



January 7, 2022

Emily Nichols and Alain Perez
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Old Union – Suite 103
520 Lasuen Mall
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Sent via Electronic Mail (ugs-chair@assu.stanford.edu)

Dear Co-Chairs Nichols and Perez:

FIRE¹ was disappointed that the leadership of the Associated Students of Stanford University Undergraduate Senate failed to respond to our letter of December 7, 2021,² concerning the Senate's denial of funding for a February 17, 2022, event featuring former Vice President Michael Pence, proposed by the Stanford College Republicans ("SCR").

Since we first wrote to you, our concern for the Senate's abdication of its responsibility to protect its students' freedom of expression has only deepened. More evidence has emerged that the decision was premised on opposition to Pence speaking, or on the anticipated campus reaction to Pence's speech, rather than *bona fide* concerns about the spread of COVID-19 or event security.

For example, during the December 7 Undergraduate Senate meeting, several senators made remarks indicating that they were abstaining from the vote on whether to authorize funding for the event out of concern about the reactions of students to the content of Pence's speech.³ The Senate then conducted another vote on the event, which failed after five student senators voted to authorize the funding, eight voted to abstain, and none voted to deny the funding.⁴

The recording of that Senate meeting is permeated with evidence that the student senators' decisions to abstain, or not to vote at all, were driven by viewpoint-based considerations. One senator exhorted their colleagues to take "into consideration as you consider your vote" the

¹ As you will recall from past correspondences, the Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

² Enclosed.

³ Stanford Undergraduate Senate meeting, ASSU UNDERGRADUATE SENATE (Dec. 7, 2021), *available at* <https://www.youtube.com/watch?v=KAqsS1yw408>.

⁴ *Id.*

“health and well-being—emotionally, physically, and mentally—of students.”⁵ Another acknowledged the value of “diversity of thought and ideas . . . to advancing intellectual discourse and finding solutions to societal issues” and recognized that denying funding would set “a precarious precedent for other communities and may be unfairly used against them,” but voted to abstain because they did “not feel comfortable voting yes” due to their fear of “propagation of ideals” others may believe harmful.⁶ Still another encouraged students to “make moral judgments” if they’re “against the individual speaker[.]”⁷

That meeting also undermines any pretense that the denial was premised on legitimate safety or security concerns. A modified version of the event addressed these concerns, but still failed to gain approval. The Senate itself proposed its own changes to address these concerns, and approved those changes by majority votes, but the majority of its members nevertheless refused to even vote on the funding.

At the end of the meeting, senators voted on a modified version of the event that would have placed the following restrictions on the proceedings: a requirement that all attendees at the event wear masks provided by SCR, health checks for Stanford students and proof of vaccination or a negative COVID test for unvaccinated attendees, a pre-registration form to confirm that all non-Stanford attendees are registered residents of Santa Clara County, a 1,000-person cap on the maximum number of attendees (subject to change depending on the severity of the Omicron variant), and a limit on the number of non-Stanford attendees to 10 percent of the event’s total attendance.⁸

While COVID-19 will likely continue to present legitimate public health concerns, Stanford’s own guidelines allow in-person events with more than 500 attendees.⁹ And when concerns about safety, security, or public health burden a particularly controversial campus speaker, those claims must be scrutinized to prevent the violation of student expressive rights disguised as security concerns.

As we wrote in our previous letter:¹⁰

If the denial of funding is premised on the viewpoints of SCR or on public opposition to the invited speaker, the former Vice President of the United States, that denial is a violation of the expressive rights promised to Stanford students by both the university and the ASSU.¹¹ Decisions concerning student organizations’ recognition or access to student fee

⁵ *Id.* at 44:48.

⁶ *Id.* At 33:49 to 34:49.

⁷ *Id.* at 29:11.

⁸ *Id.* at 1:46:06 to 1:47:04.

⁹ *Overview of gatherings and meetings at Stanford, Required event modifications*, STANFORD UNIV. COVID-19 HEALTH ALERTS (last modified Nov. 5, 2021), <https://healthalerts.stanford.edu/covid-19/prevention-care/overview-of-gatherings-and-meetings-at-stanford> (last visited Jan. 5, 2021).

¹⁰ Letter from FIRE to ASSU Undergraduate Senate (Dec. 7, 2021) (encl.)

