



Kamala D. Harris
Attorney General
California Department of Justice
1300 "I" Street
Sacramento, CA 95814-2919

Attention: Stepan Haytayan
300 South Spring Street
Suite 1702
Los Angeles, CA 90013

January 29, 2014

RE: Alleged Misuse of State Resources

Dear Attorney General Harris:

We are writing to you as co-founders of AMCHA Initiative, a non-profit organization dedicated to investigating, documenting, educating about and combating antisemitism at institutions of higher education in America.¹ For more than two years we have been concerned with California State University Northridge mathematics professor David Klein's use of CSUN's name and resources to promote the academic, cultural, and economic boycott of Israel. During this time we have communicated our concerns to CSUN presidents Jolene Koester, Harold Hellenbrand, and Dianne Harrison, CSU Chancellors Charles Reed and Timothy White, and the CSU Board of Trustees.²

We are aware that on 4/2/12 the Global Frontier Justice Center (GFJC) sent you a letter³ alleging that Prof. Klein had been engaging in "a prolonged and continuous violation" of California state law, "with the support and sanction of officials at CSUN," and that on 5/17/12 you sent a response⁴ claiming that the evidence provided by the GFJC did not support the finding that any violation of state law had occurred.

¹ www.amchainitiative.org

² <http://www.amchainitiative.org/csun-northridge-professor-david-kleins-website-promoting-the-boycott-of-israel/>

³ <http://amchainitiative.org/wp-content/uploads/2012/06/GFJC-csun-letter-with-attachments-April-2012.pdf>

⁴ http://www.csun.edu/academic.affairs/ca_dept_of_justice.pdf

After reviewing the GFJC's allegations and your response, we would like to present new evidence which we believe will clearly show that Prof. Klein has been in violation of state law for several years.

1. The Global Frontier Justice Center's Allegations and Your Response

1.1. Klein's Webpages

The GFJC's allegations centered around two of Klein's CSUN-hosted webpages: 1) Klein's Mathematics Department homepage,⁵ which included a section entitled "CSUN and Political Issues" that contained links to politically controversial webpages such as to Klein's own CSUN-hosted "Boycott Israel Resource Page"; and 2) Klein's "Boycott Israel Resource Page",⁶ which the GFJC described as being devoted to:

- expressing hostility towards Israel
- painting the Palestinians as "victims" and not aggressors
- encouraging the boycott of Israeli goods, scholarship and academics, and sports
- encouraging people to divest from companies that do business with Israel
- encouraging people to lobby local governments and unions to divest from Israel and Israeli business
- advocating the end of the CSU study abroad program in Israel
- responding to "hate mail" about the webpage
- providing one-sided, unbalanced articles corroborating Klein's message

1.2. Violation of CAL. GOV'T CODE § 8314

The GFJC's primary allegation was that both of Klein's webpages were in violation of CAL. GOV'T CODE § 8314, which considers it a misdemeanor to use "public resources" to advocate for "personal or other purposes which are not authorized by law."⁷ The GFJC argued that since Klein had been using, at no cost, the university's web-hosting services to host his "Boycott Israel Resource Page," that his usage had not been "incidental" but "substantial enough to result in a gain or advantage" to himself, thereby meeting the statute's definition of "use" of public resources.

Furthermore, the GFJC argued that since Klein was a Mathematics professor whose area of expertise was far removed from the material posted on his "Boycott Israel Resource Page," and since that material was altogether unscholarly and political in nature and did "nothing to contribute to the academic atmosphere on campus," that Klein's webpage was clearly "an outside endeavor not related to state business," which therefore met the statute's definition of a "personal" use of the University's resources.

