

COMMONWEALTH OF MASSACHUSETTS

THE TRIAL COURT

SUFFOLK, SS

SUPERIOR COURT DEPARTMENT
C. A. No. 1984-CV-1308

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

OPPOSITION TO
EMERGENCY MOTION
TO INTERVENE AND
MEMORANDUM OF
LAW

Plaintiffs hereby oppose the proposed intervenors' Motion to Intervene on the following grounds:

1) Intervenors claim that their interests will not be adequately protected by the Defendants. They claim those interests are their constitutional rights to assemble and hear the panelists. Their right to assemble and hear the panelists will not be infringed by not being permitted to intervene. There are multiple locations in both Amherst and environs where they can assemble and hear the speakers. See attached list.

2) Intervenors claim that many challenges to advocates of Palestinian rights are occurring on college campuses, and that Ken Marcus, Assistant Secretary for Civil Rights at the Department of Education, has described complaints filed as "meritless complaints designed to chill speech." In the article quoted, he says just the opposite: he wrote that the BDS movement will be stronger and that Israel haters won't stop there but will

harass Jewish students and interrupt pro-Israel speakers. “They will vandalize Jewish property, spit at Jewish students, threaten violence “or physically assault Jewish supporters of Israel”...This behavior is a violation of the civil rights of Jewish students.” His article is attached.

3) The proposed intervenors also wish to challenge the “unfounded assertions that the panelists are anti-Semitic”, that criticism of Israeli policy is anti-Semitic and dangerous for Jews, and that the event will inspire anti-Semitic animus on the campus of UMass, and to challenge Plaintiffs’ use of their definition of anti-Semitism. But Plaintiffs are not seeking a declaratory judgment as to whether or not the panelists are anti-Semitic – Plaintiffs seek to enjoin a one-sided rally by proponents of BDS, an anti-Semitic movement whose aim is the destruction of the Jewish state.

The events in March at the University of North Carolina are a case in point of what will happen at UMass if the event is allowed to proceed under the guise that it is “an exchange of ideas”. UNC and Duke co-sponsored a conference titled “Conflict over Gaza: People, Politics, and Possibilities.” It claimed to shed much needed light on the current realities in the Gaza strip, though it was wrought with Israel bashing and misinformation. Organizers neglected to invite a single mainstream pro-Israel group or speaker, demonstrating the extent to which the conference was held to disparage Israel rather than encourage productive dialogue and conversation.

In response to concerns raised by alarmed students and pro-Israel activists on campus prior to the conference, letters were sent to the UNC Chancellor and Duke President. Based on past remarks and writings by numerous speakers invited to the conference, they alerted Duke and UNC to the strong possibility that this conference will quickly degenerate into a forum dedicated to expressing anti-Semitic sentiment and anti-Zionist sentiment that will likely cross the line into anti-Semitism. Many of the speakers derogated the Jewish State in sessions that vilified its leaders and citizens. Panelists denied Israel’s right to exist, branding it a settler-colonial entity while negating the enduring legacy of Jewish life in the region. Many of the films shown only presented the Palestinian perspective of Gaza, referring to Israel in terms of “occupation” and committing “crimes against humanity.” North Carolina Congressman George Holding has called for a federal probe into the conference. On April 15, Holding wrote Education Secretary Betsy DeVos asking the department to investigate

the “reports of severe anti-Israel bias and anti-Semitic rhetoric.” His letter calls for greater inquiry into the event program, specifically if the organizers invited “any mainstream pro-Israel groups or speakers to participate” and if presentations included “dialogue promoting the Boycott, Divestment, and Sanctions (BDS) movement.

Just as was done in this instance, letters were written to the President and Chancellor. A partial text of the letter from the Louis D. Brandeis Center for Human Rights Under Law, a national non-profit legal advocacy organization that works to combat anti-Semitism in higher education, to UNC and Duke follows:

We are concerned about [the] upcoming conference entitled, “Conflict Over Gaza: People, Politics and Possibilities.” ... We fear, based on past statements made by several of the individuals invited to present at the conference, that the event will devolve from academic discourse on concrete issues into an anti-Semitic diatribe that seeks to delegitimize and demonize the State of Israel.

Our apprehension stems from past experience. In February, UNC invited Linda Sarsour, an anti-Israel activist, to give the keynote speech at UNC’s Minority Health Conference. Sarsour used this platform to promote the anti-Semitic and discriminatory Boycott, Divestment, and Sanctions (BDS) Movement against only one country – Israel. Given the anti-Semitic and anti-Semitic-masked-as-anti-Israel rhetoric that some of the panelists and presenters at the upcoming conference have previously utilized, we are concerned that these speakers may similarly take advantage of this platform to promote such views.

For example, Harvard University professor Sara Roy, has compared Israeli policy to that of the Nazis, an anti-Semitic trope according to the International Holocaust Remembrance Alliance Definition of Anti-Semitism, the worldwide gold standard definition of anti-Semitism...

...Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in programs that receive federal funds. The U.S. Department of Education’s Office for Civil Rights (OCR) announced that Title VI applies to discrimination on the basis of Jewish ethnicity or ancestry in guidance (*see* Kenneth L. Marcus, Dear Colleague Letter (Sep. 13, 2004)). Title VI requires universities to protect against a hostile environment.

