



*Via Email*

October 23, 2014

Jeremy Travis  
President, John Jay College  
524 West 59th Street  
New York, NY 10019

Re: Students for Justice in Palestine at John Jay College

Dear President Travis:

We at Palestine Solidarity Legal Support and the Center for Constitutional Rights are writing on behalf of Students for Justice in Palestine (SJP) to express our concern to John Jay College's recent directive that SJP dilute their message because it makes people "uncomfortable" and your recent letter to the John Jay community suggesting that SJP's activities are linked to the rise of anti-Semitism. These actions appear to have been taken based on the viewpoint of SJP's message and threaten to chill student speech on campus. We urge you to ensure that John Jay College meets its legal obligations under the First Amendment to the U.S. Constitution and that SJP's political expression is protected in the future.

**I. John Jay College's Center for Student Involvement Censored SJP's Speech and Directed Students Not to Attend SJP's "Die-In/Vigil for Ferguson and Gaza."**

John Jay College's Center for Student Involvement and Leadership (CSIL), formerly known as the Office for Student Life, is responsible for certifying and overseeing student organizations on campus.<sup>1</sup> SJP applied for and received permission from CSIL to hold a "Die-in/Vigil for Ferguson and Gaza" on October 8, 2014. The event, which was co-organized with the African Students Association, took place from approximately 1:30 to 2:30 p.m. on the first floor of the New Building. About thirty students held posters with messages such as "Hands Up, Don't Shoot," "Black Lives Matter, Palestinian Lives Matter," "U.S. Dollars Feed Israeli War Crimes, and "Free Palestine." Approximately seven or eight students staged a "die-in" where they theatrically wrapped themselves in white sheets and lay on the floor to represent lives that

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<sup>1</sup> This fact and others stated in this letter are according to our understanding of the matter; please let us know if you believe anything is incorrect.

were taken because of military and police repression.<sup>2</sup> Some of the sheets had red paint on them to symbolize blood. Students from Hillel staged a counter-protest at approximately the same time.

Approximately a half hour before the event was scheduled to take place, CSIL's Student Life Coordinator John Leebens pulled the Secretary of SJP, Leena Widdi, into his office, closed the door, and told her that the sheets and the red paint make people feel "uncomfortable" and "that's not okay." Mr. Leebens stated that he had received many complaints from students in advance of the event and instructed Ms. Widdi to not use the sheets with the dried paint. Ms. Widdi told Mr. Leebens that she needed to relay his message to the rest of SJP's executive board. After meeting with the executive board, Ms. Widdi conveyed to Mr. Leebens that SJP would compromise and use only half of the sheets with red coloring. Later, some students reported to SJP that Mr. Leebens discouraged them from participating in the event and as a result they did not attend. In a meeting with SJP students on October 22, 2014, Mr. Leebens told students that John Jay College has the power to stop all die-ins and similar expressive activity by SJP.

CSIL's scrutiny and censorship of SJP's activity violates the First Amendment rights of SJP and must immediately cease. As you are no doubt aware, the First Amendment is binding on public colleges.<sup>3</sup> Students and faculty have the right to voice objections to Israeli policies, just as they have the right to voice support. CSIL may not direct SJP to dilute its message because some students may disagree or feel uncomfortable with the message expressed.<sup>4</sup> Likewise, CSIL's pressure on students to not participate in an event supporting the rights of Palestinians chills student expression that John Jay College is required to protect.

## **II. Expression of political viewpoints, standing alone, is not "harassment" and does not create a "hostile educational environment" under Title VI of the Civil Rights Act of 1964.**

It is in this context that your October 21, 2014 letter to the John Jay College community raises further concerns. In your letter, you stated that you are:

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<sup>2</sup> Students for Justice in Palestine at John Jay College, Post "Die-in/Vigil for Ferguson and Gaza (Oct. 8, 2014)

[https://www.facebook.com/media/set/?set=a.733742033328701.1073741832.366248636744711&type=.](https://www.facebook.com/media/set/?set=a.733742033328701.1073741832.366248636744711&type=)

<sup>3</sup> See *Widmar v. Vincent*, 454 U.S. 263, 268–69 (1981) ("With respect to persons entitled to be there, our cases leave no doubt that the First Amendment rights of speech and association extend to the campuses of state universities."); *Healy v. James*, 408 U.S. 169, 180 (1972) ("[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large.").

<sup>4</sup> *Texas v. Johnson*, 491 U.S. 397, 414 (1989) ("If 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."); *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949) ("[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.").

deeply troubled, both personally and professionally, by recent reports that Jewish students at John Jay College have felt intimidated and harassed on our campus.

These instances on our campus occurred at a time when other parts of our country, and countries in Europe, are witnessing a rise in anti-Semitism. Universities are often a focal point for organizing activities that have fueled these trends.<sup>5</sup>

Your letter goes on to state that “there have been a series of incidents that have created tensions among three student groups, the Hillel Club, the United Nations Student Association and the Students for Justice in Palestine.” Although you did not consult SJP prior to widely distributing the letter, we understand that you have since asked SJP’s executive board to meet with you next week.

Recently, expression about Israel, Palestine, and the United States’ role in the Middle East has been a flashpoint for university administrators who have been asked to condemn certain viewpoints, monitor student expression or activism, and in some cases, to censor or punish students or faculty based on their opinions about this issue.

