



Via Email

April 25, 2018

James B. Milliken
Office of the Chancellor
205 East 42nd Street
New York, NY 10017

Vincent Boudreau
Office of the President
Room 300
160 Convent Ave.
New York, NY 10031

Loretta P. Martinez
Office of General Counsel
205 East 42nd Street
New York, New York 10017

Re: CCNY's Cancellation of SJP's May 3, 2018 Event

Dear Chancellor Milliken, President Boudreau and Ms. Martinez,

We write on behalf of Students for Justice in Palestine (SJP) at City College to express our serious concerns with respect to City College of New York's (CCNY) cancellation of a book event featuring Israeli-American author Miko Peled after CCNY determined the event to be controversial. Such censorship violates the First Amendment, by which CCNY is bound. Accordingly, we demand that you immediately allow SJP's event to go forward, apologize, and reaffirm the City University of New York's commitment to free speech, associational rights and academic freedom.

I. Facts

The following is our understanding of the facts:

a. SJP Submits Event Request Form Four Months in Advance

In January 2018, the president of SJP electronically submitted a Student Life Event Request Form via CCNY's website for an event titled *The General's Son: The Transformation of an Israeli in Palestine* featuring Israeli-American writer and human rights activist Miko Peled, who was to discuss his new book bearing the same name.

On February 14, an SJP board member stopped by Student Life Reservations to confirm that the event was to be postponed from March 8 to May 3, 2018, due to a change in the speaker's schedule. Later that day, Student Life and Leadership Development (SSLD) Reservations staff wrote SJP, confirming the student's visit and SJP's event applications for the semester, including the Peled event on May 3, 2018.¹ SJP proceeded to organize and plan the event, occasionally checking in with Student Life with respect to when CCNY would send SJP the event application.

On April 9, 2018, SJP posted an event announcement to their Facebook page which included the event's name, date and time, along with the following description:

Miko Peled, author of *The General's Son and Injustice*, was born in Jerusalem in 1961 into a well-known Zionist family. Miko Peled is a writer and human rights activist born and raised in Jerusalem. He is considered by many to be one of the clearest voices calling for justice in Palestine, support of the Palestinian call for Boycott, Divestment and Sanctions, (BDS) and the creation of a single democracy with equal rights on all of historic Palestine.²

b. CCNY cancels event because Peled's views are "controversial"

On April 18, 2018, CCNY Director of SSLD O'Lanso Gabbidon met with the SJP board at his request. At the meeting, Gabbidon told SJP that CCNY was cancelling the May 3, 2018 Peled event because CCNY's administration found his views "particularly controversial." Gabbidon stated that CCNY wanted to make sure there was "civil discourse" across the college, that the issue of Peled speaking on campus was "deeply political" and that the administration was concerned with negative news coverage.

Gabbidon asked if SJP would agree to reschedule the event for next semester because the CCNY's president needed to attend, the university needed more time to research the speaker, and because CCNY would want to arrange "at least two moderators" for the event.

The students demurred on changing the date, stating that this was to be their big event of the year, that they did not provide food for attendees at several other events so that they could save up for this event, that Peled may not be able to return the following semester and that they feared CCNY would again cancel the event. One student later told Gabbidon that she was graduating, like other students interested in the event, and would be deprived of the opportunity to see him next year.

¹ Email from Rafael Abdulmajid, SSLD Reservations Staff, CCNY to [Name Redacted] and [Name Redacted], Students for Justice in Palestine (Feb. 14, 2018).

² Students for Justice in Palestine at City College, *The General's Son: A Transformation of an Israeli in Palestine*, (Apr. 9, 2018), <https://www.facebook.com/events/156128811732502/>.

Gabbidon stated that there was no way the event would proceed on May 3. He confirmed that SJP submitted the event request in January, even stating that SJP had done their “due diligence,” but that after senior CCNY administrators saw the event announcement, they asked why they had not heard about it. He also stated that the events application process was “evolving.”

When a student asked what CCNY needed to do so that the event could take place next semester, Gabbidon responded that the administration just needed to be “comfortable.”

c. CCNY's Shifting Reasons for Cancelling SJP's Event

At 8:45 pm on April 18, Gabbidon emailed SJP board members, stating:

As promised from our meeting today, I must inform you all that we can't not (sic) move forward with your event, The General's Son, for this semester. I would like to extend my apologies with this regard since there wasn't an eApp as well as the appropriate contracts and disbursement filed before the appropriate deadline. With this in mind your event will be postponed for a future semester.

A follow-up meeting should be scheduled with myself to discuss how best to move forward.

