%2C%20performance%2C%20and%20publication..>

<sup>6</sup> Obscene material is lewd, sexual, and serves no artistic, educational, scientific or literary value to the public. *Paris Adult Theater v. Slaton* (1973). Indecent speech does *not* amount to obscenity. *Papish v. Bd. of Curators of Univ. of Mo.*, 410 U.S. 667 (1973).

<sup>7</sup> *Brandenberg v. Ohio*, 395 U.S. 444 (1969).

<sup>8</sup> True threats are words or conduct that intentionally put others in fear for their physical safety. This is *not* the same as hate speech. *Koeppel v. Romano*, 252 F. Supp. 3d 1310 (M.D. Fla. 2017), *aff’d sub nom. Doe v. Valencia Coll.*, No. 17-12562, 2018 WL 4354223 (11th Cir. Sept. 13, 2018).

<sup>9</sup> Spreading false rumors about someone can amount to defamation and subject an offender to legal action. *Gertz v. Welch*, 418 U.S. 323 (1974).

<sup>10</sup> *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45 (1983); *Ward v. Rock Against Racism*, 491 U.S. 781, 790 (1989).

concerns related to nuisance, such as excessive noise or traffic.<sup>11</sup> A restriction must therefore be narrowly drawn to cut down on nuisance. The University cannot show that limiting students to eight tabling reservations per semester serves any significant interest in ensuring safety and avoiding nuisance. And even if it did, that interest could likely be served in narrower ways, such as restricting the location of tabling to prevent fire hazards or limiting the time of day in which tabling can occur to avoid excessive noise at odd hours.

Finally, the University fails to provide alternative channels of communication for student organizations. For many groups, tabling is the most effective way to convey a message on campus. And at Iowa State, Memorial Union is one of the most popular locations to engage in speech activities because of the heavy foot traffic there. For this reason, standing in outdoor areas of campus, without a table, is not a comparable alternative to tabling at Memorial Union. As the weather turns colder, engaging in speech activities outside becomes nearly impossible. The University therefore fails to provide alternative channels of communication for student groups who have reached the eight-reservation limit. This alone renders the restriction unconstitutional.

## II. Iowa State University's tabling policy is a prior restraint.

Since 1724, freedom of speech has famously been called the “great Bulwark of liberty,”<sup>12</sup> intended as “a response to the repression of speech and the press that had existed in England.”<sup>13</sup> Our Founding Fathers intended to protect the unfettered discussion on matters of public concern. “Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law—the argument of force in its worst form.”<sup>14</sup>

The U.S. Supreme Court has long embraced the Framers' hatred of censorship.<sup>15</sup> Thus, courts consistently strike down any action that allows the government to stop or even burden a citizen's expression before the citizen is even able to speak, also known as a prior restraint.<sup>16</sup>

The tabling policy is a prior restraint because it censors student organizations who want to engage in speech as often as possible. In limiting how often students can engage in expression through tabling, the University effectively silences the more vocal, active groups. Although the University may claim that limiting the number of tables gives every student group an equal opportunity to engage in speech activities, this restriction does not guarantee that every student organization *will* take up tabling. Instead, the restriction guarantees that tables in Memorial Union will be empty; the student organizations who are interested in tabling will have reached their limit,

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<sup>11</sup> See *Grayned v. City of Rockford*, 408 U.S. 104, 115–16 (1972) (“A demonstration or parade on a large street during rush hour might put an intolerable burden on the essential flow of traffic, and for that reason could be prohibited. If overamplified loudspeakers assault the citizenry, government may turn them down.”).

<sup>12</sup> 1 John Trenchard & William Gordon, *Cato's Letters: Essays on Liberty, Civil and Religious* 99 (1724), reprinted in Jeffrey A. Smith, *Printers and Press Freedom* 25 (Oxford Univ. Press 1988).

<sup>13</sup> *Citizens United v. FEC*, 558 U.S. 310, 353 (2010).

<sup>14</sup> *Whitney v. California*, 274 U.S. 357, 376 (1927) (Brandeis, J., concurring).

<sup>15</sup> See *Meyer v. Grant*, 486 U.S. 414, 421 (1988).

<sup>16</sup> *Near v. Minn.*, 283 U.S. 697 (1931); *New York Times Co. v. United States*, 403 U.S. 713 (1971); *Superior Films v. Dep't of Educ.*, 246 U.S. 587 (1954), *Carroll v. President and Comm'rs of Princess Anne*, 393 U.S. 175 (1968).

and the remaining student organizations will not care to table at all. Rather than promote open discourse, this restriction promotes silence.

### **Demand**

“[C]olleges and universities are not enclaves immune from the sweep of the First Amendment.”<sup>17</sup> It is the duty of college officials to protect and defend the voices of every student on campus. But through this tabling policy, active student organizations are silenced after speaking a certain number of times. This restriction goes beyond a reasonable time, place, and manner restriction because it is not narrowly tailored to achieve a significant interest, and it fails to provide alternative channels for communication.

The University must therefore revise its tabling policy to remove limits on how often student organizations can reserve tables. If there is an influx in tabling requests as a result of that change, the University has a duty to promote and accommodate that speech.

Open discourse is critical to both a functioning democracy and a well-rounded college experience. College students are in the unique position of being surrounded by true diversity: diversity of thought, race, religion, and culture. For many, this is the first—and perhaps only—time they will be exposed to a “marketplace of ideas” that differ from their own. The college experience can have a significant impact on the leaders of tomorrow. Iowa State University must do its part to ensure this freedom for *all* its students.

Yours in Freedom,

s/ Cece O’Leary  
Cece O’Leary  
Director of 1A Project  
Southeastern Legal Foundation

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<sup>17</sup> *Healy*, 408 U.S. at 180.