



UNIVERSITY COMMITTEE ON ACADEMIC FREEDOM (UCAFP)
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Assembly of the Academic Senate
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May 9, 2013

**BOB POWELL, CHAIR
ACADEMIC SENATE**

**RE: CAMPUS ORGANIZATIONS AND INDIVIDUALS ADVOCATING FOR THE
INTERESTS OF PALESTINIANS**

Dear Bob,

It has been brought to the attention of UCAF that organizations outside the University of California have been making a concerted effort to pressure the University to enact restrictions on the free speech rights of campus organizations and individuals advocating for the interests of Palestinians. Their efforts include filing both lawsuits and claims with the US Department of Education under Title VI. These organizations seem to conflate criticism of Israel with anti-Semitism and with intimidation of Jewish students, and to suggest that the University has an obligation to muzzle the expression of views critical of Israel or in support of Palestine on campus.

The American Civil Liberties Union and the Ad Hoc Jewish Student Committee have both made statements (attached) pointing out the danger that these activities pose to free speech and academic freedom. We have not reviewed the substance of all the claims made in these reports, but we believe that the University should take the reports and the underlying situation very seriously. The reports make a case that University leadership has not responded adequately to these threats thus far.

Relatedly, these reports also provide evidence that on some campuses, threats have been made against pro-Palestinian students. Threats against anyone at the University of California are obviously unacceptable, and we recommend that the Senate encourage all campuses to take vigorous action to prevent and discipline threats made by anyone.

Finally, the majority of UCAF (there was one dissenting vote) urges that the Senate take a strong position rejecting any efforts (whether originating outside the University or inside it) that would limit free expression by supporters of either the Israeli people or the Palestinian people. Vigorous debate is a core function of the great university, and must be unfettered. On controversial issues like Middle Eastern

politics, many people have strongly held views which are deeply offensive and upsetting to some. Be that as it may, no one has a right to a campus free from expression they find offensive or even insulting. What people on our campuses do have, on the other hand, is the right to present counter-arguments and analyses of their own.

Sincerely,

A handwritten signature in black ink that reads "Cameron Gundersen". The signature is written in a cursive, flowing style.

Cameron Gundersen, Chair
UCAF



December 10, 2012

Via U.S. Mail

Gemini McCasland
U.S. Department of Education
Office of Civil Rights
50 Beale Street, Suite 7200
San Francisco, CA 94105

Re: Case No. 09-12-2259

Dear Ms. McCasland:

I am writing on behalf of the American Civil Liberties Union of Northern California (ACLUNC) with respect to Case No. 09-12-2259, a matter currently under investigation by the Office of Civil Rights of the Department of Education. A Title VI complaint (“Complaint”) was filed against the University of California, Berkeley by letter dated July 9, 2012, submitted (and made public) by attorneys Joel H. Siegal and Neal M. Sher. The Complaint alleges that Jewish students at the University were harassed and subjected to “a pervasive hostile environment” on the basis of their “shared ancestry or ethnic identity as Jews.” (Complaint at p.1-2).

The basic principles of the ACLUNC are to protect and promote the freedoms of liberty and equality enshrined in the Constitution and cognate statutes. We believe it is particularly important that these constitutional values be vigilantly protected on college and university campuses. Towards that end, we whole-heartedly support the civil rights mission of OCR to investigate thoroughly and vigorously complaints that students are being discriminatorily harassed and subjected to a hostile environment because of their race, national origin or other traits expressly protected by the federal civil rights laws. We have often turned, or directed others, to OCR as the first line of defense of these civil rights in the educational setting.

The ACLUNC has an equal commitment to ensuring that the free speech principles of the First Amendment are preserved and allowed to thrive on college campuses, whose central purpose is the free exchange of ideas. We are well aware of how these two values – freedom of speech and equal educational opportunity – can seemingly conflict, and how difficult it is to resolve such controversies in a way that will preserve both values.

MICHELLE A. WELSH, CHAIRPERSON | DENNIS McNALLY, AJAY KRISHNAN, FARAH BRELVI, ALLEN ASCH, VICE CHAIRPERSONS | KENNETH SUGARMAN, SECRETARY/TREASURER
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The ACLUNC has been involved in the past in a number of instances in which similar claims have arisen as a result of the activities of pro-Palestinian and/or pro-Israeli student groups on campus. We have no organizational position or policy with respect to the Israeli-Palestine conflict or the respective views of these student groups. We know that these controversies can pose very hard cases, but this Complaint *on its face* raises constitutional red flags that are significant and alarming.

