

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

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AHMAD AWAD, SOFIA DADAP,
SAPPHIRE LURIE AND JULIE NORRIS,

Case No. 2020-00843

Petitioners-Respondents,

INDEX: 153826/17

- against -

FORDHAM UNIVERSITY,

Respondent-Appellant.
-----X

NOTICE OF MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

Attorney for Proposed *Amicus Curiae*
Catholic Scholars
Jonathan Wallace, Esq.
PO #728
Amagansett, N.Y. 11930



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**NOTICE OF MOTION OF CATHOLIC SCHOLARS
FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONERS-RESPONDENTS.**

PLEASE TAKE NOTICE, that upon the annexed Affirmation of Jonathan Wallace, Esq., duly affirmed and upon all exhibits thereto including a copy of the proposed brief of *amicus curiae*, the undersigned will move this Court at 27 Madison Avenue, New York, NY 10010 at , 9:30 a.m. on August 31, 2020, or as soon thereafter as is practical, for an order granting leave to Catholic Scholars to file with this Court a brief as *amicus curiae* in support of Petitioners-Respondents in the above-styled action, pursuant to 22 N.Y.C.R.R. § 1250.4(f). Petitioners-Respondents have consented to the proposed submission.


Dated: August 18, 2020

Respectfully Submitted,

Jonathan Wallace, Esq.

Attorney for proposed *amicus curiae* Catholic Scholars

PO #728 Amagansett, N.Y. 11930



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AFFIRMATION

Jonathan Wallace, an attorney duly admitted to practice law in the Courts of the State of New York, states the following under penalty of perjury:

1. I have been retained *pro bono* to make this motion on behalf of proposed *amicus curiae* Catholic Scholars pursuant to 22 N.Y.C.R.R. § 1250.4(f). As such, I am fully familiar with the facts and the circumstances from the information furnished by my client pertinent to this issue and as set forth below.
2. The proposed brief in support of Petitioners-Respondents is submitted on behalf of the Catholic Scholars identified therein, who are based at various universities and religious organizations throughout the United States.
3. This Affirmation is submitted in support of Catholic Scholars' motion for leave to submit a brief as *amicus curiae* regarding Fordham University's improper decision to deny club recognition to Students for Justice in Palestine ("SJP"), as inconsistent with the way of Jesus and the spirit of Catholic Social Teaching. .
4. Specifically, *amicus curiae* seeks to underscore that the Dean of Students decision to reject

Petitioners-Respondents' student club application is not warranted. Indeed, to the contrary, Catholic doctrine would encourage students to utilize nonviolent resistance to promote the political goals of fundamental justice and to resist an illegal occupation.

5. As set forth in the attached proposed brief, proposed *amicus curiae* is seeking for this Court to uphold the lower court's application of the arbitrary and capricious standard in Fordham University's unreasonable exercise of discretion in declining to recognize SJP, allowing for the improper politicization of peaceful activism.

6. Simply put, Respondent-Appellant deviated from usual practice and failed to adhere to its own internal guidelines and mission statement in rejecting the club.

7. A copy of the proposed brief is annexed hereto as Exhibit A.

8. For these reasons, Catholic Scholars respectfully seek this Court's permission to file the attached *amicus curiae* brief.

Respectfully Submitted,

Dated: August 18, 2020

Jonathan Wallace
Attorney for proposed *amicus curiae* Catholic
Scholars
Jonathan Wallace, Esq.
PO #728
Amagansett, N.Y. 11930



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CERTIFICATION

Pursuant to 22 N.Y.C.R.R. § 130-1.1-a, I, , Jonathan Wallace, an attorney admitted to practice law in the Courts of the State of New York do hereby certify, to the best of my knowledge and belief, that the following attached papers: **NOTICE OF MOTION, AFFIRMATION, and CERTIFICATION** are in accordance with the rules pertaining to this certification.

Dated: , August 18, 2020

Respectfully Submitted,

Attorney for proposed *amicus curiae* Catholic
Scholars

Jonathan Wallace Esq.

P.O. #728


Amagansett, N.Y. 11930


EXHIBIT A
PROPOSED BRIEF

SUPREME COURT OF THE STATE OF NEW YORK
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AMICUS BRIEF OF CATHOLIC SCHOLARS

Attorney for Proposed *Amicus Curiae*
Catholic Scholars
Jonathan Wallace, Esq.
PO #728
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AMICUS BRIEF OF CATHOLIC SCHOLARS

INTRODUCTION

“I cannot support an organization whose...goals clearly conflict with and run contrary to the mission and values of the university.”

Fordham University’s Dean of Students, Keith Eldredge, in denying Students for Justice in Palestine club application (R. 81).

