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Office of the Chancellor
University of California, Berkeley
200 California Hall #1500
Berkeley, CA 94720-1500

Dear Chancellor Lyons and Executive Vice Chancellor and Provost Hermalin,

The Berkeley Faculty Association writes to express its objection to the discipline case against AFT member, EECS Lecturer Peyrin Kao. We believe that discipline on this basis threatens the faculty's fundamental political freedoms as citizens, notwithstanding your statements that Kao's freedom to engage in advocacy outside the classroom is protected. While we acknowledge that our concerns reflect limits to the information available, in particular our lack of access to the student complaints and the report by Professors Nelson and Warwyznek to which you refer, the following matters seem to us highly questionable, and possibly wrongly applied:

1. *Regental Policy 2301 and APM 015*. RP 2301 requires that "no instructor distort the instructional process in a manner which deviates from the responsibilities inherent in academic freedom." RP 2301 therefore expressly requires reference to APM-015 for its meaning, and to narrow the vagueness of its terms. APM 015, by its terms, recognizes both "the right to present controversial material relevant to a course of instruction [and] enjoyment of constitutionally protected freedom of expression," and a corresponding responsibility not to permit "significant intrusion of material unrelated to the course." (APM 015 (I) (2-3); II (A)(1)(b))

Notably, you do not quote APM 015, perhaps because it is a fair question whether the incidents discussed in the letter amount to a “significant intrusion.” Disciplining a faculty member under RP 2301, without reference to the more general standard, invites speculation about the “spirit” and “purpose” of the Regental Policy and an arbitrary application of its contentious terms. This smacks of a “we know it when we see it” standard, and threatens to chill faculty speech overall.

2. *The Spring 2024 end-of-class incident.* As you state, and as reported, Kao waited until the end of official class time before offering students the option of staying behind to hear him engage in political advocacy. Kao’s intent can be construed as abiding by the restriction imposed on him previously, not to engage in advocacy during class time, while still exercising his First Amendment rights. Yet you take this as an intent to *flout* the restriction, and seem to punish it because of his hostility to the “spirit” of RP 2301. This seems like retaliation for protected speech, not punishment for prohibited speech. Moreover, the extension of policies about misuse of classroom time to time outside of class, when students are getting up, milling about, and so on, threatens not only the political freedom of instructors but also of potential audience members, who should be free after class to listen to extracurricular material that engages them. There is no basis for treating this as a case of coercion or “indoctrination” by the instructor.
3. *Disciplining Kao for the Fall 2025 hunger strike.* We are especially concerned at your use of Kao’s hunger strike as a basis for the punishment you have determined, both in its basis and its substance. Although a hunger strike is unquestionably primarily an outside-class expressive action (less than 2% of his time per week while striking was in front of his students), you nonetheless treat it as violating RP 2301 because you ascribe to him an illicit intent to shape his students’ thought *during class*. The basis for your ascription is this quote from an email interview he did outside class: “

With this hunger strike, I hope to bring the starvation here, to Berkeley, in front of my students, to remind them that the Palestinians being starved by Israel are just as human as we are . . . But in my view, it's crucial that students studying computer science or other tech-related subjects think critically about their roles in industry after graduating to make sure they are contributing to solutions to the world's problems, and not becoming cogs in the war machine." It is evident from these quotes that Mr. Kao intended to influence his students' thinking on political matters.

First, we note that it seems wrong, if not contradictory, to punish Kao for in-class political advocacy on the *evidentiary basis* of outside-of-class protected expression. There is no question but that Kao’s interview is protected political speech, and that punishing him on its basis cannot be readily distinguished from retaliation *for* that speech.

Second, the quotation does not clearly show that Kao intended his hunger strike to be an intelligible mode of advocacy during his class. He speaks of wanting to influence his students, but there is no reason to think he specifically intends that influence to be exercised during class time. Indeed, from your letter, there is no indication that he mentioned the reason for his hunger strike during class time in front of the students; you quote him as referring to a web resource to which students could, *outside the classroom*, discover the cause behind his strike if they wished to. A student who had not read press coverage would have no reason to assign a specific meaning to the physical appearance of an instructor. The physical appearance of an instructor cannot possibly count as impermissible classroom advocacy.

As to Kao's students who chose outside class to discover why he was striking, RP 2301 is very clear: "There are many hours available during the daily activities of students and faculty for free discourse on matters of concern to them as citizens." Advocacy by faculty outside the confines of class, even directed towards one's own students, is protected speech, as you also acknowledge. Indeed, Kao's reported care not to mention the cause of his advocacy during class can be seen as fully consistent with both the letter and spirit of RP2301, by showing that it is not in fact "necessary to interrupt progress of an academic course or to modify grading procedures to provide such discussion."

Third, we are especially troubled that you refer to spurious notions of "visible physical toll," as the test of our capacity to work and further basis for punishment. Nothing in the record we have seen suggests that Kao's performance as a teacher of the course material in fact suffered as a result of the strike. His own self-deprecating comment cannot be taken as evidence of that. We find particularly egregious the notion that what we do as teachers requires some notion of normative embodiment; we know this clearly when it is racial or sexual, and ableist sanctions of this kind also have no place in our university. Such sanctions and singling out spurious in-class effects because of outside-class political activity again seem like retaliation for protected speech.

4. *Viewpoint and content discrimination.* We end with the most obvious point. We are unaware of any other cases of faculty discipline under Regental Policy 2301, even though it is clear that many faculty have engaged in discussions that some might label "advocacy" both inside and at the margins of the classroom (including in discussions after class while in the lecture hall). We are concerned that Kao is being disciplined not for engaging in advocacy per se, but because his advocacy touched on Gaza and reflected a pro-Palestinian viewpoint. It is hard to escape the judgment that this appears to be another instance of the "Palestine exception" to free speech.

We therefore urge you to immediately rescind your decision to suspend Kao and, to the extent your statements reflect general policy, revise them to ensure that they conform with the spirit of both RP2301 and the First Amendment of the Constitution, protecting extra-curricular speech.

Sincerely yours,

The Board of Berkeley Faculty Association