

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

SUFFOLK, SS

SUPERIOR COURT DEPARTMENT
C. A. No.

JOHN DOE 1, JOHN DOE 2, and JOHN DOE 3

Plaintiffs

v

ROBERT J. MANNING, R. NORMAN PETERS, MARY L. BURNS, ROBERT EPSTEIN, DAVID G. FUBINI, MARIA D. FURMAN, STEPHEN R. KARAM, MICHAEL V. O'BRIEN, KERRI E. OSTERHAUS-HOULE, IMARI K. PARIS JEFFRIES, JAMES A. PEYSER, ELIZABETH D. SCHEIBEL, HENRY M. THOMAS, STEVEN A. TOLMAN, VICTOR WOOLRIDGE, CHARLES F. WU, NOREEN C. OKWARA, SILAVONG PHIMMASONE, MARY L. BURNS, BRIAN J. MADIGAN, KATHERINE E. MALLETT, JIYA NAIR, SARA TARIQ, EACH IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE BOARD OF TRUSTEES OF THE UNIVERSITY OF MASSACHUSETTS; MARTY MEEHAN, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNIVERSITY OF MASSACHUSETTS; KUMBLE R. SUBBASWAMY, IN HIS OFFICIAL CAPACITY AS CHANCELLOR, UNIVERSITY OF MASSACHUSETTS AMHERST

Defendants

VERIFIED COMPLAINT
FOR DECLARATORY
AND INJUNCTIVE
RELIEF

INTRODUCTION

Anti-Semitism is a deadly hatred. In spite of their public statements on behalf of the University of Massachusetts against hatred, bigotry, and the Boycott, Divest and Sanction movement ("BDS"), and their publicly stated and legally binding policies of inclusion of all students and making them feel welcome on the campus, non-discrimination against students

on the basis of their religion or national origin, and in spite of multiple, recent protests and letters to them documenting the anti-Semitic nature of BDS and its purpose is to delegitimize the state of Israel, the national homeland of the Jewish people, and to eliminate it by any means including violence, Defendants are hosting a pro-BDS event on the University of Massachusetts Amherst campus that is being co-sponsored by their Department of Communication, their Department of Women, Gender, Sexuality Studies, and their Resistance Studies Initiative UMASS. Allowing this event to be co-sponsored by entire University departments gives the impression, clearly intentional, that all of the faculty within these departments support the BDS movement. Fliers announcing the event have been posted around campus for weeks, making Jewish students fearful and intimidated. The fliers describe the panelists as “prominent activists and journalists who have ...been ...branded as “anti-Semitic”. Plaintiffs are concerned Jewish students who request that defendants be enjoined from allowing the BDS event presently scheduled for May 4, 2019 at the University of Massachusetts Fine Arts Center and tell the organizers to hold it off campus.

The defendants know or by this time should know that anti-Semitic hate speech inspires anti-Semitic hate acts, and that recent student-organized BDS events on campuses across the country have led to anti-Semitic incidents. This event is not a student event – because of the faculty sponsorships it is a University event. There have already been anti-Semitic incidents on the University’s campus that have been reported in the news and some of which are tracked on its website. If past such events are predictors, Plaintiffs and other Jewish students at the University will suffer even more hostility and be the subject of more anti-

Semitism than they have already suffered if the University sponsors and hosts this event on its campus.

JURISDICTION AND VENUE

1. The Court has jurisdiction pursuant to G.L. c. 214 § 1 and G.L. c. 231A.
2. Venue is appropriate pursuant to G.L. c. 214 § 5.

PARTIES

3. The Plaintiffs are Jewish students at the University Massachusetts Amherst ("U Mass Amherst"). They bring this action on behalf of themselves and similarly situated students at U Mass Amherst. They bring this action as John Does because it has become increasingly difficult for them to feel comfortable and protected on the campus. They are hesitant to even express their views on campus for fear of hostility and retaliation by other students and by faculty - certainly reasonable in light of the fact that some of the faculty is actively sponsoring this event. Moreover, they fear retaliation in the form of poor grades, denial of letters of recommendation with the resulting inability to gain admittance to graduate school or to be hired by prospective employers.
4. Defendant Trustees are responsible for the governance of U Mass Amherst pursuant to G.L.75§1A. Defendants are authorized law to establish policy for U Mass.
5. Defendants Meehan and Subbaswamy are, respectively, the President of the University and Chancellor of U Mass Amherst and are responsible for the day to day operations of U Mass Amherst. They are responsible for enforcement of Board of Trustees' policies.

FACTS APPLICABLE TO ALL CAUSES OF ACTION

6. On or about April 11, fliers were posted at various locations the following event: *Not Backing Down: Israel, Free Speech and the Battle for Palestinian Rights*. Panel participants are listed as Roger Waters, Linda Sarsour, Marc Lamont Hill and David Zirin. n the U Mass Amherst campus advertising an event scheduled to be held on May 4th 2019 at the U Mass Amherst Fine Arts Center.
7. The fliers advertise that tickets can be obtained at fineartscenter.com ; however, one who goes to this site will be automatically redirected to <https://fac.umass.edu/Online/>, a U Mass Amherst website.
8. Alternatively, the flier advises that tickets may be had by calling either of 2 phone numbers, both of which connect to the U Mass Amherst Fine Arts box office.
9. The flier advises that more information can be had by going to NotBackingDownUMass.com. A true and accurate copy of one fliers that was posted is annexed hereto as Exhibit A.
10. NotBackingDownUmass.com states that the event is a panel discussion. The featured panelists are Linda Sarsour, Roger Waters, Mark Lamont Hill and David Zirin. Each of these panelists has a publicly known reputation for either being anti-Semitic and/or supporting known anti-Semites.
11. Much of the activities and speech engaged in by these panelists is a direct violation of the definition of anti-Semitism adopted by the International Holocaust Remembrance Alliance (“IHRA) annexed hereto as Exhibit B. This definition of anti-Semitism has been adopted by the U.S. Department of State, see Exhibit C, and the U.S. Department of Education, see Exhibit D.

12. The working definition of anti-Semitism as adopted by the IHRA cites the following as examples of anti-Semitism: 1. accusing Jewish citizens of being more loyal to Israel than to their own nations; 2. calling for or justifying the harming of Jews in the name of a radical ideology; 3. making dehumanizing, demonizing or stereotypical allegations about Jews or the power of Jews as a collective; 4. denying the Jewish people their right to self-determination; 5. applying double standards to requiring of Israel behavior not expected or demanded of any other democratic nation; and 6. drawing comparisons of contemporary Israeli policy to that of the Nazis. See, Exhibit B.
13. Many of the statements and activities of the panel members participating in the pro-BDS conference at U-Mass Amherst falls squarely within the working definition of anti-Semitism.
14. **Linda Sarsour** is an out-spoken anti-Semite and opposes Israel's right to exist. An October 31, 2012 tweet from her personal Twitter account, @lsarsour states, "Nothing is creepier than Zionism." A tweet on October 15, 2015 from the same persona account states, "[Israeli Prime Minister Benjamin] Netanyahu is a waste of a human being." Both tweets remain active in her Twitter feed, despite receiving casts amount of criticism.
15. In September of 2018, while at the Islamic Society of North America's annual convention, she stated that the Anti-Defamation League ("ADL") "has been a purveyor of Islamophobia against our community..." See, <https://www.investigativeproject.org/7630/ipt-exclusive-linda-sarsour-blood-libel>.
16. Sarcour actively supports Louis Farrakan and spoke at a rally of the Nation of Islam, which he heads, in 2015, at which she proclaimed that the "same people who justify the massacres

of Palestinian people and call it collateral damage are the same people who justify the murder of young black men and women.” When criticized for her blatant anti-Semitism in this comment, she said “I stand by every word.”