We are not in a position to address factual disputes that may exist with respect to this matter, and are not basing the views in this letter on any first-hand knowledge of the campus climate at UC Berkeley for Jewish students or for any other groups of students. However, the allegations of this Title VI complaint reflect either a profound misunderstanding of the First Amendment, or an attempt to persuade the government to use its power to restrict speech based on its content and political viewpoint. As the Supreme Court has declared: “[A]bove all else, the First Amendment means that government has no power to restrict expression because of its message its ideas, its subject matter or its content.”¹ *This paramount constitutional message is consistently ignored by this Complaint.*

The current OCR investigation does not take place on a blank slate. As you know, the virtually identical facts and legal claims put forward in the Complaint were also raised by the same attorneys in a federal civil rights case, *Felber v. Yudof*. We are familiar with the pleadings and briefs in that case. On a motion to dismiss, the *Felber* court assumed that the facts pled were true, but dismissed the claims, including the Title VI claim. The Court found that “a very substantial portion of the conduct to which plaintiffs object 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.”² Because we believe that the court’s decision was absolutely correct and constitutionally compelled, it is disturbing that this “substantial” amount of “pure political speech and expressive conduct” is again under government scrutiny, and will remain so for an indefinite period of time. Given the fragility of free speech rights, that is something that must be of concern to OCR in conducting this investigation, and in particular in its duration (as will be discussed more fully below)

The Complaint Targets Core Political Speech in Violation of Fundamental First Amendment Principles

In light of the centrality of the First Amendment’s presumption against content-discrimination and viewpoint discrimination, it is striking (and frankly shocking) that the

¹ *Police Dept. of Chicago v. Mosely*, 408 U.S. 92, 95(1972).

² *Felber v. Yudof*, 851 F. Supp.2d 1182, 1188 (N.D.Cal. 2011).

Complaint so extensively relies on protected political speech as evidence of actionable harassment. The Complaint is based on two premises that are legally unsupportable:

1. That speech and expressive conduct that expresses opposition to the policies and actions of the State of Israel or the ideals of Zionism are, in and of themselves, equivalent to anti-Semitism and “hate speech;” and
2. That the University (or OCR) can sanction or prohibit core political expression because its message may be deeply offensive, disturbing or even hateful to a particular group of students, in this case Jewish students.

As the Complaint plainly demonstrates, these premises, if accepted, can foster government restriction of speech based on content and viewpoint that *goes far beyond controlling legal precedent*.

The conflict between Israelis and Palestinians has been and remains today a dangerous and seemingly intractable international crisis. Thus, it is not surprising that this controversy has played itself out on college campuses in this country; in fact, it would be disturbing if it had not evoked student activism and heated controversy.

The Complaint is primarily directed against the annual “Apartheid Week” as exemplary of the conduct that constitutes the discriminatory harassment of Jewish students. During Apartheid Week, students associated with the Students for Justice in Palestine (SJP) and the Muslim Student Association (MSA) organize a mock checkpoint to simulate the checkpoints that are established in the West Bank by the Israeli military. According to public reports, students who are dressed as Israeli soldiers confront other students who portray Palestinians attempting to go through the checkpoint, and place them under arrest or restraint. Barbed wire is part of the mock checkpoint. In past years, passersby have been approached by the “Israeli soldiers” and asked for their papers. In past years, some of the “soldiers” have carried toy weapons. Significantly, the mock checkpoint takes place in Sproul Plaza, the quintessential public forum that is the historic center of free speech activity on campus.³

It is obvious from the signs that are part of the protest that the protestors intend to convey a political viewpoint about the Israeli occupation of the West Bank and Gaza – that it is discriminatory against Palestinians, and that it is unjust, coercive, oppressive. The Complaint attempts to transform Apartheid Week, and other similar expressive activities by these groups, into discriminatory harassment of Jewish students that has created a hostile environment that

³ We recognize that the Complaint includes allegations of an assault of a Jewish student, broken windows at the Hillel House, and plainly anti-Semitic graffiti (“Fuck the Jews”). While these are cause for legitimate civil rights concern, and OCR should certainly carefully consider the University’s response to these allegations, it should be kept in mind that they appear to be isolated incidents and/or carried out by unknown persons. They are not part of the expressive activities of the SJP and MSA, like Apartheid Week, which are the primary focus and concern of this Complaint.

