



April 25, 2024

Jay Hartzell
Office of the President
University of Texas at Austin
110 Inner Campus Drive
Stop G3400
Austin, Texas 78712-3400

URGENT

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

Dear President Hartzell:

FIRE¹ is deeply concerned by the University of Texas at Austin's outrageous and unnecessary use of riot police yesterday afternoon to forcibly disperse students and faculty engaged in a peaceful Gaza solidarity walk-out on campus, taking journalists covering the event with them. UT Austin, at the direction of Governor Greg Abbott, appears to have preemptively banned peaceful pro-Palestinian protesters due solely to their views rather than for any actionable misconduct.² UT Austin's inexcusable actions violate its binding First Amendment obligations as a public university, as well as its obligations under state law to keep all open, outdoor areas of public campuses free for all constitutionally-protected protest. UT Austin must ensure all criminal trespassing charges against peaceful protesters are dropped, if not already dismissed, and forgo further pursuit of institutional or criminal punishment.

On Tuesday, April 23, the Palestinian Solidarity Committee of Austin announced a "Popular University for Gaza" walk-out planned for the following day,³ followed by an afternoon

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

² The recitation here reflects our understanding of the pertinent facts based on public information. We appreciate that you may have additional information and invite you to share it with us.

³ Palestinian Solidarity Committee (@psc_atx), INSTAGRAM (Apr. 23, 2024), <https://www.instagram.com/p/C6G7WP9OkA0/>. The post read in part: "In the footsteps of our comrades at Columbia SJP, Rutgers-New Brunswick, Yale, and countless others across the nation, we will be establishing THE POPULAR UNIVERSITY FOR GAZA and demanding our administration divest from death. We will be occupying the space throughout the entire day, so be sure to bring blankets, food and water, face masks, and lots of energy."

schedule that included teach-ins, study breaks, pizza, and an art workshop.⁴ That evening, the UT Austin sent PSC a letter informing the group the university would not permit Wednesday’s walk-out to move forward due to its “declared intent to violate our policies and rules, and disrupt our campus operations.”⁵ As evidence of disruptive intent, the letter cited the group’s April 21 Instagram post, which included the line: “In the footsteps of our comrades at Rutgers-New Brunswick SJP, Tufts SJP, and Columbia SJP, we will take back our university and force our administration to divest, for the people of Gaza!”⁶ The letter also noted the group’s encouragement for protesters to bring face masks and further stated:⁷

The University of Texas at Austin will not allow this campus to be “taken” and protesters to derail our mission in ways that groups affiliated with your national organization have accomplished elsewhere.

Please be advised that you are not permitted to hold your event on the University campus. Any attempt to do so will subject your organization and its attending members to discipline including suspension under the Institutional Rules. Individuals not affiliated with the University and attempting to attend this event will be directed to leave campus. Refusal to comply may result in arrest.

On Wednesday, students and faculty gathering for the walk-out encountered a large law enforcement presence, including UT police and Texas Department of Public Safety (DPS) troopers called in “at the request of the University and at the direction of Texas Governor Greg Abbott, in order to prevent any unlawful assembly and to support UT Police in maintaining the peace by arresting anyone engaging in any sort of criminal activity, including criminal trespass.”⁸ The officers ordered those present to disperse, ultimately arresting more than 50 protesters and at least one journalist covering the event.⁹

⁴ Palestinian Solidarity Committee (@psc_atx), INSTAGRAM (Apr. 24, 2024), <https://www.instagram.com/p/C6JjD95uVyJ/>.

⁵ X user Ryan Chandler posted images of the university’s April 23 letter to the Palestine Solidarity Committee. Ryan Chandler (@RyanChandlerTV), X (Apr. 24, 2024, 1:02 PM), <https://twitter.com/RyanChandlerTV/status/1783179784060584198> [<https://perma.cc/HP2Q-F8Z8>].

⁶ *Id.* (quoting Palestinian Solidarity Committee (@psc_atx), INSTAGRAM (Apr. 21, 2024), <https://www.instagram.com/p/C6AFX0zppNB/>).

⁷ *Id.*

⁸ Texas DPS (@TxDPS), X (Apr. 24, 2024, 6:20 PM), <https://twitter.com/TxDPS/status/1783259674931769787> [<https://perma.cc/QVU6-YMWR>].

⁹ Lily Kepner et al., *UT-Austin students hold pro-Palestinian protest; at least 50 arrested*, AUSTIN AMERICAN-STATESMAN (Apr. 24, 2024, 2:55 PM), <https://www.statesman.com/story/news/local/2024/04/24/ut-austin-campus-student-protest-arrest-pro-palestine-protests-walk-out/73425149007/>.

As the officers responded to the protest on campus, Abbott posted the following on social media:¹⁰

Arrests being made right now & will continue until the crowd disperses.

These protesters belong in jail.

Antisemitism will not be tolerated in Texas. Period.

Students joining in hate-filled, antisemitic protests at any public college or university in Texas should be expelled.

That evening, you sent a campus-wide letter saying that “protesters tried to deliver on their stated intent to occupy campus ... and many ignored University officials’ continual pleas for restraint and to immediately disperse.”¹¹

This response comes on the heels of a March 27 Executive Order Governor Abbott issued instructing Texas state colleges and universities to review and update their speech policies to “address the sharp rise in antisemitic speech and acts on university campuses and establish appropriate punishments, including expulsion.”¹² The Order also identified SPC by name as a group schools should discipline for violation of the policies.¹³

UT Austin’s disproportionate response to a seemingly peaceful protest, on expressly viewpoint-based grounds, raises serious constitutional concerns. As a public institution, any university restriction on student expression must comport with the First Amendment’s “bedrock principle” of viewpoint neutrality.¹⁴ The university may establish and enforce reasonable restrictions on the time, place, and manner of speech or expressive activity, but its rules must be viewpoint- and content-neutral, narrowly tailored to serve a significant government interest, leave open ample alternative channels for communication,¹⁵ and—perhaps most importantly—not selectively enforced based on a speaker’s viewpoint.¹⁶

¹⁰ Greg Abbott (@GregAbbott_TX), X (Apr. 24, 2024, 4:51 PM), https://twitter.com/GregAbbott_TX/status/1783237229252346194.

