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MULTI-FORUM INSTITUTIONS, THE POWER OF PLATFORMS, AND DISINVITING SPEAKERS FROM UNIVERSITY CAMPUSES

Much attention has been devoted recently to cases where a controversial speaker is invited to speak on campus and subsequently some members of the university seek to have that speaker disinvited. Debates about such scenarios often blur together legal, normative, and empirical considerations. I seek to help clarify issues by separating key legal, normative, and empirical questions. Central to my examination is the idea of the university as a *multi-forum institution*—i.e. a complex public institution whose parts contain different types of forums. I conclude that it is sometimes legally and normatively permissible (1) for universities to disinvite speakers, and (2) for students to seek to get speakers they consider unacceptable disinvited. I also suggest that my arguments sometimes extend to shouting down speakers.

BY MARK SATTA

1. INTRODUCTION

In recent years, there have been several high-profile cases in which a controversial speaker was invited to give a talk at a university and subsequently some members of the university sought to have that speaker disinvited from speaking on campus.¹ Some of the commentary in response to these cases has included support for the following positions:

- (1) If someone has been invited to give a talk at a public university, it is a violation of the freedom of speech to disinvite the speaker or to attempt by certain disruptive means to get the speaker's invitation rescinded. (This is a legal claim.)
- (2) An invited speaker should always be permitted to deliver their campus talk, regardless of whether the university is public or private, so long as the talk consists of speech protected by the First Amendment. (This is a normative claim.)
- (3) The primary force motivating students' attempts to prevent controversial speakers from speaking on campus is students' desires to feel safe and to avoid being exposed to views they find uncomfortable or offensive. (This is an empirical claim.)

¹ I'm using 'university' inclusively to refer to all institutions of higher education.

I argue that these three claims are false. I argue that claim (1) relies on mistaken ideas about free speech rights and public universities. I argue that claim (2) relies on mistaken ideas about the purposes of universities and the significance of speaking invitations on university platforms. I argue that claim (3) overlooks many students' recognition that an invitation to speak on a university platform normalizes and gives social legitimacy to a speaker's ideas and overlooks well-reasoned motivations to avoid contributing to such normalization.

Furthermore, I argue that it is legally and morally permissible for a university—public or private—to put some restrictions on who is given a university platform from which to speak, so long as those restrictions are reasonable in light of the university's mission. Given the complex set of relevant factors, decision-making about when to disinvite a speaker from a university platform or when to protest the invitation of such a speaker is a context-dependent matter.

This paper has five sections in addition to this introduction. Section 2 surveys some defenses that have been given of the three claims outlined above. Section 3 provides information about freedom of speech, freedom of association, and academic freedom.

In Section 4, I argue that disinviting a speaker from delivering a talk on campus does not automatically violate First Amendment free speech rights, even if the speaker's speech would consist solely of speech protected by the First Amendment. This is because university platforms are not public forums. Thus, there is no general right to speak on a university platform.

In Section 5, I argue that, under some circumstances, there are good reasons to protest and to rescind a speaker's invitation to speak on a university platform, even if the content of the speech is protected by the First Amendment. I also argue that universities have the freedom to set their own policies concerning who may be invited to speak on campus and by what procedures. Such policies ought to be rooted in the university's mission.

In Section 6, I argue that much of the rhetoric about student protests of university speakers has overemphasized and misunderstood students’ concerns about avoiding offensiveness and discomfort. I also argue that such rhetoric has underemphasized students’ awareness of the political significance of speaking from a university platform.

Gregory Magarian distinguishes between two types of protests, which he labels (1) “shouting down,” and (2) “preemptive protest.”² Shouting down is “nonviolent protest at the time and place of a speech that aims to prevent the speaker from reaching an audience.”³ The quintessential form of shouting down is literally shouting over the speaker such that the speaker’s message cannot reach the speaker’s intended audience. In contrast, preemptive protest is nonviolent protest of a speaking invitation that does not occur at the same time and place as the speech.⁴ What distinguishes preemptive protest from shouting down is when and where the protest happens, not how raucous the protesting is or the mode by which the protestors protest. Preemptive protest itself can involve shouting as well as a wide array of activities such as picketing, rallying, signing petitions, boycotting venues, joining sit ins, or organizing walk outs from classes, among others. Put simply, preemptive protest is any form of protest that is (1) nonviolent, and (2) not happening at the same time and place as the protested speaking event. In this paper, I focus primarily on preemptive protests aimed at having a speaker’s invitation to speak from a university platform rescinded, but at the end of both Sections 3 and 4, I examine the significance of my arguments for shouting down speakers.

By “a talk on a university platform” I mean any lecture or other speaking event in which university resources are used to elevate the profile of the speaker’s message. Methods of such elevation include university sponsorship of a talk, university funding for or assistance with advertising a talk, payment of a speaker honorarium, or provision of university equipment or

² Magarian, “What Audiences Object,” 556.

³ *Ibid.*, 572.

⁴ *Ibid.*, 556.

facilities that are not generally available to the public. Unless otherwise specified, references to things like “a talk,” “a lecture,” or “an invitation to speak” refer specifically to speech occurring on a university platform.

2. THE RHETORIC AGAINST DISINVITING SPEAKERS FROM COLLEGE CAMPUSES

An influential source of advocacy for some of the claims I am arguing against is Erwin Chemerinsky and Howard Gillman’s book *Free Speech on Campus*. Chemerinsky and Gillman’s “central thesis is that all ideas and views should be able to be expressed on college campuses, no matter how offensive or uncomfortable they make people feel.”⁵

Chemerinsky and Gillman’s framing of their thesis is important in two ways. First, they frame their thesis in the passive tense (“should be able to be expressed”). Their framing avoids referencing *who* is doing the expressing (e.g. faculty member, student, someone not affiliated with the institution). Second, Chemerinsky and Gillman imply that the most salient reasons why speech is sometimes prevented on campus is because ideas are viewed as offensive or uncomfortable.

Chemerinsky and Gillman suggest that their thesis applies to rescinding invitations to speak on campus and to shouting down, writing that “[w]e are disturbed that some campuses have recently excluded speakers with controversial viewpoints, or ruled that an invited speaker will not be allowed unless there is a competing perspective at the event. Campuses must be open to all ideas and views, no matter how controversial or even offensive.”⁶ They also state that “[c]ampus leaders should underscore the importance of providing a forum for unpopular and controversial views, and should

⁵ Chemerinsky and Gillman, *Free Speech on Campus*, 19.

