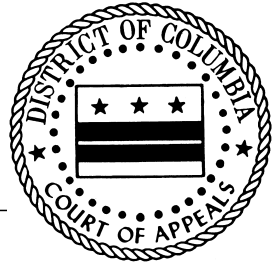


DISTRICT OF COLUMBIA COURT OF APPEALS

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Clerk of the Court  
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NO. 23-CV-0240

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SIMON BRONNER, et al.,

*Plaintiffs-Appellants,*

v.

THE AMERICAN STUDIES  
ASSOCIATION, et al.,

*Defendants-Appellees.*

On Appeal from the Superior Court  
of the District of Columbia  
(Hon. Robert R. Rigsby, J.)

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BRIEF OF *AMICUS CURIAE* PALESTINE LEGAL  
IN SUPPORT OF DEFENDANTS-APPELLEES

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## **RULE 28(a)(2)(B) DISCLOSURE STATEMENT**

*Amicus* is a nonprofit organization, which certifies it has no parent corporation and has not issued any shares of stock to any publicly held corporation.

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## **INTEREST OF AMICUS CURIAE**

Palestine Legal is a non-profit legal and advocacy organization dedicated to protecting the civil and constitutional rights of people in the U.S. who speak out for Palestinian freedom. Palestine Legal tracks incidents of censorship and efforts to suppress expression supporting Palestinian rights, including strategic lawsuits and legal threats intended to limit advocacy of the kind at issue in this case.

Palestine Legal writes to situate this lawsuit in the context of a broader, coordinated effort to stifle speech in support of Palestinian rights, including attempts by former and current counsel for Plaintiffs-appellees the Louis D. Brandeis Center for Human Rights (“Brandeis Center”) and current counsel the Deborah Project to chill criticism of Israel’s policies in academia and amongst students. Palestine Legal urges this Court to ensure that meritless litigation is not deployed to silence advocacy on the critical issue of Palestinian human rights.

## **INTRODUCTION AND SUMMARY OF ARGUMENT**

In recent years, an increasing number of people have been protesting Israel’s violations of Palestinian rights. Many have heeded the call for “Boycott, Divestment and Sanctions” (BDS) that was issued by Palestinian civil society organizations in 2005 as a way to protest Israel’s nearly eight decades of international law violations

and human rights abuses against Palestinians.<sup>1</sup> Individuals and groups like Defendants-Appellees engage in boycotts of Israeli academic institutions on the conviction that these institutions play a central role in Israel's denial of Palestinian rights. They do so in a manner that echoes boycotts challenging discrimination throughout history, from the anti-segregation bus boycotts in the U.S. South to the South African anti-apartheid boycotts.

This growing movement for Palestinian rights, and especially the call for boycotts, has in turn been met aggressively by its target—the Israeli government—which, along with aligned private groups, has devoted significant financial and strategic resources to undermining it. From 2016 to 2019, the Israeli government allotted over \$100 million to undermine BDS.<sup>2</sup> This includes more than \$860,000 to establish a legal network to stop the rise of the boycott movement.<sup>3</sup> Even Israel's spy agency, the Mossad, has been deployed to combat boycott activities.<sup>4</sup>

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<sup>1</sup> *Palestinian Civil Society Call for BDS*, BDSMOVEMENT.NET (July 9, 2005), <https://bdsmovement.net/call>.

<sup>2</sup> Thrall, Nathan, *How the Battle of Israel and Anti-Semitism is Fracturing American Politics*, N.Y. TIMES MAGAZINE (Mar. 29, 2019), <https://www.nytimes.com/2019/03/28/magazine/battle-over-bds-israel-palestinians-antisemitism.html>.

<sup>3</sup> Maayan Jaffe-Hoffman, *Strategic Affairs Ministry to Form Anti-BDS Legal Network*, THE JERUSALEM POST (Last updated Dec. 21, 2018 01:57AM), <https://www.jpost.com/Arab-Israeli-Conflict/Ministry-of-Strategic-Affairs-to-create-international-anti-BDS-legal-team-574946>.

<sup>4</sup> A January 2019 freedom of information request of Israel's Minister of Strategic Affairs' schedule revealed a record of cooperation between the Ministry of Strategic Affairs and Israel's spy agency, the Mossad, to combat boycott activities

It is in this climate that the Brandeis Center—whose mission it is to stop what it calls “anti-Israelism” on U.S. college campuses—brought this lawsuit.<sup>5</sup> Contrary to the claims of Plaintiffs, lawsuits such as this have nothing to do with concerns over the intricacies of nonprofit management. This lawsuit is about preventing and punishing speech critical of Israel’s treatment of Palestinians by making it incredibly burdensome and expensive to engage in it. In the words of Brandeis Center’s founder, former president and general counsel: “This [lawsuit] is not just about the American Studies Association,” but is meant to “send a signal” to other associations considering advocating for boycott resolutions.<sup>6</sup>

Indeed, the Deborah Project sent just such a signal when it wrote the American Anthropological Association (AAA), which was considering a near-identical

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in the U.S. Noa Landau, *Mossad Involved in Anti-Boycott Activity, Israeli Minister’s Datebooks Reveal*, HAARETZ (June 12, 2019), <https://www.haaretz.com/israel-news/.premium-mossad-involved-in-anti-boycott-activity-israeli-minister-s-diaries-reveal-1.7360253>; Linah Alsaafin, *From Spying to Lobbying, Israel’s Fight Against BDS Intensifies*, AL-JAZEERA (June 20, 2019), <https://www.aljazeera.com/news/2019/06/spying-lobbying-israel-fight-bds-intensifies-190620170711122.html>; Asa Winstanley, *Mossad Role in Israel’s War Against BDS Confirmed*, ELECTRONIC INTIFADA (June 14, 2019), <https://electronicintifada.net/blogs/asa-winstanley/mossad-role-israels-war-against-bds-confirmed>.

