

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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In the Matter of,

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

Index No. 153826/2017

Petitioners,

**AFFIDAVIT**

-against-

FORDHAM UNIVERSITY,

Respondent,

For a Judgment Pursuant to Article 78 of the  
Civil Practice Law and Rules.

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STATE OF NEW YORK    )  
                                  )    ss.:  
COUNTY OF NEW YORK )

KEITH ELDREDGE, being duly sworn, states:

1. I am Dean of Students at the Lincoln Center campus of Fordham University (the “University” or “Fordham”), respondent in this Article 78 proceeding.

2. I make this affidavit in further support of Fordham’s motion to dismiss the Verified Petition (the “Petition”) and specifically to address some of the claims raised in Petitioners’ opposition to the motion (the “Opposition”) by petitioner Ahmad Awad (“Petitioner Awad”), petitioner Sofia Dadap (“Petitioner Dadap”), petitioner Sapphira Lurie (“Petitioner Lurie”), and petitioner Julie Norris (“Petitioner Norris”) (collectively, “Petitioners”), who are, or were, students interested in forming a local, Fordham-supported chapter of a national organization known as Students for Justice in Palestine (“SJP”), on Fordham’s Lincoln Center campus.

3. While Petitioners obviously do not agree with my decision to deny official Fordham student club status to a local chapter of SJP that they wished to form on the Lincoln Center campus, they also cannot avoid the following facts:

- a. My decision was rendered in full compliance with Fordham's official club approval policy and procedures, which are set forth in the University's Club Guidelines<sup>1</sup>;
- b. After weighing many diverse viewpoints and materials submitted by various constituencies at Fordham, as well as materials that I located and reviewed as part of my independent review of the application, I denied approval of Petitioners' application in the exercise of my discretion as Dean of Students, and in full compliance with the University's Club Guidelines; and
- c. Despite conflating Fordham's Mission Statement, Demonstration Policy and its Bias-Related Incidents and/or Hate Crimes Policy in an attempt to cobble together an independent free speech policy where none exists, Petitioners simply do not enjoy the broader First Amendment privileges at a private institution such as Fordham that they may have at public institutions. Moreover, this is not a free speech or "viewpoint" issue at all, since at no time did I restrict Petitioners' opportunities to discuss any aspects of the Palestinian-Israeli conflict. They could, and still can, do so. Rather, I simply denied their application to have Fordham financially and otherwise support a local chapter of SJP on Fordham's Lincoln Center campus.

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<sup>1</sup> See Exhibit "A" to the moving affidavit of Dr. Dorothy A. Wenzel, Ph.D., Director of Fordham's Office for Student Involvement, dated June 5, 2017 (the "Wenzel Moving Affidavit"), which is the University's Club Guidelines in effect at all relevant times herein.

The Club Registration Packet Prepared by Students

4. Petitioners make much of the fact that they were wholly unaware of the University's Official Club Guidelines, which contain Fordham's official club approval process. Instead, they contend that they followed the process that was created and provided to them by their fellow students who were members of the student government organization known as the United Student Government ("USG") and therefore their failure to understand the actual, official Fordham Club Guidelines should be excused. This argument is illogical as Petitioners cannot excuse their own negligence in failing to know and understand University policy by complaining that other students apparently misled them.

5. Simply stated, while it is indeed unfortunate that Petitioners relied on misinformation created by and provided to them by their fellow students, Fordham is in no way responsible for the creation or transmission of that erroneous procedure. Rather, as stated in the Wenzel Moving Affidavit at Paragraph 8 and as I confirm herein, Fordham's official procedure has been in place since April 2015 and Petitioners were obligated to proceed thereunder. Further, in the accompanying reply affidavit of Dr. Dorothy A. Wenzel, sworn to on July 17, 2017 (the "Wenzel Reply Affidavit"), Dr. Wenzel unequivocally demonstrates that the official University Club Guidelines were disseminated by USG to interested parties in 2015, thereby confirming their existence at that time. See Exhibit "A" to the Wenzel Reply Affidavit.

