



FIRE

Foundation for Individual
Rights and Expression

December 7, 2023

Jonathan Holloway
Office of the President
Rutgers, The State University of New Jersey
Winants Hall, Suite 203
7 College Avenue, 2nd Floor
New Brunswick, New Jersey 08901

URGENT

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

Dear President Holloway:

FIRE¹ writes to you regarding a public letter from New Jersey Representative Josh Gottheimer calling on you to “take action” regarding upcoming campus appearances by guest speakers Marc Lamont Hill and Nick Estes.² We urge you to be mindful of Rutgers’ legal obligations as a public university bound by the First Amendment,³ and to resist calls to disinvite Hill and Estes from campus or to otherwise restrict the event in any capacity.

Gottheimer’s December 4 letter urges the university to address Hill and Estes’s appearance at today’s event titled “Race, Liberation, and Palestine: A Conversation with Noura Erakat, Nick

¹ As you may recall from previous correspondence, the Foundation for Individual Rights and Expression (FIRE) is a nonpartisan, nonprofit organization dedicated to defending freedom of speech. You can learn more about our recently expanded mission and activities at thefire.org.

² Release: Gottheimer Calls On Rutgers University to Protect Students and Remove Antisemitic, Anti-Israel Speakers From December 7 Event, JOSH GOTTHEIMER N.J. FIFTH DIST. (Dec. 4, 2023) <https://gottheimer.house.gov/posts/release-gottheimer-calls-on-rutgers-university-to-protect-students-and-remove-antisemitic-anti-israel-speakers-from-december-7-event> [<https://perma.cc/N39C-MFAY>]. The recitation here reflects our understanding of the pertinent facts, based on public information. We appreciate that you may have additional information to offer and invite you to share it with us.

³ *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.’”) (internal citation omitted).

Estes, and Marc Lamont Hill.”⁴ Rutgers will host the event as part of its Sawyer Seminar lecture series “The Afterlives of Liberation,” run by six Rutgers faculty members and graduate students, which “considers the fraught afterlives of the racial liberation struggles of the post-1968 era[.]”⁵

Gottheimer objects that while the event appears “to be a valuable learning opportunity for students,” it “only provid[es] a platform for two well-known antisemites.”⁶ He argues: “While differing views are a critical part of building cultural understanding, they cannot provide a bully pulpit for those who seek to divide others and spew hate. The first amendment [sic] does not give students the right to bully, intimidate, and instill fear onto other students.”⁷

Contrary to Gottheimer’s assertions, the First Amendment gives faculty and students the broad expressive right to invite controversial campus speakers. The law, conversely, *does* bar Rutgers’ administration from rending control of the event from seminar series speakers. Public institutions may not limit invitations to speakers on the basis of “orthodoxy or popularity of their political or social views[.]”⁸ Likewise, when a university “opens the lecture halls to outside speakers, it must do so nondiscriminatorily.”⁹ Doing as Gottheimer urges and subjecting invitations to a viewpoint-based litmus test would constitute “censorship in its rawest form.”¹⁰

These important principles protect the right to invite to public campuses speakers offering dissenting, unorthodox, or controversial views, including both religious speakers¹¹ and conservative commentators.¹² Some observers, both on and off campus, may disagree vehemently with the views expressed by Hill and Estes, but it is in precisely such a scenario that Rutgers’ obligation to protect freedom of expression must operate.

Gottheimer may believe the event will “provide a bully pulpit for those who seek to divide others and spew hate.” But the Supreme Court has repeatedly held there is no categorical

⁴ The event is promoted as a “critical conversation” between Hill, Estes, and Noura Erakat, an associate professor at Rutgers, to “discuss the ongoing assault in Gaza, address how anti-blackness and settler colonialism shape our current discourse on Palestine, and highlight long histories of solidarity between Black, Indigenous, and Palestinian struggles.” *Race, Liberation, and Palestine: A Conversation with Noura Erakat, Nick Estes, and Marc Lamont Hill*, RUTGERS UNIV., <https://sawyerseminarafterlives.rutgers.edu/race-liberation-palestine/> [<https://perma.cc/SX9D-SAPN>].

⁵ *About Afterlives*, RUTGERS UNIV., <https://sawyerseminarafterlives.rutgers.edu/about/> [<https://perma.cc/X6M4-XQAN>].

⁶ Release, *supra* note 2.

⁷ *Id.*

⁸ *Brooks v. Auburn Univ.*, 296 F.Supp. 188, 194 (M.D. Ala. 1969).

⁹ *Stacy v. Williams*, 306 F.Supp. 963, 971 (N.D. Miss. 1969).

¹⁰ *Brooks*, 296 F. Supp. at 191, 96.

¹¹ *Id.*

¹² *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.”).

exception for expression others find hateful.¹³ The Court recently and expressly reaffirmed as much in refusing to sustain a limitation on speech viewed as “hateful” or demeaning “on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground.”¹⁴ Instead, Rutgers must allow the “breathing space for speech” required to maximize the campus climate for open debate and discussion – the environment to which universities are dedicated to by their very nature.¹⁵

To be sure, Hill and Estes are not shielded from every consequence of their speech, which includes criticism by students, faculty, or the broader community, including state legislators. Such criticism is a form of “more speech,” the remedy the First Amendment prefers to censorship.¹⁶ We urge you to stand firm against the public pressure on Rutgers to “take action” or interfere with the event. Now more than ever, it is vital to support the rights of faculty and students to engage with speakers holding views that provoke others into dialogue and debate.

We request a response to this letter no later than close of business on today, December 7, confirming Rutgers will allow the event to proceed without administrative interference.

Sincerely,



Graham Piro
Program Officer, Campus Rights Advocacy

Cc: John J. Hoffman, Senior Vice President and General Counsel
Timothy Cedrone, Associate General Counsel

¹³ See, e.g., *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992) (invalidating ordinance that prohibited placing on any property symbols that “arouse[] anger, alarm or resentment in others on the basis of race, color, creed, religion or gender”).

¹⁴ *Matal v. Tam*, 137 S. Ct. 1744, 1764 (2017).

¹⁵ *New York Times Co. v. Sullivan*, 376 U.S. 254, 271-72 (1964) (“free debate” requires tolerance of false statements, in order to provide “breathing space for speech”); *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829, 836 (1995) (recognizing viewpoint discrimination in higher education as “an egregious form of content discrimination” incompatible with freedom of speech).

¹⁶ *Whitney v. California*, 274 U.S. 357, 377 (1927).