interferes with their education. But even if some Jewish students, such as Ms. Felber and Mr. Maissy (the plaintiffs in *Felber*), feel that expressive activities such as Apartheid Week are “clearly racist and anti-Semitic” (Complaint at p.3), government or University action against such core speech activities would violate a number of fundamental First Amendment precepts:

1. Speech that criticizes the State of Israel and its policies and actions, or even questions its right to exist as a Jewish State in the region, cannot constitute the basis for government restriction or regulation. “[S]peech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.”⁴ That this point of view is being heard by UC students on the Berkeley campus is a perfect example of the campus serving its highest purpose as the “the marketplace of ideas.”⁵ The Complaint’s own description of the “clear purpose” of Apartheid Week – “to delegitimize the existence of the State of Israel and to equate her system of government in South Africa between 1948 and 1993” (Complaint at p. 4) – underscores that this is speech that presents a political viewpoint and thus deserves the “special protection” afforded by the First Amendment. As the Court noted in *Felber* looking at the same allegations, the plaintiffs “appear to be attempting to draw an untenable line that would remove from protection signs and publications that are critical of Israel and supportive of Hamas and Hezbollah.” *Felber*, 851 F. Supp.2d at 1188.

2. The fact that Apartheid Week goes beyond a speech or a leaflet, and involves barbed wire and the depiction of Israeli soldiers using harsh and even coercive methods in their treatment of Palestinians, does not alter the constitutional calculus. This is expressive or symbolic conduct that is manifestly “imbued with elements of communication”⁶ and thus falls within the ambit of the First Amendment. That such expressive acts heighten and intensify the message, and may be outrageous or hateful to some, does not deprive them of constitutional protection.⁷ The First Amendment protects speech, no matter how offensive or disturbing it is to some people.⁸ In fact, First Amendment protections are most important when speakers take controversial or unpopular positions that might arouse strong feelings, passions, and hostility. There are no sacred cows when it comes to the First Amendment’s protection for political messages or viewpoints.⁹

⁴ *Connick v. Myers*, 461 U.S. 138, 145 (1983).

⁵ *Healy v. James*, 408 U.S. 169, 180-81 (1972).

⁶ *Spence v. Washington*, 418 U.S. 405, 409 (1974).

⁷ See, e.g., *Virginia v. Black*, 538 U.S. 343,365-66 (2003) (cross burning); *Texas v. Johnson*, 491 US 397, 414 (1989) (flag desecration); *University of Utah Students Against Apartheid v. Peterson*, 649 F. Supp 1200, 1203-1207 (D. Utah 1986) (construction and maintenance of shanties on university campus to protest apartheid in South Africa is constitutionally protected symbolic expression).

⁸ *Terminiello v. City of Chicago*, 337 US 1, 4(1949); *Cohen v. California*, 403 U.S. 15, 24-25 (1971).

⁹ In *Snyder v. Phelps*, 131 S.Ct. 1207, 1217 (2011), the Supreme Court concluded that the signs held by protestors at a funeral – which included messages such as “God Hates the USA/Thank God for 9/11” and “God Hates Fags” – were constitutionally protected speech on matters of “public concern”.

3. These fundamental free speech principles are entitled to “vigilant protection” in the university setting.¹⁰ The ACLUNC agrees that the government has a compelling interest in protecting students’ right to equal educational opportunity, and that this includes preventing students from being subjected to discriminatory harassment that creates a pervasive hostile academic environment. This principle –grounded in the Equal Protection guarantee – is as important to the ACLUNC as the First Amendment. While the two are not always easy to reconcile, the ACLUNC believes that the guiding principle when these values come into conflict must be that constitutionally protected speech cannot be the basis for university sanction unless it rises to the level of intentional harassment of specific persons on the basis of race, national origin, or one of the other protected categories. That some may perceive the message as deeply offensive or bigoted or hateful does not by itself transform speech into actionable harassment that can be the subject of University sanction or government restriction.¹¹

College Republicans at San Francisco State v. Reed, 523 F. Supp 2d 1005 (N.D. Cal 2007) is a case which bears a marked similarity to the instant case, except that in that case the expressive activity allegedly targeted the Muslim religion. As part of an “Anti-Terrorism” rally organized by the College Republicans at the central plaza of San Francisco State University, some members of the organization began stomping on mock versions of the flags of Hamas and Hezbollah, which they claimed were terrorist groups. Those flags incorporated the word “Allah,” in Arabic script. Some spectators became incensed at this act of stepping on the name of God; complaints were filed with the University. The resulting investigation¹² was followed by a successful facial First Amendment challenge to the University’s speech and conduct code.

