Via e-mail

President Morton Schapiro
Northwestern University
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July 8, 2015

Re: Free speech concerns with re-definition of anti-Semitism

Dear President Schapiro,

As civil and human rights organizations committed to racial justice, we support your efforts to confront racism and bigotry on campus. Recent incidents involving swastikas found on campus warrant thoughtful conversations about how to effectively combat anti-Semitism and racism to create a learning environment that is welcoming for all students. As you engage in this critical conversation, however, we urge you to reject external efforts1 to adopt a re-definition of anti-Semitism used by the United States Department of State’s Special Envoy to Monitor and Combat Anti-Semitism.2 Although the Special Envoy uses the re-definition abroad, it has no bearing in the United States.

By conflating political criticism of Israel with anti-Semitism, this re-definition confuses the term. It would therefore be counter-productive to the goal of fostering a thoughtful, safe and welcoming campus environment, making it harder to address genuine anti-Semitic acts such as the recent swastika graffiti. Moreover, because the re-definition infringes on principles of free speech, it is especially inappropriate for a university setting, as recently noted by the re-definition’s own lead author, Kenneth Stern.3

You should also be aware of the United States Department of Education’s Office for Civil Rights’ (DOE) decisions in four recent investigations prompted by complaints that speech and other advocacy favoring Palestinian rights created a “hostile environment” for Jewish

students. In consistently finding that these incidents “did not constitute actionable harassment,” DOE affirmed the importance of protecting “robust and discordant expressions” on matters of public concern in the university setting. We urge you to do the same.

I. The State Department’s re-definition of anti-Semitism is not appropriate for a university setting

Though much of the State Department’s re-definition of anti-Semitism is uncontroversial and aligns with a traditional understanding of the term, it radically departs from that understanding with its listing of examples of “Anti-Semitism Related to Israel,” known as the “three D’s”: “demonizing Israel,” “applying a double standard to Israel” and “delegitimizing Israel.” This codifies the false conflation of anti-Semitism with political speech critical of Israeli policies. This approach is inappropriate especially for universities that value academic freedom and free speech principles.

In recent years, Northwestern University students have organized events and launched divestment campaigns to raise awareness for Palestinian human rights violations caused by Israeli policies. This human rights activism is appropriate for a university setting and helps prepare students to address complicated international and political issues. There is no evidence that campus activism critical of Israeli policy and advocacy for Palestinian human rights is to blame for the swastika graffiti.

If the anti-Semitism re-definition is adopted, it could put university administrators in the position of suppressing political speech and human rights activism. Administrators, who have a duty to mitigate racially-hostile environments, would likely be called upon to respond to speech and advocacy critical of Israel that some would argue meets the criteria laid out in the re-definition. Under the mistaken illusion that it is appropriate to penalize such speech and advocacy, administrators may end up limiting speech. As a result, administrators run the risk of violating Northwestern University’s own commitment to academic freedom, which “strives to create a community that fosters personal and intellectual growth by bringing together faculty, students, and staff from different backgrounds and perspectives to engage in a mutual exchange of ideas and experiences.”

Further, adoption of the re-definition would almost certainly have a chilling effect on speech and academic inquiry. Students, professors, and researchers will inevitably act in ways to avoid review of their activities and avoid the specter of being labeled anti-Semitic. This is especially likely given the re-definition’s vagueness. What is a “double standard” with regards to criticism of Israel and how will it be judged? How many additional countries are students and

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4 DOE’s determination letters in these four cases, explaining its legal findings, can be downloaded at the following URLs: UC Berkeley (http://bit.ly/doeucb); UC Santa Cruz (http://bit.ly/doeucsc); UC Irvine (http://bit.ly/doeucirvine); Rutgers University (http://bit.ly/1W4Xaj).

5 For example, the State Department’s re-definition begins: “Anti-Semitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of anti-Semitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.” Merriam-Webster defines anti-Semitism as, “Hostility toward or discrimination against Jews as a religious, ethnic or racial group.”

6 Defining Anti-Semitism, supra note 1.


II. The U.S. Department of Education rejected similar attempts to repress Palestine human rights activism

As you know, in recent years, there have been allegations that expression criticizing the state of Israel or advocating for Palestinian human rights constitutes “harassment” or “intimidation” that “targets” and creates a “hostile educational environment” for Jewish students on campus on the basis of race or national origin. In the context of discussion about Israel and Palestine on campus, however, DOE has emphatically rejected complaints conflating protected political speech with actionable harassment. To date, no such complaint has been sustained or found to have legal merit.12

There are crucial lessons to be learned and adopted from DOE’s findings. As DOE has affirmed in four separate cases after conducting lengthy investigations of alleged harassment of Jewish students based on student and faculty advocacy for Palestinian rights, expression of political viewpoints does not, standing alone, give rise to actionable harassment under Title VI simply because some may find it offensive.13

To the contrary, universities risk violating free speech principles if they censor or chill expression.14 DOE, in addressing the importance of diverse viewpoints and expression on college and university campuses, noted that the activities at issue in the complaints “constituted 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

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9 Kenneth Stern, supra note 2.
10 Id.
11 Id.
13 As DOE notes, “harassment must include something beyond the mere expression of views, words, symbols or thought that a student finds personally offensive. The offensiveness of a particular expression, standing alone, is not a legally sufficient basis to establish a hostile environment.” Letter from U.S. Department of Education to UC Berkeley, Aug. 19, 2013, re: Case No. 09-12-2259, available at http://bit.ly/doeucb.
14 DOE OCR has stated it will not, in its enforcement of anti-discrimination laws, exceed the boundaries of the First Amendment for either private or public universities. See Dear Colleague Letter from U.S. Department of Education, July 28, 2003, http://www2.ed.gov/about/offices/list/ocr/firstamend.html (“OCR’s regulations should not be interpreted in ways that would lead to the suppression of protected speech on public or private campuses.”).
offensive and hurtful, is a circumstance that a reasonable student in higher education may experience.”15

As President of Northwestern University, we urge you to affirm your commitment to protecting free speech on campus by embracing the DOE findings and using them as a guide to safeguard the right to criticize Israel and Israeli policies exercised by students, academics and administrators alike.

III. Conclusion

We appreciate the importance of addressing allegations of anti-Semitism on campus. But just as Northwestern University has an obligation to respond seriously to allegations of anti-Semitism, so too must it protect students’ right to speak openly and freely on matters of public concern. We urge you not to consider adopting the State Department’s re-definition of anti-Semitism and to resist any other attempt to conflate anti-Semitism with criticism of Israel.

We would be happy to discuss these issues further and we can be reached via Rahul Saksena at rsaksena@palestinelegal.org, (312) 399-6624.

Respectfully,

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