1.3. Violation of CAL. EDUC. CODE § 89005.5(a)(2)(C)

Secondarily, the GFJC alleged that Klein's "Boycott Israel Resource Page" violated CAL. EDUC. CODE § 89005.5(a)(2)(C), which considers it a misdemeanor to "display" the CSU name or any variant of that name "in connection with" any propaganda or promotional activity "which has for its purpose the support, endorsement, advancement...[of] boycott or of any political...activity or program," without the

⁵ <http://www.csun.edu/~vcmth00m/>

⁶ <http://www.csun.edu/~vcmth00m/boycott.html>

⁷ <http://codes.lp.findlaw.com/cacode/GOV/1/2/d1/5/s8314>

permission of the CSU Trustees.⁸ Since Klein's webpage was clearly hosted on the CSUN webserver and the University's name displayed in the webpage's URL and linked to the promotion of a boycott, the GFJC argued:

"Because the page lists no author and there are many outside pages that link directly to the boycott page, a visitor to the page might look to the URL to figure out who the author is. Such a person would likely conclude that CSUN is the author and sponsor of the page. As such, the CSUN Boycott Page presumably violates CAL. EDUC. CODE § 89005.5(a)(2)(C)."

1.4. Your Response

On 5/17/12, your office sent a response to the GFJC lawyers, stating that you had "carefully reviewed the letter and materials" they had sent to you. You concluded that the evidence provided in the GFJC's letter did not support a finding of misuse of the CSU name and resources, and you found no basis for any action on your part.

We note that in your letter you did *not* conclude that Prof. Klein's webpages did not violate CAL. GOV'T CODE § 8314 or CAL. EDUC. CODE § 89005.5; rather, you concluded that the Global Frontier Justice Center *had not provided enough evidence* for you to find that these laws had been violated.

2. New Evidence that Klein's Webpages Violate California State Law

Therefore, we would like to present new evidence that has come to light since your investigation of this matter, evidence that was not considered by either the University or your office in drawing your original conclusions. We believe this new evidence shows beyond a reasonable doubt that both Klein's two CSUN webpages are in violation of CAL. EDUC. CODE § 89005 and CAL. GOV'T CODE § 8314, and that CSUN administrators have also been remiss in allowing Klein to violate these statutes with impunity for more than four years.

2.1 New Evidence of the Violation of § 89005.5

Although the GFJC's primary allegation was that Klein had violated CAL. GOV'T CODE § 8314, they also raised the fact that Klein's use of the University's website for his "Boycott Israel Resource Page," which clearly displays the name and logo of CSUN in the browser window, as well as his use of the CSUN Mathematics Department homepage for promoting links to his "Boycott Israel Resource Page" and other political webpages in a section Klein entitled "CSUN and Political Issues," clearly violated CAL. EDUC. CODE § 89005.5(a)(2)(C), which considers it a misdemeanor to "display" the CSU name or any variant of that name "in connection with" the promotion of any "boycott" or other "political activity," without the permission of the CSU Board of Trustees.

Given that the name of CSUN was clearly displayed in connection with the promotion of "boycott" and other "political issues" on at least two of Klein's CSUN-hosted webpages, we believe the reason your office concluded that the evidence did not show a violation of § 89005.5(a)(2)(C) was a mistaken presumption that the CSU Trustees had given their permission to Klein to use the CSU name in connection with the promotion of boycott or other political activity.

⁸ <http://codes.lp.findlaw.com/cacode/EDC/3/d8/55/1/1/s89005.5>

Since your determination in May 2012 that the evidence presented by the GJFC did not prove that the Klein webpages were in violation of § 89005.5(a)(2)(C), new evidence has come to light which we believe shows conclusively that Klein is in violation of this statute.

2.1.1 The CSU Trustees Did Not Give Klein Permission

On September 25, 2013, the California State University Trustees formally confirmed, via a letter to us from CSU Interim General Counsel Andrew Jones, that they did not give CSUN professor David Klein permission to post his webpage promoting the boycott of Israel on the CSUN website.⁹

Although Mr. Jones argued in his letter to us that Klein's webpage did not violate § 89005.5 because Klein "has not used nor invoked the CSU name in support of his viewpoint," we believe that Mr. Jones is misreading the law, which does not require that an individual use or invoke the CSU name "in support of his viewpoint" to be in violation of the statute. A violation of § 89005.5(a)(2)(C) only requires that an individual use the CSU name, without the permission of the CSU Trustees, "to display...this name publicly at, or in connection with any...propaganda, advertising, or promotional activity of any kind which has for its purpose or any part of its purpose the support, endorsement, advancement...of...boycott." The subdivision is quite clear and nowhere suggests that the individual who is using the CSU name must have the intention of using that name "in support of his viewpoint."

