



November 22, 2017

Members, House of Representatives Judiciary Committee  
2138 Rayburn House Office Bldg.  
Washington, DC 20515

Dear Chairman Goodlatte, Ranking Member Conyers, and Honorable Members of the House Judiciary Committee:

On behalf of the Zionist Organization of America (ZOA), we thank you for holding the hearing on November 7, 2017, which focused on the serious issue of campus anti-Semitism and whether the U.S. Department of Education's Office for Civil Rights (OCR) is adequately protecting Jewish students from harassment and intimidation under Title VI of the Civil Rights Act. We appreciate the Committee's careful consideration of the proposed bill entitled the Anti-Semitism Awareness Act (the "Act") and respectfully urge you to approve it and send it to the full House for a vote. We also ask that you include this letter in the official record of the hearing.

For the reasons set forth more fully below, we do not believe that OCR is effectively enforcing Title VI to ensure that Jewish students are afforded a learning environment that every student deserves – one that is physically and psychologically safe. The Act will be a useful and sorely needed tool to help OCR better evaluate and decide Title VI actions alleging anti-Semitism.

#### **About the ZOA**

The ZOA is the oldest and one of the largest pro-Israel organizations in the U.S., with a history of illustrious leaders such as U.S. Supreme Court Justice Louis D. Brandeis, Rabbi Stephen Wise, and Rabbi Abba Hillel Silver. For many years, we have been at the forefront in fighting for Jewish students' legal right to a safe and welcoming learning environment.

In 2004, the ZOA filed a groundbreaking student-supported Title VI complaint with OCR, against the University of California, Irvine. It was the first case of campus anti-Semitism that OCR ever investigated under Title VI.

In 2005, the ZOA was one of three witnesses invited to testify at a first-ever hearing on campus anti-Semitism conducted by the U.S. Commission on Civil Rights. The hearing led to landmark findings and recommendations by the Commission, including that anti-Zionism and anti-Israelism can be manifestations of anti-Semitism, and that OCR should vigorously enforce Title VI to protect Jewish students from anti-Semitic harassment.

Triggered by the ZOA's efforts, members of Congress on both sides of the aisle wrote to the Secretary of Education, expressed their concern about whether OCR was enforcing Title VI to protect Jewish students from campus anti-Semitism. The ZOA's efforts also led to a similar letter of concern from the Conference of Presidents of Major American Jewish Organizations (an umbrella group for more than 50 national Jewish organizations across the political and religious spectrums) to the Assistant Secretary of Education.

In 2010, at the invitation of the co-chair of the Congressional Task Force Against Anti-Semitism, the ZOA and others briefed congressional staff on anti-Semitic harassment and the demonization and delegitimization of Israel on American college campuses, and the federal government's role in addressing these problems.

In addition to educating members of Congress, the ZOA has been educating the public about the problems that Jewish students are facing on their college campuses, and the legal tools that should be available to them to remedy the problems. We write articles, op-eds, and letters, issue press releases, and give presentations at synagogues and other venues regarding these issues.

We have helped Jewish students on campuses across the country, including at UC Irvine, the University of California, Berkeley; the University of Michigan; Northeastern University in Boston; Rutgers University in New Jersey; Florida Atlantic University; the University of Illinois; Wayne State University in Michigan; Pitzer College in California; and the City University of New York, to name a few.

The ZOA led the effort to ensure that OCR reinterpreted Title VI to protect Jewish students from harassment and intimidation based on their Jewish ancestry and ethnicity. OCR set forth this crucial policy in an October 26, 2010 "Dear Colleague" letter.

The *Forward* newspaper has recognized our efforts in advocating for Jewish students and fighting campus anti-Semitism. The *Forward* named ZOA leaders among the most influential members of the Jewish community, and identified us as "the first to put legal teeth into Jewish organizations' warnings of rising anti-Israel sentiment in university classrooms."

### **The Need for the Anti-Semitism Awareness Act**

Based on our years of experience in advocating for Jewish students, it is our view that while OCR issued an excellent policy in 2010 to protect Jewish students under Title VI, it has not adequately or effectively enforced the policy, particularly when a Title VI complaint alleges anti-Semitism that is expressed as vicious anti-Israelism or anti-Zionism. In our experience, this form of anti-Semitism is the most prevalent on many college campuses across the U.S. It can be just as hurtful and harmful to Jewish students as the more classic forms of Jew-hatred (e.g., ethnic slurs; Holocaust denial or minimization; and claims that Jews control the media, the government or other societal institutions). It can also create a hostile learning environment for Jewish students, in violation of Title VI.

Yet to this point, OCR has lacked critical guidance on how anti-Semitism is manifested today, including on our college campuses, which has affected how it has enforced Title VI. That is why the Act is so important: It will provide the guidance that OCR needs so that it can more effectively enforce the law in response to all forms of anti-Semitism, and better secure the legal right of Jewish students to a safe and welcoming learning environment.

The Act does not limit speech, despite what its detractors claim, nor will it change the legal standards by which OCR evaluates and decides Title VI complaints. The Act simply provides that when OCR reviews, investigates and determines whether Jewish students' rights have been violated under Title VI, OCR must consider the U.S. State Department's definition of anti-Semitism. It's an excellent definition that summarizes the many ways in which anti-Semitism is expressed globally and in the U.S., including on our college campuses. Our government has been successfully using this definition to assess anti-Semitism around the world. It will surely be a useful tool for OCR in assessing whether harassment and intimidation are motivated by anti-Semitic bias on campus.

