



February 17, 2022

Richard Yao, Ph.D.  
Office of the President  
California State University Channel Islands  
1 University Drive  
Camarillo, California 93012

*Sent via U.S. Mail and Electronic Mail (richard.yao@csuci.edu)*

Dear President Yao:

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.

FIRE is concerned by California State University Channel Islands' (CSUCI's) warning to a student, Bailey Morris, that she may be subject to disciplinary action if she continues to criticize university staff or engages in "otherwise disruptive communications," following Morris's complaints about the university's actions, policies, and procedures. Criticism—even heated criticism—of government policies and actors, including employees of a public university, is squarely protected by the First Amendment. CSUCI's warning to Morris fails to specifically identify any unprotected expression and is calculated to chill her from exercising the full range of her First Amendment rights.

That threat alone—even if not carried out—violates Morris's well-established rights under the First Amendment. FIRE calls on CSUCI to immediately cease its infringement of Morris's constitutional rights by rescinding the warning.

**I. CSUCI Orders Morris to Cease Criticizing Staff**

The following is our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share any information that might change our analysis. To these ends, please find enclosed an executed privacy waiver authorizing you to share information about this matter.

Bailey Morris is an undergraduate student enrolled at CSUCI. During her time as a student, Morris has made multiple complaints to the university alleging that the university has failed to provide reasonable accommodations for her disability, discriminated against her on the basis of disability, violated her privacy rights, and retaliated against her for reporting rights

violations. On April 13, 2021, Morris and CSUCI executed a Settlement and Resolution Agreement to resolve various complaints and allegations that Morris had made.<sup>1</sup>

Since then, Morris has accused the university of failing to comply with certain terms of the agreement and continuing to discriminate against her and deny her reasonable accommodations, among other violations of her rights. Morris has also objected to changes to the university's disability policies and procedures. Morris and her mother, Deborah Meyer-Morris, who also acts as Morris's advisor, have repeatedly communicated these concerns to CSUCI employees.

On August 26, 2021, Rebecca Lawrence, the Executive Director of the Title IX & Inclusion Office, sent Morris a letter responding to issues she and Meyer-Morris had raised and setting "expectations going forward."<sup>2</sup> Part of the letter addressed the "appropriateness" of Morris's communications with university staff and threatened disciplinary action:<sup>3</sup>

Our office has been made aware that you have allegedly communicated with University staff by swearing at, insulting and/or attacking the personal character of staff. On September 25, 2020, you were directed by William Nutt to refrain from ad hominem arguments and personal attacks in future communication when working with University personnel. Please be advised that should you continue to criticize the character of employees or engage in otherwise disruptive communications you may be referred to the Dean of Students office for possible disciplinary action.

The letter also cited Morris's communications expressing "dissatisfaction with Presidential communications, salaries of employees, the alleged incompetence of staff, and matters under the purview of the Chancellor's Office," and, while stating that "[f]eedback from CI community members is always welcome," again warned of potential punishment: "[F]eedback from students that does not adhere to the standards laid out in the Student Code of Conduct may be referred to the Dean of Students office for possible disciplinary action."<sup>4</sup>

## **II. The First Amendment Bars CSUCI from Disciplining Morris for Speech Critical of the University or its Employees**

Criticism of government policies and actors—including employees of a public university—is firmly protected by the First Amendment. The university's warning to Morris violates her First Amendment rights by prohibiting her from criticizing staff and vaguely barring "otherwise disruptive communications."

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<sup>1</sup> Settlement and Resolution Agreement between Bailey Morris and the Board of Trustees of the California State University, acting by and through its Channel Islands Campus (Apr. 13, 2021) (on file with author).

<sup>2</sup> Letter from Rebecca Lawrence, Exec. Dir. Title IX & Inclusion Off., Calif. State Univ. Channel Islands, to Bailey Morris (Aug. 26, 2021) (on file with author).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

**A. *The First Amendment Applies to CSUCI as a Public University.***

It has long been settled law that the First Amendment is binding on public universities like CSUCI.<sup>5</sup> Accordingly, the decisions and actions of a public university—including the pursuit of disciplinary sanctions<sup>6</sup> and maintenance of policies implicating student and faculty expression<sup>7</sup>—must be consistent with the First Amendment.