In resolving the case, the court applied the three constitutional precepts discussed above:

The conduct on which the College Republicans engaged during their anti-terrorism rally was indisputably expressive. And the subjects about which plaintiffs sought to express their views are as central to First Amendment sensibilities as any could be. This was core political expression in a very public forum – indeed in one of the forums where First Amendment rights are to enjoy their greatest protection. Clearly the expressive conduct in issue here fired political passions and provoked intense debate. It even inspired a hostile newspaper article. The mode of communication that the plaintiffs chose was controversial. To many in the audience, it seemed

¹⁰ *Healy v. James*, 408 US at, 180-81.

¹¹ See Erwin Chemerinsky, *Unpleasant Speech on Campus, Even Hate Speech, Is a First Amendment Issue*, 17 Wm. & Mary Bill of Rts J. 765, 770 (2009).

¹² The College Republicans contacted the ACLUNC while this investigation was pending. We wrote to SFSU President Robert A. Corrigan that the “College Republicans intended to communicate an ‘anti-terrorist’ message by standing on Hamas and Hezbollah flags to express their condemnation of these groups and to do so in a forum where their message would be heard and understood by those attending the rally. The expressions of such political views are at the heart of First Amendment freedoms.”

disrespectful and offensive. But it is these characteristics that were critical to its effectiveness. A timid, tepid articulation of concern about terrorism likely would have been largely ignored – and certainly would not have provoked the discussion and debate that this rally precipitated.

Id. at 1019-20.

Prolonged Government or University Investigations Can Have a Chilling Effect on Protected Free Speech Activities

OCR has stated “in the clearest possible terms that OCR’s regulations are not intended to restrict the exercise of any expressive activities protected under the U.S. Constitution.”¹³ However, it is important to underscore that expressive activities can be restricted and deterred by inaction as well as action. The courts have long recognized that government investigations and official scrutiny can itself under certain circumstances have a chilling effect on expressive activities, particularly when the activities are controversial and represent a minority point of view.¹⁴

Expressive activities like Apartheid Week organized by SJP and the MSA, two recognized student organizations, have been under official scrutiny at UC Berkeley since the *Felber* complaint was filed on February 4, 2011. Even though the court’s decision confirmed that Apartheid Week was core political speech, these same constitutionally protected activities are now the subject of another federal investigation – and one that is open-ended. Even students who feel strongly about these issues, and shared the views being expressed by the organizers of Apartheid Week, might have serious second thoughts about getting involved with next year’s Apartheid Week, or similar SJP and MSA activities, while there are pending charges that these activities are part of a federal law violation.

In view of the dismissal of virtually identical claims in *Felber*, and in view of the substantial amount of protected political speech that is the basis of this Complaint, this investigation should proceed expeditiously. A prolonged and protracted investigation could accomplish what the First Amendment is intended to prevent – deterring university students from engaging in the full range of expressive campus activities that are permitted and even encouraged by our constitutional system.

Our concerns in this regard are not hypothetical. OCR has been investigating allegations of an anti-Semitic educational environment at UC Santa Cruz since March 2011. That

¹³ Department of Education, Office of Civil Rights, “First Amendment Dear Colleague Letter” (July 28, 2003).

¹⁴ *Sweezy v. New Hampshire*, 354 U.S. 234, 248 (1957); *White v. Lee*, 227 F. 3d 1214, 1228-29 (9th Cir. 2000) (Eight month HUD investigation for violation of Fair Housing Act chilled First Amendment activities)

investigation is based on a 29-page complaint that almost exclusively references expressive activities and campus debate about the Israeli-Palestinian conflict. That such protected free speech activities have been part of an investigation for 20 months is disturbing in view of the chilling effect that it can have on students who want to join, or continue to participate in, similar political activities in the future. The possibility that students at UC Santa Cruz (and now UC Berkeley) may feel reluctant or deterred from engaging in such activities at this moment, when these issues have returned to the world's center stage, is troubling and should impel OCR to expedite the resolution of both investigations.

