



Council on American-Islamic Relations
Tampa Office
8056 N 56th Street, Tampa, FL 33617
Tel 813.514.1414 Fax 813.987.2400 www.cairflorida.org

February 14, 2014

Certified Returned Receipt and E-mail

Dr. Judy Genshaft, President
University of South Florida
4202 E Fowler Ave
Tampa, FL 33620

Dr. Cynthia S. Visot, Chief of Staff to the President
cvisot@usf.edu

Steven D. Prevaux, General Counsel
prevaux@usf.edu

RE: University of South Florida's legal obligations to Students for Justice in Palestine under Title VI and the First Amendment

Dear President Genshaft and General Counsel Prevaux,

We write to you on behalf of the student organization, Students for Justice in Palestine (SJP), to discuss important developments concerning the United States Department of Education (DOE) and University of South Florida's obligations under Title VI of the Civil Rights Act of 1964. Please see the attached legal advisory for more information.

In August 2013, DOE dismissed complaints against the University of California (UC) Berkeley, UC Santa Cruz, and UC Irvine, which had alleged, *inter alia*, that Jewish students who identify with the state of Israel are deprived of an equal education in violation of Title VI when exposed to student or faculty speech critical of Israel. In recent years, some organizations have relied on this theory to pressure universities around the country to take punitive or censorial measures against faculty or students who express such viewpoints. **DOE rejected the premises underlying these complaints and reaffirmed the importance of First Amendment expression on campus.**

These decisions are especially relevant to the University of South Florida (USF) because several controversies have recently taken place on campus threatening the First Amendment right of SJP to engage in criticism of the state of Israel. These events raise concern that USF is not meeting its obligation under the First Amendment to protect student speech on controversial issues.

In the spring of 2013, a student referendum sponsored by SJP that advocated for boycott and divestment from companies that profit from Israel's occupation was declared "null and void."¹ The

¹ See attached, "03-01 Brian Goff Email" notifying the student body that the referendum will not be recorded as an official student referendum; see also attached, 02-28 Executive Memorandum 53-012, from Student Body President and University Trustee Brian Goff to the Election Rules Commission requesting that "the results from the Student Referendum pertaining to divestment be deemed invalid, null, and void."

referendum consisted of a non-binding straw poll, asking students to opine on whether they would support boycott and divestment as a tool to promote human rights.² Justification for the nullification of the referendum came from student government leaders, who offered the unsubstantiated claim that the referendum “conflicts with” or is “inconsistent” with local and state laws.³ A recent appeal by SJP to the student Supreme Court was denied on the basis that the court was unable to hear the case because the referendum would “violate State law and university policy,” again without providing a basis for this claim.⁴ When pressed to provide a justification, student government officials directed SJP to consult USF General Counsel.⁵

Based on the executive memorandum from the student body president and emails from the USF General Counsel’s office to student government leaders obtained via a public records request, it is clear that the decision to nullify the referendum was made in response to pressure from the General Counsel’s office.⁶ The student body president noted that he requested that the referendum be voided after “many intense discussions with Legal Counsel and University Officials.”⁷ The General Counsel’s office has provided several justifications at different times. First, University officials pressured student government officials to remove the referendum from the student ballot because it was “political” in nature.⁸ Second, the General Counsel’s office advised student government officials that the referendum violated Fla. Stat. § 104.31 and Fla. Stat. § 110.233.⁹ Finally, during a meeting with SJP and CAIR, Associate General Counsel Adamchak referred the students to university purchasing regulations USF 4.02000 - 4.02090 which she also claimed conflicted with SJP’s referendum.

None of the justifications provided by USF officials stand up to legal analysis. First, it is obvious that a non-binding straw poll of student political opinion does not, under the First Amendment, conflict with any law. It is pure political speech, and cannot be censored at a public university.

Second, Section 104.31, Fla. Stat. proscribes political activities of officers and employees of the state, to prevent specified corrupt or influence-peddling actions, primarily in an electoral context. The electoral context is clearly not at issue here, nor is corruption. Section 110.233, Fla. Stat., proscribes specified employment practices in career service. This does not apply because state universities are explicitly exempt from career service provisions. Further, the students seeking to survey their peers’

² See attached, “SJP BDS Referendum Spring 2013.” The referendum text described oppressive conditions of the Palestinian people, listed corporations affiliated with the oppression, and asked the following questions of the student body: “**Question 1:** ☐ Would you support the USF student government in adhering to the principles of Dr. Martin Luther King Jr. that ‘injustice anywhere is a threat to justice everywhere’? ☐ **Question 2:** ☐ Would you support boycotting, divesting, and sanctioning corporations affiliated with human rights violations by replacing them with ethical alternatives at University of South Florida?”

³ 02-28 Executive Memorandum 53-012.

⁴ See attached, “02-05-14 Denial of Request for Trial.”

⁵ See attached, “02-06-14 Email from Solicitor General Shaheen Nouri.”

⁶ See attached, “02-24-13 Email exchange bw Adamchak and SG.”

⁷ 02-28 Executive Memorandum 53-012.

⁸ See attached, “02-21-13 Gary Manka Email” where Gary Manka, Director of Student Government Advising Training and Operations, notified student government officials that “since SG is an arm of the university and since the university does not take on political referendums, SG does not as well.” In the document titled, “02-24-13 Email Exchange bw Adamchak and SG” it is clear that student government officials contested this policy, noting that “Gary’s statement, as advised by legal” conflicted with the student government constitution providing that “any student has a right to call for a University-Wide initiative/referendum...” without exception for “political” topics, and further noting that students passed numerous non-binding political resolutions the previous year.

⁹ 02-24-13 Email Exchange bw Adamchak and SG.

opinions on divestment are neither officers or employees of the state as contemplated by the cited Florida statutes.

Third, the purchasing regulations are designed to eliminate practices that undermine legitimate competition because of undue influence exerted on individual purchasing agents. They do not speak to the university's right to adopt purchasing policies called for by students based on ethical considerations. The regulations currently provide for exceptions to the competitive bidding process including, for example, a preferential policy for purchase of commodities produced with recycled content. (Reg. 4.02040(7)). In any case, as the Supreme Court has held, the right of the States to regulate economic activity cannot justify prohibiting a nonviolent, politically motivated boycott, much less mere *advocacy* for a boycott.¹⁰

Finally, if either of these statutes or regulations – or indeed any statute or regulation—were to be construed as restricting advocacy for or implementation of a peaceful boycott protesting human rights violations, it would be stricken as unconstitutional. The Supreme Court has ruled that boycotts based on matters of public concern are protected speech and expression, and rest “on the highest rung of the hierarchy of First Amendment values.”¹¹

The entire process by which the referendum was nullified violated SJP students' constitutional rights to free speech and due process, and also made a mockery of USF Student Government's mission, which is “to be the premier opportunity in becoming engaged, provide the setting for all students to be equally heard and represented, and maximally enhance each student's experience and development.”

More recently, SJP has been made aware that, in response to pressure from off-campus organizations, USF officials have raised questions about the university's role in permitting SJP to sponsor an educational “game show” event about the Israel-Palestine issue.¹² University officials made a direct inquiry to SJP, and apparently questioned student government officials about funding for the event.

Both the decision to nullify SJP's student referendum in the Spring of 2013 and the current apparent university investigation into SJP's right to host programming that has a political message suggest that USF is scrutinizing campus speech in support of Palestinian rights based on the viewpoint being expressed. Such actions undertaken against expressive activities based on their viewpoint or content are prohibited under the First Amendment.¹³ Further, burdening speech in this manner undermines a primary purpose of the university itself, which is to expose students to a wide range of viewpoints.

The recent DOE decisions reaffirm that **public universities violate the First Amendment when they stifle, burden, or otherwise censor student and departmental activities on the basis of**

¹⁰ *NAACP v. Claiborne Hardware Co.*, 458 US 886, 912-915 (1982).

