



Melvin L. Oliver  
Pitzer College  
1050 N. Mills Avenue  
Claremont, CA 91711

February 12, 2018

**Re: Rescinding Student Senate action violates Pitzer’s core values and must be reversed**

Dear President Oliver and Chairman Brown:

We write to provide legal background to reinforce the “Petition in Support of Palestinian Human Rights at Pitzer College” currently being circulated on campus. The Board’s June 2017 decision to rescind Article III, Section 2, Paragraph VI of the Student Senate’s Budget Committee Bylaws [hereinafter the “Bylaw Amendment”] must be reconsidered. This unprecedented interference with student autonomy undermines Pitzer’s mission, core values, history, and your professed respect for freedom of expression. We urge you to withdraw the Board’s rescission statement and reaffirm the Board’s commitment to student autonomy.

**The Bylaw Amendment**

In April 2017, the Student Senate adopted new budget bylaws that include a restriction on the use of student activities funds to reimburse purchases from five companies identified as complicit in the occupation of Palestinian territories in violation of international law. Because the timing of the initial vote on the bylaws happened to coincide with Easter and Passover holidays, Pitzer students were falsely smeared in the press as antisemites who sought to stifle objections from religious students.<sup>1</sup> Pitzer College President Melvin L. Oliver lent support to these claims by repeating them in a message to the campus.<sup>2</sup> Contrary to these allegations, the timing of the vote was outside the control of the sponsor of the Bylaw Amendment, who was herself late to the meeting due to Easter celebrations.<sup>3</sup> There was no evidence of wrongdoing or religious animus, and the bylaws had been approved in accordance with all relevant procedures. Still the Student Senate held a second vote on the issue, giving students who opposed the amendment a second

---

<sup>1</sup> See, e.g., Rachel Frommer, ‘We Were Ambushed,’ Say Claremont Colleges’ Jewish Students After Senate Passes Sudden Pro-BDS Motion on Passover, Easter Sunday, The Algemeiner, April 19, 2017, <https://www.algemeiner.com/2017/04/19/we-were-ambushed-say-claremont-colleges-jewish-students-after-senate-passes-sudden-pro-bds-motion-on-passover-easter-sunday/>.

<sup>2</sup> See Melvin L. Oliver, Messages to the Community: Budget Committee Bylaw Amendment – Community Discussion, Pitzer College, <https://www.pitzer.edu/president/budget-committee-bylaw-amendment-community-discussion/>.

<sup>3</sup> The sponsor of the amendment explained in an email to students and faculty that the vote on the Budget Committee Bylaws was scheduled based on the need to have functional bylaws approved ahead of budget hearings for the next school year, scheduled for April 22, less than a week after the initial vote on the bylaws. See Email of Simone Bishara to Pitzer students and faculty, Subject: Student Senate Budget Committee By-laws Amendment, April 23, 2017, at 6:56 PM.

opportunity to express their views.<sup>4</sup> After further debate, the Budget Committee Bylaws were approved once again.<sup>5</sup>

Though contentious, the amendment process engaged students of varied perspectives to discuss a matter of global importance and identify a concrete action they could take to defend human rights. In so doing, it reflected all of Pitzer's Community Values: community, diversity, dialogue, inquiry, and action.<sup>6</sup>

On June 16, 2017, the Board issued a statement rescinding the amendment and declaring it to be of no effect.<sup>7</sup> As the students noted in their petition, "It is particularly revealing that the Board rescinded the amendment during the summer break, when students were not present to form a democratic response." In the statement, the Board noted, "In Pitzer's 54-year history, the Board has consistently supported Student Senate autonomy over the funds allocated to it by the College." The Board sought to justify its changed approach to student autonomy by explaining that "the Israeli-Palestinian conflict is among the most complex, emotional and divisive issues of our time, and is one on which the College has not taken a position" and that the Board "expects the Student Senate to remain neutral in ... any restrictions imposed on [student activities] funds."