### **OCR's Failure to Effectively Enforce Title VI to Protect Jewish Students**

At the November 7<sup>th</sup> hearing, Congressman Ted Deutch recounted that when he met with the Assistant Secretary for Civil Rights, he asked her how many ongoing investigations of anti-Semitism OCR was pursuing. The Assistant Secretary said zero. That statement is not completely accurate.

#### **OCR Failed to Protect Jewish Students at Rutgers**

We know of at least one Title VI action, filed by the ZOA, that has been pending at OCR for more than six years. On July 20, 2011, the ZOA filed a Title VI action on behalf of Jewish students at New Jersey's Rutgers University. It took OCR three years to decide the case, dismissing it on July 31, 2014. On September 29, 2014, the ZOA filed a timely request for reconsideration of OCR's determination. We have been waiting more than three years since then for OCR to issue a decision on our appeal. We have made numerous inquiries about the case, but no one from the Department of Education has responded to let us know when we can expect a decision.

In the meantime, all of the Jewish students who had the courage to come forward in the Rutgers case have long since graduated. At least two of them have gotten married. OCR's handling of the case has sent a poor message to them, and to those of us who advocate for Jewish students – that OCR is not committed to vigorously enforcing the law to protect Jewish students.

We do not believe that the length of time it has taken OCR to resolve the Rutgers case is attributable to the case's complexity or the number of witnesses. In fact, when OCR initially agreed to investigate allegations in the ZOA's Title VI complaint, we were shocked when one of the OCR investigators informed us that OCR might not be interviewing the student targets at all. We did not understand how OCR could decide whether Jewish students had been illegally harassed without interviewing the students themselves and learning about what they endured.

We thus objected to the route that OCR suggested it might be taking, since that would affect the fairness and thoroughness of the investigation. Ultimately, OCR agreed to interview seven students, even though there were additional students who would have come forward to establish that there was a hostile anti-Semitic environment at Rutgers that university officials had failed to address, in violation of Title VI.

#### OCR Failed to Protect Jewish Students at UC Irvine

OCR sent a similarly poor message to students and to those of us who advocate for their legal rights, based on the way in which it handled the ZOA's Title VI action against the University of California, Irvine, mentioned above. The evidence in the case was horrifying: Jewish students were physically threatened and physically assaulted. A Holocaust memorial on campus was vandalized. Posters obscenely proclaimed that "Zionism is Nazism" and equated the Star of David with the swastika. A huge sign on the university's main walkway said, "Israelis Love to Kill Innocent Children." From podiums in the center of campus so that they were almost impossible to avoid, speakers regularly vilified Jews and Israel, comparing Jews to Satan and referring to them as "the new Nazis."

Courageous Jewish students came forward and described these and other appalling incidents to OCR investigators. They reported feeling afraid to openly express that they were Jewish or pro-Israel. Some feared for their physical safety. Two told the OCR investigators that they left UC Irvine and transferred elsewhere because they could no longer endure the hostility.

Students also told OCR how they repeatedly tried to get university officials to address the problems, to no avail. One student wrote to administrators, demanding that her physical safety be protected. The only official who responded actually suggested that she visit the counseling center, as if she were the problem.

Given the evidence, it is almost impossible to understand how OCR could conclude that Jewish students' rights under Title VI had not been violated. But OCR did just that; its decision showed a lack of understanding that sometimes anti-Israel and anti-Zionist sentiment crosses the line into anti-Semitism and can create a hostile learning environment in violation of Title VI. When the ZOA exercised its right to appeal, it took an additional six years for the appeal process to conclude. OCR eventually affirmed its dismissal of the case in a one-page letter. It did so on the very same day that it dismissed two other Title VI cases (not ZOA's) filed on behalf of Jewish students at two other University of California campuses – acting with one clean sweep.

#### **The Act Will Enable OCR to Enforce Title VI More Effectively to Protect Jewish Students**

OCR's handling of the Title VI cases against UC Irvine and Rutgers is an indication of why more cases are not being filed on behalf of Jewish students. It is not because Jewish students are not being threatened, harassed and intimidated. They are. Many are facing anti-Semitic hostility on their campuses which interferes with their learning and their ability to be who they are and say what they believe. So few consider seeking legal recourse from OCR because students and their legal advocates have gotten the message from OCR that Title VI cases

alleging anti-Semitism will drag on for years, and that in the end, they will be dismissed if the anti-Semitism is masked as criticism of Israel or Zionism.

OCR's response to Title VI cases alleging anti-Semitism has had other negative consequences. University administrators now understand that they need not worry about remedying a hostile anti-Semitic campus environment that results from vicious criticism of Israel, since, to this point, they know they will not face any legal repercussions under Title VI for their inaction. Also, those who demonize and delegitimize Israel on campus and create a hostile environment for Jewish students feel confident that they can continue their vicious anti-Semitic attacks unabated, since there will not be any consequences for their harassment. Finally, Jewish students who endure anti-Semitic hostility that affects their learning and jeopardizes their feelings of safety are being denied the same legal protections that other ethnic and racial groups are afforded under Title VI.

We strongly believe that OCR's enforcement of Title VI will improve if the Act is passed. It will provide OCR with important and necessary guidance about what constitutes anti-Semitism, crucial for OCR to effectively address this serious problem.

Thank you for considering our concerns.

Respectfully,



Morton A. Klein  
National President



Susan B. Tuchman, Esq.  
Director, Center for Law and Justice