

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

----- X
AHMAD AWAD, SOFIA DADAP, SAPHIRA LURIE
and JULIE NORRIS,

New York County Clerk
Index #: 153826/17

Petitioners-Respondents,

-- against --

FORDHAM UNIVERSITY,

Respondent-Appellant.
----- X

**NOTICE OF MOTION
FOR LEAVE TO FILE A
BRIEF AS AMICI
CURIAE IN SUPPORT
OF PETITIONERS-
RESPONDENTS**

Return Date: 8/17/2020



PLEASE TAKE NOTICE that upon the annexed Affirmation of Robert L. Herbst, attorney for the proposed amici curiae, duly affirmed on August 7, 2020, and upon all exhibits thereto including a copy of the proposed brief of amici curiae Jewish Studies Scholars, the undersigned will move this Court at 27 Madison Avenue, New York, NY 10010 at 10 a.m. on the 17th day of August, 2020, or as soon thereafter as is practicable, for an order granting leave to the Jewish Studies Scholars to file with this Court a brief as amici curiae in support of Petitioners-Respondents in the above-styled action, pursuant to 22 N.Y.C.C.R. § 1250.4(f). Petitioners-Respondents have consented to the proposed submission.

Dated: New York, New York
August 7, 2020

Respectfully submitted



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-- against --

**AFFIRMATION IN
SUPPORT**

FORDHAM UNIVERSITY,

Return Date: 8/17/2020

Respondent-Appellant.
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Robert L. Herbst, an attorney duly admitted to practice before this Court, states the following under penalty of perjury:

1. I have been retained pro bono to make this motion on behalf of the following 13 proposed amici curiae Jewish Studies scholars (“Jewish Studies Scholars”) pursuant to 22 N.Y.C.R.R. § 1250.4(f). As such, I am fully familiar with the facts and circumstances from the information furnished by my clients pertinent to this issue and as set forth below. The proposed amici curiae Jewish Studies Scholars, and their credentials, are:

- **Benjamin Balthaser** is Associate Professor of Multi-Ethnic Literature at Indiana University, South Bend. He has written widely on antisemitism, race, colonialism and Jewish identity in two books as well as scholarly publications including *American Quarterly*, *Boston Review* and *Oxford History of Native American Literature*. He is currently completing a manuscript on Jewish political engagements with racial identity and anti-Zionist thought with Verso Books, currently titled *Citizen of the Whole World: Anti-Zionism and the American Jewish Literary Left*.

- **Daniel Boyarin** is the Taubman Professor of Talmudic Culture at UC Berkeley and chair of the Rhetoric Department there. He has written articles and chapters of books on the cultural history of Zionism. He taught for many years at Ben-Gurion and Bar-Ilan universities in Israel, where he was chair of the board of the Alternative Information Center, a resource for unbiased news on Israel/Palestine for journalists and parliamentarians. He is on the Academic Advisory Boards of both Jewish Voice for Peace and Open Hillel.
- **Hasia Diner** is a professor at New York University, with a joint appointment in the NYU Department of History and the Skirball Department of Hebrew and Judaic Studies. An expert in the field of American Jewish history, she has written widely on various aspects of this subject. Her two most recent books, both published by Yale University Press, are *Roads Taken: The Great Jewish Migrations to the New World and The Peddlers Who Forged the Way* (2016); and *Julius Rosenwald: Repairing the World* (2017), which is part of the Jewish Lives Series of YUP. She has twice won the National Jewish Book Award and lectures widely around the United States and abroad.
- **Marjorie N. Feld** is professor of history at Babson College in Massachusetts, where she teaches courses on U.S. gender and labor history as well as the history of global human rights movements. Her first book, *Lillian Wald: A Biography*, published in 2008 by University of North Carolina Press, won the Saul Viener Book Prize of the American Jewish Historical Society. Her second book, *Nations Divided: American Jews and the Struggle Over Apartheid*, was published by Palgrave MacMillan in July 2014. She is currently at work on her third book, *Leaving Zion*, a history of American Jewish anti-

Zionism. Feld is on the academic advisory boards of Jewish Voice for Peace, Open Hillel and the Jewish Women's Archive.

- **Gil Hochberg** is Ransford Professor of Hebrew and Comparative Literature, and Middle East Studies at Columbia University. Her research focuses on the intersections among psychoanalysis, postcolonial theory, nationalism, gender and sexuality. Her first book, *In Spite of Partition: Jews, Arabs, and the Limits of Separatist Imagination* (Princeton University Press, 2007), examines the complex relationship between the signifiers “Arab” and “Jew” in contemporary Jewish and Arab literatures. Her most recent book, *Visual Occupations: Vision and Visibility in a Conflict Zone* (Duke University Press, 2015), is a study of the visual politics of the Israeli-Palestinian conflict.
- **Ari Y. Kelman** is a social scientist with expertise in the sociology of American Jewry. Since 2012 he has held the Jim Joseph Professorship in Education and Jewish Studies at Stanford University's Graduate School of Education, where he is also serving as the interim director of the Taube Center for Jewish Studies. His research focuses on the intersection of education and religion, and he has written three books on the subject, with a fourth currently in press. He has published and presented widely, in both scholarly and popular contexts, on issues pertaining to education and American Jews, including higher education. Recently he released the first qualitative study of how Jewish students on college campuses understand and engage with the politics of the Israel-Palestine conflict.
- **Chana Kronfeld** is an Israeli-American scholar of Jewish Studies. She is the Bernie H. Williams Professor of Comparative, Hebrew and Yiddish Literature at the University of California, Berkeley. Her book, *On the Margins of Modernism*, received the MLA Scaglione Prize for best book in Comparative Literary Studies, and she is the author,

most recently, of *The Full Severity of Compassion: The Poetry of Yehuda Amichai*. She is the co-translator, with Chana Bloch z'l, of Yehuda Amichai's *Open Closed Open* (PEN Translation Prize) and of *Hovering at a Low Altitude: The Collected Poetry of Dahlia Ravikovitch* (top NEA Translation Award). Kronfeld is the winner of the Israeli Akavyahu Lifetime Achievement Award for her research on Hebrew and Yiddish poetry.