<sup>5</sup>*Mission and Values*, BRANDEIS CTR. (Jan. 13, 2013), <https://web.archive.org/web/20130114221218/http://brandeiscenter.com/index.php/about/mission>.

<sup>6</sup> Elizabeth Redden, *Israel Boycott Battle Heads to Court*, INSIDE HIGHER ED (Apr. 21, 2016), <https://www.insidehighered.com/news/2016/04/21/lawsuit-targets-american-studies-associations-stance-israel-academic-boycott>.

boycott resolution last June—*after* the district court dismissed the case, most of it as a SLAPP—stating that it “has represented members of the American Studies Association in litigation against the ASA” since 2016 and that “we very much hope that no such litigation against AAA will be necessary; but if it is, we will not hesitate to initiate and vigorously prosecute it.”<sup>7</sup> The letter—which conveniently left out that the Deborah Project’s lawsuit against the ASA had been dismissed—threatened to burden anthropology professors with having to reveal details of their political activities through discovery.<sup>8</sup> A few weeks later, after voting had closed, the Brandeis Center sent its own six-page threat letter to the AAA urging it to “set [the resolution] aside” or be sued—citing to an article on the Deborah Project’s threatened lawsuit.<sup>9</sup>

These statements reveal an explicit intent to misuse the legal process to stop speech these groups do not like. The District of Columbia’s Anti-SLAPP Act of 2010 (“Anti-SLAPP Act”) was enacted to weed out precisely this type of misuse of the legal process. Absent a dismissal and attorneys’ fees, anti-Palestinian groups like the

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<sup>7</sup> Letter from Lori Lowenthal Marcus, Legal Director, the Deborah Project to Edward Liebow, Executive Director, American Anthropological Association (June 13, 2023), attached hereto as Exhibit A.

<sup>8</sup> *Id.* “Discovery in that litigation has yielded a great deal of important evidence about the efforts of anti-Israel activists to subvert the scholarly missions of academic societies.”

<sup>9</sup> Letter from L. Rachel Lerman, General Counsel, Louis D. Brandeis Human Rights Ctr., to Edward Liebow, Executive Director, American Anthropological Association (July 20, 2023), attached hereto as Exhibit B.



Brandeis Center and the Deborah Project will continue to misuse the legal process to prevent and punish speech supporting Palestinian rights, speech which is even more critical in these times.

Palestine Legal accordingly urges this Court to affirm dismissal of this case pursuant to the Anti-SLAPP Act.

## ARGUMENT

### **I. A BOYCOTT OF ISRAELI ACADEMIC INSTITUTIONS IS EXPRESSIVE CONDUCT THAT FALLS WITHIN THE PURVIEW OF THE ANTI-SLAPP ACT**

Almost every major social movement has at some point used boycotts as a method to raise awareness about a persistent injustice. From the boycott of slave-produced sugar,<sup>10</sup> to the anti-colonial boycott of British goods in India,<sup>11</sup> to the Montgomery bus boycott,<sup>12</sup> the historical pedigree and legitimacy of boycotts as a

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<sup>10</sup> Mike Kaye, *The Tools of the Abolitionists*, BBC.CO.UK, [http://www.bbc.co.uk/history/british/abolition/abolition\\_tools\\_gallery\\_07.shtml](http://www.bbc.co.uk/history/british/abolition/abolition_tools_gallery_07.shtml) (last updated Feb. 17, 2011).

<sup>11</sup> CHARLES ANDREW ORR, A STUDY OF INDIAN BOYCOTTS (1940). The word “boycott” originates from 1880’s Ireland, when tenant workers, unhappy with the refusal of their English land agent—Charles Cunningham Boycott—to decrease rents when crops were poor, refused to sell him goods. Steven Greenhouse, *IDEAS & TRENDS: A Weapon for Consumers; The Boycott Returns*, N.Y. TIMES (Mar. 26, 2000), <https://www.nytimes.com/2000/03/26/weekinreview/ideas-trends-a-weapon-for-consumers-the-boycott-returns.html>.

<sup>12</sup> See E.R. Shipp, *Rosa Parks, 92, Founding Symbol of Civil Rights Movement, Dies*, N. Y. TIMES (Oct. 25, 2005), <https://www.nytimes.com/2005/10/25/us/25parks.html>.

tool to challenge injustice is unimpeachable. Indeed, it was a global boycott, divestment, and sanctions movement—which included academic boycotts—that helped dismantle apartheid in South Africa.<sup>13</sup> Boycotts for Palestinian rights follows in this legacy.

