



Via Email

March 3, 2016

Dr. Stephanie Quade
Dean of Students
Office of Student Development
AMU 329
stephanie.quade@marquette.edu

Dear Dean Quade,

We write on behalf of Students for Justice in Palestine (“SJP”) at Marquette University, whose mock display of the Israeli Separation Wall was summarily confiscated and prohibited by the Office of Student Development from being re-displayed. We are concerned that the University is restricting SJP’s speech activities because of the message they are conveying, and applying its policies in a discriminatory manner. The university’s actions are contrary to Marquette’s stated values and principles of free expression and academic freedom that are elemental to institutions of higher education, and appear to violate students’ rights under applicable law.

Our understanding of the facts surrounding the exhibition of the mock wall in the Alumni Memorial Union (“AMU”) by SJP last week is as follows:

SJP at Marquette University is a registered student organization that seeks to educate the Marquette University community about Palestine and to support the Palestinian struggle for freedom and self-determination. SJP organized a series of events for Israeli Apartheid Week on campus the week of February 21. Flyers for those events were duly approved by the Office of Student Development and space in the AMU was reserved for tabling in accordance with school policies. Students set up the display of the mock wall on the evening of February 21 in the designated tabling area. The wall featured slogans and pictures that appear on the actual wall in Palestine. The next morning, the students found that the wall had been removed without notice.

On February 22, 2016, Julie West, Coordinator for Leadership Programming & Student Involvement in the Office of Student Development (“OSD”) informed an SJP leader that their display was taken down “because the content was not approved.”¹ The next day, after a request for an update, Ms. West informed the student that she had “consulted with relevant colleagues” and determined, again, that the concern with the display was with its content, saying that some unspecified “phrases and representations” are “likely to cause great offense” and, “[b]ecause of the concerning nature of the content of the display, we cannot approve the wall being displayed

¹ All referenced emails on file with Palestine Legal.

again.” She also claimed that the display was in violation of policies in the Student Organization Handbook. Ms. West has also repeatedly referenced a need to understand the “intent” of events, publicity and displays before approval.

As we understand, Ms. West has not been able to point to any section of the Handbook that requires pre-approval of the content of a display, despite numerous requests for such clarification, and we have not located any such policy that would apply to the wall as it was exhibited.

In an email on February 25, 2016, Ms. West also stated that because of an “incident between SJP and JSU/Hillel a few years ago” she had “consulted with relevant colleagues on campus for feedback” on the wall² and based on that consultation, had determined that the wall could not be displayed. The student leader of SJP asked Ms. West to please indicate in what way this treatment was consistently applied to JSU/Hillel prior to their events, but received no reply.

1. SJP followed posted policies for Student Organizations

SJP received approval for the tabling space, publicity for their events (including a flyer advertising the mock wall),³ and for the literature it was distributing, as it had done the last two years when it displayed the mock wall. Ms. West, after multiple requests for a specific section or page reference to the policy SJP allegedly violated, eventually instructed the student to do a “simple search” for “events and publicity.”⁴ This appears to be a misapplication or, at best, an inconsistent application of school policies. There is no apparent policy that applies to displays that are part of a tabling event. SJP had all of their events and publicity approved by Ms. West’s office, including the tabling. The fact that SJP’s previous displays of the mock wall were allowed without any additional approval requirements is further indication that the policies were not consistently or correctly applied.

2. The Office of Student Development’s decision to remove the mock wall because of its content and other groups’ opposition to the message is contrary to Marquette’s stated values and free speech and due process principles

OSD’s representative, Ms. West, has repeatedly and clearly indicated that her decision was based on disapproval of the content of the mock wall. Ms. West’s emails illustrate her intent to restrict SJP’s speech based on the viewpoint expressed. Of significant concern is the fact that Ms. West consulted with individuals and groups known to be hostile to SJP’s views, and appears to have based the University’s decision to take down the wall on that group’s disapproval of SJP’s message.⁵ There does not appear to be a policy requiring such prior approval by other

² Email of February 23, 2016.

³ Ironically, SJP received approval for their flyer publicizing the mock wall on February 22, after the wall had already been taken down earlier the same day.

