



Via e-mail

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March 18, 2024

Re: Vanderbilt must cease violation of students' rights to free speech and association, and allow student divestment referendum to move forward

Dear Ms. Shellaway,

We write on behalf of Vanderbilt Divest Coalition to remind you and your client, Vanderbilt, of your obligation to uphold students' rights to freely debate university policy on divestment from human rights violations, via the ballot referendum process or in any other forum. The University must address two recent violations of this principle: 1) discriminatory treatment of students and organizations involved in the Vanderbilt Divest Coalition, restricting their speech and association rights; and 2) attempts to prevent the student divestment referendum from moving forward on March 25, 2024.

1) Vanderbilt must cease discriminating against the students and organizations involved in the Vanderbilt Divest Coalition

Vanderbilt Divest Coalition is a diverse coalition of more than 17 Vanderbilt student organizations who have joined together to advocate for a constitutional amendment of the Vanderbilt Student Government that would cease ongoing financial support for companies complicit in human rights violations of the Palestinian people. The petition for this amendment received 642 signatures, more than three times as many as were needed for the petition to proceed to a campus-wide referendum.¹

Since beginning to organize for the divestment amendment, students and student organizations have reported that the University has targeted them for selective application of policy regulating their speech and association, as well as restrictions on their activity that are not based in University policy at all.

¹ <https://roadmaps.today/?p=30>

On February 24, 2024, Students for Justice in Palestine, a registered student organization, received a notice from Student Accountability, Community Standards & Academic Integrity, warning them of violations of the University's policy for Notices, Posters, Banners and Printed Announcements. The notice references flyers concerning the divestment resolution that were allegedly posted in violation of this policy, yet without any support for the claim that SJP had posted these flyers. Students report that flyers from other authorized and non-authorized groups are posted that do not comply with these regulations routinely, yet other groups are not singled out for potential sanction.

On March 6, 2024, Students for Justice in Palestine planned to hold a meeting for students to learn about the Vanderbilt Divest Coalition and booked a room for their meeting, in accordance with standard University policy. However, SJP was notified by email on March 5 that their room reservation was cancelled because "the Vanderbilt Divest Coalition is an unrecognized student organization and, as such, cannot reserve space on campus." The email accused SJP of acting as a "front" for this alleged unrecognized student organization and threatened individual and organizational sanctions. In the email exchange regarding their event cancellation, SJP was told by Associate Dean for Community Standards and Student Support Neil Jamerson that "SJP can plan activities and cohost with other registered student organizations as SJP" yet were also told that their event concerning the divestment campaign would not be re-booked and any reservation concerning the campaign would not be honored in the future.

After a meeting with Associate Dean for Student Engagement and Leadership Traci Ray, SJP was given the parameters within which they could hold their meeting on March 6. Students discussed with Ms. Ray exactly how the University believed that the organization should advertise the event so as not to be "misleading" or suggestive that the Vanderbilt Divest Coalition is an independent student organization. The students re-booked another space on campus and extensively modified their outreach materials in accordance with the direction provided by Ms. Ray.

Unfortunately, despite seeking guidance from the administration and complying with all directions provided, SJP's event was once again cancelled by Neil Jamerson less than two hours before it was supposed to begin with no explanation as to how SJP had failed to comply with the specific instructions provided by Ms. Ray. After exchanging emails, Mr. Jamerson again reversed position and provided SJP with "conditional approval" to hold their meeting, just 10 minutes before it was supposed to begin. Mr. Jamerson's email also told students to prepare for potential protests, and that given the late hour, the University would not be able to protect them.

Additionally, we understand that SJP's apartheid wall event scheduled for today has had the location and time unilaterally changed by the University, despite SJP properly reserving the space for the event more than two months in advance.

Although Vanderbilt is not a public university, and therefore not bound by the First Amendment, selective application of University policy and arbitrary restriction of student speech and assembly are incongruous with Vanderbilt's commitment to freedom of

expression. According to the Vanderbilt Freedom of Expression policy, “Vanderbilt is firmly committed to academic freedom and freedom of expression and will maintain the conditions of freedom of inquiry, thought, and discussion on campus.”² The Freedom of Expression policy continues that this freedom extends “even when that expression directly challenges the beliefs and ideas of another and even when that expression may be deemed disagreeable or possibly even offensive.”³

Vanderbilt states that its approach to free expression rests on three pillars: open forums, institutional neutrality and civil discourse.⁴ Institutional neutrality is defined as “the commitment our university leaders make to refrain from taking public positions on controversial issues unless the issue is materially related to the core mission and functioning of the university.”⁵ By unilaterally blocking a student referendum from a campus-wide vote, the University is violating its own principal of institutional neutrality. The cancellation of this referendum firmly signals the University administration has taken a position against freedom of expression for students, and against Palestinian human rights, which students are attempting to advocate for.

In violating the commitments the University has made to its students, the University is not only morally failing live up to the standards it has set for itself and legally failing to provide students the educational experience they were promised in exchange for their enrollment and tuition dollars, it is also violating their right to equal access to education regardless of race, color or national origin under Title VI of the Civil Rights Act of 1964. As the Department of Education reminded educational institutions in a Dear Colleague letter last week, there has been “a nationwide rise in complaints of discrimination against students, including against Muslim, Arab, Sikh, South Asian, Hindu, and Palestinian students in schools” and schools like Vanderbilt that receive federal funding have a legal obligation to “provide all students a school environment free from discrimination based on race, color, or national origin, including shared ancestry or ethnic characteristics.”⁶ The selective silencing and misapplication of University policies against Palestinian students and those who are affiliated with Palestinian identity is a violation of these rights under federal law.

