

*Via e-mail*

July 24, 2014

California Assembly Select Committee on Campus Climate

Scott Matsumoto

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**Re: Proposed recommendations and background on free speech and advocacy for Palestinian rights**

Dear Mr. Matsumoto and the Assembly Select Committee on Campus Climate:

As concerned civil rights organizations, we offer for your consideration the following proposed recommendations on free speech and advocacy for Palestinian rights.

**Background:**

California Education Code § 66301 requires that no state institution of higher education “shall make or enforce a rule subjecting a student to disciplinary sanction solely on the basis of conduct that is speech or other communication that, when engaged in outside a campus of those institutions, is protected from governmental restriction by the First Amendment to the United States Constitution or Section 2 of Article I of the California Constitution.” The quoted statute not only references a bedrock principle of U.S. democracy but points to an exalted status for free speech on campuses, especially at our great public universities.

Despite this principle, however, the past few years have witnessed a barrage of efforts by non-campus groups to silence the many students and faculty who feel compelled to speak critically of and act to change aspects of Israeli and U.S. government policies regarding the Israel-Palestine conflict.<sup>1</sup> These groups have frequently misrepresented episodes of campus speech, painting them as physical threats when they are not, issuing inflammatory accusations, for instance employing the “terrorist” label, and especially treating speech they dislike as if it constitutes an attack on students based on religious or ethnic identity.<sup>2</sup> They have submitted complaints to the U.S. Department of Education against three UC campuses,<sup>3</sup> issued implied threats of more such complaints, and filed a lawsuit,<sup>4</sup> all alleging violations of Title VI of the Civil Rights Act of 1964.

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<sup>1</sup> Letter from University of California Academic Freedom Committee Chair Cameron Gunderson to Academic Senate Chair Bob Powell expressing concern regarding a concerted effort to pressure the university to enact restrictions on free speech rights, available at <http://palestinelegalsupport.org/2013/05/17/university-of-california-committee-on-academic-freedom-rejects-efforts-to-suppress-palestinian-advocacy/>

<sup>2</sup> Letter from Civil Rights Groups to UC President Napolitano and Regents, and California State University Chancellor White and Trustees Expressing Concern about Tactics to Silence Speech, February 21, 2014, available at <http://palestinelegalsupport.org/2014/02/21/rights-groups-write-to-uc-csu-trustees-about-amcha-tactics-to-silence-speech-on-palestinian-rights/>

<sup>3</sup> See, <http://ccrjustice.org/newsroom/press-releases/victory-student-free-speech%2C-department-of-education-dismisses-complaints>.

<sup>4</sup> *Felber v. Yudof*, 851 F.Supp.2d 1182, 1188 (N.D. Cal. 2011). In dismissing the complaint, federal Judge Richard Seeborg held that “[a] very substantial portion of the conduct to which [the complainants] object [i.e., speech critical of Israel] represents pure political speech and expressive conduct, in a public setting, regarding matters of public concern, which is entitled to special protection under the First Amendment.”

In all cases where groups claimed criticism of Israel violated Jewish students' civil rights on California campuses, federal civil rights investigators at the U.S. Department of Education (and, in one case, a federal judge) concluded that *no such violations had occurred*. These conclusions were the result of fact-intensive investigations lasting several years. In fact, DOE found that the activities alleged to have created a hostile environment for Jewish students "constitute expression on matters of public concern directed to the university community. In the university environment, exposure to such robust and discordant expressions, even when personally offensive and hurtful, is a circumstance that a reasonable student in higher education may experience. In this context, the events that the complainants described do not constitute actionable harassment."<sup>5</sup>

Despite the repeated failure of legal complaints aimed at squelching speech, California public university administrators have at times responded to pressure by restricting activities of campus groups that advocate for Palestinian rights and by subjecting student activities to enhanced scrutiny. We have been made aware of these instances and have documented them through legal consultations with student groups throughout California. Even where university administrators have not overtly censored pro-Palestinian speech, they have exacerbated the intimidating climate by issuing statements that stigmatize such speech without any effort to first verify facts or reach out to affected communities.<sup>6</sup> This was also documented in the 2012 University of California report on the experiences of Muslim and Arab students in the University of California. The report found that "Muslim and Arab students and faculty on each campus voiced frustration and sometimes personal pain from administrative communication and statements."<sup>7</sup>

Concerted campaigns to restrict criticism of Israel, combined with failures by university administrators to robustly support student speech rights, have created a severe chilling effect. This is unacceptable on the campuses of prominent public universities, our society's quintessential marketplace of ideas. The chilling effect inhibits students and faculty from expressing their passionately held opinions and deprives other students from hearing diverse points of view. It also denies students the ability to fully participate in and benefit from all educational opportunities in campus life.

