

ZACHOR

Legal Institute

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November 26, 2021

Executive Committee of the Board of Trustees and
President Price
Duke University
217 Allen Building
Durham, NC 27708

Re. Discriminatory Action by Student Government at Duke University

Dear Executive Committee of the Duke University Board of Trustees and President Price:

I am writing to you on behalf of Zachor Legal Institute (“Zachor”), a non-profit civil rights legal organization combating discrimination.

Recent news reports regarding Duke University (“Duke”) indicate that the student body government is engaging in targeted discrimination on the basis of national origin, religion and shared ethnicity. In particular, the student government has rejected the application of the organization Students Supporting Israel (“SSI”), a group of Jewish students who support the homeland of the indigenous people of the land of Israel, Jews.

We believe there is no need to recite the facts of what happened at Duke other than to note that the student body government has violated Duke’s internal policies and has likely engaged in action that, if allowed to continue, will subject Duke to penalties for violating Title VI of the Civil Rights Act of 1964, as amended, (“Title VI”; 42 U.S.C. § 2000(d) et seq.) and its implementing regulations (34 C.F.R. Part 100 et seq.).

While Zachor is not affiliated with the organization FIRE (Foundation for Individual Rights in Education), we fully agree with the public statement they made regarding the situation at Duke with regard to SSI, which we are pasting at the end of this letter, and which can be found at https://www.thefire.org/duke-student-senate-upholds-veto-of-students-supporting-israel-chapter-over-uninclusive-tweet/?utm_source=facebook&utm_campaign=Newsdesk.

To expand on one point made by FIRE on Duke’s Policy on Prohibited Discrimination, Harassment, and Related Misconduct (<https://oie.duke.edu/ppdhrm>, the “PPDHRM Policy”), we first note the following statement made therein:

This Policy prohibits discrimination and harassment on the basis of age, color, disability, gender, gender expression, gender identity, genetic information, national origin, race, religion, sex (including pregnancy), sexual orientation, or veteran status (collectively, “protected status”

or “protected characteristics”). This prohibition includes discrimination and harassment based on the perception of an individual’s protected status, even if that perception is incorrect. The Policy also prohibits related misconduct, such as sexual assault, relationship violence, and stalking. This Policy applies to all operations of Duke University.

The Duke student government is clearly discriminating against students who have sought approval for the creation of the SSI chapter on campus. As is discussed later in this letter, under Title VI of the Civil Rights Act, which applies to all institutions that receive federal funding (such as Duke), acts that target students on the basis of their national origin and religion, which includes shared ethnicity under controlling regulations for Title VI, are discriminatory.¹ Further, the Duke PPDRHM policy explicitly refers to “perception of an individual’s protected status”, which extends the coverage of the policy to not only Jewish Zionist students, but all students who identify as such.

The Duke student government has violated the above-quoted section of the PPDRHM policy by withholding recognition of SSI solely because the members of the proposed SSI chapter are openly Zionist, which is a protected status under Title VI and, by the text of the PPDRHM, Duke’s own policies. Other students who have organized to promote the interests of other middle eastern states and constituents have been allowed to form student groups on campus and there should be no difference in eligibility standards between the proposed SSI chapter and the other groups, like Students for Justice in Palestine, an organization that has clear and demonstrated ties to foreign terror groups and one that spreads a toxic environment against Jewish students on campus, yet was allowed on campus.²

A recent survey of Jewish students by the Louis D. Brandeis Center for Human Rights Under Law^[1] found that over 65% of survey respondents experienced or had knowledge of antisemitic acts on their campus and over 50% of survey respondents felt that there was such hostility against Jews, and in particular, Jews who identify with the Jewish homeland of Israel, that they actively hid their Jewish identities.

