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Susan Permahan, Director  
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Dear Ms. Permahan:

Mr. Omer Kitaplioglu has described to us some of his recent correspondence with you regarding a soon upcoming event at your library that will include the presentation of the film "The Armenian Revolt" and a discussion of the book, "The Armenian Massacres in Ottoman Turkey" by its author, Professor Guenter Lewy.

Apparently, certain individuals so vehemently oppose the subject matter and/or content of the film and book that they urge the library to cancel the event. We understand that you have stood steadfastly against this attempt to bully you into censorship. Therefore, the Turkish American Legal Defense Fund gratefully commends you.

It is clear that the protestors you have encountered are exhorting you to suppress views that may disagree with the Armenian allegation of genocide. As you doubtlessly are aware, the decisions of the Supreme Court condemning viewpoint discrimination in public forums are plentiful. To highlight just a few bedrock principles and the emblematic cases that have upheld them: The government may not regulate speech based on the substantive content of the message conveyed. Police Dept. of Chicago v. Mosley, 408 U.S. 92 (1972); The government may not favor one private speaker over another based on viewpoint. Members of City Council of Los Angeles v. Vincent, 466 U.S. 789 (1984), and; Excluding speech from a public forum because of its message is presumptively unconstitutional. Turner Broadcasting Systems, Inc. v. F.C.C., 512 U.S. 622 (1994), and; If the state opens up a forum for public access, it can neither disparage nor suppress presentation of a particular type of viewpoint.

As described to us by Mr. Kitaplioglu, your reasoning and poise in the face of shrill criticism perfectly reflects the text and spirit of the First Amendment. The Supreme Court explained in Terminiello v. City of Chicago, 337 U.S. 1 (1949), that, "[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it

induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute, is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a substantive evil that rises above public inconvenience, annoyance or unrest...For the alternative would lead to standardization of ideas.” [citations omitted]. Indeed, your offer of an equal opportunity to the protestors to present their views scrupulously honors the First Amendment. Justice Louis D. Brandeis in Whitney v. California, 274 U.S. 357 (1927), lectured that the fitting remedy for disagreeable speech is more speech, not enforced silence.

In effect, the protestors are asking you to prescribe what many consider the orthodox view on a genuine historical controversy – whether the sad experience of the Ottoman Armenians during the last years of the Ottoman Empire constitutes the crime of genocide -- by denying a forum to skeptics. The Supreme Court admonished, however, in West Virginia Board of Education v. Barnette, 319 U.S. 624 (1943): “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in...matters of opinion ...”

In sum, there is no room under the First Amendment for a heckler’s veto. The Supreme Court explained in Feiner v. New York, 340 U.S. 315 (1951) that, “[O]rdinary mumblings and objections of a hostile audience cannot be allowed to silence a speaker.” It added in Cohen v. California, 403 U.S. 15 (1971), that the state may not act as a substitute censor of speech to avoid physical censorship “by the violent and lawless.”

In the eyes of the law and the eyes of the public, permitting all comers to enjoy a forum to express speech at your library does not constitute the library’s endorsement or non-endorsement of any who speak. In Rumsfeld v. Forum for Academic and Institutional Rights, 547 U.S. 47 (2006), the Supreme Court denied that universities required to provide equal recruiting access to the Defense Department would be perceived as subscribing to its frowning on homosexuality. Chief Justice John Roberts amplified: “We have held that high school students can appreciate the difference between speech a school sponsors and speech the school permits because legally required to do so, pursuant to an equal access policy.”

Your critics undoubtedly hate the viewpoints that conflict with their own. But Justice Oliver Wendell Holmes elaborated in United States v. Schwimmer, 279 U.S. 644 (1929): “The principle of free thought is not free thought for those who agree with us but freedom for the thought we hate.” But none of your detractors apparently have articulated, or even can articulate, a legal right to override your non-discriminatory open forum policy.

The New Jersey State Constitution, Article I, section 6, echoes the First Amendment to the United States Constitution. If you (or the library) are sued, demoted, or otherwise experience retaliation for your faultless defense of freedom of speech, the Turkish American Legal Defense Fund will eagerly file amicus curiae briefs on your behalf. Moreover, we believe that any suit challenging the legality of your actions would be dismissed as frivolous and expose the plaintiff[s] to sanctions.

We wish to underscore that we have no objection to the library hosting events that promote the genocide viewpoint in the Turkish-Armenian historical controversy. Indeed, members of our organization would be eager to participate in debates that include genocide thesis and contra-genocide thesis proponents in any forum.

In conclusion, thank you for your efforts in defense of rights precious to all Americans. If you possess any lingering hesitation concerning where the legal fault lines run in this matter, please contact us. We have been told that there will be a meeting of the library's trustees on April 17 in the evening and that at that meeting the trustees may permit the protestors or their counsel to present arguments urging the cancellation of the event. Should you feel it would buttress your already robust defense of the library's decision, the Turkish American Legal Defense Fund would gladly send counsel to the meeting as well. Please advise us at your earliest convenience whether you would find this useful.

Sincerely,

A handwritten signature in black ink, appearing to read "B Fein". The signature is stylized with a large, looped "B" and a cursive "Fein".

Bruce Fein

A handwritten signature in black ink, appearing to read "David Saltzman". The signature is cursive and includes a long horizontal flourish at the end.

David Saltzman

Attorneys for  
The Turkish American Legal Defense Fund