

Via Email

March 28, 2013

Claremont McKenna College
Pamela Gann, President
Hiram Chodosh, President Elect
Gregory Hess, Dean of Faculty
Sven Arndt, Faculty Chair

Pitzer College
Laura Trombley, President
Muriel Poston, Dean of Faculty
Mita Banerjee, Faculty Chair

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Maria Klawe, President
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Amy Marcus-Newhall, Dean of Faculty
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Scripps College
Lori Bettison-Varga, President
Rita Roberts, Faculty Chair

Keck Graduate Institute
Sheldon Schuster, President
Animesh Ray, Faculty Chair

Claremont Graduate University
Deborah Freund, President
Lorne Olfman, Faculty Chair

RE: Claremont Colleges' responsibility to protect student speech and remedy the harms of racial bias.

Dear Presidents, Deans of Faculty, and Faculty Chairpersons,

The undersigned civil rights organizations write on behalf of the student organization Students for Justice in Palestine, and concerned faculty, to express our alarm about developments at the Claremont Colleges ("the Colleges").

Our concern arises from recent reports that a professor from Claremont McKenna College (CMC) lashed out at a student during an event to raise awareness about Palestinian human rights. As detailed below, the response from CMC suggests that the administration is not prepared to address the harm caused by the professor's actions. These events threaten students' civil rights, and suggest that Claremont McKenna College is not meeting its obligation to make the campus welcoming for a range of political viewpoints on the Israeli-Palestinian conflict.

We also write to provide important background for this controversy, which takes place in the context of escalating efforts to suppress Palestinian rights advocacy on campuses throughout the U.S. These efforts create a discriminatory and intimidating atmosphere for Arab, Muslim, and pro-Palestinian members of the campus community. In light of this climate, the Colleges have a heightened obligation to protect speech on this issue, and to protect students and faculty who are targeted for their views.

I. Recent events at Claremont McKenna College

As you are likely aware, on March 4th, 2013, Students for Justice in Palestine (SJP) at the Claremont Colleges staged a mock Israeli military checkpoint at the Collins Dining Hall at CMC. During this protest, there was a heated verbal exchange between a student and a professor from CMC, during which the CMC professor cursed at the student using a racial slur.

The purpose of the student demonstration was to raise awareness about the human rights crisis in the occupied Palestinian territory. The demonstration was a performance reenacting a mild version of Israeli military checkpoints. It involved performers asking passersby for their identification. The students who organized the protest complied with all relevant campus policies and procedures, as Pitzer College's own investigation has confirmed. Initially the students had partially roped off one access point to the dining hall, but when asked by CMC officials to restructure the protest to move away from the entrance to the dining hall, the students complied.

During the checkpoint protest, a professor from CMC came to the scene, and requested campus officials to intervene to have the student protesters move away from the entrance to the dining hall. A Palestinian student involved in the protest then walked up to the professor and asked his reason for being there. The student requested that the professor identify himself because he was uncertain whether the professor had authority to interfere with their event. In an exchange verified and quoted in the campus security officer's report, the professor then responded by cursing at the student, and repeatedly calling him a "cockroach," presumably referring to his ethnic background as a Palestinian.

The term "cockroach" has a history of usage as a form of dehumanization in several contexts of genocide, including Rwanda, and by Israeli politicians as a demeaning reference to Palestinians. The student who was victim to the professor's verbal abuse has explained that while living in the occupied territory he often heard the term applied to him and other ethnic Palestinians as a racial slur.

The student has filed a complaint against the professor, pursuant to college procedures laid out in the CMC Faculty Handbook. The complaint requests remedies that focus on redressing the harms to the educational environment caused by the professional misconduct and display of racial bias. The affected students were not given assurance by CMC officials that the complaint was being taken seriously. As of this date, the affected students are unaware of what actions, if any, CMC officials are taking to address the harm that occurred.

