



November 1, 2024

David Bogen  
Office of the President  
Berklee College of Music  
1140 Boylston Street  
Boston, Massachusetts 02215

*Sent via U.S. Mail and Electronic Mail (dbogen@berklee.edu)*

Dear Interim President Bogen:

FIRE, a nonpartisan nonprofit dedicated to defending freedom of speech,<sup>1</sup> is concerned by your indefinite postponement of student Simon Amaya Price’s final Songwriting and Social Change project—an event titled “Born in the Right Body: Desister and Detransitioner Awareness”—after the event received widespread criticism. Regardless of whether people may find the proposed event offensive, it is unquestionably protected by Berklee College of Music’s commitment to free expression. As such, we urge you to uphold this commitment, immediately rescind the postponement, and allow Amaya Price’s event to go forward.

Amaya Price organized the event to fulfill the Songwriting and Social Change course project requirement. The event, scheduled for October 20, was a presentation and Q&A intended to “raise[] awareness of trans desisters and detransitioners, the issues [they] face legally, societally, and medically, and foster[] open dialogue and debate[.]”<sup>2</sup> Amaya Price decided on this topic partly because he identifies as a desister.

On October 15, Berklee’s Office of Diversity & Inclusion granted Amaya Price funding for the event and permitted him to use the office’s logo in marketing materials.<sup>3</sup> Once Amaya Price began advertising the event, he received widespread criticism. Individuals said they were going to throw “expired groceries” at him, that he was transphobic, and that he should be scared to

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<sup>1</sup> For more than 20 years, FIRE has defended freedom of expression, conscience, and religion, and other individual rights on America’s college campuses. You can learn more about our mission and activities at [thefire.org](http://thefire.org).

<sup>2</sup> Diversity and Inclusion Grant Funding Application submitted by Simon Amaya Price (Oct. 11, 2024) (on file with author). The recitation of facts here reflects our understanding of the pertinent information. We appreciate that you may have additional information to offer and invite you to share it with us. To this end, please find enclosed an executed privacy waiver authorizing you to share information about this matter.

<sup>3</sup> Email from Berklee Diversity & Inclusion to Simon Amaya Price, student (Oct. 15, 2024, 4:41 PM) (on file with author).

host the event.<sup>4</sup> Berklee students also circulated a petition—which garnered 1,998 signatures—urging the college to cancel the event because it was allegedly “expected to harm the mental well-being of individuals in the transgender community.”<sup>5</sup>

On October 17, Amaya Price met with Berklee Vice President and Executive Director Ron Savage, who recommended the event be postponed for safety reasons and promised to support Amaya Price in finding a different venue for the event and helping to figure out logistics. Soon after, however, the Office of Diversity & Inclusion posted to its Instagram that “the event will no longer take place as planned on October 20” and that it would “not be sponsored” by the Office.<sup>6</sup>

On October 21, Savage indefinitely postponed the event.

According to its Standards of Conduct, one of Berklee’s fundamental values is respecting the “creative expression of all.”<sup>7</sup> Berklee also specifically states that it “values expression, inquiry, and the free exchange of ideas” and “does not engage in censorship” or “aim to obstruct the free exchange of ideas.”<sup>8</sup> That written commitment is laudable, and is particularly important at a college like Berklee that is dedicated to a creative endeavor. But since widely popular expression rarely needs protection, an institution of higher education typically finds its commitment to free speech tested when expression is unpopular or controversial. Berklee is failing this test with respect to Amaya Price’s event.

Berklee, as a private college, is not explicitly bound by the First Amendment. Yet it is through the rulings and wisdom of our nation’s courts that Americans, including Berklee’s students and faculty members, have come to understand how the principles of free speech are applied. Our courts’ First Amendment jurisprudence therefore informs Berklee’s commitments to upholding student free speech rights and its students’ reasonable expectations of what those rights encompass. Thus, under its own rules Berklee may not postpone or cancel a student event simply because some, or even many, decry its message.

As mentioned above, Amaya Price intends his event to help foster open discussion and debate on desisters and detransitioners. While any discussion of transgender issues is likely to be controversial and offend some listeners, the Supreme Court has repeatedly, consistently, and clearly held that free speech principles do and must protect expression others find offensive or

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<sup>4</sup> Screenshots of Instagram comments on file with author.

