

Via Email

December 6, 2018

Richard M. Englert
Office of the President
Temple University Second Floor, Sullivan Hall
1330 Polett Walk
Philadelphia, Pennsylvania 19122

Re: Investigation of Marc Lamont Hill for United Nations Speech

Dear President Englert:

As civil rights organizations seeking to protect the constitutional rights of people speaking out for Palestinian freedom, we write to express concerns about Temple University's reported investigation of Professor Marc Lamont Hill after his November 28th speech at the United Nations calling for equality for all people in Israel and Palestine. Hill's speech is protected by the First Amendment, by which Temple University is bound as a public university. Temple's failure to disclaim trustee Patrick O'Connor's demand for investigation into Hill impermissibly chills the free speech rights of professors, as well as the entire university community. This letter offers additional context to help Temple University avoid stifling expression of political views with which some may disagree.

I. Facts

The following summarizes the events leading up to O'Connor's request that Temple's legal department investigate options for disciplining Hill. Please let us know if you believe the factual summary to be inaccurate.

a. Hill's Social Justice Background

Marc Lamont Hill has been a professor at Temple University since 2005 and is currently Steve Charles Professor of Media, Cities, and Solutions.¹ Alongside his academic work, he has also played a prominent role in public discourse, having hosted news programs on BET and VH1 and served as a commentator on CNN and Fox News.² His writing and scholarship have touched on diverse and vital issues of social justice including youth education, gentrification, criminal

¹ BIO - Dr. Marc Lamont Hill, www.marclamonthill.com/about.

² Keith Murphy, Marc Lamont Hill Talks Donald Trump, Cop Killings, #BLM & Taking VH1 'Live!' With New TV Show, Vibe, July 16, 2016, <https://www.vibe.com/2016/07/marc-lamont-hill-vh1-live-show-interview>.

law reform, prison reform, and institutional discrimination against poor, black, immigrant and LGBTQ communities.³

Hill has also been an outspoken advocate for justice for Palestinians for over a decade, both in commenting on current events and in drawing connections between various movements for justice in the United States and abroad.⁴ Hill has personally witnessed conditions in Palestine and Israel, where he travelled and met with displaced Palestinians, activists, and refugees.⁵ Hill has shared these experiences with Temple students.⁶

b. Hill's United Nations Speech Calling for Freedom and Equality

On November 28, 2018, Hill spoke by invitation at an event marking the International Day of Solidarity with the Palestinian People at the United Nations.⁷ In a press release announcing the event, Hill was described as a “social activist and host of BET News and political contributor for CNN.”⁸

In his speech, Hill described Israel's treatment of Palestinian citizens of Israel as well as those in the West Bank and Gaza.⁹ Outlining provisions of the Universal Declaration of Human Rights, Hill described the ways in which Israel restricts the freedom and equality of Palestinians, ranging from the humanitarian crisis in Gaza, resulting from Israel's over decade-long siege, to the formal adoption of institutional discrimination in Israeli law. Noting recent moves by the Trump administration that have emboldened Israel in its disregard of the rights of Palestinians, Hill explained that these actions were in line with longstanding U.S. policy.

He grounded his understanding of and his solidarity with Palestinians in his experiences as a Black American. He used that experience to highlight widespread misconceptions about the abolition of slavery and the struggle for civil rights, explaining that a sanitized memory of U.S. history has resulted in a double standard that demands that Palestinians remain passive in the face of state violence. He also used that experience to emphasize the importance of solidarity and of learning, building, and organizing together.

³ Dr. Marc Lamont Hill - Curriculum Vitae, www.marclamonthill.com/cv.php.

⁴ Marc Lamont Hill, Not My Brand of Hope, *The Root*, Feb. 5, 2008, <https://www.theroot.com/not-my-brand-of-hope-1790899571>; Greta Anderson, Temple to investigate if it will reprimand Marc Lamont Hill, *Temple News*, Dec. 4, 2018, <https://longform.temple-news.com/temple-to-investigate-if-it-will-reprimand-marc-lamont-hill/>.

⁵ Julianne Hing, Video: Black Lives Matter Delegation Visits Palestine, *Colorlines*, Jan. 16, 2015, <https://www.colorlines.com/articles/video-black-lives-matter-delegation-visits-palestine>.

