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Via email to [sl\\_vicepresident@osu.edu](mailto:sl_vicepresident@osu.edu)

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**Re: OSU's Violation of Students' Civil and Constitutional Rights**

Dear Senior Vice President Shivers:

I write on behalf of the student campaign Ohio State University Divest to clarify a misinterpretation of state law and to remind the university of its duty to respect students' civil and constitutional rights. OSU's repeated efforts to stifle a student ballot initiative intended to allow the student body to express their views on the university's complicity in an ongoing genocide violate both the First Amendment and Title VI of the Civil Rights Act of 1964, which requires the university to provide all students a school environment free from discrimination based on race, color, or national origin, including shared ancestry or ethnic characteristics.

On March 7, students from the OSU Divest team were told that their ballot initiative, titled "Initiative Urging the Ohio State University to Divest from Companies Profiting from Human Rights Violations," could not proceed because student government "actions cannot supersede state law, and the initiative could not be enacted if passed." This move was the latest in a series of discriminatory bureaucratic barriers erected by the university and student government to prevent students from expressing their views on a pressing matter of global importance.

Our understanding of the matter is as follows:

## **OSU and USG's Repeated and Unjustified Invalidation of the OSU Divest Initiative**

On February 21, 2024, the Judicial Panel of the Undergraduate Student Government (USG) notified OSU Divest of a complaint filed against the initiative challenging the method in which signatures for the initiative were gathered. Days later, the panel nullified 415 of the 1,247 signatures OSU Divest had collected in support of its initiative, leaving the initiative below the 1,000 signature threshold required to qualify for the ballot.

On February 29, OSU Divest filed an appeal to urge the Judicial Panel to re evaluate its decision to disqualify the signatures. On March 3, the Judicial Panel granted the appeal due to procedural ambiguities and inconsistencies in the interpretation of the bylaws, which they admitted were implemented in error against OSU Divest. The panel verified the validity of 1,078 signatures, allowing the initiative to be placed on the ballot. The decision also recognized the USG's mistreatment of OSU Divest initiative circulator Jineen Musa.

On March 4, USG elections began, with the initiative on the ballot. That night, in an email sent after midnight, the Judicial Panel informed OSU Divest that "the Ohio State University made the decisive call to remove the initiative from the ballot," but that there would be a special election scheduled for the initiative "pending the comprehensive completion of the re hearing and the implementation of necessary corrective measures."

On March 7, you informed OSU Divest that the university had requested the opinion of the Ohio attorney general on whether a divestment initiative was legal and if state law would allow the university to divest if it chose to do so, claiming that this opinion was what prevented the initiative from proceeding.

In a March 6 letter from First Assistant Attorney General Jonathan Blanton to OSU President Walter "Ted" Carter, Jr., Blanton explained that President Carter had asked "whether The Ohio State University may divest its interests in Israeli assets." Blanton answered this question in the negative:

Israel is a jurisdiction with whom the State of Ohio enjoys open trade. Accordingly, pursuant to Ohio Revised Code Section 9.76, the University may not divest wholesale its interests in Israeli assets. Further, the University may not adopt or adhere to a policy of refusing to deal with or otherwise limit commercial relations with Israel or with any persons or entities associated with it.

## OSU's Misinterpretation of Both Ohio Law and the Ballot Initiative

According to this letter, the question posed to the attorney general was not whether OSU students could vote the OSU Divest initiative. It was not whether USG could follow through on the initiative, should it pass. Nor did President Carter ask whether OSU could ultimately heed the initiative's call for divestment. The question posed and the answer received had no bearing on the initiative.

The initiative's operative question is as follows:

Shall the Undergraduate Student Government call upon The Ohio State University to identify, cease, and/or prohibit any investments in companies complicit in the documented ethnic cleansing of Palestinians, including but not limited to Caterpillar, Hewlett Packard Enterprise, Lockheed Martin, RTX, Elbit Systems, and Chevron, until they are no longer engaged in the violation of human rights and other practices deemed unethical by the Buckeye community?

This initiative is not a binding directive on OSU to divest, nor does it call for wholesale divestment of OSU's interests in Israeli assets. It is a call for USG as a representative of the student body to call on the university to engage in targeted divestment solely from companies complicit in the documented ethnic cleansing of Palestinians.

