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**VIA US MAIL**

July 10, 2012

President Mark G. Yudof  
University of California  
1111 Franklin Street, 12<sup>th</sup> Floor  
Oakland, California 94607

Charles F. Robinson  
UC Vice President and General Counsel  
University Office of the President  
Office of the General Counsel  
1111 Franklin Street, 8th Floor  
Oakland, CA 94607

Chancellors Birgeneau, Katehi, Drake, Block, Leland, White, Pradeep Khosla,  
Desmond-Hellmann, Blumenthal and Yang

***Re: UC Campus "Climate Assessment" and Student Speech***

Dear President Yudof, General Counsel Robinson and Chancellors:

We are writing on behalf of the elected UC student body officers and organizations listed at the end of this letter to express their and our concerns about the direction of UC's effort to assess what you have termed the "campus climate" at the University of California. While recent racial incidents at UC campuses may have contributed to your call for this assessment process, it is clear from your open letter to the campus community on this subject posted here:

(<http://www.universityofcalifornia.edu/news/article/26327>), that your concerns center on student speech and expressive activities critical of Israel. We believe that there is a great risk this "assessment" process, if it goes unchecked, will "chill" and discourage legitimate student speech and activism on these issues and will have a disproportionate impact on Arab, Muslim and Palestinian students who defend Palestinian human rights.

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When you formed the *Advisory Council on Campus Climate, Culture and Inclusion* in June 2010, you charged that body with addressing "challenges in enhancing and sustaining a tolerant, inclusive environment on each of the university's campuses." More recently, you announced that the UC would launch a system-wide "campus climate survey" to assess the needs of students from diverse religious or ethnic backgrounds. The Council will report on the survey results to you and possibly to the Board of Regents, potentially leading to new policies impacting student speech on these issues.

To be clear, we unreservedly support efforts to promote mutual tolerance and understanding at the UC campuses among various religious, ethnic and racial groups. Furthermore, we regard discrimination and acts of intolerance as rising problems within the UC system. Events such as the "Compton Cookout" frat party at UCSD and the "Increase Diversity Bake-sale" hosted by UCB College Republicans, are egregious examples of ethnic and racial stereotyping and demonstrate the need to create a more inclusive campus environment. However, the "climate assessment" process must not lead to the adoption of new policies that would curb the civil rights of Arab, Muslim, and Palestinian students or restrict student speech on these issues.

From its inception, the Council has singled out student speech and activism critical of Israel. Efforts in 2010 to push for divestment from American companies enabling human rights violations by Israel led to calls for limitations on student speech and activism critical of Israel. While ostensibly formed to address all forms of racial and religious intolerance, the Council initially met last Fall, as far as we know, only with Jewish student groups and faculty calling on you to suppress speech critical of Israel. The Council did not interview representatives of Arab, Muslim or Palestinian student groups until the end of the academic year.

Furthermore, you appointed to the Council a leader of the Anti-Defamation League, ("ADL"), a group that calls on UC and other universities to silence activism critical of Israel and specifically targets the undersigned campus groups most vocal on the subject, the *Students for Justice in Palestine* and *Muslim Students Association*. Appointing someone with such partisan views on these subjects to your Council clearly was calculated to appease your critics in the staunchly pro-Israel community.

Most of all, we are concerned by the statement in your posted message, (see: above link), that "*behaviors that may have an adverse impact (on) Jewish students or any member of our community may likely be considered a violation of our University's Statement of Ethical Values and Principles of Community, which call for civility and respect in our personal interactions.*" That statement, plus the recommendations of the *Jewish Students Campus Climate Fact-Finding Team Report* released on July 9, fortify our concern that you will propose to the Regents new policies restricting student speech and expressive activities critical of Israeli based purely on the fact that some Jewish

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students on campus find the content of such speech unsettling or as anti-Semitic.<sup>1</sup> This is unacceptable.

