



LIBERTY | JUSTICE | EQUALITY



November 18, 2015

Chancellor Gene Block
University of California Los Angeles, Chancellor's Office
Box 951405, 2147 Murphy Hall
Los Angeles, CA 90095-1405
chancellor@ucla.edu

Dear Chancellor Block,

We write on behalf of Students for Justice in Palestine (SJP) at UCLA to express concern about the threat to free expression and free association posed by the Graduate Students Association's (GSA) policy of discrimination against students with pro-divestment viewpoints. As described below, the GSA recently agreed to fund a Diversity Town Hall event on the condition that the event organizers have "zero connection with 'Divest from Israel' or any equivalent movement/organization." This condition violates the well-established First Amendment rights of student organizations on campus, and must be rescinded immediately.

Palestine Legal is dedicated to advancing the constitutional rights of people in the U.S. – particularly students – who engage in activity critical of the Israeli government. The Center for Constitutional Rights has been dedicated to advancing and protecting the rights guaranteed by the Constitution, including the First Amendment, for decades. Together, we have documented a pattern of suppression targeting protected speech in favor of Palestinian rights and we recently published a report, "[The Palestine Exception to Free Speech: A Movement Under Attack in the U.S.](#)"¹ We have attached the report, and hope that you will review it carefully.

The ACLU of Southern California has a long history of defending the First Amendment rights of all people, including students and student groups. We oppose any attempts at government censorship and discrimination.

We trust that you embrace bedrock values of free speech and political association as essential to the learning environment at UCLA, regardless of your views on Israel/Palestine. We expect you will recognize the harm that the GSA's actions have caused to all UCLA students and that you will immediately remedy the serious chilling effect.

¹ The report is also available at www.palestinelegal.org/the-palestine-exception.

I – Factual Summary

UCLA’s Graduate Students Association (GSA) is a student-run organization responsible for the promotion of graduate students’ interests on the UCLA campus.² The GSA forms a part of the Associated Students of UCLA, which is authorized by the University of California Regents to administer the student government. As part of this role, the GSA is authorized to allocate portions of the mandatory student fees paid by UCLA students.

On October 15, 2015, a graduate student organizer requested \$2000 from the GSA to help fund a Diversity Town Hall sponsored by a student organization called the Diversity Caucus. The Diversity Caucus is an umbrella organization of undergraduate and graduate student organizations that work on diversity initiatives on campus. The Diversity Town Hall event was intended as a community forum to discuss issues of race and campus climate. The advertisement explained that topics for discussion were to include a keynote by the Vice Chancellor for Equity, Diversity and Inclusion, networking among diversity organizations, dialogue around issues of campus climate, and brainstorming to improve campus climate.³

On October 16th, the President of the GSA Milan Chatterjee replied to the student organizer, informing her that the GSA cabinet approved an allocation of \$2,000 for the Diversity Town Hall, but that the funding came with two stipulations. The first required that the GSA’s logo be included in all marketing materials. The second stipulation was the following:

2. We understand that your organization has **zero connection** with "Divest from Israel"⁴ or any equivalent movement/organization. Hence, we approved your funding.

I did want to reiterate that GSA leadership has a **zero engagement/endorsement** policy towards Divest from Israel or any related movement/organization. I am confident that this won't be the case, but if we are aware that the Diversity Caucus is engaging with any such movement--directly or indirectly--in the organization of this event, we'll have to withdraw or recoup our allocation. I know this is [sic] won't be the case, but I wanted to put our policy out there. [Emphasis in original.]

² Constitution of the Graduate Students Association, <http://www.gsa.asucla.ucla.edu/organization/governing-documents/constitution>.

³ Diversity Caucus, Campus Town Hall flyer, <http://equity.ucla.edu/wp-content/uploads/2015/10/2015-11-05-GSC-Diversity-Caucus.pdf>.