⁶ Emily Scott, Marc Lamont Hill speaks in Student Center about Palestine, Oct. 7, 2017, <https://temple-news.com/marc-lamont-hill-speaks-student-center-palestine/>.

⁷ Palestinian Rights Committee Will Hold Special Meeting to Observe International Day of Solidarity, 28 November, United Nations, Nov. 27, 2018, <https://www.un.org/press/en/2018/gapal1417.doc.htm>.

⁸ *Id.*

⁹ *Jadaliyya Reports*, Marc Lamont Hill Speech at United Nation's International Day of Solidarity with Palestine, *Jadaliyya*, Nov. 29, 2018, www.jadaliyya.com/Details/38202/Marc-Lamont-Hill-Speech-at-United-Nations-International-Day-of-Solidarity-with-Palestine.

Hill ended his speech saying, “We have an opportunity to not just offer solidarity in words but to commit to political action, grassroots action, local action, and international action that will give us what justice requires. And that is a free Palestine from the river to the sea.”

c. Calls to Censor, Investigate and Punish Hill

Almost immediately after Hill made his speech, the National Council of Young Israel tweeted at CNN and Temple University, characterizing Hill’s statement as “highly offensive & virulent anti-Semitism” and calling on them to fire Hill.¹⁰ The Anti-Defamation League soon followed suit, claiming that the phrase “from the river to the sea” is a call for an end to the State of Israel.¹¹

CNN quickly announced on Thursday, November 29th, that Hill was “no longer under contract” with the organization.¹² Initially, Temple resisted demands to fire or reprimand Hill.¹³ In your Statement on Temple’s Values, you recognized Hill’s constitutional right to free speech, but repeated without criticism the claim that many associate the phrase “from the river to the sea” with a “perceived threat.”¹⁴ Though not directly calling Hill antisemitic, the statement condemned “in the strongest possible terms all anti-Semitic, racist or incendiary language, hate speech, calls to violence, and the disparagement of any person or persons based on religion, nationality, race, gender, sexual orientation or identity.” You did not undertake to defend Hill or explicitly state that he would not be penalized for his speech.

Patrick O’Connor, the chairman of the Temple’s board, publicly announced on Friday, November 30th, that Temple administrators were unhappy and “people” wanted to fire Hill right away.¹⁵ He said he had directed the legal department to explore the school’s options.¹⁶ It was

¹⁰ NCYI Young Israel, Twitter, Nov. 28, 2018, <https://twitter.com/NCYIYoungIsrael/status/1067938412295069696>. The National Council of Young Israel’s claims about Hill are remarkable given the organization’s self-professed history of arming the vigilante Zionist group Irgun, which carried out bombings and massacres during the formation of Israel. See Whitney Webb, Exposing the Israel Lobby Groups Behind the “Political Lynching” of Marc Lamont Hill, Mint Press News, Dec. 4, 2018, <https://www.mintpressnews.com/the-israel-lobby-groups-behind-the-political-lynching-of-marc-lamont-hill/252534/>.

¹¹ Associated Press, CNN Fires Analyst Marc Lamont Hill After UN Speech on Israel, NY Times, Nov. 29, 2018, <https://www.nytimes.com/aponline/2018/11/29/us/ap-us-tv-cnn-marc-lamont-hill.html>.

¹² *Id.*

¹³ Greta Anderson, Temple administration, advocacy groups react to Marc Lamont Hill’s controversial UN comments, Temple News, Nov. 30, 2018, <https://temple-news.com/cnn-drops-temple-professor-marc-lamont-hill-for-pro-palestine-u-n-speech/>.

¹⁴ Statement on Temple’s Values, Temple, Nov. 30, 2018, <https://news.temple.edu/announcements/2018-11-30/statement-temple-values>.

¹⁵ Craig R. McCoy, U.N. speech by Temple prof draws fire from university’s board chair, Philadelphia Inquirer, Nov. 30, 2018, www2.philly.com/philly/news/breaking/marc-lamont-hill-temple-israel-anti-semitic-20181130.html.