- **Charles H. Manekin** is a professor of philosophy at the University of Maryland, and until recently (2011-2017) director of the Joseph and Rebecca Meyerhoff Center of Jewish Studies. He specializes in the history of philosophy, specifically medieval Jewish and Islamic philosophy. He is also interested in the history of science among Muslims and Jews. He has written books on Gersonides and Maimonides and has edited a collection of articles on general and Jewish perspectives on freedom and moral responsibility. He has also edited and translated collections of Jewish philosophy for Routledge and Cambridge University Press. He received a National Endowment of the Humanities Collaboration Grant for translating and updating Moritz Steinschneider's *The Hebrew Translations of the Middle Ages*, the first volume of which recently appeared.
- **Benjamin Schreier** of Penn State University studies post-1900 American and Jewish American literature and culture. The major focus of his current research is an analysis of identity and intellectuality in literature and literary scholarship. He is the author, most recently, of *The Rise and Fall of Jewish American Literature: Ethnic Studies and the Challenge of Identity* (Penn Press, 2020); *The Impossible Jew: Identity and the Reconstruction of Jewish American Literature* (NYU Press, 2015); and *The Power of Negative Thinking: Cynicism and the History of Modern American Literature* (UVA Press, 2009). He has been the editor of *Studies in American Jewish Literature*, a journal

published by Penn State Press, since 2011, and served as director of Penn State's Jewish Studies Program from 2014 to 2020.

- **Joshua Schreier**, professor of history at Vassar College, works at the intersection of Middle Eastern, Algerian, Jewish and French histories. His research focuses on North African Jews early in the French occupation of Algeria, in the middle decades of the 19th century. He has written about how the French deployed the ideology of “civilization” to consolidate colonial rule, even while local actors co-opted, reformulated or deflected this ideology. His more recent work explores how Algerian Islamists wrote about Jews and Zionism in interwar French Algeria. He is the author of *Arabs of the Jewish Faith: The Civilizing Mission in Colonial Algeria* (Rutgers U. Press, 2010) and *The Merchants of Oran: A Jewish Port at the Dawn of Empire* (Stanford U. Press, 2017).
- **Aaron J. Hahn Tapper**, the Mae and Benjamin Swig Professor in Jewish Studies at the University of San Francisco and founding Director of the Swig Program in Jewish Studies and Social Justice, has been at USF since 2007. A longtime educator, his primary academic interest is the intersection of identity formation, social justice and marginalized groups. The author of *Judaisms: A Twenty-First-Century Introduction to Jews and Jewish Identities* (2016), he has co-edited two volumes, *Muslims and Jews in America: Commonalities, Contentions, and Complexities* (2011), with Reza Aslan; and *Social Justice and Israel/Palestine: Foundational and Contemporary Debates* (2019), with Mira Sucharov. He is currently writing a book on how Australia's Aboriginals and Torres Strait Islanders received former Prime Minister Kevin Rudd's political apology, delivered in February 2008.

- **Barry Trachtenberg** is a scholar of modern Jewish history and the Nazi Holocaust. Since July 2016, he has been employed as The Michael H. and Deborah K. Rubin Presidential Chair of Jewish History and Associate Professor at Wake Forest University in Winston-Salem, N.C. He also serves on the Board of Scholars of Facing History and Ourselves and on the Academic Council of the Holocaust Educational Foundation of Northwestern University. He taught from 2003 to 2016 at the State University of New York at Albany, where he directed the programs in Judaic Studies and Hebrew Studies from 2010 to 2016. He is the author of two books, most recently *The United States and the Holocaust: Race, Refuge, Remembrance* (Bloomsbury, 2018), and various articles – both scholarly and popular – on many aspects of modern Jewish history and the Holocaust. For many years, he has taught academic courses and given community lectures on modern Jewish history, Zionism, Israel, antisemitism and the Nazi Holocaust. He is on the Academic Advisory Boards of both Jewish Voice for Peace and Open Hillel.
- **Diane L. Wolf** is professor of sociology at University of California, Davis, where she was director of the Jewish Studies program for 10 years. Her work focuses on trauma and memory as related to the post-Holocaust family dynamics of survivors and their offspring. She has written three books and edited two others. She is currently writing a book on *Recalibrating Post-Memory: Trauma and the Children of Holocaust Survivors*. She is on the Academic Advisory Board of Open Hillel and in 2018 was a Visiting Senior Fellow at the Zentrum für Antisemitismusforschung (Center for the Study of Antisemitism) at the Technical University in Berlin.

2. The attached proposed brief in support of Petitioners-Respondents is submitted on behalf of these Jewish Studies scholars, all affiliated professionally with universities around the

United States. Their specific specialties vary, but they are united in their interest in and concern for academic freedom, the free exchange of ideas, free speech and vigorous debate and scrutiny on campus of any and all political and social issues, including the policies of the Israeli state and government, and the facts of Palestinian life on the ground in Israel-Palestine. They are particularly concerned about the use of false allegations of antisemitism to (1) stigmatize and suppress speech and advocacy critical of Israel, (2) bully, intimidate and silence Jewish, Palestinian and other non-Jewish students advocating for what they perceive to be justice in Palestine, and (3) smear them as self-hating Jews or antisemites. The Jewish Studies Scholars are gravely concerned about the impact of these strategies on students and faculty engaged in such advocacy, and the health of the academic community in general.

3. This Affirmation is submitted in support of the Jewish Studies Scholars' motion for leave to submit the proposed brief as *amici curiae* regarding Fordham University's denial of recognition of a Students for Justice in Palestine (SJP) club on campus, in violation of the university's stated commitment to a robust consideration and discussion of differing views, which it identifies as a core part of Fordham's mission.

4. Specifically, *amici curiae* seek to show that Fordham's denial of recognition to its SJP club is part of an ongoing strategy to suppress speech and non-violent advocacy critical of Israel and supportive of Palestinian human rights and dignity. In this strategy, false allegations of antisemitism play a major role, as exemplified by the proposed *amicus curiae* briefs submitted in support of appellant by ISGAP and StandWithUs. While the exact nature and meaning of antisemitism are contested among scholars of Jewish studies, an inaccurate, overbroad and harmful "working definition" proposed by the International Holocaust Remembrance Alliance (IHRA) has recently morphed into a campus "speech code." That speech code is being used to

silence and intimidate Jewish and non-Jewish students and faculty who (1) engage in legitimate criticism of the Israeli state, (2) advocate in support of the human rights and dignity of Palestinian and other non-Jewish inhabitants of Israel-Palestine, and (3) including those who support employment of the non-violent tools of boycott, divestment and sanctions – tools which have been used for many decades to support the civil rights movement in the American South, and to pressure the Republic of South Africa to end Apartheid, without any allegation that those engaging in such boycott, divestment and sanctions were prejudiced against American whites or white “Afrikaners.”

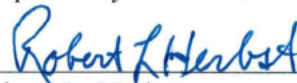
5. Accordingly, the amici curiae Jewish Studies Scholars propose to offer the Court useful information from experts in the field on how the concept of antisemitism has been redefined to include – and rule out as legitimate on campus -- most of the criticism of Israeli state policies which discriminate against, occupy and oppress its non-Jewish Palestinian inhabitants. This redefinition has inevitably colored the stated and unstated reasons for Fordham’s decision to deny its students a campus club for “Justice in Palestine” in violation of its own mission and rules which, in any other context, would not be considered illegitimately “polarizing” and a “threat” to Jewish students.

