



December 14, 2015

Chancellor Pradeep K. Khosla
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Dominick Suvonnasupa
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Sent via U.S. Mail and Electronic Mail (chancellor@ucsd.edu, aspresident@ucsd.edu)

Dear Chancellor Khosla and President Suvonnasupa:

The Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, freedom of speech, and freedom of conscience on America's college campuses. Our website, thefire.org, will give you a greater sense of our identity and activities.

FIRE is deeply concerned about the threat to free expression and freedom of the press at the University of California, San Diego (UCSD) posed by the Associated Students of UCSD Council's November 18 vote to end its funding of all student media organizations. The Associated Students Council's decision was made in reaction to content published in the controversial satirical newspaper *The Koala* and represents unconstitutional viewpoint discrimination. The Associated Students Council must immediately reverse its decision to defund student media. If it cannot or will not do so, UCSD must intercede, as the university has a non-delegable duty to uphold the First Amendment rights of its students and student organizations and cannot permit its student government to administer mandatory student fees in an unconstitutional manner.

The following is our understanding of the facts; please correct us if you believe we are in error.

The Koala is known for satirical content that many in the UCSD campus community find offensive. On November 16, 2015, *The Koala* published an article entitled "UCSD Unveils New Dangerous Space on Campus," which contained several racial slurs and mocked the notion of

campus “safe spaces” and the use of “trigger warnings.”

On November 18, high-ranking UCSD administrators, including Chancellor Khosla, issued a statement denouncing the newspaper:

We, the UC San Diego administration, strongly denounce the Koala publication and the offensive and hurtful language it chooses to publish. The Koala is profoundly repugnant, repulsive, attacking and cruel. The UC San Diego administration does not provide any financial support for the Koala, and we call on all students, faculty, staff and community members to join us in condemning this publication and other hurtful acts.

The same day, the Associated Students Council, which provides financial support for *The Koala* through mandatory student activity fees, voted to amend its governing rules to remove funding for all student print media. Prior to the vote, Vice Chancellor of Student Affairs Juan Gonzalez read the administrators’ statement aloud.¹ According to a reporter with *The Guardian*, an independent UCSD student newspaper, who was present at the meeting, council members discussing the amendment “explained that since Council cannot selectively discriminate against one publication (the Koala) without infringing upon First Amendment rights, Council should defund all publications currently receiving money from student fees.”² According to the reporter, after voting in favor of the amendment, “[a]ll councilmembers agreed to try to assist other organizations in finding alternate sources of funding.”

After the vote, Associated Students Council President Suvonnasupa attempted to justify the amendment as a content-neutral funding decision. The *San Diego Union-Tribune* reported on December 7 that Suvonnasupa “insists that the vote was not about The Koala, but was only about addressing the most efficient use of student funds.”³ This statement, however, is contradicted by the record. First, the timing of the Council’s vote vis-à-vis the UCSD administrators’ condemnation of *The Koala* is suspect, especially considering Vice Chancellor Gonzalez’s attendance and the fact that he read UCSD’s denunciation of *The Koala* for the record at this same meeting. Moreover, the discussion among council members preceding the vote, including comments from Suvonnasupa himself, makes clear that the content of student press outlets motivated the timing of and basis for the decision. As recorded on the live blog of the meeting,⁴ some of the council members’ comments included the following:

¹ Naftali Burakovsky & Kriti Sarin, *11/18 A.S. Council*, THE GUARDIAN (UCSD), Nov. 19, 2015, <http://ucsdguardian.org/2015/11/19/1118-a-s-council>.

² *Id.*

³ Gary Warth, *UCSD student leaders criticized for cutting media funds*, SAN DIEGO UNION-TRIBUNE, Dec. 7, 2015, <http://www.sandiegouniontribune.com/news/2015/dec/07/ucsd-students-koala-cuts>.

