



March 20, 2014

President John Hennessy  
Stanford University  
Office of the President  
Building 10  
Stanford, California 94305

Bryce Anzelmo and Trevor Martin, Co-Chairs  
Graduate Student Council  
Second Floor, Graduate Community Center  
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Stanford, California 94305

*Sent via U.S. Mail and Facsimile (650-725-6847/650-352-2244)*

Dear President Hennessy and Co-Chairs Anzelmo and Martin:

The Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, freedom of speech, and freedom of conscience on America's college campuses. Our website, [thefire.org](http://thefire.org), will give you a greater sense of our identity and activities.

FIRE is gravely concerned by the threat to freedom of speech at Stanford University posed by the Graduate Student Council's (GSC's) revocation of \$600 in funding to the Stanford Anscombe Society (SAS) on the basis of complaints about the organization's viewpoint and the viewpoints of speakers the group plans to bring to Stanford for a conference this April. Revoking SAS's funding because of the content of its expression and that of its guests betrays Stanford's ideals as an institution of higher learning committed to freedom of expression, and must be promptly reversed. Stanford has additionally saddled SAS with more than \$5,600 in unjust security fees to hold its conference, effectively sanctioning a "heckler's veto" by the group's opponents. This imposition must also be reversed, in accordance with Stanford's duty to protect free expression.

The following is our understanding of the facts. Please inform us if you believe we are in error.

The two legislative bodies of the Associated Students of Stanford University (ASSU) are the Undergraduate Senate and the Graduate Student Council (GSC). Both the Senate and the GSC fund student group activities at Stanford; while the GSC is the primary funding body for student groups whose membership consists predominantly or wholly of graduate students, groups whose memberships contain undergraduate and graduate students in general may also apply for GSC funding for a portion of their program expenses.

In February 2014, SAS, which describes itself as “a student group that promotes discussion regarding the roles of the family, marriage, and sexual integrity in the lives of Stanford students both now and after graduation,” applied for \$600 from the GSC to fund its “Communicating Values: Marriage, Family, and the Media” conference. The aim of SAS’s Communicating Values conference, as described on the conference’s website, is “to help university students and young adults to promote the values of marriage, family, and sexual integrity to the broader popular culture.” On February 26, the GSC approved SAS’s funding request by an 8–4–1 vote, as recorded in its meeting minutes.

The allocation of funding prompted complaints from Stanford students, however, and at the GSC’s March 5 meeting, GSC officer Eduardo González-Maldonado motioned to reconsider the funding the GSC had allocated. Both students and GSC officers voiced opposition to providing funding to SAS.

Those arguing against funding SAS contended that the presence of speakers opposing same-sex marriage on campus (or the allowance of the conference to take place as currently planned) was discriminatory and would leave students unsafe. One student commented, for instance:

Brianne: Want to touch on SAS’s point that what they are doing is not discriminatory. If you take minority group and strip them of their civil rights then that is discriminatory. On website the conference is to train them how to make secular arguments on why not to have gay marriage in US. **Finds that this event will hurt members of LGBT members at Stanford and provide an unsafe space for them. She personally came from Utah to Stanford and this event would make stanford unsafe as it stands now.**<sup>1</sup>

[Emphasis added.]

Several comments cited the “Inclusiveness” clause in the GSC Funding Guidelines as additional justification for revoking SAS’s funding. That clause states:

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<sup>1</sup> All comments are taken directly from the GSC’s published minutes, and all grammar and punctuation from the minutes has been left intact.

In funding [Voluntary Student Organization] events or activities—including, but not limited to those that may have religious or political overtones—the **GSC seeks to promote cultural understanding and the free exchange of diverse viewpoints. With this in mind, VSOs seeking event funding should demonstrate a concerted effort to welcome and promote the participation of diverse segments of the graduate student community.** Events and activities involving politically charged issues should focus on the education of the general community regarding the history and relevance of the issue. The GSC will not fund events or activities that:

- a. **Have any appearance or tone of exclusivity.**
- b. **Create an environment where a given segment of the graduate student population are made to feel unwelcome at the event due to religious, political, or other conviction.**

[Emphases added.]

One officer specifically cited this clause as his reason for changing his previous vote to allocate SAS funding:

David – [...] About the inclusivity clause – I do think, I originally supported conference, but I am going to revoke the funding just because of this, because while i do believe in the power of free speech, we are funding the conference, and even though we are giving our money to this speaker only, or whoever we are funding, symbolically, we are funding the entire conference, and saying that this conference is a good conduit for free speech, and I don't believe that, because numerous speakers have said before that it's not really inclusive.