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


7. For these reasons, the Jewish Studies Scholars respectfully seek this Court’s permission to file the attached amici curiae brief.

Dated: New York, New York
August 7, 2020

Respectfully submitted



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EXHIBIT A
PROPOSED BRIEF

New York County Clerk's Index No. 153826/17

**NEW YORK SUPREME COURT
APPELLATE DIVISION – FIRST DEPARTMENT**

AHMAD AWAD, SOFIA DADAP, SAPPHIRA LURIE, JULIE NORRIS, and
VEER SHETTY,

Petitioners-Respondents,

v.

FORDHAM UNIVERSITY,

Respondent-Appellant.

**[PROPOSED] BRIEF OF AMICI CURIAE JEWISH STUDIES
SCHOLARS**

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INTRODUCTION AND SCOPE OF THIS BRIEF

This amicus curiae brief is respectfully submitted by 13 scholars in the field of Jewish studies in opposition to Respondent-Appellant Fordham University's appeal of Supreme Court's July 29, 2019, order, entered August 6, 2019, annulling Fordham's decision to deny its students' request to form a club with the title Students for Justice in Palestine (SJP), holding that the decision (1) did not abide by Fordham's own Mission Statement and other rules and (2) was irrational, arbitrary and capricious.

This brief does not address those core legal issues. Rather, it offers the Court useful background information from experts in the field regarding stated and unstated elements of the rationale for the university's decision, based on opinions fed to it by partisans who have consistently attempted to stigmatize and suppress criticism of Israeli state policy, especially on campuses, by redefining the concept of antisemitism to include most such criticism.

Proposed amicus briefs submitted to the Court by the Institute for the Study of Global Antisemitism and Policy (ISGAP) and by StandWithUs exemplify this misleading, dangerous attack on open discourse to which Fordham claims to be unequivocally committed. Both briefs promote an overly broad, highly contested redefinition of antisemitism and mischaracterize non-violent strategies of boycott,

divestment and sanctions, called for by Palestinian civil society organizations to build support for their people's civil rights, as inherently antisemitic.

CREDENTIALS AND INTEREST OF AMICI CURIAE

The credentials of the 13 Amici Curiae Jewish Studies scholars are contained in the accompanying affirmation of the undersigned. They are all affiliated professionally with universities around the United States. Their specific specialties vary, but they are united in their interest in and concern for academic freedom, the free exchange of ideas and vigorous debate and scrutiny of any and all political and social issues, including real and faux antisemitism, the policies of the Israeli state and government, the facts of Palestinian life on the ground in Israel-Palestine, and efforts on college and university campuses to (1) squelch speech and advocacy critical of Israel; (2) bully, intimidate and silence Jewish, Palestinian and other students advocating for what they perceive to be justice in Palestine, and (3) smear them as self-hating Jews or antisemites. The Amici Curiae are gravely concerned about the impact of these strategies on students and faculty engaged in such advocacy, and the health of the academic community in general.

**HISTORICAL CONTEXT: THE ONGOING ATTEMPT
TO SUPPRESS SPEECH CRITICAL OF ISRAEL
AND IN SUPPORT OF PALESTINIAN RIGHTS**

Israel-aligned groups have a history of flooding officials, including legislators, state attorneys general and especially university administrators, with complaints that speech and political advocacy critical of Israeli policies constitutes antisemitic “hate speech” and must be stopped. Jewish Voice for Peace, a national organization with chapters on many campuses, published a report in 2015 detailing how these groups distort the meaning of antisemitism to include such speech.¹ The Center for Constitutional Rights and Palestine Legal have published a report, and periodic updates, documenting the nature and extent of incidents of censorship that have resulted from such pressures.²

Although these complaints have consistently been found to be meritless, they cost universities and targeted groups alike much in time and resources, investigating and defending against such false accusations. Moreover, their chilling effect has led some university administrations preemptively to restrict the

¹ *Stifling Dissent: How Israel’s defenders use false charges of antisemitism to limit the debate over Israel on campus*, Jewish Voice for Peace, 2015, available at <https://jewishvoiceforpeace.org/stifling-dissent/>.

² *The Palestine Exception to Free Speech: A Movement Under Attack in the U.S.*, Palestine Legal and the Center for Constitutional Rights (September 2015), available at <http://palestinelegal.org/the-palestine-exception/>.

See also a recent update, Year-In-Review: Palestine Legal Responded to 247 Suppression Incidents in 2019, Nearly 1,500 since 2014, Palestine Legal and the Center for Constitutional Rights (February 5, 2020), available at <https://palestinelegal.org/2019-report>.

parameters allowed on campus for Palestinian rights advocacy and criticism of Israel. Fordham’s attempt to prevent creation of an SJP chapter is a prime example, as Respondents’ brief makes clear.

Before 2015, Israel-aligned groups filed numerous Civil Rights Act Title VI complaints with the U.S. Department of Education’s Office for Civil Rights (DOE-OCR), alleging that political activity on campus critical of Israeli policies creates a “hostile environment” for Jewish students.³ Though the complaints were rejected by DOE-OCR – and in one case, a federal court – the Trump administration’s adoption of this viewpoint, followed by a December 2019 executive order purporting to redefine antisemitism broadly to include strictly political expression, has sparked the filing of new complaints and the reopening of one that was previously closed in 2014.⁴

Previously, DOE-OCR dismissed cases against University of California (UC) Irvine, UC Santa Cruz and UC Berkeley in 2013, and Rutgers in 2014, with written determination letters stating that the First Amendment protects speech critical of the state of Israel and that such speech does not constitute a civil rights

³ Complaints were filed in 2009-2014 against University of California (UC) Irvine, UC Santa Cruz, UC Berkeley, Rutgers University, Barnard College and Brooklyn College. All were found to be meritless. See, Palestine Legal, *Palestine Exception to Free Speech*, fn. 2, *supra*.

⁴ After three years without any such filings, two new DOE/OCR complaints alleging a hostile environment for Jewish students resulting from Palestinian advocacy were filed in 2018 and at least eight in 2019. See Palestine Legal, 2019 update, fn. 2, *supra*.

violation.⁵ Applying that principle more broadly to all institutions of higher education, DOE-OCR noted that “in the university environment, exposure to such robust and discordant expressions, even when personally offensive and hurtful, is a circumstance that a reasonable student in higher education may experience.”⁶

Supreme Court found this principle to be an explicit part of Fordham’s mission and policies. R-23 (“... the consideration and discussion of differing views is actually part of Fordham’s mission, regardless of whether that consideration and discussion might discomfit some and polarize others.”).