<sup>5</sup> Cate Chappell, *Stop the Transphobic Berklee/Simon Price Event Scheduled for 10/20*, CHANGE.ORG (Oct. 16, 2024), <https://www.change.org/p/stop-the-transphobic-berklee-simon-price-event-scheduled-for-10-20>.

<sup>6</sup> Screenshot on file with author. The Office of Diversity & Inclusion retains “the right to withdraw the grant if the program deviates from the original description outlined in the application.” *Diversity & Inclusion Grant*, BERKLEE (on file with author). There has been no allegation that Amaya Price’s event deviated from the event description in the application.

<sup>7</sup> *Standards of Conduct*, Fundamental Core Values, BERKLEE, <https://www.berklee.edu/introduction-table-contents/overview/105-standards-conduct> [<https://perma.cc/5MWE-EUS3>].

<sup>8</sup> *Demonstration & Protest Policy*, BERKLEE (on file with author).

even hateful.<sup>9</sup> In holding that the First Amendment protects protesters holding insulting signs outside soldiers' funerals that read "God hates fags," the Court explained why even intentionally hateful or upsetting speech should not be censored:<sup>10</sup>

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. On the facts before us, we 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.

The Supreme Court reiterated elsewhere:<sup>11</sup>

[Speech] may indeed best serve its high purpose when it induces a condition of unrest ... 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.

These principles apply with particular force to colleges, like Berklee, which by their nature are dedicated to open debate and discussion. It is clear from reading Berklee's policies that their authors also understood that for American colleges to properly function, they must protect expression that some members of a community *will* find controversial, offensive, or hateful.

Indefinitely postponing Amaya Price's event directly following widespread criticism and a petition to cancel the event strongly suggests the postponement was based on viewpoint, either that of Amaya Price or of his critics. Such viewpoint-based decisions are considered the most "egregious" act of "censorship in its purest form."<sup>12</sup> In postponing the event, Berklee also ratifies an impermissible "heckler's veto,"<sup>13</sup> putting campus speech at the mercy of those most willing to threaten disruption or violence in order to silence their opponents. If those opposed to a viewpoint target an event for disruption, Berklee must respond not by postponing the event but rather with "bona fide efforts" to protect the speaker's right to host the event and the

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<sup>9</sup> *Matal v. Tam*, 582 U.S. 218, 245 (2017) (refusing to uphold a limitation on speech viewed as "hateful" or demeaning "on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground"); *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (burning the American flag is 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) (a parody ad depicting a pastor losing his virginity to his mother in an outhouse is protected); *Cox v. Louisiana*, 379 U.S. 536, 557 (1965) (the government cannot disperse civil rights marchers out of fear that "muttering" and "grumbling" white onlookers might resort to violence).

<sup>10</sup> *Snyder v. Phelps*, 562 U.S. 443, 448, 460–461 (2011).

<sup>11</sup> *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949).

<sup>12</sup> *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 836 (1995).

<sup>13</sup> See *First Amendment Glossary*, Heckler's veto, FIRE, <https://www.thefire.org/research-learn/first-amendment-glossary> (last visited Oct. 25, 2024).

audience's right to hear by ensuring the event can go on.<sup>14</sup> Allowing objectors to dictate what speech may take place on campus is a clear violation of Berklee's commitment to expressive rights.

While Berklee has an important interest in ensuring campus safety, the college may not invoke it to squelch debate and discussion. In holding that even the violent reaction of a hostile mob cannot justify cutting off a speaker's protected expression, courts have explained:<sup>15</sup>

Maintenance of the peace should not be achieved at the expense of the free speech. The freedom to espouse sincerely held religious, political, or philosophical beliefs, especially in the face of hostile opposition, is too important to our democratic institution for it to be abridged simply due to the hostility of reactionary listeners who may be offended by a speaker's message.

