



August 31, 2015

VIA EMAIL

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University of California Board of Regents  
Office of the Secretary and Chief of Staff to the Regents  
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Dear President Napolitano and Honorable Members of the Board of Regents:

We are national educational and advocacy organizations deeply concerned about rising anti-Semitism on U.S. campuses, including at the University of California (UC). Over the last few years, Jewish UC students have reported being physically assaulted, threatened, and discriminated against. In addition, Jewish property has been defaced and destroyed. We appreciate your commitment, under the leadership of President Napolitano, to addressing campus anti-Semitism. A crucial step to addressing the problem (as well as any other form of bigotry) is understanding what anti-Semitism is and how it may be expressed. The State Department has done an excellent job in defining anti-Semitism today, recognizing the reality that while not all criticism of Israel is anti-Semitic, some of it is. We respectfully urge you to adopt this definition and incorporate it into the statement of principles against intolerance that we understand you may be issuing in September.

Some of us have communicated this request to you already. But we are aware that four organizations – Palestine Legal, Jewish Voice for Peace, the National Lawyers Guild, and the Center for Constitutional Rights – have written to you, urging that you “drop consideration” of the State Department definition based on several false and misleading claims. These claims cannot go unanswered and we address them below.

## **A. The State Department Definition is Not a “Redefinition” of Anti-Semitism But Rather a Longstanding Definition of the Problem**

In their letter to you, the four groups opposed to the State Department definition repeatedly refer to it as a “redefinition” of anti-Semitism – as if there were a long and universally accepted definition that the State Department has deviated from. The fact is that the State Department has been using virtually the same definition of anti-Semitism for the past 10 years.

In January 2005, the State Department issued a global report on anti-Semitism in which the Department distinguished “between legitimate criticism of policies and practices of the State of Israel, and commentary that assumes an anti-Semitic character.” The Department noted that “[t]he demonization of Israel, or vilification of Israeli leaders, sometimes through comparisons with Nazi leaders, and through the use of Nazi symbols to caricature them, indicates an anti-Semitic bias rather than a valid criticism of policy concerning a controversial issue.” (<http://www.state.gov/j/drl/rls/40258.htm>.)

Three years later, in March 2008, the State Department issued a comprehensive report on contemporary global anti-Semitism, describing anti-Semitism as “an adaptive phenomenon.” Age-old forms of anti-Semitism unfortunately still exist (e.g., accusing Jews of blood libel, dual loyalty and undue influence on government policy and the media), but new forms of anti-Semitism have emerged, characterized by criticism of Zionism or Israeli policy. The State Department rightly recognized that whether intended or not, these new forms of anti-Semitism have “the effect of promoting prejudice against all Jews by demonizing Israel and Israelis and attributing Israel’s perceived faults to its Jewish character.” (<http://www.state.gov/documents/organization/102301.pdf> at p. 4.)

In 2010, the State Department affirmed this definition (<http://www.state.gov/j/drl/rls/fs/2010/122352.htm>), and since then, government officials have been using it, recognizing that anti-Israelism can cross the line into anti-Semitism. In December 2011, for example, when the U.S. government’s Special Envoy to Monitor and Combat Anti-Semitism testified before the Commission on Security and Cooperation in Europe (U.S. Helsinki Commission), she stated:

I want to be clear – legitimate criticism of policies of the State of Israel is not anti-Semitism. We do record huge increases in anti-Semitic acts whenever there are hostilities in the Middle East. This form of anti-Semitism is more difficult for many to identify. But if all Jews are held responsible for the decisions of the sovereign State of Israel, this is not objecting to a policy – this is hatred of the collective Jew or anti-Semitism. It is anti-Semitism when a right-wing group distributes posters depicting a doll with peyote, a yarmulke, wrapped in an Israeli flag, and with an arrow through its head . . . . It is anti-Semitism when posters say, “Committed every war crime in the book yet the world remains silent, death to

Israel,” and “Israel, your days are numbered,” and “For world peace Israel must be destroyed”. . . . When individual Jews are effectively banned or their conferences boycotted, or are held responsible for Israeli policy – this is not objecting to a policy – this is aimed at the collective Jew and is anti-Semitism.”

(<http://www.state.gov/j/drl/rls/rm/2011/178164.htm>.)

