

centerforconstitutionalrights
on the front lines for social justice

February 11, 2013

Council Member Lewis A. Fidler
1402 East 64th Street
Brooklyn, NY 11234

Council Member David G. Greenfield
4424 16th Avenue
Brooklyn, NY 11204

Council Member Michael Nelson
1605 Voorhies Avenue, First Floor
Brooklyn, NY 11235

Council Member Mark Weprin
73-03 Bell Boulevard
Oakland Gardens, NY 11364

Council Member Gale A. Brewer
563 Columbus Ave.
New York, NY 10024

Council Member James S. Oddo
900 South Avenue, Suite 403
Staten Island, NY 10314

Council Member Daniel J. Halloran
166-08 24th Road
Whitestone, NY 11357

Council Member Sara M. González
5601 5th Ave S-2
Brooklyn, NY 11220

Dear City Council Members,

The Center for Constitutional Rights and the National Lawyers Guild write in response to the inappropriate letter you co-signed to Brooklyn College President Karen Gould expressing opposition to the February 7, 2013 student-organized event on the boycott, divestment and sanctions movement against Israel. As public elected officials, your threat to withhold funding to the public institution because of personal disagreement with the event's content is a form of compulsion the First Amendment prohibits. *See West Virginia Bd. of Ed. v. Barnette*, 319 U.S.624, 640 (1943); *Brooklyn Institute of Arts and Sciences v. City of New York*, 64 F.Supp.2d 184, 201 (E.D.N.Y. 1999) (hereinafter "*Brooklyn Institute*").

The United States Supreme Court has repeatedly affirmed the supremacy of individuals' First Amendment rights to freely express their political views over government officials' determinations about what views are acceptable for others to express. The Supreme Court explained, "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion." *Barnette*, 319 U.S. at 642. Accordingly, government officials are prohibited from "censoring works said to be 'offensive.'" *Texas v. Johnson*, 491 U.S. 397, 414 (1989).

As government officials, in this case you have attempted to dictate what political views and scholarly discussions can and cannot be aired at a public university. You have done so by demanding that Brooklyn College cancel the event, or force its Political Science department to remove its co-sponsorship. The only reasoning behind your threat was that you found the content “offensive.” Even as you paid lip service to the First Amendment and principles of academic freedom, you claim that taxpayer money should not be allotted to an institution that allows discussion on a subject you disagree with. In making clear your control of the College’s funding, you indirectly threatened censorship.

In the *Brooklyn Institute* case, as here, a New York City elected official attempted to censor the content of a publicly funded cultural institution’s exhibits on the basis that taxpayers should not be expected to pay for things they may find offensive. *Brooklyn Institute*, 64 F.Supp.2d at 200. The court in that case concluded that such use of public office violates the First Amendment, finding “There is no federal constitutional issue more grave than the effort by government officials to censor works of expression and to threaten the vitality of a major cultural institution, as punishment for failing to abide by governmental demands for orthodoxy.” *Id.* at 193.

The judge also rejected the argument that the taxpayers could dictate public expenditures based on their individual sensibilities or that the discretionary nature of government funding permitted lawmakers to silence individuals receiving funding when the decision is based on disagreement with the recipient’s message. The judge stated, “Although the government is under no obligation to provide various kinds of benefits, it may not deny them if the reason for the denial would require a choice between exercising First Amendment rights and obtaining the benefit. That is, it may not ‘discriminate invidiously in its subsidies in such a way as to ‘aim [] at the suppression of dangerous ideas.’” *Id.* at 200.

Please be advised that “where the denial of a benefit, subsidy or contract is motivated by a desire to suppress speech in violation of the First Amendment” an injunctive remedy is likely to succeed. Courts have recognized that the chilling of speech is a substantial and irreparable injury, and that even where a party seeking relief continues the exercise of First Amendment rights despite the threat or punitive action, it “does not mean that it is not being chilled into engaging in less speech than it otherwise would have.” *Housing Works, Inc. v. City of New York*, 72 F. Supp. 2d 402, 421 (SDNY 1999).

Brooklyn College students, faculty, and other university community members have already been harmed because of the public attacks aimed at censoring a university event that you and others waged against it and because of your threat to withhold funding. The College community has expended significant resources in defending against external pressure and threats, and has potentially suffered reputational harm because of this incident. Your politically motivated attack on the University and individuals within it has had the effect of dissuading speech that expresses a particular viewpoint by threatening retaliatory actions if it is allowed to continue. The further

harm that the Brooklyn College community would face if you carried out your threat to decrease funding is obvious.

Our organizations are committed to upholding the First Amendment rights of those challenging orthodox views, including such views on the Palestinian-Israeli question. Given the clear violation of First Amendment rights that your letter portends, and the violation of principles of academic freedom that your threat represents, we urge you to withdraw your names from the letter to Brooklyn College that you co-signed, as two of your colleagues, Council Members Stephen Levin and Letitia James, have already courageously done.

Sincerely,

A handwritten signature in black ink, appearing to read "Baher Azmy". The signature is fluid and cursive, with a prominent initial "B" and a long, sweeping tail.

Baher Azmy
Legal Director, Center for Constitutional Rights

A handwritten signature in black ink, appearing to read "Heidi Boghosian". The signature is cursive and includes a long horizontal line at the end.

Heidi Boghosian
Executive Director, National Lawyers Guild

cc: Council Member Letitia James
67 Hanson Place, Ground Floor
Brooklyn, NY 11217

Council Member Stephen Levin
410 Atlantic Avenue
Brooklyn, NY 11217