



**Foundation for Individual Rights in Education**

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May 6, 2011

Chancellor Henry T. Yang  
Office of the Chancellor  
University of California, Santa Barbara  
5221 Cheadle Hall  
Santa Barbara, California 93106

*Sent via U.S. Mail and Facsimile (805-893-8717)*

Dear Chancellor Yang:

As you know from our previous letter regarding a separate matter, the Foundation for Individual Rights in Education (FIRE) unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, due process, legal equality, freedom of association, religious liberty and, in this case, freedom of speech on America's college campuses. Our website, thefire.org, will give you a greater sense of our recent activities.

FIRE is concerned about the threat to freedom of expression posed by University of California, Santa Barbara's (UCSB's) denial of student activity funds to the UCSB College Republicans (CRs) for a scheduled event featuring conservative speaker David Horowitz on May 26, 2011. FIRE is also concerned that UCSB may be charging an unconstitutional fee for extra security beyond what UCSB would charge for other similarly situated speaking events.

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

On May 3, 2011, independent student newspaper the *Daily Nexus* reported that the UCSB's Associated Students Finance Board had recently denied a request from the CRs for \$2,000 to host David Horowitz for a speaking event. The *Daily Nexus* reported that this decision was "due to the controversial reputation" of Horowitz. The article reports that Finance Board member Ahmed Naguib explained that Horowitz "made several racist remarks about Arabs and accused people of terrorism last time he visited." The Finance Board meeting had taken place on May 2.

Likewise, in an email on May 3 to CRs President Steven Begakis from Lucy Nguyen, the Associated Students liaison to the CRs, Nguyen wrote that "College

Republicans was not allocated funds for David Horowitz because the board believes that the dialogue between Horowitz and UCSB students will not be a constructive one.”

The CRs appealed for reconsideration to UCSB’s Associated Students Legislative Council (ASLC), and the ASLC agreed to hear the appeal. On May 5, 2011, the *Daily Nexus* reported that ASLC had heard the appeal on May 4. According to the article, the ASLC debate featured a great deal of discussion based on viewpoint as a criterion for the decision to allocate funding:

Following a lengthy debate, the board [ASLC] swiftly approved a motion to allocate \$1,100 for the event. [...] The result was met with outrage from the audience, as individuals shouted “You are sponsoring Islamophobia and racism on this campus,” and “Who on this board is representing the Muslim community?” [...] The council eventually modified the amount to \$800 [for security only].

This blatant viewpoint discrimination cannot stand. As a public university, UCSB—together with its agent for allocating student activity fee funds, UCSB Associated Students—is obligated to distribute student fees to groups in a viewpoint-neutral manner. See *Rosenberger v. Rectors of the University of Virginia*, 515 U.S. 819, 836 (1995) (“For the University, by regulation, to cast disapproval on particular viewpoints of its students risks the suppression of free speech and creative inquiry in one of the vital centers for the Nation’s intellectual life, its college and university campuses.”); *Board of Regents v. Southworth*, 529 U.S. 217, 233 (2000) (“When a university requires its students to pay fees to support the extracurricular speech of other students, all in the interest of open discussion, it may not prefer some viewpoints to others.”).

Indeed, as a public university, UCSB is both legally and morally bound by the First Amendment’s guarantees of freedom of expression and freedom of association. That the First Amendment’s protections fully extend to public colleges like UCSB is settled law. See, for example, *Rust v. Sullivan*, 500 U.S. 173, 200 (1991) (“[W]e have recognized that the university is a traditional sphere of free expression so fundamental to the functioning of our society that the Government’s ability to control speech within that sphere by means of conditions attached to the expenditure of Government funds is restricted by the vagueness and overbreadth doctrines of the First Amendment”); *Widmar v. Vincent*, 454 U.S. 263, 268–69 (1981) (“With respect to persons entitled to be there, our cases leave no doubt that the First Amendment rights of speech and association extend to the campuses of state universities”); *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’”) (citation omitted).

If UCSB Associated Students does not remedy its violation of the constitutional rights of the UCSB College Republicans, your administration must step in to put an immediate halt to this violation of fundamental rights.

In addition, FIRE is concerned that UCSB may be requiring the CRs to pay a significant amount of money for extra security for the event. Yet *any* requirement that student organizations hosting controversial events pay for extra security, as compared with similar but non-controversial events, is unconstitutional because it affixes a price tag to events on the basis of their expressive content.

The Supreme Court addressed precisely this issue in *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 134–135 (1992), when it struck down an ordinance in Forsyth County, Georgia, that permitted the local government to set varying fees for events based upon how much police protection the event would need. Criticizing the ordinance, the Court wrote that “[t]he fee assessed will depend on the administrator’s measure of the amount of hostility likely to be created by the speech based on its content. Those wishing to express views unpopular with bottle throwers, for example, may have to pay more for their permit.” Deciding that such a determination required county administrators to “examine the content of the message that is conveyed” (citation omitted), the Court wrote that “[l]isteners’ reaction to speech is not a content-neutral basis for regulation.... **Speech cannot be financially burdened, any more than it can be punished or banned, simply because it might offend a hostile mob.**” (Emphasis added.)

In the interest of preserving content neutrality in determining fees for campus events, UCSB cannot and must not force student groups to pay more money for security protection because others in the community might feel offended by an event and subsequently become violent or try to disrupt the event. Indeed, by holding student organizations that host expressive events financially responsible for possible disruptive activity resulting from the controversial character of their events, UCSB would be effectively granting a “heckler’s veto” to the most disruptive members of the university community. Individuals wishing to silence speech with which they disagree merely have to threaten to protest, and student groups unable to furnish adequate funds for security will be forced to cancel their events. In such a situation, disruptive heckling triumphs over responsible expressive activity. This is an unacceptable result in a free society and is especially lamentable on a college or university campus, identified by the Supreme Court as “peculiarly the marketplace of ideas.” *Healy v. James, id.* Controversial speech cannot be unduly burdened simply because it is controversial.

Please note that after our organization wrote the University of California at Berkeley regarding this very issue on February 12, 2009, the school acknowledged its legal responsibility not to burden controversial speech. Berkeley subsequently agreed to apply only content-neutral criteria when assessing the security charge for events, regardless of the expected audience reaction and the university’s assessment of the amount of security needed. Such criteria reportedly include the expected number of attendees, the nature of and number of exits from the room for the event, whether money is to be exchanged, and so on. We publicly commended Berkeley for its model reaction and its clear recognition of the value of freedom of expression on campus, and we suggest this example to you in the interest of promoting best practices on campus.

FIRE hopes to resolve this situation amicably and swiftly; we are, however, prepared to use all of our resources to see this situation through to a just and moral conclusion. We request a response to this letter by May 20, 2011.

Sincerely,



Adam Kissel  
Vice President of Programs

cc:

Yonie Harris, Dean of Students

Harrison Weber, President, Associated Students

Jake Elwood, Internal Vice President, Associated Students

Marisela Marquez, Executive Director, Associated Students

Denise Rinaldi, Associate Director for Special Projects, Associated Students

Cindy Lopez, Associate Director of Administration, Associated Students

Andrew Trindle, Chair, Judicial Council, Associated Students

Eric Gearhart, Member, Judicial Council, Associated Students

Jordan Wolfe, Member, Judicial Council, Associated Students

Ryan Malloy, Member, Judicial Council, Associated Students

Alexa Greco, Member, Judicial Council, Associated Students