⁴ Email of February 25, 2016.

⁵ In an email from October 1, 2014 to a previous SJP leader, Ms. West clearly stated that she consulted with the Campus Ministry in order to obtain the opinion of the Jewish Student Union. In her email of February 25, 2016, Ms. West again states that she consulted with the Campus Ministry regarding the mock wall.

campus groups or individuals, and any such policy would be highly concerning. Giving other groups the opportunity to censor SJP's speech indicates that the university is subjecting SJP to discriminatory treatment, violating students' free expression, and also raises due process concerns.

Free speech principles exist precisely to protect from censorship speech that some members of a community may find controversial.⁶ Marquette's own stated mission also includes a commitment "to the unfettered pursuit of truth,"⁷ and to "academic freedom as the necessary precondition for that search."⁸ Marquette claims to encourage free expression, stating that it "strives to develop men and women who will dedicate their lives to the service of others, actively entering into the struggle for a more just society. We expect all members of the Marquette community...to give concrete expression to their beliefs by giving of themselves in service to those in need."⁹ The University's promises to nurture diversity and to support students in their search for truth and justice cannot be selectively and discriminatorily applied because some members of the university community are inimical to that cause.

By restricting SJP's ability to express its message calling for freedom, justice and self-determination for Palestinians, Marquette is violating fundamental free speech principles¹⁰ as well as its own stated promises to nurture an environment where students are free to engage in struggles for truth and justice.

Marquette University has a responsibility to all of its students to ensure that they receive the benefits of university programs and activities on a fair and equitable basis. Political speech, no matter how controversial, is of vital importance to the educational environment and university community. That one office has determined that a specific organization, expressing a particular point of view, should be subjected to additional scrutiny and censorship is antithetical to Marquette's values, and the purpose of institutions of higher education, which the Supreme

⁶ The offensiveness of a message to some does not deprive it of constitutional protection. *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). Given "the dependence of a free society on free universities," these principles apply equally to college campuses. *Sweezy v. New Hampshire*, 354 U.S. 234, 262 (1957); *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819, 836 (1995) ("For the University, by regulation, to cast disapproval on particular viewpoints of its students risks the suppression of free speech and creative inquiry in one of the vital centers for the Nation's intellectual life, its college and university campuses.").

⁷ See Student Organization Handbook, p. 4, available at <http://www.marquette.edu/osd/organizations/documents/StudentOrg handbook15-16.pdf>

⁸ See "Our Mission," available at <http://marquette.edu/about/mission.php>

⁹ *Id.*

¹⁰ While Marquette, as a private school, is not explicitly bound by the First Amendment, it is expected, as a recipient of Federal assistance, to abide by the provisions of the Higher Education Act, and specifically §1011a, Protection of Student Speech and Association Rights, which provides that "no student attending an institution of higher education on a full- or part-time basis should, on the basis of participation in protected speech or protected association, be excluded from participation in, be denied the benefits of, or be subjected to discrimination or official sanction under any education program, activity, or division of the institution directly or indirectly receiving financial assistance." See 20 U.S. Code §1011a.

Court has recognized as “peculiarly the ‘marketplace of ideas’.”¹¹ Marquette’s discriminatory treatment of SJP creates a “Palestine exception to free speech,” a phenomenon which my organization has widely documented on U.S. campuses.¹²

We therefore request that Marquette University immediately issue a statement making clear its support for student speech on its campus, including a commitment to be transparent about procedures for pre-approval of student speech by the administration and to not subject such speech to prior approval by other members of the campus community; clarify for employees in the Office of Student Development and other relevant departments university policies on student speech rights; and allow SJP to display the wall in the AMU as originally planned.

Thank you for your prompt response to these requests. Please contact me at [REDACTED]

Sincerely,



Dima Khalidi
Director, Palestine Legal
Cooperating Counsel, Center for Constitutional Rights

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¹¹ *Keyishian v. Board of Regents of Univ. of N.Y.*, 385 U.S. 589, 603 (1967)

¹² Please see our comprehensive study on this issue at: <http://palestinelegal.org/the-palestine-exception>