⁵ *Letter from Zachary Pelchat*, Team Leader, Department of Education Office for Civil Rights, San Francisco, to UC Irvine Chancellor Michael Drake, OCR Case No. 09-07-2205 (Aug. 19, 2013), available at https://ccrjustice.org/sites/default/files/assets/files/OCR-UCIrvine_Letter_of_Findings_to_Recipient.pdf;

Letter from Zachary Pelchat, Team Leader, Department of Education Office for Civil Rights, San Francisco, to Carole E. Rossi, Chief Campus Counsel, UC Santa Cruz, OCR Case 09-09-2145 (August 19, 2013), available at http://news.ucsc.edu/2013/08/images/OCR_letter-of-findings.pdf;

Letter from Zachary Pelchat, Team Leader, Department of Education Office for Civil Rights, San Francisco, to UC Berkeley Chancellor Robert Birgeneau, OCR Case No. 09-2-2259 (August 19, 2013), available at http://news.berkeley.edu/wp-content/uploads/2013/08/DOE.OCR_.pdf;

Letter from Emily Frangos, Compliance Team Leader, Department of Education Office for Civil Rights, New York, to Morton A. Klein, President, Zionist Organization of America, re case No. 02-11-2157 (July 31, 2014) <https://www.documentcloud.org/documents/1300803-ocr-decision-on-title-vi-complaint-7-31-14.html>.

⁶ Letter from DOE to Chancellor Drake, *supra*, at fn. 5; Letter from DOE to Carole E. Rossi, *supra, id.*; Letter from DOE to Chancellor Robert Birgeneau, *supra, id.*

Like determinations were issued by a federal judge in a 2011 case making similar accusations against administrators at UC Berkeley and demanding they suppress Palestinian rights advocacy.⁷

Although meritless, these DOE complaints and the Berkeley lawsuit resulted in lengthy investigations and caused reputational damage to students and faculty as they dragged on. Before he became Assistant Secretary of Education for Civil Rights in the Trump administration, Kenneth Marcus filed many of these Title VI complaints on behalf of the Louis D. Brandeis Center (an Israel-aligned organization with no connection to the late Supreme Court justice or the university). Marcus also encouraged others to continue to file them in order to chill campus speech and intimidate the speakers. He wrote, “These cases – even when rejected – expose administrators to bad publicity. ... No university wants to be accused of creating an abusive environment. ... Needless to say, getting caught up in a civil rights complaint is not a good way to build a resume or impress a future employer.”⁸ It was Marcus, as head of DOE’s Office of Civil Rights, who announced in 2018 – before Trump’s executive order – that the administration

⁷ *Plaintiffs in Felber v. Yudof case dismiss lawsuit*, Dan Mogulof in *Berkeley News*, July 12, 2012, available at <http://news.berkeley.edu/2012/07/12/plaintiffs-in-felber-v-yudof-case-dismiss-lawsuit/>.

⁸ *Standing Up for Jewish Students*, Kenneth Marcus, *Jerusalem Post* (September 9, 2013), available at <http://www.jpost.com/Opinion/Op-Ed-Contributors/Standing-up-for-Jewish-students-325648>.

would mandate a controversial redefinition of antisemitism by institutions of higher education.⁹ At the same time, he reopened a 2011 case, dismissed by OCR in 2014 as unwarranted, alleging anti-Jewish discrimination by Palestinian students and allies at Rutgers.¹⁰

At a June 2, 2016, conference organized by major Israel lobby leaders, titled “BDS – the New Anti-Semitism,” Lawfare Project director Brooke Goldstein, an attorney for complainants in several cases aimed at advocacy for Palestinian rights, called on supporters to “make the enemy pay.” She disclosed that the group was preparing more Title VI complaints and said that it and other pro-Israel groups were encouraging Jewish students to file police complaints against Palestine solidarity organizers. Then-Israeli Ambassador to the United Nations, Danny Danon, assured attendees at the same event that such efforts have the full support of the Israeli state.¹¹

In short, there has been for some time a wide-ranging effort to chill campus speech through judicial and formal administrative complaints, along with a torrent

⁹ *Limiting the Debate*, Andrew Kreighbaum in *Inside Higher Ed*, Sept. 13, 2018, available at <https://www.insidehighered.com/news/2018/09/13/trump-administration-will-use-more-expansive-definition-anti-semitism-ways-critics>.

¹⁰ *Trump embraces a dangerously broad definition of anti-Semitism*, *Los Angeles Times* editorial (September 15, 2018), available at <https://www.latimes.com/opinion/editorials/la-ed-trump-antisemitism-20180915-story.html>.

¹¹ *Israel lawfare group plans “massive punishments” for activists*, Ali Abunimah, *Electronic Intifada* (June 25, 2016), available at <https://electronicintifada.net/blogs/ali-abunimah/israel-lawfare-group-plans-massive-punishments-activists>.

of informal demands to campus officials that political activities supporting Palestinian human rights and highly critical of Israel be highly restricted if not banned altogether. The successful effort to influence Dean Eldredge’s decision in this case was part of that torrent. This appeal will resolve the question whether his and Fordham’s decision to chill such speech and advocacy was irrational, arbitrary and capricious in light of its Mission Statement, policies and rules protecting such speech and advocacy.

ARGUMENT

A. The exact nature and meaning of antisemitism are deeply contested among Jewish studies scholars.

Scholars of antisemitism have a variety of views regarding details beyond a short dictionary definition of the term: “Hostility toward or discrimination against Jews as a religious, ethnic, or racial group;”¹² or even the slightly longer, somewhat confusing opening lines of what has become known as the International Holocaust Remembrance Alliance [IHRA] Working Definition of Antisemitism: “[A] certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish

¹² <https://www.merriam-webster.com/dictionary/anti-Semitism>.

community institutions and religious facilities.”¹³

Historically, hatred of Jews goes back at least to the Middle Ages in Europe. The term “antisemitism,” however, dates back only to the late 19th century and was first advanced as a means to insist upon the fundamental incompatibility of Jews with European society. Since that time, it has come to have a range of negative and often hurtful associations, from a relatively “mild” distaste for the imagined collective “control” by Jews of certain areas of culture, politics and the economy, to viewing Jews as a biological threat to “white races.”¹⁴ Scholars frequently debate the reasons the term came into being, its relationship to previous manifestations of anti-Jewish hatred, its impact on the lives of European Jews at the time of its coining, its role in shaping Allied nations’ refugee policies in the 1930s and ’40s, the extent to which it was a factor in the Nazi Holocaust, and whether there exists a “new” antisemitism – in which some of the old prejudices are thought to be employed unfairly against the modern state of Israel.¹⁵

¹³ *Working Definition of Antisemitism*, International Holocaust Remembrance Alliance, 2016, available at <https://www.holocaustremembrance.com/working-definition-antisemitism>.