6. Moreover, as more fully explained in my moving affidavit at paragraphs 9-13 and the Wenzel Moving Affidavit at paragraphs 10-14, when it became apparent to the University, through Dr. Wenzel, that Petitioners and the USG representatives misunderstood the actual club approval procedure, Petitioners were immediately informed of the discrepancy and were referred

to the official Club Guidelines before any vote by either USG or me had taken place. Thus, despite their own error, Petitioners suffered no injury as a result of their own and USG's mistake.

7. The fact that no vote had taken place on Petitioners' application when USG's transcription error was discovered is of critical importance because it crystallizes the fundamental flaw in Petitioners' argument. When the USG students' error was discovered, I had not yet passed on SJP's application to become a student club at Fordham's Lincoln Center campus under the official University Club Guidelines. But even under the inverted club approval process set forth by USG in its Club Registration Packet that was created erroneously by the USG students, I had not yet made a determination when the error was discovered and neither had the USG Senate. Therefore, under either scenario, including the latter hypothetical situation, the outcome of the vote on Petitioners' application was unaffected by USG's transcription error because I would have vetoed the application in any event and can do so under either scenario.

8. Nevertheless, the fact remains that in strict adherence to and compliance with the University's actual, official Club Guidelines, I did veto the application. Thus, Fordham has succinctly demonstrated that it followed its policy in all respects.

**My Reasons (or Rational Basis) For the Denial**

9. As seen throughout the Opposition, Petitioners present numerous political, social, ideological and personal reasons as to why the Palestinian-Israeli conflict merits debate, dialogue and examination. As I stated in my moving affidavit, I could not agree more. As with South Africa and Northern Ireland before it, the Palestinian-Israeli conflict evokes strong emotions, opinions, and entrenched positions on both sides of the issue, which is precisely why I spent so much time and effort to hear from all sides of the issue and to carefully review all materials that were provided to or otherwise obtained by me. See generally, Eldredge Moving Affidavit. After

engaging in that very detailed review, I specifically recognized that divergence of opinion and dichotomy of positions when I denied Petitioners' application and specifically encouraged further vibrant discourse on this issue in my December 22, 2016 email to many of the Petitioners.

My statement bears repeating herein:

After consultation with numerous faculty, staff and students and my own deliberation, I have decided to deny the request to form a club known as Students for Justice in Palestine at Fordham University. 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 these goals clearly conflict with and run contrary to the mission and values of the University.

There is perhaps no more complex topic than the Israeli-Palestinian conflict, and it is a topic that often leads to polarization rather than dialogue. The purpose of the organization as stated in the proposed club constitution points toward that polarization. Specifically, the call for Boycott, Divestment and Sanctions of Israel presents a barrier to open dialogue and mutual learning and understanding.

**In a statement announcing their vote to approve the club, United Student Government at Lincoln Center acknowledged the need for open, academic discussion and the promotion of intellectual rigor on campus; however, I disagree that the proposal to form a club affiliated with the national Students for Justice in Palestine organization is the best way to provide this. I welcome continued conversation about alternative ways to promote awareness of this important conflict and the issues that surround it from multiple perspectives.**

See Exhibit "A" to Eldredge Moving Affidavit. (Emphasis added).

10. As seen above, and in my moving affidavit, it was after hours of work, over several weeks of discussions and document review, that I made my decision. It cannot be fairly said that I, in any way, stifled debate or reasoned discourse on this issue. More to the point, I did not, as Petitioners contend, engage in some sort of issue or "viewpoint" discrimination. Rather, I specifically invited and indeed encouraged continued conversation and discussion on this very complex issue and I sought continued contributions to that discussion from a wide array of perspectives.

11. However, I did not agree that the conversation should be led by a group affiliated with SJP given its stated goals against Israel and the resulting polarization it would cause on campus. The Court is reminded that Petitioners could have and were presented with the option of having a club to explore these views, but without any affiliation with SJP, but did not accept that option. See Eldredge Moving Affidavit, at ¶ 25.