Ohio Revised Code § 9.76 (ORC 9.76) prohibits businesses that boycott Israel or any jurisdiction with whom Ohio can enjoy open trade from entering into or renewing a contract with the State of Ohio "for the acquisition or provision of supplies, equipment, or services, or for construction services." This section defines boycotts as "refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with persons or entities in a *discriminatory* manner" (emphasis added). It specifically excludes "A decision based on ... the specific conduct of a targeted person or entity."

The initiative brought forth by OSU Divest urges the university to cease investments in companies that are contributing to and profiting from the genocide in Gaza. The initiative states, "We, the undersigned, ask our student government to call upon the university to continue to adhere to its self professed values of integrity and accountability in its investment policy by ceasing and/or prohibiting any investments in companies that are contributing to and profiting from the genocidal war in the Gaza Strip," identifying six companies whose specified conduct implicates them the Israeli government's ongoing military actions in Gaza.

The initiative does not call for a boycott as defined by ORC 9.76, but even if it did, the initiative still would not run afoul of the law. Under ORC 9.76, OSU “may not enter into or renew a contract with a company for the acquisition or provision of supplies, equipment, or services, or for construction services, unless the contract declares that the company is not boycotting any jurisdiction with whom this state can enjoy open trade, including Israel, and will not do so during the contract period.” The law does not prohibit OSU as a state agency from itself engaging in a boycott of Israel.

### **ORC 9.76 Violates the First Amendment and the Ohio Constitution**

If ORC 9.76 were applied to block the initiative, it would be unlawful as it violates freedom of speech. The right to boycott has long been recognized as a protected form of expression. The Supreme Court has held that a nonviolent boycott to bring about political, social, or economic change is protected under the First Amendment. *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982). The government is not permitted to chill or condition the receipt of government benefits on the requirement that an individual forgo core political speech activity, nor can the government enact measures that chill free speech rights. *See, e.g., Speiser v. Randall*, 357 U.S. 513, 529 (1958). The majority of federal courts that have heard challenges to these laws in Arizona, Georgia, Kansas, and Texas have blocked states from enforcing anti BDS laws over concerns that the laws infringe on First Amendment rights. Similar analysis with would apply under Article I § 11 of the Ohio Constitution, which states, “Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press.” ORC 9.76 is unenforceable because legislative actions cannot supersede the state or federal Constitution.

### **OSU’s Actions Violate Students’ State and Federal Constitutional and Civil Rights**

As OSU Divest informed you on both March 7 and March 18, the deliberate misinterpretation of Ohio state law against Palestinian students at Ohio State is a violation of their rights.

As a public institution, OSU is required to comply with the First Amendment. *See, e.g., Healy v. James*, 408 U.S. 169, 180 (1972) (“[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large.”). Viewpoint discrimination on university campuses strikes at the heart of the First Amendment. *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819, 836 (1995) (“For the University, by regulation, to cast disapproval on particular

viewpoints of its students risks the suppression of free speech and creative inquiry in one of the vital centers for the Nation's intellectual life, its college and university campuses.”). Here the university is not only silencing the views of OSU Divest but has also prevented the entire student body from expressing its views on the initiative.

Efforts to thwart Palestinian student activism at OSU under the guise of adhering to inapplicable state law also run afoul of Title VI of the Civil Rights Act of 1964. While OSU may enforce its rules and bylaws, and consider the opinion of the attorney general, it may not do so in a discriminatory manner. We warn OSU against disparate treatment toward Palestinian students and put the university on notice for applying these rules unevenly. As the Department of Education reminded educational institutions in a Dear Colleague letter last week, there has been “a nationwide rise in complaints of discrimination against students, including against Muslim, Arab, Sikh, South Asian, Hindu, and Palestinian students in schools” and schools like OSU that receive federal funding have a legal obligation to “provide all students a school environment free from discrimination based on race, color, or national origin, including shared ancestry or ethnic characteristics.”<sup>1</sup> The selective silencing and misapplication of state law against Palestinian students and their allies is a violation of Title VI.

OSU has the legal obligation to cease further interference with student speech activities, to reinstate the ballot initiative, and to conduct the promised special election. The university has a constitutional responsibility to facilitate a free marketplace of ideas at OSU, including students’ right to vote on a ballot initiative expressing the student body’s views on divestment from companies complicit in human rights violations.

As educators of leaders of tomorrow, we expect OSU to protect the university as a center of critical and unfettered inquiry—even on controversial matters of public concern such as human rights violations.

Sincerely,



Rifqa Falaneh

Michael Ratner Justice Fellow

Palestine Legal

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<sup>1</sup> <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-202403-massahp.pdf>