Very truly yours,



Alan L. Schlosser
Legal Director

CC:
Thomas E. Perez
Assistant Attorney General
U.S. Department of Justice
Civil Rights Division
Education Opportunity Section
950 Pennsylvania Avenue NW
Patrick Henry Building, Suite 430
Washington, DC 20530

Arthur Zeidman
U.S. Department of Education
Office of Civil Rights
50 Beale Street, Suite 7200
San Francisco, CA 94105

*** This is the initial letter sent to President Yudof on July 20, 2012. In addition to the 27 faculty and students who originally signed this letter, more than 200 have added their signatures here: <http://www.change.org/petitions/letter-to-pres-yudof-in-response-to-jewish-campus-climate-report>*

July 20, 2012

President Mark Yudof
University of California Office of the President
President@ucop.edu

Dear President Yudof:

We, the undersigned University of California undergraduate students, graduate students, alumni, faculty and parents, write to you as members of the UC Jewish community who are deeply concerned and troubled by the [Jewish Student Campus Climate Fact-Finding Team Report and Recommendations](#) recently issued by Richard D. Barton and Alice Huffman. We share the commitment to “address[ing] challenges in enhancing and sustaining a tolerant, inclusive environment on each of the university’s 10 campuses” which your [Advisory Council on Campus Climate, Culture and Inclusion](#) aims to do. However, the report and recommendations it includes omit the experiences of many students and faculty in the Jewish community, grossly misrepresent educational initiatives focused on Israel and Palestine and political organizing in support of Palestinian rights, and threaten academic freedom on our campuses.

For these reasons we ask that you table the report and its problematic recommendations and in the future only consider recommendations derived from a demonstrably equitable and representative study of campus climate for all students at the University of California.

Listed below are some of the most problematic aspects of the report:

1. How did the authors decide with whom to speak?

On the first page of the report, the authors state that they visited six UC campuses where they met with undergraduates, graduate students, faculty, senior administrators, and representatives of off-campus Jewish organizations and on-campus non-Jewish organizations. That is the full extent of the methodological information the authors provide.

We believe that this report represents only a very partial view of Jewish people on UC campuses. The authors do not tell us how or why they chose the people with whom they met, who they met with, or whether the meetings were open to anyone, especially students, who wished to participate and, if so, if they were publicized as such, and what rationale guided their choices. At UC Santa Cruz and UC Berkeley, participation was by invitation-only, and a number of Jewish students who are publicly active and involved in campus Jewish life only learned of this report upon its publication.

Whose Jewish opinions did the authors include in this report, and why? Did the authors make an effort to include students from left-wing groups on each campus in order to understand the divisions among Jews as well as the values and experiences of the left-leaning Jews? Did they make an effort to speak with the Jewish students who choose not to affiliate with traditional Jewish organizations? If not, why not?

2. Misrepresentation of Palestinian rights and anti-occupation movements on UC campuses.

Throughout the report, the authors portray student organizing on behalf of Palestinian rights and against the Israeli occupation as anti-Israel, carried out in bad faith, harmful to Jewish students and latently anti-Semitic. We believe this is a gross misrepresentation of the movements in which we are involved, which advocate for human rights for all peoples in the region. Criticizing the Israeli government and military are not inherently anti-Semitic acts.

There is a disconnect between the authors' empirical findings and their exclusive focus on the feelings of students who advocate for Israeli policies. The authors claim that "the Jewish communities on the [UC] campuses are very diverse, making generalizations difficult" (page 2) and "this is especially true when it comes to the issue of Israel," as some "Jewish students participate actively in pro-Palestinian and anti-Zionist activities" (page 3). Yet when the authors speak of activism on the issue of Israel, they ignore those Jewish students' experiences and instead only focus on the sense of "hostility" and "isolation" that the Israel-advocating students feel. This disconnect compromises the report and also shapes the misrepresentation of student organizing on campus. Many students who actively participate in organizing for Palestinian rights don't see their political activism as "anti-Israel" or "anti-Zionist," as the report claims; in fact, some of these students even identify as Zionists.

