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VIA EMAIL

December 19, 2023

Santa J. Ono, University President
Timothy Lynch, Vice President and General Counsel
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RE: Suppression of Student Speech and FOIA Request for Public Records

Dear President Ono and General Counsel Lynch,

We write on behalf of the American Civil Liberties Union of Michigan to express our concern with what appears to be a pattern of actions by the University of Michigan (“the University”) that demonstrates an increasing willingness to censor, suppress, and harshly punish student advocacy relating to the ongoing crisis in Palestine and Israel.

While the ACLU, as a matter of official policy, generally does not take positions on international events, we recognize that the horrific events on and since October 7 have created a tense and challenging environment on campuses around the United States, including at the University. And we are keenly aware of the harm, discrimination, and surveillance that has been experienced by many students—especially Jewish, Palestinian, Muslim, Middle Eastern, and South Asian students—as they consume the daily news, check on loved ones abroad, and navigate the turbulent campus environment. We further recognize the difficult task university administrators have to support and protect students in the midst of such tragedy.

Nonetheless, universities are the cradle of our democracy. It is where students develop life-long critical thinking skills, where they test their ideas, and where they learn from each other—even when it is challenging, uncomfortable, or confrontational to do so. Hard times for democracy can be hard times on campus as well.

We are therefore troubled by what we perceive to be an escalating pattern of suppression in the University’s response to student speech, dissent, and protest that is currently widespread on campus. And our concern is deepened by the fact that the University’s actions take place in the context of what many have described as a rising nationwide McCarthyite wave of retaliation against speech related to Palestine and Israel. To help us better understand the University’s actions we discuss below, please find attached a request for public records under the Freedom of Information Act, M.C.L. § 15.231 *et seq.*

A. The University's escalating pattern of suppressing student expression

Earlier this month, the University's decision to unilaterally cancel student body elections on two resolutions regarding Palestine and Israel captured national media attention. But that troubling decision, which we will discuss further below, was not the University's first or only action that stifled student expression. Over the past two months, the ACLU of Michigan has received numerous complaints of student speech suppression by the University.

For example, we have received reports that at least two schools within the University decided to limit or entirely shut down community-wide email listservs in recent weeks. In late October, medical students reported that the Medical School's administration imposed strict moderation policies on the official student body listserv after students sent two pro-Palestine statements to their peers. Once those moderation policies were in place, school officials prevented further emails related to Palestine and Israel from being sent to the listserv. Further, in mid-November, law students reported that the Law School's administration announced that it would completely shut down its school-wide listserv at the end of the year. It made this announcement during a time when students were exchanging impassioned emails about Palestine and Israel. Regardless of motive, these schools' decisions to limit or shut down one of their primary "public squares" in the midst of such important discourse does a great disservice to their students' intellectual growth and civic engagement.

Perhaps more concerning, students faced an unnecessarily outsized police response to a pro-Palestine protest and sit-in organized on November 17. It appears from video footage and news reports that over fifty police cars from over ten police departments were dispatched to respond to the November 17 protest. Multiple individuals reported being physically harmed by police officers on the scene, with one student reporting that a police officer ripped off her hijab. Others reported police officers denying access to water and bathrooms until a student fainted. While civil disobedience, such as the unauthorized occupation of a closed building, is typically not protected by the Constitution, we are concerned that this aggressive police response may be part of a larger trend of the University taking a hostile and confrontational stance towards students' organized political activity and advocacy at a time when it is especially important for student voices to be heard.

By the end of the November 17 protest, over forty student protestors were issued notices that they were barred from entering the Ruthven administrative building for one year. And when some of those students requested an exemption for the sole purpose of attending the December 5 public meeting of the University Regents in Ruthven, the Division of Public Safety and Security (DPSS) confirmed that they would not be allowed to attend—arguably a violation of the Open Meetings Act, M.C.L. § 15.263(6) ("A person must not be excluded from a meeting otherwise open to the public except for a breach of the peace actually committed *at the meeting*." (emphasis added)). To date, we do not believe those forty students have received any clarity on whether they may be able to attend future Regents meetings or if, instead, the University will continue to exclude some of its most politically engaged students from being allowed to directly address university officials at open public meetings.