Likewise, in November 2014, the Organization for Security and Co-operation in Europe (OSCE) – comprising 57 states spanning the globe – commemorated the tenth anniversary of the OSCE’s Berlin Conference on Anti-Semitism. In her remarks at the 10<sup>th</sup> anniversary conference, Samantha Power, the U.S. Permanent Representative to the United Nations, distinguished between legitimate criticism of Israel and anti-Semitism:

Governments must allow space for people’s views to be aired in the public sphere – whether in a conversation or at a protest. Just as there is a way to express criticisms of Palestinian policies and actions without expressing Islamophobic views or attacking Muslims; so too is there a way to express criticisms of Israel’s policies and actions without making anti-Semitic remarks.

(<http://usun.state.gov/briefing/statements/234009.htm>.)

Ten years after the State Department adopted a definition of anti-Semitism recognizing that some anti-Israelism crosses the line into anti-Semitism, it is still using virtually the same definition today. See <http://www.state.gov/j/drl/rls/fs/2010/122352.htm>.

The State Department’s longstanding definition, based on a definition drafted by the European Monitoring Center on Racism and Xenophobia (EUMC), is also used globally. In November 2014, at the tenth anniversary of the OSCE’s Berlin Conference on Anti-Semitism, the Swiss Chairman of the OSCE “[n]oted that the Working Definition of Anti-Semitism, disseminated by the EUMC in 2005 and employed by monitoring organizations in various OSCE participating States, remains a useful document for governments and civil society in explaining how anti-Zionism is frequently a mask for anti-Semitism, and Jewish communities are often targets for anti-Israel animus.” (See <http://www.osce.org/odihr/126710?download=true>.)

## **B. The State Department Definition Is Completely Appropriate for a University Setting**

The four groups opposed to the State Department definition claim that the definition is inappropriate for a university setting. We could not disagree more: The definition provides a crucial framework for university administrators, faculty, staff and students to understand the many forms that anti-Semitism takes today, including how it manifests itself with regard to Israel. In June, U.S. Rep. Brad Sherman of California – a leader in the fight against campus anti-Semitism – wrote to U.S. Secretary of Education Arne Duncan, urging the Department of

Education to adopt the State Department definition of anti-Semitism. As Congressman Sherman recognized, **it is impossible to respond to the problem unless you define it.**

In 2010, the Inter-parliamentary Coalition for Combating Antisemitism – comprised of experts and representatives of parliaments from more than 50 countries around the world, including the U.S. Congress – convened to explore the most effective ways to fight global anti-Semitism. A major outcome of this conference was the Ottawa Protocol which reaffirmed the EUMC working definition and urged universities to use it.

[\(http://www.antisem.org/archive/ottawa-protocol-on-combating-antisemitism/.\)](http://www.antisem.org/archive/ottawa-protocol-on-combating-antisemitism/)

The State Department definition is being used by several schools already. The student governments at UCLA, UC Berkeley and UC Santa Barbara have each unanimously approved resolutions condemning anti-Semitism based on the State Department's definition. And in July, the California State Legislature unanimously passed SCR-35 which uses the State Department definition and urges each UC campus to adopt a resolution condemning all forms of anti-Semitism.

The four groups opposing the State Department definition emphasize that it is a definition the State Department uses to monitor and combat anti-Semitism “*in foreign countries*” – their emphasis, not ours. It is illogical to think that anti-Semitism means one thing in foreign countries, but means something different when it happens here. If an incident that occurs abroad is anti-Semitic, then surely it must also be anti-Semitic if it occurs within the United States and on the UC campuses.

### **C. Adopting the State Department Definition Will Not Violate or Risk Violating the First Amendment**

The four groups opposed to the State Department definition of anti-Semitism claim that adopting it “could put University administrators in the position of violating free speech rights” and “expose the University and well-intentioned administrators to liability.” The groups also claim that the State Department definition is vague, and if adopted, would “have a chilling effect on constitutionally-protected speech and academic inquiry.” These are all simply scare tactics; they should not deter you from adopting the definition.

