



SPEECH FIRST

1300 I St NW Suite 400E
Washington, DC 20005

March 5, 2021

Dr. Marc Tessier-Lavigne
President
Stanford University
450 Jane Stanford Way, Building 10
Stanford, CA 94305

RE: Free Speech at Stanford University

Sent via Electronic Mail (president@stanford.edu)

Dear President Tessier-Lavigne:

Speech First is a nationwide membership organization of students, alumni, and other concerned citizens. Our organization is dedicated to preserving civil rights secured by law, including the freedom of speech guaranteed by the First Amendment. Speech First seeks to protect the rights of students and others at colleges and universities through litigation and other lawful means. For example, Speech First recently successfully challenged several policies of the University of Michigan that chilled student speech. *See Speech First, Inc. v. Schlissel*, 939 F.3d 756 (6th Cir. 2019).

As President of Speech First, I write to urge you to reform your policies to better protect student speech on your campus. As you are no doubt aware, Stanford has been repeatedly criticized for actions it has taken regarding free speech. This is unfortunate. College campuses should be a marketplace of ideas where a wide swath of views can be heard by all.

Although there are many steps Stanford could take to make its campus more welcoming for differing views, there are at least three policies in particular we ask you to review. First, Stanford's creation of a Campus Climate, Community, and Speech Committee to "depolarize" campus and its appointment of an avowedly anti-conservative professor as chair. Second, the University's Acts of Intolerance bias reporting program, whose amorphous standards threaten to significantly chill speech. Third, Stanford's Events and White Memorial Plaza policies, which significantly restrict student speech and expression. Correcting these provisions now

would further Stanford’s promise that it is, as it claims, “an institution committed to the exchange of ideas.”¹

I. Free Speech Is Critically Important on College Campuses.

As the Supreme Court has long recognized, “[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools [of higher education].” *Healy v. James*, 408 U.S. 169, 180 (1972). American universities are “peculiarly the marketplace of ideas,” training future leaders “through wide exposure to that robust exchange of ideas which discovers truth out of a multitude of tongues, rather than through any kind of authoritative selection.” *Keyishian v. Bd. of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 603 (1967). “Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.” *Sweezy v. N.H. ex rel. Wyman*, 354 U.S. 234, 250 (1957).

Under California’s Leonard Law, private universities like Stanford must adhere to the First Amendment.² And as the U.S. Department of Education recently recognized, “private institutions are often required by law to deliver what they have promised, including what they have promised about freedom of speech, including academic freedom, through their own policies.”³ A private institution’s failure to adhere to its own institutional policies “can be a contractual breach but it can also be a tort or more.”⁴ More important, private universities—no less than public universities—have a critical role to play in protecting free speech. Private universities must do everything in their power to ensure that students are free to speak, to debate, and to listen on a campus that is free of institutional censorship.

II. Although Stanford Claims to Protect Student Free Speech, Its Actions Do Not Match Its Commitments.

Stanford holds itself out as an institution committed to free speech and expression. As you have recognized: “At their core, universities are devoted to the discovery and transmission of knowledge. In both research and education, breakthroughs in understanding come not from considering a familiar, limited range

¹ Office of Community Standards, Stanford University, “Freedom of Speech and the Fundamental Standard,” <https://stanford.io/3oAjfAm>.

² Cal. Educ. Code § 94367.

³ *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Direct Grant Programs, State-Administered Formula Grant Programs, Developing Hispanic-Serving Institutions Program, and Strengthening Institutions Program*, U.S. Department of Education, 85 Fed. Reg. 3190-01, 3212-13 (Jan. 17, 2020).

⁴ *Id.*

of ideas, but from considering a broad range of ideas, including those we might find objectionable, and engaging in rigorous testing of them through analysis and debate.”⁵ Despite this rhetorical commitment, there have been many instances of Stanford not following these ideals. To name a few: The Faculty Senate is engaged in a sustained campaign to censor the speech of Hoover Institution fellows;⁶ Stanford officials have removed flyers and censored the speech of students supporting tighter immigration restrictions;⁷ and the University has thrown roadblocks in the way of conservative student groups hosting conservative speakers.⁸ Like many institutions, Stanford’s commitment to free expression is constantly on trial. It is more important now than ever that Stanford reaffirm its commitment to freedom of speech on its campus by implementing real change in its policies that chill and outright outlaw that freedom.

III. Stanford Should Revise Its Policies to Protect Speech.

Speech First has identified three steps that Stanford should, at a minimum, take to demonstrate its commitment to free speech on campus.

