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Chair of the Assembly of the Academic Senate
Faculty Representative to the Regents
University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

April 29, 2021

**MICHAEL DRAKE, PRESIDENT
UNIVERSITY OF CALIFORNIA**

Re: Academic Events and 18 U.S.C. § 2339B

Dear President Drake,

In February, the Academic Council endorsed a letter from the University Committee on Academic Freedom (UCAF)¹ expressing concern about ways in which Zoom’s terms of service may lead to instances of censorship that violate the University’s academic freedom principles and responsibilities. The concerns followed several instances in which Zoom canceled academic events at universities after receiving complaints and finding violations of its terms of service. The letter asked the UC administration to negotiate with Zoom for new contractual terms that protect academic freedom, scholarly inquiry, and First Amendment rights.

On April 13 of this year, an important step in this direction occurred when Zoom announced a new policy for higher education users that gives content moderation rights to universities and, thereby, protects academic freedom. We are grateful to the UC representatives, especially UCAF Chair Brian Soucek and Associate Vice Provost for Academic Personnel and Programs Amy K. Lee, who worked with Zoom on this issue. A major exception to this policy, however, allows Zoom to refuse to host an event if Zoom determines there is a “legal or regulatory risk” if the company does not act. In fact, a week after it shared the new policy for higher education users, this company, along with other private internet platforms, including Facebook and Eventbrite, cancelled a UC Merced webinar featuring a speaker who is a member of a US-designated foreign terrorist organization, out of concern that the event could violate federal law by providing “material support” to a terrorist organization in violation of 18 U.S.C. § 2339B.

At its April 28 meeting, the Academic Council unanimously endorsed the attached letter and request from UCAF. We ask the University to request clarification from the Department of Justice on the reach of the “material support” statute or to take other similarly urgent legal steps to protect academic freedom.

Thank you for your attention to this important matter. We look forward to working with you on next steps. Please do not hesitate to contact me if you have additional questions.

¹ https://senate.universityofcalifornia.edu/_files/reports/mg-mb-zoom-terms.pdf

Sincerely,

A handwritten signature in cursive script that reads "Mary Gauvain".

Mary Gauvain, Chair
Academic Council

Cc: General Counsel Robinson
Provost Brown
Associate Vice Provost Lee
UCAF Chair Soucek
Chief of Staff Kao
Chief Policy Advisor McAuliffe
Chief of Staff Peterson
Academic Council
Senate Directors
Systemwide Senate Director Baxter

Encl.



UNIVERSITY COMMITTEE ON ACADEMIC FREEDOM (UCAF)
Brian Soucek, Chair
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April 23, 2021

MARY GAUVAIN
CHAIR, ACADEMIC SENATE

RE: Academic Events and 18 U.S.C. § 2339B

Dear Mary,

This week, an academic event co-sponsored by UC's Humanities Research Institute and a faculty member at UC Merced was canceled because the private platforms that were needed to publicize and broadcast the event refused to do so, due to worries about a federal law prohibiting material support for foreign terrorist organizations.

The cancellations by Zoom, Facebook, and Eventbrite follow similar actions taken last Fall, when scholars at other universities attempted to hold online events involving a Palestinian activist, Leila Khaled. As you will remember, after those events were canceled, UCAF and Academic Council issued statements calling on the University to negotiate with Zoom and other platforms to protect free speech and academic freedom at UC "by granting UC full content moderation rights within the bounds of the law."¹ After productive talks with members of UC's faculty and administration, Zoom recently agreed to our request, issuing a new content moderation policy that applies not just to UC, but to all its higher education users.² Zoom's new higher education policy does, however, allow Zoom to cancel events when it "determines that there is legal ... risk to Zoom if it does not act." This is the provision Zoom relied upon in refusing to allow this week's planned event involving Ms. Khaled, "given her affiliation with a U.S. designated foreign terrorist organization."

The potential legal risk to Zoom—the reason it canceled an academic event sponsored in part by UC faculty—stems from the federal material support statute, 18 U.S.C. § 2339B, which establishes criminal fines and prison terms for anyone who "knowingly provides material support or resources to a foreign terrorist organization." The U.S. Supreme Court considered the reach of this statute in *Holder v. Humanitarian Law Project*, 130 S. Ct. 2705 (2010), but important questions remain, specifically about whether the statute applies to an academic discussion like the one just canceled. Uncertainty in the law has a chilling effect on speech—and here, on academic freedom. Fearing even a possibility of criminal liability, companies like Zoom refuse to provide the services on which our academic operations currently depend. Faculty too may shy away from planning events that even conceivably might result in fines or incarceration.

¹ <https://senate.universityofcalifornia.edu/files/reports/mg-mb-zoom-terms.pdf>

² <https://explore.zoom.us/docs/en-us/trust/academic-freedom.html>

For this reason, the Committee on Academic Freedom asks Academic Council to join us in calling upon the University to file a preenforcement lawsuit, or to take similarly urgent steps, to clarify the reach of the federal material support statute. Our faculty and students “should not be required to await and undergo a criminal prosecution”³ to know whether their academic activities are protected by the First Amendment, or criminalized under the material support law.

As UCAF has said before, “the University’s responsibility to protect academic freedom and freedom of expression cannot be outsourced.” Taking the legal steps necessary to provide clarity about what kinds of academic activities the law allows is ultimately the University’s responsibility, not that of Zoom or any other private company.

UCAF appreciates your attention to this important matter.

Sincerely,

A handwritten signature in black ink that reads "Brian Soucek". The signature is written in a cursive style with a large, stylized initial 'B'.

Brian Soucek, Chair
UCAF

³ See *Humanitarian Law Project*, 130 S. Ct. at 2717 (quoting *Babbitt v. Farm Workers*, 442 U.S. 289, 289 (1979)).