⁶ *Ibid.*, 152.

be prepared to treat disruptive protests as violations of both free speech and campus codes of conduct.”⁷

They also reject the idea that an outside speaker should be excluded on the grounds that the speaker doesn’t deserve a university platform:

“Rather than view campuses as places that must provide special protections for unfettered inquiry; some students and faculty view them as privileged arenas for the expression of respectable ideas. They consequently argue that university leaders should provide ‘no platform’ for ideas considered unworthy . . . the idea of ‘no platform’ itself reflects a misunderstanding of universities. They are not arenas reserved for high-minded and approved ways of thinking. They are spaces where all ideas can be expressed and challenged.”⁸

Here, Chemerinsky and Gillman imply a false dichotomy in which one either views “campuses as places that must provide special protections for unfettered inquiry” or as “arenas reserved for high-minded and approved ways of thinking.” But one can reject Chemerinsky and Gillman’s broad view of platform rights without treating campuses as arenas reserved for only “high-minded” or “approved” thinking.

As noted earlier, Chemerinsky and Gillman frame what they perceive as attempts by students to limit free speech on campus in terms of students’ desires to avoid discomfort or offense. Others have promoted a similar framing of the issue. For example, Greg Lukianoff and Jonathan Haidt write that:

“Another way that emotional reasoning manifests itself on college campuses is through the ‘disinvitation’ of guest speakers. The logic typically used is that if a speaker makes some students uncomfortable, upset, or angry, then that is enough to justify banning the speaker from campus entirely because of the ‘danger’ that the speaker poses to those students.”⁹

Similarly, Jean Twenge writes:

⁷ Ibid., 156. In an introduction added to the paperback addition of their book, Chemerinsky and Gillman address protests against Yiannopoulos and other “alt right provocateur[s].” They advocate extending their “basic argument” to these types of speech on university platforms. Chemerinsky and Gillman, *Free Speech on Campus*, ix-xiv.

⁸ Ibid., 71-73.

⁹ Lukianoff and Haidt, *The Coddling of the American Mind*, 47.

“The other common response to controversial speakers is ‘disinviting’ a speaker from coming at all...Protecting students from being distressed is considered more important than having a discussion of potentially uncomfortable ideas. If some people might be upset, the thinking goes, we’ll have to ban the speaker.”¹⁰

Lukianoff, Haidt, and Twenge assume that typically students who seek to get a speaker disinvited from campus are motivated primarily by a desire to escape ideas they perceive as uncomfortable, upsetting, or offensive. While such desires may sometimes motivate students’ preemptive protests and shouting down of controversial speakers, this description of student protests overlooks other significant factors motivating students.

Arguments that students are intolerant of speech they find uncomfortable or offensive has had political consequences.¹¹ For example, in 2017 Jeff Sessions, who was serving at the time as the U.S. Attorney General, stated that the American university is “transforming into an echo chamber of political correctness and homogenous thought, a shelter for fragile egos.”¹² And numerous state legislatures have introduced bills aimed at “protecting” free speech on campus, such as a 2017 bill introduced into the Wisconsin State Senate that would have prohibited anyone from threatening “to organize protest . . . with the purpose to dissuade . . . an invited speaker from attending a campus event.”¹³

3. FREEDOM OF SPEECH, FREEDOM OF ASSOCIATION, AND ACADEMIC FREEDOM

Freedom of Speech

¹⁰ Twenge, *iGen*, 156.

¹¹ For a compilation of negative news commentary on attempts to disinvite speakers from university campuses, see Kitrosser, “Free Speech, Higher Education, and PC Narratives,” 2017 (notes 136 and 137).

¹² Sessions, “Remarks as prepared for delivery.”

¹³ Record available at: <https://www.wispolitics.com/wp-content/uploads/2017/05/170503VukmirJarchowBill.pdf>. Magarian notes that “A 2017 United Nations report details proposed legislation in sixteen U.S. states that would “criminaliz[e] peaceful protests.” “When Audiences Object,” 571. For an overview of state campus free speech laws, see Bauer-Wolf, “Free Speech Laws Mushroom in Wake of Campus Protests.”

In this section, I provide some background information about the legal rights to freedom of speech, freedom of association, and academic freedom. To provide context, consider the following. It is common at many state universities for people unaffiliated with the university to come onto a quad, sidewalk, or another public university space and start speaking. For example, during my time as a PhD student at a public university, it was common for outsiders to come onto campus and loudly proclaim their views about all sorts of issues, some of which were very controversial. Sometimes these speakers were ignored. Sometimes crowds of students would gather around them. Sometimes students would get speakers or bullhorns and attempt to drown out the messages of speakers whose messages they objected to. All these forms of speech, by both outside speakers and students, are legal under most circumstances.

But things would be different if one of those outside speakers went into a campus lecture hall and demanded to be given a platform. Such speakers cannot demand a microphone, or a tech crew to provide sound and lighting for their talk. Such outside speakers cannot demand that campus security unlock lecture halls reserved for campus events. They cannot insist on being given access to campus poster boards to advertise their talks, nor can they demand money to help cover their travel expenses to campus. Outside speakers do not have these rights by default.

Why are outside speakers generally treated as having the right to proclaim most messages on many university quads but not the right to do so in classrooms or lecture halls? The answer comes from the specific design of the constitutional rights to free speech and free association as well as the nature and purpose of universities.

The First Amendment of the U.S. Constitution states that Congress shall make no law abridging the freedom of speech.¹⁴ The U.S. Supreme Court interprets this provision broadly such that all governmental entities, including state governments, are prohibited from abridging the

¹⁴ U.S. Const. amend I.

freedom of speech.¹⁵ Because public universities are state organizations, public universities must protect freedom of speech.¹⁶ (Private universities have no such legal obligation.)

Freedom of speech in the United States is a capacious right that covers a lot of speech including the expression of facts, opinions, and most forms of lies and hate speech. However, freedom of speech is not an absolute right. It is restricted in many ways. First, not all speech is protected. Threats, defamation, perjury, and commercial fraud are all examples of speech unprotected by the First Amendment.¹⁷ Second, freedom of speech does not apply the same way in all places. You cannot go into someone else’s home, church, or private social club and demand to speak, even if the speech you wish to make is speech that would be protected by the First Amendment in other contexts. Third, even in public spaces there can be restrictions on when and how you can speak.