In December 2013, after years of public grassroots organizing and after months of open debate, the ASA voted by a large margin to “honor the call of Palestinian civil society for a boycott of Israeli academic institutions.”<sup>14</sup> Anchored in human rights principles, the ASA resolution advocates for the academic freedom of Palestinian students and scholars under Israeli military occupation.<sup>15</sup> It affirms that the United States plays a significant role in enabling the Israeli occupation which has a “devastating impact on the overall well-being, the exercise of political and

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<sup>13</sup> See William Finnegan, *Postscript: Nelson Mandela, 1918-2013*, NEW YORKER, (June 8, 2013), <https://www.newyorker.com/news/news-desk/postscript-nelson-mandela-1918-2013>. “The anti-apartheid movement gained traction globally. Economic sanctions and the divestment campaign, although opposed by conservative Western leaders, including Ronald Reagan and Margaret Thatcher, who continued to call the A.N.C. a ‘terrorist organization,’ began to take their toll.” *Id.* See also Håkan Thörn, *Solidarity Across Borders: The Transnational Anti-Apartheid Movement*, 17 *Voluntas: Int’l J. Voluntary & Nonprofit Orgs.* 285 (2006).

<sup>14</sup> *Boycott of Israel Academic Institutions*, AMERICAN STUDIES ASS’N, <https://www.theasa.net/about/advocacy/resolutions-actions/resolutions/boycott-israeli-academic-institutions-0> (Dec. 14, 2013).

<sup>15</sup> *Id.*

human rights, the freedom of movement, and the educational opportunities of Palestinians.”<sup>16</sup>

Soon after its resolution was passed, the Mossad-linked Shurat HaDin Israeli Law Center threatened to sue the ASA unless the academic group “immediately take[s] all necessary steps to cancel the boycott of Israeli institutions and academics,” and claimed that the academic boycott resolution was illegal and discriminatory.<sup>17</sup> Other pro-Israel groups, including the Brandeis Center and pro-Israel blogger and law professor William Jacobson followed suit, threatening to challenge the ASA’s tax-exempt status for “tarnish[ing] Israel’s reputation.”<sup>18</sup> While the Brandeis Center never publicly followed through on its I.R.S. threat, Jacobson did. The complaint was never found to have merit.<sup>19</sup> The Brandeis Center instead

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<sup>16</sup> *Id.*

<sup>17</sup> Letter from Nitsana Darshan-Leitner, Shurat HaDin-Israel Law Ctr. to Elizabeth Duggan, President-Elect, American Studies Ass’n. (Jan. 9, 2014) (on file with Palestine Legal); Asa Winstanley, *Israeli Law Center Admits Mossad Ties*, ELECTRONIC INTIFADA (Nov. 16, 2017), <https://electronicintifada.net/blogs/asa-winstanley/israeli-law-center-shurat-hadin-admits-mossad-ties>.

<sup>18</sup> See Peter Schmidt, *Backlash Against Israel Boycott Throws Academic Association on Defensive*, NYT (Jan 5, 2014), [https://www.nytimes.com/2014/01/06/us/backlash-against-israel-boycott-throws-academic-association-on-defensive.html?\\_r=0](https://www.nytimes.com/2014/01/06/us/backlash-against-israel-boycott-throws-academic-association-on-defensive.html?_r=0); William A. Jacobson, *Anti-Israel Academic Boycott Group’s Tax-Exempt Status Challenged*, LEGAL INSURRECTION (Jan. 6, 2014), <http://legalinsurrection.com/2014/01/anti-israel-academic-boycott-groups-tax-exempt-status-challenged/>; *Five takeaways from the ASA debacle*, BRANDEIS CENTER (Sept. 22, 2023), <https://brandeiscenter.com/five-takeaways-from-the-asa-debacle/>.

<sup>19</sup> William A. Jacobson, *Judge: Lawsuit against American Studies Assoc over BDS can go forward*, LEGAL INSURRECTION (Apr. 3, 2017),

found four professors who disagreed with the boycott resolution to bring a lawsuit in federal court, and after that suit was dismissed, initiating the case on appeal here.<sup>20</sup>

Strategic lawsuits against public participation are actions filed by one side of a political debate “aimed to punish or prevent the expression of opposing points of view.” *Competitive Enter. Inst. v. Mann*, 150 A.3d 1213, 1226 (D.C. 2016), *as amended* (Dec. 13, 2018). ASA’s academic boycott resolution is unquestionably speech activity on an issue of public interest that falls within the purview of the Anti-SLAPP ACT.

## **II. THE BRANDEIS CENTER AND THE DEBORAH PROJECT BROUGHT THIS LAWSUIT TO PUNISH AND PREVENT OPPOSING POINTS OF VIEW ON THE ACADEMIC BOYCOTT**

The Brandeis Center, its former president and general counsel Kenneth Marcus, the Deborah Project, and its legal director Lori Lowenthal Marcus have all been explicit that the goal of this lawsuit is to scare off other professors and academic associations from advocating for the academic boycott of Israel.

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<https://legalinsurrection.com/2017/04/judge-lawsuit-against-american-studies-assoc-over-bds-can-move-forward/> (“In January 2014, I filed a Whistleblower Complaint with the IRS, [Anti-Israel academic boycott group’s tax-exempt status challenged](#). I have not heard anything about the status of the complaint, and there is no IRS procedure for me to check the status.”).

<sup>20</sup> *Bronner v. Duggan*, 962 F.3d 596 (D.C. Cir. 2020) (affirming the District Court’s February 4, 2019 dismissal on the basis of subject matter jurisdiction).