California universities must be sensitive to the special circumstances that Arab, Middle Eastern, Muslim and South Asian students face on campus since September 11, 2001. When university administrators fail to defend these students' rights, or to treat them fairly, students not only lose important educational opportunities, but are chilled from participation in public life on campus for fear of inviting unwanted attention or smears that rely on anti-Muslim and anti-Arab stereotypes. University administrators have an obligation to mitigate this general atmosphere in order to ensure these students are able to benefit fully and equally from their educational opportunities. Therefore the Assembly Select Committee on Campus Climate should recommend:

<sup>5</sup> See OCR Findings Letter at UC Santa Cruz re: OCR case no. 09-09-2145, Aug. 19, 2013 at 3, available at [http://news.ucsc.edu/2013/08/images/OCR\\_letter-of-findings.pdf](http://news.ucsc.edu/2013/08/images/OCR_letter-of-findings.pdf).

See, also, OCR Findings Letter at UC Berkeley re: OCR case no. 09-12-2259, Aug. 19, 2013 at 3, available at [http://newscenter.berkeley.edu/wp-content/uploads/2013/08/DOE.OCR\\_.pdf](http://newscenter.berkeley.edu/wp-content/uploads/2013/08/DOE.OCR_.pdf);

OCR Findings Letter at UC Irvine re: case no. 09-07-2205, Aug. 19, 2013 at 7, available at [http://ccrjustice.org/files/OCR-UCIrvine\\_Letter\\_of\\_Findings\\_to\\_Recipient.pdf](http://ccrjustice.org/files/OCR-UCIrvine_Letter_of_Findings_to_Recipient.pdf).

<sup>6</sup> Letter from civil rights organizations to University of California President Mark Yudof regarding UC's responsibility to end the chilling of Arab and Muslim student speech, December 3, 2012, available at [http://www.ccrjustice.org/files/CCR\\_ltr\\_Edley-Yudof\\_11%2030\\_Final.pdf](http://www.ccrjustice.org/files/CCR_ltr_Edley-Yudof_11%2030_Final.pdf).

<sup>7</sup> Muslim & Arab Student Campus Climate at the University of California, President's Advisory Council on Campus Climate, Culture, & Inclusion, Issued by Jihad Turk, Nan Senzaki, Tyrone Howard, and Armaan Rowther, July 2012, available at, <http://cascholars4academicfreedom.files.wordpress.com/2012/07/muslim-arab-student-climate-report-final.pdf>.

1. That California's universities and colleges energetically uphold and defend the free expression of all political views, especially those considered controversial by others who may vehemently disagree with them. This includes recognizing that students have a right to express their support or opposition to the policies, practices, or laws of any government entity, whether local, state, federal or foreign.
2. That university administrators should undertake affirmative efforts to protect students and other campus community members from politically motivated attacks by off-campus organizations, especially when these attacks chill participation in public life or rely on and promote anti-Arab or anti-Muslim stereotypes.
3. That educational and other efforts to defeat racism, anti-Semitism, Islamophobia and all forms of hatred must not involve unconstitutional limitations on free expression or undue "condemnation" of political opinions disliked by some in positions of authority.
4. That leaders of the state's higher education systems affirmatively accept and endorse the findings of the U.S. Department of Education relative to Title VI complaints against UC Berkeley, Santa Cruz and Irvine, that speech and non-violent activities expressing criticism of the state of Israel, its policies or U.S. support for them do not create an impermissibly hostile environment.
5. That campus and system-wide institutions issue clear written guidance, based on the above principles, to students, faculty, administrators and interested community members spelling out in greater detail the right to free expression on campus.

Thank you for your consideration. If you have any further questions, you may reach the undersigned organizations through David Mandel, of Jewish Voice for Peace and the National Lawyers Guild, [dmandel@pacbell.net](mailto:dmandel@pacbell.net), (916) 446-5066.

Sincerely,

National Lawyers Guild – San Francisco Bay Area  
Jewish Voice for Peace  
Center for Constitutional Rights  
Asian Americans Advancing Justice – Los Angeles  
Asian Americans Advancing Justice – San Francisco  
Council on American Islamic Relations – California