Instead, the students were told they were being "investigated." First in a campus-wide email, and later in private meetings with officials from Pitzer and CMC, the students involved with the SJP protest were told that the campuses were investigating potential s of the student code of conduct that they may have committed in organizing the demonstration. Pitzer College officials completed its investigation promptly and informed the campus community that the students did not violate any campus rules.

But CMC officials have continued the investigation of the student protest. Officials have maintained that there were "complaints" about the student protest, although no specific

complaints have been made known to the students. CMC officials have told the students they may have violated the demonstrations policy because they restricted access to the dining hall. But campus administrators knew that the protestors obtained all of the proper authorizations for the event, that they complied when they were asked to move, and that the campus security report noted that the students did not block the entrance to the dining hall.

Meanwhile, at least two additional incidents of harassment by unknown perpetrators have taken place against the student who was the target of the professor's verbal abuse. On March 12, the student's car tire was vandalized with a sharp metal object, flattening it. On the same day, a threatening note was found scrawled on a card marking the student's reservation for a carrel desk in the library. Pitzer officials have been notified about both incidents.

II. The Claremont Colleges have a duty to protect against harassment of all students, including Muslim, Arab, and Pro-Palestinian students.

College faculty, staff and administrators have a responsibility to foster a safe environment, promote learning and provide an equal opportunity for all students to engage in various aspects of student life without fear of harassment or discrimination. In accordance with their own anti-harassment policies, the Colleges are obligated to remedy harms of racism when they occur.

If CMC does not take swift and appropriate action to remedy the harms caused by a professor who used a racial slur against a Palestinian student, the college enables an atmosphere whereby certain segments of the student population are subject to marginalization and exclusion.

III. The Claremont Colleges are obligated to protect free speech

The First Amendment of the U.S. Constitution applies to private secular schools in California.¹ The Claremont Colleges, including Claremont McKenna College (CMC), are further obligated to uphold free speech rights because they have promised to do so in their public presentations and commitments to students who choose to enroll.²

Speech that criticizes Israeli state policies and actions, and the U.S. government's support of them, is protected First Amendment speech. The Supreme Court has emphasized that the ability to criticize government policy is "the central meaning of the First Amendment."³ When a point of view that criticizes government policy is heard on campus, the college is serving its highest purpose as a "marketplace of ideas."⁴

¹ See CA statute known as the "Leonard Law," California Education Code § 94367 (a).

² See, for example, The Claremont McKenna College Guide to Student Life, at pages 40-41, *available at* http://www.cmc.edu/dos/cmguide/CMC_Guide-Web-2012.pdf. ("Guaranteeing the rights of free speech and peaceable assembly is a basic requirement for any academic community.")

³ *New York Times v. Sullivan*, 376, U.S. 254, 273 (1964).

⁴ *Healy v. James*, 408 U.S. 169, 180-81 (1972).

The ACLU of Northern California recently wrote a letter to the Department of Education, describing a similar mock checkpoint on another college campus.⁵

The fact that Palestinian human rights activism goes beyond a lecture or a leaflet, and involves barbed wire and the depiction of Israeli soldiers using violent or coercive methods in their treatment of Palestinians, does not alter the constitutional calculus ... That such expressive acts heighten and intensify the message, and may be outrageous or hateful to some, does not deprive them of constitutional protection.⁶ The First Amendment protects speech, no matter how offensive or disturbing it is to some people.⁷ In fact, First Amendment protections are most important when speakers take controversial or unpopular positions that might arouse strong feelings, passions, and hostility. There are no sacred cows when it comes to the First Amendment's protection for political messages or viewpoints.⁸

To be clear - efforts to change Israeli policy, including efforts to educate fellow students about the reality of military checkpoints and other treatment of Palestinian civilians, are neither anti-Semitic nor anti-Jewish. These efforts are human rights campaigns that constitute constitutionally protected political speech.

Discriminatory application of neutral regulations violates principles of free speech.