Therefore, on a prima facie reading of § 89005.5, Klein violated the statute by not having the permission of the CSU Trustees before displaying the University's name on his webpages promoting the boycott of Israel and other political activity.

2.1.2 Klein is Using the CSUN Name and Reputation to Promote the Boycott of Israel

Even though we disagree with Mr. Jones' understanding of § 89005.5, we nevertheless believe there is considerable evidence that Klein has invoked and used the CSU name "in support of his viewpoint," particularly regarding the boycott of Israel.

Like the vast majority of university faculty across the country, Klein could have used a private email address and a private website to send or post messages that are unambiguously political in nature and obviously intended to encourage political activism. It may have been that when Klein originally posted his "Boycott Israel Resource Page" on the CSUN server more than four years ago, he did so to save money or out of convenience, and not in order to use the CSU name to promote his personal political activity. However, after Klein was made aware of the concerns of the Jewish community regarding the antisemitic nature of his webpage as well as the potential legal concerns that were raised by many individuals -- both of which Klein documented on his "Boycott Israel Resource Page" as they were happening -- there is no doubt that for the last two years he has deliberately chosen to use the CSUN server, rather than a private server, to promote the boycott of Israel.

Moreover, in an article¹⁰ that appeared on 6/5/12 in the *Electronic Intifada*, an online publication of

⁹ <http://www.amchainitiative.org/wp-content/uploads/2013/09/CSU-Legal-Counsel-Andrew-Jones-2nd-Letter-to-Tammi.pdf>

¹⁰ <http://electronicintifada.net/blogs/ali-abunimah/blow-zionist-censors-california-backs-professors-right-call-israel-boycott-state>

political activist groups that promotes the boycott of Israel, Klein urged other faculty to use their university's name and resources "to do similar things, to go ahead and take a public stand against apartheid in Israel and ethnic cleansing, and all the injustices there."

In addition, in a radio interview¹¹ which Klein gave on 10/12/13, he was very explicit about the way in which he invoked and used the CSU name and reputation to promote his personal political agenda of boycotting Israel, and he encouraged other faculty to exploit their universities' names and reputations to do the same:

"A couple of years ago I co-authored an open letter to the Chancellor of the California State University system. That's the biggest university system in the world. It has 23 campuses scattered throughout California. And the open letter called for the CSU administration to not restart a study abroad program to Israel. So the open letter was supporting the boycott, the BDS movement, in that respect. And the letter was signed by a hundred and forty or so professors, administrators, alumni, and students of the CSU system, including several deans and a provost, and a large number of professors and even chairs of departments and so on. So I posted that on my ["Boycott Israel Resource Page"] website...I'm on the organizing committee of US campaign for the academic and cultural boycott of Israel so I have a link to that, and I'm the faculty advisor for the Students for Justice in Palestine here at California State University Northridge, and this is a resource page for them, too...So this is my way of urging my colleagues who communicate with the administration through the faculty senate to support the academic and cultural boycott of Israel and other parts of the BDS program as well."

We believe that a reasonable person who was aware of these facts would conclude that Klein was invoking the CSUN name to falsely provide academic and institutional legitimacy "in support of his viewpoint," for the purpose of advancing the boycott of Israel.

Moreover, a 2003 Appellate Court ruling¹² regarding the case of a store owner selling items with the name "Cal Poly" on them, contains language which elucidates the meaning and intent of 89005.5:

"[T]he words 'Cal Poly' have acquired value as a result of organization and the expenditure of labor, skill and money by CSU. Bello's [the store owner] has no constitutional right to exploit the value of the university's hard-won reputation."

