

September 22, 2013

Bob Linscheid, Chair
California State University Board of Trustees
c/o Trustee Secretariat
401 Golden Shore, Suite 620
Long Beach, CA 90802
and via email: lhernandez@calstate.edu

Timothy P. White, Chancellor
California State University
401 Golden Shore
Long Beach, CA 90802-4210
and via email: publicaffairs@calstate.edu

Dear Mr. Linscheid, Mr. White and trustees:

We have become aware of a letter to the CSU Board of Trustees from AMCHA Initiative, dated Sept. 18, 2013, alleging misuse of CSU Northridge's name by Professor David Klein based on expression of his personal political views on his website and in emails, both hosted by university servers.

As you are probably aware, these frivolous charges are not new and have been consistently rejected by CSUN and by the state Attorney General's Office, to which AMCHA has also turned. We urge you to do the same, unambiguously and swiftly, to deter further instances of harassment and defamation to which Prof. Klein has been subjected for years by AMCHA and allied groups.

At the crux of the matter are core principles of free expression and academic freedom. These were affirmed in an official statement from Jolene Koester, then CSUN president, on December 5, 2011, in response to nearly identical complaints. After a review of CSU policies, it found no evidence that Prof. Klein's website implied that CSUN endorsed his views. President Koester concluded:

The University, as a forum for the free expression of ideas and points of view, takes no position on the individual expressions of ideas by faculty, staff, or students. But the University does uphold and preserve the principles of academic freedom—and Professor Klein's right to express his views. Our review affirmed that this right extends to the use of an individual's web pages, as part of the University website, as a vehicle for expression. ...

And in a follow-up statement issued December 19, 2011:

The University believes that removing or censoring Professor Klein's comments because some in the campus community and/or others disagree with him and find them offensive would create a grave precedent for the University and encourage others to demand similar action on other views and comments with which they disagree. Taking action to suppress such views would also send the wrong signal to the students who we have been charged with educating about how a

democracy should address issues involving differing views and be contrary to the University's goal to tolerate open dialogue on even the most difficult issues.¹

Regarding use of a university email to seek support for a political candidate, electioneering emails may be an inappropriate use of a CSUN email address under separate regulations. It is clear that CSUN has administrative tools to address these concerns, and does so.

The AMCHA letter devotes much of its content to California Education Code Section 89005.5, which it claims bars and makes a misdemeanor any use of the CSU "name and resources ... to promote the boycott of Israel." It is clear from the context that the purpose of the statute is to deter people from attempting to misattribute their own expressed beliefs as having official university endorsement. There is no evidence that Prof. Klein implied university endorsement of his views. CSUN itself determined in a statement published December 19, 2011 that a legal review "found no statement or endorsement of the views at the website by the CSU or by CSUN and concluded, "it is unlikely that a reasonable person would interpret the 'Boycott Israel' web page as an endorsement by the CSU or CSUN of the material contained therein."

The state Attorney General's Office agreed. In response to a similar complaint submitted on April 2, 2012, it wrote on May 17, 2012:

Because we conclude upon review that the evidence ... does not support a finding of misuse of such name and resources, we find no basis for any action on our part.²

It is important to understand that the attacks on Prof. Klein and the effort to rope in CSU officials, trustees, the attorney general and others do not originate with genuine concern for our universities' reputations or conservation of their resources, as AMCHA and several similar groups would have us believe. Rather, they are motivated by an effort to silence discourse by students, faculty and others who speak out in criticism of Israeli government policies. Spurious conflation of such criticism with anti-Semitism, together with a false description of the climate on campus for Jewish students, as if they are under constant, vicious attack, are these groups' stock in trade.

Unfortunately, House Resolution 35, passed last year by the state Assembly – though not "unanimously," as AMCHA's letter asserts, and with no opportunity for debate and rebuttal – echoed these false descriptions and allegations, and further called upon California's universities to violate students constitutional right of free speech. Fortunately, however, it has no effect of law, and amid a torrent of protest by students, faculty and civil rights organizations³, several of HR 35's initial co-authors issued disclaimers shortly after its passage, saying they had been misled as to its content.