Campuses can maintain regulations that place reasonable restrictions on the time and place and manner of speech to maintain order and foster a learning environment. A rule which prohibits student protest from blocking access to campus buildings and other similar regulations may be reasonable and valid if applied equally to all campus groups. But it violates the First Amendment for campus administrators to apply a viewpoint neutral rule in a way which discriminates against certain points of view, and not others.⁹

CMC's investigation of the SJP protest may be based on a reasonable concern that the students violated campus regulations.¹⁰ But SJP may not be placed under heightened scrutiny, and applicable regulations may not be interpreted more stringently than against other student groups, based on the content of SJP's message in support for Palestinian human rights or critical

⁵ Letter from American Civil Liberties Union of Northern California to the U.S. Department of Education, Office of Civil Rights, December 12, 2012, *available at*, <http://palestinelegalsupport.org/wp-content/uploads/2013/01/ACLU-2012.12.10-Letter-to-DOE-McCasland-re-Case-No.-09-12-2259.pdf>.

⁶ *Virginia v. Black*, 538 U.S. 343, 365-66 (2003) (cross burning); *Texas v. Johnson*, 491 US 397, 414 (1989) (flag desecration); *University of Utah Students Against Apartheid v. Peterson*, 649 F. Supp 1200, 1203-1207 (D. Utah 1986) (construction and maintenance of shanties on university campus to protest apartheid in South Africa is constitutionally protected symbolic expression).

⁷ *Terminiello v. City of Chicago*, 337 US 1,4 (1949); *Cohen v. California*, 403 U.S. 15, 24-25 (1971).

⁸ *Snyder v. Phelps*, 131 S.Ct. 1207, 1217 (2011), (signs held by protestors at a funeral- which included messages such as "God Hates the USA/Thank God for 9/11" and "God Hates Fags" - were constitutionally protected speech on matters of "public concern").

⁹ *Forsyth County v. Nationalist Movement*, 505 US 123, 131 (1992) (striking provisions of a city ordinance which was content-neutral on its face, but unconstitutionally content-based as applied).

¹⁰ This is called into question by the fact that the campus security report explicitly noted the students were not blocking the entrance to the dining hall.

of Israeli state policy.

Pending investigations can impermissibly chill free speech.

It is our understanding that Claremont McKenna College has not to this date applied its rules unevenly to restrict protected political expression; but the vague “investigation” into SJP’s protest raises concern because investigations intimidate students, causing them to avoid the topic in the future in order to avoid scrutiny. Pending investigations inevitably create a chill over one side of the debate about Israel Palestine on campus.¹¹

Faculty on college and university campuses do not have unlimited speech rights.

As employees and teachers, members of the faculty are obligated to abide by duties of professional conduct. A college does not violate the First Amendment and does not violate general principles of free speech and academic freedom if it disciplines a faculty member for professional misconduct that hurts the learning environment.¹²

IV. Repression of pro-Palestinian speech in California and nationwide sets the backdrop for the events of Claremont Colleges

In recent years, we have witnessed a steep rise in attempts to silence - through misuse of the law and other means - voices that advocate for Palestinian human rights. Colleges have been at the center of this maelstrom precisely because they are centers for critical inquiry, freedom of thought, and often, political action.

There are innumerable examples on college campuses around the country of aggressive campaigns to shield Israel from public scrutiny and punish advocates for Palestinian rights and institutions that host them. These campaigns are undertaken by organizations like the Anti-Defamation League, the Zionist Organization of America, StandWithUs, the Amcha Initiative, and the Brandeis Center, among others. They often demand that universities condemn and penalize students, faculty, university programs, and others for expressing a view supportive of Palestinian rights or critical of Israeli policies. Tactics against Palestinian rights advocates have included legal complaints to the Department of Education alleging that universities are failing to protect Jewish students by allowing events critical of Israel to take place and other forms of pressure on universities to prohibit speech mislabeled as anti-Semitic.¹³

¹¹ *Sweezy v. New Hampshire*, 354 U.S. 234, 248 (1957) (“sanction emanating from ... investigations” causes “a stain of the stamp of disloyalty” on those who are investigated). The stamp of disloyalty resulting from CMC’s investigation makes Arab, Muslim and Pro-Palestine students especially vulnerable to the longer-term effects of stigma.