Mincing no words about wanting to send a warning to other academic associations, Marcus declared, when announcing the Center's suit against the ASA in 2016:

The Brandeis Center is concerned that other associations may have the perception that the wrongdoers have been able to escape accountability for their shenanigans . . . .

Academic associations should think twice before abusing their missions and betraying the lawful purposes for which they were established in favor of the personal political agendas of their noisiest and most politicized activist members.<sup>21</sup>

Marcus was similarly blunt when he told *Inside Higher Ed* that the Center's lawsuit against the ASA was all about deterring similar advocacy by other academic associations:

This is **not just about the American Studies Association** . . . It's about any association officer or director who is thinking about using their association as a tool to advance their own ideological agenda. This should **send a signal that if association activists are not concerned that BDS resolutions** are anti-Semitic and may be a violation of academic freedom they should certainly be concerned that they may violate corporations law.<sup>22</sup>

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<sup>21</sup> Lea Speyer, *Jewish Rights Advocate: BDS Making a Laughing Stock out of the American Studies Association*, ALGEMEINER (Apr. 22, 2016, 10:42 AM), <https://www.algemeiner.com/2016/04/22/jewish-rights-advocate-bds-making-a-laughing-stock-out-of-the-american-studies-association/>.

<sup>22</sup> Elizabeth Redden, *Israel Boycott Battle Heads to Court*, INSIDE HIGHER ED, (Apr. 21, 2016), <https://www.insidehighered.com/news/2016/04/21/lawsuit-targets-american-studies-associations-stance-israel-academic-boycott> (emphasis added).

Years later, in 2021, the Brandeis Center (together with the Deborah Project) continued to publicly frame this lawsuit as a strategic use of the legal process to stop speech supporting boycotts for Palestinian rights, by holding a public talk titled, “The Legal Case against BDS.” The Brandeis Center promoted the talk, featuring Deborah Project’s founder Jesse Fried, on Twitter.<sup>23</sup>

The Deborah Project has similarly made it crystal clear that this lawsuit is not about corporate governance but stopping speech supporting the academic boycott for Palestinian rights. On April 18, just weeks after the court dismissed its lawsuit against the ASA and some of its former leaders, the Deborah Project’s Legal Director Lori Lowenthal Marcus, noted “[the current lawsuit against the ASA] has been going on for seven years now and still not resolved. However, bringing the lawsuit itself was a great deterrent for a long time in preventing other academic associations from moving forward with BDS resolutions.”<sup>24</sup>

Plaintiffs’ counsel has boldly declared this suit to be a SLAPP to stop speech supporting Palestinian rights and the court should take them at their word.

**a. The Brandeis Center took credit for chilling other academic organizations’ speech activity, citing this lawsuit against the ASA**

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<sup>23</sup> The Brandeis Center (@BrandeisCenter), TWITTER (Oct. 28, 2021, 4:05 PM), <https://twitter.com/brandeiscenter/status/1453830306465820677>.

<sup>24</sup> Americans for a Safe Israel, *Dismantling Anti-Semitic Abuses in the Education System*, YOUTUBE, at 5:59 (Apr. 18, 2023), <https://www.youtube.com/watch?v=FM285lj5whk>.

The Brandeis Center and the Deborah Project have been using this lawsuit and the threat of similar litigation to intimidate other academic associations from engaging in speech activity for Palestinian rights.

In December 2016, the Modern Languages Association (MLA), was on the eve of voting on an academic boycott resolution when it received a letter from the Brandeis Center informing the group that its proposed resolution was “illegal under the law of Maryland.”<sup>25</sup> The letter ominously noted that “The Brandeis Center represents members of the American Studies Association (ASA) in a lawsuit against the ASA challenging a resolution very similar to the one at issue here.”<sup>26</sup> After warning the MLA not to pass a boycott resolution, the Brandeis Center blasted a press release to media organizations reiterating that:

The MLA’s proposed resolution is very similar to a 2013 American Studies Association (ASA) resolution to boycott Israeli academic institutions. This past April, the Brandeis Center, along with prominent litigators at Marcus & Auerbach and Barnes & Thornburg, filed a lawsuit against the ASA on behalf of four distinguished American Studies professors, challenging this unlawful boycott of Israel.<sup>27</sup>

After the MLA’s boycott resolution failed, the Brandeis Center took credit for chilling the association’s speech activity, declaring that it was the Center’s threat of litigation that had prevented the resolution—which was “initially

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<sup>25</sup> *LDB to MLA: Drop Ultra Vires Boycott Resolution* BRANDEIS CTR (Dec. 14, 2016), <https://brandeiscenter.com/ldb-to-mla-drop-ultra-vires-boycott-resolution/>.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

expected to pass”—from succeeding.<sup>28</sup> In a statement on the Center’s website, Marcus warned other academic associations that, should they pass a resolution supporting the rights of Palestinian professors and students, they too would face painful lawsuits.<sup>29</sup> The statement emphasized that its lawsuit against the ASA was “mov[ing] forward to discovery.”<sup>30</sup>