⁴ It is not clear exactly who the GSA intended to prohibit from having any connection to the Town Hall because there is no campus or community organization with the title “Divest from Israel.” There were 32 student organizations that supported the November 2014 student government “Resolution to Divest from Companies Engaged in Violence against Palestinians.” (See, <http://www.sjpb Bruins.com/news-opinion/press-release-students-for-justice-in-palestine-hails-divestment-victory-thanks-all-supporters>.) There may be thousands in the UCLA campus community who generally support the divestment “movement.” These organizations and individuals have a broad range of involvement in the divestment movement ranging from leaders to passive supporters and everything in between.

In a follow up email on Sunday, October 18th, Chatterjee clarified that,

GSA has a policy not to engage with a UCLA movement/organization called "Divest from Israel," [sic] When we were voting on your funding, some members were concerned about this movement being involved in the organization of your event. For your funding to be approved, cabinet requested this stipulation to be inserted. I don't want to give names, but here are statements from 2 cabinet members:

"Thank you. I appreciate that stipulation. " [sic] and "I appreciate your note on the divestment movements."

Other cabinet members orally expressed their support for this stipulation.

Basically, the stipulation is that if "Divest from Israel" is involved with the organization on this event, or the Diversity Caucus endorses their position at the event, GSA won't be able to provide funding. My understanding is that this won't be the case.

The exact GSA funding source was not clear to the Diversity Caucus at the time of their application and remains unclear. The Diversity Caucus made the request directly to the GSA president and did not fill out a formal application. The GSA maintains a "Discretionary Fund" with a formal application process, written eligibility guidelines, and a stated purpose to support "educational and cultural events held primarily for graduate students that take place on the UCLA campus."⁵ Aside from the guideline that graduate students should be the primary target audience, there are no content based restrictions in the Discretionary Fund. In this case however, it was the understanding of the Diversity Caucus that the group did not apply to the Discretionary Fund because the requested \$2000 exceeded the maximum grant available.

To the knowledge of Students for Justice in Palestine (SJP), GSA maintains no viewpoint or content based restrictions in its funding guidelines and has not issued any similar restrictions to other student groups applying for GSA funding.

On Monday, October 19th, the student organizer from the Diversity Caucus forwarded the email containing GSA's funding stipulations to university officials Irma Tirado, the Student Government Accountant and Roy Champawat, the Student Union Director. There was no reply from Tirado or Champawat.

On November 5th, three hours before the event was scheduled to take place, Chatterjee threatened to freeze the funding because he was concerned the stipulation would not be followed, and concerned about rumors of a lawsuit in response to the stipulation. At this time, he notified the student organizer that he was seeking support from university administrators. SJP is not aware of whether university administrators advised Chatterjee, or whether the university took any other action.

⁵ Graduate Students Association Discretionary Fund, <http://www.gsa.asucla.ucla.edu/services/discretionary-fund>.

The Diversity Caucus ultimately did receive funding from the GSA but only after assuring Chatterjee that the group would honor the stipulation not to engage with supporters of divestment, in violation of their constitutional rights. On November 5th, the student government accounting manager forwarded a purchase order for \$2,000 in the name of Associated Students UCLA, labeled “Partial Payment for Catering for GSA Campus Town Hall.”

Later in the day on November 5th, Chatterjee confirmed by email that the GSA would not cancel the funding, but again warned, “Nonetheless, if we get a report that the stipulations were violated by being one-sided against a party in terms of Israel-Palestine Politics, we may have to recoup funding. I'm **confident** that this **won't** be the case, as it's a broad diversity event for an esteemed Vice Chancellor.” [Emphasis in original.]

In this November 5th email, Chatterjee claimed for the first time that it viewed its stipulation as applying to any discussion of Israel-Palestine. Chatterjee wrote, “The GSA Cabinet has adopted the following resolution: Under this resolution, the UCLA Graduate Student Association – as a governing body – will abstain from taking any stances or engaging in any discussion in regards to Israel-Palestine Politics.” The email did not explain why the GSA’s own neutral stance on the Israel-Palestine issue would empower it to attach funding conditions that restrict the speech and political association of student groups. Regardless, Chatterjee had not previously articulated that the GSA’s policy applies to viewpoints on more than one side of the divestment debate, even though the Diversity Caucus representatives had repeatedly asked for clarification on the meaning of the stipulation. Chatterjee made this clarification only after saying he would seek advice from university administrators on the same day of the event. The Diversity Caucus organizers did not receive his email until the evening of November 5th after the event took place.