12. While Petitioners may disagree with my decision, they cannot seriously contend that it was not a rational decision. In fact, the proof of its rationality is in the Petitioners' Opposition and the views expressed by the various affiants on their behalf. For example, Dr. Hendler, Ms. Delaney and Mr. Lorber all espouse very heartfelt and genuine views as to why a SJP chapter at Fordham would be the appropriate vehicle through which to debate these issues. I am in no way challenging their right to those views or those opinions. To the contrary, and as noted, I fully encourage further reasoned debate on this issue. To that end, as Dr. Hendler, a Fordham employee, and Petitioner Awad both confirm, I engaged in lengthy discussions with them as to the pros and cons of Petitioners' application.

13. However, nowhere in Dr. Hendler's and/or Petitioner Awad's affidavits do they indicate that I did not respectfully listen, discuss, debate and/or understand their position. I treated their collective position with the same importance, respect and courtesy with which I treated the positions of all involved constituents. The mere fact that, after engaging in a comprehensive and exhaustive review of their application and the input from all concerned, I did not agree with them or others who supported the creation of a Fordham sanctioned SJP chapter simply does not equate to a conclusion or supposition that the decision is irrational.

14. The Court is reminded that, as I mentioned in my moving affidavit, attaining club status at Fordham is a privilege that, after a club is approved, imposes many responsibilities onto

the University. The University generally provides: (1) an advisor from the ranks of its employees; (2) monetary assistance in the form of a budget allowance; and (3) meeting space on campus. Given the University's limited resources in these areas, attaining club status is not a perfunctory process but rather a collaborative endeavor that seeks to engage all affected members of the Fordham community. This process is more fully described, in great detail, in the Wenzel Moving Affidavit at paragraphs 46-53 and paragraphs 60-64. As seen therein, applications from potential clubs are commonly denied or withdrawn and neither the length of time for the process nor the interactive process used to review the SJP application was extraordinary or unusual.

15. What is unusual is Petitioners' contention that the opinions I sought from other members of the Fordham community were somehow erroneous, irrelevant, immaterial and/or irrational. Those aspersions aside, the fact of the matter is that Petitioners acknowledge that I listened intently and fully to all members of the Fordham community. In fact, as seen in my moving affidavit at paragraphs 15-21 at pages 9-13, and as Dr. Hendler's and Petitioner Awad's affidavits confirm, I thoroughly vetted Petitioners' application, their position and the position of their supporters. In that same spirit, the contrasting viewpoints of other members of the Fordham community were equally vetted and this process of engagement, exploration and investigation took many hours over several weeks.

16. After I concluded the process, I determined that in order to prevent polarization on Fordham's Lincoln Center campus, I could not approve a University sanctioned chapter of SJP and therefore denied Petitioners' application.

17. Petitioners correctly point out that I did not specifically state in my initial decision denying the application that my concerns surrounding the polarization effects that I anticipated

also included safety and security issues. Those issues, however, were raised in the discussions I had and the materials I reviewed both in support of and in opposition to the application. In my view, the use of the word “polarization”, in the context of the vibrant debate and detailed materials I had reviewed that led to my decision, included the attendant safety and security concerns, since those concerns had been discussed with Petitioners and their supporters before I made my decision. In fact, Petitioner Awad, at paragraph 8 of his affidavit, and Dr. Hendler, at paragraph 6 of his affidavit in the Opposition, both acknowledge my concern about potential violence and both assured me that the purported Fordham chapter of SJP would use the Boycott, Divestment and Sanctions (BDS) tactic in a non-violent manner. Thus, while I did not expand on the concept of safety and security when I noted my decision was based on my concerns about polarization, it certainly was discussed with Petitioners and their supporters. Additionally, as Petitioners note in the Petition at paragraph 41, and in their memorandum of law at pages 7-8, when they “appealed” my December, 2016 decision to Jeffrey Gray, Fordham’s Vice President for Student Affairs, Jeffrey Gray more fully explained Fordham’s concerns regarding the behavior of SJP chapters on other campuses that, if repeated, would violate Fordham’s student code of conduct. As they acknowledge, Mr. Gray did so in a letter dated January 20, 2017, less than a month after my decision. Thus, as Petitioners acknowledge, both in the Petition and in their Opposition, the issue of the safety and security of the Fordham community was always a part of my decision, and Petitioners have been aware of those concerns since my discussions with them began, which was well before my decision was rendered. It is disingenuous to argue otherwise.