⁴ *UCSD Associated Student Council Meeting Live Blog*, <http://as.ucsd.edu/site/news> (last visited Dec. 9, 2015).

- President Suvonnasupa: **The question is do we fund media at all? It expresses an opinion of that group.** Should student fees be used to fund these events? There is a difference between print and event in my opinion[.]
- FC Britt: We are voting on pulling a type of funding AS has been involved in. ... From a legal standpoint, we do not have to fund media but if we do fund, we need to be equal/content neutral in funding.
- AVP Juarez: **Objectivity does not exist. I'm really upset what has come out of this publication.**
- Senator Perez: I see both sides of this argument. In this case right now, this is our time to be leaders and making hard choices. **We are making a political statement with our political voice.** It may be easy to be emotional, but it is also easy to be cut and dry on this topic. There are two hard decisions.
- AVP Snyder: **Council needs to weigh in what is of most importance**[.]
- Senator Pennish: I think alternate funding needs to be secured. It shouldn't be to pull funding away because **some groups benefit and are positive to the campus.**
- Senator Vu: Campus climate has gotten so bad across the country. I feel like this should happen so we can represent our constituents[.]
- President Suvonnasupa: It has to be looked as a whole. We aren't saying we are limiting free speech. Everything printed on AS Funds is AS responsibility. **Everything printed, good or bad, is partially our responsibility**[.]

[Emphases added.]

Suvonnasupa's claim that the defunding of student media was a matter of finding the "most efficient use of student funds" is simply not borne out by the available facts. The record makes clear that the Associated Students' decision was grounded in a values-based weighing of the content and viewpoints in student media outlets, in violation of its obligation to uphold student organizations' First Amendment rights. The Associated Students Council must reverse its unconstitutional decision. If it refuses to do so, UCSD must intervene to ensure that its students' constitutional rights are upheld.

The First Amendment applies with full force to public universities such as UCSD. *See, e.g., Widmar v. Vincent*, 454 U.S. 263, 268–69 (1981) (“With respect to persons entitled to be there, our cases leave no doubt that the First Amendment rights of speech and association extend to the campuses of state universities.”). A student government to which the university has delegated authority to distribute mandatory student fees shares the institution’s duty to allocate those fees in a manner consistent with the First Amendment.

The Supreme Court of the United States has repeatedly held that speech may not be punished merely because some or even many may find it to be offensive or disrespectful. *See Texas v. Johnson*, 491 U.S. 397, 414 (1989) (“If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”); *Papish v. Board of Curators of the University of Missouri*, 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.’”).

Looking specifically at satire and intentionally provocative speech, we encourage Associated Students Council members to consider the Supreme Court’s decision in *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46 (1988), in which the Court held that the First Amendment protected an outlandish satirical advertisement suggesting that the Reverend Jerry Falwell lost his virginity in a drunken rendezvous with his mother in an outhouse—an advertisement that he and others no doubt found deeply offensive. Similarly, in *Snyder v. Phelps*, 562 U.S. 443 (2011), the Court held that intentionally hurtful and incendiary messages conveyed by Westboro Baptist Church members picketing outside a service member’s funeral were protected by the First Amendment, explaining:

Speech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and—as it did here—inflict great pain. On the facts before us, we cannot react to that pain by punishing the speaker. As a Nation we have chosen a different course—to protect even hurtful speech on public issues to ensure that we do not stifle public debate.

Id. at 460–61. As the body responsible for the distribution of funds to student organizations collected through mandatory student activity fees, the Associated Students Council acts as an agent of UCSD. As such, it is required to distribute funding in a content- and viewpoint-neutral manner, consistent with UCSD’s obligations under the First Amendment. *See Board of Regents of the University of Wisconsin System v. Southworth*, 529 U.S. 217, 233 (2000) (“When a university requires its students to pay fees to support the extracurricular speech of other students, all in the interest of open

discussion, it may not prefer some viewpoints to others.”); *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819, 836 (1995) (“For the University, by regulation, to cast disapproval on particular viewpoints of its students risks the suppression of free speech and creative inquiry in one of the vital centers for the Nation’s intellectual life, its college and university campuses.”).