Yet the report portrays this activism as strongly anti-Israel and as threatening to Jewish students. The authors make strong, accusatory claims about this activism but they don't provide any concrete details about the events they describe. The authors do not tell

us in what year and on which campus or campuses these events take place and which groups organize them. For instance, the authors state, “The use of the swastika drawn next to, or integrated with, the Jewish Star of David is commonplace” (pages 5-6). On which campus or campuses do the authors think the use of the swastika “commonplace”? What defines “commonplace”? Who, besides the authors, is making this claim? Based on our experiences on UC campuses, swastikas are irregular, unusual and widely condemned. If they appear at all, they often do so in the hands of non-campus based people. Student activists relate that when they have seen swastikas on campus, they’ve asked the holder to remove the offending sign and symbol. Simply put, our experience challenges the veracity of this claim and many others. The authors use generalizations and distortions to misrepresent our activist movements.

3. Distortion or exclusion of experiences of Jewish community members who identify as Palestinian rights supporters, critics of Israeli policy, or anti-occupation activists.

Though the report acknowledges the diversity of Jewish experience and suggests that this diversity makes recommendations or generalizations difficult, the authors develop and rely upon a narrative that represents the viewpoint of only one sector of students: those who support and advocate for Israeli policies. A number of Jewish students who are critical of Israel and who participated in the campus-based meetings with the authors say that their views were not included in the report.

Even more egregious than mere exclusion, the report contains a substantial claim that directly contradicts the testimony students gave to the authors. On page 7, the authors claim that Jewish students do not use the charge of anti-semitism to suppress criticism of Israel and that “all” of the Jewish students “understand the distinction between criticism of Israel and anti-semitism.” Yet in their meeting with the authors, several Jewish UCSC undergraduates discussed this very problem – the use of accusations of anti-semitism to undermine critics of Israel and limit debate – and presented the authors with articles they had published, both in campus and national Jewish press, arguing that their activism was not tantamount to the anti-semitism of which they were accused. The articles specifically address the Title VI complaint on that campus, with the students arguing that the Title VI complaint is being used to silence criticism of Israel on campus. The report’s authors chose to leave out any reference to the students’ statements or their articles and instead falsely claimed UC-campus-wide agreement on the applications of accusations of anti-semitism.

In addition, the authors either neglected or elected to exclude the well-documented experiences of a significant number of Jewish students and faculty on

several different campuses who have reported being bullied, intimidated, excluded or marginalized by right-wing Israel advocates.

For instance, the UC-Berkeley Jewish Student Union refused to allow J Street U to join the union, despite a mission statement saying the JSU is “committed to a pluralistic vision of Judaism.” Another Israel advocacy group at UC-Berkeley built a file on the left-leaning student group Keshet Enoshi, including private messages in the file. The Israel advocacy group then sent the file to the CEO of Hillel International asking for Hillel to cut support for Keshet Enoshi and seriously condemning UC-Berkeley’s Hillel director for not sufficiently marginalizing the group. At UC Santa Cruz, a Hillel employee harassed an undergraduate student on her facebook page, suggesting she didn’t belong in a program with other Jewish students because she is publicly critical of Israeli policies. The authors did not include any of these examples in the report. We are certain that these events are relevant for a report on the campus climate for Jewish students at UC.

4. Misinformation regarding Israel and Palestine.

The authors continuously reveal their bias in their mischaracterizations of basic facts about Israel and Palestine. For instance, they write that Israel’s fence/barrier/wall is “constructed by Israel along its border with the West Bank” (page 5) – though 85% of the barrier is built inside of the West Bank, not on the border between the West Bank and Israel, cutting off tens of thousands of West Bank Palestinians from the West Bank and expropriating thousands of acres of land and precious water sources.

Similarly, the authors describe campus re-enactments of Israeli checkpoints (page 5) as exposing students to “what Palestinians are allegedly subjected to” – thereby again undermining the veracity of Palestinians’ checkpoint experiences, which are widely documented. Of the Nakba, which is the Arabic name for the catastrophe that befell Palestinians upon the establishment of the state of Israel, the authors note that “Nakba” is how “Palestinians refer” to that event. Yet we use the term Nakba, too, because we accept that name as the Palestinian name for the events of 1948 and their effects.

5. Anti-Defamation League involved in writing the report.

While the ADL has a strong record of civil rights and anti-racism work, they are active in the effort to vilify and marginalize people and organizations working in support of Palestinian rights. The ADL has become known for accusing critics of Israel of being anti-semitic and denouncing Palestinian rights supporters, including Students for Justice in Palestine and Jewish Voice for Peace. The ADL has a history of spying on civil rights

organizations and Palestinian rights supporters and was strongly opposed to the building of an Islamic Center near the World Trade Center site.