¹¹ While Stanford is a private university, and therefore not bound by the First Amendment, it makes promises of free expression to its students. *See Freedom of Speech and the Fundamental Standard*, STANFORD UNIV., <https://communitystandards.stanford.edu/freedom-speech-and-fundamental-standard> (last visited Dec. 6, 2021).

funding must be made on a viewpoint-neutral basis, as freedom of expression bars such denials on the basis of the “ideology or the opinion or the perspective of the speaker[.]”¹²

While this decision concerns a political figure associated with the Republican Party, it will set a precedent that will weaken the ASSU’s ability to fund speakers and events of all political views. The prohibition against viewpoint discrimination has protected groups across the political spectrum when they hold dissenting or unpopular views. For example, it protected chapters of LGBTQ organizations in the 1970s and 80s when university trustees, urged by state officials, refused to “support a homosexual group” or expression, which was, at the time, considered “shocking and offensive.” Federal appellate courts overturned these denials, explaining that recognition cannot be curtailed on the basis that some find the group’s views “abhorrent or offensive.”¹³ FIRE has also come to the defense of organizations who faced loss of recognition or funding due to their protected speech, including groups on the left and right,¹⁴ pro-choice and pro-life organizations,¹⁵ and pro-Israel and pro-Palestinian groups.¹⁶

In the wake of stronger evidence that objections to the speaker drove the Undergraduate Senate’s decision to deny funding for the event, FIRE once again calls on the Undergraduate Senate to reverse its denial of funding for SCR’s event. We would appreciate receipt of your written response to this letter before the close of business on Friday, January 14, 2022.

Sincerely,



Graham Piro

Program Officer, Individual Rights Defense Program

Cc: Marc Tessier-Lavigne, President, Stanford University.
 Sherwin Lai, Chair, Constitutional Council
 Gab Crooks, Communications Director, Undergraduate Senate

Encl.

¹² *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995); *Bd. of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 221 (2000).

¹³ *Gay Students Org. of Univ. of N.H. v. Bonner*, 509 F.2d 652, 661–62 (1st Cir. 1974); *Gay & Lesbian Students Ass’n v. Gohn*, 850 F.2d 361, 362–363 (8th Cir. 1988).

¹⁴ Press Release, FIRE, *One day after FIRE files lawsuit, med school approves student’s long-denied club application* (Aug. 19, 2021), <https://bit.ly/3DKg7ZT>; Sarah McLaughlin, *We’re Not Buying Hagerstown Community College’s Excuses for Denying Student Group’s Recognition*, FIRE (Sept. 17, 2015), <https://bit.ly/3pegTdo>.

¹⁵ Katlyn Patton, *University of Northern Iowa administration must correct its student government’s refusal to recognize ‘hate group’ Students for Life*, FIRE (Oct. 16, 2020), <https://bit.ly/3ARjCMo>; Mary Zoeller, *Georgetown fails to live up to free speech promises by not recognizing pro-choice student group*, FIRE (Mar. 29, 2018), <https://bit.ly/3ve0cQk>.

¹⁶ Press Release, FIRE, *Pro-Israel group denied recognition by Williams College student government, administration’s response falls short* (May 15, 2019), <https://bit.ly/3DES26C>; Press Release, FIRE, *FIRE, NCAC Call on Fordham to Recognize Students for Justice in Palestine* (Jan. 25, 2017), <https://bit.ly/3aHuuBI>.



December 7, 2021

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URGENT

Sent via U.S. and Electronic Mail (ugs-chair@assu.stanford.edu)

Dear Co-Chairs Nichols and Perez:

The Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

FIRE is concerned by the reported denial of funding by the Associated Students of Stanford University ("ASSU") Undergraduate Senate, ostensibly over concerns about student safety, for a February 17, 2022, event featuring former Vice President Michael Pence, proposed by the Stanford College Republicans ("SCR").

Our understanding of the denial of funding is derived from a report by the *Stanford Daily*.¹ We incorporate by reference the assertions there and invite you to provide any additional or contrary information that would change the analysis that follows. If, however, the Undergraduate Senate's denial of funding for SCR's event impermissibly rests on a student organization's viewpoint, that denial is inconsistent with the policies of both Stanford University and the ASSU, which promise Stanford students freedom of expression.

It is, more specifically, our understanding that the Undergraduate Senate declined to approve an SCR Standard Grant request for \$6,000 to host Pence on campus early next year.² The vote took place in a closed session over Slack,³ which followed at least one discussion—also in a

¹ Kaushikee Nayudu & Grace Carroll, *Stanford declines to fund Stanford College Republicans' Mike Pence event*, STANFORD DAILY, (Dec. 2, 2021), <https://www.stanforddaily.com/2021/12/02/senate-declines-to-fund-stanford-college-republicans-mike-pence-event>.

² *Id.*

³ *Id.*

closed session—earlier this semester.⁴ Among the considerations regarding the event raised were “student safety, freedom of speech and COVID-19 protocols,” an anonymous senator said.⁵ All other requests were approved.⁶

Additionally, statements by co-chair Alain Perez on behalf of the Undergraduate Senate indicate that the body’s response to the application considered student opposition to past speakers hosted by the group, including Dinesh D’Souza, Charlie Kirk, Candace Owens, and Robert Spencer.⁷ That statement grounded these objections in the context of safety, urging that the appearance of these speakers itself represented a threat to safety. Perez’s statement urged that the Senate “first wants to recognize that previous iterations of such an event by SCR have caused genuine distress and fear for the personal safety of members of the Stanford community.”⁸ Perez correctly noted both that all student organizations, “including SCR, have a right to invite a speaker of their choice to an event and seek funding from the Undergraduate Senate,” and that denying funding based on viewpoint “would set a dangerous precedent that could hurt other communities on campus in the future.”⁹

