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February 22, 2010

Litsay Gupta

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role as an authorized agent of the university and is equally bound by the First Amendment. Just as UCSD itself cannot punish students or student organizations for engaging in speech protected by the First Amendment, neither can its agent, ASUCSD. As a state institution, UCSD must understand that it has a non-delegable duty to ensure that the First Amendment rights of its students are protected and that the university and its administrators will be legally liable if these rights are not respected. FIRE urges Mr. Gupta to *immediately* reverse the unconstitutional freezing of student media funds and to stop censoring student organizations on the basis of content. If Mr. Gupta will not do so, then it becomes the responsibility of UCSD's administration to immediately take action to correct this violation of the Bill of Rights.

This is our understanding of the facts; please correct us if you believe we are in error. According to the ASUCSD Standing Rules, SRTV is an organization classified with various other student-run media organizations, such as KSDT Radio, as a "service" of ASUCSD that ASUCSD's Office of Student Services "oversees" as "the overall governing body of the station." According to the Standing Rules, SRTV operates with the following mission:

- i. SRTV's primary mission is to enrich the university experience of UCSD students with a television broadcast environment **created, maintained, and perpetuated by students themselves.**
- ii. SRTV intends to meet this mission by providing the UCSD community with information and student programming including video, news, music, and **entertainment of a diverse nature**, which usually cannot be obtained elsewhere in San Diego or which serves student interests.
- iii. SRTV's major objective is to **afford any interested UCSD student facilities** for training in television arts and science topics which are not part of a regular formal UCSD instruction program and a regular broadcast medium **for artistic and informative expression.** [Emphases added.]

The Standing Rules also provide that student "[p]roducers shall be ultimately responsible for the content of the show they produce." The only named content restrictions on productions involve bans on unauthorized copyrighted material and obscene material, and limitations on "patently offensive indecent material that does not rise to the level of obscenity," which is restricted to the hours of 10:00 p.m. to 6:00 a.m. The Standing Rules refer also to UCSD's Triton Cable Use Guidelines, which do not include additional restrictions but which explain that content restrictions follow the current rules of the Federal Communications Commission.

The Standing Rules further provide generally for prior review: "All content to be aired on SRTV must be approved via a standard approval form, authorized by the General Managers [of SRTV] and AVP Student Services [an ASUCSD position]." The form that is used, named "SRTV Program Proposal Form," requires producers to provide the working title of the programming, a program description (in approx Tc 8.3(d813.83 0 Tg RO.)shUCS0015 ThAerog8j1ecd

primarily funded by our student fees. I do not believe we should continue funding this organization with our fees.

A February 20 e-mail to the affected organizations from Peter Benesch, ASUCSD Vice President, Finance and Resources, and Andrew Ang, ASUCSD Associate Vice-President, Student Organizations, spelled out the following:

The Associated Students President has issued a moratorium on all Student Media Organization Funding, effective immediately.

Such a moratorium prevents any funds to be allocated for Spring Quarter publications. In addition, any funds allocated in previous quarters can no longer be spent or accessed. However, any outstanding monetary commitments with publishers that have been placed by yesterday's date, February 19, 2010, will be honored.

According to the ASUCSD document "Student Org. Media Final Allocations - Winter 2010" at

committee I am charging. If students don't want new policies, the committee can recommend so, and funding will continue the way it has always been.

To me, it's important that we figure at least what steps we will take **before we continue along a path that is generating significant protest from some students.** [Emphases added.]

According to Mr. Gupta's video, he is convening a new "committee" this Thursday or Friday and that one of the charges of the committee is to decide whether or not to maintain the freeze on student media funding. This is unacceptable. The freeze violates the First Amendment rights of the affected organizations—rights that UCSD as a public entity and its agent, ASUCSD, are legally and morally bound to uphold. The freeze must be lifted immediately in order to avoid continuing, substantial harm to each organization, for which UCSD and ASUCSD are already liable.

Mr. Gupta has acted arbitrarily and appears to have no authority to unilaterally freeze student media funding that had already been approved. He also has demonstrated either ignorance or misunderstanding of the constitutional principles of "viewpoint neutrality" and "content neutrality." As the agent of a state university, the ASUCSD has an obligation to distribute student funds to student organizations in a viewpoint-neutral manner and may not make funding or de-funding decisions on the basis of content or viewpoint. This constitutional duty overrides every university or ASUCSD policy, including a supposed right to "shut down" SRTV—a forum created for student use with very few content restrictions—because of protected speech. *See Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 835 (1995) ("[F]or the University, by regulation, to cast disapproval on particular viewpoints of its students risks the suppression of free speech and creative inquiry in one of the vital centers for the Nation's intellectual life, its college and university campuses").

ASUCSD must distribute funds to student organizations based on objective criteria, regardless of the viewpoints espoused, whether or not ASUCSD members find those points of view objectionable, and regardless of concerns about content. Disregarding this principle in funding decisions is not only morally wrong, but unconstitutional.

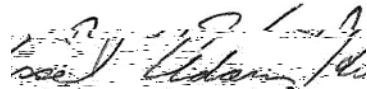
That the First Amendment's protections fully extend to public universities like UCSD is settled

them an understanding of the full repercussions of repeatedly and recklessly defying the Constitution.

Although FIRE itself does not litigate, if the university decides to continue to allow such infringement on the rights of its students, we are committed to using all of our resources in support of students' expressive rights and toward seeing this matter through to a just and moral conclusion.

Given the urgency of these matters, FIRE requests an immediate response.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Kissel". The signature is written in a cursive style with some ink bleed-through from the reverse side of the page.

Adam Kissel
Director, Individual Rights Defense Program

cc:

Penny Rue, Vice Chancellor of Student Affairs

Sandra Daley, Associate Chancellor and Chief Diversity Officer

Glynda Davis, Assistant Chancellor for Diversity

Daniel W. Park, Chief Campus Counsel and Associate General Counsel

Jeff Gattas, Executive Director, University Communications and Public Affairs

Peter Benesch, Vice President, Finance and Resources, Associated Students of UCSD

Andrew Ang, Associate Vice President, Student Organizations, Associated Students of UCSD