On November 16th, representatives of SJP raised concerns about the stipulation in a meeting with Vice Chancellor Kang, who acknowledged he had previously seen the stipulation in an email and said he would investigate the matter.

II – The GSA funding stipulation violates students’ First Amendment right to freedom of speech and political association.

It is unconstitutional for the student government to discriminate in funding student groups and their projects based on viewpoint. The Supreme Court has held that a university may not deny funding to student groups because of the viewpoint the students seek to express.⁶ Accordingly, federal courts have consistently held that student government decisions about whether to fund specific student groups must be viewpoint neutral. The University can no more condition funding for student groups on their disavowing a pro-divestment position than it can on their disavowing an anti-divestment position or on their adhering to any other viewpoint.

In *Rosenberger v. Rector and Visitors of the University of Virginia*, the Supreme Court held that “[d]iscrimination against speech because of its message is presumed to be

⁶ *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819, 836 (1995).

unconstitutional. . . .⁷ There, the Court declared a restriction on funding for student groups that adopted a religious viewpoint to be unconstitutional. In doing so, the Court reaffirmed the paramount importance of First Amendment protections in the University environment. “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.”⁸

UCLA and its GSA must grant student organizations that support divestment equal access—on a viewpoint neutral basis—to the same student fee funding available to other student organizations. Requiring organizers of the Diversity Town Hall to have "zero connection" with divestment supporters is blatant, unconstitutional discrimination against pro-divestment viewpoints. On its face, the restriction expressly eliminates pro-divestment viewpoints from the event. The stipulation excluded from the Diversity Town Hall the 32 student organizations⁹ that endorsed or sponsored divestment in 2014, as well as the union that represents graduate student workers,¹⁰ removing their political and social viewpoints from the conversation, and directly undermining the purpose of the Town Hall to promote networking and dialogue among student organizations.

Second, the stipulation violates students’ freedom of political association. The First Amendment also protects a person’s group memberships from direct and indirect interference by the government.¹¹ The GSA’s statement that its funding was conditioned on “zero connection with the ‘Divest from Israel’ movement” effectively prohibited event organizers from associating in any way with thousands of other students. The First Amendment does not permit UCLA and the GSA to dictate to students whom they may associate with.

⁷ *Rosenberger*, 515 U.S. at 828. See also *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.”).

⁸ *Rosenberger*, 515 U.S. at 836.

⁹ The list of divestment endorsers and sponsors from 2014 included: Afrikan Student Union, American Indian Student Association, Al-Talib News Magazine, Armenian Student Association, Asian Pacific Coalition, Bengali Students Association, Bhagat Puran Singh Health Initiative, Black Law Students Association, Bruin Feminists for Equality, FEM Magazine, Fossil Free UCLA, Improving Dreams, Equality, Access, and Success (IDEAS), Incarcerated Youth Tutorial Project, Indus, Jewish Voice for Peace, Law Students for Justice in Palestine, MEChA (Movimiento Estudiantil Chicano de Aztlán) de UCLA, Mentors for Academic and Peer Support (MAPS), Muslim Law Student Association, Muslim Student Association, Native Roots, Pakistani Student Association, Project One, Queer Alliance, Samahang Pilipino, Social Awareness Network for Activism through Art (SANAA), Student Coalition Against Labor Exploitation (SCALE), UMMA Volunteer Project, United Afghan Club, United Arab Society, Vietnamese Student Union, Womyn of Color Collective at UCLA Law School. (See, <http://www.sjpbruins.com/endorsements.html>.)

¹⁰ The union of graduate student workers – United Auto Workers Local 2865 – voted in December 2014 to support divestment from Israel. 58% of the members who voted at UCLA voted in favor of the measure. (See, <http://dailybruin.com/2014/12/10/graduate-student-workers-union-passes-resolution-to-support-bds-movement/>.)