The Supreme Court has divided public spaces into three general categories for purposes of free speech: (1) public forums, (2) designated public forums (with limited public forums being a subset), and (3) nonpublic forums. The kinds of speech restrictions allowed differ in each type of space.¹⁸

Public forums provide the broadest free speech protection. Public forums include places like public parks and sidewalks. In such spaces, all forms of protected speech are allowed and are subject only to content-neutral time, place, and manner restrictions (e.g. no shouting in the park after dark). Public forums are public spaces that by their very nature are left open for the full range of public discussion.

¹⁵ See *Gitlow v. New York*, 268 U.S. 652, 666 (1925).

¹⁶ See, e.g., *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 828 (1995).

¹⁷ See, e.g., *Virginia v. Black*, 538 U.S. 343, 359 (2003); *New York Times Co. v. Sullivan*, 376 U.S. 254, 268 (1964); *Bronston v. United States*, 409 U.S. 352 (1973); *Peel v. Atty. Registration & Disciplinary Comm’n*, 496 U.S. 91, 100 (1990).

¹⁸ See *Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37 (1983).

Designated public forums are public spaces that need not by their very nature be opened up to all types of protected public speech, but which become open to the broad range of expression via the actions of government. For example, if a town owns a municipal theatre, they can limit performances to only town-sponsored plays, but once they start allowing outside groups to use the space, they cannot impose content- or viewpoint-based restrictions about which plays, consisting of protected speech, can be performed at the theatre, unless such restrictions pass strict scrutiny.¹⁹ For the period in which a government space is a designated public forum the same standards apply as those of the public forum.

A subset of designated forums, called limited public forums, allow for forums to be opened up only to select topics or classes of speakers. For example, if a university has a policy that allows recognized student groups to have their publishing costs subsidized by the university, the university cannot refuse to give the funds to certain groups due to the content or viewpoint of their publications. However, they can limit the use of their funds just to student groups and not any group whatsoever that wishes to have their publications subsidized.²⁰

Nonpublic forums are government spaces that serve particular purposes other than the open airing of ideas and which, as a result, are spaces where government actors can put additional limits on who can speak and about what. For example, a military base is a government operated space, but you cannot walk into the middle of a military base and say whatever you want on free speech grounds.²¹ The U.S. Supreme Court has held that “[i]mplicit in the concept of a nonpublic forum is the right to make distinctions in access on the basis of subject matter and speaker identity” and that

¹⁹ See *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546 (1975).

²⁰ *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819 (1995).

²¹ *Greer v. Spock*, 424 U.S. 828 (1976).

“the touchstone for evaluating these distinctions is whether they are reasonable in light of the purpose which the forum at issue serves.”²²

Public universities are complex institutions comprised of many spaces. Within most public universities there are some places that are public forums (e.g. sidewalks), designated public forums (e.g. conference spaces that can be rented by the general public), limited public forums (e.g. spaces that can be reserved by students), and nonpublic forums (e.g. faculty offices). Because public universities are complex institutions comprised of parts whose forum types differ, universities are *multi-forum institutions*—i.e. an institution comprised of different types of forums.

Individuals unaffiliated with a public university do not need permission from the university to speak in its public forums. Such individuals can also obtain access to a university’s limited public forums that have been opened to the public at large, so long as individuals abide by any content-neutral procedures the university has put in place. But without an invitation from those who control the relevant nonpublic forums, individuals unaffiliated with a public university have no right to speak in a university’s nonpublic forums.²³

Freedom of Association and Academic Freedom

As the U.S. Supreme Court has acknowledged, “[w]hile the freedom of association is not explicitly set out in the [First] Amendment, it has long been held to be implicit in the freedoms of speech, assembly, and petition.”²⁴ Freedom of association provides not only the right for individuals to associate with one another but also a limited right to exclude others from associations.²⁵ Students

²² Perry, 460 U.S. at 49.

²³ The foregoing discussion is not exhaustive of the relevant legal issues. For example, I have not considered the possibility that some university spaces are nonforums, a view for which I think reasonable arguments can be made. See *Ark. Educ. Tv Comm’n v. Forbes*, 523 U.S. 666 (1998). I also have not addressed cases of university speech as “government speech.” See *Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 135 S. Ct. 2239, 2246 (2015).

²⁴ *Healy v. James*, 408 U.S. 169, 180 (1972).

²⁵ See, e.g., *Roberts v. United States Jaycees*, 468 U.S. 609 (1984); *Boy Scouts of Am. v. Dale*, 530 U.S. 640 (2000).

have a limited right of association to form student organizations recognized by public universities.²⁶ However, the U.S. Supreme Court has also recognized the right of public universities to put conditions upon the associational structure of student organizations to align with the university's goals and values.²⁷

Much like freedom of association, the U.S. Supreme Court recognizes that academic freedom “long has been viewed as a special concern of the First Amendment” even though it is not a specifically enumerated constitutional right.²⁸ The Court recognizes “the four essential freedoms” of a university: the freedoms “to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.”²⁹ Note that two of these four essential freedoms—who may teach and who may be admitted to study—are associational freedoms. That is to say, they give universities the freedom to determine who they will allow into the association in the roles of teacher and student. Thus, in the context of universities, academic freedom and freedom of association are intertwined rights.

There are two other aspects of academic freedom worth noting. First, the four essential freedoms of self-determination possessed by a university are meant to be guided by “academic grounds.”³⁰ Leaders in our public universities aren't given free rein to construct universities based on whim or prejudice. Rather, alongside their self-organizational freedom, universities have a responsibility to make these associational and organizational decisions on academic grounds.

Second, the specific persons to whom the decision-making rights of the four essential freedoms are granted are primarily university faculty and staff and secondarily university students. These freedoms are granted to members of the university community, not those outside the

²⁶ Healy, 408 U.S. at 184.

²⁷ *Christian Legal Soc'y v. Martinez*, 561 U.S. 661, 689 (2010).

²⁸ *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 312 (1978).

²⁹ *Ibid.*

³⁰ *Ibid.*

university community. The U.S. Supreme Court holds that “[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the *community* of American schools” and that “[t]o impose any strait jacket upon the *intellectual leaders* in our colleges and universities would imperil the future of our Nation.”³¹ These sentiments are echoed in a concurring opinion by former Chief Justice Warren Burger who wrote that “[p]art of the educational experience of every college student should be an experience of self-government and this must be a joint enterprise of students and faculty. It should not be imposed unilaterally from above, nor can the terms of the relationship be dictated by students.”³²

4. THE CASE FOR THE LEGAL PERMISSIBILITY OF SPEAKER DISINVITATION CAMPAIGNS

Some have suggested that disinviting speakers, and in some cases even attempting to disinvite speakers, from college campuses violates constitutional free speech rights. Such claims lack a solid legal foundation.