¹⁴ At times, antisemitic characterizations are not limited to Jews but have included non-Jewish, mostly Arab, people believed to have originated from western Asia (often called the “Middle East”) and North Africa, sometimes referred to as Semites or Semitic peoples. Scholars, however, recognize “Semitic” as legitimately applying only to a family of languages.

¹⁵ According to the Online Computer Library Center (<https://www.oclc.org/en/home.html>), thousands of books include “antisemitism” in the title. For a broad spectrum of authoritative recent viewpoints on the history and development of antisemitism, see Saul Friedländer, *Redemptive Anti-Semitism, in Nazi Germany and the Jews: Volume 1: The Years of Persecution 1933-1939* (Harper Perennial, 1998); Albert S. Lindemann, *Esau’s Tears: Modern Anti-Semitism*

(continued . . .)

The root of one major current debate on antisemitism lies in the seemingly intractable problem of how to critique Jewish collective power – whether in America, in Israel and the occupied Palestinian territories or elsewhere – in a way that does not immediately resonate with the long history of antisemitism. Throughout the last thousand years of European history, Jews were regularly characterized as an incommensurate and exceptionalist element who sought to undermine the established religious, political and/or economic order. They were accused of being killers of Christ and of seeking to repeat this offense through the murder of innocent Christian children. Such accusations led at times to blood libels (the classic antisemitic allegation that Jews used non-Jewish children’s blood to make matza, the ritual flatbread of Passover) and pogroms (violent and often deadly mob attacks on Jewish communities). In more recent centuries, Jews have been characterized variously and sometimes even simultaneously as disloyal citizens, capitalist schemers and revolutionary subversives. Such allegations have led to discriminatory legislation, riots, expulsions and physical violence. In the

and the Rise of the Jews (Cambridge University Press, 2000); David Nirenberg, *Anti-Judaism: The Western Tradition*, (W. W. Norton, 2014); James Renton and Ben Gidley, eds., *Antisemitism and Islamophobia in Europe: A Shared Story?* (Palgrave Macmillan, 2017); Alvin H. Rosenfeld, ed. *Deciphering the New Antisemitism* (Indiana University Press, 2015); Frederick M. Schweitzer and Marvin Perry, *Anti-Semitism: Myth and Hate from Antiquity to the Present* (Palgrave Macmillan, 2005); Enzo Traverso, *The Origins of Nazi Violence* (New Press, 2003); Jewish Voice for Peace, *On Antisemitism: Solidarity and the Struggle for Justice*, an anthology (Haymarket, 2017).

early 20th century, Jews were branded as a biological/racial threat and entire armies rose up to exterminate them. In each of these moments, Jews were imagined as a united group that possessed power and authority far beyond their actual numbers.

Yet in 1948, with the founding of Israel as a Jewish state, the calculus changed. For the first time, some Jews – identifying as a national group – gained actual, not imaginary, state power. The state of Israel has borders, police, courts, a military, a nuclear arsenal, political parties and a (mostly) representative system of government. Like all other states, its actions are – and must be permitted to be – a matter of public debate and discourse. But speech that is critical of Israel still strikes some as inherently antisemitic.

The problem, quite simply, is that it remains a challenge for some to hear criticism of Israel’s *actual* state power and its claim to represent Jews around the world in ways that do not echo much older, antisemitic depictions of *imaginary* Jewish power. This is not only on account of the long history of anti-Jewish hatred in the West. It is also because to characterize most speech critical of Israel as intrinsically antisemitic has been a highly effective tool employed by those who uncritically defend any action by Israel and seek to stigmatize all critics, especially those who seek justice, human rights and human dignity for the indigenous, non-Jewish people of Palestine.

Attempts by Israel-aligned groups to squelch critical discourse on Israel and challenges to its supporters' views are detrimental to public debate. Ironically, they serve only to put wind in the sails of the truly antisemitic belief that Jews are a fundamentally different people: that the Jewish state cannot be protested or even criticized, that collective Jewish power cannot be analyzed or debated, or that Jews, because they were once victims of one of humanity's greatest genocidal crimes, are somehow immune from becoming perpetrators of acts of discrimination, violence and oppression against another people.

We respectfully submit that a state court should hesitate to create legal authority based on a definition of antisemitism that conflates criticism of the policies of the state of Israel with hatred, hostility or discrimination against Jews as a religious, ethnic or racial group.

B. The amicus briefs submitted on behalf of appellants inject false allegations of antisemitism consistent with the expansive IHRA redefinition.

Neither the lower court decision nor Fordham's appeal brief touches directly on definitions of antisemitism or mentions whether allegations of it played a role in the decision to bar an SJP club at the university.

But the proposed amicus briefs by ISGAP and StandWithUs are rife with such allegations against supporters of Palestinian rights in general and SJP in particular. Given these Israel-aligned groups' focus on disrupting advocacy for

Palestinians, it is views like theirs that were likely offered to Fordham’s administrators who, according to its brief, at 36, “thoroughly review[ed] materials submitted by other interested individuals with diverse viewpoints” and “engag[ed] in full and robust discussions with . . . other professionals and experts with knowledge and expertise on SJP and its interaction with the Israeli-Palestinian conflict and the BDS movement.”¹⁶

Both ISGAP and StandWithUs base their allegations of antisemitism on the IHRA definition, the opening lines of which are quoted above, at 8. That definition, however, includes a much more controversial litany of examples of what it says could constitute manifestations of antisemitism. These include some appropriate examples, such as, “Calling for, aiding, or justifying the killing or harming of Jews in the name of a radical ideology or an extremist view of religion;” “Accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, or even for acts committed by non-Jews;” and “Accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust.”

¹⁶ BDS is an acronym for “boycott, divestment and sanctions,” characterizing a wide-ranging set of non-violent tools variously employed by critics of Israel in efforts to effect changes in Israeli policies and to galvanize public opinion against those policies. These same tools were employed against the apartheid regime in South Africa by the dominated black population without any allegations that they were guilty of racism against Afrikaners.” See fn. 37, *infra*.

Other listed examples, however, go beyond traditional definitions of antisemitism to describe what are common political criticisms of the state of Israel or its policies – voiced both here and in Israel – that have nothing to do with hatred, prejudice or stereotypes regarding Jews per se. Those examples thereby imply that speakers who hold such views are *ipso facto* antisemitic, a sweeping canard in pursuit of a political agenda to delegitimize such criticism.¹⁷

One such example is “Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a state of Israel is a racist endeavor.” It ignores the facts that a) for many Jews who live outside Israel, whether or not they are critical of its policies now or since its founding, the Israeli state is decidedly *not* an expression of *their* self-determination; b) many Jews consider it a religious or ethical obligation to challenge the legitimacy of a Jewish state that discriminates against its non-Jewish citizens in so many of its laws;¹⁸ and c) growing numbers of advocates for equal rights, including many American Jews, also reject the status quo “existence” of a state predicated on (1) displacement of most of the country’s native Palestinians starting in 1947, and (2) denial of basic

¹⁷ For a comprehensive deconstruction and critique of the IHRA definition, especially of the examples that conflate criticism of Israel with antisemitism, see *How Not to Fight Antisemitism, Independent Jewish Voices*, Canada (May 2019), available at https://www.noihra.ca/uploads/1/2/5/8/125802458/ijv_ihrareport.pdf.

