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Written Testimony before the

United States House of Representatives

Committee on the Judiciary

Hearing on “Free Speech on College Campuses”

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Chair Jordan, Ranking Member Nadler, and members of the committee: I am glad to have the opportunity to submit this written testimony regarding free speech on college campuses in light of the events that have taken place on some college and university campuses since Hamas’s horrific attack in Israel on October 7th, 2023, and the subsequent outbreak of war between Israel and Hamas. Although the ongoing war is taking place thousands of miles away from the United States, it is having a major impact on American college and university campuses, fueling tensions and animosity between students and creating a polarized and toxic climate on some campuses. Students have held demonstrations and engaged in protests; faculty have signed public letters and spoken at rallies and vigils; university leaders have issued public statements and come under intense criticism; and alumni and donors have expressed deep concern about how university administrators have responded to these statements and protests by students and faculty alike.

To be sure, there is a long history of tensions and turmoil on American college campuses in response to events overseas and foreign wars. The Israeli-Palestinian conflict, in particular, has long been a divisive and emotionally fraught issue on campus. I have been a college professor since 2002 and have personally witnessed previous periods when escalating Israeli-Palestinian violence sparked protests, tensions and bitter arguments on campus. The past month, however, has been qualitatively different. Never before have I heard so much fear and anxiety from students, especially Jewish students, many of whom have said they do not feel safe on campus. This widespread feeling of insecurity is understandable considering what has taken place on some campuses.

In the immediate aftermath of Hamas’s heinous attack on October 7th, while many Jewish students, faculty and staff were in a state of shock and grief, some pro-Palestinian student groups, most notably Students for Justice in Palestine (SJP)—the most prominent and active pro-Palestinian student group in the United States—openly expressed their support for Hamas’s attack. In a statement published after the attack, the national leadership of Students for Justice in Palestine hailed it “a historic win for the Palestinian resistance.” For them, what Hamas did was not terrorism against innocent civilians, but legitimate ‘resistance’ against Israeli ‘settlers.’ They stated, “This is what it means to Free Palestine: not just slogans and rallies, but armed confrontation with the oppressors.” One of its posters featured a paraglider that Hamas militants had used to enter Israel. Two days later, on October 9, 2023, SJP declared a “day of resistance” calling on SJP’s student chapters across the United States to demonstrate. Chants at campus demonstrations organized by SJP chapters endorsed Palestinian ‘resistance’ (e.g., the chant “Resistance is justified when people are occupied”), without

distinguishing between what might be considered legitimate resistance and terrorism, which is never legitimate. These student-led demonstrations and rallies effectively condoned and even glorified the terrorism of October 7.

While we may dismiss the chants of student protesters who might not even be fully aware of the meaning and implications of their rhetoric, the expressions of support for Hamas's terrorism by some faculty members is less forgivable. For example, Joseph Massad, a professor of modern Arab politics and intellectual history at Columbia University, hailed Hamas's attack as a "stunning victory of the Palestinian resistance." He wrote, "Perhaps the major achievement of the resistance in the temporary takeover of these settler-colonies is the death blow to any confidence that Israeli colonists had in their military and its ability to protect them. [...] They may have finally realized that living on land stolen from another people will never make them safe" (Joseph Massad, "Just another battle or the Palestinian war of liberation?" *The Electronic Intifada*, 8 October 2023). In a similar vein, a professor at Cornell University, Russell Rickford, described Hamas's attack as "exhilarating" and "energizing" at a rally held on Cornell's campus. Many other faculty members have signed onto public letters and statements that cast Israel as solely responsible for the horrific violence that Hamas inflicted on Israeli civilians.

Public expressions of support for terrorism deserve strong, unequivocal condemnation, and when they come from students and/or faculty, university leaders should not hesitate to issue such condemnations clearly and publicly, and in a consistent manner. However, students or faculty should not be punished for exercising their right to free speech. Censoring political speech, even hate speech, and banning political clubs, is a violation of the First Amendment which should be avoided at all cost. Furthermore, rhetorical support for terrorism—though it is appalling and deserves condemnation—is not the same as material support for terrorism. The former is protected speech; the latter is a crime.

While universities and colleges must uphold the rights of students, faculty and staff to freedom of speech and freedom of association, they must also ensure that their campuses are safe and inclusive learning environments for all students. This requires them to take action when their students, faculty or staff are harassed, threatened, bullied or physically intimidated. In recent weeks, there have been numerous reports of students engaging in such behavior, more often online than in person. Both pro-Israel students and pro-Palestinian students have received death threats, and both groups of students have expressed concerns for their safety. Whether they express support for Israel or for the Palestinians, students shouldn't have to fear for their safety.

