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December 6, 2016

Hon Marcy Kaptur
U.S. House of Representatives
via email only

RE: NWOPC request that you oppose passage of the "Anti-Semitism Awareness Act of 2016"

Dear Congresswoman Kaptur:

I'm writing on behalf of the Northwest Ohio Peace Coalition, a group of approximately 150 antiwar and peace and justice activists in Toledo, to request that you oppose the "Anti-Semitism Awareness Act of 2016." Contrary to the way it is being publicized, Senate Bill 10 ("S. 10") is not a benign modification of the classifications of prohibited discrimination under Title VI of the Higher Education Act.

On November 30, without debate and on a mere voice vote, the Senate stealthily passed the "Anti-Semitism Awareness Act of 2016," nominally to add the U.S. State Department's definition of "anti-Semitism" to investigation of complaints of discrimination by faculty, students and others on American college and university campuses.

However, the State Department's definition of anti-Semitism was designed for use by diplomatic officials monitoring anti-Semitism abroad, *not* as a means of policing speech on college campuses in our country. The State Department definition has never been formally adopted by anyone except the United States. *The language in S. 10 is obscure and guarantees that almost no members of Congress voting on it understand that they are explicitly changing federal law to make mere utterances against the State of Israel unlawful.*

Section 3 of the bill says:

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> For purposes of this Act, the term "definition of anti-Semitism" --
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> (1) includes the definition of anti-Semitism set forth by the Special Envoy to Monitor and Combat Anti-Semitism of the Department of State in the Fact Sheet issued on June 8, 2010, as adapted from the Working Definition of Anti-Semitism of the European Monitoring Center on Racism and Xenophobia (now known as the European Union Agency for Fundamental Rights); and
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> (2) includes the examples set forth under the headings "Contemporary Examples of Anti-Semitism" and "What is Anti-Semitism Relative to Israel?" of the Fact

Sheet.

This definition of "anti-Semitism" adopted by the State Department was conceived by the European Union Monitoring Center on Racism and Xenophobia (EUMC), now known as the European Union Agency for Fundamental Rights. But ***this definition was never formally adopted by the EU in any policy.*** It was scrubbed from the site "during a clear out of 'non-official' documents" in 2013 when the identity of the agency changed.[1] The definition was erased from the EU website because it was never an official document,[2] and carries limited authority within the State Department.

The definition departs from historical definitions of anti-Semitism, and is fraught with ambiguity which is likely to chill free speech. The definition implies that the U.S. Department of State and other international bodies have adopted or endorsed it. It certainly appears that the sponsors of S. 10 were wary of writing into the bill the explicit language of the EU definition because they knew that if "anti-Semitism" is officially equated with opposition to the policies of Israel as a nation, the law will rightfully be stricken as a First Amendment violation.

Boycotts have long played a significant role in U.S. history, and the Supreme Court has held that political and human rights boycotts are protected under the First Amendment. In the landmark civil rights case *NAACP v. Claiborne Hardware Co.* 458 U.S. 886 (1982), a local branch of the NAACP boycotted white merchants in Claiborne County, Mississippi to pressure elected officials to adopt racial justice measures. The merchants fought back, suing NAACP for interference with business. Ultimately, the Supreme Court found that "the boycott clearly involved constitutionally protected activity" through which the NAACP "sought to bring about political, social, and economic change." The Court concluded that the civil rights boycott constituted a political form of expression under the speech, assembly, association and petition clauses of the First Amendment.

The State Department guidance attempts to expand the definition of anti-Semitism to include "anti-Semitism relative to Israel," citing, as examples, speech that demonizes or delegitimizes Israel or that applies a double standard to Israel. The example given for applying a "double standard for Israel" is "requiring…behavior [of Israel] not expected or demanded of any other democratic nation." This expansion of the definition of anti-Semitism makes the concept subjective and open to abuse by those who would use it to silence criticism of Israel.

The EU definition is so vague and open to interpretation that when the University of California Board of Regents was pressured to apply it to California campuses, ***the author of the European Union definition of anti-Semitism objected out of concern that free speech would be***

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[1]http://jewssansfrontieres.blogspot.co.uk/2013/10/bbc-trust-promotes-then-demotes-almost.html

[2]http://www.timesofisrael.com/eu-drops-its-working-definition-of-anti-semitism/#ixzz37qJRBuJL

endangered:

