AMERICAN CIVIL LIBERTIES UNION of MASSACHUSETTS
ACLU FOUNDATION

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By email: presidentsoffice@clarku.edu and first class mail
John Bassett, President
Clark University
Geography Building – Room 202
950 Main St.
Worcester, MA 01610

Dear President Bassett:

The ACLU of Massachusetts is very disturbed by your decision to cancel a talk by Norman Finkelstein who had been invited by a student organization to speak in April on the Clark campus. You have been quoted in the Boston Globe today as saying that Finkelstein's presence "would invite controversy and not dialogue or understanding," and that you objected to the timing of his speech which was to take place on the first day of a conference on the Holocaust. Finkelstein's lecture was not about the Holocaust (even though he is the son of two concentration camp survivors), but was to address the Palestinian-Israeli conflict. According to the Globe, the Jewish student organization, Hillel, raised objections to Finkelstein speaking at Clark.

I have also been informed that when students who had arranged the Finkelstein event met with you, the Dean, and the Provost, administrators referred to Finkelstein as an "extremist" who was "beyond controversial," thus warranting cancellation of his speaking engagement.

In an email on this issue, you have stated:

> There is no question that Clark University stands for full freedom of inquiry in the pursuit of truth and of the good. My decision in this case was based solely on the unfortunate timing of the proposed talk.... Clark's Difficult Dialogues series next year is focusing on Israel and Palestine. We need to be good listeners to many perspectives. Perhaps one of those will be Norman Finkelstein's."

E-mail from Bassett to Witty, available at
http://www.philipweiss.org/mondoweiss/2009/04/richard-witty-calls-on-clark-u-to-allow-finkelstein-to-speak-clark-president-says-maybe-next-year.html

Even if you are now relying solely on the timing of the Finkelstein talk, as opposed to his being controversial or "beyond controversial," the cancellation of his speech violates the basic principles of freedom of speech and academic freedom which are so fundamental to an institution of higher learning. The existence of an opportunity to speak at another time or in another location does not remedy the wrong of censorship. Certainly the Clark University

campus is large enough to accommodate a speech at the same time as a conference on another subject. This is not the kind of "time, place or manner" restriction on a speaker who is seeks to speak in the same location at the same time as another speaker.

Nor may complaints from those disturbed by Finkelstein's writings about the post-Holocaust "industry" justify a decision to prevent the lecture from taking place. Indeed, even if demonstrators came to protest against Finkelstein's views, the obligation of a university is to protect the speaker's right to be heard and prevent disruption of the speech by others. By censoring the speech because of complaints about offensiveness or the controversial nature of the speaker, the university has essentially allowed what the courts call a "heckler's veto" over what speech can be heard.

Not only does this censorship violate Clark University's own principles and your statement that "Clark University stands for full freedom of inquiry," but it is also at odds with the New England Association of Schools and Colleges (NEASC) principles, under which Clark University receives accreditation. Standard Eleven: Integrity, at 11.3 provides that the institution must be "committed to the free pursuit and dissemination of knowledge. It assures faculty and students the freedom to teach and study a given field, to examine all pertinent data, to question assumptions, and to be guided by the evidence of scholarly research."

The University's censorship also conflicts with the principles of the American Association of University Professors (AAUP). The AAUP statement on outside speakers is available at http://www.aaup.org/AAUP/comm/rep/A/outside.htm and is relevant to the issue of censorship based on objections by others to a speaker:

> The university is no place for a heckler's veto....We have always been clear that colleges and universities bear the obligation to ensure conditions of peaceful discussion, which at times can be quite onerous. Only in the most extraordinary circumstances can strong evidence of imminent danger justify rescinding an invitation to an outside speaker."

There was no such evidence in this case.

These principles are just as important at a private university like Clark University as they are at a public university which is bound by the First Amendment. This was recognized recently by Tufts University President Lawrence Bacow.

> While Tufts is a private institution and not technically bound by First Amendment guarantees, it is my intention to govern as President as if we were. To put it another way, I believe that students, faculty, and staff should enjoy the same rights to freedom of expression at Tufts as they would if they attended or worked at a public university.... During the McCarthy era, a number of university presidents in the United States failed to defend the principle of freedom of expression. Students, faculty, and staff paid for this equivocation as the government sought to purge University campuses of those expressing

> particularly unpopular opinions. We must be vigilant in defending individual liberties even if it means that from time to time we must tolerate speech that violates our standards of civility and respect.

"Freedom of Expression at Tufts (August 27, 2007), available at

http://president.tufts.edu/1173575083523/Pres-Page-pres2w_1187964033049.html

The Tufts president is not alone. The Harvard University Faculty of Arts and Sciences has adopted free speech guidelines which include a similar statement:

> Because no other community defines itself so much in terms of knowledge, few others place such a high priority on freedom of speech. As a community, we take certain risks by assigning such a high priority to free speech. We assume that the long-term benefits to our community will outweigh the short-term unpleasant effects of sometimes-noxious views. Because we are a community united by a commitment to rational processes, we do not permit censorship of noxious ideas. We are committed to maintaining a climate in which reason and speech provide the correct response to a disagreeable idea.

http://www.fas.harvard.edu/%7Esecfas/FreeSpeech.html

We urge you to acknowledge, as President Bacow did at Tufts, that mistakes have been made by Clark University in cancelling the Finkelstein lecture. As the U.S. Supreme Court has noted: "[t]he 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). The Court has emphasized that the "college classroom with its surrounding environs is peculiarly the 'marketplace of ideas,' and we break no new constitutional ground in reaffirming this Nation's dedication to safeguarding academic freedom." *Healy v. James*, 408 U.S. 169, 180-81 (1972), quoting *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967).

I look forward to hearing from you about these important issues.

Sincerely,

Sarah Wunsch

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