



May 18, 2018

The Hon. Lamar Alexander
Chairman, Senate HELP Committee
455 Dirksen Senate Office Building
Washington, DC 20510

The Hon. Patty Murray
Ranking Member, Senate HELP Committee
154 Russell Senate Office Building
Washington, DC 20510

RE: Concerns about government interference with Middle East area studies programs

Dear Senators Alexander and Murray:

We, the undersigned civil rights organizations, write to express our strong objection to the recent promotion by rightwing Israel advocacy groups of statutory changes that would condition federal funding for Middle East studies programs on viewpoint-based regulation of academic activities on the Middle East.¹

The Israel advocacy groups' proposal relies on narrow, partisan efforts to characterize academic centers as "biased," "anti-American," and "anti-Israel," and calls upon Congress to adopt amendments to the Higher Education Opportunity Act of 2008 ("HEOA"), due for reauthorization this year. The proposed amendments, which were approved on a party line 23-17 vote by the House Committee on Education and the Workforce, would require the U.S. Department of Education ("DOE") to scrutinize university departments' programming, and would condition federal funding on their ability to show that programming related to Israel is sufficiently sympathetic to Israeli government policies and practices, under the guise of requiring such departments to demonstrate a commitment to "diverse perspectives."

For the following reasons, we believe these proposals, if implemented, would contravene the purpose of Title VI of the HEOA, violate academic freedom, and raise serious First Amendment concerns. We urge the Senate Committee on Health, Education, Labor, and Pensions to reject the proposed amendments.

¹ The proposal, signed by Amcha Initiative, Brandeis Center, Zionist Organization of America, and others, is available at <http://brandeiscenter.com/higher-ed-reform-letter/>.

1. Israel advocacy groups' campaign against Middle East area studies is based on faulty factual premises.

The Amcha Initiative and the Brandeis Center, two of the fourteen Israel advocacy groups actively engaged in shielding Israel from scrutiny for its well-documented international law and human rights violations and undermining scholarship and advocacy supportive of Palestinian rights, have published reports purporting to document “anti-Israel bias” at Middle East Studies centers funded under Title VI. The groups are calling upon Congress to require DOE to combat the alleged bias through controversial statutory requirements that would entangle the DOE in endless debates about the content of hundreds of academic programs and events organized at universities every year.

It is imperative that Senators are aware that the groups' reports are methodologically unsound and riddled with inaccuracies. Two of the reports cited by these groups focus on UCLA's Center for Near East Studies,² misrepresenting the nature of the Center's programming based on factual distortions. The following resources demonstrate how the reports fail to provide an accurate account of UCLA's outreach programs, proceed with overbroad and unreasonable definitions of “anti-Israel,” and misrepresent the views of speakers at UCLA's events:

- An empirical account by UCLA's Center for Near East Studies of its programming: *Setting the Record Straight: Programming of the G.E. von Grunebaum Center for Near Eastern Studies, 2010-2014*.³
- A legal analysis published by the Middle East Research and Information Project (MERIP), *Title VI and Middle East Studies: What You Should Know*.⁴
- *Letter from the Middle East Scholars Association (MESA) to the Brandeis Center*, emphasizing that the Brandeis Center's report is “replete with false or misleading assertions,” and that its apparent intent is to stifle academic engagement with the Israeli-Palestinian issue.⁵

² See Brandeis Center, *The Morass of Middle East Studies: Title VI of the Higher Education Act and Federally Funded Area Studies*, available at http://brandeiscenter.com/publications/research_articles/morass_of_middle_east; Amcha Initiative, *Antisemitic Activity and Anti-Israel Bias at the Center for Near East Studies, University of California at Los Angeles, 2010-2013*, available at <http://www.AMCHAinitiative.org/wp-content/uploads/2014/09/CNES-Report.pdf>.

³ James Gelvin, *Setting the Record Straight: Programming of the G.E. von Grunebaum Center for Near Eastern Studies, 2010-2014*, <http://international.ucla.edu/cnes/article/146247>.

⁴ Bekah Wolf, *Title VI and Middle East Studies: What You Should Know*, Middle East Research and Information Project, Nov. 14, 2014, <http://www.merip.org/title-vi-middle-east-studies-what-you-should-know>.

