



June 7, 2024

Félix V. Matos Rodríguez
Office of the Chancellor
The City University of New York
205 East 42nd Street
New York, New York 10017

Sent via U.S. Mail and Electronic Mail (chancellor@cuny.edu)

Dear Chancellor Rodríguez:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is disturbed to learn of the cancelations of Hillel-sponsored Israeli Memorial Day and Independence Day events at Baruch College and Kingsborough Community College amid concerns over planned protests. The attempted relocation at Baruch that led to cancelation, and the outright cancelation at KCC, violated students' First Amendment rights to host expressive events and sent the message that CUNY sacrifices free speech to hecklers' vetoes. We urge you to take affirmative steps to ensure the colleges and universities under CUNY's authority are familiar with their First Amendment obligations and to assure the CUNY community that this censorship will not be repeated.

Our concerns arise from a series of event-related developments this month at Baruch and KCC. First, after Baruch's Hillel chapter planned a May 2 Israeli Independence Day event in the second-floor lobby,² the college proposed two alternative locations due to alleged safety concerns, rather than providing security that would allow use of the planned location. This led the group to cancel the event rather than hold it in an alternative location.³ Not long after, KCC's Hillel chapter planned a May 13 event featuring a virtual visit by a former Israeli soldier

¹ For more than 20 years, FIRE has defended freedom of expression, conscience, and religion, and other individual rights on America's college and university campuses. You can learn more about our expanded mission and activities at thefire.org.

² Hillel at Baruch (@hillalatbaruch), Instagram (May 10, 2024), <https://www.instagram.com/p/C6zHCr3rsh7/?hl=en>. The following is our understanding of the pertinent facts, which is based on public information. We appreciate that you may have additional information and invite you to share it with us.

³ Luke Tress, *CUNY college scraps Hillel Memorial Day event over anti-Israel protest, security fears*, TIMES OF ISRAEL (May 16, 2024), <https://www.timesofisrael.com/cuny-college-scraps-hillel-memorial-day-event-over-anti-israel-protest-security-fears/>.

and cybersecurity expert, during which students could gather in person to light candles and hold a memorial service.⁴ When Hillel and campus administrators learned of a planned protest,⁵ Hillel sought additional security from the college to allow the event to proceed safely. KCC instead canceled the event just hours before its scheduled start, claiming it did so “out of an abundance of caution to ensure safety and appropriate access to campus for our students, faculty, and staff.”⁶ During a May 28 College Council meeting, KCC President Suri Duitch reportedly stated that because no guest speaker was planned to attend in person at the May 13 event, cancelation was not a “repression of freedom of speech.”⁷

The colleges’ approaches to these events represent a failure to abide by constitutional standards. The First Amendment requires public colleges, including KCC and Baruch, to protect student groups’ free speech rights by making good-faith efforts to enable expressive events to proceed as planned, in order to avoid giving those most willing to engage in disruptive activity an effective veto over who may speak. Even the cancelation of events with virtual guest speakers—or no guest speakers at all—due to others’ displeasure with content remains a stark denial of the freedom of speech, as such events remain examples of expressive conduct.⁸

CUNY colleges must not default to canceling or moving events when disruption threatens but must make “bona fide efforts” to protect the planned speakers’ expressive rights using “other, less restrictive means” such as by providing security, addressing disruptions, and (if necessary) removing disruptors.⁹ As courts have made clear, “excluding a speaker ... under most circumstances, will not constitute the least restrictive means for coping with a crowd’s hostile reaction to her constitutionally protected speech.”¹⁰ Rather, the “proper response” to potential violence is for government actors “to ensure an adequate police presence ... rather than to suppress legitimate First Amendment conduct as a prophylactic measure.”¹¹

Baruch and KCC failed in their First Amendment duties by instead ratifying “hecklers’ vetoes” over Hillel and its events, violating both the organization’s right to deliver their message and

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Recording of College Council meeting on record with author.