¹¹ *NAACP v. Claiborne Hardware Co.*, 458 US 886, 913 (1982).

¹² The event is misrepresented by Danielle Haberer in *Algemeiner*, “College Group Uses ‘Game Show’ to Dehumanize Israel” December 18, 2013, available at, <http://www.algemeiner.com/2013/12/18/college-group-uses-game-show-to-dehumanize-israel/>. The author identifies herself as a fellow for Committee for Accuracy in Middle East Reporting in America (CAMERA), an organization dedicated to promoting a positive image of Israel and well known for advocating suppression of views critical of Israel on campus.

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).

the viewpoint expressed, including in the context of the Israeli/Palestinian conflict. For example, DOE found that, at UC Santa Cruz, with respect to speaking events organized or sponsored by University departments featuring critics of Israeli policies, “[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, even when personally offensive and hurtful, is a circumstance that a reasonable student in higher education may experience.**”¹⁴ (Emphasis added.)

DOE’s resolution of these cases should bolster your confidence in defending First Amendment values on your campus by refraining from interference—whether in the form of overt censorship or burdensome scrutiny—with student and faculty events based on their viewpoint on Israeli/Palestinian issues. For your convenience, we have attached DOE’s complete written decisions and a Legal Advisory summarizing the key determinations. We hope these documents will serve as a resource to your university when responding to pressure from advocacy organizations regarding student and faculty speech.

Regarding the University’s recent failure to protect the free speech and due process rights of Students for Justice in Palestine at USF, we ask that USF immediately cease its unconstitutional treatment of SJP.

Furthermore we ask that you contact us before Monday, February 24, 2014 to schedule a meeting to discuss possible remedies. These include certification of the SJP referendum, and assurances that, going forward, the University will refrain from further restriction and heightened scrutiny of SJP based on the content of their expression.

You may contact the undersigned organizations through Thania Diaz Clevenger, at [813-514-1414 Ext 102](tel:813-514-1414), tclevenger@cair.com.

Sincerely,



Thania Diaz Clevenger
CAIR-FLORIDA
Civil Rights Director

s/*Dante P. Trevisani*
Dante P. Trevisani
NLG South Florida Chapter
President



Dima Khalidi
Center for Constitutional Rights
Cooperating Counsel

/s/ *Abraham Shakfeh*
Abraham Shakfeh
Shakfeh Law, Ltd.
Attorney at Law

¹⁴ Letter from DOE to UC Santa Cruz, Aug. 19, 2013, re: Case No. 09-09-2145, available at <http://bit.ly/doeucsc>.

Cc: Joanne M. Adamchak, Associate General Counsel, jadamcha@usf.edu

Attachments:

- 1. Documents related to the nullification of SJP's Divestment Referendum: (a) "03-01-13 Brian Goff Email" (b) 02-28-13 Executive Memorandum 53-012 (c) "SJP BDS Referendum Spring 2013." (d) "02-05-14 Denial of Request for Trial." (e) "02-06-14 Email from Solicitor General Shaheen Nouri." (f) "02-24-13 Email exchange bw Adamchak and SG." (g) "02-21-13 Gary Manka Email"**
- 2. Legal Advisory Concerning Recent DOE Investigations at UC Irvine, UC Berkeley, and UC Santa Cruz**
- 3. UC Santa Cruz Dismissal Letter**
- 4. UC Berkeley Dismissal Letter**
- 5. UC Irvine Dismissal Letter**



[USF-INFO] Apologies from Student Government

McDonald, Danielle <dean@sa.usf.edu>

Fri, Mar 1, 2013 at 2:46 PM

To: [REDACTED]

Members of the Student Body,

It is with great regret that I send this email to you.

I would like to reach out and formally apologize, both on behalf of Student Government and myself, for the referendum that was placed on the ballot pertaining to divestment in corporations potentially linked to Human Rights violations.

It has come to my attention that this referendum has caused a lot of confusion among the Student Body and that many Students have felt it inappropriate to even be on the ballot.

At this time I would like to assure you that it is not the stance of Student Government, it's employees, or any of its affiliates to divest or boycott any corporation. This referendum was not vetted by any branch of Student Government, but was proposed by a group of students so they could gauge the opinion of their peers.

Student Government remains firm in its commitment to Florida students and only getting involved with/taking stances on issues that are directly relevant to them. This, for example, means tuition, fees, creation of new universities, equal access to education, etc. Your Student Government hasn't, and won't, take a stance on international politics that is well beyond our means.

I would again reiterate that we are here for YOU, the Students, which is how this referendum came to light. We accept full responsibility for the confusion and lack of advertisement for this referendum. It is always our #1 priority to make sure the student voice is heard, which is why we added this last minute to the ballot. This did not give us enough time to advertise the ballot to you, for which we apologize. At the time, it was what we felt to be the best thing to do in order to make sure their voices were heard, but we now realize that doing so inhibited our voters from being as informed as possible and voicing their opinions, which is not our intent nor was it the intent of the authors of the referendum.

Due to the large amount of confusion, the lack of notice and the inconsistencies in the referendum with Florida Statute and USF Policies and Regulations, the Referendum will not be recorded as an official SGA Referendum. We, as your Student Government, will do everything possible to make sure that something like this does not happen again. We will also work diligently to make sure that the student voice, regarding this topic, is heard in a manner less confusing and accessible to all students.

The remaining portions of the ballot will still be considered and counted pending certification tomorrow afternoon. If you have yet to vote on the Our Shirt for next year, I highly suggest you make your voices heard and vote at SG.usf.edu/vote.

If you have any questions or concerns, please do not hesitate to contact me.

In Bull Pride,

Brian Goff

Student Body President and University Trustee

Student Government

University of South Florida

4202 East Fowler Avenue, MSC 4300

Tampa, Florida 33620

Office: (813) 974-9900

Fax: (813) 905-9993

www.sg.usf.edu

"Under Florida law, e-mail messages may be considered public records. If you do not want your e-mail released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in person"

This message has been approved under the [USF Mass E-Mail Policy](#)



UNIVERSITY OF SOUTH FLORIDA
STUDENT GOVERNMENT
Office of the President



Executive Memorandum 53-012

To: The Election Rules Commission

From: Brian Goff, Student Body President and University Trustee

Subject: Referendum #2 on the General Election Ballot

Date: February 28, 2013

To Whom it May Concern:

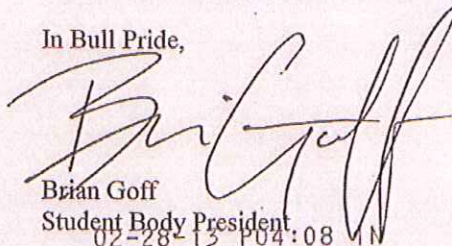
While I understand the Election Rules Commission (ERC) is an independent agency from any of the branches of Student Government, I would be negligent in my duties if I did not make the following request of the ERC.

- That the results of the Student Referendum pertaining to divestment be deemed invalid, null, and void for the following reasons:
 - Conflicts with our Statutes, our University Policies, Local laws and Ordinances, as well as State Laws as determined by University Legal Counsel.
 - Confusion on behalf of the Student Body for what the referendum was asking and what they were voting for.
- That all referendums on the ballot be considered non-binding and not the voice of Student Government or any of its employees or affiliates.
- That the ERC draft a proposal to amend Statutes (Title VII) as well as the constitution so that an incident of this nature does not happen again in the future.
- That said proposals be drafted by the end of business on March 22nd, 2013 so that it may be heard by the 53rd term Senate for consideration and ratification.

I hope you take these recommendations with serious consideration. I do not ask this of you lightly, but only after many intense discussions with Legal Counsel and University Officials.