A. Stanford Should Eliminate the Campus Climate, Community, and Speech Committee or Appoint an Impartial Chair.

It has been reported that Stanford recently established a “Committee on Campus, Climate, Community, and Speech” with the purpose of “depolariz[ing] the campus.”⁹ This Committee, in seeking to “depolarize” its students’ viewpoints, will almost certainly restrict unpopular viewpoints. In seeking consensus, the University cannot prohibit or chill “the expression of an idea simply because society finds the idea offensive or disagreeable.” *Texas v. Johnson*, 491 U.S. 397, 414 (1989). Nor can the university use the cover of depolarization to shield its students from “the discomfort and unpleasantness that always accompany an unpopular viewpoint.” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 509 (1969).

⁵ Marc Tessier-Lavigne & Persis Drell, “Advancing free speech and inclusion,” Notes from the Quad (Nov. 7, 2017), <https://stanford.io/3qa4zsa>.

⁶ See Kate Chesley, “Academic freedom questions arise on campus over COVID-19 strategy conflicts,” Stanford News (Oct. 30, 2020), <https://stanford.io/39kFnbE>.

⁷ See Jeremy Bauer-Wolf, “The Complications of Free Speech,” Inside Higher Ed (Feb. 13, 2018), <https://bit.ly/35wdxrb>.

⁸ See, e.g., Erin Woo, et al., “Following months of controversy, Dinesh D’Souza speaks to packed auditorium,” The Stanford Daily (Mar. 1, 2019), <https://bit.ly/3q8przV>.

⁹ See Stephen Sills, “My university selected an antifascist ringleader to oversee its campus speech policy,” The College Fix (Dec. 7, 2020), <https://bit.ly/3ieXzaN>; Benjamin Zeisloft, “Stanford bestows free speech policy spot on ‘Campus Antifascist Network’ co-founder,” Campus Reform (Dec. 1, 2020), <https://bit.ly/2Ldm0Jz>.

Even more concerning is the University's decision to appoint Professor David Palumbo-Liu to lead this effort. Palumbo-Liu is a co-founder of the national "Campus Antifascist Network," an organization expressly committed to silencing conservative voices on campus.¹⁰ The creation of the Committee itself does enough to chill conservative students' speech. The selection of Mr. Palumbo-Liu is deeply troubling.

To ensure that students are free to express themselves without fear of punishment, Stanford should eliminate this Committee.

B. Stanford Should Eliminate its Acts of Intolerance Protocol.

Stanford's "Acts of Intolerance" Protocol instructs students to report conduct that "adversely and unfairly targets an individual or group on the basis of one or more of these actual or perceived characteristics," including "Gender or gender identity," "Race or ethnicity," "Disability," "Religion," "Sexual orientation," "Nationality," "Age," and "Social or economic class."¹¹ The Protocol also instructs students to report "hate crimes," which are broadly defined to include, inter alia, "threatening or repeated ... electronic communications."¹²

The Supreme Court has consistently recognized the "substantial and expansive threats to free expression posed by" regulations that restrict speech on the basis of its content. *United States v. Alvarez*, 567 U.S. 709, 717 (2012). Content-based regulations necessarily "restrict expression because of its message, its ideas, its subject matter, or its content." *Ashcroft v. ACLU*, 535 U.S. 564, 573 (2002). Such regulations are antithetical to "our profound national commitment to the free exchange of ideas," *Harte-Hanks Commc'ns, Inc. v. Connaughton*, 491 U.S. 657, 686 (1989), and hinder the goal of an "uninhibited marketplace of ideas in which truth will ultimately prevail," *McCullen v. Coakley*, 573 U.S. 464, 476 (2014). Moreover, harassment codes are regularly struck down by courts because they are so overbroad that they reach "a substantial amount of constitutionally protected speech," *Dambrot v. Cent. Mich. Univ.*, 55 F.3d 1177, 1182 (6th Cir. 1995), and are so vague that they fail to provide "fair notice of the standard of conduct" to which a student will be held, *Leonardson v. City of E. Lansing*, 896 F.2d 190, 196 (6th Cir. 1990).

These policies are precisely the type of content-based regulation that have no business on a college campus. They afford the university broad discretion to discipline student speech that is deemed "adverse[]" or "unfair[]." ¹³ Examples of speech that could be chilled by such policies are easy to see. A student urging a tougher

¹⁰ *Id.*

¹¹ Dean of Students, Stanford University, *Acts of Intolerance Protocol*, <https://stanford.io/38wYQGD>.