While students were expressing their views via emails and protests, they were also petitioning to put two resolutions regarding the crisis in Palestine and Israel to a vote of the student body. As we understand it, the two resolutions—[AR 13-025](#) and [AR 13-026](#)—were placed on the student body’s November election ballot after satisfying all necessary requirements, including the collection of 1,000 verified student signatures and approval by the Central Student Judiciary. Students tell us that the resolutions, both of which were non-binding but called on the University to modify its response to the crisis, garnered significant attention and triggered vigorous debate. That debate took place on campus and online, including via an email sent to the undergraduate student body (after having been approved by the email list’s moderator) urging students to support AR 13-025 and oppose AR 13-026.

In response to that email, and as voting was already underway, General Counsel Lynch [emailed the student body](#) to inform them that the University “has been left with no alternative but to cancel the portion of the election process for these two resolutions.” General Counsel Lynch stated that the email was unauthorized, that it violated the University’s email system guidelines against campaign-related political advocacy, and that it “irreparably tainted the voting process on the two resolutions.” Students understandably responded with a wave of protest at having a student-run democratic process suddenly shut down by the University. Nonetheless, President Ono issued a [statement on December 5](#) announcing that he would “disallow any future votes” on the two “controversial and divisive” resolutions. This is a troubling course of action that undermines students’ freedom of speech, expression, and assembly.

We have also received complaints that the University has silenced graduate students’ speech in their own offices. Graduate students at the Biological Sciences Building inform us that in late November, the University directed custodial staff to remove signs that students had posted in their office windows. The signs included pro-labor messages and images of Che Guevara as well as statements such as “Stop the Genocide, Free Palestine” and “Killing People Is Bad.” Students have hung signs in these windows since well before the events of October 7 without the University seeking to remove them.

We have been told that the University claims to be removing the signs to avoid any implication that they represent the University’s speech rather than student speech. But these claims ring hollow for at least two reasons. First, the area where the signs are posted looks out into a section of the University of Michigan Museum of Natural History that is advertised by the University as being a place where the public can come to observe scientists at work. Thus, the University’s marketing of the area as graduate student office space makes it rather obvious that the signs express the views of the students whose activity and work are on public display. Indeed, the presence of numerous signs on the windows in question supporting the graduate student union would eliminate any possible doubt. Second, although the University is apparently now informing students that the signs are being removed pursuant to a policy against posting signs in public-facing windows, we are as yet unaware of any written policy to that effect. In fact, University administrators [specifically and publicly disavowed](#) having any such written policy in 2018, when the University initially sought to force a professor to take down a Black Lives Matter sign from his office window before apologetically rescinding the directive in the wake of resistance and protest from the University community.

University of Michigan students are entitled to express their views without fear of reprisal or suppression by the University. Yet, as these instances demonstrate, the University seems to be meeting student speech and protest with unnecessary resistance.

B. Students' fundamental rights to free speech, expression, and assembly

Taken together, we fear that the University's actions in recent weeks are sending an alarming message about the state of free speech on campus: if students continue to engage in speech that the University disagrees with or deems counterproductive, the University seems poised to censor or suppress that speech and respond to protests with disproportionate and unnecessarily confrontational responses. This produces precisely the type of chilling effect that our bedrock principles of free speech and academic freedom seek to prevent.

From our local secondary schools to our premier public universities, it is well established under the law that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Tinker v. Des Moines Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1968). In fact, the “vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.” *Shelton v. Tucker*, 364 U.S. 479, 487 (1960). In *Healy v. James*, 408 U.S. 169 (1972), the U.S. Supreme Court affirmed that the First Amendment protects the right of public university students and student groups to associate and speak out on matters of public concern, free from censorship by university officials. In doing so, it aptly described the college environment as a “marketplace of ideas” where academic freedom and free speech must be safeguarded. *Id.* at 180. Indeed, First Amendment concerns are at their peak in the university setting, where “the State acts against a background and tradition of thought and experiment that is at the center of our intellectual and philosophic tradition.” *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 835 (1995).

These principles are even more important when the subject of student debate is controversial and divisive. Some of the U.S. Supreme Court's most important First Amendment cases arose in the context of speech that was highly controversial and divisive at the time. *See, e.g., Tinker v. Des Moines*, 393 U.S. 503 (1968) (protesting the Vietnam War); *Cohen v. California*, 403 U.S. 15 (1971) (wearing a jacket labeled “Fuck the Draft”); *Texas v. Johnson*, 491 U.S. 397 (1989) (burning the American flag); *Snyder v. Phelps*, 562 U.S. 443 (2011) (picketing a soldier's funeral). Time and again, the U.S. Supreme Court and lower courts have shown that it is controversial and divisive speech that is the First Amendment's highest duty to protect. That is so even when a university or its administrators “find[] the views expressed by [a] group to be abhorrent.” *Healy*, 408 U.S. at 187–88. In sum, public universities have a special duty to protect the free expression of controversial ideas and opinions.

