

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

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

Docket No.:
2020-00843

Petitioners-Respondents,

-against-

FORDHAM UNIVERSITY,

Respondent-Appellant.

NOTICE OF MOTION
FOR LEAVE TO FILE
BRIEF AS AMICUS
CURIAE IN SUPPORT
OF PETITIONERS-
RESPONDENTS


PLEASE TAKE NOTICE that upon the annexed affirmation of Jethro M. Eisenstein, duly affirmed on August 13, 2020 and upon the proposed brief of amicus curiae of A Jewish Voice for Peace, Inc. annexed hereto, the undersigned will move this Court at the courthouse thereof, 27 Madison Avenue, New York, New York 10010 at 10:00 a.m. on the 24th day of August, 2020 or as soon thereafter as counsel can be heard, for an order granting leave to A Jewish Voice for Peace to file with this Court a brief as amicus curiae in support of petitioners-respondents in the above-captioned action, pursuant to 22 N.Y.C.R.R. §1250.4(f). Petitioners-respondents have consented to this proposed submission.

Dated: New York, New York
August 13, 2020

Yours etc.,


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By: 

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

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

Docket No.:
2020-00843

Petitioners-Respondents,
-against-

AFFIRMATION IN
SUPPORT OF MOTION

FORDHAM UNIVERSITY,

Respondent-Appellant.

JETHRO M. EISENSTEIN, an attorney duly licensed to
practice before the courts of the State of New York, under
penalty of perjury, affirms and says:

1. I have been retained pro bono to make this motion
on behalf of proposed amicus curiae A Jewish Voice for Peace,
Inc. pursuant to 22 N.Y.C.R.R. §1250.4(f).

2. The proposed brief in support of petitioners-
respondents is submitted on behalf of A Jewish Voice for
Peace, Inc. ("JVP"), a national grassroots organization
inspired by Jewish tradition to work for the equality and
freedom of all people in Israel/Palestine. JVP currently has
over 16,000 dues paying members, over 250,000 supporters and
over 70 chapters around the United States, making it one of
the largest and fastest growing Jewish organizations in the
country.

3. JVP has chapters on the campuses of many colleges and universities around the United States, and on those campuses works directly and collaboratively with other campus groups including Students for Justice in Palestine (SJP).

4. JVP seeks to appear as amicus curiae to counter a distorted picture presented in the amicus briefs filed by StandWithUs and by the Institute for the Study of Global Anti-Semitism and Policy ("ISGAP"). Specifically, these amici seek to portray SJP and the Boycott Divestment and Sanctions (BDS) movement that SJP supports as anti-Semitic.

5. The briefs of ISGAP and StandWithUs describe the political views of SJP in support of BDS as "polarizing", but this is nothing more than an effort to police the boundaries of permissible discourse, an effort which is anathema to the free exchange of views that should characterize political debate on any college or university campus in the United States.

6. JVP is a Jewish organization that supports BDS. JVP shows in its proposed amicus brief that BDS is not anti-Semitic, but rather is opposed to discrimination against anyone. In addition, JVP has extensive experience working with chapters of SJP on campuses in New York City and around the United States. As a Jewish organization, JVP is particularly sensitive to antisemitism, and can attest to the

fact that SJP opposes discrimination of any kind including antisemitism. For these reasons, we believe that the proposed amicus curiae brief will be of assistance to the Court.

7. No party's counsel has contributed content to the proposed amicus brief or participated in the preparation of the brief in any other manner. No party nor any party's counsel has contributed money that was intended to fund preparation or submission of the brief and no person or entity other than movant or movant's counsel contributed money that was intended to fund preparation or submission of the brief.

8. For all the above-stated reasons, your affiant prays that the motion for leave to file the attached proposed amicus brief be granted.

Dated: New York, New York
August 13, 2020

A handwritten signature in black ink that reads "Jethro M. Eisenstein". The signature is written in a cursive style with a long horizontal flourish extending to the right.