President Koester's determination that political expression must be protected on a public university campus has recently been endorsed by the U.S. Department of Education's Office of Civil Rights (OCR), which on August 19 thoroughly dismissed three complaints against UC administrations alleging violations of Jewish students' civil rights. All the alleged instances involving political expression critical

¹ <http://web.archive.org/web/20120119120404/http://www.csun.edu/presofc/presletters/presletter-2011-12-05-website.shtml>

² <http://www.csun.edu/~vcmth00m/CaAttornGen.pdf>

³ See the resolution passed by the University of California Student Association, September 15, 2012, *available at*, <http://calsjp.org/?p=1297>; see also letter from California Scholars for Academic Freedom to the California Assembly *available at*, http://www.csun.edu/~vcmth00m/OpenLetterHR_35.html; see also letter from six civil rights organizations and four student organizations to the California Assembly, *available at*, http://ca.cair.com/images/uploads/HR_35_Letter_to_Lawmakers.pdf.

of Israel were entirely protected by the First Amendment, the determination letters said, and did not create a hostile climate on campus. The OCR wrote that “robust and discordant expressions ... is a circumstance that a reasonable student in higher education may experience” The determination letter regarding UC Santa Cruz, in response to a complaint filed by AMCHA Initiative founder Tammi Rossman-Benjamin, is attached, and available at the links below.⁴

The University of California Committee on Academic Freedom (UCAF) similarly rejected efforts to suppress political expression critical of Israel. [In a letter to the UC Academic Senate, dated May 9, 2013, UCAF wrote](#), “the majority of UCAF (there was one dissenting vote) urges that the [Academic] 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.”⁵

The trustees have no duty to consider a complaint which was first raised two years ago, and which the CSUN administration, and the California Attorney General already investigated and dismissed as having no merit. The CSU Trustees should unequivocally dismiss this latest attack on academic freedom.

Please don’t hesitate to contact Jim Lafferty, of the National Lawyers Guild, Los Angeles with any questions or requests for more information on this matter.

Sincerely,

Jim Lafferty
National Lawyers Guild, Los Angeles Chapter

Liz Jackson
Cooperating Counsel, Center for Constitutional Rights

Cc:

Diane F. Harrison, President, California State University, Northridge
Andrew Jones, Interim General Counsel, California State University
Attorney General Kamala Harris
Deputy Attorney General Stepan Haytayan
Senior Assistant Attorney General Douglas Wood
California Speaker of the Assembly John A. Perez
California Superintendent of Public Instruction Tom Torlakson
California State Senator Alex Padilla (Northridge)
California Assembly Member Das Williams, Chair, Assembly Higher Education Committee

⁴ The Department of Education, Office of Civil Rights, issued similar Dismissal Letters in the separate cases of Title VI complaints against UC Berkeley, Irvine, and Santa Cruz. All three letters are available at <http://ccrjustice.org/newsroom/press-releases/victory-student-free-speech-department-of-education-dismisses-complaints>.

⁵ Letter from Cameron Gunderson, Chair, University of California University Committee on Academic Freedom, to Bob Powell, Chair, University of California Academic Senate, May 9, 2013, *available at*, [http://palestinelegalsupport.org/download/1st-amendment-free-speech/academic-freedom/UC Academic Freedom Committee Rejects Efforts to Censor Palestinian Advocacy.pdf](http://palestinelegalsupport.org/download/1st-amendment-free-speech/academic-freedom/UC%20Academic%20Freedom%20Committee%20Rejects%20Efforts%20to%20Censor%20Palestinian%20Advocacy.pdf).

California Assembly Member Joan Buchanan, Chair, Assembly Education Committee
California Senator Carol Liu, Chair, Senate Standing Committee on Education
U.S. Congressman District 30 Brad Sherman