17. During this rally, which was part of the “Justice...or Else” tour, Farrakhan claimed that Jews are responsible for the pornography industry: “Most of the 3X 4X 6X movies...most of it is run by members of the Jewish community.”
18. Later on this tour Farrakhan claimed that “[Israeli Prime Minister] Netanyahu can make a call from Israel and senators dance...Here’s a man, leave Israel and come to the U.S. Congress, and talk like he’s at home because he knows his people run the government. You didn’t hear me! Well, if his people run the government, they own the media, they own Hollywood.”
19. He also said “I’m talking about the wicked ones in the Jewish community that run America, run the government, run the world, own the banks, own the means of communication. They are my enemies! But as sure as I’m alive, my enemies will be made my footstool and so will yours.”
20. Yet more virulent anti-Semitism from Farrakhan: “A Jew is not a Jew by the circumcision of the male organ but circumcision of the heart.” See <https://www.adl.org/blog/farrakhan-promotes-million-man-march-with-anti-semitism-bigotry>, and also <https://forward.com/opinion/396003/linda-sarsour-has-been-a-farrakhan-fan-for-years/>
21. Farrakhan teaches his followers the historical lie that Jews were disproportionately responsible for black slavery and all manner of black suffering. He has called Judaism a “gutter religion” and he has praised Hitler. Recently he echoed the Nazi theme that Jews are a form of vermin, by referring to them as “termites.”

22. Sarsour refuses to condemn this hate speech, to deny it, or to distance herself from it.
<https://nypost.com/2018/11/25/linda-sarsour-is-still-refusing-to-condemn-farrakhans-hate/>
23. In addition to actively associating with Farrahkan, Ms. Sarsour has also shared a stage with and extolled the virtues of Rasmae Odeh, who is responsible for the murder of two Israeli students in a 1969 Jerusalem supermarket terrorist bombing.
<https://zoa.org/2019/02/10392587-zoa-condemns-nyu-for-inviting-anti-semite-linda-sarsour-to-speak/>
24. Sarsour has tweeted that Jews of “always choose their allegiance to Israel over their commitment to democracy and free speech.” <https://www.jpost.com/International/Muslim-activist-Sarsour-accusing-American-Jews-of-dual-loyalty-to-Israel-572241>
25. The national Women’s March has lost a great deal of funding, sponsors and participants this year due to the anti-Semitism of Ms. Sarsour and other leaders of this movement.
26. **Roger Waters** is well known as a vocal activist in the BDS movement against Israel. He accused Israel of “ethnic cleansing,” “apartheid” and “international crimes” by “indiscriminate killing of Palestinians” in a November 2012 address at the United Nations. See the text here: <http://www.russelltribunalonpalestine.com/en/3140/roger-waters-speech-at-the-un>
27. Last fall he was also at the forefront of efforts to boycott an Israel Philharmonic Orchestra performance at New York’s Carnegie Hall.
28. At his performances, Waters releases a giant, pig shaped balloon emblazoned with the Star of David. The pig’s hind quarters feature a silhouette of a man giving a Nazi salute. A picture of the pig is displayed here, in an article which also describes his BDS activism:

<https://en.mercopress.com/2018/11/13/roger-waters-accused-of-anti-semite-by-jewish-institutions-in-argentina>

29. **Marc Lamont Hill** addressed the United Nations in November of 2018 and had this to say:
- “Words will not stop *peaceful protesters* in Gaza from being killed as they fight for freedom against Israel’s still-undeclared borders... As a black American, my understanding of action, and solidarity action, is rooted in our own tradition of struggle. As black Americans resisted slavery, as well as Jim Crow laws that transformed us from a slave state to an apartheid state, we did so through multiple tactics and strategies. It is this array of tactics that I appeal to as I advocate for concrete action... Solidarity from the international community demands that *we embrace boycott, divestment, and sanctions* as a critical means by which to hold Israel accountable for its treatment of Palestinian people. ...Contrary to Western mythology, black resistance to American apartheid did not come purely through Gandhian nonviolence. Rather, slave revolts and self-defense and tactics otherwise divergent from Dr King or Mahatma Gandhi were equally important to preserving safety and attaining freedom. If we’re to operate in true solidarity with the Palestinian people, we must allow the same range of opportunity and political possibility. If we are standing in solidarity with the Palestinian people, we must recognize the right of an occupied people to defend itself.”
30. He continued: “We cannot endorse a narrow politics of respectability that shames Palestinians for resisting, for refusing to do nothing in the face of *state violence and ethnic cleansing*. Despite the legacy of hatred and imperialism and white supremacy and patriarchy and homophobia, despite these systems of power that have normalized settler colonialism, despite these structures, we can still win....”

We brought a delegation of black activists to Palestine, and we saw the connections between the police in New York City who are being trained by Israeli soldiers and the type of policing we were experiencing in New York City. We began to see relationships of resistance, and we began to build and struggle and organize together.”

31. He concluded: “So as we stand here on the seventieth anniversary of the Universal Declaration of Human Rights and the tragic commemoration of the Nakba, we have an opportunity to not just offer solidarity in words but to commit to political action, grassroots action, local action, and international action that will give us what justice requires — and that is a *free Palestine from the river to the sea.*”
32. In that speech, Hill advocated use of BDS to free Palestine from the River – the Jordan – to the sea – the Mediterranean. That is, he advocated the elimination of Israel.
33. Also, in the speech, he claims that Israeli trained police officers are responsible for police brutality against blacks in NYC, that Israelis are committing ethnic cleansing, and the rock-throwing, incendiary device throwing Gazans are peaceful.
34. Hill was fired from his job at CNN as a result of his speech the very next day.
35. Temple University, which employs Hill as a professor of media studies, released a statement saying that Hill "has through subsequent statements expressly rejected anti-Semitism and anti-Semitic violence." <https://news.temple.edu/announcements/2018-12-11/statement-condemning-remarks-professor-marc-lamont-hill>
36. Hill, however, did not reject his anti-Semitism or promotion of anti-Semitic violence at all and said: “I think history will vindicate the claims that I made.”
<https://www.hollywoodreporter.com/news/marc-lamont-hill-says-hes-profoundly-ok-cnn-fired-him-1168997>

37. **David Zirin** is a sports editor for The Nation. He tweeted “Hi, I’m Jewish. All solidarity with @marclamonthill.” <https://twitter.com/EdgeofSports/status/1068276207156948994>
38. Zirin signed a letter supporting anti-Semitic comments of Ilan Omar whose title is “Jews stand with Ilhan: There is nothing anti-semitic about calling out AIPAC’s noxious role” <https://mondoweiss.net/2019/03/nothing-semitic-calling/>
39. There is not one panelist who has moderate views or who is not avowedly anti-Israel and not unabashedly proBDS. Those attending the conference will not hear a balanced, nuanced discussion of the Israeli-Palestinian conflict. Rather, they will be exposed to a one-sided, biased, propaganda filled discussion led by panel members who have made multiple anti-Semitic comments over a period of many years. If these panel members made these same comments as students at U-Mass Amherst, they would be in blatant violation of U-Mass anti-discrimination policies and likely suspended or expelled by the University.
40. BDS is an anti- Semitic movement wrapped in a cloak of social justice. There is no similar movement being undertaken against nation states with horrendous records of human rights abuses such as North Korea, Saudi Arabia, Yemen or Iran. The sole target of BDS activity is the single nation state of Israel, which also happens to be the nation state of Jewish people.
41. BDS proponents such as Sarsour, Waters, Lamont Hill and Zirin present themselves as pro-peace protectors of human rights but, in reality, their advocacy for BDS is a thinly-veiled, anti-Israel and anti-Semitic ‘poison pill,’ whose goal is the demonization, de-legitimization, and ultimate demise of the Jewish State. <https://www.jewishvoice.org/read/article/what-you-need-know-about-bds-movement>

42. The goal of BDS, plainly speaking, is to wipe out Israel. These goals are explained here: <https://www.jewishvirtuallibrary.org/bds-in-their-own-words>. It is impossible to separate the panelists at the U-Mass Amherst event from anti-Semitism.