⁵ Letter from Nathan Brown, President of Middle East Studies Association, to Kenneth L. Marcus, President of Brandeis Center, Oct. 23, 2014, available at <http://www.mesa.arizona.edu/pdf/US20141023B.pdf> (“Your report fails to demonstrate that all or even some of the Title VI supported Middle East studies centers have failed to meet the mandates of that program. At the same time, your demand that Title VI be defunded, apparently in order to serve your political agenda of stifling open discussion of an issue critical to national concern, not only threatens the academic freedom rights of the scholars and teachers at those centers but also does a grave disservice to the United States.”).

A third report, published by Amcha Initiative, purports to expose “anti-Israel bias” of Title VI-funded programs.⁶ But the report findings contradict Amcha’s argument that Title VI-funded Middle East Studies programs fail to reflect “diverse perspectives” on Israel, and reveal the extent to which it relies on overly broad and untenable definitions of “anti-Israel bias” and “anti-Semitism.” Even tempered criticism of Israel that diverges from extreme pro-Israel orthodoxy is labeled as “biased.”⁷

These deeply flawed reports are the foundation for the Israel advocacy groups’ controversial recommendations to Congress, which are similarly premised on the flawed characterization of academic work and lectures as “*anti-American*” and “*anti-Israel*,” – subjective labels that oversimplify and disparage scholars who engage critically in their areas of expertise. The very meaning of these terms is widely contested. A standard based on such subjective terms will be very difficult, if not impossible, to apply fairly or objectively. Every attempt to do so will no doubt mire the DOE in drawn-out disputes of a political character. Congress would be proceeding on shaky ground if it extrapolated conclusions about all Middle East Studies programs in the country and undertook major policy changes based on these reports, the conclusions of which are both unreliable and controversial.

Importantly, although Amcha, Brandeis, and their partners are focused on Israel, such a standard will apply to all area studies programs funded under Title VI of the HEOA. Other area studies programs, like those focused on Russia, Latin America, and East Asia, are bound to generate contentious battles of their own as interest groups realize they can influence academic programming simply by lodging a complaint on grounds of “bias.”

2. Government regulation of academic programming contradicts academic freedom and First Amendment principles when motivated by narrow partisan or political considerations.

The Israel advocacy groups calling on Congress to regulate academic programming about the Middle East have proposed a method of evaluating scholarship that is vulnerable to politicization, is constitutionally suspect, and would infringe on academic freedom. The proposals would upend Congressional policy, as described in the Rule of Construction accompanying the HEOA, against “mandat[ing], direct[ing] or control[ling] an institution of higher education’s specific instructional content, curriculum or program of instruction.”⁸

⁶ Amcha Initiative, *Anti-Israel Bias of Directors and Speakers at Title VI-Funded Middle East Studies Programs 2014-2015*, available at <https://www.amchainitiative.org/wp-content/uploads/2016/01/NRC-Report.pdf>.

⁷ For additional commentary on Amcha’s overly broad definitions of anti-Semitism and criticism of Israel, see Robert Alter et al., Statement by Jewish Studies Professors in North America Regarding the Amcha Initiative, Jewish Daily Forward, Oct. 1, 2014, <https://forward.com/news/israel/206629/statement-by-jewish-studies-professors-in-north-am> (“AMCHA’s tactics are designed to stifle debate on issues debated in Israel and around the world, and the presumption that students must be protected from their own universities is misguided and destructive. Efforts such as these do not promote academic integrity, but rather serve to deaden the kind of spirited academic exchange that is the lifeblood of the university.”)

⁸ See 20 U.S.C. § 1132-2—Rule of Construction (“Nothing in this subchapter shall be construed to authorize the Secretary to mandate, direct or control an institution of higher education’s specific instructional content, curriculum or program of instruction.”).

To be clear, we embrace the notion that universities should endeavor to expose students to diverse points of view, particularly those to which they may not otherwise be exposed outside the university context. Students benefit from exposure to a variety of academic perspectives, including those that present viewpoints both sympathetic to and critical of Israeli state policies, American foreign policy, and so on. The policy proposals from Amcha Initiative, Brandeis Center, and their partners, however, invite unconstitutional political meddling in academic programming.

First, if funding for higher education and area studies becomes contingent on such mercurial, politicized labels, the requirement and its inevitable chilling effects would violate the First Amendment. As the Supreme Court has stated, “[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion.”⁹ Federal courts have consistently prohibited government interference with academic programming in educational institutions when such interference is motivated by narrow partisan or political considerations, or official disagreement with certain ideas.¹⁰

The government may set aside federal funding with viewpoint-neutral conditions, like requiring funding to be used to promote the study of the Middle East; but it may not require recipients to promote or forbid a particular set of opinions on the issue.¹¹ The proposal by Israel advocacy groups calls on Congress to put the DOE in the position of determining the scope of legitimate academic viewpoints, a form of government interference that not only intrudes on a sphere traditionally left to academic experts, but also approaches a prescription of orthodoxy.

