The Honorable Richard J. Durbin  
Senate Judiciary Committee  
U.S. Senate  
Washington, DC 20510

Dear Mr. Chairman:

We are writing with deep concern regarding recent attacks on academic freedom and First Amendment rights. A minority of committee members have used their position on the Senate Judiciary Committee to send threatening letters to Rutgers University about its Center for Security, Race and Rights (the Center) and one of the Center’s private donors.¹

The letters, while nonbinding, demand information about the Center and its donors’ reasons for supporting it, and imply that it should be defunded due to First Amendment-protected activity.

In spite of the false claims of these letters, there is no legitimate legislative or committee justification for these demands. It is clear the purpose of these letters is to intimidate the Center and its supporters in hopes of chilling speech.

These actions mirror the abuses of McCarthyism.

All members of Congress swear an oath to uphold the Constitution, which includes the First Amendment. The Judiciary Committee has oversight responsibilities directly related to the defense of civil liberties. The actions taken by the aforementioned members are simply unbecoming of members of the Judiciary Committee.

We urge you, as Chair, to issue a strong, public rebuke to the members who have abused their positions on this committee to try to chill First Amendment-protected expressions they disfavor.

We urge you to issue a strong, public statement in defense of the First Amendment, noting that the First Amendment protects speech that individual senators may disagree with or find offensive.

Finally, we ask you to hold a hearing on threats to First Amendment rights faced by supporters of a ceasefire in Gaza or proponents of Palestinian human rights. While both supporters of Palestine and Israel are entitled to the same First Amendment protections, it is supporters of Palestine who are facing systematic attempts to suppress their speech, harassment, and official condemnation.²

Background

Rutgers University is a public university and thus bound by the First Amendment. Rutgers University is home of the Center. The Center focuses on research, education, and advocacy on law and policy that adversely impacts the civil and human rights of America’s diverse Muslim, Arab, and South Asian communities. As a result of this mission, much of the Center’s focus has been on post-September 11, 2001 national security policy and its well-documented deleterious impact on human and civil rights. In recent months, the Center has also focused on Israel’s war on Gaza. Israel’s war has sparked widespread allegations of violations of international humanitarian law³ and spurred a crisis for civil liberties in the United States not seen since the early days of the War on Terror.

On February 7, 2024, Republican members of the Senate Judiciary Committee sent two letters. One letter was addressed to Rutgers University’s President and Board of Governors Chair. The second letter was sent to Patterson Belknap Webb & Tyler LLP, a private law firm, which has donated to the Center.

Both letters detail a list of events held by the Center or personal comments made by speakers including the Center’s director, Professor Sahar Aziz. Although the letter references the


committee’s role in crafting anti-terrorism legislation, the conduct detailed consists of almost exclusively pure political speech unquestionably protected by the First Amendment as well as bedrock principles of academic freedom. The letter makes clear the signatories’ disapproval of the speech.

The letter to Rutgers University officials asks if the Center receives funding from the federal, state, or foreign governments. It also asks for a copy of the Center’s budget and whether university officials are aware of the instances of First Amendment-protected speech the signatories disapprove. Finally, the letter asks if the administrators, based on having been notified about the political speech the committee members disapprove, support the continued existence of the Center.

The letter to Patterson Belknap asks questions about who approached the law firm asking for a donation to the Center and about the law firm partner’s role on the Center’s advisory board. Like the letter to Rutgers officials, it asks if the law firm is aware of the political speech the signatories disfavor and if they will reconsider future donations in light of the speech.

Concerns

The First Amendment protects the right to engage in political speech. As a public university, Rutgers is obligated to offer this protection. As public employees, Rutgers staff also have First Amendment rights to speak on matters of public concern. Although congressional committees have broad and important oversight powers, these powers are not unlimited. In response to the abuse of committees seeking not to legislate, but serve as inquisitors of First Amendment-protected speech, the Supreme Court has repeatedly set limits on legislative committees authority to probe First Amendment protected speech.

The government has limited powers to compel disclosure of political associations. The Supreme Court has ruled that the First Amendment’s right to free association prohibits the government from requesting membership rolls. Even in spheres where the government has greater recognized interest, such as donations to campaigns, the Supreme Court has still imposed limitations on the government when there is “reasonable probability” that the compelled disclosures will subject those identified to ‘threats, harassment, or reprisals.’

Supporters of Palestinian rights face threats, harassment, or reprisals. In fact, it appears the purpose of these public attacks on the Center and one of its private donors is to expose them to such.

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4 Healy v. James, 408 U.S. 169 (1972)
7 NAACP v. Alabama ex rel. Patterson, 357 U.S. 449 (1958)
The letter claims that the requests are in line with a legislative purpose. This is demonstrably false. Citing this committee’s role in passing legislation “to root out support for terrorism, and to compensate its victims,” the minority states they are justified in probing the Center for “promotion of terrorist sympathizers” and “platforming of radical ideologues.” While the Center and its supporters would dispute these characterizations, these are all characterizations of political speech. While this committee has passed legislation concerning acts of terrorism, the Supreme Court has made clear that Congress cannot criminalize pure political speech or independent political advocacy. Even if one were to take these bad faith character assassinations at face value, which we do not, the conduct being probed is not criminal and cannot be criminalized under the First Amendment. Senators cannot void the First Amendment by describing political speech they dislike as making the speakers “terrorist sympathizers” or “radical ideologues.”

**Conclusion**

A minority of members of this committee have abused their positions to attempt to undermine academic freedom and conduct an inappropriate probe of First Amendment-protected activity. This is simply intolerable.

We urge you to publicly rebuke these members, issue a public statement in support of the First Amendment, and hold public hearings on the current crisis for civil liberties in this country.

Sincerely,
American Muslim Bar Association
Afghans For A Better Tomorrow
American-Arab Anti-Discrimination Committee (ADC)
Center for Constitutional Rights
Charity & Security Network
Coalition for Civil Freedoms
Council on American-Islamic Relations (CAIR)
Defending Rights & Dissent
Fight for the Future
Fred T. Korematsu Center for Law and Equality, Seattle University School of Law
Human Dignity Project (THDP)
Muslim Advocates
Muslim Anti-Racism Collaborative
Muslim Countercultures Lab
Muslim Peace Fellowship
Muslims for Just Futures
NYU Center on Race, Inequality, and the Law
Shoulder to Shoulder Campaign
South Asian Legal Defense Fund
Veterans For Peace
State/Regional:
Center for Law, Equity and Race @Northeastern University School of Law
Civic Ark
Freedom for all
Friends of Human Rights
JVP-Westchester
Mekong NYC
Palestinian American Community Center
Pax Christi New Jersey
Project Hajra
Project South
Sakhi for South Asian Survivors

Cc: Members of the Senate Judiciary Committee