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New Jersey

VIA E-MAIL

May 7, 2024

Board of Commissioners
Camden County Courthouse, 6th Floor
520 Market Street
Camden, NJ 08102-1375

Dear Camden County Board of Commissioners:

On behalf of the ACLU of New Jersey, we write to express disapproval regarding the official letter sent by two members of the Camden County Board of Commissioners to the Superintendent of the Eastern Camden County Regional School District on April 22, 2024. This letter incorrectly characterizes any pro-Palestinian speech as antisemitic and disregards student free speech rights under the federal and state constitutions. The Commissioners' letter is an overreach by government officials to stifle legitimate student speech and we urge the Board to disavow it.

The ACLU-NJ defends and protects the constitutional rights of New Jerseyans and, while we do not take a position on international affairs, the ACLU-NJ opposes efforts to censor or suppress political speech, free association, and academic freedom. When it comes to the ACLU-NJ's advocacy on behalf of students who engage in expression, we are keenly aware that the lessons they learn in academic settings will stay with them throughout their lives. Thus, one of the foundational values driving our work is to encourage civic participation for students in all of its forms.

It is a basic tenet of the First Amendment that students' free speech rights do not stop at the schoolhouse gates. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). Free speech prepares students to become informed members of a democratic society where they will be faced with differing opinions and conflicting information. Since high school students donned armbands to protest the Vietnam War, in-school political expression has been the sort of core "pure speech" at the heart of the free expression protections of the First Amendment and Art. 1, Para. 6 of the New Jersey Constitution. Although this right is not unlimited, schools cannot suppress unpopular or controversial viewpoints to avoid "discomfort or unpleasantness." *Id.* at 509.

The Commissioners' letter undermines foundational constitutional principles and the value of free speech. ACLU-NJ's understanding is that students in Eastern Regional High School proposed a walkout organized in support of Palestine, the cessation of bombing in Gaza, and "basic human rights." The posters for the event did not include a reference to Israel or Judaism, did not include discriminatory content, and made no mention of violence. We also understand that the students involved in planning the walkout attempted to work with school administrators to exercise their speech rights. The students should be commended for doing so, not discouraged or condemned. Similarly, school districts should be left to respect the rights of students, and not face, as the letter implies, threats to their funding.

The letter's treatment of student speech would mean that any speech activity in support of Palestine would be censorable. That simply isn't true, and it is not responsible for government officials to suggest that it is. Additionally, the letter inaccurately references the International Holocaust Remembrance Alliance's (IHRA) definition of antisemitism to make a not-so-veiled threat that schools can lose their federal funding for student speech engaging in legitimate criticism of the government of Israel. The First Amendment means nothing if it does not allow people to criticize domestic or foreign government action.¹ This is not just our position -- the creator of the IHRA's definition of antisemitism, Kenneth Stern, has disavowed government attempts to weaponize this definition to "target or chill" speech critical of Israel.² The Commissioners' letter invokes Stern's work in precisely the way Stern warned against.

Especially during these contentious times regarding the conflict in Israel and Palestine, it is critical to distinguish political expression and peaceful protest from incidents that are antisemitic, anti-Israeli, anti-Muslim, anti-Palestinian, and/or anti-Arab. While schools are responsible for addressing incidents of discrimination, the First Amendment would mean nothing in schools if administrators could suppress political viewpoints simply because they offend people in the community or because of external pressure from other government officials. It is even more concerning that this implicit threat to

¹ ACLU, *Reject Definitions of Antisemitism that Encompass Protected Speech* (2024), <https://www.aclu.org/documents/reject-definitions-of-anti-semitism-that-encompass-protected-speech>. Further, numerous courts have determined that Title VI and similar laws must still give way to First Amendment concerns. *See, e.g., Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 206 (3d Cir. 2000). At least one court decided that it is not a Title VI violation for a school to allow pure speech critical of Israel, contrary to what the commissioners here suggest. *See Felber v. Yudof*, 851 F. Supp. 2d 1182, 1187-88 (N.D. Cal. 2011).

² Eyal Press, *The Problem with Defining Antisemitism*, *New Yorker* (Mar. 13, 2024), <https://www.newyorker.com/news/persons-of-interest/the-problem-with-defining-antisemitism>.

school funding occurred in New Jersey because our officials should understand that our state constitution affords residents even more protections for robust debate, affirmatively providing in Article I, Paragraph 6 that “Every person may freely speak, write and publish his sentiments on all subjects.”

To be clear, it is critical for schools to combat antisemitism. The harassment of Jewish students is wrong and illegal. But it is also wrong and dangerous to suggest that all speech in support of Palestinians, the cessation of bombing, and human rights is necessarily antisemitic harassment.

As we ask that the full board of commissioners take a public stand against this letter, we call upon you and all government officials in New Jersey to reflect on the role that government and schools play in our democracy and public discourse. We are all responsible for fostering democratic ideals and ensuring opportunities for civic participation remain accessible for generations to come.

Sincerely,

A handwritten signature in black ink that reads "S Fajardo". The signature is written in a cursive, flowing style.

Sarah Fajardo
Policy Director

cc: Superintendent Robert S. Cloutier