JETHRO M. EISENSTEIN

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Interest of Amicus Curiae

A Jewish Voice for Peace, Inc. ("JVP") is a national grassroots organization inspired by Jewish tradition to work for the equality and freedom of all people in Israel/Palestine. JVP currently has over 16,000 dues paying members, over 250,000 supporters and over 70 chapters around the United States, making it one of the largest and fastest growing Jewish organizations in the United States. JVP has chapters on colleges and universities campuses around the country.

Jewish Voice for Peace endorsed the Palestinian Civil Society call for Boycott Divestment and Sanctions (BDS) in 2015. JVP seeks to communicate to the Court that support for BDS is not discriminatory. Support for the boycott movement is a measure to combat the systematic discriminatory practices of the Israeli government that deny Palestinians justice and equality under the law.

The BDS movement is the most promising non-violent tactic to express international solidarity with Palestinian people. As a Jewish organization, JVP is especially sensitive to concerns about Anti-Semitism, but in years of working with chapters of Students for Justice in Palestine (SJP) and with

the boycott national committee (BNC), which directs the BDS movement, JVP has seen a commitment to fighting bigotry in all its forms, including anti-Semitism. Jewish Voice for Peace seeks to appear as *amicus curiae* in support of petitioners-respondents Ahmad Awad, Sofia Dadap, Sapphira Lurie, Julie Norris and Veer Shetty in support of affirmance of the order of Supreme Court.

Introduction

For years, under the banner of defending Israel, advocacy organizations have launched attacks against those who advocate for Palestinian rights and express political criticism of Israel, often deploying spurious charges of anti-Jewish bigotry, shutting down conversations and policing the boundaries of acceptable debate. Seeing campuses as a "battleground", they have helped shape problematic definitions of anti-Semitism in order to limit open debate on college campuses and intimidate students, faculty and administrators. The intent of these silencing tactics is to shut down conversation before it can even begin, limiting the range of political inquiry, expression and debate on campuses. In 2015, JVP published a report entitled STIFLING

DISSENT¹ detailing the ways in which Israel advocacy organizations use false charges of antisemitism to limit debate on campus. The report documents some of the suppression tactics used by these organizations.

The attack on SJP and its support for BDS in the *amicus curiae* briefs submitted by the Institute for the Study of Global Antisemitism and Policy ("ISGAP") and StandWithUs are prime examples of this strategy. ISGAP and StandWithUs create a false identity between Jews, on the one hand, and the State of Israel and its policies on the other. These briefs suggest, in other words, that boycotting the State of Israel is the same as boycotting Jews. But the boycott movement for Palestinian rights does not discriminate against Jews or any other group. Companies and institutions are boycotted for complicity in Israel's human rights abuses, not because of their religious affiliation or national origin. They are boycotted, in other words, because of what they do, and not because of who they are.

Boycotts to support Palestinian rights thus are not discriminatory. They are efforts to pressure the government of the State of Israel to end its discrimination against the

¹ https://jewishvoiceforpeace.org/wp-content/uploads/2015/09/JVP_Stifling_Dissent_Full_Report_Key_90745869.pdf

Palestinian people by exerting economic pressure on companies and institutions that facilitate and profit from the state's human rights abuses. The boycott movement seeks equal treatment for all people; no more, but no less. As such, it is the antithesis of discrimination.

The Purpose of the boycott movement

The purpose of the boycott movement is to pressure Israel to stop its oppression of Palestinians, which has been going on for more than seventy years. The Palestinian people, who are indigenous to what is today Israel and the Occupied Palestinian Territory, including East Jerusalem, were driven by Israeli forces from their land and homes and were not allowed to return. In the West Bank, they have been disenfranchised, subjected to Israeli military occupation and Israeli military rule with no voice in the government that restricts their daily movement. Israel continues to dispossess them of their land in order to build Jewish-only settlements that are illegal under international law. In Gaza, they are trapped by a blockade from land, sea and air, deliberately kept with inadequate food, fuel or materials to repair the destruction caused by repeated Israeli bombardments that have destroyed the infrastructure, killed

thousands, and are rendering the besieged and densely populated area unlivable. The World Bank has reported a rapid collapse in humanitarian conditions in Gaza, including access to medical treatment, electricity, and clean water. 54 percent of the labor force is unemployed, including 70 percent unemployment among youth.².