“Fordham...guarantees the freedom of inquiry required by rigorous thinking and the quest for truth... Fordham gives special attention to the study of the living tradition of Catholicism... Fordham is committed to research and education that assist in the alleviation of poverty, the promotion of justice, the protection of human rights and respect for the environment.”

Fordham University Mission Statement (2005)¹.

“The early Christians rejoiced when they were deemed worthy to

¹ Available at https://www.fordham.edu/info/20057/about/2997/mission_statement

suffer for what they believed. In those days the Church was not merely a thermometer that recorded the ideas and principles of popular opinion; it was a thermostat that transformed the mores of society.”

Letter from a Birmingham Jail, Reverend Martin Luther King, Jr. (defending their Easter boycott).²

“Blessed are those who are persecuted because of righteousness, for theirs is the kingdom of heaven.”

The Gospel of Matthew, 5:10 (New International Version).

IDENTITY AND INTERESTS OF *AMICI CURIAE*

The *Amici* are based at universities and religious organizations throughout the United States and the world. Their academic work at various institutions and positions in religious organizations make *the Amici* particularly knowledgeable about the origins and contemporary application of Catholic social teaching, as well as what constitutes permissible exercise of university discretion in restricting legal and non-violent student expression - including insight as to the current state of peaceful activism by Students for Justice in Palestine (“SJP”) on university campuses nationwide. Since these are key elements of this appeal, their expertise in this regard is highly relevant.

Three of these *Amici*, with other individuals, previously signed a letter to Fordham a copy of which is included in the Record on Appeal at R. 445.

² Available at <https://kinginstitute.stanford.edu/king-papers/documents/letter-birmingham-jail>

CREDENTIALS OF *AMICI CURIAE*

Drew Christiansen, S.J. is Distinguished Professor of Ethics and Development at Georgetown University. He is a former observer member of the executive board of Churches for Middle East Peace. At the request of the Holy See, he organized the Coordination of Bishops' Conferences in Support of the Church in the Holy Land. Patriarch Michel Sabbah named him a canon of the Holy Sepulchre of Jerusalem for his defense of Palestinian Christians. He is the author of numerous articles on Middle East Christians.

Fr. Rafael Garcia is a Jesuit priest serving in the El Paso-Ciudad Juárez border area, where he was first assigned in 1994. He is pastor of Sacred Heart Parish and (prior to COVID) ministers to migrants and refugees at the ICE detention center and at Southwest Key facilities for unaccompanied minors. He is also director of the Encuentro Project, border immersion program.

Eli S. McCarthy, PhD was the Director of Justice and Peace for the Conference of Major Superiors of Men, which is the leadership conference of all the U.S. Catholic men's religious orders, from 2012-2020. He is a professor at George Washington University in Peace Studies and Georgetown University in Justice and Peace Studies. He has been to Palestine in 2006 to monitor the Palestinian elections and in 2015 for research on organizations offering unarmed

civilian protection; as well as engaged in federal policy advocacy on these issues while previously serving on the board of Churches for Middle East Peace.

Fr. John Sullivan, MM, Maryknoll Fathers and Brothers, lived for 32 years as a Maryknoll Missioner in Hong Kong. He also led groups on pilgrimage in Israel/Palestine over a period of seven years with residence in Bethlehem in the Occupied Territories. He maintains a close study of the latest news and developments from organizations in support of peace in Israel/Palestine and fully supports the Students for Justice in Palestine and all nonviolent groups seeking justice and peace for the Palestinian people.

BACKGROUND

Christians have long been at the forefront of protesting and, when necessary, severing their financial ties to those who engage in unjust repression, for centuries. Thus, rather than being rooted in religious or ethnic prejudice, challenging injustice without fear or favor against any specific ethnic group is a central tenant of the Faith. Historically, Christian protests and boycotts have had powerful and profound results:

In 1754, American Quakers were the first Christian religious group to denounce slaveholding. The campaign for abolition of the slave trade by the British Parliament was thereafter spearheaded by Quakers and other devout

Christians in Britain, including William Wilberforce, and it stands to this day as perhaps the finest political achievement of what is now referred to as faith-based activism. Abolitionism in Britain thereafter became such a mass movement that boycotts began of consumer goods, with up to 400,000 Britains refusing to buy the rum and sugar that came from slave plantations in the Caribbean. The slave trade was abolished in Britain in 1807.

The very word “boycott” got its name in 1880 when an English land agent named Charles Cunningham Boycott inhumanely started to evict his Irish Catholic tenants. That community, in banding together and refusing to accept that injustice, ultimately caused Boycott to leave Ireland.

In 1955, Rosa Parks refused to give up her seat on a bus to a white man. The Southern Christian Leadership Conference, headed up by the Reverend Martin Luther King Jr., thereafter organized the Montgomery Bus Boycott. That 13-month protest ended when the Supreme Court barred segregation on public buses.

