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Richard M. Englert, Ed.D.,  
President of Temple University  
Rachael Stark, Ph.D.  
Interim Associate Vice President for Student Affairs & Dean of Students  
Temple University  
Howard Gittis Student Center, Suite 304  
1755 N 13th St,  
Philadelphia, PA 19122

**Re: Temple students disciplined for off-campus protests**

Dear President Englert and Dean Stark,

The American Civil Liberties Union of Pennsylvania (ACLU-PA) is a nonpartisan, nonprofit organization dedicated to, among other things, defending individuals' rights to free speech and protest. ACLU-PA has been retained to advise and defend [REDACTED] and [REDACTED] in their student disciplinary proceedings. For the reasons outlined below, we are concerned that Temple University ("the University") is encroaching on [REDACTED] and [REDACTED] constitutional rights to free speech, assembly, and petition by pursuing disciplinary charges for their off-campus expressive activities.

Both students attend the University. The University's disciplinary charges against them are based entirely on allegations that they participated in the Philadelphia-wide "Gaza Solidarity" encampment at the University of Pennsylvania's campus. Both students were arrested for defiant trespass, but Philadelphia's District Attorney dropped the charges because "the evidence submitted by the university's police force did not support the notion that the demonstrators had behaved criminally."<sup>1</sup> Despite the charges' dismissal, the University insists on charging both

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<sup>1</sup> Chris Palmer, Philly DA Larry Krasner declined to charge four UPenn protesters, The Philadelphia Inquirer (May 20, 2024) ("The DA said evidence submitted by the university's police force did not support the notion that those demonstrators had behaved criminally."); see also Rodrigo Torrejón, Philly DA says he takes 'very seriously' the rights of students to protest but will prosecute 'when arrest is lawful', The Philadelphia Inquirer Apr. 29, 2024).

students with disorderly conduct and failure to comply based on evidence the state has already determined was insufficient. These developments are concerning.

The University's code of conduct limits student discipline for off-campus activities to "conduct that adversely affect[s] the university community and/or the pursuit of its objectives." Student Conduct Code, Art III(A)(1). The students' participation in the "Gaza Solidarity" encampment at the University of Pennsylvania has had no discernible impact on Temple University or its objectives.

More importantly, the U.S. Constitution limits the University's authority to discipline students for off-campus expressive activities. As you undoubtedly know, the University is a "state-related" institution of higher education subject to the First Amendment.<sup>2</sup> As the U.S. Third Circuit Court of Appeals wrote in a case involving the University, "the 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. Quite to the contrary, the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." *DeJohn v. Temple Univ.*, 537 F.3d 301, 314 (3d Cir. 2008) (quoting *Healy v. James*, 408 U.S. 169, 180 (1972)) (internal quotation and citation omitted).

In a case recently won by this office, the U.S. Supreme Court stressed that the "leeway the First Amendment grants to [public] schools" to regulate student speech *in school* is "diminished" when the student engages in expression outside of the school and apart from school activities. *Mahanoy Area Sch. Dist. v. B.L.*, 594 U.S. 180, 190 (2021). *B.L.* involved high school students, but it applies to government-run institutions of higher education. One underlying rationale, echoing the above-referenced *Healy v. James* quote, is particularly apt for colleges and universities:

America's public schools are the nurseries of democracy. Our representative democracy only works if we protect the "marketplace of ideas." This free exchange facilitates an informed public opinion, which, when transmitted to lawmakers, helps produce laws that reflect the People's will. That protection must include the protection of unpopular ideas, for popular ideas have less need for protection. Thus, schools have a strong interest in ensuring that future generations understand the workings in practice of the well-known aphorism, "I disapprove of what you say, but I will defend to the death your right to say it." (Although this quote is often attributed to Voltaire, it was likely coined by an English writer, Evelyn Beatrice Hall.)

*Id.* at 189-90. The University has some history of disparaging members of its community who speak in defense of Palestinians facing violence from the government of Israel. See Craig R. McCoy, *U.N. speech by Temple prof draws fire from university's board chair*, *The Inquirer* (Nov. 30, 2018). But hostility by University leadership to the views expressed by █████ and █████ can play no role in this situation, since their activities are cloaked with constitutional protection. See *Ne. Pennsylvania Freethought Soc'y v. Cnty. of Lackawanna Transit Sys.*, 938

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<sup>2</sup> See 24 Pa.Stat. § 2510-2(7) (establishes "Temple University as an instrumentality of the Commonwealth to serve as a State-related institution in the Commonwealth system of higher education.").

F.3d 424, 432 (3d Cir. 2019) (“Viewpoint discrimination is an ‘egregious form of content discrimination’” that “‘targets ... particular views taken by speakers’” and thus “violates the First Amendment’s most basic promise.”) (quoting *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995)).

Finally, the ACLU of Pennsylvania is concerned that the University’s decision to investigate and, possibly, discipline [REDACTED] and [REDACTED] will chill not only our clients’ free speech rights, but all Temple students’ ability and willingness to express themselves. Political speech, like the speech that [REDACTED] and [REDACTED] engaged in, is “at the core of what the First Amendment is designed to protect.” *Morse v. Frederick*, 551 U.S. 393, 403 (2007) (quotation omitted). These disciplinary proceedings “risk[] 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.” *Rosenberger*, 515 U.S. at 836.

Given the tenuous legal predicate for the University’s charges against [REDACTED] and [REDACTED], we ask that the University dismiss the charges against them. These are good students who have neither a disciplinary history with the University nor any criminal involvement. Their off-campus protest activities, which were in the best tradition of non-violent civil disobedience, did not merit criminal prosecution. Their political activism did not impact or disturb the University, making disciplinary action against them equally improper—and thus, unconstitutional. Please reach out to me at [sfworlds@aclupa.org](mailto:sfworlds@aclupa.org) or via phone at 856-409-0442 if you wish to discuss this matter further before the hearing.

Respectfully,

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