



November 7, 2012

Via E-mail

U.S. Commission on Civil Rights
1331 Pennsylvania Ave., NW, Suite 1150
Washington, DC 20425
publiccomments@usccr.gov

Dear Commissioners,

We are twenty-three student organizations from California universities submitting this public comment in advance of the November 9, 2012 briefing at the US Commission on Civil Rights (USCCR) regarding federal engagement with Arab and Muslim Civil Rights. The undersigned California student groups include chapters of the Muslim Student Association (MSA), representing hundreds of Muslim students of various ethnic backgrounds, and Students for Justice in Palestine (SJP), a political advocacy group with a diverse membership, including many of Arab, Muslim, or Jewish background. The Arab Recruitment and Retention Center, which supports Arab student enrollment at UC Berkeley, has also signed.

We wish to express our alarm about current developments on University of California (UC) campuses that threaten our civil rights, including a series of Department of Education (DOE) investigations. We also wish to voice our strong objection to the participation of the Louis Brandeis Center for Human Rights on this panel.

Abuse of Title VI to Silence Political Groups and Marginalize Arab and Muslim Students

Our universities now find themselves under constant pressure by off-campus organizations to clamp down on our speech activities. That external pressure has translated into significant hurdles on our campuses, where events by Arab and Muslim students pertaining to the Israeli/Palestinian conflict are heavily scrutinized by administrators who attempt to interfere with many aspects of the organizing, planning, and execution of events like movie screenings, lectures, and non-violent activities like theatrical checkpoints and "die-ins." In many cases, administrators impose high security fees on our events, straining our budgets and making it harder to continue our programming. As a result, many students have been chilled and deterred from participation in our organizations. These hurdles threaten our civil rights and disproportionately impact Arab and Muslim students. We believe they are unconstitutional.

Two recent developments are particularly disturbing. In July, a University of California working group released a report falsely claiming that our activities should be understood as “hate speech” that creates a hostile campus climate for Jewish students.¹ In August, the California State Assembly (CSA) passed, with no real discussion or debate, House Resolution 35 praising that report and making the blatantly unconstitutional recommendation that “no public resources” be used to facilitate what it mislabels anti-Semitic activity.²

We agree with the goal of combating all forms of bigotry, including anti-Semitism, but these two documents define anti-Semitism to include a wide array of legitimate political speech that is not based in hate or bigotry, nor targeted at Jewish people in any way. For example, the UC report cites “mock checkpoints” which it says consist of “students re-enacting scenes in which Israeli soldiers are portrayed as engaging in indiscriminate acts of violence and degradation of Palestinians; and the dissemination of literature and information which accuse Israel of ‘genocide’, ‘ethnic cleansing’, and the imposition of an ‘apartheid state.’” Similarly, the resolution asserted that “anti-Semitic discourse” includes claims that “Israel is a racist, apartheid, or Nazi state, that Israel is guilty of heinous crimes against humanity such as ethnic cleansing and genocide.” Although UC President Mark Yudof has distanced himself from any suggestion that speech should be banned, Arab, Muslim, and other students continue to feel tremendous pressure on UC campuses and many UC administrators continue to stigmatize speech critical of Israel in response to off-campus lobbying.

The framing and language of these two documents track provisions of Title VI of the Civil Rights Act of 1964, which we understand to prohibit discrimination by federally funded universities, defined as including toleration of “hostile environments” based on race, ethnicity, national origin, and in some cases, religion. Unsurprisingly, politically motivated individuals recently filed a federal lawsuit laden with Islamophobic and baseless allegations that the MSA at Berkeley has a “pro-terrorist” agenda, that it is an “incubator to recruit and radicalize students to support Hamas,” and that membership in the MSA at Berkeley is a prerequisite to membership in the “Muslim Brotherhood.” These are particularly damaging allegations for our students in the post-9/11 environment and they create a climate of intimidation and fear.

That lawsuit was first dismissed,³ then settled with no real concession by the university.⁴ Immediately afterwards, the plaintiffs’ attorneys filed a nearly identical complaint with the U.S. Department of Education’s Office for Civil Rights (OCR). The OCR has announced that it will open an investigation. The investigation is based on the allegation that the very same activities

¹ See http://www.universityofcalifornia.edu/news/documents/campus_climate_jewish.pdf.