43. U Mass Amherst has publicly stated, on two separate occasions, that it is against BDS.

44. On January 7th, 2014, Chancellor Subbaswamy issued this statement:

The University of Massachusetts Amherst is opposed to academic boycotts of any kind. The current boycott of academic institutions in Israel by several academic associations is no exception. While individuals have the right to express their views, we believe that academic boycotts undermine the fundamental principles of free expression and inquiry that are central to our mission of teaching, research and service.

<https://www.umass.edu/newsoffice/article/statement-umass-amherst-chancellor-kumble>

45. On May 4, 2016, the Chancellor reiterated the University's position:

The University of Massachusetts Amherst is opposed to academic boycotts of any kind. The recent vote by members of the UMass Amherst Graduate Employee Organization to endorse the Boycott, Divestment and Sanctions (BDS) movement against Israel is no exception. UMass Amherst will not discontinue any of its academic programs in Israel nor will divestment from Israeli-related investments be considered. Furthermore, we expect all union members, regardless of the political positions they or their unions may take, to fulfill their official duties as employees of the university fully consistent with university policy. While individuals have the right to express their views, we believe that academic boycotts undermine the fundamental principles of free expression and inquiry that are central to our mission of teaching, research and service.

<https://www.umass.edu/newsoffice/article/chancellor%E2%80%99s-statement-bds>

46. U Mass has an anti-hate policy. It states:

Through the **Hate Has No Home at UMass** initiative, we stand united in defense of diversity and inclusion. Now more than ever, we must show that we reject all forms of bigotry and hatred.

Together, we reaffirm UMass Amherst's commitment to ensuring a safe and welcoming living-learning environment for every member of our community.

Join us in actively making UMass an inclusive campus for all.

<https://www.umass.edu/diversity/hate-has-no-home-at-umass>

47. U Mass Amherst, pursuant to Massachusetts anti-discrimination laws, G.L. 151(C), has implemented a Non-Discrimination and Harassment policy. That policy is annexed hereto as Exhibit E.

48. Exhibit E states that "*Harassment* is conduct by a person or persons against another person or persons based upon their legally protected class that adversely has the effect of: ... creating an intimidating, hostile, or offensive working or academic environment."
49. The fact that the BDS event has the imprimatur of the University and 3 of its departments - and the faculty within those departments - makes it especially intimidating to any students who may happen to be taking courses in any of those departments and in fact, to all students. By having this event, U Mass Amherst is creating an intimidating, hostile and offensive academic environment for its Jewish students.
50. Catalogues, bulletins, circulars, regulations, policies and public pronouncements of a university define the contractual relationship between the student and the educational institution. The pronouncements and policies announced by U Mass Amherst in Paragraphs 42, 43, and 44 are part of the contractual relationship between Plaintiffs and Defendants.
51. Letters have been written to the Chancellor and to the President pointing out that the University's sponsorship of a BDS event will be in direct contravention of their stand on BDS, will be in violation of their contract with their students, will be anti-Semitic, will promote anti-Semitism, and will incite anti-Semitic acts.
52. The University has responded by claiming that they have no discretion to not allow the event, relying on the First Amendment.
53. As pointed out to the University, their policy on permitting groups to use their facilities is in fact discretionary, and the cases they cite on the First Amendment do not apply in this situation. True and accurate copies of this correspondence are annexed hereto as Exhibit F.

COUNT I
(Discrimination)
All Defendants

54. Plaintiffs hereby reallege and incorporate herein all of the allegations contained in ¶¶ 1-53 as if fully set forth herein.
55. By their actions, Defendants are in violation of Massachusetts anti-discrimination laws and their own policies against harassment and discrimination.

COUNT II
(Violation of Contract)
All Defendants

56. Plaintiffs hereby reallege and incorporate herein all of the allegations contained in ¶¶ 1- 53 as if fully set forth herein.
57. By their actions, Defendants in violation of their contract with Plaintiffs.

REQUESTS FOR RELIEF

Plaintiffs request that this Honorable Court, after hearing, enter judgment in their favor on Counts I and II and to grant the following relief:

- 1) Adjudge and declare that Defendants are in violation of their policies on non-discrimination, inclusion and harassment;
- 2) Adjudge and declare that Defendants are in violation of their contract with Plaintiffs;
- 3) Issue a preliminary injunction enjoining Defendants from permitting the BDS rally to take place on the campus of the University of Massachusetts;
- 4) Issue a permanent injunction enjoining Defendants from permitting the BDS rally to take place on the campus of the University of Massachusetts; and
- 5) Such other and further relief as this Court finds just and proper.

Plaintiffs
By their attorney,

Karen D. Hurvitz, BBO#245720
Law Offices of Karen D. Hurvitz
34 Tanglewood Drive
Concord MA 01742
HurvitzLaw@comcast.net
(617) 513-3365

VERIFICATION

I hereby verify that I have read the contents of the foregoing Complaint for Declaratory and Injunctive Relief, and that the facts are true and accurate, to the best of my knowledge and belief.

Dated: _____

EXHIBIT A



NOT BACKING DOWN

ISRAEL, FREE SPEECH, & THE BATTLE FOR PALESTINIAN RIGHTS

SATURDAY MAY 4, 2019 | 6:30 PM
FINE ARTS CENTER, UNIVERSITY OF MASSACHUSETTS

PANEL DISCUSSION



Patrisse Cullors
Co-founder,
Black Lives
Matter



Roger Waters
Co-founder,
Pink Floyd



Marc Lamont Hill
Temple University
and former CNN
commentator



Linda Sarsour
Co-chair,
the Women's
March



Dave Zirin
Sports Editor,
The Nation
magazine



Vijay Prashad
MODERATOR
Director,
Tricontinental
Institute

ADMISSION IS FREE BUT TICKETS ARE REQUIRED (LIMIT 4 PER PERSON)

Tickets call 413-545-2511 or 800-999-8627
or online at fineartscenter.com

For more information visit NotBackingDownUmass.com

Co-sponsored by: The Media Education Foundation; Department of Communication; Department of Women, Gender, Sexuality Studies; Resistance Studies Initiative UMASS; Jewish Voice for Peace Western Massachusetts; The Resistance Center; and Arise for Social Justice. With support from Students for Justice in Palestine, Black Student Union, Prison Abolition Coalition, and Graduate Students of Color.



EXHIBIT B

Working Definition of Antisemitism

English ▼

In the spirit of the Stockholm Declaration that states: “With humanity still scarred by ... antisemitism and xenophobia the international community shares a solemn responsibility to fight those evils” the committee on Antisemitism and Holocaust Denial called the IHRA Plenary in Budapest 2015 to adopt the following working definition of antisemitism.

On 26 May 2016, the Plenary in Bucharest decided to:

Adopt the following non-legally binding working definition of antisemitism:

“Antisemitism is 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 community institutions and religious facilities.”

To guide IHRA in its work, the following examples may serve as illustrations:

Manifestations might include the targeting of the state of Israel, conceived as a Jewish collectivity. However, criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic. Antisemitism frequently charges Jews with conspiring to harm humanity, and it is often used to blame Jews for “why things go wrong.” It is expressed in speech, writing, visual forms and action, and employs sinister stereotypes and negative character traits.

Contemporary examples of antisemitism in public life, the media, schools, the workplace, and in the religious sphere could, taking into account the overall context, include, but are not limited to:

- Calling for, aiding, or justifying the killing or harming of Jews in the name of a radical ideology or an extremist view of religion.
- Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective — such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions.

- 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.
- Denying the fact, scope, mechanisms (e.g. gas chambers) or intentionality of the genocide of the Jewish people at the hands of National Socialist Germany and its supporters and accomplices during World War II (the Holocaust).
- Accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust.
- Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations.
- 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.
- Applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation.
- Using the symbols and images associated with classic antisemitism (e.g., claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis.
- Drawing comparisons of contemporary Israeli policy to that of the Nazis.
- Holding Jews collectively responsible for actions of the state of Israel.

Antisemitic acts are criminal when they are so defined by law (for example, denial of the Holocaust or distribution of antisemitic materials in some countries).

