



Via e-mail

June 23, 2014

RE: Resolution 14-0002-S67, “University of California Board of Regents/President of the University of California/Policies and Practices/Student Protection from Intimidation or Harassment”

Dear Councilmember:

We at the Center for Constitutional Rights, the National Lawyers Guild Los Angeles Chapter, the Council on American Islamic Relations – Greater Los Angeles Area Chapter, Palestine Solidarity Legal Support, and the American Civil Liberties Union of Southern California are writing to express our serious concerns with the proposed City Council Resolution 14-0002-S67, concerning “Student Protection from Intimidation or Harassment” presented by Councilmembers Blumenfield and Martinez (the “Resolution”).¹ The Resolution urges the University of California system to implement policies protecting against “intimidation or harassment of any student,” but it focuses exclusively on an asserted need to punish students who urge campus leaders to adopt an “ethics pledge” and decline trips to Israel sponsored by groups such as the American Israeli Public Affairs Committee and the Anti-Defamation League.

The Resolution is premised on an alarmingly inaccurate understanding of student debate. It does not identify any genuine instances of “intimidation” or “harassment; rather, it simply suppresses lawful political advocacy. Accordingly, implementation of the Resolution by UC administrators would violate the protection of free speech and advocacy protected by the California and United States Constitution. The Resolution also directly contradicts relevant decisions by the Department of Education Office for Civil Rights that circumscribe University

¹ Resolution 14-0002-S67 is attached for your convenience.

efforts to punish alleged “intimidation” and “harassment” occurring in the context of campus debate on Israel/Palestine.

1) The City Resolution’s attack on a student “ethics pledge” undermines student democracy and healthy campus debate on one of the world’s most important issues.

The Resolution is premised on the claim that the ethics pledge² “did not concern a policy issue relevant to the University.” This is incorrect and reflects a profound misunderstanding about the controversial issues being debated on UC campuses. Students of diverse backgrounds at UCLA have been engaged in healthy political debate about Israel/Palestine and the role of U.S. actors in supporting injustice toward Palestinians. That debate includes a question being debated across the country: whether the undergraduate student council should resolve to support divestment of UC’s resources from companies that enable and profit from the Israeli occupation of the Palestinian people.³ When undergraduate council members recently voted on proposals for University divestment, the campus paper reported “overwhelming student interest” in the issue.⁴ Future council members will also be in a position to vote on such proposals amidst similarly heightened student interest. In the context of these policy debates, students organized the ethics pledge out of concern for potential conflicts of interest on the part of their elected representatives.⁵

Regardless of whether one agrees with the purpose or tactic of the ethics pledge, it is important to understand that the City Council Resolution misrepresents the pledge. UCLA undergraduate students proposed the ethics pledge to their fellow student candidates for UCLA undergraduate council, asking them not to participate in trips from non-student lobbying organizations that they claimed had records of discrimination and bigotry directly relevant to policy issues before the undergraduate council.⁶ The ethics pledge is clear and transparent in naming student concerns with external organizations’ roles in promoting Islamophobic messages, pushing for war with Iran, and denying the Armenian genocide.

The pledge is also clear in stating general anti-discrimination criteria. It does not only request that candidates decline free trips to Israel, or free trips from specific organizations; it requests candidates decline trips from all organizations who fit the general criteria of having records of discrimination.

² The Student Ethics Pledge is attached, as an Appendix, and available at, <http://www.sjpb Bruins.com/news--opinion/joint-statement-on-usac-ethics>.

³ Janet Nguyen, *USAC Rejects Resolution on Divestment After Long Meeting*, Daily Bruin, February 26, 2014, <http://dailybruin.com/2014/02/26/usac-rejects-resolution-on-divestment-after-long-meeting-2/>.

⁴ Janet Nguyen, *Students Voice Opinions on USAC Divestment Resolution*, UCLA Daily Bruin, February 26, 2014, <http://dailybruin.com/2014/02/26/students-voice-opinions-on-usac-divestment-resolution/>. This article reports that more than 500 students attended the Undergraduate Students Association Council meeting, which had to be moved from its regular location to accommodate the crowd. “When the USAC meeting was called to order, hundreds of chairs were filled, with overflow crowding the back of the room.”