Similarly, the Brandeis Center took credit when the American Anthropological Association (AAA)—the world’s largest scholarly organization of anthropologists—narrowly failed to pass a resolution in 2016 calling for the academic boycott of Israel over its treatment of Palestinians, with an all caps headline on its website, “AAA BOYCOTT FAILS; LDB LAWSUIT CREDITED.”<sup>31</sup> The Brandeis Center bragged that “this BDS failure was remarkable in light of the overwhelming support that it had enjoyed just a few months before – at the AAA’s annual meeting last November, 88% of the membership in attendance approved the decision to bring the resolution . . .” but that “some AAA members apparently understood that [the academic boycott resolution] would

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<sup>28</sup> Edward Kunz, *Modern Language Association Overwhelmingly Passes Anti-BDS Motion*, BRANDEIS CTR., <https://brandeiscenter.com/modern-language-association-overwhelmingly-passes-anti-bds-motion-2/> (last visited Oct. 18, 2023).

<sup>29</sup> *Id.* (“...these resolutions are unlawful and may subject the organization to liability.”)

<sup>30</sup> *Id.*

<sup>31</sup> Aviva Vogel, *AAA Boycott Fails; LDB Lawsuit Credited*, BRANDEIS CTR., <https://brandeiscenter.com/aaa-boycott-fails-ldb-lawsuit-credited/>. (last visited Oct. 18, 2023). LDB is the acronym for the Louis D. Brandeis Center.



likely be unlawful and could subject the association to costly litigation and humiliating defeat.” The press release went on to discuss the Brandeis Center’s lawsuit against the ASA, citing to Marcus’ above-mentioned quote in *Inside Higher Ed* that the purpose of its lawsuit against the ASA is to deter academics from advancing boycotts for Palestinian rights. A year later, in a press release announcing an “initial victory” in this lawsuit, the Brandeis Center once again bragged about how its goal of silencing speech supporting the academic boycott of Israel was working.<sup>32</sup>

**b. The Deborah Project recently attempted to prevent the American Anthropological Association from supporting the academic boycott by threatening ‘discovery,’ citing to its freshly-dismissed lawsuit against the ASA**

The Deborah Project’s message to AAA professors could not be more clear: it does not matter whether our lawsuit succeeds on the merits, we will punish your speech by subjecting you to “discovery,” which will force you to spend hundreds

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<sup>32</sup> *Initial Victory for Plaintiffs in Path-Breaking Lawsuit Against ASA for its Boycott of Israel* BRANDEIS CENTER (Apr. 3, 2017), <https://brandeiscenter.com/initial-victory-for-plaintiffs-in-path-breaking-lawsuit-against-asa-for-its-boycott-israel/> (The press release states, “Since the filing of the ASA lawsuit, the American Anthropological Association and the Modern Language Association have both backed down from passing boycott measures. ‘Today’s victory is much bigger than merely the ASA,’ added Kenneth L. Marcus. ‘When the MLA attempted a boycott vote, this case was cited, by those on both sides of the issue, as one of the reasons the resolution was defeated. Academic activists are beginning to think twice . . . .’”)

of hours searching your emails and text messages and ultimately reveal intimate details of your life to those who oppose your advocacy.

Two days after the lower court’s dismissal of this lawsuit as a SLAPP, professors with the AAA again introduced a resolution calling for the academic boycott of Israeli institutions in protest of Israel’s treatment of Palestinians.<sup>33</sup>

Voting on the resolution took place between June 15 and July 14, 2023.<sup>34</sup>

On June 13, 2023 the Deborah Project threatened, in a letter to the AAA’s executive director, to “vigorously prosecute” the 120-year-old organization should it “implement” the resolution, falsely claiming that the AAA resolution would violate “federal, state and local laws,” antidiscrimination laws in California, New York and Virginia, Virginia corporations law, and the AAA’s own bylaws.<sup>35</sup> The letter also stated that the AAA could be subjected to “damages” and suggested that the Biden Administration could investigate it. The Deborah Project’s letter—sent

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<sup>33</sup> *The Resolution*, ANTHROBOYCOTT, <https://www.anthroboycott.org/the-resolution> (Last Visited Oct. 18, 2023).

<sup>34</sup> Scott Jaschik, *Anthropologists Vote to Boycott Israeli Academic Institutions*, INSIDE HIGHER ED, (July 24, 2023), <https://www.insidehighered.com/news/faculty-issues/2023/07/24/anthropologists-back-boycott-israeli-academic-institutions>.

<sup>35</sup> Exhibit A. In response to pressure from Israel lobby groups in the wake of the ASA boycott resolution, Congress and a number of state legislatures introduced legislation that sought to bar or reduce federal funding to universities or academic associations if they funded faculty participation in academic groups that advocate boycotts for Palestinian rights. All of these binding measures failed. *Types of Legislation*, PALESTINE LEGAL, <https://legislation.palestinelegal.org/types-of-legislation/#anti-boycott-defunding>

two months after the lower court dismissed nearly the entirety of this lawsuit as a SLAPP—ominously threatens the AAA, noting that “discovery in [its litigation against the ASA] has yielded a great deal of important evidence about the efforts of anti-Israel activists...”<sup>36</sup>

**c. The Brandeis Center recently attempted to prevent the American Anthropological Association from supporting the academic boycott by threatening “legal exposure”**

On July 20, 2023, the Brandeis Center wrote the AAA’s leadership warning that it “risk[ed] legal exposure” over its academic boycott vote, similarly claiming that the academic boycott resolution, if passed, would violate myriad laws.<sup>37</sup> The six-page letter instructed the AAA that should the referendum pass, it should “set it aside based on procedural violations and the damaging impact it will have on the AAA.”<sup>38</sup> The Brandeis Center made clear that the damaging impact would be a

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<sup>36</sup> Exhibit A. (“Since 2016, The Deborah Project has represented members of the American Studies Association in litigation against the ASA for, among other things, improperly adopting a BDS resolution. Discovery in that litigation has yielded a great deal of important evidence about the efforts of anti-Israel activists to subvert the scholarly missions of academic societies. We very much hope that no such litigation against AAA will be necessary; but if it is, we will not hesitate to initiate and vigorously prosecute it.”)

