



Foundation for Individual Rights in Education

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June 7, 2011

Chancellor Henry T. Yang
Office of the Chancellor
University of California, Santa Barbara
5221 Cheadle Hall
Santa Barbara, California 93106

Sent via U.S. Mail and Facsimile (805-893-8717)

Dear Chancellor Yang:

FIRE is in receipt of Campus Counsel Nancy Greenan Hamill's May 20 response to our May 6 letter regarding unconstitutional viewpoint discrimination against the University of California, Santa Barbara (UCSB) College Republicans student organization for a presentation by conservative writer and activist David Horowitz. Thank you for your prompt response. It appears, however, that Hamill was not given an accurate account of the Associated Students Finance Board's (FB's) or Legislative Council's (LC's) decision to partly deny funding for this event. Although Hamill asserts that the decision "was based on neutral criteria unrelated to the message content of the event," minutes from the meeting, as well as contemporary accounts, make extremely clear that the decision was based on discriminatory criteria. The minutes are enclosed.

During the LC's May 4, 2011, meeting, the LC debated whether to allocate a portion of UCSB's mandatory student activity fee for the event. According to the minutes of that meeting, FB Chair Katie Lieberknecht stated that UCSB had raised legal concerns about the FB's May 2 decision to deny all funding for the event:

The rationale presented in the [FB] minutes is a violation of University policy 86.30 in the Legal Code. UCSB Regent's Lawyer brought this to our attention.

This warning had little effect on the LC's ensuing decision, however, for LC members and audience members focused most of their discussion of the allocation on Horowitz's expression and viewpoints. Indeed, many argued that because of Horowitz's expression and viewpoints, the LC should allocate no funding whatsoever. After the LC voted to allocate \$1,100, which had been requested for security for the event, the *Daily Nexus* reported on May 5:

The result was met with outrage from the audience, as individuals shouted “You are sponsoring Islamophobia and racism on this campus,” and “Who on this board is representing the Muslim community?”

This report is corroborated in the minutes by LC member Dina Varshavsky, who stated, “We passed this and got yelled at and feel people are going back on what they originally voted.” Indeed, the LC revisited the decision during the same meeting and then voted to allocate only \$800 for the event. At the least, the College Republicans must be allocated the \$300 that was denied due to hostility to Horowitz and his protected expression.

I present here just a portion of the many statements in the minutes that demonstrate viewpoint discrimination in this case.

(1) LC member Alfredo Del Cid, who voted against the \$1,100 allocation, stated:

Diversity, speech, and ideas I appreciate and like the different angles, and when speakers with different views come I think it’s constructive, but I believe the statements should be founded in fact and there’s a difference between that and completely outlandish statements. Referencing David Horowitz’s article on how the gay AIDS epidemic stems from the gay pride movement. If there were intelligent discourse with David, then great, but this is not the case. He will go on a rant about people that he doesn’t agree with or like.

Del Cid also alleged that Horowitz had “call[ed] student organizations ‘terrorist cells.’”

(2) A student named Jared (surname unavailable), who voted against the \$1,100 allocation as proxy for LC member Danielle Stevens, stated:

I didn’t hear concrete evidence on anything when I went to the event 3 years ago; all I heard was slander.

(3) LC member Fabian Gallardo, who voted against the \$1,100 allocation, stated:

My only reservation with bringing Horowitz is that it would be an educational event. David belittles students and professors and will only anger folks.

(4) LC member Tiffany Mayville, who voted against the \$1,100 allocation, asked the College Republicans representative:

Do you think the idea of free speech jeopardizes the safety of students on the campus?

She later asked:

Couldn't you have chosen someone who better represents your minority group in a constructive manner?

She also stated:

Not funding their event is not making them feel like they are not included in this campus. Being a political[] minority is WAY different than a structural minority. I want people to represent their beliefs and we shouldn't have to have security to protect the event. We should create a constructive dialogue and break down the structure of these issues and not break down these issues. I understand the weight words have and look at what are we setting a precedent for again. The threat of being sued is very disempowering and it feels like we're being told how to vote because of legalities. We have the duty to represent students and not the Regents.

(5) LC member Danielle Mayorga, who voted against the \$1,100 allocation, stated:

I don't want to fund security because I've been there and the police do not protect the students' right to peacefully and protest and assemble.

(Mayorga's argument here suggests that she prefers a "heckler's veto" whereby the government or its agents censor a speaker's expression because of the disruptive actions of a third party. In this instance, Mayorga might even be arguing that the police should not step in to protect David Horowitz from angry protesters, so LC should not allocate funds for security to protect the speaker.)

I have omitted here the many similar statements from audience members, which included several quotations of Horowitz's prior expression as well as additional unconstitutional rationales for denying funds for the event.

Finally, at the end of the meeting, the LC voted to hide the May 2, 2011, FB discussion from the public record, as the LC minutes show:

MOTION by Jason Lopez to strike discussion about the allocation on College Republicans from the Finance Board minutes. SECOND by Danielle Mayorga. MOTION CARRIED BY CONSENT.

MOTION by Tiffany Mayville to approve the Finance Board minutes as amended. SECOND by Jason Lopez. MOTION CARRIED BY CONSENT. [Emphases in original.]

The evidence here is quite clear that at the very least, the College Republicans would have been allocated \$1,100 rather than \$800 were it not for the viewpoint discrimination by the Associated Students Legislative Council. FIRE again asks UCSB to intervene to ensure that, at the least, the College Republicans are allocated the \$300 that was denied due to hostility to Horowitz and his protected expression.

We request a response by June 21, 2011.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Kissel". The signature is fluid and cursive, with the first name "Adam" written in a larger, more prominent script than the last name "Kissel".

Adam Kissel
Vice President of Programs

Encl.

cc:

Nancy Greenan Hamill, Campus Counsel

Yonie Harris, Dean of Students

Harrison Weber, President, Associated Students

Chloe Stryker, Internal Vice President, Associated Students

Jake Elwood, former Internal Vice President, Associated Students

Marisela Marquez, Executive Director, Associated Students

Denise Rinaldi, Associate Director for Special Projects, Associated Students

Cindy Lopez, Associate Director of Administration, Associated Students