Richard D. Barton has a long history of leadership with the ADL, most recently as its National Chair of Education. Why was a member of such a well-known rightwing group chosen to spearhead this report? Was there any attempt made to balance his voice with more moderate voices?

Problematic Recommendations:

Recommendation #1: UC should review its policies on University sponsorship and neutrality and develop model institutional protocols for such activities.

We believe that UC faculty and administrators are fully capable of and empowered to make sound decisions regarding sponsorship of campus events. Any action by UC administrators to curb these decisions will be, and will be rightly seen as, infringement on faculty authority as well as free speech.

Moreover, the loss of sponsorship could spell an end to much student-led educational initiatives, which rely on faculty and administrative sponsorship for access to funding and venues. We expect that many students would choose not to attend a university that imposes political litmus tests on the programs and events they can initiate and lead.

Additionally, through their repeated misrepresentation of people, values and events in this report, the authors have proven themselves untrustworthy with regard to Jewish and Israel-Palestine related campus issues. We are quite certain that we would disagree with them on many if not most of the events they would deem “unbalanced” and “biased.”

Recommendation #2: UC should adopt a hate speech-free campus policy.

We believe in the principles of free speech and that these principles stand on their own and do not require any additional regulation. Hate speech should be answered with more speech, better speech, non-hate speech. We are committed to speaking up and speaking out. And we are also committed to ensuring anyone else’s right to speak, and not putting the reins of control over speech into the hands of any authority.

Recommendation #3: UC should develop cultural competency training around the Principles of Community, and such training be required of all community members.

Who would develop this training, who would attend, and who would decide which narratives to emphasize? There are already many academic and student-support units on UC campuses tasked with research and teaching about cultural difference and diversity; indeed, the UC is internationally known for its excellence in this area. Any kind of training should be developed by leaders from these units.

Recommendation #4: UC should adopt a UC definition of anti-Semitism and provide model protocol for campuses to identify contemporary incidents of anti-Semitism, which may be sanctioned by University non-discrimination or anti-harassment policies.

The report suggests that UC adopt the European Union's working definition of anti-semitism. While much of the EU's definition is fully appropriate and acceptable, the portions of it that relate to the state of Israel are highly problematic. For instance, there are times when it is appropriate to question whether certain individuals place Israel's interests above that of their own country. Also, while we, as Jews, strongly disagree with many policies of the Israeli government and don't believe it speaks to our Jewish values, the clause stating that it is inherently anti-semitic to "hold Jews collectively responsible for the actions of the state of Israel" is exceedingly complex. Both the state of Israel and the mainstream American Jewish establishment claim that Jews are united behind the state of Israel. Indeed, the notion that "wherever we stand, we stand with Israel" is common in many Jewish institutions. By what criteria does one distinguish between the Jewish organizations' claim to stand with Israel and the concept of holding Jews accountable for Israel's actions? What makes one of those an inherently anti-semitic act? We believe that the very existence of the question challenges the usefulness of the EU's working definition of anti-semitism.

By the same token, we are cautious about the recommendation that the UC should engage organizations to educate administrators, faculty and students to "help explain the intersection, distinctions and overlap between anti-Semitism and the protest of Israel policies and actions." As we have argued throughout this letter, we strongly disagree with the charge that opposing Israeli policies is anti-semitic. The charge of anti-semitism is often used to silence inquiry into and debate about the histories and policies shaping the region.'

Based on the above critique of the method and the outcomes of the report, we request that the recommendations be tabled and that you consider pursuing a

demonstrably equitable and representative study of campus climate for all students at UC. As Jewish students, faculty, alumni and parents, we see ourselves as allies and resources to the UC community in facing our collective challenges. We believe that fighting injustice is a Jewish value, and disagreement is such a long-held Jewish practice that it was codified in the Talmud, Jewish oral law, 2000 years ago. Our connection to and criticism of Israel, support for Palestinian rights and opposition to the occupation are all deeply, richly Jewish. We will continue to fight against anti-semitism when we see it and fight against the misuse of the charge of anti-semitism to silence inquiry, debate, and activism. Education should enable learners to try on new ideas and step up to face grave problems. Our campus climate is troubled, highly charged, and extremely contentious, but we believe that the University of California is equal to the challenge.

Sincerely,

Alana Alpert, BA, UC-Santa Cruz, 2006

██████████, BA, UC-Berkeley, 2013 (expected)

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