¹⁶ *Id.* It is unclear to us how O’Connor—as an individual trustee rather than through the collective action of the board or once of its committees—has the authority to order campus departments to take such action. There were no publicly noticed meetings of the board or any relevant committees between the time of Hill’s speech and O’Connor’s statement. If any closed executive sessions were held, the reason

reported on Tuesday that Cornelius Pratt, the president of the Temple Faculty Senate, confirmed that O'Connor had requested that the legal department determine whether Temple can reprimand Hill.¹⁷ Temple News also reported that the university “declined to comment multiple times on its considerations of Hill’s employment.”

d. What Hill Meant When He Said “from the River to the Sea”

Seeing the widespread misinterpretation of his statements, Hill immediately took to social media and to the local and school papers to explain what he meant. Rather than focusing on the politically motivated nature of the attacks against him and the often-willful misrepresentation of the content of his speech, Hill instead apologized for any inadvertent discomfort he had caused with his words.¹⁸ He explained that he was stunned and saddened by claims that his statement was a call for violence.¹⁹ Hill repeatedly rejected antisemitism in all its forms as he has previously done.²⁰

Hill explained that he concluded his “remarks with a call to free Palestine from river to sea. This means that all areas of historic Palestine—e.g., West Bank, Gaza, Israel—must be spaces of freedom, safety, and peace for Palestinians.”²¹ He rejected claims that the phrase was associated exclusively with Hamas and explained that the phrase “has been, and continues to be, a phrase used by many factions, ideologies, movements, and politicians.”²²

Commentators have noted that the phrase was used by the Israeli Likud Party in its founding documents to describe its plans to expand Israeli sovereignty over the West Bank and Gaza.²³ The phrase is also routinely used by Jewish journalists and Israeli politicians, without the backlash, calls for censorship, or accusations of antisemitism that Hill has faced.²⁴

for such a session would have had to have been publicly announced under state law. See 65 Pa.C.S.A. § 708(b). We urge you to investigate whether O'Connor breached his duty as a trustee through his statements.

¹⁷ Greta Anderson, Temple to investigate if it will reprimand Marc Lamont Hill, Temple News, Dec. 4, 2018, <https://longform.temple-news.com/temple-to-investigate-if-it-will-reprimand-marc-lamont-hill/>.

¹⁸ Marc Lamont Hill: I’m sorry my word choices caused harm | Opinion, Philadelphia Inquirer, Dec. 1, 2018, www2.philly.com/philly/opinion/commentary/marc-lamont-hill-temple-university-cnn-palestine-israel-united-nations-20181201.html.

¹⁹ *Id.*

²⁰ *Id.*; Marc Lamont Hill pens letter to Temple University community, Temple News, Dec. 1, 2018, <https://temple-news.com/marc-lamont-hill-pens-letter-to-temple-community/>.

²¹ Marc Lamont Hill, Twitter, Nov. 29, 2018,

<https://twitter.com/marclamonthill/status/1068174596048912384>.

²² Marc Lamont Hill, Twitter, Nov. 29, 2018,

<https://twitter.com/marclamonthill/status/1068174975977308160>. For an analysis on the phrase, see Maha Nassar ‘From The River To The Sea’ Doesn’t Mean What You Think It Means, Forward, Dec. 3, 2018 <https://forward.com/opinion/415250/from-the-river-to-the-sea-doesnt-mean-what-you-think-it-means>.

²³ Mitchell Plitnick, Double Standards Key To Attacks On Marc Lamont Hill, Dec. 3, 2018, <https://lobelog.com/double-standards-key-to-attacks-on-marc-lamont-hill/>.

²⁴ See Aymann Ismail, “Between the Sea and the Jordan There Will Only Be Israeli Sovereignty,” Slate, Nov. 30, 2018, <https://slate.com/news-and-politics/2018/11/marc-lamont-hill-cnn-firing-anti-semitism.html>.

II. Speech Critical of Israel Is Protected by the First Amendment

Marc Lamont Hill’s comments at the United Nations are protected by the First Amendment. As you are aware, Temple, as an arm of the Commonwealth of Pennsylvania, is bound by the First Amendment.²⁵ Speech that criticizes the status quo in Israel and Palestine is protected First Amendment speech. By explicitly targeting a particular viewpoint being expressed—one advocating equality for all people and a “one state solution”—an investigation by Temple would strike at the heart of the First Amendment.²⁶

The Supreme Court has emphasized that the ability to criticize government policy is “the central meaning of the First Amendment.”²⁷ Moreover, “[d]iscrimination against speech because of its message is presumed to be unconstitutional.”²⁸ To engage in such discrimination casts exactly the type of “disapproval on particular viewpoints” that the Supreme Court warned “risks the suppression of free speech and creative inquiry [on] university campuses.”²⁹

It is clear that supporters of Israel’s policies, including numerous groups opposed to Palestinian freedom, disagree with the viewpoint of Hill’s message. The record shows that Hill in no way targeted any individual or group on the basis of a protected characteristic. Rather, Hill expressed his viewpoint that all people should be free in the area currently controlled by Israel.