⁸ See e.g., *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (burning the American flag was protected by the First Amendment, the “bedrock principle underlying” the holding being that government actors “may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable”); *Hustler Mag., Inc. v. Falwell*, 485 U.S. 46, 50 (1988) (penalizing a parody ad depicting a pastor losing his virginity to his mother in an outhouse in prohibited by the First Amendment); *Cohen v. California*, 403 U.S. 15, 25 (1971) (wearing a jacket emblazoned with the words “Fuck the Draft” is protected by the First Amendment); *Cox v. Louisiana*, 379 U.S. 536, 557 (1965) (holding a government actor cannot disperse civil rights marchers out of fear that “muttering” and “grumbling” white onlookers might resort to violence).

⁹ *Bible Believers v. Wayne Cnty.*, 805 F.3d 228, 255 (6th Cir. 2018).

¹⁰ *Id.*

¹¹ *Collins v. Jordan*, 110 F.3d 1363, 1372 (9th Cir. 1996).

the rights of those who wished to hear it.¹² KCC and Baruch could have provided increased security—as the students requested—in lieu of canceling the events or changing their venues in anticipation of threatened protests.¹³ In failing to do so, KCC and Baruch incentivized those who would resort to threats to silence their opponents, while simultaneously deterring Hillel and other students from hosting potentially controversial events on campus. As one court aptly observed: “In a balance between two important interests—free speech on one hand, and the ... power to maintain the peace on the other—the scale is heavily weighted in favor of the First Amendment.”¹⁴

Students must know that CUNY will protect their right to hold expressive events, without fear of them being canceled or moved due to other students’ protected expression. If others would like to protest—so long as it is not disruptive—administrators must also allow them to move forward. Non-disruptive protests are a form of the “more speech” remedy which the First Amendment prefers to censorship.¹⁵

These disrupted events and the protests that appeared poised to accompany them, along with similar occurrences at schools nationwide, underscore why colleges must remain committed to their First Amendment obligations, including by educating their students on their First Amendment rights and protected forms of protest.¹⁶ Public institutions, including CUNY campuses, may not stand idly by and allow one group of students to strip another of their First Amendment right to host an expressive event, including by using the threat of disruption to do so. If CUNY continues to allow hecklers’ vetoes, it will not be long before the only speakers able to speak on its campuses will be those whose ideas are sufficiently uncontroversial in the eyes of would-be hecklers of all political stripes.

FIRE will be filing a Freedom of Information Law request to obtain further details on what occurred prior to the cancelations of these events. We also request a substantive response to this letter no later than June 21, 2024, confirming that CUNY will remind its campus leaders of

¹² See, e.g., Zach Greenberg, *Rejecting the ‘heckler’s veto’*, FIRE (June 14, 2017), <https://www.thefire.org/news/rejecting-hecklers-veto>; Adam Goldstein, *Dear University of North Texas: The ‘Heckler’s veto’ is not a good thing*, ETERNALLY RADICAL IDEA (Nov. 5, 2020), <https://www.thefire.org/news/blogs/eternally-radical-idea/dear-university-north-texas-hecklers-veto-not-good-thing>.

¹³ Although Baruch Hillel ultimately made the final decision to cancel rather than move the event, our analysis remains the same, as administrators’ decision to move an event rather than provide increased security to enable it to continue as planned can constitute a heckler’s veto.

¹⁴ *Bible Believers*, 805 F.3d at 228.

¹⁵ See, e.g., *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring) (“If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.”).

¹⁶ *FIRE statement on speaker disruption at University of New Mexico*, FIRE (Sept. 16, 2022), <https://www.thefire.org/news/fire-statement-speaker-disruption-university-new-mexico>; Sabrina Conza, *FIRE urges transparency, action from Penn State after Uncensored America event cancellation*, FIRE (Oct. 25, 2022), <https://www.thefire.org/news/fire-urges-transparency-action-penn-state-after-uncensored-america-event-cancellation>.

their First Amendment responsibilities and affirm to the CUNY community that this censorship will not be repeated.

Sincerely,

A handwritten signature in black ink, appearing to read "Zach", with a long, sweeping flourish extending to the right.

Zach Greenberg
Senior Program Officer, Campus Rights Advocacy

Cc: Suri Duitch, President of Kingsborough Community College
S. David Wu, President of Baruch College