⁵ See Aram Ghoogasian, *USAC members should not participate in external lobbying groups*, Daily Bruin, April 5, 2014, <http://dailybruin.com/2014/04/09/aram-ghoogasian-usac-members-should-not-participate-in-external-lobbying-groups/>.

⁶ The ADL, AIPAC, and Hasbara Fellowships were mentioned in the pledge because current student government officials were on record as having received free trips with these organizations.

2) The Resolution misrepresents as “bullying” and “intimidation” what is in fact legitimate political debate and protected expression.

The purpose of the pledge was self-evident—to call for more transparent behavior and tolerant values on the part of student representatives. To that end, students promoted the ethics pledge through normal political tactics, like public statements about Arab, Muslim, Armenian, and pro-Palestinian students’ experiences of discrimination, and their grievances with off-campus lobbying organizations. This is not “bullying”;⁷ it is protected expression and concerted advocacy on issues that affect these students personally, and which they care deeply about.

The ethics pledge asked candidates for elected office to take a clear position on a controversial constituent issue. As elected officials, you must be familiar with this democratic demand. Is it “bullying” when anti-tax advocates ask candidates for office to take a “no new taxes” pledge or when anti-war advocates ask candidates to pledge their opposition to military intervention? To the contrary, it is a transparency tool; it is vital to our democracy and commonly employed in election cycles at all levels of government.

The student campaign also included filing charges with the student Judicial Board, according to established UCLA protocols, requesting Judicial Board review of whether or not undergraduate councilmembers’ participation in sponsored trips violated University bylaws prohibiting conflicts of interest. This, too, is not “bullying”; it is the right of students to access due process for resolving grievances.

3) If passed, this Resolution would violate the LA City Council’s obligations under the First Amendment.

The Supreme Court has held that “speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.”⁸ The government—including the Los Angeles City Council—is never permitted to legislate in a manner that gives preference to certain political viewpoints over others.⁹ Such viewpoint discrimination “raises the specter that the Government may effectively drive certain ideas or viewpoints from the marketplace.”¹⁰

Through this Resolution, the LA City Council would run afoul of its obligations under the First Amendment by directing the UC to censor political debate on campus on a specific

⁷ According to the Anti-Defamation League, bullying is defined as, “the repeated actions or threats of action directed toward a person by one or more people who have or are perceived to have more power or status than their target in order to cause fear, distress or harm.” Cyberbullying is defined as, “intentional and repeated mistreatment of others through the use of technology.” (See, <http://www.adl.org/education-outreach/bullying-cyberbullying/>.) This definition does not apply to the political campaign at issue here. There were no threats; no clear perceived power relationship between students who are pro versus anti ethics pledge; no intent to cause “fear, distress or harm” and no “mistreatment.” There was merely intent to raise awareness about an issue of student democracy, of great interest to the student body.

⁸ *Connic v. Myers*, 461 U.S. 138, 145 (1983) (internal quotations and citations removed).

⁹ *R.A.V. v. St. Paul*, 505 U.S. 377 (1992); *Perry Education Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37 (1983).

¹⁰ *R.A.V.*, 505 U.S. at 387 (internal quotations and citations removed); See also *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943) (“If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.”).

issue. The Resolution casts exactly the “pall of orthodoxy” over the UC on matters of public concern that the Supreme Court has proscribed.¹¹

In addition, the Resolution’s suggestion that the ethics pledge and similar activity—which clearly constitute core political speech—amount to “harassment” that can and should be restricted by the UC administration and reported to “law enforcement” will have an unconstitutional chilling effect. The California Court of Appeals has ruled that a city council resolution condemning constitutionally protected speech would deter numerous other individuals from exercising their First Amendment rights.¹² The Resolution will cause students across California who may seek to similarly raise issues of student democracy and Israel/Palestine on their campuses to fear unwarranted public shaming or law enforcement scrutiny. The Constitution prohibits the LA City Council from intervening in campus politics to chill expression on one side of the debate.

Furthermore, the Resolution is, in effect, a call for the UC to violate the U.S. and California Constitutions, which prohibit public universities from burdening expressive activities based on their viewpoint or content.¹³ Burdening speech in this manner not only violates the First Amendment but also undermines the purpose of a university, which is to expose students to a wide range of viewpoints.

