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April 20, 2017

VIA EMAIL AND U.S. MAIL

Stephen C. Sutton, Ed.D.
Interim Vice Chancellor, Student Affairs
University of California, Berkeley
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University of California
Berkeley, CA 94720-1500
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Re: Unconstitutional Censorship of Conservative Speech on Campus

Dear Vice Chancellor Sutton:

This law firm represents Berkeley College Republicans (“BCR”) and event supporter Young America’s Foundation (“YAF”) regarding the decision by the Regents of the University of California (the “University” or “UC Berkeley”) to deny our clients’ First Amendment rights by prohibiting a speaking event previously scheduled for April 27, 2017, organized by our clients and featuring speaker Ann Coulter, a prominent conservative commentator and writer. Please direct all future correspondence concerning this matter to us. The University’s actions violate fundamental principles of free speech, equal protection, and due process guaranteed by the United States Constitution, and will not be tolerated.

As you know, Ms. Coulter was invited to speak at UC Berkeley’s campus by BridgeCal, a nonpartisan student group on campus, and her speech was intended to be a counterpoint presentation to another speaker invited by BridgeCal, Maria Echaveste, former U.S. presidential advisor to Bill Clinton and White House Deputy Chief of Staff during the second Clinton administration. Ms. Echaveste’s event was held as scheduled, on April 17, 2017, between 6:45p.m. and 8:30 p.m., without any interference by the University.

Our clients meticulously followed University protocol in arranging for Ms. Coulter’s planned, on-campus speaking event. As you are aware, YAF first issued a contract for this event to Pranav Jandhyala (BridgeCal) and Naweed Tahmas (BCR), as co-sponsors of Ms. Coulter’s speech, on March 28, 2017 – more than four weeks before the event. On April 3 – three and a half weeks before the scheduled event, our clients were informed that during a meeting between a BridgeCal board member and a University administrative advisor concerning reserving a proper space for the event, BridgeCal was told that the Coulter event must be held off-campus, and would need to conclude before 3:00p.m. – as opposed to Ms. Echaveste’s on-campus event,

which lasted until 8:30 p.m., and as opposed to other, innumerable speeches by prominent liberal speakers allowed on campus in the afternoon and evening hours when students are not in class, and are more likely to be able to attend.¹ Without any other viable option, our clients and Ms. Coulter conceded to the University's arbitrary, pretextual and discriminatory time-and place-restrictions which, on their face, violate the First Amendment to the United States Constitution.

On April 18, Dean of Students Joseph Greenwell assured BCR and BridgeCal that his office was securing a room on campus for the Coulter event. However, the very next day, you abruptly informed our clients that the Coulter event was cancelled due to the University's alleged inability to "find a safe and suitable venue" for the event on the scheduled April 27th date. Mr. Sutton further stated that the event would need to be rescheduled for "a later date," proposing September (five months in the future, and after the graduation of many members of the two sponsoring student groups, not to mention thousands of other Berkeley students) as the earliest possible date, and further stating that the University would "need at least four weeks [sic] notice" to re-schedule the event. Our clients responded, requesting that the University honor the event as scheduled. Ms. Coulter – a highly-sought-after speaker with multiple commitments, had already made arrangements to speak in Berkeley on April 27, as invited, with her personal security team provided through extensive arrangements by YAF. In response, earlier today, Associate Chancellor Nils Gilman again refused to allow the event to take place on April 27 as scheduled, and instead grudgingly offered to allow the event from 1:00pm to 3:00 p.m. on Tuesday, May 2 – during "dead-week," when students are not even in class, and are studying for finals and thus unavailable to attend speaking events on campus during the middle of the afternoon. We also note that it is curious that UC Berkeley officials, in attempting to manufacture excuses to disallow Ms. Coulter's speech, earlier informed the student groups that it required four weeks of lead time (which, incidentally – it was given by the groups) to arrange an appropriate venue for the speech; now, however, suddenly, an event set to take place in seven days can instead be accommodated on an altogether new date only twelve days hence? UC Berkeley's newfound flexibility strains credulity, and its four-week arbitrary notice rule imposed on conservative invitees appears to be an utter sham.