Second, to require such measures under the guise of “balance” or “diverse perspectives,” as the Israel advocacy groups do, misses the point.¹² Though universities should—and do—expose

⁹ *W. Va. State Bd. of Educ. v. Barnett*, 319 U.S. 624, 642 (1943).

¹⁰ See, e.g., *Bd. Of Educ., Island Trees Union Free School Dist. No. 26 v. Pico*, 457 U.S. 853, 872 (1982) (“[S]chool boards may not remove books from school library shelves simply because they dislike the ideas contained in those books and seek by their removal to prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.”) (quotation and citation omitted); *id.* at 870 (government discretion over pedagogical matters “may not be exercised in a narrowly partisan or political manner”). See, also, *Keyishian v. Bd. of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 601 (1967) (striking down law requiring investigation and removal of teachers who advocated “treasonous” or “seditious” ideas, in part because it would “stifle that free play of the spirit which all teachers ought especially to cultivate and practice” and “[i]t would be a bold teacher who would not stay as far as possible from utterances or acts which might jeopardize his living by enmeshing him in this intricate [enforcement] machinery”) (citation and quotation omitted).

¹¹ Such a condition would improperly require universities to endow particular viewpoints with academic legitimacy irrespective of academic merit. Cf. *Agency for Intl. Development v. Alliance for Open Society Intl., Inc.*, 133 S.Ct. 2321, 2331 (2013) (holding that federal grants to combat HIV worldwide could not be conditioned on requiring recipients to adopt policies opposing prostitution and or to refrain from advocating for the legalization of prostitution because federal funding cannot be conditioned on a “recipient espous[ing] a specific belief as its own”). See, also, *Epperson v. State of Ark.*, 393 U.S. 97, 107 (1968) (striking down Arkansas law banning the teaching of evolution in public schools because “Arkansas did not seek to excise from the curricula of its schools and universities *all* discussion of the origin of man,” but rather, “to blot out a particular theory because of its supposed conflict with the Biblical account, literally read”) (emphasis added).

¹² The Amcha, Brandeis, et al. campaign is reminiscent of the mid-2000s “Academic Bill of Rights” movement, which, under the guise of “intellectual diversity,” sought to mandate the inclusion of “conservative” viewpoints in universities in response to perceived “liberal bias.” The American Association of University Professors (AAUP) vigorously opposed such proposals in at least 28 state legislatures, explaining that “[t]he danger of such guidelines [enforcing ‘intellectual

students to a robust variety of viewpoints, that variety should reflect scholarly judgments that are based on pedagogical and curricular value, not political considerations.¹³ The recommendations urged by these Israel advocacy groups would instead put DOE officials in the position of evaluating programs under narrow partisan or political criteria. This violates “[a] fundamental premise of academic freedom [...] that decisions concerning the quality of scholarship and teaching are to be made by reference to the standards of the academic profession, as interpreted and applied by the community of scholars who are qualified by expertise and training to establish such standards.”¹⁴

Third, the version of balance espoused by the Israel advocacy groups looks at educational institutions in isolation, neglecting a key facet of academic life: intellectual diversity is achieved not solely within institutions but across them. Thus, particular institutions may often be associated with “schools of thought,” allowing particular ideas or intellectual strands to be thoroughly developed in one place and then debated in the academic community more broadly. The Chicago School of Economics, for example, would not have thrived in the same way if the University of Chicago economics department had been mandated to include a Keynesian or Marxist on every academic panel or lecture it organized. The mechanical quotas suggested by Amcha, Brandeis, and others would undermine the ability of different centers to flourish and contribute distinct scholarship to the intellectual community.