¹⁸ See the database of discriminatory laws maintained by Adalah, an Israeli civil and human rights legal organization: <https://www.adalah.org/en/content/view/7771>.

democratic rights for Palestinians and other non-Jews within the areas it has controlled since 1967.¹⁹

In a recent breakthrough essay in *Jewish Currents*, public intellectual and academic Peter Beinart joined in those views, writing, “It is time for liberal Zionists [a label he still uses for himself] to abandon the goal of Jewish-Palestinian separation and embrace the goal of Jewish–Palestinian equality.”²⁰ His companion *New York Times* essay the next day, “I No Longer Believe in a Jewish State,”²¹ would arguably constitute antisemitism under the IHRA example, “denying the Jewish people their right to self-determination [in a Jewish state].” But Beinart and many others, Jews and non-Jews alike, now believe that Israeli Jews’ right to self-determination cannot be squared with denying self-determination and equal human rights and dignity to another people – Palestinians indigenous to the land for hundreds or thousands of years. Critics of Israel like Beinart, who yearn for the Holy Land to accommodate homelands for both Jews and Palestinians who want to live there, are not antisemites, and their speech and advocacy cannot legitimately

¹⁹ See, for example, Judith Butler, *Parting Ways: Jewishness and the Critique of Zionism* (Columbia University Press, 2012); Yitzhak Laor, *The Myths of Liberal Zionism* (Verso, 2010); and Jacqueline Rose, *The Question of Zion* (Princeton University Press, 2007).

²⁰ Yavne: A Jewish Case for Equality in Israel-Palestine, *Peter Beinart* (*Jewish Currents*, July 7, 2020), available at <https://jewishcurrents.org/yavne-a-jewish-case-for-equality-in-israel-palestine/>.

²¹ *I no longer believe in a Jewish state*, Peter Beinart (*New York Times*, July 8, 2020), Available at <https://www.nytimes.com/2020/07/08/opinion/israel-annexation-two-state-solution.html>.

be ruled out of acceptable bounds, especially by a university like Fordham, committed to bedrock principles of free expression and critical inquiry.

The same widely respected author – again, a self-described Zionist – famously penned an essay in 2016 countering the frequent, false conflation of anti-Zionism and antisemitism. He noted that many Jews are members of SJP chapters or are invited to speak to them.²²

In reality, “Zionism” and “anti-Zionism” mean very different things to different people. The most common understanding, to people not invested in the Israel-Palestine issue, equates vaguely with support of, or opposition to, Israel and its actions. Israel-aligned groups define it as support for the “existence of Israel as a Jewish state,” which to many Jews begs the question of what “Jewish state” actually means if it privileges Jews above all other inhabitants in civil rights, human dignity and distribution of public resources; while Palestinians see Zionism as the historical movement that dispossessed most of them and continues to treat them as at best, second-class citizens, and at worst, as exiled, besieged or occupied without political rights.

In any event, there is a difference between criticism directed against a state – even of its founding principles – and attacks on the entire people whom that state

²² *No, anti-Zionism isn't anti-Semitism*, Peter Beinart (*Ha'aretz*, March 30, 2016), available at <https://www.haaretz.com/opinion/.premium-no-anti-zionism-isnt-anti-semitism-1.5424570>.

purports to represent on religious or ethnic grounds. Provocative as such political speech and advocacy may be to those on campus who disagree with it, including Jewish students who feel challenged by it, nowhere in the record is there a scintilla of evidence that the proposed SJP club (a) represents a danger to Jews, on campus or off; (b) would discriminate against or harm Jewish students or faculty; or (c) would even criticize Jews or the Jewish people for their religion or ethnicity.

Most of the ISGAP brief's examples (at 16-17) of purportedly harassing behavior by other SJP chapters clearly fall in the category of protected political speech: a "die-in" in a public space, signs or chants that ISGAP finds objectionable, or obviously fake "eviction notices" meant to make a point (and which proved not to be targeted at Jewish students).²³

Moreover, given the robust debate in Israel and among American Jews over the occupation and treatment of Palestinians, it was particularly inappropriate for Fordham to have disallowed a student club whose theme is justice for Palestine, thereby restricting or eliminating campus discourse by Palestinian students whose own human rights and dignity – and those of their families – are most directly affected by the Israeli policies that they – and many Jews here, in Israel and around the world – perceive to constitute discrimination, occupation and oppression.

²³ See, e.g., *How Shoddy Journalism Turned an NYU Student Protest Into Anti-Semitism* (NYU Local, April 25, 2014), available at <https://nyulocal.com/how-shoddy-journalism-turned-an-nyu-student-protest-into-anti-semitism-b50d82d317ca>.

By including such political speech regarding a state and its supporters as examples in its definition of antisemitism, the IHRA definition advances a viewpoint that is both overly expansive and deeply flawed. By promoting that definition, ISGAP and StandWithUs are improperly asking this Court to redefine as antisemitic what is in fact legitimate speech and political criticism of the policies of the state of Israel – and to promote suppression of such speech. We respectfully submit that no American court should follow that suggestion.

C. The IHRA definition has no place on campus as a speech code. Even the original author of the definition opposes its application to campuses in the United States.

Given the flaws in the IHRA definition of antisemitism, it should not form the basis for campus speech codes. Even Kenneth S. Stern, the main author of a 2005 European Union antecedent to IHRA’s definition – an antecedent that was later abandoned – now fervently agrees. Addressing proposed federal legislation²⁴ that would adopt the IHRA definition as broadly applied policy, Stern wrote in a December 2016 *New York Times* op-ed: “The worst remedy is to prohibit speech deemed offensive, disparaging or bigoted that would otherwise be protected by the

²⁴ The Anti-Semitism Awareness Act, originally S.10 – <https://www.congress.gov/bill/114th-congress/senate-bill/10/text> – passed the U.S. Senate in December 2016 but died in the House, where Stern testified at a hearing on its content held in 2017. It has been reintroduced as [H.R.4009](#) and [S.852](#) in the current Congress, where it has languished amid strong opposition from a wide range of civil rights organizations. See, for instance, ACLU’s statement on the bill: <https://www.aclu.org/press-releases/aclu-statement-senate-introduction-anti-semitism-awareness-act>.