Israel has explicitly denominated its Palestinian citizens as second-class citizens, subject to persistent *de facto* and *de jure* discrimination manifested in over fifty Israeli laws codifying discrimination in all areas of life including political participation, access to land, education, infrastructure and criminal procedures.

The international community has failed to protect Palestinians from these Israeli violations of international law, and the United States has provided unconditional aid and support to Israel despite these violations.

In 2005, Palestinian civil society appealed to the international community for help in securing the right to freedom, justice and equality for Palestinians, based on international law. The more than 170 organizations joining in this appeal included labor unions, charitable organizations,

² <http://www.worldbank.org/en/country/westbankandgaza/overview>.

political organizations and human rights organizations. They do not take direction from any government.

Inspired by the South African anti-apartheid movement and the Civil Rights movement in the United States, which employed boycotts as a tactic to exert pressure for justice, the Palestinian appeal called for boycott, divestment and sanctions ("BDS") to exert nonviolent pressure on Israel until it complies with international law by meeting three demands:

- Ending its occupation and colonization of all Arab lands and dismantling the Separation Wall.
- Recognizing the fundamental rights of the Arab-Palestinian citizens of Israel to full equality.
- Respecting, protecting and promoting the rights of Palestinian refugees to return to their homes and properties as stipulated in UN Resolution 194.

Boycotts for Palestinian rights uphold the simple principle that Palestinians are entitled to the same rights as the rest of humanity. Boycotts for Palestinian rights are used to pressure Israel to comply with international law and universal principles of human rights. As a matter of principle, the BDS movement categorically opposes all forms of racism, including Islamophobia and anti-Semitism. The BDS movement stands for freedom, justice and equality.

The Claims of ISGAP and StandWithUS

The argument presented by amici is that SJP supports BDS, BDS is anti-Semitic and that the presence of SJP on the Fordham campus will be "polarizing" and create a hostile environment. In the first place, ISGAP and StandWithUs are not the arbiters of the terms of acceptable discourse about Israel and Palestine. Exposure to views that cause discomfort is essential in a democracy:

" . . . it is controversial expression that it is the First Amendment's highest duty to protect. By political definition, popular views need no protection. It is unpopular notions that are in the greatest peril—and it was primarily to protect their expression that the First Amendment was adopted. The Framers of our Constitution believed that a democracy could remain healthy over time only if its citizens felt free both to invent new ideas and to vent thoughts and feelings that were thoroughly out of fashion. Fashion, it was understood, is an agent of repression—and repression is an agent [of] democracy's death."

College Republicans at San Francisco State U. v. Reed, 523 F. Supp. 2d 1005, 1018 (N.D. Cal. 2007)

The amici also present cherry-picked anecdotes about SJP activities on other campuses as justification for Fordham's decision to bar SJP. But the Supreme Court ruled that given the undisputed evidence that SJP at Fordham would operate

autonomously, such references to experiences at other campuses were pretextual, and disapproval of SJP at Fordham was based on the fact that the subject of SJP's speech and activity was Israel (R.24).

To the extent that experience on other campuses may be relevant, JVP has extensive experience working cooperatively with SJP on the campuses of Columbia University, New York University and Cornell University, as well as other colleges and universities around the United States. JVP can attest to the fact that SJP stands and speaks against bigotry of any kind, including antisemitism.