CSUCI’s own policies recognize that “[f]reedom of expression is a cornerstone of a democratic society and is essential to the educational process.”<sup>8</sup> The university “encourages and supports the free expression of ideas, values and opinions, recognizing that such expression may take a variety of forms, such as speeches, signs, written materials, public assemblies, parades, demonstrations, artistic representation and other forms of expressive conduct.”<sup>9</sup>

**B. *The First Amendment Protects Uncivil Expression.***

Student interactions with fellow students, faculty, or university staff will sometimes involve speech that is abrasive or uncivil, or perceived that way. But the First Amendment makes no exception for such expression.

The Supreme Court has repeatedly, consistently, and clearly held that speech may not be restricted on the basis that others find it to be uncivil, insulting, or offensive. This principle applies with particular strength to universities, dedicated to open debate and discussion. Take, for example, a student newspaper’s front-page uses of a vulgar headline (“Motherfucker Acquitted”) and a “political cartoon . . . depicting policemen raping the Statue of Liberty and the Goddess of Justice.”<sup>10</sup> These words and images—published at the height of the Vietnam War—were no doubt deeply offensive to many at a time of intense polarization and unrest. Yet, “the 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.’”<sup>11</sup>

To the extent CSUCI takes issue with the tone or allegedly insulting nature of Morris’s communications, a university’s interest in fostering civility does not justify limits on student speech.<sup>12</sup> Formal enforcement of civility standards presents considerable risks to expressive freedom because it relies on subjective evaluations about what speech is sufficiently civil or respectful. A primary “function of free speech . . . is to invite dispute,” and it “may indeed best

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<sup>5</sup> *Healy v. James*, 408 U.S. 169, 180 (1972). Morris’s expressive rights are also protected by California state law, which provides that CSU institutions shall not “make or enforce a rule subjecting a student to disciplinary sanction solely on the basis of conduct that is speech or other communication that, when engaged in outside a campus . . . is protected by the First Amendment[.]” CAL. EDUC. CODE § 66301 subd. (a).

<sup>6</sup> *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 667–68 (1973).

<sup>7</sup> *Dambrot v. Central Mich. Univ.*, 55 F.3d 1177 (6th Cir. 1995).

<sup>8</sup> *Policy on Time, Place and Manner and the Use of University Buildings and Grounds*, CAL. STATE UNIV. CHANNEL ISLANDS, <https://policy.csuci.edu/sa/01/policy-tpm.htm> (last visited Feb. 4, 2022).

<sup>9</sup> *Papish*, 410 U.S. at 667–68.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 670.

<sup>12</sup> See, e.g., *Rodriguez v. Maricopa Cnty. Cmty. Coll. Dist.*, 605 F.3d 703, 709 (9th Cir. 2009) (“the desire to maintain a sedate academic environment does not justify limitations” on expressive rights, including those posed in “vigorous, argumentative, unmeasured, and even distinctly unpleasant terms.”) (cleaned up).

serve its high purpose when it induces a condition of unrest” or “stirs people to anger,” as speech is “often provocative and challenging,” carrying “profound unsettling effects[.]”<sup>13</sup>

Impassioned criticism not only of public policies, but of public servants, falls well within the shelter of the First Amendment, which reflects “a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.”<sup>14</sup> Freedom of expression necessarily protects “not only informed and responsible criticism” but also “the freedom to speak foolishly and without moderation,” particularly in criticizing “public men and measures.”<sup>15</sup>

A rule mandating civility would imperil a broad range of protected expression. As courts have recognized, civility codes “prohibit[] the kind of communication that it is necessary to use to convey the full emotional power with which a speaker embraces her ideas or the intensity and richness of the feelings that attach her to her cause.”<sup>16</sup> Constituents of a university “may have to withstand colleagues that do not like them, are rude, and may be generally disagreeable people,”<sup>17</sup> but in order to provide breathing room for freedom of expression, administrators may not arrogate to themselves the power to punish speech they subjectively find uncivil or inappropriate.

CSUCI has failed to specifically identify any communications from Morris that are not constitutionally protected. Instead, CSUCI has placed blanket bans on broad categories of protected expression, including “ad hominem arguments” and criticism of “the character of employees.” CSUCI’s vague prohibition on “otherwise disruptive communications” also cannot be squared with the First Amendment to the extent CSUCI characterizes as “disruptive” any communications critical of university staff. The First Amendment does not insulate anyone, let alone public officials, from criticism. And the use of insults or profanity does not cause speech to lose protection.<sup>18</sup>

CSUCI further warned Morris that “feedback” that “does not adhere to the standards laid out in the Student Code of Conduct may be referred to the Dean of Students office for possible disciplinary action.” Whatever standards CSUCI means to invoke, they do not supersede the First Amendment.

