



FIRE

Foundation for Individual
Rights and Expression

December 1, 2023

Richard C. Benson
Office of the President
The University of Texas at Dallas
800 West Campbell Road
Richardson, Texas 75080-3021

Sent via U.S. Mail and Electronic Mail (president@utdallas.com)

Dear President Benson:

FIRE¹ is concerned by the University of Texas at Dallas's removal of its campus "Spirit Rocks," a mainstay for student expression at UT Dallas for more than a decade, after students used the rocks for political expression concerning the ongoing Israeli-Palestinian conflict.² While UT Dallas may have initially envisioned these rocks for promotional messages that foster school spirit, students have used the rocks for political expression, and the university has permitted this use, over the course of their existence. Removing this forum now over objections to students' political viewpoints about the Israeli-Palestinian conflict constitutes impermissible viewpoint discrimination. We thus urge UT Dallas to restore the rocks to their previous place on campus and to clarify that it will govern these forums for student speech in a manner that honors the university's First Amendment obligations.

Our concerns arise from a November 20 university statement announcing the rocks' removal, in which the university claimed the rocks "were not intended to be a display for extended political discourse," but had recently been used for messages "negatively impacting people on and off campus[.]"³ However, whatever UT Dallas's original intent may have been, its now-deleted written policy that governed the rocks' use since 2008 clearly affords students wide latitude to paint messages of their choice, which could "include **but are not limited to** event announcements, words of support and congratulations, welcome notes or creative

¹ As you may recall from prior correspondence, the Foundation for Individual Rights and Expression defends freedom of expression, conscience, and religion, and other individual rights on America's college campuses. You can learn more about our recently expanded mission and activities at thefire.org.

² The recitation here reflects our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us.

³ *Announcement of removal of Spirit Rocks*, Division of Student Affairs, UNIV. OF DALL. AT TEX. (Nov. 20, 2023) <https://www.utdallas.edu/emails/spirit-rocks/> [<https://perma.cc/SY3N-N9JC>] (emphasis added).

endeavors.”⁴ And that policy informed the practices of the campus community: In the interceding 15 years, students regularly painted political messages on the rocks, including slogans like “Vote Blue,” “Free Iran,” and “Black Lives Matter,” as well as a design for Transgender Day of Remembrance.⁵

By providing the rocks for students’ political (and other) messages, UT Dallas created, at the very least, a limited public forum for student speech.⁶ Allowing the rocks’ use for political expression does not prevent UT Dallas from imposing reasonable time, place, and manner restrictions. But because UT Dallas has both in policy and practice continuously held open the rocks for the purpose of student expression,⁷ including political speech, it cannot now limit that speech—or cut it off entirely—because it disfavors some of the views expressed. Doing so not only harms the environment for free speech on campus, teaches students an unfortunate lesson about how to react to speech with which one disagrees, but also constitutes impermissible state discrimination based on viewpoint.

The First Amendment, which binds UT Dallas as a public university,⁸ bars “state actors [from] suppress[ing] speech because of its point of view.”⁹ Viewpoint discrimination that “targets not subject matter, but particular views taken by speakers on a subject” is prohibited in every type of public forum.¹⁰ UT Dallas cannot violate its First Amendment obligations by closing down the forum because of the viewpoints expressed on the Israeli-Palestinian conflict, regardless of whether those viewpoints are pro-Israeli or pro-Palestinian. In allowing political speech on other subjects, including other conflicts, but singling out the Israeli-Palestinian conflict for unfavorable treatment, as “[t]he government must abstain from regulating speech when the

⁴ Spirit Rocks, Student Gov., UNIV. OF TEX. AT DALL., <https://sg.utdallas.edu/spiritrock/> [<https://perma.cc/98FD-FJGK>].

