



# FIRE

Foundation for Individual  
Rights and Expression

September 6, 2023

James T. Harris  
Office of the President  
University of San Diego  
Hughes Administration Center 229  
5998 Alcalá Park  
San Diego, California 92110

*Sent via U.S. Mail and Electronic Mail (president@sandiego.edu)*

Dear President Harris:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,<sup>1</sup> is concerned by the University of San Diego's rejection of the College Republican's request to host political commentator Matt Walsh due to his political views. As a university that promises free expression, USD may not restrict students' events because of their chosen speakers' viewpoints.

In June, the College Republicans, a recognized student group that, among other goals, brings conservative speakers to campus,<sup>2</sup> reached out to USD administrators about hosting Walsh. In a July 13 meeting with group leadership, Director of Student Activities and Involvement Jennifer Lee rejected the request, saying she believed Walsh's political views are "transphobic," "offensive," and would allegedly make USD students feel "unsafe," "not comfortable," and "offended and hurt."<sup>3</sup> On August 2, Vice President for Student Life Byron Howlett confirmed USD would not allow the group to host Walsh, claiming that "all guest speakers . . . [must] engage in perspectives in a manner consistent with USD's mission and core

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<sup>1</sup> For more than 20 years, FIRE has defended freedom of expression, conscience, and religion, and other individual rights on America's college campuses. You can learn more about our recently expanded mission and activities at [thefire.org](https://thefire.org).

<sup>2</sup> *Political Science Clubs and Honor Societies*, UNIV. OF SAN DIEGO, <https://www.sandiego.edu/cas/political-science/clubs-and-honors-societies.php> [<https://perma.cc/NC9S-EZJJ>]. The following reflects our understanding of the pertinent facts, though we appreciate you may have additional information and invite you to share it.

<sup>3</sup> Meeting Summary between Jennifer Lee, Director of Student Activities and Involvement, and College Republicans (July 13, 2023) (on file with author); Nick Baker, *University of San Diego Bans Matt Walsh Speech, Calls Conservative Beliefs 'Grossly Offensive'*, YOUNG AMERICAN'S FOUND., Aug. 21, 2023, <https://yaf.org/news/university-of-san-diego-bans-matt-walsh-speech-calls-conservative-beliefs-grossly-offensive>.

values.”<sup>4</sup> He claimed USD “is in full support of freedom of expression, freedom of inquiry” as “that’s the basis of a university,” but evidently that support stops short of allowing the College Republicans to host speakers whose views USD deems “very disrespectful” and “grossly offensive.”<sup>5</sup>

This rejection violates USD’s binding promises to protect student free speech.<sup>6</sup> USD’s Policy Governing Assembly on Campus unequivocally states that USD “is committed to creating and maintaining an environment in which a variety of ideas can be reasonably expressed, discussed and critically examined.”<sup>7</sup> University policy also specifically “encourages the hosting of guest speakers” as “part of its effort to help members of the university community make informed and responsible decisions in the political, social, professional and personal aspects of their lives.”<sup>8</sup> It also notes that “sponsorship of a guest speaker does not imply that either the university or the sponsoring organization approves or endorses the views expressed by the guest speaker.”<sup>9</sup> USD further promises that its “control of campus facilities will not be used as a device of censorship.”<sup>10</sup>

That Walsh has expressed viewpoints that those at USD or society at large may find offensive is not a valid basis to bar students from inviting him to speak. The principle of freedom of speech does not exist to protect only non-controversial expression; it exists precisely to protect speech that some members of a community may find controversial or offensive.<sup>11</sup> USD administrators

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<sup>4</sup> Meeting Summary between Byron Howlett, Vice President for Student Life, and College Republicans (Aug. 2, 2023) (on file with author).

<sup>5</sup> *Id.*

<sup>6</sup> *E.g., Zumbun v. Univ. of S. California*, 25 Cal. App. 3d 1, 10 (Ct. App. 1972) (“The basic legal relation between a student and a private university or college is contractual in nature. The catalogues, bulletins, circulars, and regulations of the institution made available to the matriculant become a part of the contract.”); *see also Tecza v. Univ. of San Francisco*, 532 F. App’x 667, 668–69 (9th Cir. 2013) (holding that the University of San Francisco’s Student Disability Services Handbook was a binding legal contract).