2) Vanderbilt must allow the student divestment referendum to proceed, in accordance with the Vanderbilt Student Government regulations

On March 12, 2024, Vanderbilt Student Government was informed that the referendum supported by Vanderbilt Divest Coalition would not be permitted to move forward. Without any legal citations, VSG was provided with the following explanation:

² <https://studenthandbook.vanderbilt.edu/administrative-policies#882>

³ *Id.*

⁴ <https://www.vanderbilt.edu/dialogue-vanderbilt/free-expression/#:~:text=Vanderbilt's%20approach%20to%20free%20expression,institutional%20neutrality%20and%20civil%20discourse.&text=Vanderbilt%20provides%20spaces%20in%20which,without%20the%20treat%20of%20censorship>.

⁵ *Id.*

⁶ <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-202403-massahp.pdf>

“VSG was informed by the Office of the General Counsel that under federal and state laws, boycotts by U.S. organizations of countries friendly to the United States can result in fines, penalties, or disbarment from contractor status. Any action by VSG, or any other registered student organization, to preclude expenditures of University funds on the Boycott, Divestment, Sanctions (BDS) Movement’s consumer and organic boycott targets could run counter to these laws, expose the University to potential fines and other risks, and therefore cannot be the subject of an amendment to the VSG constitution or statutes.”

The administration did not provide any indication as to what federal or state laws that they relied on in making this determination.

Presumably, one law that the Office of the General Counsel may be referring to is SB 1993, passed into law in Tennessee in 2022.⁷ This law requires that parties entering into contracts with state entities worth more than \$250,000 certify that they are not engaged in a “boycott of Israel”. This law is not applicable to the constitution change promoted by the Vanderbilt Divest Coalition for two main reasons.

First, the proposed constitutional amendment does not call for a “boycott of Israel”, as defined by SB 1993. SB 1993 defines a “boycott of Israel” as “engaging in refusals to deal, terminating business activities, or other commercial actions that are intended to limit commercial relations with Israel, or companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel to do business, or persons or entities doing business in Israel.”⁸ In contrast, the text of the amendment reads, “None of the expenditures from the VSG [Vanderbilt Student Government] Budget may be spent on the Boycott, Divestment, Sanctions (BDS) Movement’s consumer and organic boycott targets.”⁹ The Palestinian BDS National Committee calls for boycotts of specific Israeli and international companies that are complicit in violations of Palestinian rights. This is not a blanket call for boycott of companies doing business in or with Israel. Companies are included on the BDS list based on their conduct of actions taken in violation of Palestinian human rights, rather than their national origin.

Second, the Vanderbilt Student Government does not engage in contracts with public entities valued over \$250,000, so SB 1993 would not apply. SB 1993 only applies to companies that engage in contracts with public entities and does not apply at all to “a contract with a total potential value of less than two hundred fifty thousand dollars (\$250,000).”¹⁰ The Vanderbilt Student Government does not have any contracts with public entities, much less any contracts valued at more than \$250,000.

⁷ <https://publications.tnsosfiles.com/acts/112/pub/pc0775.pdf>

⁸ *Id.*

⁹ <https://roadmaps.today/?p=30>

¹⁰ <https://publications.tnsosfiles.com/acts/112/pub/pc0775.pdf>

The U.S. Supreme Court has been clear that boycotts for justice – like boycotts for Palestinian rights – are a protected form of speech under the First Amendment. The U.S. Supreme Court recognized as much forty years ago in *NAACP v. Claiborne Hardware*.¹¹ The government is not permitted to chill or condition the receipt of government benefits on the requirement that an individual forgo core political speech activity, nor can the government enact measures that chill free speech rights. Federal courts in Arizona, Georgia, Kansas, and Texas have blocked states from enforcing anti-BDS laws over concerns that the laws infringe on First Amendment rights. Students in the Vanderbilt Divest Coalition are utilizing the democratic tools available to them on campus, in order to exercise their rights to engage in core political speech, and any efforts to chill or prevent that are unconstitutional.

Given these recent events and the University’s clear statement of such, students are concerned that Vanderbilt administrators are again moving to suppress student debate and blocking the democratic referendum process from proceeding.

You have a legal obligation to cease, and to advise your client to cease further interference with student speech activities, and to facilitate a free marketplace of ideas at Vanderbilt, including students’ rights to vote on ballot referenda concerning divestment from human rights violators. Vanderbilt’s own policies on free expression are unequivocal about the role the University should play in facilitating student expression and the open exchange of ideas.

As educators of the global leaders of tomorrow, we expect you will protect the University as a center of critical and unfettered inquiry – even and especially on controversial matters of public concern, such as fossil fuels, private prisons, and human rights violations.

Sincerely,



Zoha Khalili
Senior Staff Attorney, Palestine Legal



Tori Porell
Intake Attorney, Palestine Legal

¹¹ 458 U.S. 886 (1982).