¹² *Id.*

¹³ *Id.*

immigration policy, including building a wall along the southern border, may be interpreted as making “adverse[]” statements on the basis of ethnicity and national origin. A student expressing his views on traditional marriage may be interpreted as making “unfair[]” statements on the basis of sexual orientation. A student advocating for one side or the other of the Israeli-Palestinian conflict may be interpreted as “target[ing]” on the basis of religion or national origin. As the incidents discussed above demonstrate, these are no abstract hypotheticals at Stanford—they are actively chilling students’ ability to express ideas.

Virtually any opinion or political belief—as well as any use of humor, satire, or parody—will be perceived by *somebody* as “adverse” or “unfair.” In order to determine what conduct will be considered an “act of intolerance” by the university, one “must make a subjective reference” based on the listener’s own perception of the speech. *Dambrot*, 55 F.3d at 1184. And, “[a]bsent any requirement akin to a showing of severity or pervasiveness—that is, a requirement that the conduct *objectively and subjectively* creates a hostile environment or substantially interferes with an individual’s work—the policy provides no shelter for core protected speech.” *DeJohn v. Temple Univ.*, 537 F.3d 301, 317-18 (3d Cir. 2008) (emphasis added). Stanford must revise its Acts of Intolerance Protocol to ensure that students are free to express themselves without fear of punishment.

C. Stanford Should Revise Its Events Policies.

Stanford places many restrictions on campus events that inhibit free speech. The University’s “Major Events” policy mandates that all events must “complement ... the mission of Stanford University,” be approved up to twelve weeks in advance of an event, and “be initiated, led, and implemented by their student leaders working in close consultation with Office of Student Engagement and university staff.”¹⁴ Additionally, the University has designated only one “free speech zone” on campus—White Memorial Plaza,¹⁵ an extremely small portion of Stanford’s sprawling campus leaving students with minimal space and opportunity to express themselves through protest and demonstration.¹⁶ And even in this one alcove of speech, Stanford has decreed that students must submit their request to speak a minimum of two weeks in advance to obtain preapproval to hold events.¹⁷

¹⁴ Office of Student Engagement, Stanford University, “Major Events,” <https://stanford.io/39miKDB>.

¹⁵ Office of Community Standards, Stanford University, “Freedom of Speech and the Fundamental Standard,” <https://stanford.io/3oAjfAm> (“The University has identified White Memorial Plaza as a ‘free speech zone’, which is broadly open to all. Beyond this, areas have site-specific space-use policies that must be adhered to.”).

¹⁶ Office of Student Engagement, Stanford University, “White Memorial Plaza,” <https://stanford.io/38zBjoQ>.

¹⁷ *Id.*

Students should have the right to demonstrate and speak freely without pre-approval from authorities. In particular, students should be “free to stimulate [their] audience with spontaneous and emotional appeals.” *N.A.A.C.P. v. Claiborne Hardware Co.*, 458 U.S. 886, 928 (1982). Moreover, making student speech “contingent upon the uncontrolled will of an official, as by requiring a permit or license which may be granted or withheld in the discretion of such official,” presents the opportunity for censorship. *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 151 (1969).

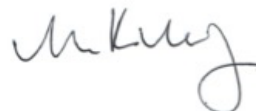
Stanford’s Major Events and White Memorial Plaza policies contradict these basic principles of free speech. They stifle political speech by preventing students from hosting events and speakers spontaneously in response to the news of the day. Requiring students to submit paperwork, obtain approval from authorities, and wait days before hosting events undeniably diminishes core political speech. In addition, by mandating that events complement an amorphous University “mission,” Stanford maintains the right to deny requests based on the content of the event. Groups inevitably will be chilled by the substantial investment required to hold an event, especially those featuring controversial speakers.

* * *

Stanford may believe it is doing students a service by preventing them from speech they deem biased or harassing. But that could not be further from the truth. Some “ideas and information are vital, some of slight worth,” but “the general rule is that the speaker and the audience” should “assess the value of the information presented.” *Edenfield v. Fane*, 507 U.S. 761, 767 (1993). Or as Frederick Douglass put it, “[t]o suppress free speech is a double wrong. It violates the rights of the hearer as well as those of the speaker.” That sentiment is nowhere truer than on the campuses of American colleges and universities.

Thank you for your consideration of these important issues. We look forward to hearing from you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mark King".

President, Speech First