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Chair of the Assembly of the Academic Senate
Faculty Representative to the Regents
University of California
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July 18, 2017

JANET NAPOLITANO, PRESIDENT
UNIVERSITY OF CALIFORNIA

Re: Statement on the Anti-Semitism Awareness Act

Dear Janet:

At its June 28, 2017 meeting, the Academic Council endorsed the attached statement from the University Committee on Academic Freedom (UCAF) expressing concern about the Anti-Semitism Awareness Act, a bill passed by the U.S. Senate in 2016, which encourages the Department of Education to apply the State Department definition of “anti-Semitism” in investigating and responding to alleged Title VI violations at educational institutions that receive federal funding.

Council shares UCAF’s concerns that the bill as written could be interpreted to equate criticism of the state of Israel with anti-Semitism, and in doing so, might chill speech seen as critical of Israel in an academic context.

As you know, the UC Regents engaged in a similar debate last year over a policy statement of Principles Against Intolerance. The Regents ended up rejecting the State Department definition by accepting an amendment to the Statement’s pre-amble proposed by UCAF and endorsed by Council clarifying that “anti-Semitic forms of anti-Zionism” rather than “anti-Zionism” should be considered discrimination, to distinguish anti-Zionism – a political viewpoint protected under the First Amendment – from anti-Semitism – unprotected racial discrimination.

We believe that similar amendments to the Anti-Semitism Awareness Act are needed to avoid conflating issues that arise during legitimate teaching, research, and debate about Israeli policy, with hatred toward Jewish people.

The bill was passed by the Senate during at the end of the last session of Congress; the House of Representatives did not have time to act on it, and it has not been reintroduced yet in the current Congress. We request that you share UCAF’s statement with the UC Office of the Federal Governmental Relations for their use should the need arise.

Sincerely,



Jim Chalfant, Chair
Academic Council

Encl

Cc: UCAF
Academic Council
Senate Director Baxter
Senate Executive Directors



UNIVERSITY COMMITTEE ON ACADEMIC FREEDOM (UCAF)
Hugh Roberts, Chair
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June 7, 2017

**JIM CHALFANT, CHAIR
ACADEMIC SENATE**

RE: UCAF ANTI-SEMITISM AWARENESS ACT STATEMENT

Dear Jim,

The University of California Committee on Academic Freedom is deeply concerned by the implications of the Anti-Semitism Awareness Act which passed the United States Senate in December of 2016, and which will in all probability be reintroduced before Congress. The Act encourages the Department of Education to apply the “definition [of “anti-Semitism”] set forth by the Special Envoy to Monitor and Combat Anti-Semitism of the Department of State” in investigating and responding to alleged violations of Title VI of the Civil Rights Act of 1964 at educational institutions that receive federal funding. While our committee condemns recent anti-Semitic incidents on UC (and other) campuses, this legislative response strikes us as profoundly ill-conceived. It represents a genuine threat to academic freedom and to the constitutional right of all members of our campus community to engage in free speech.

In all probability, the members of the US Senate considered this act a harmless and largely symbolic expression of its (laudable) abhorrence for anti-Semitic sentiments and actions. This would account for the lack of serious consultation, public comment or debate given to the measure. Unfortunately, this is a measure which could have serious unintended consequences for academic freedom and freedom of speech.¹ If the Office for Civil Rights of the Department of Education were to adopt the state department’s definition of anti-Semitism without, at the same time, carving out clear exceptions for academic research and speech about Jews and/or Israel from the definition of a legally actionable “hostile environment” under the Civil Rights Act,² the risk of the power of the state being employed to stifle and distort legitimate debate and discussion about significant cultural and political issues is clear. Whatever may be the merits of the Department of State’s guidelines on Anti-Semitism for its purposes, they are hopelessly ill-suited as a guide for investigations into discussions of the state of Israel in an academic context, a point that has been

¹ See the letter sent by the ACLU to the House of Representatives on December 5, 2016 for an analysis of the threat to First Amendment rights posed by this measure (<https://www.aclu.org/letter/oppose-hr-6421s-10-anti-semitism-awareness-act-2016>).