² See http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0001-0050/hr_35_bill_20120828_amended_asm_v97.html.

³ *Felber v. Yudof*, 851 F.Supp.2d 1182 (N.D. Cal. 2011).

⁴ See <http://newscenter.berkeley.edu/2012/07/12/plaintiffs-in-felber-v-yudof-case-dismiss-lawsuit/>.

described by the UC report and the California State Assembly resolution — mock checkpoints, criticism of Israel — create a “hostile environment” for Jewish students at UC Berkeley.

Although the complaint cites a handful of other isolated incidents for which our groups are not responsible (like anonymous graffiti and one allegation of assault involving two individuals), the underlying logic associating criticism of Israel with hate speech is unacceptable.

We believe that OCR must vigorously pursue its mission by investigating civil rights complaints. However, we are worried that the use of Title VI complaints as a political weapon constitutes a dangerous precedent that will create great harm for Arab and Muslim students on campus, while doing nothing to protect the civil rights of Jewish students, many of whom support our organizations or are members in them. The characterization of our activities as anti-Semitic and the recommendation that they be banned or curbed in any way not only misrepresent our groups’ ardently anti-racist and human rights-based principles, but distract against actual anti-Semitism that expresses hatred against Jews based on their religious or ethnic identity. It also overlooks the racism and Islamophobia to which our own communities have been subjected.

We are confident that if OCR pursues its investigations faithfully and comprehensively, aware of the political context, it will recognize the frivolity of these complaints. It should be clear that attempts to cast criticism of Israel as motivated by anti-Semitism simply ignore the facts. Israel is a modern nation-state and, like any other state, a legitimate subject of criticism when it violates international norms. Our groups’ criticism of Israel is not based on the identity of the majority of its citizens, but on the fact that it cannot be denied with any seriousness that Israel’s occupying army makes daily life miserable for millions of civilians, including the relatives and friends of members of our organizations. Israel’s extensively documented record of international law and human rights violations since 1948 is a legitimate cause for criticism, particularly since many of our students and their families were expelled from their homeland and continue to deal with discriminatory policies when they attempt to travel or return to the Occupied West Bank or present-day Israel.

We are motivated by our knowledge of such facts and our own personal experiences to cast as much attention as possible onto a pressing issue of international importance — one that is especially important for Americans, whose taxes subsidize Israel’s occupation to the order of several billion dollars a year. When groups with a political agenda dub us anti-Semitic, they erase all of our real motivations in an attempt to make the case that we are motivated by irrational hatred, rather than our values and factual understanding of a political conflict. We consider it anti-Semitic to hold Jewish people around the world culpable for the acts of Israel, in the same way that it is Islamophobic to hold Muslim people around the world culpable for the acts of political entities that claim to speak in their name. However, the organizations attempting to silence us fail to make this important distinction, often for both Jews and Muslims, leading down a dangerous path.

Moreover, describing government policies as “genocidal,” “ethnic cleansing,” or “apartheid” — regardless of accuracy — is a matter of political debate protected under our Constitution. To the same extent that others have a right to claim that Israel is a democracy, we stand by our right to claim otherwise. We stand by our right to say on our campuses that when another country assigns rights to its citizens differently based on their ethnicity or religion, that is not democratic; that when another country forces its teenagers at the age of 18 to don military uniforms and take up arms to occupy another people, that is not democratic; that when another country creates settlements on occupied land accessible only by people of a particular religion, that is not democratic. We understand that other students and politicians support such Israeli policies — they have the right to express it, just as we have the right to express our opposition. But universities certainly have no right to censor our views or punish us for them. To do so is unconstitutional and discriminatory, contradicting a core American value. We know of no instance in which student groups vocally supporting Israeli policies have been similarly scrutinized or burdened.

The Department of Education should be protecting our rights, but its investigations of UC Berkeley, UC Santa Cruz, and UC Irvine may harm them if they are undertaken in a politicized manner under pressure from lobby groups. We are confident that the USCCR will adopt a strong position in favor of freedom of speech about legitimate political issues and that it will support us as we face a campaign that marginalizes communities that have faced intolerance, violence, and bigotry since 9/11, including on campuses. Jewish, Muslim, and Arab students all have an interest in non-discriminatory educational settings; indeed, there is no contradiction between a welcoming educational environment for students of all backgrounds, and vigorous political debate. But it would be an ironic result if groups that are facing constant threats to their civil rights and liberties through extensive surveillance and harassment were further victimized by the Office for Civil Rights, rather than protected by it.