The Campus Coordinator for JVP submitted an affidavit in the Court below (R. 395-401) in which he detailed the important work done by SJP chapters on campuses around the United States to open up dialogue and debate around Israel and Palestine. He also describes efforts by Israel advocacy groups to employ troubling tactics to harass, bully, intimidate and defame students who advocate for Palestinian rights.

ISGAP and StandWithUs also complain that SJP's support of BDS is discriminatory because Israel alone is subjected to a boycott, but this claim does not withstand examination:

"To underscore the weakness of this claim, consider [NAACP v.] Claiborne [Hardware Co. 458 U.S. 886, 915 (1982)],

which vindicated black Mississippi residents' boycott of white-owned businesses during the Civil Rights Movement. The Claiborne boycott no doubt disproportionately affected the local white community, given that whites were more likely to own and be employed by the businesses. However, it was the exclusionary policies of the businesses themselves that made their staffs white-only, resulting in a disproportionate effect on whites. Equally, Israel's policies of carefully maintaining a Jewish-majority state and Jewish-only settlements in the West Bank would be responsible for any disproportionate effect that boycotts have on Jewish communities, and are precisely the policies that BDS seeks to change. For Claiborne's boycotters and BDS alike, there is irony in the claim that a boycott challenging a group's exclusionary policies discriminates against that group because only they are affected by the boycott."

Note, Wielding Antidiscrimination Law to Suppress the Movement for Palestinian Rights, 133 Harv. L. Rev. 1360, 1380 (2020) (footnotes omitted; emphasis supplied)

No one would suggest that the United States boycott and sanctions on Iran is anti-Shia. Those actions address the policies of the government of Iran. Similarly, boycotts of China over its treatment of Tibet are not viewed as anti-Chinese. Only Israel is affected by the boycott because only Israel engages in the exclusionary policies that the boycott seeks to change.

The amici suggest that permitting SJP on campus would subject Fordham University to jeopardy under the Executive Order adopting the International Holocaust Remembrance Alliance ("IHRA") definition of anti-Semitism. But the author of that definition, Kenneth Stern, had made it clear that the definition was never intended to be a campus hate speech code, which is what the Executive Order has turned it into. As Mr. Stern has written, the Executive Order

"Is an attack on academic freedom and free speech, and will harm not only pro-Palestinian advocates but also Jewish student and faculty, and the academy itself.

* * *

As proponents of the Executive Order . . . made clear, they see the application of the [IHRA] definition as 'cover[ing] many of the anti-Jewish outrages . . . frequently led by . . . students for Justice in Palestine, including . . . calls for 'intifada [and] demonizing Israel.' As much as I disagree with SJP, it has the right to make 'calls'. That's called free speech."

* * *

The real purpose of the Executive Order isn't to tip the scales in a few title VI cases but rather the chilling effect. ZOA and other groups will hunt political speech with which they disagree, and threaten to bring legal cases. I am worried administrators will have a strong motivation to suppress, or

at least condemn, political speech for
fear of litigation."

Kenneth Stern, I Drafted the Definition of Anti-Semitism.
Right Wing Jews are Weaponizing it (The Guardian,
12/13/2019).


CONCLUSION

For the above-stated reasons, *amicus curiae* A Jewish
Voice for Peace, Inc. prays that the decision of the Court
below be in all respects affirmed.

Dated: New York, New York
August 13, 2020

Respectfully submitted,

PROFETA & EISENSTEIN
Attorneys for Amici Curiae

By 

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CERTIFICATE OF COMPLIANCE

This computer generated brief was prepared using a proportionally spaced typeface.

Name of typeface: Courier New
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The total number of words in the brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of authorities, proof of service, certificate of compliance, or any authorized addendum is 2,027.

CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2020, I electronically served the foregoing Motion for Leave to file brief as amicus curiae via email:

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Pursuant to CPLR §2103(b) (7) and 22 NYCRR §1250.1(c) (4),
counsel for the parties have consented to service via email.

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