¹¹ Jay Hartzell, *Today’s Events*, UNIV. OF TEXAS AT AUSTIN (Apr. 24, 2024), <https://president.utexas.edu/2024-messages-speeches/todays-events> [<https://perma.cc/PFS5-SPLD>].

¹² Tex. Exec. Order No. GA-44 (Mar. 27, 2024), https://gov.texas.gov/uploads/files/press/EO-GA-44_antisemitism_in_institutions_of_higher_ed_IMAGE_03-27-2024.pdf.

¹³ *Id.*

¹⁴ *See, e.g., Snyder v. Phelps*, 562 U.S. 443, 458 (2011); *Iancu v. Brunetti*, 139 S. Ct. 2294, 2301 (2019); *cf., 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).

¹⁵ *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989); *see also Healy*, 408 U.S. at 192–93.

¹⁶ *Frederick Douglass Found., Inc. v. District of Columbia*, 82 F.4th 1122, 1142 (D.C. Cir. 2023) (“Neutral regulations may reasonably limit the time, place, and manner of speech, but ... cannot be enforced based on

These foundational free speech principles are also enshrined in Texas state law,¹⁷ as well as in UT Austin policy.¹⁸ Texas law is clear: Outdoor common areas on state university campuses are traditional public forums open for “any person to engage in expressive activities in those areas of the institution’s campus freely[.]”¹⁹ Students, faculty, and members of the public therefore have the right to peacefully protest at UT Austin without regard to the views they wish to express.²⁰ And the university must protect their right to peacefully protest by using “other, less restrictive means” than shutting down the rally even when protesters are met with violence or disruption from those who disagree with their message.²¹

Instead, it appears UT Austin based its response on objections to the protesters’ expressed support for Gaza and not any planned—or actual—violation of university policy or applicable law. The protestors gathered in an outdoor common area of campus traditionally open to public expression. Planned events included study breaks and ended with an art workshop,²² which are hardly intrinsically disruptive or violent activities—despite UT Austin’s attempts to frame the plans as such, and as violative of university policy. Those plans stand at odds with Gov. Abbott’s statement during the protest that participants in “hate-filled, antisemitic protests” should be jailed and expelled, his direction of DPS troopers to campus, and last month’s Executive Order specifically targeting anti-Semitism, which along with UT Austin’s actions paint a clear picture of state actors executing a multi-pronged campaign to censor disfavored views.

UT Austin’s view that PSC’s call to “take back our university and force our administration to divest” belies disruptive intent is speculative and unsubstantiated, as is your accusation that protesters “tried to deliver on their stated intent to occupy campus.” The Supreme Court affirmed more than 50 years ago that such figurative statements cannot be punished as intending violence.²³ A peaceful protest in an area of a state university that is open to public expression is not unlawful “occupation”—protesters cannot unlawfully occupy a space by engaging in expressive activity they have every right to pursue in a space in which they have every right to be.

the content or viewpoint of speech.”); *Bus. Leaders In Christ v. Univ. of Iowa*, 991 F.3d 969, 985–86 (8th Cir. 2021) (selective enforcement of facially neutral non-discrimination policy against student group based on its views violated its free speech rights).

¹⁷ Tex. Educ. Code § 51.9315 Protected Expression on Campus.

¹⁸ The University of Texas Austin, *Why can members of the public come to campus at any time and engage in demonstrations and speeches?*, YOUTUBE (Oct. 15, 2023), <https://www.youtube.com/watch?v=VCFxvdhFjPo>.

¹⁹ Tex. Educ. Code § 51.9315.

²⁰ *Id.*

²¹ *Bible Believers v. Wayne Cnty.*, 805 F.3d 228, 255 (6th Cir. 2015).

²² Palestinian Solidarity Committee on INSTAGRAM (Apr. 24, 2024), *supra* note 4.

²³ *Hess v. Indiana*, 414 U.S. 105, 109 (1973) (holding that protester’s similar statement about taking back the streets to a crowd of protesters “could not be punished by the State on the ground that [the words] had ‘a tendency to lead to violence’”).

Simply put, yesterday's show of force in response to a peaceful gathering and the dozens of arrests of peaceful protesters, and at least one journalist, make clear UT Austin has abdicated its constitutional and state-mandated obligations to protect expressive rights on its campus.

To correct course, UT Austin must urgently ensure all criminal charges against peaceful protesters are dropped, if they have not already been dismissed, and cease any further pursuit of disciplinary sanctions against peaceful protesters. The university must immediately change any policies or practices that would permit such suppression of protected speech to recur in the future—even when university leaders are pressured to do so by legislators or other powerful actors.

Given the urgent nature of this matter, FIRE requests a substantive response to this letter no later than close of business Tuesday, April 30.

Sincerely,



Jessie Appleby
Program Officer, Campus Rights Advocacy

Cc: Melissa Jones-Wommack, Acting Executive Director, Student Conduct and Academic Integrity
Aaron Voyles, Executive Director Student Involvement
Soncia Reagins-Lilly, Vice President for Student Affairs and Dean of Students
Amanda Cochran-McCall, Vice President for Legal Affairs and General Counsel