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October 2, 2024

Attorney General Dana Nessel
State of Michigan
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Dear Attorney General Nessel:

Your office recently brought charges against individuals involved in allegedly unlawful activities during anti-Israel protests at the University of Michigan this past spring. We've since watched as outside groups and political actors have criticized your charging choices as politically or religiously motivated.

As fellow Attorneys General, we write to encourage you to stand strong. To fulfill our oaths to protect and defend our state and federal constitutions, Attorneys General investigate the evidence, choose a course supported by that evidence, and show conviction by resisting partisan calls to back down. Especially as antisemitic activity has risen on college campuses nationwide, it's more important than ever that Attorneys General stand up for the rule of law, even in the face of criticism.

Earlier this month, you announced that you were charging eleven individuals for their behavior during the dangerous protests—some with trespassing, others with restricting and obstructing an officer, and others with disturbing the peace and malicious destruction of personal property.

The backlash has been fierce. Protestors recently “showed up to rally in front of the 15th District Court in Ann Arbor calling on [you] to drop the charges,” claiming the charges are “politically motivated”¹ and a “bogus ... repression tactic.”² Even worse, a prominent member of Michigan's congressional delegation denounced your choices as “frivolous charges” and a “shameful attack on students' rights.”³ She further commented on how “it seems” you decided to treat Palestinian-

¹ Ruta Ulcinaite, *Dozens gather at Ann Arbor courthouse, demand AG drop charges against pro-Palestine protestors*, WXYZ DETROIT (Sept. 20, 2024, 11:31 PM), <https://tinyurl.com/yc2mrmrw>.

² Terell Bailey, *University of Michigan protesters speak out after AG Dana Nessel files charges*, CBS NEWS (Sept. 21, 2024, 5:46 PM), <https://tinyurl.com/mmnyj526>; see also Jon King, *Pro-Palestinian protesters say charges are 'politicized,' demand AG drop them*, MICH. ADVANCE (Sept. 20, 2024, 8:33 PM), <https://tinyurl.com/3vnc3mda> (same).

³ Samuel Dodge, *Nessel charges 11 pro-Palestine protesters for University of Michigan encampment*, MLIVE (Sept. 12, 2024, 3:21 PM), <https://tinyurl.com/zxmcz7y3>.

related issues “differently, and that alone speaks volumes about possible biases within the agency [you] run[.]”⁴

These responses are troubling. Put aside the possible antisemitism behind them.⁵ Prosecutions of Israel-Hamas war-related protestors have been strongly bipartisan.⁶ Government and university leaders all over the country have consistently told protestors that, while peaceful protesting is of course permissible, occupying university property—say, in an encampment or lie in—won’t be tolerated.⁷ Colleges, too, are imposing significant sanctions like academic suspensions.⁸

We agree with you that Attorneys General must refuse to cave to intimations that political affiliation, belief, religion, or other similar characteristics should be considered when deciding whether to prosecute. As we all know well, in our criminal-justice system, the power to prosecute is an “immense” one.⁹ A prosecutor should therefore have, “as nearly as possible, a detached and impartial view of all groups in his community.”¹⁰ We support your office continuing to focus on “the facts, the law and the evidence” when “making a determination as to these charges.”¹¹ Indeed, it would be “impermissible” to consider “race, religion, or political beliefs” when deciding whether to prosecute a case, as some critics insist you should do.¹² Quite simply, as Attorneys General, political considerations must be irrelevant when deciding whether to prosecute someone.¹³

A few days ago, you rightly reminded the public that your job is “to keep communities and campuses around the state of Michigan safe”; that strong feelings don’t “excuse criminal behavior”; and that “chaos and anarchy and lawlessness on our college campuses” doesn’t answer “what’s happening in the Middle East” and “jeopardizes the safety of students.”¹⁴ “[I]rrespective of what’s happening in the Middle East,” you said, “people are going to be protected here in the state of Michigan.”¹⁵ Quite right.

Even as some continue to try to drag your focus to irrelevant factors like politics and religion, we encourage you to stick by those hard decisions that you believe—based on an earnest review of the evidence—will protect public safety regardless of broader political implications. As Attorneys General, we owe the public nothing less.

⁴ Steve Neavling, *Tlaib slams Nessel for targeting pro-Palestinian students at U-M: ‘A dangerous precedent’*, DETROIT METRO TIMES (Sept. 13, 2024, 2:21 PM), <https://tinyurl.com/a9exxmnh>.

⁵ See Ingrid Jacques, *Opinion: Tlaib makes antisemitic comments again. Whitmer’s response isn’t enough*, USA TODAY (Sept. 24, 2024, 11:08 AM), <https://tinyurl.com/ycyhteZF> (noting that you called these comments “anti-Semitic and wrong” and that Governor Whitmer said much the same).

⁶ See Jay Ulfelder, *Crowd Counting Consortium: An Empirical Overview of Recent Pro-Palestine Protests at U.S. Schools*, KENNEDY SCH. ASH CTR. (May 30, 2024), <https://tinyurl.com/4addjyn8>.

⁷ See generally Rachel Treisman & Ayana Archie, *Mass arrests roil college campuses amid pro-Palestinian protests*, NPR (Apr. 25, 2024, 6:05 PM), <https://tinyurl.com/2xbz3c6v>.

⁸ Christopher Buchanan, et al., *Hundreds arrested and suspended: How California colleges are disciplining faculty and students over protests*, CAL MATTERS (May 24, 2024), <https://tinyurl.com/2mdkd9hd>.

⁹ See Robert H. Jackson, *THE FEDERAL PROSECUTOR* (Apr. 1, 1940), <https://tinyurl.com/3h8ew9vs> (delivered by the then-Attorney General of the United States at the Second Annual Conference of United States Attorneys).

¹⁰ *Id.*

¹¹ *The Lead with Jake Tapper*, TRANSCRIPTS (Sept. 23, 2024), <https://tinyurl.com/yrpnt7tu>.

¹² *United States v. DeBardeleben*, 823 F.2d 549 (4th Cir. 1987).

¹³ *State v. West*, 641 S.E.2d 289, 290 (Ga. Ct. App. 2007); *State v. Anonymous*, 420 A.2d 910, 912 (Conn. Super. Ct. 1980); *People v. Smith*, 331 N.Y.S.2d 81, 85–86 (Cnty. Ct. 1972).

¹⁴ *The Lead with Jake Tapper*, *supra*, note 11.

¹⁵ *Id.*

Sincerely,




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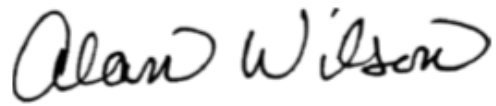
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