Members of SCR have charged that the denial is a violation of the organization’s expressive rights, and the *Stanford Daily*’s report quotes an unidentified member of the Senate acknowledging that the argument about the vote constituting a “violation of freedom of speech . . . may or may not apply in this case.”¹⁰

The lack of clarity as to the rationale(s) driving the Senate’s denial of funding is a product of the opaque process by which that decision was made. That opacity undermines student and public confidence that decisions will be made without regard to political viewpoints. We therefore urge the Senate to transparently identify the precise rationale underlying its solitary denial of funding.

If the denial of funding is premised on the viewpoints of SCR or on public opposition to the invited speaker, the former Vice President of the United States, that denial is a violation of the expressive rights promised to Stanford students by both the university and the ASSU.¹¹ Decisions concerning student organizations’ recognition or access to student fee funding

⁴ Cameron Ehsan, *Stanford College Republicans invites Mike Pence to speak on campus*, STANFORD DAILY (Nov. 18, 2021), <https://www.stanforddaily.com/2021/11/18/stanford-college-republicans-invites-mike-pence-to-speak-on-campus>.

⁵ Nayudu, *et al.*, *supra* note 1.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ While Stanford is a private university, and is therefore not bound by the First Amendment, as a public university would be, Stanford makes promises of free expression to its students in its Freedom of Speech and the Fundamental Standard policy. *See* Freedom of Speech and the Fundamental Standard, STANFORD UNIV., <https://communitystandards.stanford.edu/freedom-speech-and-fundamental-standard> (last visited Dec. 6, 2021).

must be made on a viewpoint-neutral basis, as freedom of expression bars such denials on the basis of the “ideology or the opinion or the perspective of the speaker[.]”¹²

If, instead, the denial is predicated on legitimate and identifiable concerns relating to security or public health issues, we urge the Senate to identify those concerns. We caution, however, that abstract concerns that a speech will later lead to violence, or that viewpoints will cause “distress and fear,” are not a basis to curtail another’s expression.¹³

As Mr. Perez’s statement astutely acknowledges, viewpoint discrimination in speaker invitations would set a “dangerous precedent.” A look at the history of disinvitations shows that restrictions on invitations or speaking appearances that have been deemed “dangerous” can impact speakers and student groups of all views. For example, Harvard University attempted to require a Palestinian rights group to pay the extra cost of a security fee for an event because of concerns over the expected reactions of the audience, with the implicit threat that the event would be cancelled if the cost was not paid.¹⁴ Calls for disinvitation have been prompted by speakers of all views, including political figures such as Cecile Richards,¹⁵ Joe Biden,¹⁶ Lori Lightfoot,¹⁷ and Dick Cheney.¹⁸ Disinvitations and administrative pressures do not flow solely in one direction, and denying the SCR’s funding for their event on a viewpoint-discriminatory basis would create a chilling precedent for other student groups.

Given the urgent nature of this matter, we request receipt of a response to this letter no later than the close of business on Friday, December 17, 2021, identifying any basis for the denial of funding or confirming that the denial will be reversed.

Sincerely,



Graham Piro

Program Officer, Individual Rights Defense Program

¹² *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995); *Bd. of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 221 (2000).

¹³ See, e.g., *Cox v. Louisiana*, 379 U.S. 536, 557 (1965) (Police officers’ purported concern that “muttering” and “grumbling” white onlookers might resort to violence was not a basis to restrict civil rights marchers’ First Amendment rights).

¹⁴ Zach Greenberg, *Harvard backs down from security fee on Palestinian rights event*, FIRE (April 11, 2019), <https://www.thefire.org/harvard-backs-down-from-security-fee-on-palestinian-rights-event>.

¹⁵ *Assure free speech*, HOYA (March 22, 2016), <https://thehoya.com/assure-free-speech>.

¹⁶ Morgan Phillips, *Biden, second Catholic president, to skip Notre Dame commencement after backlash to his abortion policies*, FOX NEWS (May 22, 2021), <https://www.foxnews.com/politics/biden-skip-notre-dame-commencement-abortion>.

¹⁷ James Pollard, *Amid calls to boycott Lightfoot’s commencement speech, a look at the Chicago mayor’s history on policing*, DAILY NORTHWESTERN (June 18, 2020), <https://dailynorthwestern.com/2020/06/18/campus/amid-calls-to-boycott-lightfoots-commencement-speech-a-look-at-the-chicago-mayors-history-on-policing>.

¹⁸ Martin Stolz, *Rare protests at Brigham Young over a planned Cheney appearance*, N. Y. TIMES (April 11, 2007), <https://www.nytimes.com/2007/04/11/us/11byu.html>.