



December 10, 2021

Thomas F. Rosenbaum
Office of the President
Parsons-Gates, Mail-Code 204-31
California Institute of Technology
Pasadena, California 91125-3100

Sent via Electronic Mail (president@caltech.edu)

Dear President Rosenbaum:

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 threat posed to freedom of expression and freedom of association at the California Institute of Technology based on the new event funding guidelines issued by the Graduate Student Council ("GSC").

In particular, FIRE is concerned about the guidelines' provision that GSC will determine whether the university will fund student-invited speakers based on "Caltech's values of diversity, equity, and inclusion."¹ This subjective provision invites viewpoint discrimination in contravention of the robust promises of free expression Caltech makes to its students.

Although Caltech is a private institution, and thus is not bound by the First Amendment, the university makes promises of free expression to its students. Caltech "encourage[s] curiosity in research, scholarship, and exploration, and we create the conditions where inquiry can flourish."² Additionally, the university's "Speech Policy" states:

The California Institute of Technology is committed to fostering and disseminating knowledge by means of teaching and research. To ensure intellectual freedom, it is the Institute's policy to maintain an atmosphere of free inquiry and expression.³

¹ Email from Arun Nagpal, Treasurer, Graduate Student Council, to graduate students, Cal. Inst. of Tech. (Sept. 28, 2021, 9:47 AM) (on file with author); Event Funding Guidelines, Graduate Student Council, CAL. INST. OF TECH. (last visited Nov. 1, 2021) (enclosed).

² Caltech Community's Statement on Ethical Conduct, Code of Conduct, CAL. INST. OF TECH. (last visited Dec. 10, 2021), <https://asic.caltech.edu/code-conduct>.

³ Speech Policy, CAL. INST. OF TECH. Policy (last visited Dec. 10, 2021), https://externalrelations.caltech.edu/documents/6660/speech_policy.pdf.

Caltech must keep the promises it makes to its students about their right to freedom of expression. To deliver on those promises, Caltech must reconsider the event funding guidelines.

FIRE has little doubt that this proposal represents a well-intentioned effort to better serve the Caltech community. However, such a mandate risks establishing an ideological litmus test for evaluating speaking events, which could impact student organizations' funding and ability to bring speakers to campus. This policy presents a number of issues.

First, the key terms that determine speaker funding—diversity, equity, and inclusion—are not defined by the policy. These terms lack objective definition, extending to the GSC the kind of unbridled discretion that inevitably leads to uneven, arbitrary, and viewpoint-based enforcement.⁴ This leaves room for the GSC members to use these terms as proxies to examine a speaker's viewpoints for conformity with their own particular viewpoints or beliefs—that is, it allows them to “censor ideas and enforce their own personal preferences.”⁵ However well-intentioned such restrictions might be, the right to freedom of expression requires that speech not be left to “the mercy of *noblesse oblige*,” and a speech restriction is not justified because its enforcers “promised to use it responsibly.”⁶

Even if arrived at unintentionally, impermissible viewpoint-based outcomes are unfortunately easy to imagine. For example, Caltech's Feminist Club may invite well-known feminist and former gender studies professor Janice Raymond to speak on campus—believing that Raymond's views are not widely represented at Caltech. Other students or student organizations, however, possibly including those in the position of reviewing funding for speaking events, may be displeased to learn that the Feminist Club seeks funding to bring Raymond to campus, as Raymond has made comments that offended transgender individuals.⁷ This could result in the speaking appearance not receiving funding, effectively prohibiting the student group from inviting Raymond to speak. The many possible variations of this problem illustrate the threat resulting from the lack of definitions for diversity, equity, and inclusion.⁸

Additionally, this policy, in practice, may violate Caltech's obligations under California's Leonard Law.⁹ The Leonard Law's legislative intent is to “ensure that a student has the same

⁴ See *Minn. Voters Alliance v. Mansky*, 138 S. Ct. 1876, 1891 (2018) (invalidating ill-defined ban on “political” attire in non-public forum because the “indeterminate prohibition” precluded fair enforcement).