When students, staff or faculty harass, intimidate, threaten, bully or assault other members of the campus community, it is incumbent on university and college administrators to punish the perpetrators. Universities have codes of conduct and ethics that must be upheld and enforced. It is their responsibility to ensure that their own rules

are observed by their students, faculty and staff. The federal government and state governments must ensure that universities and colleges are complying with the law and upholding the rights of all students, faculty and staff.

This does not mean, however, that university administrators should take disciplinary action whenever students report feeling threatened or unsafe. Rather, they should expeditiously investigate when such complaints are made to determine whether what took place actually amounts to harassment, intimidation, or threatening behavior. Sometimes a student may genuinely feel threatened, but there is no actionable offense that can be identified. For example, in recent weeks, some Jewish students have expressed fears when pro-Palestinian demonstrations have taken place on their campus. These demonstrations do not constitute, in and of themselves, actionable threats to Jewish students; nor do the chants of demonstrators, however objectionable and offensive some might find them. But if some demonstrators proceed to verbally harass, intimidate or physically threaten other students, they should indeed face disciplinary action; and if a student group holds a rally or a demonstration on campus during which participants engage in verbal harassment of other members of the campus community, the student group should also be penalized by the university's administration for failing to ensure that its activities do not violate the rights of others on campus. It is absolutely necessary for university and college administrators to hold students and student groups accountable for their actions when they cross the line from political speech, which must be permitted, to verbal or physical harassment, which is never acceptable.

It can, of course, be difficult at times to determine where to draw the line between permissible political speech and impermissible verbal harassment. Take, for example, the phrase "Globalize the Intifada," which has been voiced at many recent rallies on campuses. Given the violence associated with both Palestinian Intifadas, especially the Second Intifada (2000-2004), using this expression can be understood as a direct call for violence against Israelis and supporters of Israel, which includes most American Jews. When Jewish students hear this slogan chanted at a demonstration or see it on a placard, they have good reason to interpret this as a potential threat against them, which would therefore, constitute harassment.

However, the popular slogan "From the River to the Sea, Palestine will be free," which has been widely used for decades by Palestinians, has a more ambiguous meaning. For many pro-Palestinian activists, the slogan is a call for a single state in all of the territory from the Jordan River to the Mediterranean Sea. Calling for a one-state solution to the Israeli-Palestinian conflict is not necessarily a call for the violent destruction of Israel or for the genocide of Israeli Jews (though the vast majority of Israeli Jews strongly oppose this proposed solution), nor is it necessarily antisemitic to advocate for this. But the fact that this slogan is also used by Palestinian militant groups, such as Hamas, and their supporters—who do want the violent destruction of the State of Israel—explains why many Jews interpret this slogan as a call for the expulsion or even

genocide of Jewish Israelis. These different meanings and interpretations of the same slogan underscore how difficult, if not at times impossible, it can be for university officials to distinguish between what is political speech that may offend and what constitutes verbal harassment.

While students have every right not to be verbally harassed, they do not have a right to not be upset or offended. Universities and college campuses are places where students will encounter ideas and beliefs that differ from their own, and that may sometimes upset, offend and disturb them. This is unavoidable and, in fact, desirable to the extent that it challenges students intellectually, makes them more aware of diverse viewpoints and forces them to engage with a wide spectrum of ideas and beliefs. To protect students from hearing views they abhor does a disservice to them.

In the two decades that I have been teaching college courses about the Israeli-Palestinian conflict, I have found that the vast majority of students are open-minded and intellectually curious. They are generally not dogmatic or intolerant of alternative perspectives, contrary to the claims of some advocacy groups or the impression created by recent media coverage. The disturbing events that have occurred on some campuses in recent weeks are relatively rare, and do not reflect the reality of campus life or campus politics in general. Even in these politically charged and emotionally fraught times, with war raging between Israel and Hamas, only a small minority of students, albeit a highly vocal and sometimes disruptive minority, are actively engaged in protest activities of any kind. Their actions and rhetoric are not representative of the students at their universities and colleges, let alone of students attending the many different universities and colleges across the United States. It is, therefore, important to remember that what a relatively small number of students and faculty at a few universities and colleges do or say—however appalling it might be—is not symptomatic of a systemic problem in American higher education.