Criminal acts are antisemitic when the targets of attacks, whether they are people or property – such as buildings, schools, places of worship and cemeteries – are selected because they are, or are perceived to be, Jewish or linked to Jews.

Antisemitic discrimination is the denial to Jews of opportunities or services available to others and is illegal in many countries.

EXHIBIT C

U.S. Department of State Diplomacy in Action

Defining Anti-Semitism

The Department of State has used a working definition, along with examples, of anti-Semitism since 2010 (<https://2009-2017.state.gov/j/drl/rls/fs/2010/122352.htm> (<https://2009-2017.state.gov/j/drl/rls/fs/2010/122352.htm>)). On May 26, 2016, the 31 member states of the International Holocaust Remembrance Alliance (IHRA), of which the United States is a member, adopted a non-legally binding “working definition” of anti-Semitism at its plenary in Bucharest. This definition is consistent with and builds upon the information contained in the 2010 State Department definition. As a member of IHRA, the United States now uses this working definition and has encouraged other governments and international organizations to use it as well.

Bucharest, 26 May 2016

In the spirit of the Stockholm Declaration that states: “With humanity still scarred by ...antisemitism and xenophobia the international community shares a solemn responsibility to fight those evils” the committee on Antisemitism and Holocaust Denial called the IHRA Plenary in Budapest 2015 to adopt the following working definition of antisemitism.

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Contemporary examples of antisemitism in public life, the media, schools, the workplace, and in the religious sphere could, taking into account the overall context, include, but are not limited to:

- Calling for, aiding, or justifying the killing or harming of Jews in the name of a radical ideology or an extremist view of religion.
- Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective — such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions.
- 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.

- Denying the fact, scope, mechanisms (e.g. gas chambers) or intentionality of the genocide of the Jewish people at the hands of National Socialist Germany and its supporters and accomplices during World War II (the Holocaust)
- Accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust.
- Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations.
- 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.
- Applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation.
- Using the symbols and images associated with classic antisemitism (e.g., claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis.
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Antisemitic discrimination is the denial to Jews of opportunities or services available to others and is illegal in many countries.

The Office of Website Management, Bureau of Public Affairs, manages this site as a portal for information from the U.S. State Department.

External links to other Internet sites should not be construed as an endorsement of the views or privacy policies contained therein.

Note: documents in Portable Document Format (PDF) require Adobe Acrobat Reader 5.0 or higher to view, [download Adobe Acrobat Reader \(http://get.adobe.com/reader/\)](http://get.adobe.com/reader/).

EXHIBIT D



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

August 27, 2018

Susan B. Tuchman, Esq.
Zionist Organization of America
4 East 34th Street
New York, New York 10016

Rutgers University - OCR Case No. 02-11-2157

Dear Ms. Tuchman,

This letter responds to your appeal, dated September 29, 2014, of the US Department of Education, Office for Civil Rights' (OCR) July 31, 2014 determination regarding the above-referenced complaint you filed against Rutgers University (the University).

In your complaint, you alleged that the University discriminated on the basis of national origin (Jewish ancestry/ethnicity), in violation of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100 (Title VI), by failing to respond appropriately to a complaint filed on April 6, 2011, alleging that students were subjected to harassment and different treatment because of their national origin. Specifically, you alleged that you complained to the University that Jewish students were harassed and treated differently in the following manner: the Outreach Coordinator for the University's Center for Middle East Studies harassed a Jewish student (the Student) by (a) physically threatening him in November 2009, and (b) posting anti-Semitic comments about him on Facebook on December 9, 2010 (Allegation 1); other students harassed the Student by posting threatening comments about him on Facebook on or about January 31, 2011 (Allegation 2); and a student group called "Belief Awareness Knowledge and Action" (BAKA) treated Jewish students differently by charging an admission fee for an event only to Jewish and pro-Israel students on or about January 29, 2011 (Allegation 3).

As stated in OCR's July 31, 2014 letter of findings (LOF), OCR investigated your complaint, determined that there was insufficient evidence of discrimination on the basis of national origin with respect to all three allegations, and closed your case. You then timely appealed this determination on September 29, 2014. Familiarity with this record is assumed.

In your appeal, you make several arguments, which have been carefully reviewed and considered. For the reasons stated below, I have decided to vacate the LOF's analysis insofar as it suggests that there was not any evidence to corroborate that Jewish students were treated differently by being charged an admission fee for an event on or around January 29, 2011, and concludes that there was insufficient evidence to substantiate your allegation that the University failed to respond appropriately to student complaints regarding such allegedly discriminatory imposition of the admission fee at the event.

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

With respect to Allegation 3, for example, there is no dispute that at some point just before the January 29 event, a decision was made to impose a \$5 admission fee. The LOF states, at page 9, that OCR “found no evidence that BAKA students had any involvement in the decision to impose the fee, or treated any individuals differently based on national origin with respect to collecting the fee.” In a footnote to this sentence, the LOF refers to an email purportedly written by a BAKA student volunteer stating that the volunteer was instructed to waive the fee for those who appeared supportive of the event, but indicates that OCR did not credit the veracity of the email due to its having been redacted for confidentiality reasons, and therefore accorded it no evidentiary value. The record shows that a student witness who received the email also described the context of the email to OCR in an interview, and that the email states that an event organizer had stated that the admission fee needed to be imposed because “150 Zionists just showed up,” although “if someone looks like a supporter, they can get in for free.”

Title VI prohibits discrimination on the basis of race, color, or national origin; it does not address discrimination on the basis of political opinions. An individual’s pro-Israel viewpoint itself – or, for that matter, any viewpoint on the policies of the state of Israel, the Israeli-Palestinian conflict, or related issues – is not protected by Title VI.¹ However, as OCR has repeatedly indicated previously, discrimination on the basis of actual or perceived shared ancestry or ethnic characteristics – which may include discrimination against Jewish or Muslim students – is discrimination on the basis of national origin or race in violation of Title VI.² In determining whether students face discrimination on the basis of actual or perceived Jewish ancestry, we rely where appropriate upon widely established definitions of anti-Semitism. The International Holocaust Remembrance Alliance (IHRA) working definition is widely used by governmental agencies, including the U.S. Department of State, and is used by OCR as well. It provides as follows:

Antisemitism is 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 community institutions and religious facilities.

Contemporary examples of antisemitism in public life, the media, schools, the workplace, and in the religious sphere could, taking into account the overall context, include, but are not limited to:

- Calling for, aiding, or justifying the killing or harming of Jews in the name of a radical ideology or an extremist view of religion.
- Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective—such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions.
- 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.

¹ The extent to which the expression of such opinions is otherwise protected by the First Amendment or other principles of law is beyond the scope of this letter. While OCR does not enforce the First Amendment, OCR has made clear that it will interpret the laws and regulations it does enforce, including those that prohibit discriminatory harassment, consistent with the First Amendment. See Dear Colleague Letter dated July 28, 2003, available at <https://www2.ed.gov/print/about/offices/list/ocr/firstamend.html>. It is not necessary to delve into the complexities of such issues on the present facts, however; suffice it to say for now that OCR’s enforcement activity will not prohibit what the First Amendment allows or what Title VI does not proscribe.

² See Dear Colleague Letters dated October 26, 2010 (“Harassment and Bullying”), available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf> & September 13, 2004 (“Title VI and Title IX religious Discrimination in Schools and Colleges”) available at <https://www2.ed.gov/about/offices/list/ocr/religious-rights2004.html>.

- Denying the fact, scope, mechanisms (e.g., gas chambers) or intentionality of the genocide of the Jewish people at the hands of National Socialist Germany and its supporters and accomplices during World War II (The Holocaust).
- Accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust.
- Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations.
- 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.
- Applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation.
- Using the symbols and images associated with classic antisemitism (e.g., claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis.
- Drawing comparisons of contemporary Israeli policy to that of the Nazis.
- Holding Jews collectively responsible for actions of the state of Israel.