<sup>7</sup> *Policy Governing Assembly on Campus*, UNIV. OF SAN DIEGO (adopted July 16, 2020), <https://www.sandiego.edu/legal/policies/community/institutional/assembly.pdf> [<https://perma.cc/9T24-M7TD>].

<sup>8</sup> *Guest Speakers*, UNIV. OF SAN DIEGO (updated Apr. 4, 2016), <https://www.sandiego.edu/legal/policies/community/public/speakers.pdf> [<https://perma.cc/3YDM-STFB>].

<sup>9</sup> *Id.*

<sup>10</sup> *Student Organizations Handbook*, UNIV. OF SAN DIEGO (2023), [https://issuu.com/universityofsandiego/docs/asg\\_student\\_org\\_handbook\\_-\\_final\\_draft?fr=sZjc4YzUzMzIxODU](https://issuu.com/universityofsandiego/docs/asg_student_org_handbook_-_final_draft?fr=sZjc4YzUzMzIxODU) [<https://perma.cc/DVV9-SLT8>].

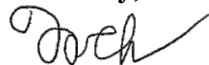
<sup>11</sup> The values of free speech and the fullest exchange of ideas is furthered by allowing students to discuss controversial, offensive, and even hateful ideas. *See, e.g., Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 670 (1973) (“[T]he mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of conventions of decency.”) (internal quotations omitted); *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949) (“[Speech] may indeed best serve its high purpose when it induces a condition of unrest . . . or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea.”); *see also Snyder v. Phelps*, 562 U.S. 443, 461 (2011) (holding that the picketing of soldiers’ funerals was protected speech, the Court noted that “[a]s a Nation we have chosen . . . to protect even hurtful speech on public issues to ensure that we do not stifle public debate.”). Courts’ interpretations of the

clearly rejected Walsh due to personal opposition to his views and their conjecture about how USD students may react to his words. Yet universities promising free expression, as USD does, cede the right to determine which speakers or views students (or faculty) may bring to campus to share with the university community.<sup>12</sup>

Viewpoint-discriminatory rejection of the College Republicans' speaker request plainly violates USD's free speech promises.<sup>13</sup> While Walsh's views may offend some on campus, those policies afford students the right to host Walsh so that his ideas may be "reasonably expressed, discussed and critically examined" by those on campus who elect to engage with them.<sup>14</sup> This exchange of ideas, however sharp and uncomfortable it sometimes may be, promotes a "more speech" approach,<sup>15</sup> and fosters open discussion—the remedy preferred over "authoritative selection" of views in academia.<sup>16</sup> USD's opinions on what student discussions *should* look like cannot come at the expense of their right to share their views, as the College Republicans seek to do by inviting Walsh to campus.<sup>17</sup>

To meet its legal and moral obligations, USD must allow the College Republicans to host Walsh and permit all student groups to host speakers without regard to the invited speaker's views. We request a substantive response to this letter by close of business on September 19, 2023, confirming that USD will meet those obligations.

Sincerely,



Zachary Greenberg  
Senior Program Officer, Student Organizations, Campus Rights Advocacy

Cc: Charlotte Johnson, Vice President for Student Affairs  
Byron Howlett, Vice President for Student Life  
Jennifer Lee, Director of Student Activities

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First Amendment's guarantee of "the freedom of speech" provide guidance as to what USD's institutional promise of that freedom means to its students.

<sup>12</sup> Free speech confers and protects the right to speak as well as "the right to receive information and ideas." *Stanley v. Georgia*, 394 U.S. 557, 564 (1969).

<sup>13</sup> See *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995) ("Viewpoint discrimination is . . . an egregious form" of censorship, and authorities "must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.").

<sup>14</sup> *Policy Governing Assembly on Campus*, *supra* note 7; see also *Brooks v. Auburn Univ.*, 412 F.2d 1171, 1172 (5th Cir. 1969) ("[T]he right of the faculty and students to hear a speaker . . . cannot be left to the discretion of the university president on a pick and choose basis.").

<sup>15</sup> *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J. concurring).

<sup>16</sup> *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967).

<sup>17</sup> USD has successfully hosted controversial speakers, such as when the College Republicans and Students for Life brought Students for Life of America President Kristan Hawkins to campus in 2021. *Spencer Bispham, President of Students for Life speaks at USD's campus*, USD STUDENT MEDIA (Dec. 8. 2021), <https://uofsdmedia.com/president-of-students-for-life-speaks-at-usds-campus>. There is no reason to believe USD cannot do so again here.