

centerforconstitutionalrights
on the front lines for social justice

February 4, 2013

Karen L. Gould
President, Brooklyn College
2900 Bedford Avenue
Brooklyn, New York 11210

Dear President Gould:

The continuing furor over the Boycott, Divestment and Sanctions (BDS) event co-sponsored by Brooklyn College's Political Science Department is evidence of the lengths to which some will go even to stop discussion of the Palestinian human rights struggle and efforts to influence Israeli policies, including the growing movement for BDS. The Center for Constitutional Rights (CCR) commends your continued defense of the Department's and the students' right to organize this event. CCR writes to place these assaults on open inquiry at Brooklyn College in a nationwide context. We encourage you to continue to stand firm in support of academic freedom and student activism.

CCR has long supported the movement for Palestinian rights in the United States and, through litigation and advocacy, has sought accountability for Israel's international law violations. In recent years, we have witnessed a steep rise in attempts – legal and otherwise – to silence voices that call for an end to the occupation and subjugation of Palestinians. 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 very rarely breaks through the orthodoxy on Israeli policy prevailing among elected officials.

There are innumerable examples on college campuses around the country of aggressive campaigns to shield Israel from public scrutiny. These campaigns are undertaken by organizations like the Anti-Defamation League, the Zionist Organization of America, StandWithUs, and the Brandeis Center, along with individuals like Alan Dershowitz. They often demand that universities condemn and penalize faculty, university programs, students, and others for expressing a view supportive of Palestinian rights or critical of Israeli policies. 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. Efforts to change Israeli policy, including those that advocate for BDS and compare Israeli policies to South African "apartheid," are neither anti-Semitic nor anti-Jewish, but are human rights campaigns that constitute constitutionally protected political speech.

Tactics against Palestinian rights advocates have included the following: legal complaints to the Department of Education alleging that universities are failing to protect Jewish students by allowing events critical of Israel to take place¹; pressure on universities to change their policies to prohibit speech deemed anti-Semitic²; and targeting universities for supporting in any way or hosting conferences and speakers that explore issues related to Palestine.³ Universities have responded to this intense pressure by increasing scrutiny of Palestine-related events and erecting barriers in front of them – to avoid inviting opposition from the usual suspects.⁴

Such increased scrutiny harms all campus community members who are interested in exploring 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. Increased scrutiny of Palestinian human rights discussion especially affects Arab and Muslim campus members who are already vulnerable in an Islamophobic political climate. Needless to say, students, faculty and university programs that openly advocate for Israel do not face the same obstacles.

In 2011, Brooklyn College initially succumbed to such pressure by cancelling adjunct professor Kristofer Petersen-Overton's teaching contract because of an attack by an Israel-aligned politician on his political views regarding the Israeli-Palestinian conflict; appropriately, Brooklyn College reversed this decision and reinstated Mr. Peterson-Overton within days. Not

¹ See Letter to University of California (UC) President Yudof from CCR 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). In one Title VI case dismissed by a federal court, the judge recognized that the activities complained of almost entirely “[represent] 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).

² A “campus climate” assessment process at the University of California (UC) resulted in a flawed report on Jewish student experiences (co-written by Anti-Defamation League’s National Chair for Education), which recommended the prohibition of hate speech, including anti-Semitic speech that was defined to include speech critical of Israel. The California State Assembly soon thereafter passed a resolution encouraging UC to adopt the recommendations and endorsing a similarly problematic definition of anti-Semitism. See Letter to UC President Yudof, supra note 1. The President of the University of California, Mark Yudof, has acknowledged that the recommendations in the report would violate the First Amendment if adopted.