This same officer read remarks by another student, which claimed that the GSC was entitled by law to deny funding to events promoting “hate speech”:

David – I am responding to the law student. Joel Minor, I'm speaking for him, third year law student – He wrote a statement, I'm not going to read all of it. Supreme court has long recognized that viewpoint neutral conditions attached to student group funding by public universities is supported by the First Amendment. See various cases, [*Christian Legal Society v. Martinez*]. [*Rosenberger v. Rector and Visitors of the University of Virginia*] says that public schools cannot deny student group funding based on viewpoint, **but enforcing viewpoint neutral policy that denies funding for hate speech is an entirely different ballgame. Even if Stanford was a public university, it would be perfectly legal to deny funding to events that make LGBT community feel unwelcome.** It would be the same for Stanford to hold a conference on why heterosexuality is abhorrent,

and to strip the right away from heterosexuals, and it's equally unacceptable to host a conference to strip homosexuals of their rights.

[Emphasis added.]

Finally, the chair of the ASSU's Undergraduate Senate, to which SAS has also applied for conference funding, expressed his desire that SAS withdraw its funding request due to the conference's nature:

Ben Holston: chair of UG senate. There's been massive fallout over \$600 request. [...] This is an event that hurts the stanford community, to express a belief that, for some reason this event is not discriminatory, is completely off-base. **This event as it stands, given the speakers, and given that they have said the event is supposed to "promote one man one woman" which promotes stripping away rights of people in this room, is unacceptable on Stanford campus. Wants them to withdraw their funding.** If they are asking for Senate funding, will see them on Tuesday.

[Emphasis added.]

The GSC then voted 10-2 to revoke the \$600 it had previously decided to allocate SAS. As *The Stanford Daily* reported on March 12, the Senate later rejected SAS's application for funding as well:

As a general fees group, SAS also reached out to the Undergraduate Senate for \$5,000 in funding. However, the appropriations committee met with the group on Thursday night and voted not to recommend their funding application.

According to Senate Chair Ben Holston '15, one senator voted in favor of recommending the request, while four expressed opposition and one abstained.

The Stanford student government's blatant viewpoint discrimination against SAS cannot stand.

As you know, Stanford makes clear in its policies that it "is committed to the principles of free inquiry and free expression" and that "[v]igorous discussion and debate are fundamental to the University."<sup>2</sup> The ASSU, of which the GSC is part, even purposefully mirrors the First Amendment in its own constitution, stating, "The Association shall enact no legislation respecting an establishment of religion, or prohibiting the free exercise

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<sup>2</sup> *Stanford Administrative Guide 1.7.1 ("Sexual Harassment")*, available at <https://adminguide.stanford.edu/chapter-1/subchapter-7/policy-1-7-1>.

thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Association for a redress of grievances.” Additionally, Stanford is legally bound by California Education Code § 94367 (the “Leonard Law,”) which prohibits California’s private nonsectarian universities from disciplining students for speech protected by the First Amendment.

In law and in spirit, then, Stanford must respect the Supreme Court’s repeated declarations that the First Amendment is fully binding on public universities. *See 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).

In honoring their own explicit promises of free expression and the animating spirit of the Leonard Law, the GSC and ASSU Undergraduate Senate, which have been delegated the authority of distributing funds collected through mandatory student fees, must distribute such fees in a viewpoint-neutral manner. *See Rosenberger v. Rector and Visitors 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 of the University of Wisconsin System 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.”). As the plain record of the GSC’s March 5 meeting shows, the GSC has fallen far short of meeting this responsibility. The minutes of that meeting are replete with calls to eliminate SAS’s funding on the basis of the group’s viewpoint and those of the speakers it plans to bring to campus, and document the GSC capitulating to this chorus and engaging in viewpoint discrimination against SAS.

Speech promoting what many students at Stanford consider discrimination (in this case, speech in opposition to same-sex marriage) is, without question, protected by the First Amendment. Moreover, simply voicing opposition to same-sex marriage does not constitute actionable discrimination. The GSC does not engage in discrimination by providing funding for SAS’s conference, nor does funding the conference confer an endorsement of the viewpoints of its speakers.

Further, the suggestion that SAS’s conference and speakers pose any kind of *physical* threat to student safety and well-being must be rejected. No evidence whatsoever has been presented in support of this proposition. Underlying this objection to the conference appears to be the pernicious idea that students have a right to be protected from encountering ideas with which they disagree—an argument that our national commitment to freedom of expression utterly rejects. Are pro-life students entitled to disallow the mere *presence* of those espousing a pro-choice viewpoint, let alone actually hearing such a view? Are pro-Israel students entitled to be spared any and all engagement with those who

support the Palestinians? A true commitment to the free and unfettered exchange of ideas—a commitment necessary at institutions that, like Stanford, seek to provide students a modern liberal arts education—is completely incompatible with any recognition of an illusory right to be free at all times from expression that offends our sense of right and wrong. Those who argue otherwise hurt the students they claim to be helping by indulging this mistaken notion.

