



March 7, 2017

Michael E. Engh, S.J.
Office of the President
Santa Clara University
500 El Camino Real
Santa Clara, California 95053

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

Dear President Engh:

As you know from our February 17 letter, the Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses. We appreciate the university's acknowledgment of the concerns we raised in that letter and decision to overturn the Associated Student Government's viewpoint-based rejection of prospective student group Turning Point USA.

Unfortunately, FIRE is once again concerned about the state of freedom of expression at Santa Clara University (SCU) following reports that SCU instructed *The Santa Clara*, the student newspaper, to remove a quote critical of an SCU dean from a published story. Administrative censorship of student reporting cannot be tolerated at a university that claims to value freedom of expression and an independent student press.

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

In a February 16 editorial titled "Censored But Not Silenced," SCU's student newspaper *The Santa Clara* claimed that "for the first time in many years" SCU failed to honor the "longstanding, explicit understanding between the university administration and *The Santa Clara* regarding editorial control over the content in this publication" that the paper believes "is paramount to our journalistic integrity."¹

¹ Editorial, *Censored But Not Silenced*, THE SANTA CLARA, (Feb. 16, 2017), <http://thesantaclara.org/editorial-censored-but-not-silenced>.

According to *The Santa Clara*, the act of administrative censorship was in response to a February 2 article, “A Closer Look at the \$100 Million Sobrato Gift,” in which the paper reported on a \$100 million donation from SCU alumnus John Sobrato. The article included a comment made by Sobrato that appeared to criticize School of Engineering Dean Godfrey Mungal.²

Frankly, we have to have a new dean that’s more connected in the high-tech community. And I don’t want to throw stones at Godfrey, but . . . we need somebody that’s a modern, high-tech entrepreneur. I’d love to see some retired executive who would like to run a school. That’s what we need to find to make this project really sing.

The Santa Clara included a response from Mungal in the article.

On February 9, Vice Provost Jeanne Rosenberger called *The Santa Clara* Editor-in-Chief Sophie Mattson and requested that Mattson remove the article about Sobrato. When pressed for a reason, Rosenberger referred Mattson to SCU General Counsel John Ottoboni. Ottoboni spoke with Mattson under the condition that the conversation would be off the record due to Mungal’s status as an SCU employee. Mattson suggested that instead of taking down the entire story, she would only remove the sections mentioning Mungal, and SCU officials agreed.

SFGate reports that Ottoboni decided to press for the story’s removal because “the potential for harm outweighed the benefit.”³ Ottoboni also told *The Mercury News*, “I reviewed the thing from a legal perspective, and it was my opinion that requesting the article be modified was appropriate.”⁴

The Santa Clara added the following note to the online version of the February 2 article:⁵

This is not the original version of this article, first published on Feb. 2. The original version contained additional comments and follow-up coverage. The comments and follow-up coverage were removed at the request of our publisher, Santa Clara University. We were and will remain strongly, vehemently opposed to removing sections of the original article. We found the request to be in violation of our commitment to journalistic ethics, and did so only to comply with our publisher’s request.

While SCU is a private university and thus not legally bound by the First Amendment, it is both morally and contractually bound to honor the explicit, repeated, and unequivocal promises of freedom of expression it has made to its students. For example, SCU’s “Student Events, Activities, and Organizations” policy states:⁶

² Nanette Asimov, *Outrage over dean altering story in Santa Clara campus paper*, SFGATE, (Feb. 28, 2017), <http://www.sfgate.com/education/article/Outrage-over-dean-altering-story-in-Santa-Clara-10967094.php>.

³ *Id.*

⁴ Scott Herhold, *Herhold: Was Santa Clara University newspaper censored?*, THE MERCURY NEWS, (Feb. 27, 2017), <http://www.mercurynews.com/2017/02/27/herhold-was-scu-newspaper-censored>.

⁵ Editorial, *Censored But Not Silenced*, THE SANTA CLARA, (Feb. 16, 2017), <http://thesantaclara.org/editorial-censored-but-not-silenced>.

⁶ *Student Handbook 2015–16*, SANTA CLARA UNIVERSITY, https://www.scu.edu/media/offices/student-life/purge/SCU_Student_Handbook_2015-16_FINAL.pdf (last visited Mar. 5, 2017).