The University of Michigan's own policies and statements recognize as much. [S.P.G. 601.1](#) states that “[t]he belief that an opinion is pernicious, false, or in any other way detestable cannot be grounds for its suppression.” The [draft free expression principles](#) that General Counsel Lynch presented to the University Regents on October 19 state that “[w]e strive to meet conflict and controversy with empathy and reason, refuting our opponents rather than refusing them a platform, and contesting their ideas instead of attacking their character.” In [an October 27 statement](#), the University emphasized that “[o]ur commitment to free expression requires us to grapple with

uncomfortable ideas, listen to others, think critically and ground our arguments in evidence.” In [a follow-up statement](#), the University reiterated that “[f]or generations, our campus community has confronted controversial topics of the day, firmly upholding each member’s right to free expression and intellectual freedom.” We fully agree with the values and principles set forth in these statements.

But at the same time, [President Ono’s statement](#) permanently cancelling and disallowing future votes on AR 13-025 and AR 13-026 described the resolutions as “controversial and divisive” and “hav[ing] done more to stoke fear, anger and animosity on our campus than they would ever accomplish as recommendations to the university.” This explanation for the University’s decision runs directly contrary to both University policy and the concerns at the core of the First Amendment. By canceling the election on the grounds that the speech involved is “controversial and divisive,” the University stifled speech and student activism and replaced them with unilateral bureaucratic judgment.

The statement also inappropriately dismisses the value of a non-binding resolution as a means by which students can collectively express their recommendations to the University. Students chose to express their views in the form of ballot-measure resolutions using an election process that was sanctioned by the University. They satisfied all the requirements for placing those resolutions on the ballot, thus creating an opportunity for the student body as a whole to make their collective voice heard on matters of public concern. Students advocated for and against, and began to vote on, the resolutions. And yet, instead of respecting its students’ preferred mode of expression, the University decided to cancel voting after it was already underway (thus nullifying votes already cast) and prevent voting from resuming at any point in the future.

Further, the University’s supposed basis for canceling the election—that one email “irreparably tainted” an election—does not, in our view, stand up to reason. The resolutions at issue were already subject to an enormous amount of advocacy both on and off campus, so we are doubtful that a single email could have truly had the “irreparable tainting” effect ascribed to it. Additionally, the email in question was apparently approved by an employee of the University before it was sent, so it hardly seems fair to penalize student organizers and voters for any error on the part of that employee. Perhaps most importantly, given that the resolutions were non-binding recommendations, the University’s administration was always free to give them whatever consideration or weight it deemed appropriate if they were to have passed, including lesser or even no consideration if the election outcome was thought to have been distorted by the email. Doing so would have been more narrowly tailored, and less speech-suppressive, than entirely shutting down an important democratic and speech-facilitating vehicle the University had made available to students.

To be absolutely clear, the University is free to voice its disagreement with the substance or effectiveness of either student resolution. That would be as much a part of campus debate as the resolutions themselves. Indeed, over the past two months, many university leaders throughout the country (including President Ono) have spoken out regarding the controversies roiling college campuses and have encouraged a more civil tone for discussion and debate. But to prevent students from voting on resolutions altogether is antithetical to our nation’s longstanding tradition of free

speech and academic inquiry. Indeed, “undifferentiated fear or apprehension of disturbance is not enough to overcome [students’] right to free expression.” *Tinker*, 393 U.S. at 507.

The same can be said about the other ways students have chosen to express views the University may deem controversial. Whether that expression comes in the form of a strongly worded email, a handmade poster, or even an organized protest, universities should not be in the business of discouraging or preventing student engagement with controversial topics—even if they deem that engagement counterproductive. Much to the contrary, one of the core missions of universities is to train students to contend thoughtfully with difficult subjects. The conversations and demonstrations that result may well be uncomfortable, charged with emotion, and sometimes hurtful. But college campuses are meant to be places where ideas are freely shared, discussed, and critiqued—not avoided. Of course, that freedom comes with limits; a student may not, for example, express their views by physically harming another student. But organizing a referendum campaign in compliance with university procedures is a far cry from violent conduct.