The European Monitoring Centre on Racism and Xenophobia's (EUMC's) working definition of anti-Semitism is substantially similar to this definition and the definitions used by the U. S. Department of State.

While weighing the credibility of evidentiary sources is important, altogether disregarding the information reflected in the above-referenced email and accompanying witness information was erroneous. Whether or not BAKA or another group that was involved in the operation of the event decided to initiate the fee,³ the email and accompanying witness information provide at least some evidence that such decision was motivated by the sudden appearance of "150 Zionists." It is not known how the event organizers defined the term "Zionist," but the characterization of a large number of people as such – "150 Zionists" – who "just showed up" could have been based at least partially on a visual assessment, as opposed to individually polling all 150 such unexpected arrivals as to their views on the policies of the state of Israel. In other words, the visual perception of the presence of "150 Zionists" referenced in the email could have been rooted in a perception of Jewish ancestry or ethnic characteristics common to the group. In cases such as this, it is important to determine whether terms such as "Zionist" are actually code for "Jewish."

Further, even if motivated solely by a desire to stack the audience with those who supported the event planners' political opinions (or, conversely, to filter out those who disagreed with those opinions), the email states by its very terms that appearance was the means used to determine whether a *waiver* of the fee necessitated by the presence of a large group of "Zionists" (however conceived) was appropriate. In addition, it is important to determine whether the conduct related to Israel is motivated by anti-Semitism. There is no indication that the Regional Office undertook such an analysis. The reports of some students not granted a fee waiver that their appearance reflected Jewish identity (e.g., by wearing a kippah) invites an inference that such Jewish-identifying appearance was used as a signal of the lack of ideological support.⁴ In short, there was at least some evidence that event organizers treated some students differently by charging the admission fee based on their appearance of Jewish ancestry/ethnic characteristics. Thus, the LOF's suggestion that there was not any evidence to corroborate that premise was inaccurate, and vacating that analytical finding is necessary.

³ For purposes of the hostile environment analysis here, it is immaterial whether the alleged harassing activity – the imposition of the fee – was conducted by a group of student peers or a third party outside group, either of which would have been arguably accountable to the University in the context of these facts.

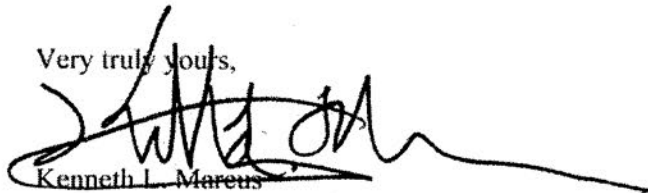
⁴ Some Jewish students also claimed that they attempted to join BAKA at the event in order to qualify for a fee waiver, but were unsuccessful.

OCR's error in disregarding the email and related information echoed the University's failure to consider the same information when students attempted to bring it to the University's attention. The LOF states, at p. 10, that the University informed OCR that the students who complained "did not provide specific information to support that they were not permitted to enter the event because they were Jewish." However, the student who received the email told OCR that the University did not allow him and his fellow students to bring the BAKA student volunteer who sent the email to a meeting with University staff to discuss their complaints regarding the imposition of the fee at the event. The student also reported that he and his fellow students were not able to discuss the email or otherwise present their position at the meeting. Assuming *arguendo* that Jewish students were indeed treated differently at the event and that the University had notice of the same, the University would be obligated to take appropriate responsive action, including action to eliminate any hostile environment against Jewish students that exists. Given the relevance of the email to the question of different treatment as discussed above, the failure to consider such information when presented, if proven, would fall short of an appropriate response to student complaints of harassment made to the University regarding the event. Thus, it is likewise appropriate to vacate the conclusion in the LOF that there was insufficient evidence to substantiate that the University failed to respond appropriately to individual complaints regarding the January 29 event.

The decision to vacate the analytical conclusions described above does not mean that the facts as presented in the record establish a violation. At this point in time, it is unknown whether or not OCR's investigation, absent the errors identified above, would have revealed sufficient (i.e. preponderating) evidence that the imposition of the admission fee at the January 29 event was discriminatory on the basis of national origin and that the University's response to the same resulted in a hostile environment in violation of Title VI. Thus, in light of my decision on this appeal, OCR New York will re-open this case to reassess the evidence obtained during the investigation of the case in light of the definition of anti-Semitism and examples cited above to determine whether a hostile environment on the basis of national origin or race existed at the University for students of actual or perceived Jewish ancestry or ethnic characteristics. In addition, the investigation will also determine whether a hostile environment on the basis of national origin or race currently exists at the University for students of actual or perceived Jewish ancestry or ethnic characteristics.

This concludes OCR's consideration of your appeal. Staff from OCR New York will contact you if any additional information is needed. You may have the right to file a private suit in federal court, regardless of OCR's determination.

Very truly yours,



Kenneth J. Marcus
Assistant Secretary for Civil Rights

EXHIBIT E

Approved 12/6/18

UNIVERSITY OF MASSACHUSETTS AMHERST
POLICY AGAINST DISCRIMINATION, HARASSMENT,
AND RELATED INTERPERSONAL VIOLENCE

*Including Sexual and Gender-Based Harassment, Sexual
Assault, Sexual Exploitation, Intimate Partner Violence,
Stalking, Complicity, and Retaliation*

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I. STATEMENT OF POLICY

This Policy Against Discrimination, Harassment and Related Interpersonal Violence, Including Sexual and Gender-Based Harassment, Sexual Assault, Sexual Exploitation, Intimate Partner Violence, Stalking, Complicity, and Retaliation ("Policy") prohibits all forms of Discrimination and Harassment based on Protected Status¹. It covers nondiscrimination in employment and in access to educational opportunities. Any member of the campus community, guest, or visitor who acts to deny, deprive or limit the educational, employment, residential and/or social access, benefits, and/or opportunities of any member of the campus community on the basis of their actual or perceived membership in the protected classes listed above will be in violation of this policy. This policy expressly, therefore, also prohibits Sexual Violence and Sexual Exploitation, Intimate Partner Violence, and Stalking. Finally, this Policy prohibits Complicity for knowingly assisting in an act that violates this Policy and Retaliation against an individual because of their good faith participation in the reporting, investigation, or adjudication of violations of this Policy. University students and employees who violate this Policy may face discipline up to and including expulsion or termination. When brought to the attention of the University, the University will take actions appropriately to respond to, stop, remedy, and prevent the reoccurrence of any such discrimination.

Discrimination, Harassment (including Sexual or Gender-Based Harassment and Sexual Violence), Intimate Partner Violence, Stalking, Complicity, and Retaliation (collectively hereafter referred to as "Prohibited Conduct") are defined in Section VII of this Policy.

In accordance with this Policy, the University will maintain Procedures which detail the complaint procedures and appeal rights associated with violations of this Policy.

Notice of Non-Discrimination Based on Protected Status

The University of Massachusetts Amherst (the "University") is committed in policy, principle, and practice to maintaining an environment which prohibits discriminatory behavior and provides equal opportunity for all persons. The University affirms its commitment to provide a welcoming and respectful work and educational environment, in which all individuals within the University community may benefit from each other's experiences and foster mutual respect and appreciation of divergent views. The University will not be tolerant of conduct which violates rights guaranteed by the law or University policies. Accordingly, and pursuant to the Affirmative Action and Non-Discrimination Policy, the University prohibits discrimination and harassment based upon protected characteristics, and retaliatory conduct, in accordance with state and federal non-discrimination laws, including but not limited to Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Violence Against Women Act of 1994, and the Massachusetts anti-discrimination laws.

¹The University of Massachusetts Amherst prohibits discrimination on the basis of race, color, religion, creed, sex, age, marital status, national origin, mental or physical disability, political belief or affiliation, pregnancy and pregnancy related condition(s), veteran status, sexual orientation, gender identity and expression, genetic information and any other class of individuals protected from discrimination under state or federal law in any aspect of the access to, admission, or treatment of students in its programs and activities, or in employment and application for employment.