### **Social Justice Precedent at Pitzer Goes Back Multiple Decades**

The Bylaw Amendment follows at least three decades of similar initiatives for economic activism in service of social justice values. In 1985, Pitzer administrators sought to model socially responsible behavior by launching a review that culminated in divestment from companies doing business in Apartheid South Africa.<sup>8</sup> Then-Treasurer Vicke Selk said that evaluating divestment gave the college "a chance to take a real live issue--not an academic or existential issue--and use it as an educational opportunity."<sup>9</sup>

This principled stance has had a lasting impact on Pitzer's ethos. In recent years students have taken a leading role in Pitzer's economic activism. For example, a student group's request that Pitzer divest from fossil fuels prompted widely lauded action by the Board in 2014 to remove fossil fuel producers from its investment portfolio.<sup>10</sup>

As the representative body of the students of Pitzer College, the Student Senate has often been a springboard for this student-led activism. In 2006 the Student Senate passed a resolution refusing

---

<sup>4</sup> See Oliver, *supra* note 2.

<sup>5</sup> See Rachel Frommer, Pitzer College Keeps BDS Resolution Largely Unchanged, Leaving Pro-Israel Students Disappointed, *The Algemeiner*, May 4, 2017, <https://www.algemeiner.com/2017/05/04/pitzer-college-keeps-bds-resolution-largely-unchanged-leaving-pro-israel-students-disappointed/>.

<sup>6</sup> See Mission and Values, Pitzer College, <https://www.pitzer.edu/about/mission-and-values/>.

<sup>7</sup> See Email of Office of Communications to Pitzer students, Subject: A Message from the Board of Trustees, June 16, 2017 at 9:54 AM.

<sup>8</sup> See Jesse Katz, Two Claremont Colleges Weigh S. Africa Divestiture, *LA Times*, July 21, 1985, [http://articles.latimes.com/1985-07-21/news/ga-7230\\_1\\_claremont-mckenna-college](http://articles.latimes.com/1985-07-21/news/ga-7230_1_claremont-mckenna-college). After investigating the issue the Board voted to divest in 1986. See Jesse Katz, 2 Claremont Schools Vote to Divest, *LA Times*, May 15, 1986, [http://articles.latimes.com/1986-05-15/news/ga-5536\\_1\\_claremont-colleges](http://articles.latimes.com/1986-05-15/news/ga-5536_1_claremont-colleges).

<sup>9</sup> *Id.*

<sup>10</sup> See Lawrence Biemiller, Pitzer College Charts a Different Course on Fossil-Fuel Divestment, *Chronicle of Higher Education*, April 25, 2015, at 23.

to reimburse student organizations for any purchases made at Wal-Mart without prior approval.<sup>11</sup> The resolution explained that it was motivated by Wal-Mart's negative impact on human rights, local and family run businesses, and the environment and its poor track record on labor and equality. In March 2016, the Student Senate voted to ban single-use plastic water bottles, citing their environmental impact.<sup>12</sup> Like the Bylaw Amendment, the Wal-Mart and water bottle bans also embody many of the college's Core Values: social responsibility, intercultural understanding, interdisciplinary learning, student engagement, and environmental sustainability.<sup>13</sup>

### **Progressive Educators Should Not Apply a Palestine Exception to Free Speech**

As the Board's message to the campus community acknowledged, the Board broke with 54 years of respect for student autonomy and shared governance to block students' political expression. It appears the Board took this unprecedented step because it disagrees with students who are now acting to support Palestinian rights, a cause apparently less palatable than labor rights in Bangladesh and China, apartheid in South Africa, or the environmental devastation of the fossil fuel industry.<sup>14</sup> Singling out the Bylaw Amendment in this manner directly violates both the neutrality principle the Board is claiming to uphold and basic free speech principles.

The difference between the Board's treatment of the Student Senate's Wal-Mart resolution and the Bylaw Amendment is part of a widespread and well documented trend of discrimination against viewpoints favorable to Palestinian rights. In 2015, Palestine Legal and the Center for Constitutional Rights published a report documenting the suppression of Palestine advocacy in the United States.<sup>15</sup> In 2017, Palestine Legal responded to 308 incidents of suppression. Eighty percent of these incidents targeted student and faculty, representing 73 university campuses across the country.<sup>16</sup> The report makes clear that speech supportive of Palestinian rights is routinely punished, censored, and labeled antisemitic and pro-terrorist.