If you have any questions, do not hesitate to ask and I will do my best to explain.

In Bull Pride,


Brian Goff
Student Body President

02-28-13 P04:08 MN



Executive Memorandum 53-012 Referendum #2 on the General Election Ballot



**University of South Florida
Student Government
Supreme Court
2013 – 2014 Term
Spring Session**



STUDENT GOVERNMENT SUPREME COURT

Solicitor General Shaheen Nouri's Request for Trial

CERTIORARI TO THE SUPREME COURT

DATE SUBMITTED: 5 FEBRUARY 2014
DECISION RENDERED: 5 FEBRUARY 2014

Question before the Court: "Whether the Election Rules Commission had original jurisdiction for the case, and thus violated statutes 501.2 & 501.2.1"

Jurisdiction: According to Title V of the Student Government Statutes:

501.2 The Supreme Court shall have appellate jurisdiction over:

501.2.1 All cases and controversies involving the Election Rules Commission.

Relevant Facts:

Student Body Constitution Article I Sec. II:

"The powers and responsibilities of the Student Government Association...shall not conflict with University Regulations or any other municipal, state, or federal law."

Supreme Court ROP 1.6.:

"The Supreme Court may dismiss a complaint that fails to state a claim for which relief can be granted by the Supreme Court."

Certiorari denied: 1-4-1

Reason for Denial of Certiorari:

Proper standing must be established for certiorari to be granted and a hearing to occur. The appellant does not have standing. Pursuant to Supreme Court ROP 1.6: "The Supreme Court may dismiss a complaint that fails to state a claim for which relief can be granted by the Supreme Court." If the Election Rules Commission's decision were to be overturned, a referendum which violates State Law and University policy would be validated which violates Article I Sec. II of the Student Body Constitution as it must not conflict with "University Regulations or any other municipal, state, or federal law." Thus relief may not be granted by this Court which is beholden to the Student Body Constitution.



Liz Jackson <lizjackson@gmail.com>

Fwd: Request for trial decision

1 message

Students for Justice in Palestine <sjpusf2010@gmail.com> Thu, Feb 6, 2014 at 7:42 PM
To: Ahmad Saadaldin <ahmaji900@gmail.com>, Liz Jackson <lizjackson@gmail.com>, carol sanders <csanders999@yahoo.com>, Abraham Shakfeh <ashakfeh@shakfehlaw.com>, Thania Clevenger <tclevenger@cair.com>

----- Forwarded message -----

From: **Nouri, Shaheen** <shaheennouri@usf.edu>
Date: Thu, Feb 6, 2014 at 5:07 PM
Subject: RE: Request for trial decision
To: Students for Justice in Palestine <sjpusf2010@gmail.com>

SJP,

If I have determined correctly, you seek clarification as to which "**statutes or policies the Supreme Court is claiming we are violating.**"

As these laws and policies are *State* laws and *University* policies, the Student Government Supreme Court would not maintain proper, binding or reasonable jurisdiction in clarifying them. Such as task would fall under the jurisdiction of University General Counsel. From conversation passed down to me from the Counsel regarding this issue, Counsel believes that this issue was addressed and completed during the appropriate ERC decision in 2013, and that SG will not re-open this final case. In an effort to advocate on your behalf, I would like to recommend that if you still wish to gain clarification on the matter from the appropriate source (General Counsel), I can go ahead and request through email that such clarification be forwarded and presented. Again, if you would wish for this route to be taken, let me know.

Shaheen Nouri

Solicitor General

Student Government Association

University of South Florida

Email: shaheennouri@usf.edu

Under Florida law, e-mail messages may be considered public records. If you do not want your e-mail message released in response to a public records request, please do not send electronic mail to this entity. Instead, please contact this individual by phone or in person.

From: Students for Justice in Palestine [mailto:sjpusf2010@gmail.com]
Sent: Thursday, February 06, 2014 2:30 PM
To: Nouri, Shaheen
Subject: Re: Request for trial decision

According to Student Body Constitution Article I Sec. II:

"The powers and responsibilities of the Student Government Association.. shall not conflict with University Regulations or any other municipal, state, or federal law."

The Supreme Court stated in its rejection for trial, "The appellant does not have standing" because the "If the Election Rules Commission's decision were to be overturned, referendum which violates State Law and University policy would be validated which violates Article I Sec. II of the Student Body Constitution"

The Supreme Court never specified which policies were violated. **Students for Justice in Palestine would like a declaratory judgment that will clarify which statues or policies the Supreme Court is claiming we are violating.**

SJP @ USF

On Thu, Feb 6, 2014 at 12:09 AM, Nouri, Shaheen <shaheennouri@usf.edu> wrote:

Mr. Buenaventura,

My clients would like to respectfully gain a little further insight and clarity on the State laws and University regulations that the Court refers to in claiming that they would be violated by reversing the invalidation of the referendum in question.

Thank you,

Shaheen Nouri

Solicitor General

Student Government Association

University of South Florida

Email: shaheennouri@usf.edu

Under Florida law, e-mail messages may be considered public records. If you do not want your e-mail message released in response to a public records request, please do not send electronic mail to this entity. Instead, please contact this individual by phone or in person.

On Feb 5, 2014, at 8:44 PM, "Buenaventura, Bryan" <buenaventura@usf.edu> wrote:

Mr. Nouri,

Attached you will find the decision for request for trial with a summary.

Thank you

V/R

Bryan Buenaventura

Chief Justice

Student Government Supreme Court

University of South Florida

Work Phone: (813) 974-9120

Cell Phone: (813) 531-2715

"Under Florida law, e-mail messages may be considered public records. If you do not want your e-mail released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in person."

<image001.jpg>

<Nouri Request for trial - denial.pdf>

Subject: Re: Student Referendum

Date: Sunday, February 24, 2013 8:53:02 PM ET

From: Manka, Gary

To: Goff, Brian, Gao, Helin, Hussein, Karim

CC: Morgan, Jessica, McDonald, Danielle, Adamchak, Joanne M.

Priority: High

Dear Brian, Jeff and Karim:

As a result of the information provided by university counsel, I am advising that SG remove the referendum from tomorrow's ballot. The conflict with state statutes along with the penalties that may result by moving forward as planned necessitate this advisement on my part. I feel it would be more beneficial for all parties, including those students who submitted the petition, for SG to hold their own referendum later in the semester. This would be the best way to honor the petition submission and represent those students' voices to the student body at large. Of course, this is your decision.

If you have any questions or concerns please feel free to contact me or Danielle McDonald. Thank you.

Respectfully,

Gary Manka, Director
Student Government Advising, Training & Operations
University of South Florida
4202 East Fowler Avenue, MSC 4300
Tampa, Florida 33620
813-974-4704
gmanka@usf.edu

Note: Florida has a very broad public records law. Most written communications to or from state employees regarding state business are public records available to the public and media upon request. Your e-mail communications may therefore be subject to public disclosure.

From: <Adamchak>, "Joanne M." <JAdamcha@usf.edu>

Date: Sunday, February 24, 2013 5:45 PM

To: Gmanka <gmanka@usf.edu>, Brian Goff <bgooff@usf.edu>, "Gao, Helin" <hgao@usf.edu>

Cc: Jessica Morgan <jmmorgan@usf.edu>, "Hussein, Karim" <karimhussein@usf.edu>, "McDonald, Danielle" <dmcDonald@usf.edu>

Subject: RE: Student Referendum

As per my voice message to SGA, the Florida Statutes to refer to are 104.31 and 110.233.

From my reading of the referendum, if SGA permits the referendum the officers are indirectly advising the University on how to purchase commodities etc.

I understand the position of SGA is there is no limitation on the referendum permitted, however, there is an overall duty to abide by state law and University policies and SGA cannot adopt a statute, by law...or referendum that violates those laws and policies.