We believe that the same understanding of the law can and should be used to demonstrate that Klein's use of the CSUN name is a violation of 89005.5(a)(2)(C), which prohibits the unauthorized use of the CSU name for the "support, endorsement, advancement...of... boycott." In other words, the name "CSUN" has "acquired value as a result of organization and the expenditure of labor, skill and money by CSU," and Klein "has no constitutional right to exploit the value of the university's hard-won reputation" for the purpose of supporting, endorsing and advancing the boycott of Israel.

2.1.3 Klein is Using the CSUN Name and Reputation to Promote Other Political Issues

Klein has also invoked and used the CSUN name in support of his viewpoint on other political issues far afield from his academic expertise, as can be seen in the section on Klein's CSUN Mathematics

¹¹ <http://www.voiceofpalestine.ca/?p=4087>

¹² http://digitalcommons.calpoly.edu/cgi/viewcontent.cgi?article=3282&context=pao_pr

Department homepage entitled "CSUN and Political Issues." Besides containing links to his "Boycott Israel Resource Page" and his "Open Letter to CSU Chancellor Charles Reed Regarding the CSU-Israel Study Abroad Program (Please endorse)," both of which he has specifically stated are intended to promote the boycott of Israel, Klein's CSUN homepage has material and links to other political views and campaigns.

For instance, Klein notes on his homepage that he is the faculty advisor for the CSUN Green Party student group, and he cites the Green Party's platform of supporting the boycott of Israel in support of his own boycott activities. Klein also has links to other CSUN-hosted webpages containing articles defending and promoting socialism and disparaging capitalism, at least one of which Klein himself has written.¹³

In addition, one of these political articles written by Klein in defense of socialism is also posted on the CSUN-hosted website of CSUN United for Peace and Justice,¹⁴ and in that version it includes a link to "tools for activists," another CSUN-hosted webpage co-authored by Klein and entitled "CSUNUPJ Activism and Media,"¹⁵ which, among other actions, urges readers to "donate on-line to the AFL-CIO strike fund."

These examples provide evidence that Klein is clearly invoking the CSUN name and reputation to promote a variety of political issues outside of the scope of his particular CSUN faculty affiliation, as well as to call for explicit political activism. Without the permission of the CSU Trustees, these political activities violate § 89005.5.

2.2. New Evidence of the Violation of § 8314

2.2.1 Using State University Resources for Personal Purposes

We believe your previous determination that Klein's webpages do not constitute a misuse of CSUN's resources, was based on the fact that the statute's condition for "personal" use -- namely, that the use was an "outside endeavor not related to state business" -- had not been met, in light of the CSUN administration's own determination that Klein's webpages were protected by freedom of speech and academic freedom and would not be removed from the CSUN server. In other words, your office relied on the University President's decision that Klein's webpages constituted "university business" in order to conclude that they were in fact "related to state business" and therefore not a "personal" use of the University's resources.

It is important to point out that the University carried out its administrative review of Klein's website,¹⁶ upon which the CSUN President's determination¹⁷ was made and upon which you based your own conclusions, in December 2011. At that time, Klein's "Boycott Israel Resource Page" only contained material expressing hostility towards Israel and promoting anti-Israel boycott, sanction and divestment campaigns. The review noted that while CSUN's legal disclaimer for internet users states that it is the

¹³ <http://www.csun.edu/~vcmth00m/NazismSocialism.html>;

<http://www.csun.edu/~vcmth00m/socialism.html>

¹⁴ <http://www.csun.edu/~csunupj/socialism.htm>

¹⁵ <http://www.csun.edu/~csunupj/activism.htm>

¹⁶ <http://www.csun.edu/president/statement-university-website-use>

¹⁷ <http://www.csun.edu/president/presidents-statement-faculty-website>

University's right to remove "defamatory, offensive, infringing or illegal materials...Dr. Klein's website, as currently constituted, does not violate the legal disclaimers policy."