Sexual Assault, Sexual Violence, Intimate Partner Violence, and Stalking Are Prohibited Forms of Conduct

Just as the University's prohibition of discrimination based on Protected Status (including Sexual Assault as a form of Sexual Harassment) is grounded in federal law, so is its prohibition against Intimate Partner Violence and Stalking. The University's response to Sexual Assault, Sexual Violence, Intimate Partner Violence, and Stalking is governed by the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act, 20 U.S.C. § 1092(f) (the Clery Act) and Section 304 of the 2013 Amendments to the Violence Against Women Act. The University is committed to taking all appropriate steps to eliminate Sexual Assault, Sexual Violence, Intimate Partner Violence and Stalking; prevent the recurrence of such acts; and address their effects, both for the Reporting Party and the broader community. The University recognizes that Sexual Assault, Sexual Violence, Intimate Partner Violence and Stalking encompass a broad spectrum of conduct and will respond according to both the severity of the allegation and the threat it poses to the campus community.

II. TO WHOM THIS POLICY APPLIES

This Policy and associated procedures apply to the conduct of, and protect, University students and employees, including faculty and staff, Five College Interchange Students, graduate, professional and doctoral students, post-doctoral scholars, Five College Shared Employees and student employees. The non-discrimination provisions also apply to contractors and other third parties under circumstances within the University's control. This Policy pertains to acts of Prohibited Conduct committed by or against Students, Employees and Third Parties when:

1. the conduct occurs on campus or other property owned or controlled by the University;
2. the conduct occurs in the context of a University employment or education program or activity, including, but not limited to, University-sponsored study abroad, research, on-line, or internship programs; or
3. the conduct occurs outside the context of a University employment or education program or activity, but has continuing adverse effects on or creates a hostile environment for Students, Employees or Third Parties while on campus or other property owned or controlled by the University or in any University employment or education program or activity.

III. REPORTING OPTIONS

The Title IX Coordinator is charged with monitoring the University's compliance with Title IX, ensuring appropriate education and training, coordinating the University's investigation, response, and resolution of all reports under this Policy and ensuring appropriate actions to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects.

Reports of Prohibited Conduct where the Responding Party is faculty or staff should be promptly reported to the Equal Opportunity Office (EO). Reports of Prohibited Conduct where the Responding Party is a graduate or undergraduate student should be promptly reported to the Dean of Students Office.

Complaints to Executive Director EO/Title IX Coordinator or Deputy Coordinators who are responders can be made via email, phone, or in person at the contact information below:

Déborá D. Ferreira
Executive Director, Equal Opportunity Office /Title IX Coordinator
Office of Equal Opportunity
225 Bartlett Hall
130 Hicks Way
Amherst, Massachusetts 01003
Phone: (413) 545-3464
Email: equalopportunity@admin.umass.edu
Web: <https://www.umass.edu/equalopportunity/>

Or Deputy Title IX Coordinators:
Kelly A. Burgess
Assistant Director, Equal Opportunity Office
Office of Equal Opportunity
225 Bartlett Hall
130 Hicks Way
Amherst, Massachusetts 01003
Phone: (413) 545-3464
Email: kellyb@admin.umass.edu
Web: <https://www.umass.edu/equalopportunity/>

Patricia Cardoso-Erase
Associate Dean of Students for Student Conduct and Compliance
Dean of Students Office
227 Whitmore Administration Building
181 Presidents Drive
Amherst, MA 01003
Phone: (413) 545-2684
Email: doso@umass.edu
Web: www.umass.edu/dean_students

Brian Henault
Lieutenant
UMass Amherst Police Department
585 East Pleasant Street
Amherst, MA 01003
Non-emergency phone: (413) 545-2121
Email: brianh@admin.umass.edu
Web: www.umass.edu/umpd

Reports of discrimination by the Executive Director EO/Title IX Coordinator or Deputy Coordinators should be reported to the Chancellor at the following address:

Office of the Chancellor
UMass Amherst

374 Whitmore Building
181 Presidents Drive
Amherst, MA 01003
Phone: 413-545-2211
Email: chancellor@umass.edu

IV. PRIVACY AND CONFIDENTIALITY

For any report under this Policy, every effort will be made to respect and safeguard the privacy interests of all individuals involved in a manner consistent with the need for a careful assessment of the allegation and any necessary steps to eliminate the conduct, prevent its recurrence, and address its effects.

V. REPORTING RESPONSIBILITIES

All members of the university community are *encouraged* to report instances of discrimination, harassment, and retaliation as described in this Policy. Reports should be directed to the Equal Opportunity Office. Additional reporting obligations specifically under Title IX, the Clery Act, and when child abuse is suspected, are detailed below.

High-level and supervisory employees, including Vice Chancellors, Vice Provosts, Deans, Department Heads, and Directors (including Directors of Centers and Institutes and Graduate and Undergraduate program directors) *must* report any information related to possible violations of this Policy.

A. TITLE IX REPORTING OBLIGATIONS

An Employee's responsibility to report information about certain types of Prohibited Conduct to the Equal Opportunity Office (EO) under this Policy is governed by their role at the University. The University designates Confidential Employees and Responsible Employees.

Confidential Employee: An employee who, because of their position, may not reveal an individual's identity or other information without permission, even to the Title IX Coordinator(s).

The following categories of employees are confidential employees:

- Licensed sexual assault counselors, physicians, psychologists, psychotherapists, social workers, clergy, and attorneys, and those persons working under the supervision of such individuals, when acting in their professional role providing services to a patient or client;
- University employees bound by statutory privilege obligations under Massachusetts law; and
- University employees providing administrative, operational and/or related support for a confidential employee in the performance of such services.

Responsible Employee: an employee (a) who, because of their position, must report known or possible incidents of sexual violence or any other sexual misconduct by students or employees, including the known details of the incident and the name(s) of alleged victim(s) and respondent(s), to the Title IX Coordinator(s) or other appropriate school designee; or (b) who has the authority to take action to redress sexual harassment/misconduct; or (c) whom a student reasonably believes has this authority or duty. Campus police officers are Responsible Employees; but, see exception for public safety personnel.

At UMass Amherst, it has been determined that “responsible employees” include:

- faculty with administrative or supervisory responsibilities (deans and associate deans, heads and chairs, graduate and undergraduate program directors, faculty athletic representatives and directors of centers and institutes);
- Campus police officers (but, see exception noted below);
- all staff that are academic advisors;
- all coaches and trainers;
- all advisors to Registered Student Organizations, intramural sports and other student groups;
- all supervising travel external to the university and any contractors doing the same;
- all personnel in Student Affairs with the exception of confidential employees; and
- staff in managerial and supervisory roles.

All University employees are strongly encouraged to report to law enforcement any conduct that could potentially present a danger to the community or may be a crime under Massachusetts law.

Exception for public safety personnel: Although campus police officers are designated as Responsible Employees, if a student or employee reporting sexual assault or domestic violence requests confidentiality, the campus police officer must not disclose the name of the reporting party to the Title IX Coordinator(s).

B. CLERY REPORTING OBLIGATIONS

Under the Clery Act, certain University employees are designated as Campus Security Authorities. CSAs include: student/conduct affairs, campus law enforcement, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities. Based on information reported to CSAs, the University includes statistics about certain criminal offenses in its annual security report and provides those statistics to the United States Department of Education in a manner that does not include any personally identifying information about individuals involved in an incident. The Clery Act also requires the University to

issue timely warnings to the University community about certain reported crimes that may pose a serious or continuing threat to Students and Employees. Consistent with the Clery Act, the University withholds the names and other personally identifying information of the Complaining Party when issuing timely warnings to the University community.

C. CHILD ABUSE REPORTING OBLIGATIONS

Certain University employees may be mandated reporters of child abuse or neglect as defined by Massachusetts G.L. c. 119, § 21 and must comply with Massachusetts' mandated reporting laws.