I don't know what more I can say but to provide you the statute and advise that the referendum as drafted could be interpreted to violate the provisions of the statutes.

1) No officer or employee of the state, or of any county or municipality thereof, except as hereinafter exempted from provisions hereof, shall:

(a) Use his or her official authority or influence for the purpose of interfering with an election or a nomination of office or coercing or influencing another person's vote or affecting the result thereof.

(b) Directly or indirectly coerce or attempt to coerce, command, or advise any other officer or employee to pay, lend, or contribute any part of his or her salary, or any money, or anything else of value to any party, committee, organization, agency, or person for political purposes. Nothing in this paragraph or in any county or municipal charter or ordinance shall prohibit an employee from suggesting to another employee in a noncoercive manner that he or she may voluntarily contribute to a fund which is administered by a party, committee, organization, agency, person, labor union or other employee organization for political purposes.

(c) Directly or indirectly coerce or attempt to coerce, command, and advise any such officer or employee as to where he or she might purchase commodities or to interfere in any other way with the personal right of said officer or employee.

The provisions of this section shall not be construed so as to prevent any person from becoming a candidate for and actively campaigning for any elective office in this state. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects and candidates. The provisions of paragraph (a) shall not be construed so as to limit the political activity in a general, special, primary, bond, referendum, or other election of any kind or nature, of elected officials or candidates for public office in the state or of any county or municipality thereof; and the provisions of paragraph (a) shall not be construed so as to limit the political activity in general or special elections of the officials appointed as the heads or directors of state administrative agencies, boards, commissions, or committees or of the members of state boards, commissions, or committees, whether they be salaried, nonsalaried, or reimbursed for expense. In the event of a dual capacity of any member of a state board, commission, or committee, any restrictive provisions applicable to either capacity shall apply. The provisions of paragraph (a) shall not be construed so as to limit the political activity in a general, special, primary, bond, referendum, or other election of any kind or nature of the Governor, the elected members of the Governor's Cabinet, or the members of the Legislature. The provisions of paragraphs (b) and (c) shall apply to all officers and employees of the state or of any county or municipality thereof, whether elected, appointed, or otherwise employed, or whether the activity shall be in connection with a primary, general, special, bond, referendum, or other election of any kind or nature.

(2) An employee of the state or any political subdivision may not participate in any political campaign for an elective office while on duty.

(3) Any person violating the provisions of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(4) Nothing contained in this section or in any county or municipal charter shall be deemed to prohibit any public employee from expressing his or her opinions on any candidate or issue or from participating in any political campaign during the employee's off-duty hours, so long as such activities are not in conflict with the provisions of subsection (1) or s. 110.233.

History.—s. 8, ch. 26870, 1951; s. 7, ch. 29615, 1955; s. 5, ch. 29936, 1955; s. 1, ch. 59-208; s. 18, ch. 65-379; s. 53, ch. 71-136; ss. 1, 2, ch. 74-13; s. 1, ch. 75-261; s. 30, ch. 79-190; s. 1, ch. 80-207; s. 628, ch. 95-147; s. 1, ch. 2006-275.

From: Manka, Gary
Sent: Sunday, February 24, 2013 4:03 PM
To: Adamchak, Joanne M.; Goff, Brian; Gao, Helin
Cc: Morgan, Jessica; Hussein, Karim; McDonald, Danielle
Subject: Re: Student Referendum

Dear All,
Attached is a pdf copy with referendum rationale and two questions. FYI. --gary

From: <Adamchak>, "Joanne M." <JAdamcha@usf.edu>
Date: Sunday, February 24, 2013 3:41 PM
To: Brian Goff <bgoff@usf.edu>, "Gao, Helin" <hgao@usf.edu>
Cc: Gary Steven Manka <gmanka@usf.edu>, Jessica Morgan <jmmorgan@usf.edu>, "Hussein, Karim" <karimhussein@usf.edu>, "McDonald, Danielle" <dmcDonald@usf.edu>
Subject: RE: Student Referendum

I am not certain what the "question" is....why don't we get the referendum and the question together and we can discuss them on Monday morning.

To expedite this kindly send the text of the issues so we are certain we are all discussing the same things.

Jodi
4-1683

From: Goff, Brian
Sent: Saturday, February 23, 2013 11:15 PM
To: Gao, Helin; Adamchak, Joanne M.
Cc: Manka, Gary; Morgan, Jessica; Hussein, Karim; McDonald, Danielle
Subject: Re: Student Referendum

We will not put the second question on the ballot.

From my HTC Sensation 4G on T-Mobile. The first nationwide 4G network

----- Reply message -----

From: "Gao, Helin" <hgao@usf.edu>
To: "Adamchak, Joanne M." <JAdamcha@usf.edu>
Cc: "Goff, Brian" <bgoff@usf.edu>, "Manka, Gary" <gmanka@usf.edu>, "Morgan, Jessica" <jmmorgan@usf.edu>, "Hussein, Karim" <karimhussein@usf.edu>, "McDonald, Danielle" <dmcDonald@usf.edu>
Subject: Student Referendum
Date: Sat, Feb 23, 2013 7:06 pm

Dear Jodi,

In regards to the student referendum [REDACTED] Through conversation

with you concerning the topic. It is my stance that Student Government should not be making any political statement on behalf of the students. Therefore agreeing with Gary's statement as advised by legal, *"since SG is an arm of the university and since the university does not take on political referendums, SG does not as well."* I understand the topic of the referendum is political.

However, the issue I see is the referendum itself. Stated in SG constitution, *"Any student has the right to call for a University-Wide initiative/referendum election provide that a petition signed by at least 20% of the number of students that voted in the most recent general election"* Article V Section I. It does not outlaw specific topics of the referendum. Neither I or Student Body President Goff has the authority to stop this referendum, since the student has followed all appropriate steps to bring forth this referendum. I feel we are violating the student's right to the referendum process. This non-binding referendum isn't put forth by any branches of Student Government, rather it is an individual student, following the correct process to have their voice hear.

Student Government have passed pervious non-binding resolution in support of political topics, like the polytechnic and tuition issue last year. At this point it would be ill-advised of me to stand between the student and their right to the referendum.

Sincerely

Jeff Gao

Senate President

College of Engineering Senator

University of South Florida Student Government

4202 East Fowler Avenue, MSC 4304

Tampa, Florida 33620

(813) 974-2401 ext. 4857

www.sg.usf.edu

"Under Florida law, e-mail messages may be considered public records. If you do not want your e-mail released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in person"



Muhammad Imam <imam@mail.usf.edu>

student referendum

Manka, Gary <gmanka@usf.edu>

Thu, Feb 21, 2013 at 1:58 PM

To: "Imam, Muhammad" <imam@mail.usf.edu>

Cc: "Gao, Helin" <hgao@usf.edu>, "Morgan, Jessica" <jmmorgan@usf.edu>, "Hussein, Karim" <karimhussein@usf.edu>

Dear Imam,

I regret to inform you that the student referendum will not be placed on the election ballot next week. I have been advised that since SG is an arm of the university and since the university does not take on political referendums, SG does not as well.

Respectfully submitted,

Gary S. Manka, Director

Student Government Advising, Training & Operations

University of South Florida

4202 East Fowler Avenue, MSC 4300

Tampa, FL 33620

[813-974-4704](tel:813-974-4704)

Note: Florida has a very broad public records law. Most written communications to or from state employees regarding state business are public records available to the public and media upon request. Your e-mail communications may therefore be subject to public disclosure.

winmail.dat
4K

FROM: Asian Americans Advancing Justice – Asian Law Caucus • Center for Constitutional Rights • Council on American-Islamic Relations, Florida.