Having defunded all student media organizations at UCSD in clear response to the viewpoints expressed by *The Koala*, the Associated Students Council has violated the organizations’ constitutional rights. Moreover, the danger inherent in the move is evident; Council members injected their own judgments regarding the value of *The Koala* and other student press outlets into the decision. By cutting access to funding and thereby to the media’s audience, Associated Students Council made a choice about the content of public opinion, information, and debate for their fellow students. This is simply impermissible at a public university in this country.

This is not the first time that Associated Students has defunded student media organizations in an attempt to target *The Koala* for unpopular speech. In 2010, Associated Students then-President Utsav Gupta unilaterally froze funding to print media and student-run television in reaction⁵ to a broadcast by *The Koala* in defense of a controversial invitation to a “Compton Cookout” party, allegedly organized by UCSD fraternities, containing numerous racial stereotypes.⁶ After learning of the broadcast, Gupta announced that he had halted media funding until the student government could “develop effective policies to ensure that our fees do not go to the support [of] the hateful speech that targets members of our community.”⁷

FIRE and other organizations, including the American Civil Liberties Union of San Diego & Imperial Counties (ACLU of San Diego) and the Student Press Law Center, condemned Gupta’s media shutdown. In a letter to Gupta and UCSD’s then-Chancellor Marye A. Fox, we emphasized Associated Students’ obligation to administer mandatory student fees in a viewpoint-neutral manner and Gupta’s violation of that duty by impermissibly using fee distribution to punish the viewpoint expressed in *The Koala*’s broadcast. FIRE worked with student media organizations to keep attention focused on the issue and, fortunately, after several weeks of controversy, the Associated Students Council voted to end the funding freeze.

⁵ FIRE Letter to Associated Students President Utsav Gupta and UCSD Chancellor Marye A. Fox, Feb. 22, 2010, <https://www.thefire.org/fire-letter-to-associated-students-president-utsav-gupta-and-ucsd-chancellor-marye-a-fox> (“FIRE Feb. 22, 2010 Letter”).

⁶ FIRE Letter to University of California, San Diego, Chancellor Marye Anne Fox, Feb. 23, 2010, <https://www.thefire.org/fire-letter-to-university-of-california-san-diego-chancellor-marye-anne-fox>.

⁷ FIRE Feb. 22, 2010 Letter, *supra* note 5.

Now as in 2010, the move by the Associated Students Council to defund student media in response to controversial content from *The Koala* amounts to unconstitutional viewpoint discrimination. We once again join the ACLU of San Diego in condemning the student government's censorship of its fellow students. FIRE concurs in the legal analysis put forward in the ACLU of San Diego's December 1 letter to President Suvonnasupa (copy enclosed), concluding that the Associated Students Council's actions violated the First Amendment.

The Associated Students Council must comply with its legal responsibilities and restore funding to all student media organizations. If it is unwilling to do so, the UCSD administration is obligated to intervene and correct the Council's constitutional violation. Chancellor Khosla has a responsibility to provide leadership in upholding the First Amendment rights of UCSD students and student organizations, especially when their speech is unpopular.

FIRE is committed to using all of the resources at our disposal to see this matter through to a just conclusion.

We request a response to this letter from Chancellor Khosla and President Suvonnasupa by December 28, 2015.

Sincerely,



Marieke Tuthill Beck-Coon
Senior Program Officer, Individual Rights Defense Program

Encl.

cc:

Juan C. Gonzalez, Vice Chancellor, Student Affairs

Daniel W. Park, Chief Campus Counsel

Taylor Valdivia, UCSD Associated Students Vice-President, Campus Affairs

Tristan Britt, UCSD Associated Students Financial Controller