First, so long as student protests consist merely of speech in public forums or designated public forums (e.g. picketing on the quad, signing petitions, holding rallies in a student center, boycotting other campus events), this speech is itself protected by the First Amendment. Such protests in fact promote the goals of free speech by contributing to discussions of important ideas and by using speech to promote self-governance. Such speech is clearly legally permissible. Perhaps a charitable way of framing the arguments of those who claim that student disinvitation campaigns violate the First Amendment is that while the speech of students is permissible, it is being used to advocate an unconstitutional outcome: namely, the rescission of a speaker’s opportunity to deliver a talk.

³¹ *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967) (emphasis added).

³² *Healy*, 408 U.S. at 195 (Burger, C.J. concurring).

This version of the argument is still flawed in several respects. First, student preemptive protests of controversial speakers can be broader than just attempting to persuade the inviting organization or the university to rescind the speaking invitation. Such protests are also a way of communicating with the invited speaker. Protests are a way of saying “we don’t want you here.” This is a legally permissible thing to do that provides information to the potential speaker. If the speaker is a troll, this may have the perverse effect of encouraging the speaker. But if the speaker has more noble goals, they may choose voluntarily to withdraw. Perhaps this kind of rationale grounded the choice that Condoleezza Rice made when she withdrew from being the Rutgers 2014 commencement speaker in response to student protests.³³ Regardless of one’s views on the merits of Rice as a commencement speaker or of the reasons for the student protest, it seems reasonable for students to want a commencement speaker whom they feel positively about. It also seems appropriate for an invited commencement speaker to withdraw if they know their invitation has been met with significant protest. This sort of negotiation between a potential speaker and audience is legal and in keeping with modern free speech rationales.

However, even when student disinvitation protests are aimed specifically at getting the university to disinvite the speaker, current First Amendment precedent suggests that under many circumstances nobody’s First Amendment rights are violated if the protests successfully lead to the rescission of the invitation. In order to understand why, it is useful to delineate three parameters: (1) who issued the invitation, (2) who rescinded the invitation, and (3) whose rights are in play.

When a speaker is invited to deliver a talk on campus, the invitation is typically issued by one of three types of entities: (a) a university-recognized student organization, (b) a faculty member or academic department, or (c) the university itself.

³³ Fitzsimmons, “Condoleezza Rice Backs Out of Rutgers Speech After Student Protests.”

If a speaker is disinvited from campus, such a disinvitation results either from (i) the organization that extended the invitation rescinding the invitation, or (ii) some other university entity with greater authority rescinding the invitation.

When a speaker is disinvited from campus, one might think that it is either (1) the invitee whose invitation was rescinded whose rights are being violated, and/or (2) the inviting organization whose rights are being violated. Let's consider each combination.

The claim that the invited speaker's rights are violated can be more quickly dismissed. As previously discussed, while all members of the public have the right to speak in public forums, the same is not so in nonpublic forums. Events in which speakers are given campus resources and a platform from which to speak at a public university usually occur in nonpublic forums. We can see that this is so because such platforms rightfully are exclusionary. Not everyone gets access to such platforms. Only those who are invited gain the privilege. This is a hallmark of a nonpublic forum. Second, such events are meant to serve the specific mission of the university, which is the education of students and the production of knowledge through academic research.³⁴ University resources such as spaces, funding, and staff are all finite. As such, university leaders are responsible for using these finite resources in a manner that contributes to a university's mission. Not all speech promotes the mission of the university. Thus, there is no violation of a speaker's right to free speech when they are denied a university platform.

One might be tempted to argue that while speakers do not initially have a First Amendment right to give a platformed speech on campus, they gain this right once the invitation is extended. But this is not so. A public library can rescind an invitation for an author to lead a story hour if they learn that the author has committed plagiarism, if they face budget cuts and need to scale back

³⁴ Cf. Post, "The Classic First Amendment Tradition under Stress," 118 ("Universities are not public fora. Whatever happens under the aegis of a university must be justified by reference to the university's twin missions of research and education. This means that outside speakers are invited to universities *because* they serve these missions.")

programming, or if they learn more information about the content of the author's works and conclude that having the author lead story hour is a bad idea. Such disinvitations do not violate the author's free speech rights. So too a university can rescind an invitation for a speaker to come deliver a talk if the university determines that the speech would not contribute sufficiently to the advancement of the university's mission. Such an action does not violate the rights of the invited speaker.

The more plausible candidate for a rights violation is that the disinvitation violates the associational and free speech rights of the university organization that issued the invitation. When an organization invites someone to speak under their banner, they are exercising a right of association. They are also exercising a free speech right to hear speech.³⁵ Thus, the relevant question becomes under what, if any, circumstances is a rescission of an invitation to speak a violation of that university organization's free speech rights?³⁶

If the organization that extended the invitation is the organization that rescinds the invitation, then there is no rights violation, assuming that the choice to rescind is voluntary. For example, if the College Democrats invite a speaker to deliver a talk on campus and the invitation is met with peaceful but substantial backlash and, as a result, the College Democrats decide to rescind the invitation, there is no rights violation. The College Democrats made a free choice in response to speech expressed by other members of the university community. Similarly, if the university invites a commencement speaker and subsequently learns that the majority of the graduating class is displeased with the choice, there is no First Amendment violation of the university's rights if the university decides to rescind the offer.

³⁵ See, e.g., *Stanley v. Georgia*, 394 U.S. 557, 564 (1969) (affirming that freedom of speech includes the right to receive information and ideas).

³⁶ I speak here of the organization's rights largely as a proxy for the rights of its members while remaining neutral on questions about the relationship between individual and group agency and individual and group rights.

The most difficult cases are ones in which the organization that rescinds the invitation is not the same as the organization that extended the invitation, especially when such a rescission goes against the wishes of the organization that extended the invitation. Given the structure of academic institutions, this might occur in two kinds of circumstances. First, the university rescinds an invitation extended by a student organization. Second, the university seeks to rescind an invitation extended by a faculty member, academic department, or other segment of university leadership. Let's consider each kind of situation in turn.