In August 2013, the United States Department of Education’s (DOE) Office of Civil Rights (OCR) closed three investigations into the University of California Berkeley, Irvine, and Santa Cruz opened under Title VI of the Civil Rights Act of 1964.¹⁶ The investigations were prompted by complaints that Jewish students who identify with the State of Israel were deprived of an equal educational opportunity because campus events created a “hostile environment” by featuring criticism of United States foreign policy towards Israel/Palestine and criticism of Israel’s policies towards the Palestinians.

DOE *rejected* these complaints, finding that such events “constitute[] 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 offensive and hurtful, is a circumstance that a reasonable student in higher education may experience.** In this context, the events that the complainants described do not constitute actionable harassment.”¹⁷

Examples of Protected Speech

The Supreme Court has repeatedly recognized that speech on matters of public concern is entitled to the highest protection under the First Amendment.¹⁸ Public universities may violate the Constitution if they interfere with students and faculty engaging in such activities.¹⁹ In closing these three investigations, DOE determined that the following activities are examples of speech on matters of public concern that *do not* constitute actionable harassment under Title VI:

- Mock military checkpoints, whereby students don military costume to enact scenes from the Occupied Palestinian Territories, sometimes during a week of events called “Israeli Apartheid Week.”²⁰
- A professor in a World History course makes comments critical of Israeli military activities without discussing other political issues.²¹

¹⁵ This advisory is intended for informational purposes only as a public service, and is not legal advice or a substitute for legal advice.

¹⁶ DOE’s determination letters in these three cases, explaining its legal findings, can be downloaded at the following URLs: UC Berkeley (<http://bit.ly/doeuch>); UC Santa Cruz (<http://bit.ly/doeucsc>); UC Irvine (<http://bit.ly/doeucirvine>).

¹⁷ See UC Santa Cruz and UC Berkeley determination letters. (Emphasis added.)

¹⁸ “[S]peech on matters of public concern...is at the heart of the First Amendment’s protection.” *Snyder v. Phelps*, 131 S.Ct. 1207, 1215 (2011) (quotations and citations omitted). “[I]f there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” *Id.* at 1219 (quotations and citations omitted).

¹⁹ For additional legal background, please see an October 2011 letter from the National Lawyers Guild concerning universities’ obligations to protect students’ free speech rights at <http://bit.ly/nlgspeech>.

²⁰ See UC Berkeley letter at 1, 3.

²¹ *Id.*

- Debates concerning university divestment from companies that support Israel's military in the Palestinian territories.²²
- A film screening and panel discussion about Palestine featuring guest speakers and moderated by a University professor, with a University department's sponsorship.²³
- A student-organized and University-sponsored "teach-in" called "Understanding Gaza" which featured only speakers perceived to be sympathetic to the Palestinian cause.²⁴
- A University-sponsored program entitled "Costs of War on Israeli Society: Two Unheard Perspectives" and another one entitled "Truth and Consequences of Israel's Gaza Invasion."²⁵

Distinguishing Between Political Disputes and Racial/Ethnic Disputes

DOE determined that in many cases, student-on-student conduct in this context (like "unwelcoming looks," the use of curse words in heated arguments, the use of cameras at protests to record adversaries, and calling someone a "neo-con" or "Zionist") "was based on the student's political views," not "national origin,"²⁶ and thus, did not implicate Title VI.

DOE also considered a small number of allegations pertaining to specific acts of vandalism by unknown perpetrators expressing hatred of an identifiable group, like racially-charged graffiti in bathroom stalls and a swastika on a student's dorm room door. Although DOE OCR did not find Title VI violations in the particular circumstances of these cases, its treatment of the allegations suggests that, if a University is notified of such incidents, it should take prompt action to remedy it, including removing the graffiti and offering support services to affected students.

Important Takeaway Points

1. Criticism of a government's policies is not the same as harassment of students who identify with that government. It is not anti-Semitic or anti-Jewish to criticize Israel.
2. University departments have the right to sponsor panels, discussions, and other events featuring viewpoints critical of a government, including the Israeli government.
3. Universities must honor students' right to engage in expressive conduct on a subject of public concern, including theatrical events and demonstrations concerning the Israeli-Palestinian conflict.

²² *Id.*

²³ *See* UC Santa Cruz letter at 1, 3.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *See* UC Irvine letter at 3-6.



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

AUG 19 2013

Carole E. Rossi
Chief Campus Counsel
University of California, Santa Cruz
200 Clark Kerr Hall
1156 High Street
Santa Cruz, California 95064

(In reply, please refer to OCR case no. 09-09-2145.)

Dear Ms. Rossi:

In a letter dated March 7, 2011, the U.S. Department of Education, Office for Civil Rights (OCR) notified you that it was opening for investigation a complaint against the University of California, Santa Cruz (University). The complaint alleged that Jewish students were subjected to a hostile environment in violation of Title VI of the Civil Rights Act of 1964, and that the University failed to respond appropriately and effectively to notice of the hostile environment.

First, the complaint alleged that an event in January 2009 entitled "A Pulse on Palestine," that included a film and a panel discussion between two external guest speakers that was moderated by a University professor created a hostile environment for Jewish students at the University. Second, the complaint alleged that a "teach in" entitled "Understanding Gaza," that was scheduled to take place in March 2009 "will undoubtedly be highly offensive and hurtful to many Jewish students on our campus." The complaint alleged that the teach-in will be a "one-sided politically motivated event, in which both speakers will undoubtedly vilify and demonize the Jewish State." After the complaint was filed, the complainant further alleged that the University's sponsorship of a program that was scheduled to take place in April 2010 entitled "Costs of War on Israeli Society: Two Unheard Perspectives" would be "deeply offensive and hurtful to many Jewish students on our campus." The complainant alleged that she sent a "strictly informational" e-mail to the University to make the University aware of the effect that an event, entitled "Truth and Consequences of Israel's Gaza Invasion," scheduled to take place on May 10, 2012 and sponsored by a student organization, would have on Jewish students. Finally, the complainant alleged that the University failed to respond promptly and effectively to several reported incidents concerning anti-Semitic graffiti on campus.

OCR enforces Title VI of the Civil Rights Act of 1964 and its implementing regulations. The regulations, at 34 C.F.R. §100.3(a) and (b), prohibit discrimination based on race, color or national origin by recipients of Federal financial assistance. Universities are

responsible under Title VI and the regulations for providing students with a nondiscriminatory educational environment. Harassment of a student based on race, color or national origin can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities. Harassment against students who are members of a discrete religious group, including Jews, triggers a university's Title VI responsibilities when the harassment is based on the group's actual or perceived shared ancestry or ethnic characteristics, rather than solely on its members' religious practices. A university also has responsibility under Title VI when its students are harassed based on their actual or perceived citizenship or residency in a country whose residents share a dominant religion or a distinct religious identity. The University receives funds from the Department and is subject to Title VI and the regulations.

OCR has consistently maintained that the statutes and regulations that it enforces protect students from prohibited discrimination, and do not restrict the exercise of expressive activities or speech that are protected under the First Amendment of the U.S. Constitution. This is particularly relevant in the university environment where academic freedom fosters the robust exchange of ideas. OCR's 1994 guidance regarding harassment on the basis of race, color, or national origin stated that in determining whether a hostile environment existed, the inquiry looks at how the conduct would have adversely affected the enjoyment of some aspect of the recipient's educational program by a reasonable person, of the same age and race as the victim, under similar circumstances. (Racial Incidents and Harassment against Students at Educational Institutions; Investigative Guidance, 59 Fed. Reg. 11448, 11449 (1994)). However, the guidance cautioned that OCR does not "endorse or prescribe speech or conduct codes or other campus policies to the extent that they violate the First Amendment." (*Id.* at 11450, n.7.) In 2003, OCR issued a "Dear Colleague" letter clarifying OCR's enforcement standards in light of First Amendment protections.

