



June 21, 2024

Michael F. Sweeney  
Chief Campus Counsel  
Office of Campus Counsel  
University of California, Davis  
One Shields Avenue  
Davis, California 95616

*Sent via U.S. Mail and Electronic Mail (mfsweeney@ucdavis.edu)*

Dear Mr. Sweeney:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,<sup>1</sup> is concerned by the decision of University of California, Davis's Division of Diversity, Equity and Inclusion ("DEI Division") to block activist Beth Bourne from viewing or commenting on its X posts after she criticized the university's stance on gender issues. When a government office opens an online forum for public commentary, as the DEI Division has on the social media platform X, the First Amendment prohibits excluding speakers based on their views. The DEI Division therefore must immediately unblock Bourne and any other users blocked for expressing disfavored views.

Beth Bourne describes herself as a "[m]om questioning gender ideology in CA schools."<sup>2</sup> On May 13, 2024, in response to a post on UC Davis's main X account about its LGBTQIA Resource Center, which the DEI Division reposted, Bourne posted a video of Chancellor Gary S. May encouraging viewers to join him in celebrating Pride Month and noting that 1 in 22 UC Davis students identify as transgender or nonbinary. In her posting, Bourne commented that:<sup>3</sup>

UC Davis @Chancellor\_May says "Hate has no place on UC Davis campus" and we should celebrate the 1,850 students who now identify as transgender. Human sex is binary and immutable. It's not possible for humans to change sex.

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<sup>1</sup> More information about FIRE's mission and activities is available at [thefire.org](https://thefire.org).

<sup>2</sup> Beth Bourne (@bourne\_beth2345), X, [https://x.com/bourne\\_beth2345](https://x.com/bourne_beth2345) [<https://perma.cc/ADB9-DJS3>].

<sup>3</sup> @bourne\_beth2345, X (May 13, 2024, 2:00 PM), [https://x.com/bourne\\_beth2345/status/1790079611721887758](https://x.com/bourne_beth2345/status/1790079611721887758) [<https://perma.cc/RW9G-HBCM>].

It's also not hateful to want to protect vulnerable students from the tran\$ gender medical industry that turns healthy bodies into medical patients for life.

It's not hateful to stand up for women's rights to fair and safe sports and sex-segregated spaces like bathrooms and locker rooms as originally intended by Title IX.

Are there any @ucdavis science professors courageous enough to come forward and help end this madness?

Many others users replied to that same UC Davis post by sharing a post from the X account Libs of TikTok showing footage of a confrontation between Bourne and pro-Palestinian protesters, in which Bourne expressed her views on transgender women and a protester replied, "Put a gun in your mouth, you piece of shit."<sup>4</sup> The post tagged Bourne's X account and claimed the replying protester is a UC Davis professor. On May 27, Bourne discovered the DEI Division's X account had blocked her.<sup>5</sup>

The DEI Division's actions violate the First Amendment, which long-settled law makes clear binds public universities like UC Davis.<sup>6</sup> The First Amendment also applies with full force to the "vast democratic forums of the Internet," and social media, in particular, enables citizens to engage directly with their elected representatives and other government officials.<sup>7</sup> As the Supreme Court recently made clear in *Lindke v. Freed*, when a government actor uses social media to speak for the state—including state institutions like UC Davis—it must comply with the First Amendment.<sup>8</sup>

By creating a social media account that allows the public to comment on its posts, the DEI Division opened a public forum where viewpoint discrimination is impermissible. So while what the DEI Division posts on its social media accounts is UC Davis's own speech not subject to First Amendment limits,<sup>9</sup> the interactive parts of its accounts—including comment sections

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<sup>4</sup> @libsoftiktok, X (May 13, 2024, 2:19 PM), <https://x.com/libsoftiktok/status/1790084415126909207/video/1> [<https://perma.cc/F4BC-SZDD>].

<sup>5</sup> @bourne\_beth2345, X (May 27, 2024, 11:22 AM), [https://x.com/bourne\\_beth2345/status/1795113244094615597](https://x.com/bourne_beth2345/status/1795113244094615597) [<https://perma.cc/4DC6-5NF6>].

<sup>6</sup> *Healy v. James*, 408 U.S. 169, 180 (1972).

<sup>7</sup> *Packingham v. North Carolina*, 582 U.S. 98, 104–05 (2017).

<sup>8</sup> 601 U.S. 187, 202 (2024). The facts in *Lindke* concerned a government official's mixed use of a social media account for personal and government business. But the Court noted that in some cases, as when an account belongs to a government subdivision (e.g., a "City of Port Huron" Facebook page), state action is "clear." That is the case here, as the DEI Division's X account is an official institutional account of UC Davis.

<sup>9</sup> *Shurtleff v. City of Bos.*, 142 S. Ct. 1583, 1587 (2022) (when the government creates a forum for expression, the First Amendment prevents it from discriminating against speakers based on their viewpoint, but "when the government speaks for itself, the First Amendment does not demand airtime for all views").

where the public may engage with the account’s posts—are public forums where viewpoint-based restrictions on access or content are unconstitutional.<sup>10</sup>

The DEI Division blocked Bourne on X after she replied to one of the Division’s reposts by criticizing the university’s messages concerning gender and diversity, and after many others posted a video of Bourne challenging protesters. The DEI Division did not provide Bourne any explanation for blocking her, and the available evidence points to but one conclusion: it disapproved of her views, which is an unconstitutional basis for excluding her from a public forum.

University officials may respond to criticism they believe is ill-informed or misguided with counter-speech, or they may choose to ignore it. But the First Amendment sharply limits their authority to restrict citizens’ speech in a public forum, whether online or off.

FIRE calls on UC Davis to immediately unblock Bourne from viewing and commenting on the DEI Division’s X account and to affirm the university’s commitment to its First Amendment obligations going forward. We request a substantive response to this letter no later than close of business July 5, 2024.

Sincerely,



Aaron Terr  
Director of Public Advocacy, FIRE

Cc: Renetta Garrison Tull, Vice Chancellor for Diversity, Equity and Inclusion

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<sup>10</sup> *Id. see also, e.g., Pleasant Grove City v. Summum*, 555 U.S. 460, 469–70 (2009) (First Amendment prohibits viewpoint discrimination in public fora); *Garnier v. O’Connor-Ratcliff*, 41 F.4th 1158, 1177–79 (9th Cir. 2022), *vacated on other grounds sub nom. O’Connor-Ratcliff v. Garnier*, 601 U.S. 205 (2024) (interactive features of government social media account, where public can comment on posts, create public forum where viewpoint discrimination is impermissible); *Knight First Amendment Inst. at Columbia Univ. v. Trump*, 928 F.3d 226, 237 (2d Cir. 2019), *vacated as moot sub nom. Biden v. Knight First Amendment Inst. at Columbia Univ.*, 141 S. Ct. 1220 (2021) (same); *Davison v. Randall*, 912 F.3d 666, 682 n.3, 686–88 (4th Cir. 2019) (same); *Price v. City of New York*, No. 15-cv-5871, 2018 U.S. Dist. LEXIS 105815, \*25–46 (S.D.N.Y. June 25, 2018) (where New York Police Department precinct blocked Twitter user, whether forum was a “public, designated, or nonpublic” was immaterial, as “viewpoint discrimination . . . is unlawful in *any* forum”) (emphasis in original).