⁵ *Grayned v. City of Rockford*, 408 U.S. 104, 113 n.22 (1972).

⁶ *U.S. v. Stevens*, 559 U.S. 460, 480 (2010).

⁷ *Why The Trans Community Hates Dr. Janice G. Raymond*, TRANSGRIOT (Sept. 20, 2010), <https://transgriot.blogspot.com/2010/09/why-trans-community-hates-dr-janice-g.html>.

⁸ FIRE has seen viewpoint discrimination in funding at other universities. For example, Stanford University's student senate recently denied funding to the College Republicans to host a speaking appearance with former Vice President Mike Pence. Recording of the student senate meeting showed that students chose not to fund the speaking engagement based on Pence's views. See Graham Piro, *New audio reveals Stanford student senate engaged in viewpoint discrimination to deny funding for Mike Pence appearance*, FIRE (Dec. 10, 2021), <https://www.thefire.org/new-audio-reveals-stanford-student-senate-engaged-in-viewpoint-discrimination-to-deny-funding-for-mike-pence-appearance>.

⁹ See Cal. Educ. Code § 94367.

right to exercise his or her free speech on campus as he or she enjoys when off campus.”¹⁰ Thus, the Leonard Law is meant to provide students at private universities speech protections commensurate with those they would have at public institutions under the First Amendment.

Associational rights are linked with the speech rights of an organization’s individual members. The Supreme Court has recognized that freedom of expression extends to association.¹¹ The government offends the First Amendment when it imposes financial burdens on certain speakers based on the content of their expression.¹² If Caltech’s GSC were to reject a speaker due to the speaker’s viewpoint, determining that his or her views do not adequately represent the values of undefined “diversity, equity, and inclusion” interests, this would undermine the Leonard Law’s purpose of broadly protecting students’ expressive rights.

Given its promises of free expression, Caltech—whether through its administration or the student governments to which it extends authority—cannot discriminate against student organizations based on their viewpoints. It therefore cannot provide GSC with the discretion to deny funding to student groups because its members may disagree with the views of proposed speakers. Providing GSC this discretion all but guarantees this funding power will be abused to punish views at odds with popular sentiment or views of those tasked with evaluating whether a student organization’s speaker request complies with Caltech’s values of diversity, equity, and inclusion.

To protect students’ expressive and associational rights and to comply with Caltech’s promises, we urge Caltech to rescind this section of GSC’s new policy.

We request receipt of a response to this letter no later than the close of business on Monday, December 27, confirming that GSC’s event funding guidelines will no longer base speaker funding on diversity, equity, and inclusion.

Sincerely,



Sabrina Conza
Program Analyst, Individual Rights Defense Program

Cc: Board of Directors, Graduate Student Council
Tom Mannion, Senior Director of Student Activities & Programs

Encl.

¹⁰ *Yu v. Univ. of La Verne*, 126 Cal. Rptr.3d 763, 789 (citing Stats. 1992, ch. 1362, §4, p. 6847).

¹¹ *NAACP v. Alabama*, 357 U.S. 449 (1958).

¹² See *Rosenberger v. Rector and Visitors of Univ. Va.*, 515 U.S. 819, 828 (1995) (citing *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 115 (1991))

Event Funding Guidelines

Graduate Student Council at the California Institute of Technology

As agreed upon by the GSC's Board of Directors on 8/17/2021 to specify the guidelines for events with Caltech-external speakers as requested by the GSC's Statutes, Article VI, Section 4.