In addressing allegations of harassment, OCR recognizes that in order to be prohibited by the statutes and regulations that OCR enforces, the 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. Under OCR's standards, in order to establish a hostile environment conduct must be sufficiently severe, persistent or pervasive as to limit or deny the student's ability to participate in or benefit from the educational program. This requires that conduct be evaluated from the perspective of a reasonable person in the alleged victim's position.

In its investigation, OCR carefully reviewed all of the available information with respect to the allegations, as well as additional allegations that were made after filing the OCR complaint. OCR reviewed the documentation and information that the University provided in response to OCR's data request. In addition, OCR sent a survey regarding students' experiences surrounding the 2009 "A Pulse on Palestine" event to 87 of the 91 students¹ who had signed a petition protesting the event in 2009. OCR received four

¹ The e-mail addresses of four students who signed the petition were illegible.

responses to the surveys: two responders stated that they believed that there was a hostile environment for Jewish students at the University, and two of the responders stated that they did not feel that there was a hostile environment for Jewish students at the University. In addition, OCR interviewed two of the responders² to the survey and one alumna who signed the petition, but did not respond to the survey. One student responder who was interviewed by OCR stated that he never felt discriminated against in any way by the University and that events at his residential college were very open and welcoming of different perspectives. Another student responder stated to OCR during an interview that she believed the campus had a "very strong community of Jewish students" and that in day to day interactions, including classes, there is an open dialogue that is not discriminatory. The alumna who was interviewed by OCR stated that when the University sponsored "A Pulse on Palestine" she felt "completely failed by my school" and stated that it was "hurtful" that the University would sponsor such events. In addition, OCR also reviewed a list provided by the University of the on-campus events and conferences related to Judaism, Israel, Palestine, and/or Islam that took place during the 2008-2009 academic year. A total of 42 events held: 27 were sponsored or co-sponsored by Jewish student groups or faculty; 15 were sponsored or co-sponsored by Muslim student groups or faculty.

Based on the results of its investigation, OCR is closing this complaint. The facts relevant to OCR's determination and the reasons therefor are set forth below.

Of the four events alleged in the OCR complaint, "A Pulse on Palestine" and "Truth or Consequences of Israel's Gaza Invasion" took place as scheduled. The two other events that were alleged to be harassing, "Understanding Gaza" and "Costs of War on Israeli Society: Two Unheard Perspectives," were cancelled. All 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, even when personally offensive and hurtful, is a circumstance that a reasonable student in higher education may experience. In this context, the events that were described do not constitute actionable harassment.

With regard to the allegation concerning anti-Semitic graffiti on campus, OCR determined that once such graffiti was reported, the University took prompt action to investigate the circumstances and to remove the graffiti.

Accordingly, OCR is closing the complaint as of the date of this letter. This concludes OCR's consideration of this complaint. OCR is notifying the complainant by concurrent letter.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

² Two of the survey responders did not respond to OCR's requests for interview.

Please be advised that the University may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personal information which, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

If you have any questions about this letter, please call our office at 415-486-5555.

Sincerely,

A handwritten signature in black ink, appearing to be 'ZP', with a long horizontal line extending to the right.

Zachary Pelchat
Team Leader



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

AUG 19 2013

Robert J. Birgeneau
Chancellor
Office of the Chancellor
200 California Hall # 1500
University of California at Berkeley
Berkeley, California 94720-1500

(In reply, please refer to case no. 09-12-2259.)

Dear Chancellor Birgeneau:

In a letter dated September 11, 2012, the U.S. Department of Education, Office for Civil Rights (OCR), notified you that it was opening for investigation a complaint against the University of California, Berkeley (University). The complaint alleged that peers subjected Jewish students at the University to a hostile environment on the basis of their national origin, and the University failed to respond promptly and effectively to notice of the hostile environment.

The complaint and the additional allegations that the complainants made after filing the complaint described five timely¹ incidents that they alleged created a hostile environment for Jewish students. First, the complaint alleged that mock military checkpoint demonstrations held on campus during Israeli Apartheid Week by Students for Justice in Palestine in 2012, created a hostile environment on the basis of national origin for Jewish students. Second, the complainants alleged that during a Survey of World History course, a professor offended a Jewish student when she commented on Israeli air strikes but did not discuss any other current political issues. Third, the complainants alleged that participants made statements against Jews during recent Associated Students Union of the University of California meetings to discuss a student senate bill resolution calling for the divestment of University funds from companies that support Israel's military in the Palestinian territories. Fourth, the complainants alleged that a Jewish student complained that someone defaced the sign on campus for Tikvah, a Jewish student organization. Finally, the complainants alleged that someone drew a swastika on a Jewish student's dormitory room door in December 2012.

OCR enforces Title VI of the Civil Rights Act of 1964 and its implementing regulations. The regulations, at 34 C.F.R. §100.3(a) and (b), prohibit discrimination based on race, color or national origin by recipients of Federal financial assistance. Universities are

¹ Section 106 of OCR's *Case Processing Manual* provides as follows: "OCR will take action only with respect to those complaint allegations . . . that have been filed within 180 calendar days of the date of the last act of alleged discrimination unless the complainant is granted a waiver under Section 107."

responsible under Title VI and the regulations for providing students with a nondiscriminatory educational environment. Harassment of a student based on race, color or national origin can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities. Harassment against students who are members of a discrete religious group, including Jews, triggers a university's Title VI responsibilities when the harassment is based on the group's actual or perceived shared ancestry or ethnic characteristics, rather than solely on its members' religious practices. A university also has responsibility under Title VI when its students are harassed based on their actual or perceived citizenship or residency in a country whose residents share a dominant religion or a distinct religious identity. The University receives funds from the Department and is subject to Title VI and the regulations.

OCR has consistently maintained that the statutes and regulations that it enforces protect students from prohibited discrimination, and do not restrict the exercise of expressive activities or speech that are protected under the First Amendment of the U.S. Constitution. This is particularly relevant in the university environment where academic freedom fosters the robust exchange of ideas. OCR's 1994 guidance regarding harassment on the basis of race, color, or national origin stated that in determining whether a hostile environment existed, the inquiry looks at how the conduct would have adversely affected the enjoyment of some aspect of the recipient's educational program by a reasonable person, of the same age and race as the victim, under similar circumstances. (Racial Incidents and Harassment against Students at Educational Institutions; Investigative Guidance, 59 Fed. Reg. 11448, 11449 (1994). However, the guidance cautioned that OCR does not "endorse or prescribe speech or conduct codes or other campus policies to the extent that they violate the First Amendment." (*Id.* at 11450, n.7.) In 2003, OCR issued a "Dear Colleague" letter clarifying OCR's enforcement standards in light of First Amendment protections.

In addressing allegations of harassment, OCR recognizes that in order to be prohibited by the statutes and regulations that OCR enforces, the 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. Under OCR's standards, in order to establish a hostile environment conduct must be sufficiently severe, persistent or pervasive as to limit or deny the student's ability to participate in or benefit from the educational program. This requires that conduct be evaluated from the perspective of a reasonable person in the alleged victim's position.

In its investigation, OCR carefully reviewed all of the information that we found in our investigation of the allegations that occurred within 180 days of the date that the complainants filed the complaint. OCR sent letters to the leaders of seven Jewish student organizations inviting members to contact OCR if they observed the mock military checkpoint that occurred in Sproul Plaza in 2012. OCR interviewed the complainants, Jewish student witnesses provided by the complainants, and student witnesses who responded to letters OCR sent to University Jewish student

organizations. OCR also interviewed student witnesses who are members of Students for Justice in Palestine and who contacted OCR when they heard about the investigation. In addition, OCR observed three of the days during the Israel Peace and Diversity Week that took place on the University's campus from March 3-9, 2013, including a "Peace Rally" when students held a counter-demonstration involving a cardboard box cut out and painted to look like a bus, which read "Segregated Bus" and "No Palestinians."