C. The broader context of stifling student speech in today’s McCarthyite atmosphere

We must also be honest about how the University’s recent actions are being perceived given the atmosphere surrounding public discourse on Palestine and Israel. Many academics, commentators, and civil rights advocates have observed that our country is currently experiencing a McCarthyite wave of retaliation against pro-Palestine speech. People have lost their jobs, have been doxxed or added to blacklists, and have even been physically harmed for supporting Palestinian rights or criticizing Israel. Advocacy groups have made [unfounded calls](#) for universities to investigate pro-Palestine student groups for supporting terrorism. Elected officials have even called for the Department of Justice to [investigate](#) student supporters of Palestine and have [introduced a bill](#) that would expel Palestinians from the United States. We are not suggesting that the University’s actions discussed in this letter were motivated by a similar bias against pro-Palestine viewpoints or Palestinians. However, we ask the University to consider that, whether intended or not, its actions have been interpreted by many (both on and off campus) as largely targeting pro-Palestine speech. In the midst of this nationwide atmosphere, we encourage the University to clarify that it respects and protects the rights of students to engage in pro-Palestine speech as much as speech from other viewpoints.

Many Jewish students across the political spectrum are also experiencing complex anguish as they grapple both with their own reaction to recent world events and with a very real wave of antisemitism that has followed. The University can, and should, take appropriate measures to ensure that its campus does not become a hostile educational environment for such students and to respond to documented incidents of antisemitism—just as it should respond to acts of Islamophobia, anti-immigrant acts of hate, and other actions targeted at students because of their race, ethnicity, religion, or national origin. However, as far as we are aware, the speech that the University has sought to stifle and suppress does not rise near the level of creating a hostile educational environment.

D. Our recommendations for restoring the University's commitment to free speech and expression

We understand that President Ono has now committed to scheduling meetings with student leaders to discuss their concerns, and we commend that necessary step. But we urge the University to take additional measures to cement its commitment to open dialogue and student speech, including:

1. Allowing the student body to vote on AR 13-025 and AR 13-026, which students had properly placed on the November ballot;
2. Publicly committing to not disciplining students or disbanding student groups because of their speech, lawful assembly, or programming;
3. Issuing a statement recognizing that students' right to free speech and lawful assembly extends to controversial and divisive topics and viewpoints—including those related to the crisis in Palestine and Israel—and that the University will respect and promote that right;
4. Arranging for an independent audit or review of the University's policies, practices, and recent actions to ensure compliance with the First Amendment, the Michigan Constitution, the Open Meetings Act, and university speech policies;
5. Reversing recent decisions to limit or shut down community-wide student listservs, and ensuring that listserv guidelines and policies are clearly communicated to students;
6. Ceasing its targeted enforcement of any purported policy prohibiting faculty, staff, and students from posting signs on office windows;
7. Issuing exemptions to the affected students' trespass notices to allow them to attend public meetings of the University Regents and meetings with University leadership that take place in the Ruthven Building;
8. Taking appropriate steps to ensure that the University is not complicit in an overly harsh or punitive police or prosecutorial response to student protests, including disavowing any plan, or support for a plan, to pursue criminal charges;
9. Fulfilling the attached FOIA requests without delay or obstruction.

* * *

Running one of the nation's greatest public universities is undoubtedly a difficult task—especially when it comes to balancing student safety and free expression. We recognize that the current climate on campus has resulted in a rise in documented threats against Jewish, Palestinian, Muslim, and Middle Eastern and South Asian students and faculty alike. We take these threats to personal safety seriously, and we know that you do as well.

But in a time of such heightened crisis, university leaders must also allow students to engage fully with the toughest challenges of our time. Over the last two months, students at the University of Michigan have embraced the time-honored American tradition of passionate on-campus debate and demonstration. That is admirable. And while many may disagree with their tactics or their message, we must hold fast to our nation's commitment—and your constitutional obligation—to free speech and open debate. Unilaterally cancelling student referenda, shutting down email lists, removing posters, and inviting an overwhelming police response to student protests do exactly the opposite.

We are encouraged by President Ono's plans to meet with student leaders, and hope that those meetings will begin to restore the University's commitment to protecting free speech, expression, and assembly. But we also urge you to implement our additional recommendations to better promote vibrant student dialogue.

We look forward to your response to our concerns and recommendations, and we remain available to discuss them further. You may contact us directly at (313) 578-6800 or via email at rwadood@aclumich.org.

Sincerely,



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