By default, the authority to invite outside speakers to deliver platformed talks on campus belongs to university faculty and administrators. Many universities delegate some of that authority to students by empowering student organizations to invite speakers to come to campus. If a university determines that a student group has used its delegated power poorly in choosing to invite a speaker, whether the university has the right to rescind the speaking invitation without the consent of the student organization depends on (1) how much authority the university has delegated to student groups, and (2) the reasoning for rescinding the invitation.

If the authority delegated to student groups to invite speakers to campus has been expressly limited through requirements of university approval or by the retention of a university veto, the university is likely free to rescind the offer so long as the motivation to rescind the invitation is in accordance with the university's mission. As the level of authority given to student organizations to invite speakers to campus becomes greater, the bar for what constitutes a sufficient ground on which the university can rescind the invitation becomes higher. In such a circumstance, there is a conflict of rights at play. Student organizations have a limited degree of associational rights. This would seem naturally to extend to student organizations having rights to choose whom they want to associate with via a speaking invitation. And students may be able to exercise a certain level of academic freedom in keeping with Chief Justice Burger's dictum given earlier that "[p]art of the

educational experience of every college student should be an experience of self-government and this must be a joint enterprise of students and faculty.” On the other hand, Burger also stated that the terms for this joint enterprise cannot “be dictated by students” and, as noted earlier, the Supreme Court has recognized that universities can place limits on the associational structures of student organizations.

Thus, whether university administrators may rescind an invitation issued by a student organization is context specific. The relevance of the speech to the university’s educational mission, the motivation behind the student organization’s decision to extend the invitation, and the level of authority to invite speakers delegated to student organizations are all pertinent considerations.

The final scenario we will consider is that of one segment of university leadership seeks to rescind a speaking invitation issued by another segment of university leadership. Faculty and administrators are both authorities in the university. Both share a role in the decision-making and operation of the institution. But some tasks fall more clearly under the purview of faculty and some more clearly under the purview of administrators. Something that falls quite clearly under the purview of the faculty are talks related to the discipline for which the faculty members are experts.³⁷ Thus, faculty in the Philosophy Department have the authority to invite guest speakers to give lectures on philosophy. And it is the Philosophy Department faculty who are in the best position to determine which speakers speaking about philosophy further the mission of the university. Thus, it is generally beyond the power of other branches of university leadership to undo the choices of philosophy faculty members operating within their own domain of expertise. There are, of course, many other questions in this area that should be asked—what happens if the philosophy faculty is divided over whether to disinvite a speaker? But such questions move us solidly from questions of First Amendment rights to questions of good institutional policy.

³⁷ Cf. Simpson and Srinivasan “No Platforming.”

In summary, protests to disinvite speakers from lecturing on campus are themselves a form of protected speech. Outside speakers do not have a right to speak on a university platform, and consequently no such right is taken away from them if their invitation to speak is rescinded. Members of the university, including student groups, have rights of association that permit them to invite speakers to campus, but when these rights conflict with other rights, such as the right of university leaders to promote the university’s mission, these associational rights can be limited.

Applications to Shouting Down

It is worth considering whether the foregoing conclusions about preemptive protest apply to shouting down as well. There are good reasons to think that they do. To see why, consider the potentially relevant differences between preemptive protest and shouting down. First, in preemptive protest, protesters attempt to prevent a speaker from accessing a platform at some future point, while with shouting down protesters seek to thwart a speaker’s ability to convey their message in real time from a platform the speaker is already occupying. Second, in cases of shouting down, protesters also seek to thwart in real time the ability of those who want to listen to the speech from doing so. I think it is unlikely that these factors significantly alter the legal analysis.

Concerning the first difference, some have expressed worry about a modified form of the “heckler’s veto.” Gillman and Chemerinsky raise this worry, writing that:

“[I]ndividuals do not have a right to prevent others from speaking. It has long been recognized in constitutional law that the “heckler’s veto”—defined as the suppression of speech in order to appease disruptive, hostile, or threatening members of the audience—can be as much a threat to rights of free expression as government censorship. If audience members had a general right to engage in disruptive or threatening behavior by using loud, boisterous, or inciting speech, it would give any determined individual or group veto power over the expression of any idea they opposed.”³⁸

³⁸ Gillman and Chemerinsky, “Does Disruption Violate Free Speech?”

Two observations undercut the force of this reasoning. First, Gillman and Chemerinsky bypass specifying *who* is suppressing speech. This is a significant oversight. The “heckler’s veto,” as traditionally understood, is about *government* suppression of speech in order to appease unreceptive audiences.³⁹ It is not about limiting the speech of unreceptive audiences themselves. Second, Gillman and Chemerinsky lump together “disruptive and threatening behavior.” But free speech law generally keeps these two categories distinct. True threats do not receive free speech protection; merely disruptive speech generally does.⁴⁰

Concerning the rights of the listening audience, Justice Thurgood Marshall’s comments that “[t]he freedom to speak and the freedom to hear are inseparable” and that “they are two sides of the same coin” are instructive.⁴¹ Audiences do indeed have a right to listen. But if the right to listen is the other side of the right to speak coin, this suggests that the right to listen is *also* a right against interference by the government, not private actors such as protestors. Thus, the reasoning in favor of the legality of preemptive protest also favors the legality of shouting down.

There is a related issue lurking here: whether universities can and should place restrictions on shouting down during university talks. As Chemerinsky and Gillman point out, many universities have policies barring students from disrupting regular university business. Given the academic freedom of university administrators and faculty, it seems likely that applying such policies to university talks is legally permissible. I suggest the more important question here is whether such action is wise. This once again moves us back to normative questions about ethics and good policy. Such questions are addressed in the next section.

5. NORMATIVE ARGUMENTS IN FAVOR OF (OCCASIONALLY) DISINVITING CAMPUS SPEAKERS

³⁹ See, e.g., *Terminiello v. Chicago*, 337 U.S. 1 (1949).

⁴⁰ Compare *Virginia v. Black*, 538 U.S. 343 (2003) and *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

⁴¹ *Kleindienst v. Mandel*, 408 U.S. 753, 775 (1972) (Marshall, J., dissenting).

Here I address the normative question of whether there are good reasons to sometimes disinvite or attempt to disinvite a speaker from giving a talk on a university platform. I argue that there can be good reasons to do so if the speaker’s speech is sufficiently ill-motivated or of sufficiently low value in connection with the university’s mission.