VI. **PROHIBITED CONDUCT UNDER THIS POLICY**²

Prohibited conduct under this Policy is prohibited regardless of the sex, sexual orientation and/or gender identity/expression of the Complaining Party³ or Responding Party. Prohibited Conduct includes the following specifically defined forms of behavior: Discrimination, Harassment, Sexual or Gender-Based Harassment, Sexual Assault, Sexual Exploitation, Intimate Partner Violence, Stalking, Complicity, and Retaliation.

A. UNLAWFUL DISCRIMINATION

Unlawful discrimination is conduct that is directed at a specific person or persons that subjects them to treatment that adversely affects their employment, application for employment, education, admissions, University benefits, programs, or activities, because of their religion or religious belief, color, race, marital status, veteran or military status, age, sex (including sexual harassment), gender identity or expression, sexual orientation, national origin, ethnicity, disability, genetic information, or any other legally protected class.

B. HARASSMENT

Harassment is conduct by a person or persons against another person or persons based upon their legally protected class that adversely has the effect of:

- i. unreasonably interfering with a person or person's employment, educational benefits, academic grades or opportunities, or participation in University programs or activities; or
- ii. unreasonably interfering with a person or person's work or academic

² These definitions are primarily from the University of Massachusetts Board of Trustees Administrative Standards for the Nondiscrimination and Harassment Policy (Doc. T16-040) and may overlap with Massachusetts criminal statutes in some cases, and provide greater protection in other instances. For the purposes of this Policy, UMass Amherst has defined categories of sexual misconduct, as stated below, for which action under this policy may be imposed. Any person upon any other person, regardless of the sex, gender, sexual orientation, and/or gender identity of those involved, may commit acts of sexual misconduct.

³UMass recognizes that an individual may choose to self-identify as a victim or a survivor. For consistency in this Policy, the University uses the term Complaining Party to maintain the neutrality of the Policy and procedures.

- performance; or
- iii. creating an intimidating, hostile, or offensive working or academic environment.

C. SEXUAL HARASSMENT

Sexual Harassment is unwelcome conduct of a sexual nature when:

- i. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, education, or participation in University programs or activities; or
- ii. submission to or rejection of such conduct by a person or persons is used as a basis for employment or educational decisions affecting such person or persons, or participation in University programs or activities; or
- iii. such conduct unreasonably interferes with a person or person's work or academic performance; interferes with or limits a person or person's ability to participate in or benefit from a work or academic program or activity; or creates an intimidating, hostile, or offensive working or academic environment.

D. SEXUAL ASSAULT

Sexual Assault is broadly defined as any sexual activity that is forced, coerced, or unwanted.

Consent is permission to engage in communication and/or a specific, mutually-agreed upon sexual activity that is given freely, actively, and knowingly, using mutually understandable and unambiguous words or actions, or—in plain language—to agree to do the same thing, at the same time, in the same way, with each other.

- Consent cannot be inferred by silence, passivity, or not resisting;
- Consent cannot be implied by a current or previous dating or sexual relationship;
- Consent to one form of sexual activity does not imply consent to other forms of sexual activity;
- Consent is not indefinite; it is revocable and may be withdrawn at any time, using words or actions such that a reasonable person would understand a lack of continued consent;
- Consent cannot be given by person who is
 - Asleep;
 - Incapacitated by drugs or alcohol;
 - Unconscious;
 - Mentally or physically incapacitated; or
 - Under duress, intimidation, threat, coercion, or force.
- Consent cannot be given by a person under the age of 16.

It is the responsibility of the person seeking to initiate the sexual activity or conduct to affirmatively obtain consent, not the intended recipient of such conduct to deny such consent.

Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and/or coercion that overcome resistance.

Coercion is the use of an unreasonable amount of pressure to engage in sexual activity. Coercion does not begin when the initiator makes an initial sexual advance. Coercion begins when the initiator continues to pressure another, through the use of psychological/emotional pressure, alcohol, drugs, threat, intimidation, or force, to engage in sexual behavior, when a reasonable person would realize that the other does not want to engage in sexual activity.

Incapacitation is the physical and/or mental inability, whether temporary or permanent, of an individual to make rational, reasonable decisions or judgments regarding one's well-being or welfare. States of incapacitation include, but are not limited to, unconsciousness, sleep, and blackouts. Incapacitation may result from the voluntary or involuntary consumption of alcohol and/or other drugs. Where alcohol or other substances are involved, incapacitation is determined by how the substance impacts a person's decision-making capacity, awareness of consequences, and ability to make informed judgments. For purposes of this Policy a person is not incapacitated merely because the person has been drinking or using drugs. The question of incapacitation is determined on a case-by-case basis using both objective and subjective standards. In evaluating whether a person was incapacitated for purposes of evaluating effective consent, the University will consider: (1) whether the person initiating the sexual activity knew that their partner was incapacitated; and if not (2) whether a reasonable person in the same situation would have known that their partner was incapacitated; and (3) whether the person initiating the sexual activity played a role in creating the circumstances of incapacity.

E. SEXUAL EXPLOITATION

Sexual Exploitation is taking sexual advantage of another person without his or her consent. Sexual exploitation includes, without limitation, causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over such other person; causing the prostitution of another person; recording, photographing or transmitting identifiable images of private sexual activity and/or the intimate parts of another person; allowing third parties to observe private sexual acts; and engaging in voyeurism.

F. SEXUAL VIOLENCE

Sexual Violence is any physical sexual act or activity engaged in without the consent of the other individual, including when the other individual is unable to consent to the act or activity (See also, definition for *Consent*).

G. INTIMATE PARTNER VIOLENCE

Intimate Partner Violence is Dating Violence or Domestic Violence as defined below.

H. DATING VIOLENCE

Dating Violence is abusive behavior (including, but not limited to, physical, emotional, and/or sexual acts or conduct) committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship will be determined by factors such as the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved.

I. DOMESTIC VIOLENCE

Domestic Violence is any abusive behavior (including, but not limited to, physical, emotional, and/or sexual acts or conduct) committed:

- a. against a person who is a current or former spouse;
- b. against a person with whom the abuser shares a child in common;
- c. against a person who is or has cohabitated with the abuser as a spouse;
- d. against a person similarly situated to a spouse;
- e. between a parent and child;
- f. between members of the same household in an intimate relationship; or
- g. against any other person similarly situated.

J. GENDER EXPRESSION

Gender expression refers to the external characteristics and behaviors that relate to a perception of gender, including but not limited to dress, mannerisms, speech patterns, social interactions, and body characteristics.

K. GENDER IDENTITY

Gender identity refers to an individual's internal sense of gender, which may be male or female, man or woman, or not conforming to those binary genders. A person's gender identity may be different or the same as the person's sex assigned at birth.

L. STALKING

Stalking is any course of conduct (more than one act) directed at a specific person (directly, indirectly, through a third party or other means) that places that person in reasonable fear for their safety or the safety of others.

M. RETALIATION

Retaliation is the interference through intimidation, including threats, coercion, or unlawful discrimination, with an individual's right or privilege secured under the law [Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964, the Violence Against Women Act of 1994, the Massachusetts antidiscrimination laws, or other laws] or interfering with an individual's right to make a complaint, testify, assist, or participate in any

manner in an investigation, proceeding or hearing, or to intervene to prevent a violation of this policy.

N. COMPLICITY

Complicity is any act taken with the purpose of aiding, facilitating, promoting or encouraging the commission of an act of Prohibited Conduct by another person.

VII. **PREVENTION, AWARENESS AND TRAINING PROGRAMS**

The University is committed to the prevention of Prohibited Conduct through regular and ongoing education and awareness programs. Incoming students and new employees receive primary prevention and awareness programming as part of their orientation, and returning students and current employees receive ongoing training and related education and awareness programs. The University provides training, education and awareness programs to students and employees to ensure broad understanding of this Policy and the topics and issues related to maintaining an education and employment environment free from harassment and discrimination.

For a description of the University's Prohibited Conduct prevention and awareness programs, including programs on minimizing the risk of incidents of Prohibited Conduct and bystander intervention, see the University's annual Clery reports (found online at: <https://www.umass.edu/umpd/clery-act>).

