



May 14, 2024

Taylor Eighmy
Office of the President
Main Building, Suite 4.122
The University of Texas at San Antonio
One UTSA Circle
San Antonio, Texas 78249

URGENT

Sent via Express Mail and Electronic Mail (president@utsa.edu)

Dear President Eighmy:

FIRE¹ is disappointed not to have received a response to our enclosed April 29 letter concerning allegations that an administrator prohibited student protestors from using particular words and phrases, as well as chanting in Arabic.² That a UTSA spokesperson denied “certain words” were banned—while ignoring allegations about specific phrases and speaking Arabic—before doubling down by saying “the university will not tolerate antisemitic expression” only reinforces our concerns.³ While these statements on USTA’s behalf appear reactive to Governor Abbott’s Executive Order instructing Texas’s state universities to “address the sharp rise in antisemitic speech” on campus,⁴ UTSA may not constitutionally abridge students’ First Amendment rights to effectuate the governor’s mandate. We therefore once again urge UTSA to publicly affirm that student protestors may use words, phrases, and languages that the First Amendment clearly protects, regardless of the viewpoint expressed.

To reiterate the constitutional safeguards described in our previous letter, public universities must protect student expression that falls within the First Amendment, “no matter how

¹ As you will recall, the Foundation for Individual Rights and Expression is a nonpartisan nonprofit dedicated to defending freedom of expression, conscience, and religion, and other individual rights on America’s university campuses. You can learn more about our expanded mission and activities at thefire.org.

² Michael Karlis, *Protesters say UTSA restricted their speech at march calling for Gaza ceasefire*, SAN ANTONIO CURRENT (Apr. 24, 2024), <https://www.sacurrent.com/news/utsa-students-say-school-restricted-speech-atprotest-calling-for-gaza-ceasefire-34379435>.

³ Isaac Windes, *Students allege free speech violations at UTSA march for Palestine*, SAN ANTONIO REPORT (Apr. 24, 2024), <https://sanantonioreport.org/students-allege-free-speech-violations-at-utsa-march-forpalestine>.

⁴ Tex. Exec. Order No. GA-44 (Mar. 27, 2024), https://gov.texas.gov/uploads/files/press/EO-GA-44_antisemitism_in_institutions_of_higher_ed_IMAGE_03-27-2024.pdf (singling out, among other things, the phrase “from the river to the sea, Palestine will be free”).

offensive” or subjectively hateful or anti-Semitic to some.⁵ We also noted that mere utterance of the phrase “from the river to the sea, Palestine will be free” does not fall into any category of unprotected speech.⁶ Nor may UTSA’s interest in remedying hostile environment harassment override core First Amendment rights.⁷ And UTSA certainly cannot bar students from expressing themselves in a different language, as the First Amendment also extends to “those who speak other languages[.]”⁸

We therefore urge UTSA to publicly reaffirm the full breadth of the First Amendment’s protection of its students’ speech, and to respond to the following in writing:

1. Did any administrator, staff member, or other employee warn students against using particular words, phrases, or languages? If so, who was it, and what did they tell the students?
2. Is a student’s use of the phrase “from the river to the sea, Palestine will be free” protected by the First Amendment?
3. What steps, if any, has UTSA taken to comply with Gov. Abbott’s Executive Order?

While FIRE has already filed a Public Information Act request that may shed light on answers to these questions, we believe a straightforward dialogue would be more productive for all concerned. FIRE therefore requests a substantive response no later than May 21, 2024.

Sincerely,



Haley Gluhanich
Senior Program Officer, Campus Rights Advocacy

Encl.

⁵ *Papish v. Bd. of Curators of Univ. of Mo.*, 410 U.S. 667, 670 (1973); see *Matal v. Tam*, 528 U.S. 218, 246 (2017) (refusing to establish limits on speech viewed as “hateful” or demeaning “on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground”); see also e.g., *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992) (invalidating ordinance that prohibited placing on any property symbols that “arouse[] anger, alarm or resentment in others on the basis of race, color, creed, religion or gender”).