Based on the results of its investigation, OCR is closing this complaint. The facts relevant to OCR's determination and the reasons therefor are set forth below.

OCR has determined that the first three allegations in the complaint describe events that 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 offensive and hurtful, is a circumstance that a reasonable student in higher education may experience. In this context, the events that the complainants described do not constitute actionable harassment.

With regard to the fourth allegation, OCR's investigation determined that the alleged defacement of the Tikvah sign was not reported. The University had no record of the incident and the student witnesses who were interviewed by OCR did not corroborate the complainants' allegation that the incident had been reported to the University; they further informed OCR that the organization fixed the sign after it was defaced. With regard to the fifth allegation, the complainants informed OCR that the student did not report the incident; the student removed the swastika herself after she discovered it. Accordingly, the fourth and fifth allegations do not state claims because the University neither knew nor reasonably should have known about the alleged harassing events.

Accordingly, OCR is closing the complaint as of the date of this letter. This concludes OCR's consideration of the complaint. OCR is notifying the complainants by concurrent letter.


This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and it should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainants may have the right to file a private suit in federal court whether or not OCR finds a violation.

Federal regulations prohibit the Recipient from retaliating against the complainants or from intimidating, threatening, coercing, or harassing the complainants or anyone else because the complainants filed a complaint with OCR or because the complainants or anyone else take part in the complaint resolution process.

Under the Freedom of Information Act, it may be necessary to release this document and related records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

If you have any questions about this letter, please call our office at 415-486-5555.

Sincerely,



Zachary Pelchat
Team Leader

cc: Christopher M. Patti, Esq.
Chief Campus Counsel



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

AUG 19 2013

Dr. Michael V. Drake
Chancellor University of California, Irvine
The Chancellor's Office
510 Administration
Irvine, CA 92697-1900

(In reply, please refer to OCR case number 09-07-2205)

Dear Chancellor Drake:

In a letter dated April 25, 2008, the U.S. Department of Education, Office for Civil Rights (OCR), notified you that it was opening for investigation a complaint against the University of California, Irvine (University). The complaint alleged that Jewish students were harassed and subjected to a hostile environment, on the basis of their national origin, with respect to the following incidents:

1. *Hostility toward a student who just completed her freshman year because she is Jewish and pro-Israel.*
2. *Harassment of a student reporter as she attempted to interview Muslim Student Union (MSU) guest Ward Churchill in May 2007 during "Holocaust Memorial Week." Specifically, a Muslim student repeatedly pushed a camera in the student reporter's face. The student filed a complaint with the University, but was not satisfied with the University's response.*
3. *Harassment by a University student of a rabbi visiting the campus in May 2007 for an "Israel: Apartheid Resurrected" event. Specifically, the student cursed at the rabbi and asked him, "Don't you have somebody's money to steal?" Nearby students, including at least one Jewish student, heard the comment.*
4. *Harassment of a Jewish student at an MSU-sponsored event on May 16, 2007. Specifically, another student called the Jewish student a "whore" and a "slut" and repeatedly used the word "f---" while yelling at her. The individual allegedly yelled at other students present, calling them "animals."*
5. *Coercion and intimidation of a student by MSU students following his attempt to film an MSU event in May 2007.*
6. *A University administrator harassed a Jewish student based on her national origin by calling her a "troublemaker" after she complained to him about an allegedly harassing incident.*
7. *At the MSU's request, the University prevents the recording of MSU-sponsored speakers, even ejecting students who attempt to make such recordings from events.*

8. *The University has failed to discipline MSU members for disseminating false information that inflames hatred for Jews and Israel, despite Jewish students complaining that the falsehoods violate University codes of conduct. Specifically, during May 2007's "Israel: Apartheid Resurrected" week, the MSU distributed flyers attributing, allegedly falsely, an anti-Israel statement to Nelson Mandela.*
9. *During spring 2007 events, the University failed to stop MSU members from displaying "UC" on t-shirts and flyers containing anti-Israel sentiments, for example, t-shirts reading, "UC Intifada: How You Can Help Palestine." The University did not respond to Jewish students' complaints that such uses violate University policies that prohibit the use of the University's name, insignia and seal, for political purposes and activities.*

OCR enforces Title VI of the Civil Rights Act of 1964 and its implementing regulations. The regulations, at 34 C.F.R. §100.3(a) and (b), prohibit discrimination based on race, color or national origin by recipients of Federal financial assistance. Universities are responsible under Title VI and the regulations for providing students with a nondiscriminatory educational environment. Harassment of a student based on race, color or national origin can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities. Harassment against students who are members of a discrete religious group, including Jews, triggers a university's Title VI responsibilities when the harassment is based on the group's actual or perceived shared ancestry or ethnic characteristics, rather than solely on its members' religious practices. A university also has responsibility under Title VI when its students are harassed based on their actual or perceived citizenship or residency in a country whose residents share a dominant religion or a distinct religious identity. The University receives funds from the Department and is subject to Title VI and the regulations.

OCR has consistently maintained that the statutes and regulations that it enforces protect students from prohibited discrimination, and do not restrict the exercise of expressive activities or speech that are protected under the First Amendment of the U.S. Constitution. This is particularly relevant in the university environment where academic freedom fosters the robust exchange of ideas. OCR's 1994 guidance regarding harassment on the basis of race, color, or national origin stated that in determining whether a hostile environment existed, the inquiry looks at how the conduct would have adversely affected the enjoyment of some aspect of the recipient's educational program by a reasonable person, of the same age and race as the victim, under similar circumstances. (Racial Incidents and Harassment against Students at Educational Institutions; Investigative Guidance, 59 Fed. Reg. 11448, 11449 (1994). However, the guidance cautioned that OCR does not "endorse or prescribe speech or conduct codes or other campus policies to the extent that they violate the First Amendment." (*Id.* at 11450, n.7.) In 2003, OCR issued a "Dear Colleague" letter clarifying OCR's enforcement standards in light of First Amendment protections. In addressing allegations of harassment, OCR recognizes that in order to be prohibited by the statutes and regulations that OCR enforces, the 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. Under OCR's standards, in order to establish a hostile environment conduct must be sufficiently severe, persistent or pervasive as to limit or deny the student's ability to participate in or benefit from the educational program. This requires that conduct be evaluated from the perspective of a reasonable person in the alleged victim's position.

In its investigation, OCR interviewed the complainant and each of the students identified by the complainant as witnesses for each of the allegations. OCR also carefully reviewed all documentation and information provided by the complainant and the University.

Based on the results of the investigation, OCR is closing the complaint. The facts relevant to OCR's determination and the reasons therefor are set forth below.

- 1. Hostility toward a student who just completed her freshman year because she is Jewish and pro-Israel.*

In her interview with OCR, the witness described a relationship with Muslim students who lived in her dormitory so contentious that she felt compelled to move to a new residence during the spring 2007 semester. According to the student, the animosity stemmed from the student's objection to the Muslim students' protests at a lecture that Daniel Pipes delivered on campus and the Muslim students' reactions to her objection. The student stated that she had been friends with the Muslim students until she learned of their protest, at which point she stopped talking to them. The Muslim students responded by ceasing communication with her. This situation ultimately led to a confrontation between the student and the Muslim students, during which she called them anti-Semitic and they called her a racist. Subsequently, the student and her mother requested that the student be moved to a new dormitory; the request was granted. These facts do not support a conclusion that the student was harassed because of her national origin; rather, they demonstrate that the conflict was related to the different political views of the participants.

The student also stated that she perceived general hostility toward herself and Jewish students at anti-Israel events, but did not describe any specific conduct other than "unwelcoming looks." This allegation fails to state a claim of unlawful harassment as "unwelcoming looks," without more, are not sufficiently serious to establish that college students were subjected to a hostile environment.