4) The Department of Education has made it clear that universities must honor students’ right to engage in expressive conduct on a subject of public concern.

To emphasize the important distinction between political speech and harassment, we would like to call your attention to decisions by the Department of Education Office for Civil Rights (DOE), dismissing complaints against UC Berkeley, UC Santa Cruz, and UC Irvine which had alleged that campus political expression critical of Israel constituted “harassment.”¹⁴ In each case, the DOE found that, with respect to expression critical of Israel or the Israeli lobby,

[a]ll these events constituted (or would have constituted) expression on matters of public concern directed to the University community. In the university environment, exposure to such robust and discordant expressions,

¹¹ *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967); *see also, Adler v. Board of Education*, 342 U.S. 485 (1952); *Cramp v. Board of Public Instruction*, 368 U.S. 278, 82 S.Ct. 275, (1961); *Board of Regents v. Roth*, 408 U.S. 564 (1972); *Perry v. Sindermann*, 408 U.S. 593 (1972); *Mt. Healthy City Board of Ed. v. Doyle*, 429 U.S. 274 (1977).

¹² *Tichinin v. City of Morgan Hill*, 177 Cal.App.4th 1049 (Cal. Ct. App. 2009) (City’s resolution targeted the plaintiff for engaging in protected activities of free speech and petition and induced fear of criminal prosecution, creating an unconstitutional chilling effect.)

¹³ “[I]f there is a bedrock principle underlying the First Amendment,” the Supreme Court has said, “it is that the government [including publicly funded universities] may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” *Snyder v. Phelps*, 131 S. Ct. 1207, 1215 (2011) (quotations and citations omitted).

¹⁴ Letter from DOE to UC Berkeley, Aug. 19, 2013, re: Case No. 09-12-2259; Letter from DOE to UC Santa Cruz, Aug. 19, 2013, re: Case No. 09-09-2145; Letter from DOE to UC Irvine, Aug. 19, 2013, re Case No. 09-07-2205. DOE’s determination letters in these three cases, explaining its legal findings, can be downloaded at the following URLs: UC Berkeley (<http://bit.ly/doesuch>); UC Santa Cruz (<http://bit.ly/doesucsc>); UC Irvine (<http://bit.ly/doesucirvine>).

even when personally offensive and hurtful, is a circumstance that a reasonable student in higher education may experience.

This applies equally to student attempts to condemn the influence of off-campus Israel lobby groups on student government officials. The LA City Council should respect the authority of the DOE Office for Civil Rights on what constitutes expressive conduct in a robust political environment.

5) The Resolution undermines the goal of protecting students from bullying and harassment, which it disingenuously purports to advance.

In our work with students from Arab, Muslim, and pro-Palestinian student groups, we have documented a strong national trend of intimidation tactics designed to silence their political speech critical of Israeli government practices. These tactics include threats to their physical safety,¹⁵ baseless reputational smears,¹⁶ repeated legal complaints falsely conflating criticism of Israel with anti-Semitism,¹⁷ discriminatory treatment by the university,¹⁸ and repeated attempts to malign and mischaracterize their legitimate political speech.¹⁹ These intimidation tactics commonly resort to labeling pro-Palestine activists with dangerously negative stereotypes about Arab and Muslim people, including “terrorist,”²⁰ “sand monkey”²¹ and other racial slurs. The same negative stereotypes have tragically led to the killing of Muslims in California.²²

¹⁵ At UCLA, as expressed by Vice Chancellor Janina Montero, Muslim and pro-Palestinian students have suffered incidents of verbal harassment and physical attacks in recent years. See, <http://www.sjpb Bruins.com/news--opinion/message-from-vice-chancellor-re-hate-incidents-against-sjp>. At UC Berkeley, on April 1, 2013, an Asian student was punched in the face and knocked to the ground while handing out a flyer that criticized Israel. The assailant objected to the content of the flyer.