³ For example, back-door pressure on the Board of Directors at UC Hastings School of Law in 2011 led the university to withdraw its sponsorship of an academic conference exploring legal avenues for attaining Palestinian rights the night before it began (see <http://www.jadaliyya.com/pages/index/1081/what-emergency-the-adl-academic-freedom-lawfare-an>). In another case at the University of Pennsylvania, there was aggressive opposition to a student-organized conference on BDS that included an imposition of high security fees on the students, and attacks on student organizers by professors in campus newspapers. The President of U Penn disavowed the conference in a statement of support for Israel during a counter-event featuring Alan Dershowitz. (See <http://mondoweiss.net/2012/02/pennbds-still-being-smearred-two-weeks-after-student-conference.html>). In a third example, attempts were made to cancel a speaking tour of Israeli historian Ilan Pappé at California State University campuses because he is critical of Israeli policy (See <http://electronicintifada.net/blogs/nora/zionist-group-fails-disrupt-ilan-pappes-tour-california-state-universities>.) The examples are numerous.

⁴ Students are reporting different tactics that universities are employing to obstruct Palestine-related events, including banning use of the word “apartheid” in student events, imposing high security fees, denying funding to student groups, requiring additional screening of events for Palestinian rights groups, surveillance of students’ activities, disciplinary threats to student activists, and more.

surprisingly, some of the same individuals that led the campaign against Petersen-Overton are heading this campaign to force Brooklyn College to silence those who wish to discuss BDS on its campus.⁵

It is clear that the objections to the upcoming BDS event are based entirely on political objection to the viewpoint expressed. The New York City Council Members' letter of January 29 threatening Brooklyn College's funding if you allow this event to take place, or fail to remove the Political Science Department's co-sponsorship, is an especially troubling sign of government interference. This threat, and any move to withdraw funding on these grounds, would likely be subject to challenge on First Amendment grounds.

Even the New York politicians, signatories to a recent letter complaining to you of the event, recognize that academic freedom requires that you allow it to take place. They then claim, however, that academic freedom also requires you to allow contrary viewpoints to be aired at the same time. They maintain that a university department should not be allowed to co-sponsor an event because it expresses a view on an issue with which they happen to disagree.

The proposition that this event, featuring two highly credentialed and experienced scholars of these issues, should not be co-sponsored by a University department because it is not "balanced," is profoundly misguided. Surely, these politicians would not have objected had the event been entitled "Fighting BDS against Israel," nor would they have called for a balance of perspectives.

Academic freedom does not obligate University officials to ensure that each side of a controversial issue be represented simultaneously on every occasion, as you rightly said in a statement today. Rather, it demands that free inquiry be allowed to take place on a college campus without the interference of external political forces that would dictate otherwise. The Association of American University Professors (AAUP), a leading voice on matters of academic freedom, noted in the Petersen-Overton case that, "The AAUP does not require that courses be balanced, believing that exposure to advocacy can be a beneficial component of an education, so long as students are not expected to agree with an instructor's point of view."⁶

Universities all over the country are being pressured to censor a particular viewpoint on a question of critical international importance because some find it disagreeable or, even worse, politically inexpedient. The First Amendment and cherished values of higher education cannot permit succumbing to such pressure. CCR and its partners are committed to ensuring equal, unobstructed access to viewpoints of those supporting Palestinian rights. We will continue to monitor the responses of universities across the country to outside appeals to restrict this speech, and we are dedicated to challenging infringements on individuals' First Amendment rights to speak out on this issue.

We applaud you for standing strongly in favor of academic freedom, and insisting that the event must go on, despite the immense pressure placed upon the College. We hope that Brooklyn

⁵ See <http://www.guardian.co.uk/commentisfree/2013/feb/02/brooklyn-college-bds-alan-dershowitz>, noting Dov Hikind's involvement in the Petersen-Overton controversy and Alan Dershowitz's involvement in other campaigns to smear academics and others because of their views on the Palestinian-Israeli issue.

⁶ See <http://www.aaup.org/news/advocacy-and-faculty-rights>.

College will continue its principled stance in the face of increasing efforts to suppress speech expressing a viewpoint sympathetic to the Palestinian cause for freedom and equality.

Sincerely,

A handwritten signature in black ink, appearing to read "Baher Azmy". The signature is fluid and cursive, with the first name being more prominent.

Baher Azmy
Legal Director, Center for Constitutional Rights

A handwritten signature in black ink, appearing to read "Dima Khalidi". The signature is cursive and somewhat stylized, with a long horizontal stroke at the beginning.

Dima Khalidi
Cooperating Counsel, Center for Constitutional Rights