¹¹ *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958).

The stipulation's meaning is clear: divestment supporters are on a blacklist, and if you associate with them, you will be punished by being unable to obtain GSA funding available to others with different points of view. Student organizers understood that their relationships with divestment supporters put the funding for an important event at risk. Such an effort to tilt the scales on an important political issue is anathema to the First Amendment.

Third, the GSA policy constitutes a vague – and chilling – restriction on campus speech and political association. Even if the policy were somehow viewpoint neutral, it would be unconstitutionally vague because an ordinary person cannot decipher what conduct or speech or political association is prohibited and what is permissible. Given the large numbers of student organizations and individuals in the UCLA community who support divestment, and the huge spectrum of involvement among these organizations and individuals, how would organizers of the Diversity Town Hall know what kind of contact is prohibited under the GSA policy, and with whom? Does "zero connection" mean that organizers of the Town Hall may not speak to any individual who supports divestment? Does it mean the organizers may not have an institutional relationship, and what sort of institutional relationship would be prohibited? Does it matter that many student organizations that have stated their support for divestment are key constituencies in the UCLA diversity community? The requirement to have "zero connection with the Israel divest movement" is an incomprehensible and unworkable prohibition.

Finally, the after-the-fact explanation that the GSA policy is a content-based restriction against all discussion of Israel-Palestine politics does not justify the funding stipulation. It could not cure the viewpoint discrimination that GSA had already committed because the explanation was not put forward until the day of the event, and the event organizers did not receive the email until after the event took place. The fact that Chatterjee offered this explanation after-the-fact indicates it was merely a pretext to justify discrimination against pro-divestment viewpoints. Regardless, the GSA policy of neutrality on Israel-Palestine politics is not a legitimate justification because the GSA's own political position cannot govern the funding of events. The GSA has its own First Amendment right to speak – or not speak – on an issue, but it cannot dictate the viewpoints of other student organizations through funding restrictions.

IV – The University must immediately rescind its unconstitutional policy and remedy the chilling effect.

The university is obligated to ensure that the GSA complies with its constitutional obligations to uphold students' First Amendment rights. For at least three weeks, the university has been aware, or should have been aware of the GSA's policy of unconstitutional viewpoint discrimination, and has failed to address it, as the chilling effect ripples outward. To ameliorate the harm done, the affected students respectfully request that the university take the following immediate steps:

1. Rescind and correct the GSA's policy of viewpoint discrimination.
2. Enact a policy forbidding viewpoint discrimination in funding decisions.

3. Send clear instructions implementing the policy to all student affairs staff who oversee student groups, and student government organizations who allocate funding. Recommend that student government organizations write clear instructions into their governing documents and other online resources of student government websites.
4. Unequivocally state that campus members may not be penalized for supporting divestment or penalized for associating with supporters of divestment.
5. Unequivocally state that the university values open discussion about important social and political issues and consequently firmly commits to providing funding to a variety of student organizations on a viewpoint neutral basis.
6. Allocate funding from the GSA to an event where issues of Israel and Palestine are openly discussed.

The undersigned organizations are committed to using all of the resources at our disposal to ensure the First Amendment rights of UCLA students. We request a prompt response to this letter by December 2, 2015.

Sincerely,

Peter J. Eliasberg
Legal Director, ACLU
Manheim Family Attorney
For First Amendment Rights

Liz Jackson
Staff Attorney, Palestine Legal
Cooperating Counsel, Center for Constitutional Rights

Maria LaHood
Deputy Legal Director, Center for Constitutional Rights

cc:

L. Amy Blum, Interim Vice Chancellor, Legal Affairs, UCLA, ablum@conet.ucla.edu
Jerry Kang, Vice Chancellor for Equity, Diversity and Inclusion, kang@law.ucla.edu
Milan Chatterjee, President of the Graduate Students Association, pres@gsa.asucla.ucla.edu