Furthermore, Federal Bureau of Investigation data show that in 2020, almost 60% of all hate crimes that were based on religious bias targeted Jews.^[2]

Over the past several years, as antisemitic activity on campuses has spread, Zachor has been contacted by scores of Jewish students who, like the respondents in the Brandeis Center’s survey, have been harmed by the antisemitism spread by this form of discrimination. Students have reported everything from physical attacks when they openly display their heritage and connection to their homeland to refusals by university administrators to provide equal time to Zionist points of view and rampant hostile campus environments, where antisemites on campus marginalize, intimidate and harass Jewish students to the point that the Jewish students are not

¹ We assume that Duke is fully aware of the provisions of Title VI, especially with regard to antisemitism, based on recent DOE activity regarding Duke and the hostile environment against Jews on campus: <https://www.federalregister.gov/documents/2019/09/17/2019-20067/notice-of-a-letter-regarding-the-duke-unc-consortium-for-middle-east-studies> and <https://zoa.org/2019/12/10431913-431913/>.

² See, e.g., https://jcpa.org/wp-content/uploads/2017/11/SJP_Unmasked_Final_edited.pdf.

able to participate fully and equally in educational opportunities.

While antisemitism on university campuses is, unfortunately, not a new phenomenon, until recently there was no clear guidance from the federal government, including the Department of Education (“DOE”), as to how to confront this dangerous, discriminatory movement that harms educational opportunities for all students, particularly those who are Jewish. Title VI has long prohibited discrimination on the basis of, inter alia, race and national origin, in federally funded programs, but there had been unresolved questions relating to how antisemitism in its various forms especially antizionism, can be addressed by Title VI.

On December 11, 2019, these questions were answered with the issuance of the “Executive Order Combating Antisemitism” (the “EO”),^[10] which incorporated much of the [International Holocaust Remembrance Alliance \(IHRA\) working definition of antisemitism](#), the de facto standard universally defining contemporary hate targeting Jews, into the enforcement mechanisms available to the Department of Education’s Title VI investigation and complaint resolution process.

The IHRA definition brings recognition of a relatively new form of antisemitism spreading on social media and in academic institutions: substituting antizionism (that is, the denial of the Jewish right to self-determination as the indigenous population of the land of Israel) for direct anti-Jewish incitement.

Indeed, the PPDHRM Policy explicitly incorporates the IHRA definition of antisemitism under the section titled “Examples of Prohibited Conduct”:

Anti-Semitic conduct implicates the Policy and can manifest in the University environment in a number of ways. The International Holocaust Remembrance Alliance defines anti-Semitism as “a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.” Examples of anti-Semitic conduct that implicates this Policy include:

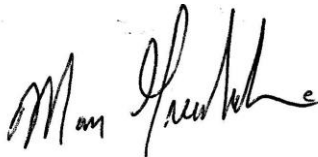
- *Repeated instances of anti-Semitic slurs directed toward an individual, regardless of whether that individual is Jewish.*
- *Refusing to allow an individual to participate in any program sponsored or hosted by the University because he or she is perceived to be from Israel, is associated with a Jewish organization, wears religious attire, like a kippah, or displays a religious symbol associated with Judaism, like a Star of David.*
- *Defacing a Jewish employee’s or student’s property with a hateful symbol such as a swastika.*
- *Using force or intimidation to obstruct the path of an employee or student because they are Jewish, perceived to be Jewish, or supportive of Jewish institutions or organizations.*
- *Refusing to grant a student some expected benefit, such as a letter of recommendation, based on the perception that the student is Jewish, is associated with a Jewish organization, or because that student is perceived to be from Israel.*

Thus, it is clear to us that Duke has adopted the IHRA definition, which has been incorporated into Title VI, and is also subject to Title VI due to its receipt of federal funding. The acts of Duke's student government to discriminate against Jewish Zionist students who wish to form a chapter of SSI, an organization with a long history of providing support to Jewish Zionist students and contributing to each campus that it operates on, is not only a violation of Duke's own policies, it also likely constitutes a violation of Title VI if Duke's administration allows the discrimination to continue.

We urge you to override the student government's discriminatory rejection of the SSI chapter at Duke and further urge you to implement an educational program on campus to inform all students of the pernicious nature of all forms of antisemitism, including antizionism, and to follow up with regular reviews of the actions of student groups who have heretofore suffered no consequences for violating the PPDHRM Policy and putting the university at risk for violations of Title VI.