Universities have been at the center of this maelstrom precisely because they are centers for critical inquiry, freedom of thought, and often, political action – and therefore allow a perspective that rarely breaks through the orthodoxy on Israeli policy prevailing among elected officials and in the mainstream media. Aggressive campaigns targeting college campuses around the country often demand that universities condemn and penalize students, faculty, and others for expressing a view supportive of Palestinian rights or critical of Israeli policies. These campaigns disguise their attempts to stifle constitutionally protected speech by mislabeling speech that criticizes Israeli policies as hateful and anti-Semitic and therefore, subject to condemnation and suppression.

It is in light of this context that your letter, which appears to suggest that protests against Israel’s human rights abuses are fueling anti-Semitism, is particularly concerning. Speech like that of SJP’s at issue here is neither anti-Semitic, nor anti-Jewish, but is political speech that deserves the highest level of constitutional protection.<sup>6</sup> Allegations that expression criticizing the state of Israel or advocating for Palestinian human rights is harassment or intimidation that targets and creates a hostile educational environment for Jewish students on campus on the basis of race or national origin in violation of Title VI of the Civil Rights Act of 1964 have been

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<sup>5</sup> President Jeremy Travis, Important Announcements from President Travis Jeremy Travis (Oct. 21, 2014), *available at* <http://seanmkennedy.commons.gc.cuny.edu/files/2014/10/John-Jay-College-SJP-statement.png>.

<sup>6</sup> We strongly object to the notion that any ethnic or religious group monolithically holds a single political opinion about this subject, as such complaints suggest. To the contrary, Jewish communities, like Christian, Muslim, and other communities, are diverse and are home to a spectrum of perspectives on this issue and others. Further, to say that criticism of the Israeli government is inherently an attack on Jewish students is to suggest that criticism of the Vatican is an attack on Catholic students, or that criticism of Saudi Arabia’s government is an attack on Muslim students. Under such logic, our freedom to discuss political issues or criticize political institutions would be severely curtailed.

soundly rejected by the U.S. Department of Education's Office for Civil Rights (DOE OCR).<sup>7</sup> To date, no such complaint has been sustained or found to have legal merit. Rather, OCR's decisions have confirmed that students are free to engage in creative activism that is addressed to the broader campus community and relates to an issue of public concern.<sup>8</sup>

No doubt, harassment or intimidation of any student on the basis of race, color, or national origin triggers Title VI obligations. However, as the U.S. Department of Education has stated, that "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."<sup>9</sup> In other words, mere expression of political viewpoints, whether through pamphlets, theater, demonstrations, or otherwise, does not, standing alone, give rise to a Title VI violation simply because some may disagree with it or find it offensive.<sup>10</sup> To the contrary, a public university risks violating students' constitutional rights if it censors or chills protected expression. Individual administrators also risk being held financially and personally liable for violating clearly established First Amendment rights.<sup>11</sup>

Universities' increased scrutiny of speech critical of Israel in response to pressure harms all campus community members, especially those who are interested in exploring the critical issue of Israel/Palestine. It threatens to shut down robust debate on one of the most urgent foreign policy, moral and political questions of our time. Needless to say, students, faculty and university programs that openly advocate for Israel and defend its actions, many of which human rights bodies and organizations have determined to be in violation of international law, do not face the same obstacles. The First Amendment and well-established values of higher education that envision the university as the "marketplace of ideas" do not permit this type of viewpoint discrimination.

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<sup>7</sup> A federal judge has also dismissed a lawsuit making similar allegations. *See Felber v. Yudof*, 851 F.Supp.2d 1182, 1188 (N.D. Cal. 2011) ("A very substantial portion of the conduct to which [the complainants] object [i.e., speech critical of Israel] 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.").

<sup>8</sup> For example, the Students for Justice in Palestine chapter at the University of California Berkeley staged a "mock checkpoint" where they theatrically enacted an Israeli military checkpoint, dramatizing the interaction between Israeli soldiers and Palestinian civilians in the Occupied Palestinian Territory while wearing imitation military uniforms and holding toy firearms. Upon investigation, OCR determined these activities were "expression on matters of public concern" that "do not constitute actionable harassment." Letter from DOE to UC Berkeley, Aug. 19, 2013, re: Case No. 09-12-2259, *available at* <http://bit.ly/doeucb>.

<sup>9</sup> Letter from DOE to the Zionist Organization of America, July 31, 2014, re: Case No. 02-11-2157, *available at* <https://www.documentcloud.org/documents/1300803-ocr-decision-on-title-vi-complaint-7-31-14.html>.

<sup>10</sup> As OCR notes, "harassment must include something beyond the mere expression of views, words, symbols or thought that a student finds personally offensive. The offensiveness of a particular expression, standing alone, is not a legally sufficient basis to establish a hostile environment." Letter from DOE to UC Berkeley, *supra* 7 at 2.

<sup>11</sup> *See, e.g., White v. Lee*, 227 F.3d 1214 (9th Cir. 2000) (denying qualified immunity to government officials who investigated and chilled speech protected under First Amendment).

As a university dedicated to providing a diverse intellectual environment and “educating for justice,” John Jay College should live up to the highest ideals of free speech and inquiry. We urge you to stand firmly in support of student speech rights, and to refuse to accede to demands to burden some speech. John Jay College must also ensure that students are not burdened, punished or policed for protected political expression in the future.

Thank you for your prompt consideration of this matter.

Sincerely,



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