Louis Brandeis Center Does Not Represent Us

We also write to voice our strong objection to the participation of Mr. Kenneth Marcus on behalf of the Louis Brandeis Center for Human Rights, whose primary mission is to address what it calls “the resurgent problem of anti-Semitism and anti-Israelism on university campuses.”⁵ We do not question Mr. Marcus’ commitment to anti-discrimination law nor his right to express his views, but we believe his political agenda — to silence others by misrepresenting and stigmatizing their views — is inimical to our civil rights and liberties, as illustrated by the negative impact his campaign to end “anti-Israelism” on campus has had on our communities. Although he may speak against anti-Muslim and anti-Arab discrimination in other settings, his campaign represents one of the biggest threats to Arab and Muslim students’ civil rights on campuses today. And, unfortunately, the Department of Education has thus far enabled that

⁵ See <http://brandeiscenter.com/index.php?/about/mission>.

campaign. His organization has celebrated all of the aforementioned threats on our campuses: the UC report,⁶ the California State Assembly resolution,⁷ and the baseless, Islamophobic Title VI complaints.⁸ We are shocked and dismayed that he has been slated to speak on the Arab and Muslim American civil rights organization panel despite his use of tactics clearly aimed at suppressing the speech of Arab and Muslim students in particular.

Conclusion

We thank you for considering our letter and for including it in the public comment in connection with this briefing. We hope the problems we have raised can be addressed at the November 9th briefing, and at future hearings. We also hope that student organizations themselves will have a direct say on this issue in the future, as we are most familiar with the impact that the broadside against our civil rights has on us. You may reach all of the undersigned student organizations through Haidar Ali Anwar, President of Muslim Students Association West, at haidaranwar@gmail.com or Rahim Kurwa, representative of Students for Justice in Palestine chapters, at rahim.kurwa@gmail.com. We look forward to hearing from you.

Sincerely,

Muslim Student Association-West Coast
UC Berkeley - MSA
UC Davis - MSA
UC Irvine - Muslim Student Union
UC Los Angeles - MSA
UC Riverside - MSA
UC San Diego - MSA
University of Southern California - MSU
San Jose State University – MSA
San Francisco State University – MSA
Cal State University Chico – MSA
Cal Poly Pomona – MSA

Diablo Valley Community College – MSA
Arab Recruitment and Retention Center at Cal
UC Berkeley - SJP
UC Davis - SJP
UC Irvine - SJP
UC Los Angeles - SJP
UC Riverside - SJP
UC San Diego - SJP
UC Santa Barbara - SJP
UC Santa Cruz - Committee for Justice in
Palestine
University of Southern California - SJP

⁶ In a Jerusalem Post op-ed, Mr. Marcus called the UC report “remarkable” and supported the idea that UC would “review[] policies under which university sponsorship is afforded to unbalanced and biased events such as ‘Israeli Apartheid Week,’” making it clear that controlling political speech is his group’s concern. See http://brandeiscenter.com/index.php?/publications/research_opinion_full/fighting_anti_semitism_at_the_u_of_california.

⁷ The Center reproduced an op-ed praising HR 35 although it used clearly Islamophobic language, calling our student groups “campus radicals” who are “part of a larger, more invidious intellectual jihad against Israel.” See http://brandeiscenter.com/index.php?/publications/research_opinion_full/criticism_of_israel_or_hate_speech_the_boundaries_of_academic_free_speech.

⁸ On its website, the Center proudly promotes the Islamophobic Title VI complaint accusing Muslim students of “pro-terrorist” agendas and likening them to Nazis, and notes that the complaint was filed by two of the Center’s legal advisors. See http://brandeiscenter.com/index.php?/news/news_full/ldb_releases_november_brandeis_brief.

Additional Endorsements

The following organizations endorsed this letter after it was delivered:

1. CSU Fullerton MSA
2. CSU San Bernardino MSA
3. San Diego State MSA