However, in March 2012 Klein posted as the first item referenced on his "Boycott Israel Resource Page" a link entitled "Rossman-Benjamin: The Face of a Police State Academic."¹⁸ The linked article¹⁹ bore the same title and was written by British anti-Zionist Tony Greenstein, a leader of the international campaign to boycott Israel. Greenstein's article includes the following verbal assault against one of us (Tammi Rossman-Benjamin) and our organization, AMCHA Initiative:

- Greenstein compares Tammi Rossman-Benjamin to a Nazi collaborator, writing: "Rossman-Benjamin reminds me of the court academics who prostituted themselves in 1933 when the Nazis came to power." He has posted three photographs of her next to a photograph of Martin Heidegger, whose caption reads: "famous philosopher who lent his talents to the cause of the 3rd Reich," and he accused her of "climbing into bed with Hitler supporters."
- Greenstein calls her a "police state academic," a "junk academic," a "zombie," a "fruit cake," and a "McCarthyite apparatchick," and he insinuates that she is part of the "racist right."
- Greenstein falsely implies that AMCHA Initiative is funded by the Israeli government.

The link "Rossman-Benjamin: The Face of a Police State Academic" remained in a prominent position at the top of Klein's CSUN-hosted webpage for several weeks, and was subsequently moved to a position lower on the page, which it still occupies. In addition, some weeks after the first link was posted, Klein added a second link on his "Boycott Israel Resource Page" to the same Greenstein article, this link entitled "Rossman-Benjamin: A Good Example of the Low Academic Standards of US Zionist Jewish-Holocaust Studies Departments." This link, too, still remains on Klein's webpage.

In May 2012, Klein posted a link on his "Boycott Israel Resource Page" entitled "J'ACCUSE! THE NEW ANTI-ANTI-SEMITISM,"²⁰ which was an official statement issued by CSUN Interim President Harold Hellenbrand as his "Provost's Message" for April 2012. In his statement, Hellenbrand demonized and delegitimized AMCHA Initiative's efforts to address the issue of anti-Jewish bigotry at CSUN. For example:

- Hellenbrand falsely accused AMCHA Initiative of being a Jewish messianic organization, which "fantasizes its inception as a Golden State recapitulation of the in-gathering of the Jews under the Word."
- Hellenbrand falsely accused AMCHA Initiative of violating U.S. law through "entangling alliance with a foreign power [Israel]" and ignoring "the separation of church and state."

We reiterate that the above examples of the links to two arguably defamatory articles, which continue to be found on Klein's CSUN-hosted webpage, were never considered in the University's administrative review, in President Koester's official statement about Klein's webpages, in the GJFC's letter to you, or in your office's investigation of the GJFC's allegations about the webpages. We believe that were they to have been considered in the initial administrative review, Klein's website would have been found in violation of CSUN's legal disclaimers policy stating that it is the University's right to remove

¹⁸ <http://www.amchainitiative.org/wp-content/uploads/2013/11/Kleins-Boycott-page-March-2012.pdf>

¹⁹ <http://azvsas.blogspot.com/2012/02/rossman-benjamin-face-of-police-state.html>

²⁰ http://www.csun.edu/academic.affairs/new_anti_anti_semitism.pdf

"defamatory, offensive, infringing or illegal materials."²¹ Furthermore, we believe that had Klein's links to these articles been considered by CSUN President Koester, she would not have deemed Klein's webpage, as constituted, to be appropriate "university business," nor would your office have considered his webpage to be legitimate "state business."

In other words, the existence of links to articles on Klein's webpage whose sole purpose is to demonize, delegitimize, and defame an individual and an organization that have been critical of his webpage is an obvious example of Klein using State University resources for personal purposes, in violation of CAL. GOV'T CODE § 8314.