Because as a university we remain irrevocably committed to intellectual discourse, we acknowledge, affirm, and defend the right of every member of the campus community to freedom of expression, freedom of association, and freedom of exercise of faith in accordance with the University's stated mission and goals.

Additionally, SCU's "Statement of Community Values" claims that "hampering [the] community's right to the communication of ideas and ideals just because they don't represent [one's own]" is inconsistent with university members' commitment to "valu[ing] diversity and learn[ing] from diverse people, ideas, and situations."⁷

As a preliminary matter, Rosenberger and Ottoboni had no legal basis to believe *The Santa Clara* should be required to remove its story or Sobrato's quote about Mungal. It is unclear what Ottoboni meant in stating that he "reviewed the thing from a legal perspective" and concluded that it was appropriate to request that the newspaper remove the quote. Perhaps the university believes the quoted material to be defamatory. Defamation "involves the intentional publication of a statement of fact that is false, unprivileged, and has a natural tendency to injure or which causes special damage." *Smith v. Maldonado*, 72 Cal. App. 4th 637, 645 (1999).

Yet, there is no apparent contention that Sobrato did not utter the words quoted in the newspaper. If Sobrato's words are quoted accurately, they amount to a statement of opinion, not fact, and cannot support a claim sounding in defamation. Even if Sobrato were misquoted, or quoted out of context, the inaccuracy could not approach defamation absent, at a minimum, a "material change in meaning" of the speaker's words. *Masson v. New Yorker Magazine*, 501 U.S. 496, 516 (1991).

However, it seems most likely that Rosenberger and Ottoboni asked for the story's removal because of concerns over image, rather than legality. SCU's administration may have felt uncomfortable about its student newspaper reporting on a major donor's criticism of an SCU dean, but that discomfort is not good cause for censorship. Student press does not exist to provide favorable media attention to the university that houses it, and SCU cannot cloak itself in the mantle of freedom of expression while demanding censorship of student press when its reporting makes the university uncomfortable.

In the "Scholar Commons"—which lists the university's "[s]cholarship, [r]esearch, and [p]ublications"—SCU states the following in an FAQ for *The Santa Clara*:⁸

Is the newspaper entirely student-run?

Yes. About 30 undergraduates, who work as reporters, editors, page designers (and even distributors), produce the paper you see each week in print and online. How much content does the university require you to print each week? None. **The Santa Clara is virtually editorially independent from the university. Although the newspaper receives some**

⁷ *Id.*

⁸ *The Santa Clara*, SANTA CLARA UNIVERSITY, <http://scholarcommons.scu.edu/tsc> (last visited March 5, 2017) (emphasis added).

funding from the university, editorial decisions are made entirely by student editors.

The paper has an advisor, a journalism professor who offers critiques after the paper is published.

It is heartening that SCU celebrates the independence of its student press, but if that independence does not apply at all times, then those words are mere platitudes. Editorial independence is *most relevant* at times when it makes those in positions of power uncomfortable. If that independence can be revoked during times of difficulty, then it does not exist at all.

In demanding censorship of *The Santa Clara*, SCU likely intended to preserve its image, but it should be clear from the negative media attention in response to SCU's censorship demands that the greatest harm to the university's image has been a direct result of the university's actions, not *The Santa Clara*'s. In fact, far more attention has been driven to Sobrato's remark as a result of SCU's call for its removal. This tends to be the outcome of censorship.

We appreciate that SCU took to heart the concerns raised in FIRE's February 17 letter and protected students' freedom of speech by recognizing a student group that had been rejected because its views could be seen as offensive to some members of the campus community. We ask the university to again recommit SCU to those laudable ideals and reaffirm to the campus community and *The Santa Clara* that student press will not become less free at SCU simply because its reporting could be seen as offensive to the university's administration.

In "Censored But Not Silenced," *The Santa Clara*'s editorial board states:

In journalism classes taught at Santa Clara, freedom of the press is emphasized as one of the cornerstones of democracy. We implore the administration to respect the values being taught on our campus.

This is a worthy lesson for SCU to teach its students, and an important one for the university to abide by as well. We hope to soon praise the university for publicly committing to do so.

We request a response to this letter by March 21, 2017.

Sincerely,



Sarah McLaughlin
Program Officer, Individual Rights Defense Program

cc:

John Ottoboni, General Counsel
Jeanne Rosenberger, Vice Provost for Student Life