Specifically, in this section I argue that the following three considerations can provide students with good reasons to protest a speaker and the university with good reasons to disinvite a speaker when the value of the proposed speech is sufficiently low or the speaker is acting in bad faith:

1. Protests of invited speakers often serve as discussions about whether a speaker’s views are worth taking seriously—i.e. discussions about whether their views are “beyond the pale.” Such discussions are a valuable type of speech and ought to have the power to lead to action.
2. Giving a speaker a university platform often provides evidence to the general public that the speaker’s views are worthy of serious consideration. When the views demonstrably are not worthy of serious consideration, giving such speakers a platform creates misleading evidence. This is epistemically and civically harmful. It is reasonable to take measures to stop the creation of such misleading evidence.
3. Universities have finite resources that ought to be used wisely. University leaders have a fiduciary responsibility to students to use those resources wisely. As such, sometimes it will be appropriate for university leaders to further the missions of their institutions by disinviting speakers. Students may reasonably protest to encourage such action.

Let’s consider each of these reasons in turn.

Protests to Disinvite Speakers as Speech about What is Worthy of Serious Consideration

The notion that an idea is unworthy of our serious consideration is often expressed idiomatically in terms of the idea being “beyond the pale.” The phrase “beyond the pale” is too polysemous and has too complex a history to allow for a precise definition. Still I invoke the phrase because I think it is the English phrase that most reliably and efficiently communicates the general category I have in mind. Things that are beyond the pale are in some sense unacceptable. As I am

using the phrase, in order for an idea to be correctly considered beyond the pale two conditions must obtain. First, the idea must be considered thoroughly debunked and without any good evidential basis. (This criterion concerns the idea’s epistemic status.) Second, the idea must be considered one that it is bad for us to seriously consider. (This criterion concerns the idea’s normative status.)

I have set a rather high bar for when an idea is beyond the pale. Many controversial and uncomfortable ideas will fail to be beyond the pale in this sense. But some ideas do meet this high bar. For example, arguments that smoking cigarettes is harmless will rightfully be considered by many to be beyond the pale because such claims are thoroughly debunked and taking them seriously is a bad idea.

Most of us consider certain ideas to be beyond the pale. Sometimes, society broadly agrees about whether an idea is beyond the pale. For example, in our society there is widespread agreement that promotion of child pornography or genocide is beyond the pale. But what is beyond the pale is itself something we can disagree about. These days, in many circles it is considered beyond the pale to promote criminalizing same-sex sexual activity between consenting adults. However, not that long ago, on a national level, this topic was not beyond the pale. Laws criminalizing same-sex sexual activity between consenting adults were permitted in the United States up until they were ruled unconstitutional in 2003.⁴² Criminalizing same-sex sexual activity between consenting adults is now more frequently considered beyond the pale than it was in 2003 in large part because people have come to insist that the issue is beyond the pale. For many, the matter is simply not up for discussion. The arguments and stances of individuals about what is beyond the pale shapes what is treated as

⁴² In *Lawrence v. Texas*, 539 U.S. 558 (2003), the Supreme Court held such laws to be unconstitutional.

beyond the pale. Thus, just as there can be value in discussing whether an idea is true, so too there can be value in discussing whether an idea is beyond the pale.⁴³

Student disinvitation campaigns constitute speech advocating that a speaker's positions be considered beyond the pale. This is because an invitation to speak on a university platform implies that an idea is not beyond the pale. Invitations to speak on university platforms imply that the speaker's ideas are not beyond the pale for a variety of reasons including the prestige that university platforms confer, the selectivity of university platforms, and the required expenditure of finite university resources to accommodate speeches given on university platforms.

This connection between inviting a speaker and implying that their ideas are worthy of consideration has been identified by scholars. For example, Bryan Van Norden writes that to provide an institutional platform for a talk “is to take a positive stand that these views are within the realm of defensible rational discourse, and that these people are worth taking seriously as thinkers.”⁴⁴ Gregory Magarian notes the inverse principle writing that “[b]y seeking to exclude a speaker from a forum, objectors contend that the speaker is not merely wrong but beyond the pale, unworthy of participation in the discussion.”⁴⁵

Student disinvitation campaigns are a mode of speech whereby students declare that a speaker's ideas ought to be considered beyond the pale. Thus, to the extent that it is reasonable or laudable to claim that a speaker's ideas are beyond the pale, student disinvitation campaigns of that speaker are reasonable and laudable. Similarly, a university need not be viewed as inappropriately catering to the whims of their students if they disinvite a speaker or take protests seriously, especially when students are correct that a speaker's ideas should be viewed as beyond the pale. In fact,

⁴³ This is not to say that it is always valuable to discuss whether an idea that should be beyond the pale is in fact beyond the pale. Sometimes the best course of action is to ignore those trying to promote ideas that should be beyond the pale.

⁴⁴ Van Norden, “The Ignorant Do Not Have a Right to an Audience.”

⁴⁵ Magarian, “When Audiences Object,” 569.

universities often would be wise to try to use these kinds of student protests as occasions to help students develop the skill of engaging in productive dialogue.

University Platforms and Harmful Misleading Evidence

When a speaker’s ideas should not be legitimated but the speaker is given a university platform anyway, the provision of that platform creates misleading evidence that the speaker’s ideas are legitimate. This kind of misleading evidence can be civically harmful because it can mislead others into taking seriously views that it is detrimental to take seriously. Seeking to avoid giving an unwarranted epistemic boost to ideas that don’t deserve it provides students with another good reason to protest certain invited speakers and likewise provides universities with a good reason to disinvite certain speakers.

Neil Levy argues that giving speakers a university platform for ideas that do not deserve the platform creates misleading evidence. Levy writes:

“Provision of a platform provides higher-order evidence that the view being argued for is worth taking seriously. In refusing to offer bad views a platform, we therefore withhold misleading evidence, and to that extent we treat the audience with the respect due to autonomous agents.”⁴⁶

The provision of such a platform is misleading in part because, as Levy notes, (1) invitations to speak at universities “figure among the proxies for expertise and representiveness,” and (2) it is rational to be guided by higher-order evidence.⁴⁷ Thus, the very act of providing the platform—no matter what else one does—creates misleading evidence when the platform is not merited.

There are two other features of the misleading evidence created by the provision of unmerited university platforms that make the potential for social harm more likely. First, the misleading evidence generated by providing a university platform to meritless ideas is provided not

⁴⁶ Levy, “No-Platforming and Higher-Order Evidence,” 487.