First Amendment.” He further stated that the purpose of the definition he formulated was “intended for data collectors writing reports about anti-Semitism in Europe. It was never supposed to curtail speech on campus.”²⁵

As academics with decades of teaching experience at the college level, we agree fully with Stern, who also addressed a letter to Congress, noting that “antisemitism – like all forms of bigotry – has an impact on some campuses. The worst way to address it is to create a de facto hate speech code, which is what this bill proposes to do.”²⁶

Fordham’s denial of the students’ request to form an SJP chapter relied significantly on the allegation that the group’s sole purpose was advocating political goals of a specific group, and against a specific country, Israel. But to argue that Palestinian students are somehow engaging in improper “discrimination” (see ISGAP brief at 22) when they choose to focus their political activities on opposing the country that directly oppresses them and their families is absurd.

²⁵ *Will Campus Criticism of Israel Violate Federal Law?* Kenneth Stern, New York Times (December 12, 2016), available at <https://www.nytimes.com/2016/12/12/opinion/will-campus-criticism-of-israel-violate-federal-law.html>.

²⁶ Letter to Members of Congress, Kenneth Stern, Justus & Karin Rosenberg Foundation (Dec. 6, 2016), available at <http://jkrfoundation.org/wp-content/uploads/2016/12/Stern-Letter-links-corrected.pdf>.

Nor should it be surprising that Americans of diverse backgrounds may focus more on Israeli violations of human rights than on those committed elsewhere. It is not surprising that Jewish students who sympathize with Palestinians and oppose Israeli treatment of them would focus, first and foremost, on what they perceive to be the moral and religious failings of their co-religionists in Israel. Nor is it unreasonable for U.S. taxpayers – Jews and non-Jews alike – to question first how Israel, the largest recipient of U.S. military aid, is spending American money that facilitates the military occupation of Palestinians.

Advocates of shutting down Palestinian advocacy, like ISGAP and StandWithUs, often cite alleged threats of violence or “harassment” against Jewish students as reasons to do so.²⁷ In fact, however, the most comprehensive recent study of undergraduates at five California campuses, regularly excoriated as the “most antisemitic,” found that the subjects overwhelmingly felt safe, had experienced little antisemitism and had no trouble differentiating it from political debate regarding Israel-Palestine, all contrary to the pictures drawn by the students’ self-appointed defenders.²⁸

²⁷ See, e.g., unsupported references in the ISGAP brief at 12, 15, 22, 25.

²⁸ *Safe on the Sidelines: Jewish Students and the Israel-Palestine Conflict on Campus*, Ari Y. Kelman et al (September 2017), available at <https://stanford.app.box.com/v/SafeandonthesidelinesReport>.

Although discussions around Israel and Zionism may often be uncomfortable for their supporters and detractors alike (as we witness in our classes), it is the responsibility of students and educators to foster dialogue, not limit it, to understand the historical implications of our speech, and to allow for the meanings and definitions of fraught terms to develop and change as a consequence of informed deliberation and debate.

D. Much of the drive to suppress Palestinian advocacy centers on misrepresentation and demonization of campaigns that employ nonviolent tools of boycott, divestment and sanctions to pressure Israel to comply with international law, wrongly labelling them as antisemitic.

Numerous references in Supreme Court’s decision and Fordham’s appeals brief alike demonstrate that much of the campus “polarization” given as the primary reason for the university’s decision centered on the SJP students’ commitment to “BDS” – a Palestinian-led, nonviolent, global campaign to use boycotts, divestment and sanctions as a way to pressure Israel to comply with international law.²⁹

²⁹ ISGAP’s brief mentions condemnations of BDS by politicians and laws in many states (an executive order in New York) barring state investment in and/or contracting with any entity that boycotts Israel. But it fails to mention that federal courts in three states have found such laws to be unconstitutional violations of the First Amendment guarantee of free speech, with more such decisions expected from lawsuits in progress. *See, e.g., Andrew Cuomo’s BDS Blacklist Is a Clear Violation of the First Amendment*, Dima Khalidi (*The Nation*, June 23, 2016), available at <https://www.thenation.com/article/archive/andrew-cuomos-bds-blacklist-is-a-clear-violation-of-the-first-amendment/>; and *Ten things to know about anti-boycott legislation*, Palestine Legal, January 17, 2020, available at <https://palestinelegal.org/news/2016/6/3/what-to-know-about-anti-bds-legislation>.

What has become known as the “BDS movement” stems from a 2005 call by 170 Palestinian civil society organizations centered loosely in Ramallah, on the occupied West Bank. It came 38 years after the 1967 war, when Israel occupied the West Bank, including East Jerusalem, and the Gaza Strip. The initiative reflected a new generation’s frustration at the ongoing and gradually worsening conditions for Palestinians, and its desire for new tools of persuasion and pressure that might change those conditions.

Gaza has now been held under a crippling land, air and sea blockade for 13 years, with periodic mass attacks by Israel’s military in which thousands, mostly civilians, have been killed. Since March 2018, the Israeli military has killed more than 200 Gazans and maimed thousands in weekly civil protests near the fortified fence that encloses the area. A large majority of the victims have been civilians, including dozens of children, most of them shot by Israeli snipers across the fence.³⁰

Despite the strict prohibition under international law against transferring citizens of an occupying power to occupied territory, over 650,000 Jewish-Israeli settlers now reside in the West Bank. These settlers enjoy the full rights of Israeli

³⁰ Two Years On: People Injured and Traumatized During the “Great March of Return” are Still Struggling, United Nations, posted April 6, 2020, available at <https://www.un.org/unispal/document/two-years-on-people-injured-and-traumatized-during-the-great-march-of-return-are-still-struggling/>.

citizenship, while nearly 3 million Palestinians in the territory lack basic human rights, including the right to move freely, the right to due process and the right to elect those who exercise ultimate control over their lives. Brutal violence, often fatal, is committed regularly, mostly by soldiers, but also by gangs of settlers who rampage through villages attacking people and property.³¹ Much of the Palestinian land that was once expected to constitute a Palestinian state has been confiscated to accommodate settlements, along with their infrastructure and the massive “separation wall,” all of which are illegal under international law.³² Around 5,000 Palestinians, including several hundred children, are incarcerated, with only a small minority accused of violent resistance and many held for long periods without any charge.³³ And in the latest development, the Israeli government has vowed to annex up to 30 percent of the territory, a war crime under international law.

³¹ For reports and studies on all topics regarding the status of human rights in the occupied territories, see the preeminent Israeli human rights organization B’Tselem: <https://www.btselem.org/>, and its *Annual Report* for 2019: https://www.btselem.org/sites/default/files2/2019_activity_report.pdf

³² *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, International Court of Justice, July 9, 2004, available at <https://www.icj-cij.org/en/case/131/advisory-opinions>. Summary available at <http://www.icj-cij.org/docket/index.php?pr=71&code=mwp&p1=3&p2=4&p3=6>.