<sup>37</sup> Exhibit B.

<sup>38</sup> *Id.*

SLAPP suit by its former co-counsel in this suit, the Deborah Project by citing to an article titled “Suit Threatened as Anthropologists’ Israel Boycott Vote Begins.”<sup>39</sup>

The Anti-SLAPP Act was created to weed out meritless litigation wielded to prevent opposing points of view on issues of public interest—which is precisely what Plaintiffs and their counsel, the Brandeis Center and the Deborah Project, have made clear is their intention in filing this case.

### **III. THE DEBORAH PROJECT HAS REPEATEDLY WEAPONIZED LEGAL CLAIMS TO SHIELD ISRAEL FROM CRITICISM**

The Deborah Project was founded in 2016 with a mission to publicize and deter anti-Israel bias in education settings—in other words, First Amendment-protected speech criticizing a state’s policies.<sup>40</sup> It has pursued a strategy of filing baseless discrimination complaints targeting speech activity critical of Israel’s policies at California public schools,<sup>41</sup> targeted multiple school board members with ethics complaints over statements supporting Palestinian rights (none of

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<sup>39</sup> The letter cited to an article published by *Inside Higher Ed*, titled “Suit Threatened as Anthropologists’ Israel Boycott Vote Begins,” along with this link <https://www.insidehighered.com/news/quick-takes/2023/06/16/suit-threatened-anthropologists-israel-boycott-vote-begins>. Exhibit B.

<sup>40</sup> *About*, THE DEBORAH PROJECT, <https://deborahproject.org/about/> (last visited Oct. 18, 2023).

<sup>41</sup> Plaintiff Complaint, *Deborah Project, Inc. v. Mountain View – Los Altos Union High Sch. Dist.*, No. 23CV417072, (Cal. Super. Ct. 2023).

which has succeeded),<sup>42</sup> and it has abused legal mechanisms to make it difficult for scholars and academic departments to express views critical of Israel's treatment of Palestinians.<sup>43</sup>

In 2021, the Deborah Project filed an amicus brief in support of an ethics complaint against two Board of Education members in New Jersey, claiming, incorrectly, that their statements supporting Palestinian human rights should disqualify them from being on the board. The New Jersey School Ethics Commission rightly found no ethics violation and dismissed the complaint in its entirety.<sup>44</sup> Last spring, the Deborah Project filed a similar complaint against a Rutgers Professor of Law and Board of Education member who had criticized Israel's treatment of Palestinians. That complaint is still ongoing.<sup>45</sup>

And in September 2023, the Deborah Project sent a letter to Princeton University's president complaining that a Princeton Near Eastern Studies professor had assigned a chapter from a book critical of Israel. The book, *The Right to Maim*, is authored by Rutgers Professor Jasbir Puar, a defendant in this suit. The Deborah Project appeared to suggest, absurdly, that Princeton could lose

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<sup>42</sup> Schwartz v. Abedrabbo, No.: C40-21, (NJ School Ethics Comm'n Jan. 25, 2022), [https://www.nj.gov/education/legal/ethics/2022/docs/C40-21\\_CE\\_et.pdf](https://www.nj.gov/education/legal/ethics/2022/docs/C40-21_CE_et.pdf).

<sup>43</sup> *Anti-Palestinian Deborah Project Files Baseless Ethics Complaint Against Arab-American School Board Member and Law Professor*, PALESTINE LEGAL (Sept. 22, 2023), <https://palestinelegal.org/news/sahar-aziz>.

<sup>44</sup> Schwartz, *supra* note 42 at 7.

<sup>45</sup> PALESTINE LEGAL, *supra* note 43.

its tax-exempt status over the Princeton professor and Puar’s political speech.<sup>46</sup> In an op-ed, Lowenthal Marcus explained the Deborah Project’s strategy is to “call[] Princeton’s attention to the legal problems they create for themselves when they protect political advocacy in their classrooms.”<sup>47</sup> Princeton’s President rightly responded by defending academic freedom and stating that the university would not cancel the course, condemn the readings or discipline the professor.<sup>48</sup>

The Deborah Project has made it loud and clear that its mission is to stop criticism of Israel’s policies by misusing the legal process. As the Deborah Project’s Legal Director Marcus explained, “[j]ust the bringing of a lawsuit can deter bad action.”<sup>49</sup>

#### **IV. THIS LAWSUIT IS PART OF A BROADER EFFORT TO SUPPRESS GROWING ADVOCACY IN SUPPORT OF PALESTINIAN RIGHTS.**

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<sup>46</sup>Letter from Lori Lowenthal Marcus & Jerome Marcus, the Deborah Project, to Princeton Univ. President Eisgruber, (Aug. 22, 2023), <https://deborahproject.org/wp-content/uploads/2023/08/TDP-Letter-to-Eisgruber-final.pdf>.