⁵ See, e.g., Andre Averion, Fatimah Azeem, Jack Sierputowski, *Student Affairs removes Spirits Rocks for platforming “extended political discourse,”* THE MERCURY (Nov. 20, 2023), <https://utdmercury.com/student-affairs-removes-spirit-rocks-for-platforming-extended-political-discourse> (displaying pictures of the rocks painted with political slogans); William Melhado, *A Texas university removed its unique public billboards after students used them to share thoughts on Gaza war,* TEX. TRIB. (Nov. 22, 2023), <https://www.texastribune.org/2023/11/22/ut-dallas-israel-palestine-spirit-rocks> (“Sometimes the messages were political, ‘vote Blue.’ Sometimes not, ‘Welcome Scholars!’”).

⁶ See *Hopper v. City of Pasco*, 241 F.3d 1067, 1074–75 (9th Cir. 2001) (quoting *DiLoreto v. Downey Unified Sch. Dist. Bd. of Educ.*, 196 F.3d 958, 965 (9th Cir. 1999) (internal quotation marks omitted) (A limited public forum “refer[s] to a type of nonpublic forum that the government has intentionally opened to certain groups or certain topics”).

⁷ Spirit Rocks, *Supra* note 4.

⁸ *Healy v. James*, 408 U.S. 169, 180 (1972) (“[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, ‘the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.’”) (internal citation omitted).

⁹ *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829–830 (1995); accord *Rodriguez, v. Maricopa Cty. Cmty. Coll. Dist.*, 705 (9th Cir. 2009) 605 F.3d 703, 705. See also, *Koala v. Khosla*, 931 F.3d 887, 903–04 (9th Cir. 2019) (suggesting university’s viewpoint-discriminatory closure of a forum for student expression, even under the guise of viewpoint neutrality, would violate the First Amendment).

¹⁰ *Hartman v. Thompson*, 931 F.2d 471, 488 (6th Cir. 2019) (internal quotations and citations omitted).

specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.”¹¹

It also cannot avoid its constitutional obligations by removing fora for speech simply because administrators and others on campus have taken offense at the painted messages. The principle underlying our nation’s protection of expansive expressive freedom is that it does not exist to protect only non-controversial expression, but instead to protect precisely that speech which some members of a community find controversial or offensive.¹² Students’ painted messages on the rocks about the Israeli-Palestinian conflict are exactly the “heated exchange of views” that the First Amendment anticipates on a public college campus.¹³

As a normative matter, closing this historic avenue for student expression suggests UT Dallas does not place appropriate value on student debate and discussion concerning the vital political issues of the day. Such an abdication of the values of the First Amendment represents a grave oversight by UT Dallas, as institutions of higher education are, by their nature, dedicated to open debate and discussion. Indeed, removing the rocks will not eliminate the ideas that negatively impacted people on campus, as UT Dallas claimed,¹⁴ but will instead eliminate a forum for responding to those ideas with “more speech,” the remedy to offensive expression the First Amendment prefers to censorship.¹⁵

We urge UT Dallas to restore its Spirit Rocks to their prior location and to honor its previously explicitly viewpoint-neutral policy that offers suggestions for what the university would like painted on the rocks while protecting the right to use the rocks for expression of students’ choosing, including that on political matters. We request a substantive response to this letter no later than close of business on Friday, December 15, 2023.

Sincerely,



Graham Piro
Program Officer, Campus Rights Advocacy

Cc: Tim Shaw, University Attorney
Gene Fitch, Jr., Vice President for Student Affairs

¹¹ *Rosenberger*, 515 U.S. at 82-829 (1995).

¹² *Snyder v. Phelps*, 563 U.S. 443, 461 (2011). (“Speech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and—as it did here—inflict great pain . . . [W]e cannot react to that pain by punishing the speaker. As a Nation we have chosen a different course—to protect even hurtful speech on public issues to ensure that we do not stifle public debate.”)

¹³ See *Rodriguez*, 605 F.3d at 710 (sending “racially-charged emails” was not unlawful harassment, as the First Amendment “embraces such a heated exchange of views,” especially when they “concern sensitive topics like race, where the risk of conflict and insult is high”).

¹⁴ *Announcement*, *supra* note 3.

¹⁵ *Whitney v. California*, 274 U.S. 357, 377 (1927).