³³ Addameer is the main Palestinian NGO that tracks and represents political prisoners. See <https://www.addameer.org/>.

In addition, Palestinian citizens of Israel – 20 percent of the population – experience many forms of de jure and de facto discrimination,³⁴ while millions of Palestinians forced from their homes by Israel in the period surrounding its establishment in 1948 and their descendants are denied the right to return to their homeland, also in violation of international law.³⁵

Despite abundant documentation and condemnation of Israeli policies by the United Nations and many major human rights organizations around the world,³⁶ the global community has failed to hold Israel accountable and to enforce compliance with international law. That failure, and lessons from previous futile attempts at both organized armed resistance and diplomacy, are what led to the 2005 “BDS call.” Modeled after the earlier anti-apartheid campaign in support of South African freedom and based on human rights recognized under international law, the call’s three demands are for 1) an end to Israel’s occupation; 2) full equality for all within the state of Israel; and 3) the right of Palestinian refugees to return to their country.³⁷ The BDS call unequivocally declares its commitment to non-

³⁴ See Adalah database at fn. 18, *supra*.

³⁵ Universal Declaration of Human Rights, Article 13(2): <https://www.un.org/en/universal-declaration-human-rights/>; and UNGA Resolution 194, December 11, 1948, Section 11: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/C758572B78D1CD0085256BCF0077E51A>.

³⁶ See, e.g., annual reports from Amnesty International, <https://www.amnesty.org/en/countries/middle-east-and-north-africa/israel-and-occupied-palestinian-territories/report-israel-and-occupied-palestinian-territories/>; and Human Rights Watch, <https://www.hrw.org/world-report/2020/country-chapters/israel/palestine>.

³⁷ See <https://bdsmovement.net/>.

violence and demands human rights equally for all, regardless of religion or nationality. It is therefore a perversion of the term to call BDS antisemitic.

Many thousands of people and organizations worldwide have responded by embracing a variety of strategies to pressure Israel peacefully to end its human rights violations and to influence public opinion in favor of Palestinian rights. These campaigns have undoubtedly been controversial, and they have begun to bear fruit, to a small extent economically and much more so morally, in the court of public opinion. Major church denominations have voted to boycott products from illegal settlements and/or divest from Israeli and multinational corporations whose actions and profits are tied to the occupation.³⁸ Numerous student governments, unions and academic associations have declared their support. Some large corporations, under pressure from public outcry, have ended their involvement with Israel's occupation.³⁹

Boycotts in pursuit of political aims are an integral part of American history. From the original Boston Tea Party protest have followed other transformative campaigns: the Montgomery bus boycott against segregation, the grape boycott in support of farm labor rights, boycotts of companies and institutions enabling South

³⁸ *Ten U.S. Churches Now Sanction Israel—To Some Degree, and with Caveats*, Steven Sellers Lapham, *Washington Report on Middle East Affairs*, March/April 2019, pp. 51-53, available at <https://www.wrmea.org/2019-march-april/ten-us-churches-now-sanction-israel-to-some-degree-and-with-caveats.html>.

³⁹ See reports from the BDS National Committee in Ramallah, <https://bdsmovement.net/>.

African apartheid, and current divestment campaigns against fossil fuel and private prison corporations. All of these boycotts were controversial when first proposed by small groups of advocates. Eventually, all came to win widespread public and growing political support.

It is exactly this prospect that has caused heightened concern, even panic, in Israel's government and among its avid supporters around the world. A new exposé in the Israeli daily *Ha'aretz* details a continuing – and until now secret – government effort to fund a variety of pro-Israel propaganda activities, mostly in the United States, laundering funds from prospective donors to keep recipients from having to register as foreign agents.⁴⁰ Israel has budgeted hundreds of millions of dollars in recent years for intelligence gathering, media advocacy and legal and political action in an effort to stop the incoming tide of criticism, focusing especially on university campuses.⁴¹ Invoking the IHRA document, the most common adjective attached to “BDS” by those who seek to delegitimize criticism of Israel's occupation and what many here and in Israel have come to

⁴⁰ *Israel Set Up a Front Company to Boost Image and Fight BDS. This Is How It Failed*, *Ha'aretz*, July 30, 2020, available at <https://www.haaretz.com/israel-news/.premium-israel-set-up-a-front-company-to-boost-image-and-fight-bds-this-is-how-it-failed-1.9030179>.

⁴¹ *Israel okays \$72 million anti-BDS project* (*Times of Israel*, December 29, 2017). Available at <https://www.timesofisrael.com/israel-okays-72-million-anti-bds-project/>. The Israeli daily reported on the start of the effort; it has only grown since. Also, *Israel Secretly Using U.S. Law Firm to Fight BDS Activists in Europe, North America* (*Ha'aretz*, October 25, 2017), available at <https://www.haaretz.com/israel-news/reveled-israel-s-top-secret-global-legal-operation-to-fight-bds-1.5460218>.

describe as apartheid, is “antisemitic.”⁴² But just as the Montgomery bus boycott was not “anti-white,” and the South Africa boycott and divestment campaigns were not “anti-Afrikaner,” the BDS call targets human rights violations, not Jews, and is therefore not antisemitic. All constitute political speech and advocacy on behalf of marginalized groups.

⁴² *Yes It's Israeli Apartheid, Even Without Annexation*, Michael Sfard (*Ha'aretz*, July 9, 2020), available at <https://www.haaretz.com/israel-news/.premium-yes-it-s-israeli-apartheid-even-without-annexation-1.8984029>. See also the author's comprehensive legal opinion on the subject, *The Israeli Occupation of the West Bank and the Crime of Apartheid*, available at <https://s3-eu-west-1.amazonaws.com/files.yesh-din.org/Apartheid+2020/Apartheid+ENG.pdf>. For an American Jewish couple's perspective, see *When My Daughter Called Israel an Apartheid State, I Objected. Now, I'm Not So Sure*, [Katie A. Weiner](#) and [Allen S. Weiner](#) (*Ha'aretz*, July 5, 2020), available at <https://www.haaretz.com/us-news/.premium-when-my-daughter-called-israel-an-apartheid-state-i-objected-now-i-m-not-so-sure-1.8970682>

CONCLUSION

The decision below should be affirmed.

Dated: August 7, 2020

Respectfully submitted,

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

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AHMAD AWAD, SOFIA DADAP, SAPPHIRA LURIE
and JULIE NORRIS,

New York County Clerk
Index #: 153826/17

Petitioners-Respondents,

CERTIFICATION

-- against --

Return Date: 8/17/2020

FORDHAM UNIVERSITY,

Respondent-Appellant.
----- x


Pursuant to 22 N.Y.C.C.R. § 130-1-a, 1, Robert Herbst, an attorney admitted to practice before this Court, 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: New York, New York
August 7, 2020

Respectfully submitted



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