¹² *See, e.g., Bonnell v. Lorenzo*, 241 F.3d 800 (6th Cir. 2001).

¹³ Efforts to restrict speech are summarized in a letter to University of California President Yudof from the Center for Constitutional Rights and other rights groups, available at http://www.ccrjustice.org/files/CCR_ltr_Edleyudof_11%2030_Final.pdf (summarizing Title VI cases filed against universities because of Palestine solidarity activities).

These campaigns disguise 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. Many efforts to condemn speech related to Palestinian human rights also promote Islamophobic stereotypes by accusing student groups of being “foreign,” “pro-terrorist,” or “incubators to recruit and radicalize students to support Hamas.”¹⁴ These allegations are false and they are particularly damaging to level at Muslim and Arab students in the post- 9/11 climate when such suspected affiliations carry potential criminal consequences, and where they generate a climate of intimidation and fear.

This context creates a heightened obligation to protect students who are under heavy fire for human rights advocacy. Unfortunately, some colleges have done just the opposite; they have responded to intense external pressure by increasing scrutiny of Palestine-related events and erecting barriers in front of them – to avoid inviting opposition from the usual suspects.

Such increased scrutiny harms all campus community members who are interested in learning about this important issue. 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 do not face the same obstacles.

V. A climate of racism and fear exists for Arab and Muslim students

A pervasive climate of Islamophobia is affecting the United States at various institutional levels including the political and academic spheres. Arab and Muslim students nationwide struggle to fully participate in student life at university and college campuses.

Many Muslim and Arab university students have reported a fear of discussing domestic and foreign political issues and civil rights issues. They are afraid of becoming politically active so as not to attract unwarranted attention and be mislabeled as extremist. There is a fear of being formally associated with other Muslim students vis-à-vis the Muslim Student Association (which has been unfairly maligned) let alone being actively involved with the student group.¹⁵

If college administrators do not communicate to Muslim and Arab students that their campus participation is valued, they self-monitor and withdraw from activities that are integral to a formative college experience. The inability to participate in free and open debate, whether inside or outside the classroom, to exchange ideas and associate freely with other students disempowers Muslim and Arab students and creates feelings of victimization and exclusion.

¹⁴ These allegations were made in a complaint submitted to federal court, alleging that the University of California Berkeley failed to protect Jewish students against a hostile climate, caused by Palestinian rights advocacy. The complaint was dismissed because the activities complained of was protected by the First Amendment. (*Felber v. Yudof*, 851 F.Supp.2d 1182, 1188 (N.D. Cal 2011). A lecturer at University of California Santa Cruz recently made similar claims in a lecture captured on YouTube.

¹⁵ CLEAR Project, AALDEF, and MACCLC. “Mapping Muslims: MYPD Spying and its Impact on American Muslims.” March 11, 2013 at <http://www.cunyclear.org/wp-content/uploads/2013/03/MM-FINAL-4-web.pdf>.

VI. Conclusion

The First Amendment and cherished values of higher education cannot allow colleges to succumb to pressure to censor a particular viewpoint on a question of critical international importance. The undersigned organizations are committed to ensuring equal, unobstructed access to viewpoints supporting Palestinian rights. We will continue to monitor colleges across the country that hesitate to protect Arab, Muslim, or pro-Palestinian students.

We hope that you will consider swift and appropriate remedies to protect student speech rights, and to address the harms to the educational environment resulting from racial bias. We would be very happy to engage in further conversation about how the Presidents of the Claremont Colleges can support robust participation in campus life for all students.

You may reach us by contacting Liz Jackson at: Lizjackson@gmail.com, 617-947-4593.

Sincerely yours,

Liz Jackson, Cooperating Counsel, Center for Constitutional Rights, on behalf of:

Center for Constitutional Rights
Council on American-Islamic Relations, Los Angeles
National Lawyers Guild, San Francisco Bay Area and Los Angeles Chapters
American Muslims for Palestine
Asian Law Caucus