⁶ For example, to constitute a “true threat,” a speaker must convey a “serious expression” of intent to “commit an unlawful act of violence.” *Virginia v. Black*, 538 U.S. 343, 359 (2003). And advocacy that others act is “incitement” only if “[1] intended to produce, and [2] likely to produce, imminent” unlawful action. *Hess v. Indiana*, 414 U.S. 105, 109 (1973). Notably, a phrase advocating violence overseas is neither a serious expression of intent to undertake violence nor likely to cause imminent violence.

⁷ *Speech First, Inc. v. Fenves*, 979 F.3d 319, 337 n.16 (5th Cir. 2020) (a state university’s interest in preventing harassment is not license to restrict speech beyond what is permitted in *Davis v. Monroe County Board of Education*, 526 U.S. 629, 650 (1999)).

⁸ *Meyer v. Nebraska*, 262 U.S. 390, 401 (1923).



April 29, 2024

Taylor Eighmy
Office of the President
Main Building, Suite 4.122
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One UTSA Circle
San Antonio, Texas 78249

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Sent via Express Mail and Electronic Mail (president@utsa.edu)

Dear President Eighmy:

FIRE¹ is deeply concerned by reports that a University of Texas at San Antonio administrator directed student demonstrators to avoid particular words, phrases, and any use of Arabic language. We call on the university to expeditiously investigate these allegations and reassure students that UTSA permits protests that use these words, phrases, and choice of language, which the First Amendment clearly protects.

Our concerns arise out of what appears to be a UTSA administrator's attempt to implement Texas Governor Greg Abbott's March 27, 2024, Executive Order instructing Texas state universities to "address the sharp rise in antisemitic speech" on campus, in which he cited (among other things) "students chanting antisemitic phrases such as 'from the river to the sea, Palestine will be free.'"² Gov. Abbott's order directs UTSA to provide "evidence that those policies are being enforced" by June 25, 2024.

In relevant part here, organizers of an April 24 UTSA student demonstration reported that an administrator warned them that using "terms such as 'Zionism' and 'Israel' and chanting 'From the river to the sea, Palestine will be free'"—the phrase singled out by Gov. Abbott's Executive Order—"were prohibited ... because they qualified as 'antisemitic hate speech.'"³ Organizers

¹ The Foundation for Individual Rights and Expression (FIRE) is a nonpartisan nonprofit dedicated to defending freedom of speech. You can learn more about our expanded mission and activities at thefire.org.

² Tex. Exec. Order No. GA-44 (Mar. 27, 2024), https://gov.texas.gov/uploads/files/press/EO-GA-44_antisemitism_in_institutions_of_higher_ed_IMAGE_03-27-2024.pdf.

³ Michael Karlis, *Protesters say UTSA restricted their speech at march calling for Gaza ceasefire*, SAN ANTONIO CURRENT (Apr. 24, 2024), <https://www.sacurrent.com/news/utsa-students-say-school-restricted-speech-at-protest-calling-for-gaza-ceasefire-34379435>.

also reported the administrator forbade them from chanting in Arabic.⁴ A university spokesperson later denied UTSA banned “certain words,” but stated: “the university will not tolerate antisemitic expression.”⁵

If the students’ report is substantially accurate, the university’s direction raises serious First Amendment concerns. The First Amendment protects student expression at public universities, “no matter how offensive” it may be to others.⁶ Protest in the open areas of a public university campus is an exercise of core political speech, and Texas law recognizes the “outdoor areas” of these public institutions as “traditional public forums” open to “assemblies, protests, [and] speeches.”⁷ Restrictions on the content of student speech there must accordingly withstand strict First Amendment scrutiny, requiring USTA to show its action “is necessary to serve a compelling state interest” and “narrowly drawn to achieve that end.”⁸ Based on the allegations, UTSA cannot make that showing here.

UTSA’s reported denial does not adequately address the allegations. It denies only that it prohibits “certain words,”⁹ while ignoring allegations that particular phrases—and use of the Arabic language—had been barred.

