



May 21, 2013

Via U.S. Mail

Arthur Zeidman
Gemini McCasland
Office for Civil Rights, San Francisco Division
U.S. Department of Education
50 Beale Street, Suite 7200
San Francisco, CA 94105-1813

Re: Pending Title VI Investigations of University of California Campuses

Dear Mr. Zeidman and Ms. McCasland:

I am writing you again on behalf of the American Civil Liberties Union of Northern California (ACLUNC) concerning investigations that your office is conducting of Title VI complaints filed at three University of California campuses. Each complaint charges that the University has tolerated a climate of anti-Semitism that has created a hostile environment for Jewish students.

I wrote to you on December 10, 2012 with respect to the complaint against the University of California Berkeley. (Case No. 09-12-2259). The concerns of the ACLUNC were triggered by the fact that the complaint on its face called for a civil rights investigation based primarily on the constitutionally protected activities of individual students and student organizations (Students for Justice in Palestine (SJP) and the Muslims Student Association (MSA)), who are opposed to the policies and practices of the State of Israel. It appeared to us that the underlying premise of the complaint was that speech and expressive conduct that communicates strong opposition to the policies of Israel or to the principles of Zionism, and that was offensive to some Jewish students, could in and of itself be evidence of sanctionable anti-Semitism. As I said (and discussed in some detail) in my letter dated December 10th, “these premises, if accepted, can foster government restriction of speech based on content and viewpoint that *goes far beyond controlling legal precedent*”.

MICHELLE A. WELSH, CHAIRPERSON | DENNIS McNALLY, AJAY KRISHNAN, FARAH BRELVI, ALLEN ASCH, VICE CHAIRPERSONS | KENNETH J. SUGARMAN, SECRETARY/TREASURER
ABDI SOLTANI, EXECUTIVE DIRECTOR | CHERI BRYANT, DEVELOPMENT DIRECTOR | SHAYNA GELENDER, ORGANIZING & COMMUNITY ENGAGEMENT DIRECTOR | REBECCA FARMER, COMMUNICATIONS DIRECTOR
ALAN SCHLOSSER, LEGAL DIRECTOR | MARGARET C. CROSBY, ELIZABETH GILL, LINDA LYE, JULIA HARUMI MASS, LINNEA NELSON, MICHAEL RISHER, JORY STEELE, STAFF ATTORNEYS
PHYLLIDA BURLINGAME, ALLEN HOPPER, NATASHA MINSKER, NICOLE A. OZER, POLICY DIRECTORS | STEPHEN V. BOMSE, GENERAL COUNSEL



Mr. Arthur Zeidman
May 21, 2013
Page 2

The ACLUNC has always been supportive and appreciative of the role of OCR to investigate civil rights complaints, and to act when it finds that discriminatory harassment has created a hostile environment for students based on their race, national origin or other protected categories covered by Title VI. In fact, we have many times used your complaint process when we felt that there were civil rights issues that fell within your purview. Our letter was not intended to criticize OCR for investigating this matter. However, in view of specific circumstances surrounding this particular complaint, we believed that it was important for this investigation to be handled and completed as expeditiously as possible consistent with a full and fair review of the facts, but also sensitive to the free speech rights that were also at stake. The concern that we expressed in our first letter with the chilling effects of a protracted investigation remain, and in fact are now heightened, in view of the five months that have passed since our first letter was sent.

A government investigation of a complaint which targets in large part the free speech activities of two student organizations undeniably has the potential for chilling protected political speech. This particular investigation should have been informed by the fact that a federal judge, upon reviewing allegations virtually identical to those made in the OCR complaint, dismissed it because “*a very substantial portion of the conduct to which plaintiffs object represents pure political speech and expressive conduct, in a public setting, regarding matters of public concern, which is entitled to special protection under the First Amendment.*” *Felber v. Yudof*, 851 F. Supp 2d 1182, 1188 (N.D.Cal 2011)(emphasis added). Furthermore, these “matters of public concern” – the interactions between the Israeli government and the Palestinians in the West Bank and Gaza – remain the subject of significant controversy and debate on University of California campuses today.

Students who support (or might consider supporting) the positions of the SJP and the MSA have faced the fact of an ongoing federal government investigation of these organizations for over two years. The pendency of the investigation itself could dissuade students (particularly students who are sympathetic but not yet committed) from participating in the activities of these groups, for fear of adverse personal consequences flowing from the accusations that they are violating the federal civil rights of other students and involved in unlawful hate speech. That these serious allegations of violations of federal law remain unresolved, years after a federal court has deemed the activities fully protected by the First Amendment, is extremely troubling. Further delay in reaching any resolution or conclusion raises the possibility that MSA and SJP, their members and sympathizers, and the political views that they espouse, will all remain under a cloud of suspicion for a significant portion of some students’ undergraduate career at UC, and perhaps the entire four years!

Mr. Arthur Zeidman
May 21, 2013
Page 3

Therefore, we urge you again to make a fair, but also timely, resolution of these investigations a priority matter for your office.

Sincerely,



Alan L. Schlosser
Legal Director

ALS:cl

cc: Seth M. Galanter,
Acting Assistant Secretary for Civil Rights, U.S. Department of Education
Sandra G. Battle,
Deputy Assistant Secretary for Enforcement, U.S. Department of Education