VIII. **OBLIGATION TO PROVIDE TRUTHFUL INFORMATION**

All University community members are expected to provide truthful information in any report, investigation, or proceeding under this Policy. Submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in connection with an incident of Prohibited Conduct is prohibited and subject to disciplinary sanctions under The Student Code (for Students), Principles of Employee Conduct (for Employees), and any other applicable and appropriate University policy or policies. This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are not later substantiated.

IX. **RELATED POLICIES**

A. STUDENTS

University of Massachusetts Amherst Code of Student Conduct:
https://www.umass.edu/dean_students/sites/default/files/documents/2016-2019%20Code%20of%20Student%20Conduct.pdf

B. EMPLOYEES AND THIRD PARTIES

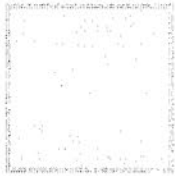
- Policy Statement: Affirmative Action and Equal Opportunity Statement: <https://www.umass.edu/eod/aa.html>
- Code of Conduct (employees):
https://www.umassp.edu/sites/umassp.edu/files/content/policies/board/personnel/Principles_of_Employee_%20Conduct.pdf
- Code of Conduct for University of Massachusetts Vendors:
https://www.umassp.edu/sites/umassp.edu/files/content/policies/board/fiscal-admin/Vendor_Relationship_Code_of_Conduct.pdf
- Policy on Consensual Relationships Between Faculty and Students:
<https://www.umass.edu/provost/sites/default/files/uploads/Policy%20on%20consensual%20relationships%20between%20faculty%20and%20students.pdf>
- Policy on Employment and Contracting for Service of Relatives:
<https://www.mass.gov/service-details/self-dealing-and-nepotism-conflict-of-interest-law-restrictions-gl-c-268a-sections>

X. POLICY REVIEW

This Policy is maintained by the Equal Opportunity Office (EO). The University will periodically review and update this Policy and will evaluate, among other things, any changes in legal requirements, existing University resources, and the resolution of cases from the preceding year (including, but not limited to, timeframes for completion and sanctions and remedies imposed).

EXHIBIT F

Re: Fw: DISTURBING EVENT at your school, on your watch



Karen Hurvitz <hurvitzlaw@comcast.net>

Tue, Apr 23, 8:51 PM

(2 days ago) Re

to Chancellor, MMeehan, robert, rnpeters, Info, stevek, cparisjeffries, Jim.Peyser, PHMThomas, :

Dear President Meehan and Chancellor Subbaswamy,

I am writing to you because I have not heard back from you. As you know from my prior email, the rally is not protected by the First Amendment because it is not being organized by the students but rather by a professor with the support and imprimatur of 3 university departments - in contravention of Massachusetts anti-discrimination laws and the University's own published policies.

Although I have not heard from you, I have heard from many very upset and concerned Jewish students who believe, rightfully, that the University has let them down by hosting this rally on campus. They tell me that it has become increasingly difficult for them to feel comfortable and protected on the campus. They are fearful of expressing their views for fear of hostility and retaliation by other students and by faculty - certainly reasonable in light of the fact that some of the faculty is sponsoring this event. In spite of their discomfort, they are willing to put themselves on the line in order to stop this event from taking place on campus because they believe it is the right thing to do. I have drafted a Complaint for a Preliminary Injunction on which several of them are Plaintiffs. They are prepared to file it. I am sending it to you, without the students' names, in order to keep them protected for as long as possible, in order to give the University one last chance to abide by its policies and statements and tell the organizers that they will have to find an off-campus venue for this rally. Please let me know by the close of business tomorrow what you decide to do.

Thank you.

Karen Hurvitz

LAW OFFICE OF KAREN D. HURVITZ
HURVITZLAW@COMCAST.NET
(617) 513-3365

"The only thing necessary for the triumph of evil is that good men do nothing."

Edmund Burke

THIS MESSAGE AND ANY ATTACHED DOCUMENTS CONTAIN ATTORNEY-CLIENT COMMUNICATION, SUBJECT TO PRIVILEGE AND EXEMPT FROM DISCLOSURE UNDER LAW. THEY ARE FOR THE INTENDED RECIPIENT ONLY; DELIVERY OF THIS MESSAGE TO ANYONE OTHER THAN THE INTENDED RECIPIENT DOES NOT WAIVE THEIR CONFIDENTIALITY. IF YOU ARE NOT THE INTENDED RECIPIENT PLEASE NOTIFY ME AND DELETE THIS MESSAGE FROM YOUR SYSTEM.

On Thu, Apr 18, 2019 at 2:26 PM Karen Hurvitz <hurvitzlaw@comcast.net> wrote:
Dear Chancellor,

Thank you for your email.

With all due respect, the cases that your counsel has cited do not apply to this case, since they were both decided under the Establishment Clause, dealing with the First Amendment's prohibition against the State's establishment of religion.

In the *Widmar* case, the question was "whether a state university, which makes its facilities generally available for the activities of *registered student groups*, may close its facilities to a *registered student group* desiring to use the facilities for religious worship and religious discussion." The court said that their decision was "narrow" one, and that the University, having created a forum generally open to *student groups*, could not ban religious speech. The court was careful to say that they affirmed the continuing validity a "university's right to exclude even First Amendment activities that "violate reasonable campus rules or substantially interfere with the opportunity of other students to obtain an education."

The group here is not a registered student group, and the issue has nothing to do with the First Amendment's religious Establishment Clause. Moreover, this event does indeed contradict two earlier statements by the administration, one of which was made by you personally, wherein it was explicitly stated that the university does not support an academic boycott against Israel and will not divest from Israeli related investments. Additionally, the content of this conference along with previous statements of the panelists-of which there are many-violate the school's anti-discrimination policy. This policy prohibits unlawful discrimination and harassment based upon a person's religion or national origin. As noted, most of the panelists at this conference have a documented record of anti-Semitic rhetoric on multiple occasions over a period of years. If the statements made by panelists Sarsour, Lamont Hill and Waters were made by students of UMass, those students would likely be suspended or expelled. Certainly, you must be aware of the very hostile environment this event will likely this create. If not, read this article: <https://www.tabletmag.com/jewish-news-and-politics/283535/enough-is-enough-2>.

The *Lamb's Chapel* case dealt with a similar issue: whether it was a violation of the Free Speech Clause of the First Amendment to deny a church access to school premises to exhibit for public viewing and for assertedly religious purposes, a film series dealing with family and child-rearing issues faced by parents today. The showing of this film series "would not have been sponsored by the school." The Court held, again, very narrowly, that under these circumstances, as

in *Widmar*, there would have been “no realistic danger that the community would think that the District was endorsing religion or any particular creed...As in *Widmar*... permitting District property to be used to exhibit the film series involved in this case would not have been an establishment of religion.... and does not foster an excessive entanglement with religion.”

We are not asking that you prevent the event from going forward – we are asking that you not permit it to go forward in a University of Massachusetts building, with the sponsorship of three University of Massachusetts departments, using University of Massachusetts emails. Allowing all of this gives UMass community and the public at large the impression that this event is indeed associated with and endorsed by the University of Massachusetts.

Moreover, the promotion of this event violates the University of Massachusetts’ implied contract with its students. The law is clear that the basic legal relationship between a student and a university is contractual and consists of statements in catalogues, bulletins, statements on website, policies and regulations of the school. You have publicly stated your opposition to BDS on no less than 2 occasions. You are breaching your contract by allowing this event.

Finally, your email states that “UMass Amherst is committed to fostering a community of dignity and respect and rejects all forms of bigotry.” These are powerful words. However, this statement and the sentiment behind it will be rendered meaningless by allowing a conference which is **co-sponsored by three university departments** and being advertised on campus emails to take place when this conference promotes religious bigotry and hatred. In essence, what will be promoted at this event is a frontal attack on the very ideals the university claims it values and upholds.

-
Karen Hurvitz

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Edmund Burke

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