Some students have claimed that the revocation of funds is permissible under the GSC’s “Inclusiveness” policy, which states that “GSC seeks to promote cultural understanding and the free exchange of diverse viewpoints” while simultaneously stating that it will not fund any event that “[c]reate[s] an environment where a given segment of the □ student population are made to feel unwelcome at the event due to religious, political, or other conviction.” While these two contrasting ideals may not often be brought into tension with each other, SAS’s case shows what happens when they are: The GSC accords the “right” of students to feel comfortable the highest priority, even if it comes at the cost of the “free exchange of diverse viewpoints” and closes the marketplace of ideas at Stanford to certain views. This result effectively enshrines the right to engage in viewpoint discrimination in GSC policy, contradicting the GSC’s duty to ensure that *no* organization is punished because of its constitutionally protected expression. We repeat: There is no right to be free from expression that offends us. The GSC must, accordingly, revise its policies to make clear that groups will not be censored because of the viewpoint they seek to express. It is especially important that it do so because for groups consisting entirely of graduate students, the GSC is the only ASSU funding option. No group must be silenced because of this illiberal and impracticable policy.

Should any GSC officer have been swayed by the statement that a “viewpoint neutral policy that denies funding for hate speech” (as described in the record) is acceptable, FIRE hopes this letter will disabuse members of this false notion. By definition, any prohibition of “hate speech” is not viewpoint-neutral. Further, the suggestion that “hate speech” is in any way recognized as a category of speech unprotected by the First Amendment is entirely incorrect, and our legal system has time and time again rejected efforts to carve out such exceptions as unconstitutional. With the exception of narrowly-drawn exceptions such as incitement and true threats, “hate speech,” however defined, is protected by the First Amendment, and any policy officially prohibiting such expression is incompatible with our national commitment to freedom of speech. *See, e.g., Snyder v. Phelps*, 131 S. Ct. 1207, 1220 (2011) (“As a Nation we have chosen ... to protect even hurtful speech on public issues to ensure that we do not stifle public debate.”).

Lastly, FIRE is aware that in addition to having its funding from the GSC revoked, SAS is now being required to pay more than \$5,600 in security fees for the presence of ten police officers at the event. According to SAS, the organization did not request any security for the event. Instead, SAS was informed by Stanford last week that the university had requested a security presence at the event and that the group was required to pay for the security itself. SAS reports that the initial estimate was roughly \$7,000 and that as a result of the high cost it had eliminated some speakers from the event and consolidated the event into a single

day, as opposed to the two days originally scheduled. Reducing the planned programming has brought SAS's liability down to \$5,628.

The negative reaction by Stanford students to SAS's conference has factored directly into the conference's security costs. SAS—despite never having requested it—is being forced to subsidize the possible disruption of its event by those who oppose its presence. This effectively grants SAS's opponents a “heckler's veto” to financially burden SAS's expression to the point of insolvency, and deeply chills free expression.

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. Declaring the ordinance a violation of the First Amendment, 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.” In deciding that such a determination required county administrators to “examine the content of the message that is conveyed,” the Court stated 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; citation omitted). In keeping with its promise to provide the university community with robust expressive rights, Stanford must not force SAS to pay such a premium to exercise its right to free expression.

SAS's defunding is a classic example of succumbing to the demands of the majority—precisely what the viewpoint-neutral mechanism for distributing student fees was designed to avoid. Stanford students are free, of course, to express their opposition to SAS; the national discourse on same-sex marriage is made most robust by ensuring that all are able to speak their minds on the subject. A point so often lost, however, is that majority sentiment isn't static—it changes over time, sometimes with remarkable speed. One does not need to turn the clock back far to recall a time when concerted majoritarian efforts to keep speech supporting gay rights out of the conversation were mainstream, and one can still read of such struggles in today's news. The wisest solution—one to which Stanford is committed in policy and promise—is to refuse to discriminate based on the popularity of one's ideas or expression, and allow *all* speech into the marketplace where it may win and lose adherents on its own merits.

The Graduate Student Council must promptly reverse its vote to revoke SAS's funding, and both it and the ASSU Undergraduate Senate must disavow such viewpoint-discriminatory abuses in the future. We ask the GSC to revise its bylaws to eliminate the possibility of viewpoint discrimination. Finally, we call on Stanford to eliminate the unjust and oppressive security fee with which it has burdened SAS's expression and make clear that it will not condition a group's right to free speech on that group's ability to pay for its protection.

We request a response to this letter by April 3, 2014, and appreciate your attention to these important concerns.

Sincerely,



Peter Bonilla

Director, Individual Rights Defense Program

cc:

Greg Boardman, Vice Provost for Student Affairs

Christine M. Griffith, Associate Vice Provost and Dean of Student Life

Nanci Howe, Director, Student Activities and Leadership

Billy Gallagher, Co-President, Associated Students of Stanford University

Dan Ashton, Co-President, Associated Students of Stanford University

Ben Holston, Chair, ASSU Undergraduate Senate