Concerned about the shifting reasons for the event cancellation, the students asked Gabbidon on Monday, April 23 why his April 18 email differed from what he told them in person earlier that day, and pointed out that they had not submitted an event application (eApp) because CCNY had not supplied one, despite repeated requests.

In response, Gabbidon stated that he spent an “enormous amount of time” on how to word the email, and that the decision was a matter of “semantics.”

II. CCNY's Cancellation of Miko Peled's Event Violates the First Amendment

CCNY's decision to cancel SJP's May 3 event violates the First Amendment and must immediately be reversed. As you are no doubt aware, the First Amendment is binding on public colleges.³ By explicitly targeting a particular viewpoint being expressed—one calling for justice and equality for Palestinians—CCNY's actions strike at the heart of the First Amendment.⁴

³ See *Widmar v. Vincent*, 454 U.S. 263, 268–69 (1981) (“With respect to persons entitled to be there, our cases leave no doubt that the First Amendment rights of speech and association extend to the campuses of state universities.”); *Healy v. James*, 408 U.S. 169, 180 (1972) (“[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large.”).

⁴ *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 828 (1995) (“It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys.”).

The Supreme Court has long held that “[d]iscrimination against speech because of its message is presumed to be unconstitutional.”⁵ Students at public universities have the right to use university facilities on a non-discriminatory basis.⁶ In other words, CCNY may not cherry-pick which student-organized events it allows to go forward based on their message.⁷ To do so casts exactly the type of “disapproval on particular viewpoints” that the Supreme Court warned “risks the suppression of free speech and creative inquiry [on] university campuses.”⁸

Moreover, there is longstanding legal precedent that a public college may not impede a student group’s right to expression because it is controversial.⁹ As the Supreme Court has made clear:

[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. . . . That is why freedom of speech, though not absolute, is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest.¹⁰

It is clear, as reflected by comments from CCNY administrator Gabbidon, that SJP’s event was censored because of administrators’ fears that the event would spark “controversy.” The subsequent excuse that the students did not follow the proper procedures was clearly pretextual given the fact that the deadlines are regularly ignored by administrators, as happened with other SJP events this academic year.¹¹

⁵ *Id.*; see also, *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 55 (1983) (“In a public forum . . . all parties have a constitutional right of access and the State must demonstrate compelling reasons for restricting access to a single class of speakers, a single viewpoint, or a single subject.”).

⁶ See, e.g., *Healy*, 408 U.S. at 169.

⁷ *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (“If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”); *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949) (“[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.”); See also *Bd. of Regents of Univ. of Wisconsin Sys. v. Southworth*, 529 U.S. 217, 235 (2000) (“Access to a public forum, for instance, does not depend upon majoritarian consent.”); *Rosenberger*, 515 U.S. at 828 (“Discrimination against speech because of its message is presumed to be unconstitutional.”).

⁸ *Rosenberger*, 515 U.S. 819 at 835.

⁹ *Healy*, 408 U.S. at 186 (1972).

¹⁰ *Terminiello*, 337 U.S. at 4-5 (1949) (internal citations and quotations removed).

¹¹ For example, in January 2018, SJP submitted a Student Life request form for an April 26, 2018 event. CCNY emailed SJP the events application on April 12 – ten business days before the event was to take place. CCNY ultimately approved the event on April 23, three days before the event.

CCNY's justification for cancelling SJP's May 3 event evinces unconstitutional content and viewpoint-based discrimination. The decision must be reversed, and SJP must be permitted to proceed with the event as advertised.

III. Conclusion

Universities' scrutiny and censorship of speech critical of Israel harms all campus community members, especially those who are interested in exploring the critical issue of Israel and Palestine. It threatens to shut down robust debate on one of the most urgent foreign policy, moral and political questions of our time. The First Amendment and well-established values of higher education that envision the university as the "marketplace of ideas" do not permit this type of viewpoint discrimination.

There is no constitutionally sound justification for the cancellation of SJP's May 3 event, and we expect CCNY will live up to its obligations under the U.S. Constitution. Please be advised that administrators at public colleges who violate clearly established rights may be held personally liable for monetary damages under 42 U.S.C. § 1983.¹²

To ameliorate the harm done, we request that you take the following immediate steps:

1. Reinstate SJP's event, *The General's Son*, featuring Miko Peled, for May 3, 2018.
2. Apologize, in writing, to SJP.
3. A commitment to comply with the First Amendment.

We respectfully request a response by Friday, April 27, 2018.

Sincerely,



Maria C. LaHood
Deputy Legal Director
Center for Constitutional Rights



Radhika Sainath
Senior Staff Attorney
Palestine Legal

¹² *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).