> But official adoption of the State Department's definition would do more harm than good. I say this sadly, as the lead author of the somewhat more detailed European Monitoring Centre's (EUMC) "working definition on antisemitism," upon which the State Department definition is based, and as a strong advocate of State's use of the definition in its global work.
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> The EUMC definition was crafted as a tool for data collectors in European countries to identify what to include and exclude from their reports about antisemitism, and to have a common frame of reference so that data might be compared across borders. It was used by Special Envoy Gregg Richman in the Department's 2008 Global Antisemitism Report, and then Special Envoy Hannah Rosenthal instituted a training program on the definition, so that U.S. diplomats could better raise the issue with their counterparts. While the EUMC's successor organization has not been using the definition for a variety of political and other reasons, members of parliaments around the world concerned with antisemitism have urged its adoption, beginning with a 2009 declaration in London.
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> No definition of something as complex as antisemitism can be perfect, but this one, ten years after its creation, remains a very good one. It is certainly a useful tool for college campuses, if used appropriately. It can, for example, be a starting point for needed discussions about antisemitism and how we define it (and how we might define other forms of hatred and bigotry too). Reference to it would certainly help students understand events, both across the world and locally.
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> *But to enshrine such a definition on a college campus is an ill-advised idea that will make matters worse, and not only for Jewish students; it would also damage the university as a whole*.
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> ***** ***** ***** *****
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> But on a college campus, do we really want a student (imagine yourself as a Palestinian student) to fear that anti-Zionism on their part (even if they are quoting Martin Buber and Hannah Arendt to make their case) will violate an administratively-imposed definition of what is ok to be said?

(Emphasis added). "Should a Major University System Have a Particular Definition of Anti-Semitism?" by Kenneth Stern, Jewish Journal, June 22, 2015.[3]

Contrary to what S. 10's sponsors claim, there is no massive upsurge in anti-Semitic harassment on college campuses. U.S. Department of Education civil rights investigations of anti-Semitism complaints on campuses are largely baseless. In 2013, the Department of

[3]http://www.jewishjournal.com/opinion/article/should_a_major_university_system_have_a_particular_definition_of_anti_semit

Education investigated and repeatedly rejected the claims made by the Brandeis Center and other right wing Israel advocacy organizations alleging that advocacy for Palestinian rights subjected Jewish students to a hostile environment on several California campuses. The Department of Education dismissed claims under Title VI of the Civil Rights Act against UC Berkeley, UC Santa Cruz, and UC Irvine, issuing letters[4] finding that the allegations were not actionable because the activities complained of, including testimony in support of a divestment resolution, scholarly lectures, advocacy programming, mock check points, verbal disagreements about Israel and Palestine, and other similar activity, are constitutionally protected First Amendment expression. The Department recognized that the speech and activities alleged to be anti-Semitic were in fact based on political viewpoint, not on race, ethnicity or national origin. In each dismissal, the Department wrote, "In the university environment, exposure to such robust and discordant expressions, even when personally offensive and hurtful, is a circumstance that a reasonable student in higher education may experience."

The main protagonist for adopting the discontinued working definition is the AMCHA Initiative, an organization whose executive director, Tammi Rossman-Benjamin, maintains that enacting it is intended to silence the international Boycott, Divestment and Sanctions movement (BDS). BDS is an international campaign that urges economic boycotts against Israeli products to force Israelis' compliance with international law on matters affecting Palestine. AMCHA seeks to brand and repress as anti-Semitic campus student actions and academic presentations that criticize Israel's treatment of supporters of Palestine. At the home page of its website, the Initiative lists "Promoting Boycott, Divestment, Sanctions Against Israel" under the heading "10 Forms of Antisemitic Activity."[5]

The Senate has now voted to favor one side in a vital debate taking place on college campuses, while threatening the other side with official investigations and sanctions if its advocates cross an ill-defined and arbitrary line. Senate Bill 10 tells Palestinian and progressive Jewish students (and many others) that their speech will be policed and that they may be penalized. It threatens faculty members who present evidence of mistreatment of Palestinians and so threatens and chills academic freedom. The mere accusation can influence tenure appointments and employment relationships while cleansing higher education institutions of academic proponents of critical thought.

An an act of Congress, the anti-Semitism definition likely would spur intimidation and complaints against BDS and pro-Palestinian supporters. It is patronizing, inexcusable and unjust in the current post-Trump election atmosphere for members of Congress to pretend that students

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[4]Dept. Of Education Title VI dismissal letter re UC Berkeley, http://newscenter.berkeley.edu/wp-content/uploads/2013/08/DOE.OCR_.pdf; Title VI dismissal letter re UC Irvine, http://ccrjustice.org/files/OCR-UCIrvine_Letter_of_Findings_to_Recipient.pdf; Title VI dismissal letter re UC Santa Cruz, http://news.ucsc.edu/2013/08/images/OCR_letter-of-findings.pdf

[5]https://archive.is/rkxPa

and faculty who advocate for Palestinian rights aren't already being targeted and subjected to harassment, threats, and defamation.

For Congress to take sides in this controversy would demean the role of higher education, weaken and discredit the very meaning of anti-Semitism, and send the message that bullying makes right. When the campus debates over Israel and Palestine become ugly, the solution is absolutely not for Congress to weigh in by jeopardizing the careers and academic futures of one set of debaters with an obviously unconstitutional law. The proper course is for students, faculty and administrators to insist on continued discourse while supporting an open environment for the debate to continue.

The U.S. Congress cannot cancel constitutional protections in order to silence debate. If it does so, it will only cause more hostility and destroy bridges to understanding. Please vote against this First Amendment assault when it comes to a vote in the House.

On behalf of the Peace Coalition, thank you.

For NWOPC,

/s/ Terry J. Lodge
Terry J. Lodge