We agree that Jewish students, just like other students, should not be met with an adverse environment based on their identity. However, we disagree with your suggestion that just because a student group takes offense at the content of the speech of other students, UC can restrict the latter's Free Speech rights under the guise of promoting greater civility on campus. Under well established Supreme Court precedent, the "civility" or incivility of speech is irrelevant to whether speech must be permitted. Justice Douglas said it best:

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<sup>1</sup> In the *Jewish Student Fact-Finding Team Report and Recommendations*, ("Jewish Student Report"), released July 9, 2012, this climate assessment team recommended, *inter-alia*, that UC consider banning expressive activities such as Israeli Apartheid week events, adopt the European Union ("EU"), definition of "anti-Semitism" and ban "hate speech at UC." (Recommendations #s 1, 2 & 4). These recommendations are deeply troubling. A ban on "hate speech" motivated by racial or religious bias not only runs afoul of the First Amendment, *R.A.V. v. City of St Paul*, 112 S. Ct. 2538 (1992), the same is especially problematic when imposed by U.S. public universities where robust discourse on public controversies is expected and healthy. See: *Doe v. University of Michigan*, 721 F. Supp. 852 (E.D. Mich. 1989) and *UMW Post, Inc., Board of Regents of the University of Wisconsin*, 774 F. Supp. 1163 (E.D. Wis. 1991).

Adoption of the EU definition of anti-Semitism, which can be found here: (<http://fra.europa.eu/fraWebsite/material/pub/AS/AS-WorkingDefinition-draft.pdf>), at UC is equally flawed. Under the examples of "anti-Semitism" provided with the EU definition --which we note, is championed elsewhere by the ADL but was rejected by Britain's largest trade union for university academics because it stifles debate and is used to deflect criticism of Israel-- claiming that the existence of the State of Israel is, or was "racist," or speaking out only on Israeli human rights abuses without also criticizing the policies of other nations, is deemed "anti-Semitism." Apart from the issue of whether the establishment of the State of Israel was "racist" or was facilitated by racist ideology, subjects intensely debated in the international community, regulation of student speech at UC premised on adoption of the EU definition of anti-Semitism inevitably would plunge UC into content-based regulation of speech. This would constitute a patent violation of students' First Amendment right to describe Israel or Israeli policies however they want to describe it, and regardless of whether they choose to criticize the policies of other nations. There is no "equal criticism" obligation under the First Amendment!

Instead of an effort to suppress speech on these issues, we urge you to adopt the recommendation of the *Muslim and Arab Students Campus Climate Fact-Finding Team Report*, which goes in the opposite direction. It calls on UC to apply more "evenhanded" UC Free Speech polices that "... provide a safe environment for student events and that also do not reinforce a perception that there is a hostile environment for uncomfortable speech (at UC)." (Recommendation No. 7).

*"A function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea." Terminiello v. Chicago, 337 U.S. 1, 4 (1949).*

Moreover, and perhaps more fundamentally, there is nothing uncivil about calling for Palestinian human rights and equality, or in speech which criticizes --sharply or mildly, it does not matter-- Israeli governmental policies. As long as the policies being criticized or even condemned, are policies *of the state*, they are fair game for open debate, criticism and rebuke, etc., without the kind of threat at censure your letter suggests may be imminent. This principle is fundamental to the activities conducted by the student groups signing this letter, some of which have a large number of Jewish members.

We recognize, of course, that *some* Jewish students and faculty identify strongly with the state of Israel and take personally criticism of its government. But it is wrong to fuse the policies of the government of Israel with all Jewish people, or with the Jewish identity and religion. It is even worse for you and others to suggest that robust activism on campus relative to these issues and sharp criticism of Israel should be restricted based on this purely subjective response. Are students and faculty of Iranian ancestry able to call on you to squelch the kind of rampant criticism of Iranian policy and leaders we hear everywhere, including at UC, merely because they identify with that country's national heritage, dominant religion or ethnicity?

Your public statements on this subject also echo the ADL's complaint that Israel is being "singled out" for criticism and this, you told the ADL in your speech to that organization in 2011, reflects anti-Jewish bias.<sup>2</sup> Israel's treatment of Palestinians has been the subject of multiple condemnations by the United Nations and in the global community. This longstanding conflict also threatens world peace in a way arguably unequalled by any other international conflict of our time. Accordingly, it is *entirely* understandable why the issue generates more attention on campus than other international issues, particularly considering the inseparability of the Israeli-Palestinian conflict from key foreign policies of our government in this region.