There is nothing vague about how the State Department has defined anti-Semitism. The definition includes numerous examples of how anti-Semitism manifests itself today, including with regard to Israel. In addition, adopting the definition would not have any effect on constitutionally protected speech or academic inquiry. It would simply amount to an expression of how the UC Regents understands and explains the problem, and would help educate the campus community about what anti-Semitism is. Regardless of how the UC Regents define anti-Semitism – or any other form of bigotry – the Regents must respond to the bigotry consistent with the law and the First Amendment, without infringing on protected speech.

As support for their claim that simply by defining anti-Semitism, “Palestinian human rights activism” will be “repressed,” the opposing groups refer to three decisions issued by the U.S. Department of Education’s Office for Civil Rights (OCR), after complaints were filed with the agency alleging a hostile environment for Jewish students at three UC campuses, in violation of Title VI of the Civil Rights Act. This claim fails as well.

After the complaints were investigated, OCR eventually dismissed each of the three (unrelated) complaints on the basis that they failed to state a claim under Title VI. OCR did not define or discuss the meaning of anti-Semitism in any of its decisions.

What OCR has made clear – well before it interpreted Title VI to protect Jewish students from anti-Semitic harassment and intimidation – is that when OCR addresses any form of harassment under its jurisdiction, “all actions taken by OCR must comport with First Amendment principles.” OCR also affirmed that consistent with these principles, it can “ensure a safe and nondiscriminatory environment for students that is conducive to learning and protects both the constitutional and civil rights of all students.” (<http://www2.ed.gov/about/offices/list/ocr/firstamend.html>.)

We appreciate and fully support the importance of complying with First Amendment principles. These principles must and surely will be respected regardless of how anti-Semitism – or any other form of bigotry – is defined.

#### **D. The UC Regents have the Right to Express their Own Views on Anti-Semitism**

You are free to express your own views on the meaning of anti-Semitism. In fact, you have the right to do so.<sup>1</sup>

The U.S. Supreme Court has determined that “[a] government entity has the right to ‘speak for itself.’ . . . . ‘[I]t is entitled to say what it wishes,’ . . . and to select the views that it wants to express.” *Pleasant Grove v. Sumnum*, 555 U.S. 460, 467-68 (2009) (citations omitted). Citing to U.S. Supreme Court precedent, one California appellate court likewise noted that “the government certainly has the freedom to speak. ‘Indeed, it is not easy to imagine how

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<sup>1</sup> Two of the groups that object to the State Department definition have themselves crafted and disseminated their own definition of anti-Semitism. In a *Legal and Tactical Guide to Palestinian Human Rights Advocacy in the U.S.*, Palestine Legal (formerly known as Palestine Solidarity Legal Support) and the Center for Constitutional Rights state that “[s]peech that condemns Israel as an apartheid state is not **anti-Semitic**. Criticism of Jewish people as a whole because of Israel’s actions is, on the other hand, anti-Semitic. Disparagement of an individual based on stereotypes of Jewish people may also be anti-Semitic ‘hate speech.’ . . . . But criticism of Israeli policies is not hateful towards Jewish people.” (<http://palestinelegalsupport.org/wp-content/uploads/2013/09/Legal-and-Tactical-Guide-Palestinian-Human-Rights-Advocacy-in-the-U.S.-.pdf> at 7) (emphasis in original).

We do not question that these groups have the freedom to express their own views about the meaning of anti-Semitism. But that does not mean that the UC Regents or anyone else is obligated to agree with those views. Palestine Legal and the Center for Constitutional Rights have also expressed their particular views on the meaning of Islamophobia, stating in their guide that “a generalized denunciation of Palestinians or Muslims as ‘terrorist’ may be Islamophobic ‘hate speech.’” *Id.* Again, that is their particular viewpoint with which others might disagree.

government could function if it lacked this freedom.”” *Vargas v. Salinas*, 134 Cal.Rptr.3d 244, 257 (2011), *cert. denied*, 133 S. Ct. 424 (2012) (citation omitted).

Accordingly, we respectfully urge you to exercise your right and freedom to speak. Please make it clear that you understand and define anti-Semitism according to the definition long used by the State Department.

### **E. Conclusion**

Thank you for your leadership and for your commitment to addressing anti-Semitic bigotry on the UC campuses, which affects the entire UC community. This ugly problem cannot be meaningfully and effectively combatted until we truly understand the problem itself. With that goal in mind, we urge you to adopt the State Department definition of anti-Semitism.

Respectfully,

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