



April 1, 2022

Adam Haney
Office of General Counsel
The State University of New York
H. Carl McCall SUNY Building
353 Broadway
Albany, New York 12246

Sent via Electronic Mail (general.counsel@suny.edu)

Dear Mr. Haney:

FIRE¹ appreciates your response yesterday to our March 17 letter regarding SUNY Brockport's defunding of an appearance by faculty-invited speaker Jalil Muntaqim. We were surprised to read that the "reasons for the termination of the funding have to do with noncompliance with internal ... processes."² This is particularly curious given that SUNY Brockport Chief Diversity Officer Damita Davis announced unequivocally the grant was revoked based on unspecified "new information," not procedural issues.³ Additionally, Davis said the university would pause "the PED grant program while a thorough review and revision of the grant application process can take place." This implies there may be disagreement with *the nature of* PED's process, not the faculty member's "noncompliance" with it. And even if the faculty member's noncompliance is at issue, SUNY Brockport should make that faculty member aware of the issue, rather than leave him in the dark and chill his speech. While we also understand an anonymous donor has stepped in to fund Muntaqim's appearance, that circumstance does not remove SUNY Brockport's First Amendment obligations to respect faculty's academic freedom.

On top of this, since our first letter, SUNY Brockport has further betrayed its First Amendment obligations by unilaterally moving the Muntaqim event online. Specifically, on March 23, SUNY Brockport announced it would take this step to "help mitigate any potential

¹ FIRE is a nonpartisan nonprofit dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

² Letter from Adam Haney, General Counsel, State University of New York, to Sabrina Conza, Program Officer, FIRE (Mar. 31, 2022) (on file with author).

³ UPDATE ON JALIL MUNTAQIM EVENT, SUNY BROCKPORT (Mar. 16, 2022, 4:55 PM), https://www.brockport.edu/about/diversity/statement_jalil_muntaqim_event.html.

security concerns,”⁴ and did so without consulting with or obtaining consent from the faculty member who invited Muntaqim to campus for an in-person event. This is deeply troubling and does not comport with the university’s strong free speech policies—which earn it FIRE’s green light rating—nor with its obligations under the First Amendment.

As a public institution bound by the First Amendment, SUNY Brockport may not limit invitations on the basis of “orthodoxy or popularity of their political or social views[.]”⁵ When a college “opens the lecture halls” to outside speakers, “it must do so nondiscriminatorily.”⁶ Subjecting invitations to a “philosophical” litmus test constitutes “censorship in its rawest form.”⁷

These principles, which apply equally to initial invitations and honoring invitations already extended, have protected the right to host speakers who offer dissenting, unorthodox, or controversial views. This includes religious speakers,⁸ conservative commentators,⁹ civil rights activists,¹⁰ anti-war activists,¹¹ those who refused to testify about suspected “Communist or subversive connections,”¹² people convicted of felonies or crimes of moral turpitude,¹³ advocates of the government overthrow,¹⁴ advocates of the “Occupy” movement,¹⁵ and, perhaps most controversially, candidates for public office.¹⁶

Some may strongly disagree with inviting Muntaqim to campus, and there may be protests or attempts to disrupt the event because of those disagreements. However, lack of consensus is not a valid basis for SUNY Brockport to move the event online, a decision which must ultimately rest with the professor who invited him. It is the university’s responsibility to

⁴ *SUNY Brockport making convicted cop killer’s speaking event virtual*, WHEC (Mar. 23, 2022), <https://www.whec.com/rochester-new-york-news/suny-brockport-making-convicted-cop-killers-speaking-event-virtual/6426506/?cat=565>.

⁵ *Brooks v. Auburn Univ.*, 296 F.Supp. 188, 192–95 (M.D. Ala. 1969).

⁶ *Stacy v. Williams*, 306 F. Supp. 963, 971 (N.D. Miss. 1969).

⁷ *Brooks*, 296 F.Supp. at 192–95.

⁸ *Id.*

⁹ *Young America’s Found. v. Kaler*, 370 F. Supp. 3d. 967, 974 (D. Minn. 2019) (Ben Shapiro, “political commentator, nationally syndicated columnist, author, radio talk show host, and attorney.”).

¹⁰ *Pickings v. Bruce*, 430 F.2d 595, 597–600 (8th Cir. 1970) (representatives of the Southern Students Organizing Committee invited to show and discuss a film); *see also, Smith v. Univ. of Tenn.*, 300 F.Supp. 777, 779 (E.D. Tenn. 1969) (Dick Gregory, a comedian, civil rights activist, and presidential candidate).

¹¹ *Brooks*, 296 F.Supp. at 190–91.

¹² *Dickson v. Sitterson*, 280 F.Supp. 486, 488 (M.D.N.C. 1968). *Dickson* involved a challenge to a law that prohibited invitations to members of the Communist Party after students, illustrating the law’s absurdity, sat in a grassy area on the perimeter of campus to listen to a critic of the House Un-American Activities Committee speak from “behind a stone wall which separated the public street from the University campus,” *id.* at 494, a spectacle that was memorably photographed. *See* N.C. Dep’t of Natural & Cultural Resources, *Speaker Ban Roiled UNC-Chapel Hill Campus*, <https://www.ncdcr.gov/blog/2014/06/25/speaker-ban-roiled-unc-chapel-hill-campus> (last visited Feb. 8, 2022).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Ari Cohn, *Western Michigan University Bans Rapper, Burdens Free Expression*, FIRE, Apr. 18, 2014, <https://www.thefire.org/western-michigan-university-bans-rapper-burdens-free-expression> (discussing lawsuit over university’s veto of student group’s invitation to Boots Riley).

¹⁶ *Stacy*, 306 F.Supp. at 971.

ensure faculty are able to exercise their expressive rights by hosting speakers, and to apply neutral event-related guidelines in a viewpoint-neutral manner.

When controversial events are targeted for disruption by those opposed to the speakers or their messages, universities must respond not by canceling events, but rather by making “bona fide efforts” to protect expressive rights “by other, less restrictive means.”¹⁷ Restricting expressive activity in response to threatened disruption violates SUNY Brockport’s obligations under the First Amendment and further incentivizes more threats to future events, putting both the expressive rights and the safety of the university community in jeopardy.

To comport with the university’s legal obligations, SUNY Brockport must promptly restore both Muntaqim’s in-person appearance and university funding of the event.

We request a response to this letter by the close of business on April 5, 2022.

Sincerely,



Sabrina Conza
Program Officer, Individual Rights Defense Program

Cc: Damita Davis, Chief Diversity Officer
Heidi Macpherson, President

¹⁷ *Bible Believers v. Wayne Cnty.*, 805 F.3d 228, 255 (6th Cir. 2018).