It was, in fact, an incident in Berklee's hometown of Boston that led legendary abolitionist Frederick Douglass to write perhaps the most eloquent statement ever made about the danger of allowing the reaction of a hostile audience to determine what may be expressed. In his "Plea for Free Speech in Boston," Douglass spoke at Boston's Music Hall of an abolitionist meeting several days prior that "was invaded, insulted, captured by a mob of gentlemen, and thereafter broken up and dispersed by the order of the mayor, who refused to protect it, though called upon to do so."<sup>16</sup> Then as now, critics complained about the timing of this controversial event:<sup>17</sup>

Even here in Boston, and among the friends of freedom, we hear two voices: one denouncing the mob that broke up our meeting on Monday as a base and cowardly outrage; and another, deprecating and regretting the holding of such a meeting, by such men, at such a time. We are told that the meeting was ill-timed, and the parties to it unwise.

Douglass rejected the idea that speech could or should be silenced because some of the audience might wish it to be, noting that the speaker is not the only party injured by such suppression:<sup>18</sup>

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<sup>14</sup> *Bible Believers v. Wayne Cnty.*, 805 F.3d 228, 255 (6th Cir. 2018).

<sup>15</sup> *Id.* at 252.

<sup>16</sup> Frederick Douglass, *A Plea for Free Speech in Boston* (1860), available at <https://constitutioncenter.org/the-constitution/historic-document-library/detail/frederick-douglass-a-plea-for-free-speech-in-boston-1860>.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

There can be no right of speech where any man, however lifted up, or however humble, however young, or however old, is overawed by force, and compelled to suppress his honest sentiments.

Equally clear is the right to hear. To suppress free speech is a double wrong. It violates the rights of the hearer as well as those of the speaker.

In indefinitely postponing Amaya Price’s event because of hostility towards his viewpoint, Berklee has made the same mistake as Boston’s leaders of a century and a half before. If there were threats truly so serious that Berklee felt it had no choice but to postpone the event, the college has a responsibility to report those threats to law enforcement so they can be investigated and criminal charges pursued if appropriate.

A student-hosted event bringing awareness to desisters and detransitioners is fully protected by Berklee’s institutional commitment to free expression and may not face institutional censorship simply because some are offended by it. This principle does not shield Amaya Price from every consequence of the controversial event—including the criticism from other students, faculty, and the broader community. Criticism is a form of “more speech,” the preferred remedy to offensive expression.<sup>19</sup> However, authorities are limited in which institutional consequences they may impose when free expression is at stake.

We request a substantive response to this letter no later than the close of business on November 8, 2024 confirming Berklee will work with Amaya Price to ensure his event occurs as soon as possible, without any required content changes.

Sincerely,



Haley Gluhanich  
Senior Program Officer, Campus Rights Advocacy

Cc: Ron Savage, Vice President and Executive Director

Encl.

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<sup>19</sup> *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring). For example, “more speech” would include allowing peaceful protests at the event or hosting another event with opposing views. While the Office of Diversity & Inclusion did bring students together to answer questions about Amaya Price’s postponed event, that should have happened *after* Amaya Price’s event occurred.

## Authorization and Waiver for Release of Personal Information


I, Simon Amaya Price, born on June 2nd, 2004, do hereby authorize Berklee College of Music (the "Institution") to release to the Foundation for Individual Rights and Expression ("FIRE") any and all information concerning my current status, disciplinary records, or other student records maintained by the Institution, including records which are otherwise protected from disclosure under the Family Educational Rights and Privacy Act of 1974. I further authorize the Institution to engage FIRE's staff members in a full discussion of all matters pertaining to my status as a student, disciplinary records, records maintained by the Institution, or my relationship with the Institution, and, in so doing, to fully disclose all relevant information. The purpose of this waiver is to provide information concerning a dispute in which I am involved.

I have reached or passed 18 years of age or I am attending an institution of postsecondary education.

In waiving such protections, I am complying with the instructions to specify the records that may be disclosed, state the purpose of the disclosure, and identify the party or class of parties to whom disclosure may be made, as provided by 34 CFR 99.30(b)(3) under the authority of 20 U.S.C. § 1232g(b)(2)(A).

This authorization and waiver does not extend to or authorize the release of any information or records to any entity or person other than the Foundation for Individual Rights and Expression, and I understand that I may withdraw this authorization in writing at any time. I further understand that my execution of this waiver and release does not, on its own or in connection with any other communications or activity, serve to establish an attorney-client relationship with FIRE.

I also hereby consent that FIRE may disclose information obtained as a result of this authorization and waiver, but only the information that I authorize.

Signed by:  
  
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10/31/2024

Student's Signature

Date