The Five Colleges are no stranger to the Palestine exception. The past several years demonstrate a pattern of discriminatory treatment towards speech critical of Israeli policy:

- In March 2016, the Claremont Police Department, with approval from the Council of Presidents, sent an "emergency" email to the entire campus community broadcasting baseless and harmful accusations of bias against Students for Justice in Palestine (SJP).<sup>17</sup> Members of SJP had distributed flyers in dorms to raise awareness about Israeli

---

<sup>11</sup> See Amelia Neptune, Resolution on Wal-Mart, Pitzer Student Senate: The Blog, Feb. 21, 2006, <http://pitzersenate.blogspot.com/2006/02/resolution-on-wal-mart.html>.

<sup>12</sup> Sean Ogami, Pitzer Senate Bans Disposable Water Bottles from Vending Machines, The Student Life, March 25, 2016, <http://tsl.news/news/5663/>.

<sup>13</sup> See Mission and Values, supra note 6.

<sup>14</sup> See Neptune, supra note 11.

<sup>15</sup> *The Palestine Exception to Free Speech: A Movement Under Attack in the US* is available here: <https://palestinelegal.org/the-palestine-exception>.

<sup>16</sup> See Year-In-Review: Palestine Legal Responded to 308 Suppression Incidents in 2017, Nearly 1000 in Last 4 Years, <https://palestinelegal.org/2017-report>.

<sup>17</sup> See Claremont Colleges botch response to student speech critical of Israel, Palestine Legal, March 22, 2016, <https://palestinelegal.org/news/2016/3/22/claremontcollegespolicespeechcriticalofisrael>.

demolitions of Palestinian homes. The message announced that police were investigating the flyers, which contained pure political speech. This suggested to students that such speech activity could be criminally punished.

- In March 2015, Pitzer led SJP through administrative hurdles and denied approval of SJP's request to display a replica of the Israeli apartheid wall on the Pitzer campus. The wall was political expression intended to raise awareness about the effects of occupation, segregation and dispossession of Palestinian land.<sup>18</sup> Ample evidence indicated that Pitzer denied the student request in order to curtail the expression of a viewpoint favorable to Palestinian rights.<sup>19</sup> Although Pitzer did not ultimately punish the students for going forward with the protest,<sup>20</sup> the process and resulting uncertainty placed a discriminatory burden on the students' freedom of expression.
- In March 2013, a Claremont McKenna College (CMC) professor called for campus security to move a mock checkpoint set up by Claremont SJP and cursed at a Palestinian Pitzer student participating in the mock checkpoint.<sup>21</sup> The professor called the student a "f\*\*\*ing cockroach," an insult the student felt was a reference to his ethnicity.<sup>22</sup> Although a Pitzer investigation found that SJP had complied with the campus demonstration policy, CMC placed blame on the students, took no action against the professor, and took no remedial action to address the racial bias and harms to the free speech environment.<sup>23</sup>

Though Pitzer, as a private institution, is not within the direct reach of the First Amendment, the college has made a commitment to freedom of expression.<sup>24</sup> That commitment is meaningful only when tested. When faced with contentious issues like Israel/Palestine, the Board must safeguard—not abandon—freedom of expression.

The Board in this case broke from 54 years of respecting student autonomy because far rightwing Israel advocacy groups pressured the Board to intervene to suppress student speech.<sup>25</sup> This is exceedingly inappropriate for progressive educators who profess to nurture an environment of open debate on controversial subjects.

---

<sup>18</sup> See Letter of Liz Jackson to President Laura Trombley, March 30, 2015, <http://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/55357b08e4b0366c2fd525e9/55357b0ce4b0366c2fd527e8/1427750210000/Letter-to-Pitzer-President-Trombley-Re-SJP-Speech-Rights-3-30-15-redacted.pdf?format=original>.