⁴⁷ Levy, “No-Platforming and Higher-Order Evidence,” 496 and 499.

only to the audience in attendance but also to others who learn that the speaker was given a university platform from which to express their ideas. If a speaker with baseless views is invited to speak at Harvard, Princeton, and Yale, it may be easier for that speaker to convince others that their ideas have merit because such other people may rationally use their trust in those institutions as a proxy for deciding if the speaker's ideas have merit.⁴⁸

Second, the scope of this higher-order evidence is typically broader than the scope of any direct evidence rebutting the speaker's ideas. It is a common refrain that the best response to speech you disagree with is more speech. But even if the experts in the audience clearly rebut a speaker's misguided ideas, someone looking at that speaker's resume months later likely won't know that the speaker's ideas were easily refuted by experts. Simply offering more speech provides no guarantee that the misleading evidence generated by access to a platform will be rebutted. Thus, rescinding the speaking invitation may be the only way to rebut the misleading evidence created by the invitation. If a speaker's misguided ideas are harmful, students have a good reason to seek to avoid the social harm that may result from creating misleading evidence about the legitimacy of the speaker's ideas.

It is worth noting an important difference between the first two reasons offered. The first reason I offered—that protests are a valuable type of political speech about what should be considered beyond the pale—remains valuable even if protesters are mistaken about what is beyond the pale. The value is in the increased political speech itself. But the circumstances under which this second reason—that providing university platforms to unworthy ideas can create civically harmful misleading evidence—is valuable depends upon those protesting or disinviting being correct that providing the platform would create sufficiently harmful misleading evidence to justify the protest or recission. The substantive analysis of the quality of the speech is an irreducible part of determining when this second reason for protest or disinvitation is present. Human fallibility thus provides us

⁴⁸ Cf. Levy, “No-Platforming and Higher-Order Evidence,” 498-99.

with a reason to rely on this second kind of reason for protest or disinvitation judiciously. Such decisions should be made with intellectual humility. But, of course, intellectual humility doesn't mean never trusting oneself enough to act on one's well generated conclusions.

University's Fiduciary Duties

A third good reason for university faculty and administrators to rescind, under certain circumstances, a speaking invitation comes from the fiduciary responsibility that university leaders have to provide a high-quality education for their students and to use the finite resources of the institution wisely. In addition, if students think the university is not exercising their fiduciary duty wisely, they have the right to make their concerns known.

Robert Mark Simpson and Amia Srinivasan offer a hypothetical situation in which this kind of student protest and follow up action by university leaders would be appropriate. In the scenario they offer “a crank historian is invited to deliver a commencement address, student agitation alerts management to the controversial status of the invitee, and then management defers to its own experts in the history department to decide whether, according to their disciplinary standards, the offer of a speaking platform for this invitee should be honored.”⁴⁹ If the history department determines, using the academic standards of historians, that the speaker does not merit the platform, this reflects that the students had good reason to cause a stir and that the university now has a good reason to consider rescinding the speaking offer. This is because, as Magarian notes, “administrators necessarily and properly direct the university's educational program, including the invitation of speakers to enhance students' education.”⁵⁰

⁴⁹ Simpson and Srinivasan, “No Platforming,” 202–03.

⁵⁰ Magarian, “When Audiences Object,” 554.

Van Norden frames this kind of issue in terms of “just access,” which he states is a separate issue from that of free speech.⁵¹ He explains the grounding for just access writing that “[a]ccess to the general public granted by institutions like...university lectures, is a finite resource. Justice requires that, like any finite good, institutional access should be apportioned based on merit and on what benefits the community as a whole.”⁵² This articulation hits on both aspects of the fiduciary duties of universities leaders outlined above: (1) prudent use of finite resources, and (2) using those resources in such a way that benefits the university community. Van Norden suggest that, in light of this, what “just access means in terms of positive policy is that institutions that are the gatekeepers to the public have a fiduciary responsibility to award access based on the merit of ideas and thinkers.”⁵³

On the other hand, part of exercising the fiduciary duty of providing students with a quality education can include empowering students to control some of the university’s resources by letting them make some decisions about who will be granted a university platform. Setting up such a balance is to make university self-governance the “joint enterprise of students and faculty” identified by Chief Justice Burger.

In this section, I’ve offered three reasons that sometimes provide students with good reason to preemptively protest certain speakers and university leaders with good reasons to rescind speaking invitations. When these reasons apply is a situation-dependent matter. Thus, changing from categorical thinking to situational thinking about when to protest or to disinvite a university speaker is a good thing. Much of the naysaying about students’ occasional protests of campus speakers is framed categorically. Campuses should indeed provide a robust environment for inquiry. That is part of what makes well-running universities such marvelous places. But a university’s primary

⁵¹ Van Norden, “The Ignorant Do Not Have a Right to an Audience.”

⁵² Ibid.

⁵³ Ibid.

responsibility is to provide this environment to members of the university community—especially students—and not to just anyone. And providing a robust environment for free inquiry must be balanced against other university objectives such as imparting specialized knowledge from instructors to students and providing an environment conducive to academic research. I am not suggesting that students or universities should be quick to protest or disinvite speakers. Protests and disinvitations should be undertaken judiciously, but they are not actions that members of the university community should categorically avoid.

Applications for Shouting Down

It is worth considering the extent to which the normative considerations offered in this section apply to shouting down. The first consideration—that protesting a speaker is valuable speech about what should be considered beyond the pale—naturally extends to shouting down. The words typically used when shouting down (as well as the action of shouting down itself) send the message that the speaker’s speech should not be tolerated, at least not when delivered from the relevant platform. Thus, shouting down is speech about what should be considered beyond the pale.

The remaining question is whether shouting down is *valuable* speech about what is beyond the pale. Speech about what should be treated as beyond the pale has positive value, but one might argue that the positive value of such speech is outweighed by the negative value of preventing someone from speaking or of preventing an audience from receiving the speech. As a general rule, speech that prevents someone from delivering their speech when an audience has gathered specifically to hear that speaker should be weighed negatively in virtue of its disruption of others’ plans. But this general rule is defeasible. Speech advocating that Nazism should be treated as beyond the pale is valuable. Speech advocating that Nazism should be treated as beyond the pale that is shouted in order to drown out the message of a Neo-Nazi spewing vitriol against Jews and other

marginalized groups to an audience that has assembled to listen is even more valuable in virtue of the disruption it causes to the plans of the Neo-Nazi and their audience.