The University's transparently insincere offer to permit Ms. Coulter to speak during a two-hour window of time on May 2 when the students who invited here will not be in class and will instead be studying for finals, and when Ms. Coulter will no longer be in the area, is not a suitable alternative (indeed – it does not even pass the proverbial "smell test" of credibility), and we hereby reject it. The illegitimate time, place and manner restrictions imposed by the University will prejudicially limit, if not eviscerate, student access to the event, defeating its very purpose, and depriving Berkeley students of a much-needed counterweight to the favored voices such as Mr. Fox's, or Ms. Echaveste's, that UC Berkeley warmly welcomes. We note that the unilateral cancellation of Ms. Coulter's planned speech comes on the heels of UC Berkeley's

¹ We note that just yesterday afternoon, Vicente Fox, the former President of Mexico, was permitted to speak on the UC Berkeley campus after 3 p.m., and in a central location, on the controversial topic of US-Mexico relations. Mr. Fox was advertised by the sponsoring Latin America Leadership Society as being "a vocal critic of President Trump's policies, actively denouncing plans to construct the border wall and his efforts to sever economic ties with Mexico." UC Berkeley allowed Mr. Fox to speak without incident.

similar silencing of two other speakers invited by the BCR—noted author and conservative activist David Horowitz earlier this month, and Milo Yiannopoulos, both of whom UC Berkeley officials cancelled at the last minute on the pretext of being unable to provide adequate security, and after, in Mr. Yiannopoulos’s case, forcing the BCR group to pay a large sum of money for security, and in the case of Mr. Horowitz, requiring that his remarks be delivered in the middle of the day (during a time when most students are in class), and in a remote area on the periphery of the campus.

In each of the three recent conservative speech censorship instances, UC Berkeley impermissibly has allowed a “heckler’s veto” to suppress the free speech rights of speakers properly invited by recognized student groups, and in each case, did so after first attempting to bully the students out of pursuing their quest to hear these alternative voices by piling on requirement after unconstitutional requirement – “security fees,” inconvenient hours, inconvenient locations, attendance restrictions, and more. UC Berkeley may not censor speech its administrators plainly disfavor, simply because a potential mob shares the administrators’ distaste. *See, e.g., Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 134-35 (1992) (“[L]isteners’ reaction to speech is not a content-neutral regulation. [citations omitted]. Speech cannot be financially burdened, any more than it can be punished or banned, simply because it might offend a hostile mob.”).

It is ironic that UC Berkeley, known to many Americans as the birthplace of the free speech movement, is now leading the vanguard to silence conservative speech on campus. Surely a public institution of higher learning should be a crucible of challenging ideas and thought, not a kindergarten where wards of the state are fed a steady diet of pasteurized pabulum. Quite apart from what UC Berkeley *should* be – a forum where diverse viewpoints are welcomed – the Constitution does not permit the University to ban controversial speech. As the United States Supreme Court ruled in *Terminello v. City of Chicago*, 337 U.S. 1 (1949):

[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. *That is why freedom of speech, though not absolute, is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest.* There is no room under our Constitution for a more restrictive view. For the alternative would lead to standardization of ideas either by legislatures, courts, or dominant political or community groups.” (Internal citations omitted, emphasis added).

On behalf of BRC and YAF, we demand that UC Berkeley honor its obligation to respect the First Amendment rights of its students, without regard to their political preference or affiliation, by ensuring that Ms. Coulter be allowed to speak on campus on April 27, in a manner consistent with the treatment afforded to other recent speakers such as Ms. Echaveste and Mr.

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Fox – namely, during late afternoon or evening hours, and in a central location. Please confirm by 5 p.m. on Friday, April 21, 2017, that you will cooperate with Ms. Coulter’s planned speech by providing a similar forum to her as that provided to other prominent speakers this month. If UC Berkeley continues to insist on violating the constitutional rights of its students and our clients by marginalizing or banning Ms. Coulter’s speech, we will seek relief in federal court, including claims for injunctive relief and damages. You are on notice of potential imminent litigation, and should seek counsel on the University’s evidence preservation obligations immediately, as the destruction of any such evidence concerning the circumstances set forth above may lead to evidentiary or other sanctions in litigation. Should you wish to discuss the resolution of this matter, please contact me at my office.

Regards,

A handwritten signature in blue ink that reads "Harmeet K. Dhillon". The signature is fluid and cursive, with the first name being the most prominent.

Harmeet K. Dhillon

cc: Mark Trammell, Esq. (Young America’s Foundation)

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