<sup>19</sup> *Id.*

<sup>20</sup> See Palestine Legal Urges Pitzer College to Protect Rights of Students to Display Mock Apartheid Wall, Palestine Legal, <https://palestinelegal.org/news/2015/03/30/letter-psls-urges-pitzer-college-to-protect-rights-of-students-to-display-mock-separation-wall> (updated April 7, 2015).

<sup>21</sup> See Letter of Liz Jackson to Claremont Colleges Faculty and Chairpersons, RE: Claremont Colleges' responsibility to protect student speech and remedy the harms of racial bias, March 28, 2013, [https://ccrjustice.org/sites/default/files/assets/files/5C's%20Responsibility%20to%20Protect%20Speech%20%20Remedy%20Racial%20Bias-3-28%20\(1\).pdf](https://ccrjustice.org/sites/default/files/assets/files/5C's%20Responsibility%20to%20Protect%20Speech%20%20Remedy%20Racial%20Bias-3-28%20(1).pdf)

<sup>22</sup> The student who was victim to the professor's verbal abuse has explained that while living in the occupied territories he often heard the term applied to him and other ethnic Palestinians as a racial slur.

<sup>23</sup> See Jackson, *supra* note 21.

<sup>24</sup> See Mission and Values, *supra* note 6.

<sup>25</sup> See, e.g., Letter of Susan B. Tuchman to President Melvin Oliver, May 5, 2017, <https://zoa.org/wp-content/uploads/2017/06/letter-to-President-Oliver-5-5-17.pdf>; Academic Engagement Network, Campus Engagement, <http://academicengagement.org/campus-engagements/>.

## **Advocacy for Palestinian Equality Is Principled Social Justice Work**

Efforts to change Israeli policy through economic advocacy are part of a global nonviolent resistance movement seeking equality, justice and freedom for Palestinians.<sup>26</sup> These efforts seek respect for the internationally recognized rights of Palestinians who are under military occupation, living as second class citizens within Israel, or have lived as refugees from their homeland for generations. Like the students who worked to integrate segregated lunch counters in the Jim Crow South, these are courageous young people demanding dignity, equality and human rights that all people should enjoy.

Palestinian rights activism at the Claremont Colleges is grounded in opposition to all forms of discrimination.<sup>27</sup> For example, Pitzer SJP has “condemn[ed] any form of oppression on the basis of race, gender identity, sexual orientation, religious affiliation, national origin, or disability.<sup>28</sup> SJP students work with diverse coalitions at the Claremont Colleges, including Jewish allies in Claremont Jewish Voice for Peace, toward their shared vision of Palestinian liberation and social justice for all.<sup>29</sup>

## **The Student Senate Acted Within Its Rights To Manage Its Purchases**

The Student Senate has a right to manage its own purchases according to the ethical values of the student body.

As the Board noted in its message to the campus community, “Student Activities Funds are derived from mandatory fees the College levies upon **all** students.” Outside pro-Israel organizations have argued that this mandatory fee would, at a public institution, require viewpoint neutrality, forbidding the Bylaw Amendment enacted in support of Palestinian rights.<sup>30</sup> If Pitzer were a public institution, the student government would be prohibited from favoring or disfavoring particular groups based on their viewpoint or the content of their expression. However, this does not mean that the government entity itself could never express its own viewpoint. As the Supreme Court has explained, “when the government speaks it is entitled to promote a program, to espouse a policy, or to take a position. In doing so, it represents its citizens and it carries out its duties on their behalf.”<sup>31</sup>

---

<sup>26</sup> See Palestinian BDS National Committee, What Is BDS, <https://bdsmovement.net/what-is-bds>.

<sup>27</sup> See, e.g., Pitzer SJP to display mock Apartheid Wall despite administration attempts to censor free speech, Mondoweiss, March 31, 2015, <http://mondoweiss.net/2015/03/apartheid-administration-attempts/>.