Fourth, to suggest the HEOA requires this kind of intrusion on a center’s curricular judgment misreads the statute. By use of the term “diverse perspectives” in some sections of the Higher Education Act, Congress did not mean to require the narrow, politicized notion of “balance” put forth by Amcha and Brandeis. To the contrary, as noted above, in 2008 Congress specifically amended the Higher Education Act to include a rule of construction that “[n]othing in this subchapter shall be construed to authorize the Secretary to mandate, direct or control an institution

diversity’] is that they invite diversity to be measured by political standards that diverge from the academic criteria of the scholarly profession” and that “they seek to enforce a kind of diversity that is instead determined by essentially political categories, like the number of Republicans or Democrats on a faculty, or the number of conservatives or liberals.” To date, no such legislative effort has succeeded. Amcha and Brandeis’s recommendations threaten academic freedom in the same way by attempting to create a government apparatus to enforce “diverse perspectives” in federally-funded programs based on essentially political categories like “pro” or “anti-Israel.” *See* American Association of University Professors, Academic Bill of Rights, available at <http://www.aaup.org/AAUP/comm/rep/A/abor.htm> (attached). *See, also*, AAUP, The ‘Academic Bill of Rights’-Coming to Your Campus, available at <http://www.aaup.org/our-work/government-relations/past-campaigns-academic-bill-rights/academic-bill-rights-coming-your>.

¹³ *See* Nancy Whitmore, First Amendment showdown: Intellectual diversity mandates and the academic marketplace, *Communication Law and Policy*, Vol. 13, No. 3 at 370-71 (Summer 2008), available at http://digitalcommons.butler.edu/cgi/viewcontent.cgi?article=1007&context=ecom_papers (“The content selected and ultimately disseminated through curricular offerings and scholarly pursuits represents a professional judgment by the university’s academicians on the value of the communication to the discipline it serves. Academicians, therefore, are not disseminators of government ideas or scripted professional speech. They function as instructors and scholars whose proper role may well include the evaluation of government administrations, policies and actions.”).

¹⁴ *See* AAUP Statement on Academic Bill of Rights, *supra* 12 (emphasis added). The incoherence of Amcha and Brandeis’s version of “balance” could be seen as analogous to potential complaints by oil companies that scientists at federally funded universities exhibit a “global warming” bias, and requests that the federal government require the promotion of more “diverse perspectives” by including voices that deny global warming. Such an ends-oriented notion of balance, which looks at final conclusions rather than academic merit or methodology, may be appropriate for a political talk-show, but not a university.

of higher education's specific instructional content, curriculum or program of instruction.”¹⁵ Further, though the statute requires applicants to explain how their programs facilitate “diverse perspectives,”¹⁶ Congress refrained from making that a criterion for evaluating applications.¹⁷

The Israel advocacy groups’ proposals threaten to inhibit—not promote—wide-ranging debate on world affairs. Their likely outcome is not more debate, but less—in other words, a chilling effect on engagement with issues involving Israel and Palestine in Middle East Studies centers altogether. As such, their recommendations are intolerable intrusions on academic freedom and First Amendment rights that will undermine the purpose of the HEOA.

* * * *

Given the serious issues at stake, we ask the Senate to consider the concerns outlined above, and to reject the recommendations made by Amcha, Brandeis, and their partners. Please do not hesitate to contact Rahul Saxena, staff attorney at Palestine Legal, with any questions:
rsaxena@palestinelegal.org.

Sincerely,

American-Arab Anti-Discrimination Committee
Center for Constitutional Rights
National Lawyers Guild
Palestine Legal

CC Members of the Senate HELP Committee

¹⁵ See 20 U.S.C. § 1132-2—Rule of Construction.

¹⁶ See 20 U.S.C. § 1122(e)(1) (applications must include “an explanation of how the activities funded by the grant will reflect diverse perspectives and a wide range of views and generate debate on world regions and international affairs”).

¹⁷ See 20 U.S.C. § 1127(b) (grant applications should be evaluated for, *inter alia*, “the degree to which activities of centers...address national needs, and generate information for and disseminate information to the public,” but no reference to ‘diverse perspectives’). A Republican initiative to include a reference to “diverse perspectives” in Section 1127(b) failed. In September 2003, House Republicans proposed House Resolution 3077 to re-authorize Title VI funding under the Higher Education Act, proposing to amend selection criteria for grant recipients such that “the Secretary shall take into account the degree to which activities of centers... foster debate on American foreign policy from diverse perspectives.” H.R. 3077, 108th Cong. (2003). That bill died, but similar language was re-introduced the following Congressional cycle. See H.R. 509, 109th Cong. (2005). However, Republicans lost the House in 2006 and, in 2007, when comprehensive legislation to re-authorize the Higher Education Act was introduced, the proposed language regarding “diverse perspectives” was not included; instead, the language proposed “the Secretary shall take into account the degree to which activities of centers... foster debate on international issues.” See H.R. 4137, 110th Cong. (2007).