¹⁶ For example, a student was smeared by political opponents as dangerous and accused of posting “overtly threatening photos” involving a pineapple and a knife, which were clearly a joke among friends related to a basketball rivalry. See, Yazan Kherallah, *Viewpoint: Pineapple Express*, The Michigan Daily, March 28, 2014, <http://michigandaily.com/opinion/03viewpoint-pineapple-express28?page=0,0>

¹⁷ For example, *Felber v. Yudof*, 851 F.Supp.2d 1182, 1188 (N.D. Cal 2011). See also, the Title VI complaints against UC Berkeley, UC Santa Cruz, and UC Irvine, discussed at footnote 13.

¹⁸ See, for example, Letter from Center for Constitutional Rights to Barnard University President Spar, *Re: Removal of C-SJP Banner*, March 13, 2014, <http://palestinelegalsupport.org/2014/03/14/letter-ccr-urges-barnard-college-president-debora-spar-to-reconsider-decision-to-remove-student-group-banner/>.

¹⁹ Letter from Center for Constitutional Rights to University of California President Mark Yudof, *Re: the UC's responsibility to end the chilling of Arab and Muslim student speech*, December 3, 2012, <http://www.ccrjustice.org/update:-letter-university-of-california-president-advising-him-of-need-protect-protect-palestinian-s/>.

²⁰ For example, the founder of the pro-Israel AMCHA Initiative has repeatedly accused students involved with the Muslim Students Association and Students for Justice in Palestine as having “ties to terrorist organizations.” See, Annie Robbins, *Berkeley Student Association Passes Resolution Condemning Islamophobic Hate Speech*, Mondoweis, March 22, 2013, <http://mondoweiss.net/2013/03/association-condemning-islamophobic.html/comment-page-1>.

²¹ For example, students have reported receiving hate mail such with death threats such as, “The day the world finally nukes all you subhuman sand monkeys will be a day to rejoice. ... Die.”

²² Kim Minugh, *Authorities describe killing of man outside Home Depot on Florin Road as racially motivated*, Sacramento Bee, March 26, 2014, <http://www.sacbee.com/2014/03/26/6271774/authorities-describe-killing-of.html#storylink=cpy>.

This experience is real and it threatens the safety of many UC students. And yet the LA City Council Resolution sees fit to describe “Islamophobia” in quotation marks as if it does not exist or is merely a rhetorical term.²³

6) Conclusion

For the above reasons, we respectfully urge members of the LA City Council to oppose Resolution 14-0002-S67. By opposing this Resolution, you may avoid such a clear attempt to shut down viewpoints you may disagree with, and respect students First Amendment rights to engage in political debate about core campus policy issues.

Should you have any questions or concerns, please feel free to contact us via Liz Jackson, Cooperating Counsel with the Center for Constitutional Rights, ljackson@palestinelegalsupport.org, (617) 947-4593.

Thank you for your time and consideration.

Sincerely,

American Civil Liberties Union of Southern California

Center for Constitutional Rights

Council on American Islamic Relations – Greater Los Angeles Area Chapter

National Lawyers Guild Los Angeles Chapter

Palestine Solidarity Legal Support

²³ The Council on American Islamic Relations has scrupulously documented the problems of Islamophobia in the U.S., including in California Schools. See, CAIR-CA, [Growing in Faith: California Muslim Youth Experiences with Bullying, Harassment and Religious Accommodation in Schools](http://ca.cair.com/downloads/GrowingInFaith.pdf), December, 2013, <http://ca.cair.com/downloads/GrowingInFaith.pdf>. The report shows that nearly half of Muslim students in California say they have been subjected to some form of bias-based bullying.

Appendix: Joint Statement on Undergraduate Student Association Council Ethics

We, as UCLA students from various backgrounds and perspectives, ask that elected officials refrain from taking free or sponsored trips with AIPAC (American Israel Public Affairs Committee), the Anti-Defamation League (ADL), or Hasbara Fellowships. As many students have experienced this year, AIPAC and ADL have political agendas that marginalize multiple communities on campus. Recently, student government trips to AIPAC have come under scrutiny (1) because of the organization's ties to anti-Armenian groups and public figures. Both AIPAC (2) and the ADL (3) (as well as its current president (4)) have histories of Islamophobia. AIPAC has sponsored Islamophobic speakers at its conferences (5) and has also consistently pushed for war with Iran (6), even while the Obama administration has sought a diplomatic route. AIPAC also marginalizes the Afrikan and Palestinian communities, as the organization has consistently endorsed and protected actions that have violated human rights and international law.