Further, the university’s insistence that it will not “tolerate antisemitic expression” reinforces the concern that the university will act against speech it deems antisemitic—regardless of whether it is protected. Given Gov. Abbott’s executive order declaring particular phrases “antisemitic” and directing “enforcement” of university policy, that concern is real. That speech is perceived as hateful—antisemitic or otherwise—has no bearing on its protection, as there is no categorical exception to the First Amendment for “hateful” speech.¹⁰

The other restrictions the students described—that also went unaddressed by the university’s reported response—would not meet First Amendment scrutiny. Because, like many political refrains, “from the river to the sea, Palestine will be free” carries diffuse meanings,¹¹ its mere utterance does not fall into any of the categories of unprotected speech.¹² Nor does the

⁴ *Id.*

⁵ Isaac Windes, *Students allege free speech violations at UTSA march for Palestine*, SAN ANTONIO REPORT (Apr. 24, 2024), <https://sanantonioreport.org/students-allege-free-speech-violations-at-utsa-march-for-palestine>.

⁶ *Papish v. Bd. of Curators of Univ. of Mo.*, 410 U.S. 667, 670 (1973).

⁷ Tex. Educ. Code § 51.9315(a)(2), (c)(1).

⁸ *Widmar v. Vincent*, 454 U.S. 263, 270 (1981).

⁹ We appreciate the university’s denial of this particular allegation, as officials cannot “forbid particular words,” as that power would allow them to censor “particular words as a convenient guise for banning the expression of unpopular views.” *Cohen v. California*, 403 U.S. 15, 16 (1971).

¹⁰ See, e.g., *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992) (invalidating ordinance that prohibited placing on any property symbols that “arouse[] anger, alarm or resentment in others on the basis of race, color, creed, religion or gender”). *Accord Matal v. Tam*, 528 U.S. 218, 246 (2017) (refusing to establish limit on speech viewed as “hateful” or demeaning “on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground”).

¹¹ Karoun Demirjian & Liam Stack, *In Congress and on Campuses, ‘From the River to the Sea’ Inflames Debate*, N.Y. TIMES (Nov. 12, 2023), <https://www.nytimes.com/2023/11/09/us/politics/river-to-the-sea-israel-gaza-palestinians.html>.

¹² For example, to constitute a “true threat,” a statement must be a “serious expression” conveying the speaker’s intent to “commit an unlawful act of violence.” *Virginia v. Black*, 538 U.S. 343, 359 (2003). And

university's interest in remedying hostile environment harassment authorize it to override core First Amendment rights.¹³ And any suggestion that students avoid the Arabic language would violate the settled rule that the First Amendment "extends to all, to those who speak other languages as well as to those born with English on the tongue."¹⁴

We therefore ask UTSA to publicly reaffirm the full breadth of the First Amendment's protection of its students' speech, and that the university respond to the following questions in writing:

1. Did any administrator, staff member, or other employee warn students against using particular words, phrases, or languages?
2. If so, who was it and what did they tell the students?
3. Is a student's use of the phrase "From the river to the sea, Palestine will be free" protected by the First Amendment?
4. What steps, if any, has UTSA taken to comply with Gov. Abbott's Executive Order?

Given the urgent nature of this matter, FIRE requests a substantive response to this letter no later than close of business Friday, May 3, 2024.

Sincerely,



Haley Gluhanich
Program Officer, Campus Rights Advocacy

advocacy that *others* act is "incitement" only if it is "[1] intended to produce, and [2] likely to produce, *imminent*" unlawful action. *Hess v. Indiana*, 414 U.S. 105, 109 (1973). Notably, even a phrase advocating violence overseas is neither a serious expression of intent to undertake violence nor likely to cause imminent violence.

¹³ *Speech First, Inc. v. Fenves*, 979 F.3d 319, 337 n.16 (5th Cir. 2020) (an interest in preventing harassment is not enough to restrict student expression, even if it meets the "severe, pervasive, and objectively offensive" standard set forth in *Davis v. Monroe County Board of Education*, 526 U.S. 629, 650 (1999)).

¹⁴ *Meyer v. Nebraska*, 262 U.S. 390, 401 (1923); see also, e.g., *Bernstein v. U.S. Dept. of State*, 922 F. Supp. 1426, 1435 ("Nor does the particular language one chooses change the nature of language for First Amendment purposes").