



August 7, 2014

Dr. Phyllis M. Wise
Chancellor
University of Illinois at Urbana-Champaign
Swanlund Administration Building
601 John Street
Champaign, IL 61820
chancellor@illinois.edu

Dear Dr. Wise:

The Center for Constitutional Rights (CCR) writes to express our considerable alarm about the decision of the University of Illinois at Urbana-Champaign to terminate the appointment of Professor Steven Salaita at the University based on the content of his constitutionally-protected speech critical of Israeli government practices in recent weeks. Your seemingly unprecedented decision to terminate the appointment of a tenured professor on such grounds violates Professor Salaita's clearly established constitutional rights as well as elementary principles of academic freedom to which the University purportedly subscribes. We urge you in the strongest terms to reconsider your unlawful course of action.

As you well know, in October 2013, the University's College of Liberal Arts and Sciences made an offer to Professor Salaita for an appointment, with tenure, in the College's American Indian Studies program; he soon after accepted your offer (which the University confirmed in writing) and resigned from his tenured position in the English Department at Virginia Tech University. Your offer letter expressly stressed the University's adherence to the American Association of University Professors' Statement of Principles on Academic Freedom and Tenure. The University's offer was naturally based in large part on Professor Salaita's strong scholarly record, which includes numerous publications criticizing militarism, colonialism and the unjust treatment of the Palestinian people.¹ His views (which he has long aired passionately and openly in many forums, including social media) are no doubt considered highly controversial by many in this country,² but Professor Salaita could rest assured that his tenured position and the foundational principles of academic freedom and expression would permit him to share his views without fear of censure or reprisal.

Accordingly, in recent weeks, Professor Salaita made a number of posts to his social media platforms that are deeply critical of the Israeli government's military and political actions in Gaza, all

¹ See, e.g. Steven Salaita, *Israel's Dead Soul* (2011); Steven Salaita, *The Uncultured Wars: Arabs, Muslims and the Poverty of Liberal Thought – New Essays* (2008); Steven Salaita, *The Holy Land in Transit: Colonialism and the Quest for Canaan* (2006); Steven Salaita, *Anti-Arab Racism in the USA: Where it Comes From and What it Means for Politics* (2006).

² See, e.g., Steven Salaita, *No Thanks: Stop saying 'support the troops'* Salon, Aug. 25, 2013; Steven Salaita, *Academics Should Boycott Israel: Growing movement takes next step*, Salon, Dec. 4, 2013.

in a context of a heated global conversation in reaction to the Israeli military's attacks on Gaza that exacted a heavy civilian toll. Given what Professor Salaita perceived to be atrocities committed by the Israeli government – in the context of a broader political framework of unjust occupation – his posts were, like so many thousands of others, hard-hitting, acerbic and for some audiences that disagreed, upsetting. Unlike traditional academic discourse, of course, quick, sharp and terse comment is in the very nature of the dynamic, competitive world of social media. And, for First Amendment purposes, it is plain that one cannot separate the content of speech from the manner in which it is expressed. *See Cohen v. California*, 403 U.S. 15 (1971) (First Amendment protects “Fuck the draft” emblem in public courthouse).

Nevertheless, despite Professor Salaita's obvious reliance on the terms of the University's appointment – by resigning from his tenured position at Virginia Tech, renting his Virginia home and preparing his entire family to move – you summarily terminated his appointment to a tenured position, without notice or any opportunity to be heard or to object. Your August 1, 2014 letter references your Office's failure to seek or obtain final authorization from the Board of Trustees as the reason for the termination of Professor Salaita; yet, leaving aside the procedural irregularities in your rationale,³ at bottom the University's decision to terminate his position is transparently due to the University's objection – or the objection of others pressuring the University – to the *substance* of his political expressions on an issue that is controversial and surfaces deeply held, passionate and sometimes harsh expressions of opinion.⁴ *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 828 (1995) (“It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys.”).

An attempt by university officials to repress or penalize speech on a matter of public concern such as Israel/Palestine because of disagreement with its message is impermissible “viewpoint discrimination,” a serious First Amendment violation. *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992). As the Supreme Court has long stressed, “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.” *Texas v. Johnson*, 491 U.S. 397, 414 (1989). Likewise, it is no defense to your attempted viewpoint censorship to assert that the *manner* in which Professor Salaita expressed his views was uncivil or harsh or that the substance or style of his communication would offend his audience. The Supreme Court has never accepted a desire to shelter offended listeners from harsh messages, recognizing that powerful and provocative speech is often necessarily “vehement, caustic and sometimes unpleasant.” *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964). This recognition embodies “a profound national commitment to the principle

³ Although Professor Salaita's appointment was effective August 16th, your termination letter stated that his appointment would not be recommended for submission to the Board in September, after his start date.

⁴ We are aware that numerous advocates pressured the University to punish Mr. Salaita for his views. For example, the Simon Weisenthal Center wrote to the University advocating for his termination because of his political expression. *See* http://jewishvoiceny.com/index.php?option=com_content&view=article&id=8125:wiesenthal-center-calls-ui-profes;%20see%20also%20Tucker%20Carlson,%20http://dailycaller.com/2014/07/21/university-of-illinois-professor-blames-jews-for-anti-semitism/.

that debate on public issues should be uninhibited, robust and wide-open.” *Id.* Censoring speech to protect certain audiences – a classically prohibited “heckler’s veto,” see *Reno v. American Civil Liberties Union*, 521 U.S. 844, 880 (1997) – is unacceptable because “in public debate [we] must tolerate insulting, and even outrageous, speech in order to provide adequate breathing space to the freedoms protected by the First Amendment.” *Boos v. Barry*, 485 U.S. 312, 322 (1988); see also *Snyder v. Phelps*, 131 S. Ct. 1207, 1219 (2011) (providing full First Amendment protections to Westboro Baptist Church hecklers at military funerals override claims of emotional distress suffered by family members).

Beyond the First Amendment violation committed here, the University has betrayed elementary principles of academic freedom which naturally extends protections to faculty members’ ability to “speak or write as citizens,” and which must be free from “institutional censorship or discipline.” See American Association of University Professors, 1940 Statement of Principles on Academic Freedom and Tenure. Summarily dismissing a tenured professor – without any notice or hearing – for expressing his opinion on a matter of public concern undermines the critical role universities play in a democracy. The university is “peculiarly the ‘marketplace of ideas,’” *Keyishian v. Board of Regents of Univ. of N.Y.*, 385 U.S. 589, 603 (1967); it must encourage critical thought and questioning of social and political orthodoxy, see *id.*, and is charged with producing future leaders acculturated in the norms of a pluralistic, democratic country. *Grutter v. Bollinger*, 539 U.S. 306, 324-325 (2003). In taking such precipitous action, you have sent the anti-democratic message to your faculty and students that censorship – rather than engagement, reflection or critique – is an appropriate response when political orthodoxy is challenged. The Supreme Court warned against such self-defeating academic censorship, which previously arose during the McCarthy-era:

The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. . . . Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.

Keyishian v. Board of Regents, 385 U.S. 589, 684 (1967).

Your actions have inflicted serious damage not just on one scholar; they have set your University on an unsustainable course charted against elementary constitutional principles. We strongly urge you to retract this precipitous decision and reaffirm your commitment to academic freedom and the right of members of the University of Illinois community to engage vocally and vociferously on matters of great public concern.

Very truly yours,



Baher Azmy
Legal Director
Center for Constitutional Rights