<sup>47</sup> Lori Lowenthal Marcus, *The Princeton Case: ‘Academic freedom’ to Attack Jews* JNS, (Sept. 3, 2023), <https://www.jns.org/us-news/anti-israel/23/9/3/315515/>.

<sup>48</sup> Christopher Eisgruber, *Statement on Academic Freedom*, PRINCETON UNIV., (SEPT. 11, 2023) <https://president.princeton.edu/blogs/statement-academic-freedom>.

<sup>49</sup> Americans for a Safe Israel, *supra* note 24 at 6:35.

Prominent groups across the United States are protesting Israeli state practices that violate Palestinian rights, including by endorsing BDS as a tactic to effect change. Several major U.S.-based religious institutions have endorsed and participated in BDS initiatives, including the Evangelical Lutheran Church in America, the Presbyterian Church (USA), the Mennonite Church, and the United Methodist Church.<sup>50</sup> Acclaimed writers, artists, and professional athletes such as Natalie Portman, Lorde, Lana del Rey, Lauryn Hill, Cornell West, Michael Bennett, and others have endorsed or participated in a cultural boycott of Israel—or refused to travel there—because of its human rights violations.<sup>51</sup> United Electrical, Radio and Machine Workers of America (UE), a member-run union representing 30,000

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<sup>50</sup> See Anna Baltzer, *Churches are Standing Up!*, U.S. CAMPAIGN FOR PALESTINIAN RIGHTS (Jul. 23, 2017), <https://uscpr.org/churches-are-standing-up/>; Annie Robbins, *In overwhelming vote, leading Lutheran branch calls on US to cut off aid to Israel*, MONDOWEISS (Aug. 12, 2016), <https://mondoweiss.net/2016/08/lutherans-say-cut-off-aid-toisrael/>.

<sup>51</sup> Dana Kennedy, *Is Natalie Portman’s Israel Protest a Tipping Point?*, DAILY BEAST (Apr. 21, 2018), <https://www.thedailybeast.com/is-natalie-portmans-israel-protest-a-tipping-point>; Letter to the Editor, *Lorde’s artistic right to cancel gig in Tel Aviv*, THE GUARDIAN (Jan. 5, 2018), <https://www.theguardian.com/music/2018/jan/05/lordes-artistic-right-to-cancel-gig-in-tel-aviv>; *Natalie Portman: Israel’s Nation-state Law is ‘Racist’ and a ‘Mistake,’* HAARETZ (Dec. 20, 2018), <https://www.haaretz.com/us-news/natalie-portman-israel-s-nation-state-law-is-racist-and-a-mistake-1.6744158>; August Brown, *Lauryn Hill cancels Israel concert after bungled Nigeria date*, L.A. TIMES (May 5, 2015), <https://www.latimes.com/entertainment/music/posts/la-et-ms-lauryn-hill-cancels-israel-concert-20150505-story.html>; Steve Almasy, *Michael Bennet boycotts trip, says he won’t be used by Israel*, CNN (Feb. 12, 2017), <https://www.cnn.com/2017/02/12/middleeast/nfl-players-boycott-israel-trip/index.html>.

workers, endorses BDS.<sup>52</sup> In 2015, a “Black Solidarity Statement with Palestine” signed by over 1000 individuals and over 40 Black-led organizations endorsed BDS.<sup>53</sup> Archbishop Emeritus and 1984 Nobel Peace Prize Winner Desmond Tutu was a longtime vigorous supporter of BDS, recognizing that it falls within the social justice protest tradition of the South African anti-apartheid movement.<sup>54</sup>

This increased advocacy in support of Palestinian rights has been met with aggressive efforts by legislators, universities, and others to suppress such speech, often at the urging of the Israeli government and Israel-aligned private groups.<sup>55</sup> Meritless lawsuits such as this are one of many tools intended to discourage and stop criticism of Israel’s treatment of Palestinians as it increasingly filters into the mainstream. From 2014-2022, Palestine Legal responded to over 2200 incidents of censorship, punishment, and other burdening of advocacy for Palestinian rights.<sup>56</sup>

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<sup>52</sup> *UE Endorses BDS Movement for Peace and Justice in Israel and Palestine*, UEUNION(Sept. 1, 2015), <https://www.ueunion.org/political-action/2015/BDS>.

<sup>53</sup> *2015 Black Solidarity Statement with Palestine*, BLACKFORPALESTINE.COM, <http://www.blackforpalestine.com/read-the-statement.html> (last visited Oct. 18, 2023).

<sup>54</sup> *See Tutu: Israel’s Humiliation of Palestinians ‘Familiar to Black South Africans’*, HAARETZ (Mar. 10, 2014), <http://www.haaretz.com/israel-news/1.578872>.

<sup>55</sup> *See* CTR. FOR CONST. RTS. & PALESTINE LEGAL, *THE PALESTINE EXCEPTION TO FREE SPEECH: A MOVEMENT UNDER ATTACK IN THE US* (2015), <https://ccrjustice.org/the-palestine-exception>.