1. Events that invite a Caltech-external speaker and want to receive GSC funding must apply for GSC's Event Funding. The inviting party must provide information about the speaker.
 - 1.1. The request should contain the speaker's name, general information, as well as a short description as to why they were chosen and what they will talk about/present/discuss.
 - 1.2. "Caltech-external" means someone who is not a student, postdoc, faculty or staff at Caltech or JPL. "Speaker" means that the invited person, group, company etc. will have an active role in the foreground of the event, e.g. presenting, discussing, commenting, etc. (As opposed to e.g. moderators or technical assistance who do not count as speakers.)
2. Requests will be processed by the following procedure:
 - 2.1. A Review Board (RB) shall be constituted, which will review the request and research the speaker.
 - 2.2. The RB will then formulate a recommendation, which it shall submit to the BoD and the requesting party, ideally within 7 working days via Email or the GSC Slack.
 - 2.3. In the next 7 working days, the BoD will discuss whether and/or in which form to fund the request. The discussion can take place at a meeting or asynchronously on the GSC Slack. The requesting party should be invited to attend and be heard.
 - 2.4. Should there be concerns, the discussion period can be extended, possibly including more meetings (see section 2.08 of the GSC Bylaws).
 - 2.5. At the end of the discussion period, the BoD votes on the funding request. The final decision will be taken by majority vote.
3. Each time a funding request comes in, a Review Board (RB) is formed by assembling at least two members from a Review Volunteer Pool (RVP).
 - 3.1. The RVP is a list of students (not necessarily BoD members) that have indicated to the BoD that they are willing and able to be available for RBs when funding requests come in. All BoD members are in the RVP by default but can be removed by opting out.
 - 3.2. The RVP has a chair whose only additional task compared to regular RVP members is to manage the list of volunteers and coordinate the formations of RBs. The RVP chair is elected by the BoD.

- 3.3. To ensure that some volunteers do not have a disproportionate workload, some form of random assignment, rotation or otherwise distributive mechanism should be in place when forming RBs.
- 3.4. Should there not be enough volunteers in the RVP to form a RB (or to avoid a few people being assigned multiple RBs in a row), the RVP chair can request help from the members of the BoD.
- 3.5. Ultimately, it is the BoD's responsibility to have an RB formed each time a funding request comes in.
- 3.6. Volunteers can decline reviewing a certain request for work or personal reasons, as well as if they believe they would not be impartial enough for a fair review.
4. The Review Board will review the speakers and formulate a funding recommendation based on the following guidelines:
 - 4.1. General guidelines for GSC funding as outlined in the Statutes and Bylaws apply, and the proposed speaker must adhere to all relevant legal codes and statutes, as well as Caltech's policies and regulations. Movie and media screenings must observe copyright laws.
 - 4.2. The RB will consider whether funding this speaker is consistent with GSC's and Caltech's values of diversity, equity and inclusion, both inside and outside the Caltech community.
 - 4.3. Speakers that discriminate or promote discrimination (in their own actions or words, not by affiliation) based on race, colour, ethnicity, national origin, sex, gender, gender identity, gender expression, sexual orientation, language, religion, political or other opinion, caste, class, socio-economic status, disability, health condition are grounds for denial of funding.
 - 4.4. In reviewing the speaker, the RB will consider information from different sources (e.g. the submitting club, the speaker's publications, the speaker's communication with the GSC and the submitting party, and civil rights or other organizations) and viewpoints. However, when evaluating a funding recommendation, the GSC BoD will consider the authenticity and reliability of the sources utilized.
 - 4.5. The format of the event (e.g. single-person talk vs. panel discussion, single vs. repeating events) will also be taken into consideration, especially in cases where concerns were raised by point 4.2.
5. The BoD welcomes feedback received through various channels about events (co-)funded by the GSC (e.g. email, feedback forms, personal communication) that may have violated the GSC's Mission. Such information, once verified, can be used in the future should funding requests from the same organizers or for the same invited speaker be received.
6. GSC (co-)funded events have to include the following disclaimer on any flyers, posters, or email notices publicizing the event:

Disclaimer: Views and opinions expressed by event guest speakers are those of the speaker and do not necessarily represent or reflect policy or positions of the Graduate Student Council (GSC) at Caltech. The GSC is committed to improve the academic, professional, and social experience of graduate students at

Caltech by engaging with campus offices, building a diverse and vibrant community, and advocating for a better quality of life.