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<sup>13</sup> *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949).

<sup>14</sup> *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

<sup>15</sup> *Baumgartner v. United States*, 322 U.S. 665, 673–74 (1944).

<sup>16</sup> *Coll. Republicans at S.F. State Univ. v. Reed*, 523 F. Supp. 2d 1005, 1020 (N.D. Cal. 2007).

<sup>17</sup> *Somoza v. Univ. of Denver*, 513 F.3d 1206, 1218 (10th Cir. 2008).

<sup>18</sup> See *Snyder v. Phelps*, 562 U.S. 443, 448, 461 (2011) (First Amendment protected protesters holding insulting signs outside of soldiers’ funerals, including signs that said “God hates fags”); *Cohen v. California*, 403 U.S. 15, 25 (1971) (First Amendment precluded punishment for wearing a jacket emblazoned with the words “Fuck the Draft”).

Of course, CSUCI may punish speech that *does* fall into one of the limited exceptions to the First Amendment, such as true threats<sup>19</sup> or incitement.<sup>20</sup> But again, CSUCI does not identify any such communications from Morris, and the August 26 letter, on its face, forbids her from engaging in protected expression in the future. University officials may prefer that Morris lodge her complaints more politely, but the First Amendment precludes them from turning that preference into a demand.

**C. *The First Amendment Protects the Right to Petition.***

Morris’s speech is also protected by the concomitant First Amendment right to petition the government for a redress of grievances. “The right to petition allows citizens to express their ideas, hopes, and concerns to their government and their elected representatives[.]”<sup>21</sup> This encompasses the rights of students to raise grievances and urge action by public university officials, even if the latter find those grievances or the mode of their delivery to be inappropriate, as a “citizen’s right to petition is not limited to goals that are deemed worthy, and the citizen’s right to speak freely is not limited to fair comments.”<sup>22</sup>

**III. Conclusion**

CSUCI has every right to express disapproval of Morris’s style of communication or to make efforts to facilitate more productive exchanges between Morris and university officials. But the university must stop short of threatening Morris with punishment for criticizing those officials.

FIRE calls on CSUCI to rescind its disciplinary warning to Morris concerning her communications with university staff. We request receipt of a response to this letter no later than the close of business on March 3, 2022.

Sincerely,



Aaron Terr  
Program Officer, Individual Rights Defense Program and Public Records

Cc: William Nutt, Manager of Institutional Equity and Interim Title IX Coordinator

Encl.

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<sup>19</sup> A “true threat” is a statement through which “the speaker means to 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).

<sup>20</sup> Incitement requires that speech be “directed to inciting or producing imminent lawless action” and “is likely to incite or produce such action.” *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).

<sup>21</sup> *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 388 (2011).

<sup>22</sup> *Eaton v. Newport Bd. of Educ.*, 975 F.2d 292, 298 (6th Cir. 1992).

## Authorization and Waiver for Release of Personal Information


I, Bailey Morris, born on                     , do hereby authorize California State Channel Islands (the "Institution") to release to the Foundation for Individual Rights in Education ("FIRE") any and all information concerning my current status, disciplinary records, or other student records maintained by the Institution, including records which are otherwise protected from disclosure under the Family Educational Rights and Privacy Act of 1974. I further authorize the Institution to engage FIRE's staff members in a full discussion of all matters pertaining to my status as a student, disciplinary records, records maintained by the Institution, or my relationship with the Institution, and, in so doing, to fully disclose all relevant information. The purpose of this waiver is to provide information concerning a dispute in which I am involved.

I have reached or passed 18 years of age or I am attending an institution of postsecondary education.

In waiving such protections, I am complying with the instructions to specify the records that may be disclosed, state the purpose of the disclosure, and identify the party or class of parties to whom disclosure may be made, as provided by 34 CFR 99.30(b)(3) under the authority of 20 U.S.C. § 1232g(b)(2)(A).

This authorization and waiver does not extend to or authorize the release of any information or records to any entity or person other than the Foundation for Individual Rights in Education, and I understand that I may withdraw this authorization in writing at any time. I further understand that my execution of this waiver and release does not, on its own or in connection with any other communications or activity, serve to establish an attorney-client relationship with FIRE.

I also hereby consent that FIRE may disclose information obtained as a result of this authorization and waiver, but only the information that I authorize.

DocuSigned by:  
  
Student's Signature

2/17/2022  
Date