Finally, the student groups signing this letter also object to your characterization of pro-Palestinian activists on campus and your blatant appeals to others to counter our speech. In your posted speeches and messages on this subject, especially in your

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<sup>2</sup> <http://www.ucop.edu/newsroom/newswire/img/44/4492707094ebc36ba8c0c2.pdf>

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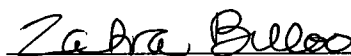
**July 10, 2012**

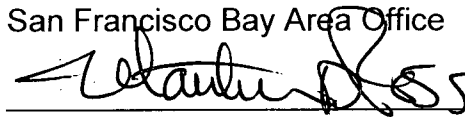
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remarks to ADL, you refer to the position of Palestinian and other students on these issues and criticism of Israel generally, as being "bad" speech which you say should be vigorously opposed by what you call "good" speech, i.e., speech in opposition to our views.<sup>3</sup> President Yudof: you cannot fairly address the atmosphere of intolerance that you say exists at UC campuses on these issues when you simultaneously urge others to aggressively oppose views critical of Israel. You, too, cannot be this much of a partisan, weighing in with expressions of your personal views, but purport to be able to establish fair and accommodating university policies in this sensitive area.

In conclusion, we call for a more balanced approach, fair treatment, and above all, respect for the right of university students and faculty to express their political beliefs, including those critical of Israel.

Respectfully,

  
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Zahra Billoo, Executive Director  
Council of American-Islamic Relations  
San Francisco Bay Area Office

  
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Matthew D. Ross  
Liz Jackson, UCB School of Law, 2011  
For the Bay Area & Los Angeles  
National Lawyers Guild chapters

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***For and on behalf of the following elected student body officers:***

Shahryar Abbasi  
External Affairs Vice President, ASUC Berkeley

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<sup>3</sup> In your November, 2011 speech to the ADL you told that body: *"And while we can't censor bad speech, we can dictate time, place, and manner. At UC Irvine, Chancellor Drake has insisted that the simulated checkpoints be set up directly in front of his office, where he can physically see them for the entire week."* (See link given above). The legal groups signing this letter are adamant that the limited authority of the University to regulate the "time, place and manner" of protected speech does not permit UC to require that the protected speech be conducted at a particular location selected by the University simply in order to be able to be better able to monitor the activity. This was an abuse of students' First Amendment rights.

Lana El-Farra  
External Vice President, ASUC Los Angeles

Nadim Houssain  
External Vice President, ASUCSB Santa Barbara

Taylor Mason  
Cultural Affairs Commissioner, ASUCLA Los Angeles

Hassan Mukhlis  
ASUC Senator, ASUCI Irvine

Sadia Saifuddin  
ASUC Senator, ASUC Berkeley

***And the following UC Student Organizations:***

UC Berkeley Arab Recruitment and Retention Center  
UC Berkeley Arab Student Union  
UC Berkeley Muslim Student Association  
UC Berkeley Students for Justice in Palestine  
UC Davis Muslim Student Association  
UC Davis Students for Justice in Palestine  
UC Irvine Muslim Students Union  
UC Irvine Students for Justice in Palestine  
UC Los Angeles Muslim Students Association  
UC Los Angeles Students for Justice in Palestine  
UC Los Angeles United Arab Society  
UC Riverside Muslim Student Association  
UC Riverside Students for Justice in Palestine  
UC San Diego Muslim Student Association  
UC San Diego Students for Justice in Palestine  
UC Santa Barbara Students for Justice in Palestine  
UC Santa Cruz Committee for Justice in Palestine

cc: UC Berkeley:  
Vice Chancellor for Student Affairs Harry LeGrande  
Vice Chancellor for Equity and Inclusion Gibor Basri  
Chief Campus Counsel Christopher Patti  
Berkeley School of Law Dean Christopher Edley