2.2.2. Recent Condemnations of Academic Boycott of Israel by CSU Chancellor and CSUN President

Recently California State University Chancellor Timothy White publicly stated his strong opposition to the American Studies Association's academic boycott of Israel, saying that the boycott "violates the basic tenets of higher education including academic freedom and scholarly dialog."²² CSUN President Diane Harrison has also condemned the academic boycott of Israel, stating that it "undermines academic freedom – the very heart of the academic enterprise."²³

Klein, who is himself a founding member of the U.S. Campaign for the Academic and Cultural Boycott of Israel,²⁴ has used his CSUN-hosted webpage to promote academic boycotts of Israel in general, and the American Studies Association boycott in particular. We believe that in light of CSU Chancellor White's clear denunciation of the academic boycott of Israel, it would be highly unlikely that the current CSUN president would defend as legitimate "state business" Klein's use of state university resources to advocate a boycott deemed to be a violation of "the basic tenets of higher education including academic freedom" by the University's top administrator.

If Klein's use of the CSUN website is no longer considered legitimate "state business," then he has been using "public resources" to advocate for "personal purposes," a clear violation of CAL. GOV'T CODE § 8314.

2.2.3. Unlawful Use of State University Resources

Although we believe that Klein is guilty of violating § 8314 in his use of public resources for "personal purposes," the statute also considers the use of public resources "not authorized by law" to be a misdemeanor. If, as we believe, Klein is in violation of § 89005.5(a)(2)(C), then he is also, de jure, in violation of § 8314.

3. Evidence that Klein's Webpages Violate Federal Law

Your office should also take heed that one of the aims of the BDS campaign advocated by Klein on the CSUN internet site is to induce CSUN and the California State University System to enforce an

²¹ <http://www.csun.edu/president/statement-university-website-use>

²² <http://www.amchainitiative.org/wp-content/uploads/2014/01/ASAResolutionFINAL.pdf>

²³ <http://www.csun.edu/president/news/statement-academic-boycott>

²⁴ <http://www.usacbi.org/about-us/>

unlawful boycott of Israeli products, services and contacts contrary to statutory United States policy and laws.

In 1977 Congress stated official United States policy to be against United States' business, universities and citizens engaging in the Arab League Boycott of Israel. 50 U.S.C.App. § 2402 (5) and § 2407 (c) renders this question completely federally preempted so that it is clear no instrumentality of California or other State may legally engage in the type of anti-Israel boycott activities advocated by Klein in his BDS advocacy webpage. Were the University to engage in such boycott activities it would be subject to very serious federally imposed sanctions including possible fines and even tax complications and penalties. These are enforced in part by the U.S. Department of Commerce Bureau of Industry and Security, Office of Antiboycott Compliance.²⁵

Klein's BDS webpage does not advocate for any repeal or change in these laws, but rather that CSUN and other campuses and universities engage in boycott activities in violation of them. The Arab Boycott of Israel is an "unsanctioned foreign boycott," and under federal law, Mr. Klein's advocacy thereof may trigger an obligation by CSUN to report the BDS campaign against it to both the United States Treasury and Commerce Departments. In addition, Mr. Klein's BDS website is an ongoing "incident" which should have been interdicted by CSUN's IT Department under its own IT Security Response Procedure SOP#90-08-004 since the BDS webpage is a continuing reportable request to comply with and support the Arab League Boycott, and as such is a violation of federal law.

4. Conclusion

We have presented new evidence clearly showing that Prof. David Klein has been in violation of both CAL. EDUC. CODE § 89005.5(a)(2)(C) and CAL. GOV'T CODE § 8314 for several years.

In addition, to the extent that Klein's use of the University's website to promote a boycott of Israel may be deemed unlawful by United States law, University administrators may have neglected their obligation to report to the U.S. Treasury and Commerce Departments Klein's call for the University to engage in an unlawful boycott of Israel.

In light of the evidence we have provided, we respectfully request that you re-investigate this matter as soon as possible and make the results of your investigation public.

We look forward to hearing from you soon.

Sincerely,

Tammi Rossman-Benjamin
Co-founder AMCHA Initiative

Leila Beckwith
Co-founder AMCHA Initiative

²⁵ www.bis.doc.gov/index.php/enforcement/oac