Speech that advocates for freedom and equality of all people “from the River to the Sea” is speech that criticizes the status quo treatment of Palestinians by the State of Israel—not by Jews or Israelis as a people. The use of the term “from the River to the Sea” does not become anti-Jewish or anti-Israeli simply because some interpret it as a personal attack or because they strongly identify with Israel as a Jewish state, as opposed to a state with equal rights for all its inhabitants.

The personal offense of some campus members and off campus groups cannot change the fact that Hill’s statements expressed a viewpoint critical of a state’s policies.

²⁵ 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.”).

²⁶ *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 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.”).

²⁷ *New York Times v. Sullivan*, 376 U.S. 254, 273 (1964).

²⁸ *Id.*; see also, *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 55 (1983) (“In a public forum . . . all parties have a constitutional right of access and the State must demonstrate compelling reasons for restricting access to a single class of speakers, a single viewpoint, or a single subject.”).

²⁹ *Rosenberger*, 515 U.S. 819 at 835.

III. Temple May Not Fire or Reprimand Hill

The First Amendment prohibits government interference with speech except in narrow and necessary circumstances.³⁰ As you recognized, the protections of the First Amendment encompass public employees who are speaking as private citizens on matters of public concern.³¹ When a public employee speaks as a citizen on a matter of public concern, the government can only restrict their speech if the restriction is necessary in order for the government to operate efficiently and effectively.³²

It is undisputed that Hill's speech took place outside the classroom and that the question of self-determination for Palestinians and what it should or should not look like is an important matter of public concern.³³ Hill's speech did not interfere with the orderly operation of the university. What might require the use of university resources is responding to the pressure campaign by groups opposed to Palestinian freedom. This pressure campaign should not operate as a heckler's veto and cannot constitutionally factor into the university's decision making.³⁴

IV. Temple Must Respect Hill's Academic Freedom

As Temple faculty members made clear in an open letter on December 5th, in addition to the university's constitutional obligations, Temple also has a contractual duty to respect Hill's academic freedom.³⁵ As the American Association of University Professors' (AAUP) 1940 Statement of Principles on Academic Freedom and Tenure states, when professors "speak or write as citizens, they should be free from institutional censorship or discipline."³⁶ This policy is

³⁰ See, e.g., *Roth v. United States*, 354 U.S. 476, 484 (1957) (All ideas having even the slightest redeeming social importance -- unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion -- have the full protection of the guaranties, unless excludable because they encroach upon the limited area of more important interests.").

³¹ See *Garcetti v. Ceballos*, 547 U.S. 410, 417 (2006).

³² *Id.* at 419.

³³ "Speech involves matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community, or when it is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public." *Lane v. Franks*, 134 S. Ct. 2369, 2379 (2014) (internal quotations omitted). See also *Salaita v. Kennedy*, 118 F. Supp. 3d 1068, 1083 (N.D. Ill. 2015) (finding that tweets regarding "Israeli-Palestinian relations" were a matter of public concern with regard to plaintiff's First Amendment claim against public university for retaliatory termination based on his speech).

³⁴ See *US v. Marcavage*, 609 F. 3d 264, 282 (3rd Cir. 2010) ("These principles are well embedded in First Amendment jurisprudence. Together they stand for the proposition that where the government regulates speech based on its perception that the speech will spark fear among or disturb its audience, such regulation is by definition based on the speech's content").

³⁵ Temple professors: No confidence in university leader who won't support Marc Lamont Hill's academic freedom | Opinion, Philadelphia Inquirer, Dec. 5, 2018, www2.philly.com/opinion/commentary/marc-lamont-hill-temple-university-professor-patrick-oconnor-20181205.html.