In the 1980s with the support of many Christian organizations such as Christians Concerned for Africa, along with other faith groups, and supported by the leadership of South African Bishop Desmond Tutu, the United States and other countries refused to do business with or travel to South Africa. This resulted, in 1991, in bringing an end to the practice of apartheid which had separated blacks and whites there since 1948.

With respect to Palestine, the approximately 2.9 million Palestinian people living in the West Bank (aside from the nearly 2 million people living in Gaza) have for decades been forced to live under oppressive conditions as part of a military occupation. Sympathy for their basic humanity, and a desire to do something about it, is in line with the most profound Christian – and Catholic – values.

ARGUMENT

Fordham's rejection of SJP is inconsistent with the values of the Gospel and the spirit and practice of Catholic social teaching

As U.S. Catholic academics, clergy, and religious, *amici* are seriously troubled by the refusal of Fordham University to accept the court's decision directing it to recognize a campus chapter of Students for Justice in Palestine (SJP). Fordham's actions are inconsistent with the values of the Gospel as well as both the spirit and practice of Catholic social teaching.

Jesus clearly reaches out to those on the margins and those being unjustly treated by any social, religious, or political groups. Jesus creates conditions for these voices to be heard. Notably, Jesus even takes considerable social and physical risks to do this, even to the point of offering his very life. Catholic social teaching developed this mission for our times and has clearly highlighted the

preference for the poor and marginalized, solidarity, human rights, and the common good of all.

Pope Francis has frequently discussed these aspects of Catholic belief. In a 2015 speech to a joint session of the U.S. Congress, Pope Francis said: “From this perspective of dialogue, I would like to recognize the efforts made in recent months to help overcome historic differences linked to painful episodes of the past. It is my duty to build bridges and to help all men and women, in any way possible, to do the same. When countries which have been at odds resume the path of dialogue – a dialogue which may have been interrupted for the most legitimate of reasons – new opportunities open up for all. This has required, and requires, courage and daring, which is not the same as irresponsibility. A good political leader is one who, with the interests of all in mind, seizes the moment in a spirit of openness and pragmatism. A good political leader always opts to initiate processes rather than possessing spaces”. “ADDRESS OF THE HOLY FATHER, United States Capitol, Washington, D.C. Thursday, 24 September 2015”.³ “[T]he Church today.... needs to be present in order to promote full human development and to pursue the common good [including] dialogue with other believers who are not part of the Catholic Church....In a culture which privileges dialogue as a form of encounter, it is time to devise a means for building consensus and agreement while

³ Available at http://w2.vatican.va/content/francesco/en/speeches/2015/september/documents/papa-francesco_20150924_usa-us-congress.html

seeking the goal of a just, responsive and inclusive society.” “APOSTOLIC EXHORTATION EVANGELII GAUDIUM OF THE HOLY FATHER FRANCIS TO THE BISHOPS, CLERGY, CONSECRATED PERSONS AND THE LAY FAITHFUL ON THE PROCLAMATION OF THE GOSPEL IN TODAY’S WORLD”.⁴ “Within each social stratum, and between them, institutions develop to regulate human relationships. Anything which weakens those institutions has negative consequences, such as injustice, violence and loss of freedom.” “ENCYCLICAL LETTER LAUDATO SI’ OF THE HOLY FATHER FRANCIS ON CARE FOR OUR COMMON HOME”.⁵

In 2013, the Pope told students at Jesuit schools in Italy and Albania: “Freedom means being able to think about what we do, being able to assess what is good and what is bad, these are the types of conduct that lead to development; it means always opting for the good. Let us be free for goodness. And in this do not be afraid to go against the tide, even if it is not easy! Always being free to choose goodness is demanding but it will make you into people with a backbone who can face life, people with courage and patience.” “ADDRESS OF POPE FRANCIS TO THE STUDENTS OF THE JESUIT SCHOOLS OF ITALY AND ALBANIA”,

⁴ Available at http://w2.vatican.va/content/francesco/en/apost_exhortations/documents/papa-francesco_esortazione-ap_20131124_evangelii-gaudium.html#No_to_the_inequality_which_spawns_violence

⁵ Available at http://w2.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html

Friday, 7 June 2013.⁶

Fordham's refusal to allow a SJP chapter to form must also be viewed against the background of the Vatican's increasingly open and cordial relationship to Palestine, and Pope Francis' activism for an equitable peace plan in the region. In 2014, the *Christian Science Monitor* reported: "Pope Francis made a surprise stop at the hulking wall Palestinians see as a symbol of Israeli oppression on Sunday, minutes after begging both sides to end a conflict that he said was no longer acceptable. In an image set to become one of the most emblematic of his trip to the holy land, a somber-looking Francis rested his forehead against the concrete structure that separates Bethlehem from Jerusalem, and prayed silently as a child holding a Palestinian flag looked on." Philip Pullella and Noah Browning, "On Bethlehem visit, Pope makes foray into Israeli-Palestinian conflict", *The Christian Science Monitor*, May 25, 2014.⁷ The following year, "The Vatican has agreed to a new treaty with Palestinian representatives that refers to them as the State of Palestine, which the Associated Press is reporting as formal recognition of Palestine as a state. A Vatican spokesman told AP, 'Yes, it's a recognition that the state exists.'" Zack Beauchamp, "The Vatican recognizes Palestine as a state in new treaty", *Vox*, May 13, 2015.⁸ To date, 138 member states of the United