Thus, so long as the speaker's value is of sufficiently low value, the value of speaking about what should be beyond the pale helps justify not only preemptive protest but also shouting down. But this analysis points toward an important distinction between justifications for preemptive protests and justifications for shouting down. Earlier in this section, I argued that preemptive protest can have value as speech about what is beyond the pale even if the protesters are mistaken about what should be beyond the pale. This is because it is still speech about an important issue that could lead to fruitful discussion, even though the protesters' position itself is mistaken. This does not strike me as true in cases of shouting down. When one shouts down a speaker for the misguided reason that the speaker's message is beyond the pale when it is not, the negative value of the disruption will typically outweigh the positive value of speaking about what should be treated as beyond the pale. Thus, it is more important that protesters get it right when shouting down than when preemptively protesting.

The second consideration—that successful preemptive protests and disinvitations can block the creation of misleading evidence about the value of a speaker's messages—does not apply as neatly in the case of shouting down. As discussed earlier, even if a speaker's baseless claims delivered from a prestigious platform are easily rebutted, the speaker is still able to promote the fact that they were given the platform to begin with. So too, in cases of shouting down, a speaker can still promote the fact that they were given a platform, even if they were shouted down from that platform. Still, I think evidential considerations can also play a role in justifying shouting down a speaker. While it is true that shouting down happens too late to rescind a speaking invitation, shouting down may be the best available mechanism members of a university community have at that point to try to rebut the

misleading evidence created by the speaker being given a university platform from which to deliver their message.

The relationship between shouting down and the third consideration—that universities have a responsibility to use their resources wisely—is also more tenuous. When protesters shout down a speaker, the resources for the talk have already been expended. Still, shouting down can have value here by allowing protesters to communicate to the university that they object to this use of university resources. Such messaging may guide the university’s future resource allocations. As with the other two considerations, shouting down gains value only under circumstances where it is appropriate to send a message to the university, or a segment of it, that they have mismanaged resources. In summary, the reasons considered in this paper that sometimes justify preemptive protest can at times also justify shouting down, although perhaps less often.

6. SNOWFLAKE NARRATIVES AND STUDENT RECOGNITION OF THE POWER OF PLATFORMS

In the previous two sections, I argued that (1) under many circumstances protesting a campus speaker and rescinding an invitation to speak on campus are actions compatible with the First Amendment, and (2) sometimes there are good reasons to protest a campus speaking invitation or to rescind a campus speaking invitation. Here, I respond to the popular narrative that the primary motivation for students’ disinvitation campaigns is students’ desires to avoid speech that they find uncomfortable, offensive, or upsetting. I call such explanations of student protests “snowflake narratives.” As I’m using the term, snowflake narratives are attempts to explain student actions by painting students as extremely sensitive and motivated by a strong desire to avoid what they find uncomfortable, offensive, or upsetting.

It is true that many of today’s college students have an evolving understanding of the ways in which words can cause harm. Commentators who promote snowflake narratives often fail to realize

the positive aspects of these developments in thought. It is also true that students can sometimes make unreasonable demands for the silencing of others' speech. But disinvitation attempts are much less common than most proponents of snowflake narratives would lead us to believe. As Michael Hiltzick points out, in its first seventeen years of tracking speaker disinvitation attempts in the U.S., the Foundation for Individual Rights in Education (FIRE) compiled a total of only 331 such attempts. That averages out to less than 20 disinvitation attempts a year in a country with more than 4,000 institutions of higher education. Thus, disinvitation attempts are in fact exceedingly rare affairs.⁵⁴

If students are seeking to have speakers disinvited from campus whenever they find a speaker's ideas uncomfortable, offensive, or upsetting, we ought to observe far more disinvitation attempts than we do. The rarity with which students seek to get speakers disinvited from campus indicate that students are more judicious in deciding when to protest the invitation of a speaker on campus than snowflake narratives suggest.

Given what we have already covered, it seems to me that the reasons that students typically rely on are rooted in the good reasons for protesting speaking invitations put forward in the previous section. That is to say, many students realize that giving a university platform to a speaker conveys legitimacy to a speaker's ideas. They realize that speaking platforms can move ideas currently considered beyond the pale into mainstream discourse. They realize that such movement of unmerited ideas into mainstream discourse can create epistemic and civic harm. And they do not want their universities to contribute to these things by hosting a speaker on a university platform who has an odious message or ill intent.

⁵⁴ Hiltzick further argues that only 145 of the 331 entries are "true disinvitations." Hiltzick, "Are college campuses growing more intolerant of free speech?"

Lukianoff and Haidt hypothesize that the increase in student protests of invited speakers starting around 2015 is largely the result of changes in how today’s university students were raised (e.g. via “paranoid parents,” “the decline of free play,” and a “bureaucracy of safetyism”) and in the characteristics of students (e.g. more anxiety and depression, and a “quest for justice.”).⁵⁵ But there is a simpler explanation. Beginning around 2015, university students observed concerted efforts to move a variety of views that had been widely treated as beyond the pale into mainstream discourse. Part of this movement consisted of unqualified speakers like Milo Yiannopoulos clamoring for university platforms.⁵⁶ Many students recognized the harm this could cause and responded in protest. It is not, by and large, that students are afraid or intolerant of all ideas they disagree with or find uncomfortable. The matter is much more nuanced than that. We owe it to our students to recognize the complexity of these situations and the complex motivations for their protests. We should avoid a one-size-fits-all policy that requires universities to allow unfettered and equal access to university platforms to all comers, regardless of one’s message, credentials, or affiliation with the university. Instead, we should develop policies and facilitate conversations that allow faculty, administrators, and students to wisely engage in the joint enterprise of university governance.

Without care, the suggestions I offer here can be abused. While members of the university community do have the responsibility and the ability to exercise control over who is given a university platform, this control should not be used to cast a “pall of orthodoxy” over the university.⁵⁷ Identifying the difference between responsible gatekeeping and the creation of ideological litmus tests is not always easy. The task of making these differentiations requires wisdom,

⁵⁵ Lukianoff and Haidt, *The Coddling of the American Mind*.

⁵⁶ See, e.g., Beauchamp, ““Milo Yiannopoulos.””

⁵⁷ See *Keyishian*, 385 U.S. at 603.

virtue, collective reasoning, and informed decision-making. Working together to find this balance gives us all much to talk about.⁵⁸

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