The student further stated that an unknown person smashed a pumpkin placed outside her campus apartment on which she had carved "shalom"; she stated that she did not report the smashing of the pumpkin to the University. This allegation fails to state a claim because there is no evidence that the pumpkin was smashed because of the

student's national origin; furthermore, there is no evidence that the University knew or reasonably should have known about the incident.

2. *Harassment of a student reporter as she attempted to interview MSU guest Ward Churchill in May 2007 during "Holocaust Memorial Week." Specifically, a Muslim student repeatedly pushed a camera in the student reporter's face. The student filed a complaint with the University, but was not satisfied with the University's response.*

The student informed OCR that students belonging to MSU often positioned cameras in the faces of individuals with pro-Israel or politically conservative views as a tactic to intimidate them, and surmised she was targeted during the event that took place in May 2007 because she was wearing a t-shirt reading "I love Israel." She stated that, although she was born in Israel, she did not think students on campus knew that she was Israeli, or even that she was Jewish. However, she stated that she believed that she was commonly recognized as pro-Israel, and believed she was targeted because of this. This allegation fails to state a claim because there is insufficient evidence that the student was subjected to unlawful harassment because of her national origin; rather, the evidence supports the conclusion that the alleged harassment was based on the student's political views.

3. *Harassment by a University student of a rabbi visiting the campus in May 2007 for an "Israel: Apartheid Resurrected" event. Specifically, the student cursed at the rabbi and asked him, "Don't you have somebody's money to steal?" Nearby students, including at least one Jewish student, heard the comment.*

OCR interviewed two students identified by the complainant as witnesses to this incident. These students understood the statement to the rabbi to be a slur against Jews, and stated that Jewish students who overheard the comment were offended. Although offensive, this statement is not sufficiently serious as to deny or limit students' ability to participate in or benefit from the University's program.

4. *Harassment of a Jewish student at an MSU-sponsored event on May 16, 2007. Specifically, another student called the Jewish student a "whore" and a "slut" and repeatedly used the word "f---" while yelling at her. The individual allegedly yelled at other students present, calling them "animals."*

The student informed OCR that she felt the alleged harasser singled her out because she was wearing a pro-Israel t-shirt, and because he heard her express disagreement with statements of an MSU guest who was speaking when the incident occurred. As stated by the student subjected to the alleged harassment as well as witnesses to the incident interviewed by OCR, the student was targeted because she was perceived to be pro-Israel. This allegation fails to state a claim because there is insufficient evidence

that the student was subjected to unlawful harassment because of her national origin; rather, the evidence supports the conclusion that the alleged harassment was based on the student's political views. Furthermore, even if the witness had alleged that these comments constituted sexual harassment, they were not sufficiently serious as to deny or limit the student's ability to participate in or benefit from the University's program.

5. Coercion and intimidation of a student by MSU students following his attempt to film an MSU event in May 2007.

The student informed OCR that he was videotaping a speech given in May 2007 by a speaker invited to campus by the MSU when several members of the MSU told him to stop filming. He stated that he was photographed twice by an MSU student with members of the MSU following the event. The witness stated that he is not Jewish and that he had never had any contact with these individuals prior to the event. He further stated that he believed that the reason he was singled out by the members of the MSU was because he was filming. A University administrator witnessed this incident and informed the student that he was not permitted to film the event. The student stated that he subsequently filed an anonymous complaint with the University in which he complained that he was not permitted to film the MSU event; he stated that he did not know whether the University investigated his complaint.

The student also described an incident in May 2008. According to the student, because he and his brother were filming the audience at another MSU event, an MSU member charged at and threatened his brother. At the same event, an MSU member blocked the student's path and took pictures of him. The student also described additional instances of antagonism by MSU members when he attempted to film subsequent events. However, because some MSU members had called him a "Zionist" and a "neo-con," the student stated that he believed that they perceived him to be a supporter of Israel and of students who supported the state of Israel. Although the University's Director of Student Conduct witnessed the incident involving the student and his brother, and invited the student to file a complaint, the student did not do so.

These allegations fail to state a claim because the facts demonstrate that the student was the subject of the alleged harassing incident in May 2007 not because of his national origin but rather because of his filming activities and, in the May 2008 and the later events, because of his perceived support for the state of Israel and for students who were supporters of the state of Israel.

6. A University administrator harassed a Jewish student based on her national origin by calling her a "troublemaker" after she complained to him about an allegedly harassing incident.

The student, who is the subject of Allegation Two above, informed OCR that she had a history of actively condemning pro-terrorist and academically dishonest events, blogging about campus events and complaining to administrators about on-campus treatment of

Jewish students, pro-Israel students and students perceived to be pro-Israel. The specific alleged disparaging statement made about her by the administrator was, according to the complaint, in response to the student's objection to an MSU student putting a camera in her face. As discussed under Allegation Two, the student stated to OCR that she believed that this incident occurred because she is pro-Israel. This allegation fails to state a claim because there is insufficient evidence that the student was subjected to unlawful harassment because of her national origin; rather, the evidence supports the conclusion that the alleged harassment was based on the student's political views.

7. *At the MSU's request, the University prevents the recording of MSU-sponsored speakers, even ejecting students who attempt to make such recordings from events.*¹

The complainant informed OCR that she did not know of any student groups other than the MSU that have requested that the University prevent the recording of their events or speakers. Because there is no evidence that the University treated any other similarly-situated student groups differently (i.e., by denying their requests to prevent recording of their events and ejecting students who attempt to make such recordings), there is no basis to infer that the University's actions constituted unlawful discrimination against Jewish students on the basis of their national origin.

8. *The University has failed to discipline MSU members for disseminating false information that inflames hatred for Jews and Israel, despite Jewish students complaining that the falsehoods violate University codes of conduct. Specifically, during May 2007's "Israel: Apartheid Resurrected" week, the MSU distributed flyers attributing, allegedly falsely, an anti-Israel statement to Nelson Mandela.*

The distribution of flyers by MSU members expressing allegedly false and inflammatory anti-Israel information during "Israel: Apartheid Resurrected" week in May 2007 constituted expression by MSU members on matters of public concern directed to the University community. In the university environment, exposure to such robust and discordant expressions, even when personally offensive and hurtful, is a circumstance that a reasonable student in higher education may experience. In this context, the event described by the complainant does not constitute actionable harassment.

9. *During spring 2007 events, the University failed to stop MSU members from displaying "UC" on t-shirts and flyers containing anti-Israel sentiments, for example, t-shirts reading "UC Intifada: How You Can Help Palestine." The University did not respond to a Jewish student's complaint that such use*

¹ The complainant acknowledged that the University has changed its practice since OCR opened this complaint.

violates University policies that prohibit the use of the University's name, insignia and seal, for political purposes and activities.

OCR's investigation revealed that the student reporter who was the subject of Allegation Two above sent an e-mail to the University's Director of Student Conduct on May 30, 2007, in which she complained about the use of "UC" on t-shirts and flyers that contained anti-Israel sentiments and cited the University policy that she believed that the MSU had violated. The Director responded to the student reporter on May 31, 2007, acknowledging her complaint and stating, "This e-mail is to verify that I have received your complaint and that we will look into this matter regarding the use of the university name."

This allegation does not state a claim because there is no evidence that the University's alleged failure to enforce its policies was based on discrimination that is prohibited by Title VI.

OCR is closing the complaint as of the date of this letter and will notify the complainant by concurrent letter.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and it should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.


OCR routinely advises recipients of Federal funds and public education entities that Federal regulations prohibit intimidation, harassment or retaliation against those filing complaints with OCR and those participating in the complaint resolution process. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Page 8 – (09-07-2205)

If you have any questions about this letter, please call our office at 415-486-5555.

Sincerely,



Zachary Pelchat
Team Leader