



# FIRE

Foundation for Individual  
Rights and Expression

December 13, 2023

Richard Saller  
Office of the President  
Stanford University  
450 Jane Stanford Way, Building 10  
Stanford, California 94305

**URGENT**

*Sent via Next Day Delivery and Electronic Mail (president@stanford.edu)*

Dear President Saller:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,<sup>1</sup> is deeply concerned by your announcement that calls for genocide are categorically unprotected under Stanford's Fundamental Standard. Weakening Stanford's laudable commitment to free speech will inflame existing campus tensions around the Israeli-Palestinian conflict and diminish Stanford's core mission of knowledge-building and truth seeking. Fulfilling that mission requires the maximally open climate for speech and debate that Stanford's policies already provide. FIRE thus strongly urges Stanford to stand by its free speech commitment.

We acknowledge that we do so in the wake of the widespread criticism of congressional testimony in which the presidents of the University of Pennsylvania, Harvard, and Massachusetts Institute of Technology accurately noted that whether individuals engaged in speech construable as calling for genocide of Jews violates their respective university policies is "a context-dependent decision."<sup>2</sup> Stanford reacted by tweeting that calls for genocide would violate its own student code of conduct: "In the context of the national discourse, Stanford unequivocally condemns calls for the genocide of Jews or any peoples. That statement would

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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 university campuses. You can learn more about our recently expanded mission and activities at [thefire.org](https://thefire.org).

<sup>2</sup> Kyla Guilfoil, *White House condemns university presidents after contentious congressional hearing on antisemitism*, NBC NEWS (updated Dec. 7, 2023, 8:16 AM), <https://www.nbcnews.com/politics/white-house/white-house-condemns-university-presidents-contentious-congressional-h-rcna128373>.

clearly violate Stanford’s Fundamental Standard, the code of conduct for all students at the university.”<sup>3</sup>

A blanket declaration that particular slogans or the conceptual advocacy of violence represent unprotected speech is inconsistent with both Stanford’s longstanding stated commitment to upholding free speech rights<sup>4</sup> and the legal protections for expression extended to private California university students by California’s Leonard Law.<sup>5</sup>

University leaders cannot censor their way into a more tolerant and welcoming campus.<sup>6</sup> Punishing generalized calls for violence that are not true threats,<sup>7</sup> incitement,<sup>8</sup> or discriminatory harassment<sup>9</sup> (or otherwise unprotected) may please some critics, but it will do nothing to address the root causes of anti-Semitism on campus. It will also violate the Leonard Law. Stanford has long, and wisely, cautioned against misguided efforts to punish hateful but protected speech, explaining that “a commitment to academic and personal freedom means that many statements that may conflict with our ideals cannot be subject to discipline under the Fundamental Standard. ... [E]ven abhorrent speech is protected under the First Amendment and may not be subject to university discipline.”<sup>10</sup>

As one of the world’s elite universities, Stanford is uniquely situated to marshal resources to effectively address troubling campus divisions. Using your institution’s profound power to enlighten is a far better alternative than trying to repress rather than eradicate hate by punishing protected speech. Stanford’s own policies recognize education as the best antidote to hateful rhetoric: “[T]he appropriate intervention to abhorrent speech ‘is more speech, not

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<sup>3</sup> Stanford University (@Stanford), X (Dec. 8, 2023, 1:29 AM), <https://twitter.com/Stanford/status/1733010882249249056> [<https://perma.cc/BXF3-CFAJ>].

<sup>4</sup> *The Fundamental Standard*, STANFORD UNIV., <https://communitystandards.stanford.edu/policies-guidance/fundamental-standard>.

<sup>5</sup> Cal. Educ. Code §§ 94367, 66301; *Freedom of Speech & the Fundamental Standard*, STANFORD UNIV., <https://communitystandards.stanford.edu/resources/additional-resources/freedom-speech-fundamental-standard> (“Even when the speech in question is reprehensible, the Leonard Law restricts Stanford’s ability to discipline students for engaging in protected speech.”).

<sup>6</sup> Zach Greenberg, *A world without hate speech*, FIRE (Oct. 12, 2017), <https://www.thefire.org/news/world-without-hate-speech>.

<sup>7</sup> A true threat must communicate “a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” *Virginia v. Black*, 538 U.S. 343, 359 (2003); *see also Freedom of Speech & the Fundamental Standard*, *supra* note 5 (“While any form of hateful speech may feel threatening, only speech that communicates or incites a serious intent to harm is no longer protected under the First Amendment. This speech must be directed toward a particular individual or a group of specific individuals and does not include hyperbole, jest, or emotional rhetoric.”).

<sup>8</sup> Incitement is speech advocating violence that is both intended and likely to produce imminent lawless action by others. *Brandenburg v. Ohio*, 395 U.S. 444, 447–48 (1969).

<sup>9</sup> Actionable harassment must be unwelcome, discriminatory on the basis of gender or another protected status, and “so severe, pervasive, and objectively offensive that it can be said to deprive the victim[] of access to the educational opportunities or benefits provided by the school.” *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 650 (1999).

<sup>10</sup> *Freedom of Speech & the Fundamental Standard*, *supra* note 5.

enforced silence.”<sup>11</sup> Stanford can also inform its campus community that robust protection for political speech—of vital necessity in times of intense disagreement about global affairs—encompasses rhetorical hyperbole, the conceptual endorsement of violence,<sup>12</sup> and assertions of the “moral propriety or even moral necessity for a resort to force or violence.”<sup>13</sup> And the university can explain how this protection balances the fundamental right to discuss public issues with the obligation to ensure campus safety.

If Stanford chooses in this moment of controversy to water down its free speech commitments by exempting calls for genocide, it will open the door to censorship of a limitless array of views to the detriment of tolerance, robust academic debate, and the ability of opposing activists to find common ground. At a minimum, it sends the message that Stanford will not stand by its free expression commitments at the most critical junctures. It will also incentivize those who would unduly pressure the institution. FIRE urges Stanford to instead stand up for free speech by holding to its laudable commitment to First Amendment standards, as well as its legal obligations under California state law. We would be pleased to help Stanford educate its campus community on the value of that commitment.

We request a substantive response to this letter no later than close of business December 20, 2023.

Sincerely,



Jessie Appleby  
Program Officer, Campus Rights Advocacy

Cc: Jenny Martinez, Provost  
Board of Trustees

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<sup>11</sup> *Id.* (quoting *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring)).

<sup>12</sup> *Watts v. United States*, 394 U.S. 705, 708 (1969).

<sup>13</sup> *Noto v. United States*, 367 U.S. 290, 297–98 (1961).