³⁶ American Association of University Professors, 1940 Statement of Principles on Academic Freedom and Tenure, <https://www.aaup.org/report/1940-statement-principles-academic-freedom-and-tenure>.

included in Temple's Faculty Handbook and incorporated into contracts of full-time faculty members.³⁷

V. The Threat of Temple's Investigation of Professor Hill Unconstitutionally Chills Expression

Moreover, Temple's threat of investigation itself violates the First Amendment and seriously threatens academic freedom. When investigations are declared by public institutions, the mere threat of legal sanctions may violate the First Amendment.³⁸ That is because government investigations can encroach on constitutional liberties and have an "inhibiting effect in the flow of democratic expression."³⁹

Temple's threatened investigation into Hill sends a clear message to professors that it is perilous to criticize Israel or support Palestinian rights, and those who do so, even on their own time, will suffer the consequences. Indeed, commentators have suggested that the chilling effect was precisely the reason behind such threats.⁴⁰ Such actions strike at the heart of the First Amendment. Professors should be allowed to criticize a state's policies, whether in their academic work or in their personal lives, without fear of sanction.

VI. Attacks on Hill Are Part of a Campaign to Silence Criticism of Israel

Calls to censor and punish Marc Lamont Hill are part of broader attempts to shield the State of Israel from criticism. Palestine Legal responded to 308 incidents of suppression of U.S.-based Palestine advocacy in 2017, and nearly 1000 incidents from January 1, 2014 through December 31, 2017.⁴¹ Of the 308 incidents we responded to last year, 142 reported incidents involved accusations of antisemitism based solely on speech critical of Israeli policies and 123 involved unsubstantiated accusations of support for violence and terrorism, again based solely on speech critical of Israeli policies.⁴² Over 80% of these incidents targeted students and scholars. These numbers understate the phenomenon, as many activists are unaware of their rights or do not report incidents of suppression.

³⁷ Temple University Faculty Handbook 1, www.temple.edu/Senate/documents/faculty_handbook.pdf. The inclusion of academic freedom principles in the faculty handbook itself creates legally enforceable rights. *Greene v. Howard University*, 412 F.2d 1128, 1135 (D.C. Cir. 1969) ("The employment contracts of appellants here comprehend as essential parts of themselves the hiring policies and practices of the University as embodied in its employment regulations and customs.").

³⁸ *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67 (1963).

³⁹ *Sweezy v. New Hampshire*, 354 U.S. 234, 245–48 (1957); cf. *Stolt-Nielsen, S.A. v. United States*, 442 F.3d 177, 183 (3d Cir. 2006) (noting that courts have power to block criminal prosecution "in order to avoid a chilling effect on constitutional rights").

⁴⁰ David Palumbo-Liu, *The Harsh and Unjust Punishment of Marc Lamont Hill*, *The Nation*, Dec. 4, 2018, <https://www.thenation.com/article/marc-lamont-hill-academic-freedom/>; Whitney Webb, *Exposing the Israel Lobby Groups Behind the "Political Lynching" of Marc Lamont Hill*, *Mint Press News*, Dec. 4, 2018, <https://www.mintpressnews.com/the-israel-lobby-groups-behind-the-political-lynching-of-marc-lamont-hill/252534/>.

⁴¹ Palestine Legal, *Year-In-Review: Palestine Legal Responded to 308 Suppression Incidents in 2017, Nearly 1000 in Last 4 Years*, Jan. 30, 2018, <https://palestinelegal.org/2017-report>.

⁴² *Id.*

VII. Conclusion

Universities’ scrutiny and censorship of speech critical of Israel harms all campus community members, especially those who are interested in exploring the critical issue of Israel and Palestine. It threatens to shut down robust debate on one of the most significant foreign policy, moral, and political questions of our time. 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.⁴³

There is no constitutionally sound justification for investigating Marc Lamont Hill, and we expect Temple will live up to its obligations under the U.S. Constitution and uphold his rights, including by refusing to conduct any investigation.

Sincerely,



Zoha Khalili
Staff Attorney
Palestine Legal



Radhika Sainath
Senior Staff Attorney
Palestine Legal



Maria C. LaHood
Deputy Legal Director
Center for Constitutional Rights

cc: Michael B. Gebhardt, Office of University Counsel

⁴³ *Healy*, 408 U.S. at 180-81.