² For additional background on judicial and administrative implementation of the “hostile environment” standard on university campuses, see the AAUP’s 2016 report, *The History, Uses and Abuses of Title IX* (<http://www.aaup.org/report/history-uses-and-abuses-title-ix>).

compellingly argued by the lead author of the definition in question.³ The Act directs the Department of Education to consult both the definition of anti-Semitism included in the State Department's June 8, 2010 Fact Sheet, "Defining Anti-Semitism" (<https://2009-2017.state.gov/j/drl/rls/fs/2010/122352.htm>) and the examples set forth in the Fact Sheet under the headings "Contemporary Examples of Anti-Semitism" and "What is Anti-Semitism Relative to Israel?" (Notably, it does not direct the department of Education to observe the proviso with which the Fact Sheet concludes: "However, criticism of Israel similar to that leveled against any other country cannot be regarded as anti-Semitic.")

The "definition" of anti-Semitism provided in the Fact Sheet is so vague as to be almost meaningless: "Anti-Semitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of anti-Semitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities." A "certain perception of Jews" which may manifest itself as unspecified actions against "Jewish or non-Jewish" people amounts to a "definition" in which nothing is defined.

The examples that accompany the "definition" are, in their way, even more troubling for application in a university setting: "Drawing comparisons of contemporary Israeli policy to that of the Nazis"; "Applying double standards by requiring of [Israel] a behavior not expected or demanded of any other democratic nation"; "Denying the Jewish people their right to self-determination, and denying Israel the right to exist." It is easy enough to envisage the kinds of inarguably anti-Semitic rhetoric, irrelevant to academic inquiry, envisaged by the authors of this Fact Sheet. Unfortunately, it is equally easy to imagine statements and arguments presented in legitimate academic discourse that would meet these criteria, or could be construed to meet them. A broad philosophical objection to the existence of nation-states per se, for example, would "deny Israel's right to exist"—along with the right of every other nation in the world. An Israeli scholar might feel empowered, as a citizen, to "demand of [Israel] a behavior not...demanded of any other democratic nation." A scholar studying some common, broadly shared, feature of modern Western bureaucratic state organizations might note its presence in both the Nazi and Israeli state apparatuses, without drawing an ideological comparison of any kind.

The University of California engaged in a thorough discussion about the wisdom of applying the State Department definition of anti-Semitism to the context of academic debate in 2015 and 2016, when the UC Regents were formulating their policy on "Principles Against Intolerance." A vigorous public debate and a thorough exploration of the arguments for and against such a decision by the Working Group formed by the Regents to establish a final draft of the Policy led to a clear recognition that it would entail too great a threat to freedom of expression.⁴ Indeed, while the preamble to the policy as finally adopted includes a condemnation of "anti-Semitic forms of anti-Zionism," it makes clear in that very phrase, that there can be forms of "anti-Zionist" argumentation which are not motivated by or predicated upon anti-Semitic beliefs or arguments.

"Academic freedom" is not a *carte blanche* to say anything in any circumstance. A professor of mathematics, for example, who turned his or her lectures into an opportunity to peddle crackpot Holocaust denial theories would rightly be subject both to university discipline and, potentially, civil sanction. It is, however, hard to imagine a more direct challenge to an academic culture of free and robust debate—a culture that has served the United States admirably and made its universities the most vibrant and productive in the world—than the imposition by the government of a poorly-worded checklist of

³ See <https://www.nytimes.com/2016/12/12/opinion/will-campus-criticism-of-israel-violate-federal-law.html>

⁴ See <http://regents.universityofcalifornia.edu/aar/mare.pdf> for a full account of this process, and the policy that was finally adopted.

unacceptable sentiments and positions. While we applaud the Act's directive that it shall not be "construed to diminish or infringe upon any right protected under the First Amendment," we fear that without explicit safeguards for the core values of academic freedom this Act could have a profoundly chilling effect on important and necessary academic discourse. It is undeniable that no student or other member of the university community should be discriminated against because of their faith or their ethnicity, but it would exceed the wisdom of Solomon—let alone the United States Congress—to devise a list of arguments or statements about a nation and its actions which could only be made from hateful motives. We urge Congress to abandon this misguided and heavy-handed intrusion into the realm of academic inquiry and debate.

Sincerely,

A handwritten signature in black ink, appearing to read "Hugh Roberts". The signature is written in a cursive style with a large, sweeping initial "H".

Hugh Roberts, Chair
UCAF