

January 15, 2018

Chairman Lamar Alexander
Ranking Member Patty Murray
Members of the Committee
Committee on Health, Education, Labor and Pensions
428 Senate Dirksen Office Building
Washington, DC 20510

Dear Chairman Alexander, Ranking Member Murray, and Honorable Committee Members:

We are 60 Jewish, Christian, education and civil rights organizations, representing millions of your constituents. We write to urge you to immediately confirm Kenneth L. Marcus to head the Department of Education's Office for Civil Rights.

While some believe that preventing discrimination in education and protecting the First Amendment are at odds, we could not disagree more. Both principles are paramount. When each and every student's rights to freedom of expression and full participation in campus life are safeguarded, everyone benefits. Schools can and must protect both. And we cannot think of a more qualified individual who understands the law in this area better than Ken Marcus. As both a civil rights advocate and constitutional expert, he fully grasps how civil liberties protections and free speech rights work hand in hand. One look at Ken's record demonstrates this understanding countless times over.

During his service at the U.S. Commission on Civil Rights, the U.S. Department of Education, and the U.S. Department of Housing and Urban Development, Ken championed the civil rights of all Americans in a wide range of areas, including strengthening Title IX enforcement, fighting against racial segregation, increasing fair housing rights for the disabled, and ensuring that Jewish, Sikh and Muslim students were protected under Title VI. As a professor, he taught classes on diversity management, civil rights law, and equality and social justice for all. And, most recently, at the Louis D. Brandeis Center for Human Rights Under Law, Ken has worked directly with state and federal legislators and university administrators to fight rising bigotry on our campuses.

Through all of this exemplary anti-discrimination work, he has always demonstrated a strong understanding and firm commitment to the First Amendment. He has

taught, written about and litigated cases under the First Amendment for years. He served as lead counsel and prevailed in a landmark First Amendment lawsuit which affirmed that anti-discrimination laws cannot be used to suppress speech. He has consistently counseled university presidents that censorship is never the proper remedy for addressing anti-Semitic and anti-Zionist expression. Instead, he has advised presidents to use more speech to condemn and educate against bigoted behavior. He has publicly endorsed and commended the University of Chicago's statement on free speech, which is considered the gold standard on campus free speech by our country's leading First Amendment advocates, including the Foundation for Individual Rights in Education (FIRE). And his team at the Louis D. Brandeis Center for Human Rights Under Law has repeatedly fought for equal free-speech rights and access for all students.

It is no wonder that Ken has received much bipartisan praise over the years. The *Atlantic* credited Ken for the Bush administration "taking a stronger approach to enforcing civil-rights laws. During his term, he issued guidance reminding schools of the need to have a Title IX officer and clarifying that Title VI also protected students of faith from discrimination." And at the end of his term at the U.S. Commission on Civil Rights, the *Wall Street Journal* wrote, "the Commission has rarely been better managed," and that it "deserves a medal for good governance."

Jennifer Braceras, the former commissioner of the U.S. Commission on Civil Rights, who worked with Ken, has said, "In my time working with Ken, I found him to be a brilliant, compassionate, and zealous defender of the civil rights and civil liberties of all Americans. I am astonished that anyone would accuse him of being anti-free speech. This is a guy who has a long record of vigorously defending the First Amendment, who is passionately opposed to censorship of any kind, and who has probably thought more carefully about the fine line between free expression and racial intimidation than anyone else in this field." And Jeff Robbins, a Democrat and U.S. delegate to the United Nations Human Rights Commission during the Clinton administration said Ken is "eminently qualified" and was responsible for "energetically enforcing antidiscrimination measures" at OCR. "His confirmation by the Senate would seem to be a shoo-in, but for one strange wild card. An expert on anti-Semitism—he has written and lectured widely on the subject—his nomination, predictably, has been bitterly criticized by the fringe and unhinged groups who operate something of an anti-Semitism lobby. Democrats in the Senate would do well not to fall for it."

It is a shame that during this time of increased polarization in our country, some have tried to distort and smear Ken's exemplary record and decades of honorable public service. A person who voluntarily left the private sector to devote his life to prevent rising bigotry and advocate for those who are most vulnerable should be applauded. We are fortunate to have qualified individuals like Ken who are willing to serve our government. Students deserve to have an individual like Ken in their corner fighting for their rights. We strongly urge you to confirm his nomination.

Sincerely,

Academic Council for Israel
Accuracy in Academia
Alums for Campus Fairness - National
Alums for Campus Fairness - UCLA
AMCHA Initiative
American Association of Jewish Lawyers and Jurists
American Council of Trustees and Alumni
American Institute for Jewish Research
American Jewish International Relations Institute
American Truth Project
Americans for a Safe Israel
Americans for Peace and Tolerance
BEAR: Bias Education, Advocacy & Resources
Boston Israel Action Committee
California Association of Scholars
Campus Anti-Semitism Task Force of the North Shore
Christians and Jews United for Israel
Christians United for Israel Action Fund
Club Z
Coalition for Jewish Values
Committee for Accuracy in Middle East Reporting in America (CAMERA)
Davis Faculty for Israel
Eagles Wings
Endowment for Middle East Truth (EMET)
Fuel For Truth
HaLev Israel
Hasbara Fellowships
Institute for Black Solidarity with Israel
Institute for Hebraic Christian Studies

Iranian American Jewish Federation
Iranian Jewish Women's Organization
Israel-American Coalition for Action
Israel Matters
Israel Peace Initiative (IPI)
JAM @ UCSB
Jerusalem U
Jewish Israel Cafe
Jubilee Sisters Bible Group
Middle East Forum
Middle East Political and Information Network (MEPIN)
National Conference on Jewish Affairs
National Council of Young Israel
NH4Israel
Proclaiming Justice to the Nations
RI Coalition for Israel
Russian Jewish Community Foundation
Scholars for Peace in the Middle East
Simon Wiesenthal Center
StandWithUs
Stop BDS on Campus
Students and Parents Against Campus Anti-Semitism
Students Supporting Israel National
Students Supporting Israel at UCLA
Students Supporting Israel at UC Irvine
The Israel Christian Nexus
The Israel Group
The Lawfare Project
Training and Education About the Middle East (T.E.A.M.)
Zioness Movement
Zionist Organization of America