Hasbara Fellowships is housed under Aish International (7), an organization which has helped disseminate Islamophobic materials (8) on campuses and around the country. These materials portray the Muslim community as threats, have incited violence against Muslims, and serve to marginalize Muslim students on campus.

We further ask that USAC Council Members do not accept free or sponsored trips that marginalize communities on the UCLA campus (9). This includes any outside non-student organization that promotes discrimination on the basis of race, religion, color, age, national origin, sex, sexual orientation, physical ability, mental ability, marital status, financial status or social status, or which engages in any form of systematic prejudiced oppression. The UCSA and USSA conferences are deemed acceptable as these conferences deal directly with student issues and do not marginalize any community.

Please sign as a candidate in the upcoming USAC elections assuring the campus that you will decline these trips while in elected office:

(1) <http://dailybruin.com/2014/04/09/aram-ghoogasian-usac-members-should-not-participate-in-external-lobbying-groups/>

(2) <http://mondoweiss.net/2013/03/approval-islamophobe-emerson.html>

(3) <http://www.alternet.org/world/how-anti-defamation-league-fuels-islamophobia>

(4) <http://www.thedailybeast.com/articles/2013/04/29/abe-foxman-rationalizes-blanket-spying-on-american-muslims.html>

(5) see reference 2

(6) http://www.huffingtonpost.com/robert-naiman/lobbying-for-iran-war-aip_b_4569882.html

(7) <http://www.aish.com/ai/ip/>

(8) <http://www.alternet.org/world/follow-money-islamophobia-israel-right-or-wrong>,
<http://ipsnorthamerica.net/news.php?idnews=1705>

(9) see reference 1

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations, or policies proposed to or pending before a local, state, or federal governmental body or agency must first have been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, this Spring candidates for all undergraduate student council offices at the University of California, Los Angeles were asked to sign a pledge not to take trips to Israel that are sponsored by the three groups, which the pledge called 'Islamophobic'; and

WHEREAS these groups, American Israel Public Affairs Committee (AIPAC) and Anti-Defamation League(ADL), are well known and reputable non-profit organizations; and

WHEREAS the pledge request was part of a larger campaign which has used intimidation as a tactic; and

WHEREAS the pledge request did not concern a policy issue relevant to the University, but rather the legitimacy of the State of Israel - a democratic country that is a U.S. ally; and

WHEREAS, no other groups or issues were singled out in the pledge, belying the singular and divisive anti-Israel focus of their campaign; and

WHEREAS, students who refused to sign the pledge have been the subject of bullying tactics, including extreme social media harassment, intimidation and the filing of specious ethics violations charges ultimately dismissed by the UCLA Judicial Board, but nonetheless created a major distraction for students during midterm week; and

WHEREAS, UCLA Chancellor Gene Block said he was "troubled" by the pledge because it "sought to delegitimize educational trips offered by some organizations but not others" and UC President Janet Napolitano said the pledge violated principles of civility and respect; and

WHEREAS, comments by the UCLA and UC President indicate appropriate concern. they do not address serious underlying concerns related to bullying tactics intended to intimidate students with differing viewpoints and to protect students from harassment and personal, vengeful attacks; and

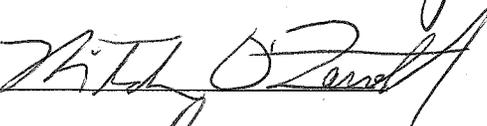
WHEREAS, additional action must be taken by the University of California Board of Regents and the President of the University of California system to ensure that students are protected from bullying and harassment;

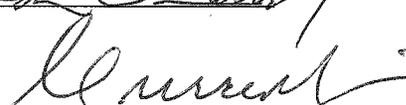
NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2013-2014 State Legislative Program support for administrative action by the University of California Board of Regents and President of the University of California to develop policies and institute practices that will be implemented at every University of California campus so that intimidation or harassment of any student not be tolerated and where appropriate referred to the proper law enforcement agencies.

PRESENTED BY:


BOB BLUMENFELD
Councilman, 3rd District

SECONDED BY:


May 23, 2014