<sup>56</sup> *2022 Year-In-Review: Bolder and More Resilient Palestine Advocacy Resists Growing Backlash*, PALESTINE LEGAL, <https://palestinelegal.org/2022-report> (last visited Oct. 18, 2023).



This number understates the phenomenon, as many activists are unaware of their rights or do not report incidents of suppression. These incidents affect playwrights, teachers, artists, chefs, musicians, professors, students, and authors.<sup>57</sup> Censorship campaigns and legal threats frequently conflate criticism of Israel’s treatment of Palestinians with bias against Jewish people, as the Brandeis Center and Deborah Project regularly do.

“The goal [of such lawsuits] is to make the enemy pay,” said the director of the Lawfare Project, a pro-Israel group that partners with the Brandeis Center, “and

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<sup>57</sup> *Id.*; 2018 Year-In-Review: Censorship of Palestine Advocacy in the U.S. *Intensifies*, PALESTINE LEGAL, <https://palestinelegal.org/2018-report> (last visited Oct. 18, 2023); CTR. FOR CONST. RTS. & PALESTINE LEGAL, *supra* note 50; *See also, e.g.*, Jennifer Schuessler, *Jewish Center Faces Backlash After Canceling Play Criticized as Anti-Israel*, N.Y. TIMES (Oct. 11, 2017), <https://www.nytimes.com/2017/10/11/arts/jewish-center-faces-backlash-after-canceling-play-criticized-as-anti-israel.html>; Ben Norton, *Palestinian-American artist detained for sketches & Arabic writing falsely accused of terrorism by right-wing media*, SALON (Dec. 22, 2015, 5:00PM), [https://www.salon.com/2015/12/22/palestinian\\_american\\_artist\\_detained\\_for\\_sketching\\_in\\_arabic\\_falsely\\_accused\\_of\\_terrorism\\_by\\_right\\_wing\\_media/](https://www.salon.com/2015/12/22/palestinian_american_artist_detained_for_sketching_in_arabic_falsely_accused_of_terrorism_by_right_wing_media/); Leena Trivedi-Grenier, *The Tenacity of Chef Reem Assil*, VICE (May 11, 2018), [https://munchies.vice.com/en\\_us/article/mbkqv/the-tenacity-of-chef-reem-assil](https://munchies.vice.com/en_us/article/mbkqv/the-tenacity-of-chef-reem-assil); Sam Sodomsky & Amy Phillips, *Lawmaker Calls for Lorde Florida Concert Cancellations Over Israel*, PITCHFORK.COM (Feb. 14, 2018), <https://pitchfork.com/news/lawmaker-calls-for-lorde-florida-concert-cancellations-over-israel/>; Alice Yin, *Evanston Public Library reinstates canceled book talk after accusations of censorship*, DAILY NORTHWESTERN (Aug. 4, 2014), <https://dailynorthwestern.com/2014/08/04/city/evanston-public-library-reinstates-canceled-book-talk-after-accusations-of-censorship/>.

to send a message, a deterrent message, that similar actions such as those that they engage in will result in massive punishments.”<sup>58</sup>

In line with this broader suppression campaign, the Brandeis Center and the Deborah Project’s ultimate purpose in this lawsuit is to prevent scholars from advocating for their ideals when those ideals challenge Israel’s impunity for its decades-long occupation of Palestine. This is not a proper use of our courts.

## CONCLUSION

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<sup>58</sup> See Ali Abunimah, *Israel lawfare group plans “Massive Punishments” for activists*, ELECTRONIC INTIFADA (June 25, 2016), <https://electronicintifada.net/blogs/ali-abunimah/israel-lawfare-group-plans-massive-punishments-activists>; The Brandeis Center has partnered with the Lawfare Project on several letters calling for the punishment of students supporting Palestinian rights. See *Lawfare Project and Brandeis Center Urge NYU to Discipline Students for Distributing Harassing Eviction Notices Into Private Dorm Rooms*, LAWFARE PROJECT (May 5, 2014), <https://www.thelawfareproject.org/releases/2018/4/3/lawfare-project-and-brandeis-center-urge-nyu-to-discipline-students-for-distributing-harassing-eviction-notices-into-private-dorm-rooms>; Aaron Bandler, *Pro-Israel Groups Urge U-Mich to Crack Down on Academic Boycotts*, JEWISH JOURNAL (Nov. 1, 2018), <https://jewishjournal.com/news/united-states/241311/pro-israel-groups-urge-u-mich-crack-academic-boycotts/>; *Lawfare Project, Lawsuit Alleges Pervasive and Endemic Anti-Semitism at CUNY Campus*, THE LAWFARE PROJECT (Mar. 23, 2016), <https://www.thelawfareproject.org/releases/2018/4/3/lawsuit-alleges-pervasive-and-endemic-anti-semitism-at-cuny-campus>.

For the foregoing reasons, this Court should remand this case to the Superior Court with instructions to dismiss all counts of the Complaint and under the Anti-SLAPP Act.

Dated: October 25, 2023

Respectfully submitted,

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**Certificate of Service**

I hereby certify that on October 25, 2023, I caused the foregoing to be filed electronically with the Court of Appeals' efileing system, which system will notify counsel of record and the Judge's Chambers of the filing.

/s/Benjamin E. Douglas  
Benjamin E. Douglas