Please feel free to contact the undersigned at Marc@Zachorlegal.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Marc Greendorfer". The signature is fluid and cursive, with the first name "Marc" written in a larger, more prominent script than the last name "Greendorfer".

Marc A. Greendorfer
President of Zachor Legal Institute

Statement by FIRE
**Duke student senate upholds veto of Students Supporting Israel chapter over
'uninclusive' tweet**

by [Sabrina Conza](#)

November 18, 2021

On Nov. 15, Duke's Student Government President, Christina Wang, [vetoed](#) recognition for a chapter of Students Supporting Israel based solely on a social media post that Wang said "was unacceptable for any student group and appeared antithetical to the group's stated mission to be welcoming and inclusive to all Duke students."

SSI's "offense" was that on its Instagram page, it posted a screenshot of a Duke student's public tweet — which criticized the student senate's recognition of SSI just three days prior as promoting "settler colonialism" — with a caption offering to educate the student "on what 'settler colonialism' actually is and why Israel does not fall under this category whatsoever."

7:42



SSI_DUKE
Posts

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My school promotes settler colonialism 😞



dukechronicle.com

DSG charters pro-Israel group, updates House Rules procedures at Wednesday meeting

10:46 AM · Nov 13, 2021 · Twitter Web App

1 Like



26 likes

ssi_duke To Yana and others like her, please allow us to educate you on what "settler colonialism" actually is and why Israel does not fall under this category whatsoever. These types of false narratives are what we strive to combat and condemn, which is why Duke's chapter of Students Supporting Israel has been officially established & is here to stay!!! Looking forward to SSI 101 this Wednesday night... if you haven't already, please RSVP using the link in our bio



Instagram post by SSI Duke.

Somehow this routine expression of political disagreement, of the kind that happens millions of times a day on social media platforms, has been deemed unacceptable by Duke's student government. Despite Duke's promises of freedom of expression to students, Wang added at the time of her veto that other groups "may be denied, reviewed, or suspended at any time" if they exhibit "similar conduct."

Yesterday, Duke's student senators had the opportunity to override Wang's veto. FIRE wrote in ahead of the vote, and as we explained in our [letter](#) to Duke's student government:

Denial of recognition to SSI—which burdens its members' rights to expression and association—is premised on its having "singled out" a critic in a manner deemed uncivil. While Duke is free to *encourage* students and student organizations to engage in civil discourse, it cannot *require* that students limit their advocacy only to polite, sober tones.

Yet shockingly, after almost three hours of discussion and a "[sealed](#)" vote (student senators fretted that they might "feel pressure to vote one way or another"), the student senate [voted](#) to uphold Wang's veto. Only three voted to override the veto, while 37 voted to sustain it.

Not only is this the wrong decision, but it also violates Duke's promises of free expression, which Duke's student government is bound to uphold. (In fact, [Duke](#) is one of only 58 institutions whose policies earn FIRE's highest, "green light" rating for maintaining policies that do not abridge students' expressive rights.) Duke students are further [promised](#) the right to "freely associate" and to form groups once all criteria are met. SSI has met the criteria; Duke must now allow its members to associate.

Duke's student government may not deny students the rights Duke guarantees because the students' expression does not meet subjective standards of civility.

With this move, Duke's student government is consciously punishing SSI for engaging in debate and responding to its critics — engagement that should be encouraged, not punished, at an institution dedicated to free expression. After all, how one responds to a critic *without* singling them out is a mystery. Even if one believes the organization's response to be uncivil, Duke's student government may not deny students the rights Duke guarantees because the students' expression does not meet subjective standards of civility.

Duke's student government judiciary now has the obligation to step in and overturn the senate's actions. As the student senate has violated the expressive and associational rights both Duke and Duke's student government promise to students, the judiciary must remedy the situation and grant SSI recognition. And if the judiciary fails to do so, Duke's administration must grant SSI recognition to deliver on the promises the university makes.