**Conflating Inapplicable Policies Does Not Create a Claim of “Viewpoint Discrimination”**

18. This matter simply concerns the application to form a Fordham-sanctioned and supported student club. As such, and as discussed at length above and in the moving papers, the only University policy implicated is its very succinct and clear University Club Guidelines, which were not only substantially followed, but completely followed.

19. Moreover, in my December 22, 2016 email denying the application, I specifically noted and encouraged continuing discourse on the Palestinian-Israeli issue, and still do. Nevertheless, despite Petitioners’ understanding that the University did not want to provide financial and other support to a SJP chapter but would certainly support the very discussion they strive to have on campus under a different moniker, Petitioners refused to compromise.

20. Interestingly, Petitioners’ position that they needed to operate under the SJP banner is contradicted by the affidavit they submitted from Irene Lucia Delaney, who is a member of the Steering Committee of the National Students for Justice in Palestine. In paragraph 12 of her affidavit, Ms. Delaney lists many student clubs with a similar mission as that which Petitioners’ club espoused but which do not use the names SJP or Students for Justice in Palestine; thus confirming that the use of the name SJP is not required in order for students to be fully engaged on this topic.

21. In any event, recognizing that they do not have the same broader constitutional freedoms that students at public institutions enjoy, Petitioners attempt to fabricate a novel “viewpoint discrimination” claim. They do so by cobbling together sentences from wholly unrelated and, in this case, wholly irrelevant, University policies. To be clear, there is no demonstration, protest or public gathering at issue in this matter, nor has one been alleged to be at issue. As such, Petitioners’ citation to Fordham’s Demonstration Policy is wholly irrelevant

and designed solely to mislead the Court. Similarly, there is no bias incident at issue, so Petitioners' citation to the University's Bias-Related Incidents and/or Hate Crimes Policy only serves as a frivolous attempt to muddy the very clear waters of Fordham's actions herein. Finally, Fordham's Mission Statement as set forth in part by Petitioners at page 8 of their memorandum of law does not alter the rational basis for my decision in any way. As Petitioners have set forth, the relevant portions of the Mission Statement are as follows: Fordham "guarantees the freedom of inquiry required by rigorous thinking and the quest for truth....seeks to foster in all its students life-long habits of careful observation, critical thinking, creativity, moral reflection and articulate expression... (and) seeks to develop in its students an understanding and reverence for the cultures and ways of life other than their own."

22. My discretionary denial of Petitioners' application, which occurred only after a full and robust discussion with them, their supporters, those opposed and those who took no position, and after carefully reviewing any and all materials that I obtained or that were provided to me, in no way impacted the spirit or the express terms of the University's mission. Petitioners may and should have the debate and discourse that the Palestinian-Israeli issues mandates. But the fact remains that their ability to do so is not impacted in any manner by my decision. They simply cannot do so under the banner of affiliation that they insist on utilizing.

23. Moreover, as seen in the accompanying memorandum of law, regardless of how they characterize their claim, Petitioners ignore the basic legal tenet that private colleges and universities may narrowly determine the manner in which issues are disseminated, discussed and debated. That is the institution's right as a private entity as opposed to the constitutional challenge that a public entity may face when addressing a similar issue and circumstances.

Nonetheless, Fordham encourages Petitioners to continue to debate and discuss this very complex and divisive issue.

**Conclusion**

24. As discussed above and in more detail in my moving affidavit, and demonstrated by the documentary evidence, it is beyond debate that the University complied with its policies and procedures, acted in the exercise of honest discretion and my decision was neither arbitrary nor capricious. Consequently, for the reasons set forth herein and in the accompanying supporting papers, Petitioners' claims fail on both procedural and substantive grounds and should be dismissed in their entirety.

*Keith Eldredge*

KEITH ELDREDGE

Sworn to before me this  
17<sup>th</sup> day of July, 2017.

*Ann Delaney Chillemi*  
Notary Public

*State of New York  
County of Westchester / Certificate on file NY County*

ANN DELANEY CHILLEMI  
Notary Public, State Of New York  
No. 01CH8071302  
Qualified In Westchester County  
Commission Expires March 18, 20 18