⁶ Available at http://w2.vatican.va/content/francesco/en/speeches/2013/june/documents/papa-francesco_20130607_scuole-gesuiti.html

⁷ Available at <https://www.csmonitor.com/World/Latest-News-Wires/2014/0525/On-Bethlehem-visit-Pope-makes-foray-into-Israeli-Palestinian-conflict>

⁸ Available at <https://www.vox.com/2015/5/13/8597953/vatican-palestine>

Nations have done the same.

The U.S. Catholic Conference of Bishops has also worked tirelessly to create space for Palestinian voices, while affirming the legitimate needs of Israel. They have spoken out for Palestinian Christians, for those suffering in Gaza, against settlements, and for the programs of Catholic Relief Services in Palestinian territories. The U.S. Conference of Major Superiors of Men (CMSM), serving the leaders of U.S. Catholic men's religious institutes, has also worked hard on this issue. Based on the testimony and request from Palestinian Christian religious leaders, CMSM has even challenged those profiting from illegal settlements by endorsing the boycott of such companies.

Dean Eldredge's past email denying the creation of an SJP chapter stated: "While students are encouraged to promote diverse political points of view, and we encourage conversation and debate on all topics, I cannot support an organization whose sole purpose is advocating political goals of a specific group, and against a specific country, when those goals clearly conflict with and run contrary to the mission and values of the University." Such denial by a Catholic university is inconsistent with both Pope Francis' recognition of Palestine as a state and his call to live the Beatitudes. It is an affront to the mission and values of Jesus and Catholic social teaching. Specifically, over 100 SJP chapters have been in existence on campuses nationwide. Many Catholic academic institutions have

permitted SJP chapters or other Palestinian solidarity groups⁹ and we are not aware of any other than Fordham using prior restraint to bar the creation of such a group. Such groups are admirably resisting the longstanding illegal occupation, which violates human rights, rather than being directed against any country based upon preexisting prejudice.

Dean Eldredge's conclusion that allowing an SJP chapter was inconsistent with Fordham's Christian values mission statement is further belied by the fact that numerous Christian organizations have read the Gospel as supporting a call to boycott illegal Israeli settlements. For example, in addition to CMSM's boycott mentioned above, a January of 2019 letter listed, the following Christian congregations or denominations confirming that they had adopted resolutions calling for such boycotts:

The Alliance of Baptists
American Friends Service Committee – AFSC
Disciples Palestine Israel Network of the Christian Church (Disciples of Christ)
The Episcopal Peace Fellowship's Palestine Israel Network- EPF-PIN
Friends of Sabeel North America – FOSNA
Israel Palestine Mission Network- Presbyterian Church (USA)
Kairos USA
Mennonite Palestine Israel Network – MennoPIN
Palestine Christian Alliance for Peace – PCAP
Quaker Palestine Israel Network – QPIN
Unitarian Universalists for Justice in the Middle East – UUJME

⁹ Benedictine University, Boston College, DePaul University, Georgetown University, Lewis University, Loyola University – Chicago, Loyola University – New Orleans, Marquette University, Manhattan College, Saint Xavier, University, Santa Clara University, Seton Hall University, Saint Joseph's College, University of Dayton.

Palestine Israel Action Group (PIAG) of Ann Arbor Friends Meeting (Quakers)
United Church of Christ Palestine Israel Network – UCCPin
United Methodists for Kairos Response – UMKR

CONCLUSION

As U.S. Catholic academics, clergy, and religious, we are seriously troubled by the refusal, on December 22nd, 2016, by Dean Eldredge to recognize the creation of the Fordham campus chapter of Students for Justice in Palestine. We strongly urge this Court to affirm the decision below, finding Dean Eldredge’s actions to be “arbitrary” and “capricious” at a Catholic university, not only because they were not based on any experience or violation of university conduct guidelines by the students at issue, but further because they were entirely inconsistent with Fordham’s sacred mission to promote the values of the Gospel, and the actual lived practice of the best of historical Catholic social teaching and faith-based activism.

/s/ Jonathan Wallace, Esq.
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PRINTING SPECIFICATIONS STATEMENT

Pursuant to 22 NYCRR Section 1250.8(j) the foregoing brief was prepared on a computer using Open Office.

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