<sup>28</sup> *Id.*

<sup>29</sup> See Claremont JVP, Jewish Voice for Peace, Dec. 12, 2016, <https://jewishvoiceforpeace.org/claremont-jvp-responds-walker-wall-mural/>

<sup>30</sup> See Tuchman, *supra* note 25. Ms. Tuchman’s letter seems to make a vague threat that Pitzer “would be held to the same standards” and “would be required to comply,” without explaining who would have the authority to hold the college accountable or impose such requirements on it.

<sup>31</sup> *Walker v. Sons of Confederate Veterans*, 135 S. Ct. 2239, 2246 (2015). Explaining the impossibility of having a functional government under an absolutist view of viewpoint neutrality, the Court asked, “How could a state government effectively develop programs designed to encourage and provide vaccinations, if officials also had to voice the perspective of those who oppose this type of immunization?” *Id.*

The Student Senate has not restricted or compelled the speech of any student group, nor has it discriminated against any group, or changed the funding allocation to any group. The Senate merely determined that, as the democratically elected representative of the student body and as the steward of student activities funds paid by that body, it would not facilitate financial support for violations of international law—just as it determined it wouldn't facilitate abuses of labor rights when it decided it would not spend its funds at Walmart. The Bylaw Amendment means that individual student groups cannot force the Pitzer student body to purchase from five companies identified as complicit in violations of Palestinian rights. Student groups are free to purchase, for example, a bulldozer from Caterpillar, Inc. Just like the Walmart ban, the Bylaw Amendment simply states that the group would not be reimbursed for that purchase by the Student Senate.

The Student Senate's ability to manage purchases is particularly important in light of the fact that “[a]ll reusable (non-consumable) supplies and materials that are purchased by an organization using student activities funds are the property of Student Senate.”<sup>32</sup>

### **The Board Violated Student Autonomy and Shared Governance To Suppress Student Speech**

Article VIII, Section 8.1 of the Bylaws of Faculty, Staff and Student Governance at Pitzer College, as approved by the Board, states, “The students of Pitzer College recognize the Pitzer College Student Senate as the official body . . . to fund Pitzer and Claremont Colleges’ student organizations.” Neither these bylaws nor the Bylaws of Pitzer College make any other reference to the administration of student activities funds, indicating that the administration of these funds is the domain of the Student Senate.

Despite this, and in direct contradiction with Pitzer's history as an institution that has always valued community governance,<sup>33</sup> the Board unilaterally silenced the Student Senate, stating that the “Israeli-Palestinian conflict” is an issue “on which the College has not taken a position.” It is irrelevant whether the Board has a position on this issue because the students clearly took a position. Your decision to arbitrarily negate the role of the Student Senate as the representative of the students, in response to pressure from outside organizations, violates fundamental democratic values. Your decision undermines the Student Senate's core purpose to administer student activities and to represent the moral voice of the student body. The Board's intervention to silence the student voice is a shocking abrogation of Pitzer's bedrock progressive values.

Moreover, the Board's decision is a content-based regulation of the Student Senate's expression. If the Student Senate can only take action on issues that the “College”—meaning here the Trustees—has “taken a position” on, and presumably only in accordance with the viewpoint approved by the Trustees, Pitzer's commitment to freedom of expression would be illusory.

---

<sup>32</sup> See Pitzer College Student Senate, Student Organizations Guide, <https://www.pitzer.edu/student-senate/organizations/student-organizations-guide/>.

<sup>33</sup> See Pitzer College History, <https://www.pitzer.edu/about/pitzer-college-history/>.

\* \* \*

We urge you to respect the democratic decision of the Student Senate to amend the budget bylaws and implement safeguards to ensure student autonomy in relation to all matters under the jurisdiction of the Pitzer Student Senate. Regardless of whether you agree with the Student Senate and their justice-centered action, your core values require you to refrain from censoring the will of the student body.

Thank you for your time and attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Zoha Khalili', with a stylized, cursive script.

Zoha Khalili  
Staff Attorney, Palestine Legal

**Cc: Pitzer College Board of Trustees**