...Furthermore, it is important for your universities to recognize that Zionism is a key component of Jewish identity and the expression of the right to Jewish self-determination. Denying this right to self-determination (while promoting Palestinian self-determination) is anti-Semitic. The connection of the Jews to the Land of Israel pre-dates the modern state of Israel and dates back to the Patriarch Abraham who settled in the land. For over 2000 years Jews have “yearned for Zion.” No matter where Jews have lived, for centuries they have faced Zion (and Jerusalem) in prayer, and their prayers have included references to the “ingathering of the exiles” and the return of the Jews to Zion. Each year at the Passover Seder and at the end of Yom Kippur (Day of Atonement), Jews around the world proclaim “Next Year in Jerusalem” as part of the service. Suggesting that this expression of faith and history is not legitimate or demonizing support for Jewish self-determination as colonialist, marginalizes and threatens pro-Israel, Zionist students on campus. The university has an obligation to protect its students from discrimination –

and that includes the Zionist community whose support for Israel grows out of their ethnic and ancestral heritage and religious faith.

WHEREFORE, for all of the foregoing reasons and for any further reasons that may arise at a hearing on this matter, Plaintiffs oppose the Motion to Intervene.

Plaintiffs
By their attorney,

_____/S/_____
Karen D. Hurvitz, BBO#245720
Law Offices of Karen D. Hurvitz
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CERTIFICATE OF SERVICE

I hereby certify that I have emailed a copy of the foregoing Opposition to UMass counsel Denise Barton by email at dbarton@umass.edu and to Intervenor's counsel Rachel Weber by email at RWeber@RWeberlaw.com and will also and will also deliver a hard copy to them, this 2d day of May, 2019.

_____/s/_____
Karen D. Hurvitz

Updated

Public Meeting Places in Amherst, Hadley and Northampton

Building	Address	Contact	Capacity/Type	Fee	Wheel Chair Accessible	Parking
American Legion	162 Russell St. Hadley	586-9699	250	\$135 up to 6 hours	No	Yes
Amherst Knights of Columbus Rev. J. Joseph Quigley Hall	45 Boltwood Walk, Amherst	Frank Lattuca 253-6500 info@koc1619.org	60	Yes Call or email	Yes	Yes
Amherst Women's Club	35 Triangle St. Amherst	Jean Harlow 259-1935 Elizabeth 256-6637	4 rooms w/ 2 bathrooms	Various	Yes, (bathrooms <u>not</u> accessible)	25 on site
Bangs Community Center	70 Boltwood Walk, Amherst	Karen Erman 259-3159 ermank@amherstma.gov	Many sizes. Non-profits only	Free	Yes	Public
The Barn Studio "The White Barn"	20 Dickinson St. Amherst	Mindi Sahner 253-3008	Dance & exercise studio	\$15/hr Call	Yes	Yes
Clarion Hotel and Conf. Center	1 Atwood Dr Northampton	5861211	Various	Call	Yes	Yes
Delta Organic Farm	352 E. Hadley Rd. Amherst	Jim Pitts 253-1893	A big living rm. w a big white-board 14 people	Yes Various	Yes	Yes
East Street Studio	47 East St Hadley	585-4507 256-6385 584-5535	Performance space (30' x 50' – 100 and various smaller)	\$25/hr	No	Yes
First Churches – UCC & ABC	129 Main St Northampton	584-9392	150-200 50-60 - Parlor	Yes. Call	Yes	On Street
Building	Address	Contact	Capacity/Type	Fee	Wheel Chair Accessible	Parking

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First Congregational Church	165 Main St. Amherst	Ruth 253-3456; Tue-Fri 8:30-1:30	Dinning room & lounge	For non-profit s only. Yes	Yes	Yes, private
Florence Civic Center	90 Park St Florence (Owned by City)	584-5048 M-F 7- 5 Call week before	90 2-3 breakouts	\$75 \$115/day	Yes	Parking Lot
Florence Community Center	140 Pine St Florence	587-1157 T-Fri 12 - 4	200 Classroom	\$20/hr \$10/hr	Yes – Chair Lift	On street
Grace Episcopal Church	14 Boltwood Ave. Amherst	Robin 256-6754 M-Th : 9-4 F: 9-1	Main Hall & small rooms	Various Call	Yes	On Street
Jones Library	43 Amity St. Amherst	256-4090	30-100	Free for Non-profit s. Others, yes	Yes	Public
Lilly Library in Florence	19 Meadow St Florence	587-1500 x4 lillylibrary.org for application	40 chairs	Free (Non-profi ts)	Yes	On Street
Lord Jeffery Inn	30 Boltwood Ave. Amherst	Sharon Scott Mary Skowrya 253-2576	Meeting rooms Seats 85	Yes	Yes	On Street
Media Education Foundation	60 Masonic St Northampton	584-8500, x2201, x2204 (Nora)	90 (50 chairs) Media Equipment	Free (Non-profi ts)		On Street
Building	Address	Contact	Capacity/Type	Fee	Wheel Chair Accessible	Parking
Munson Memorial Library	South Amherst Common	Karen Erman 259-3159 ermank@amherstma.gov	Upstairs 100 Downstairs 35	\$15/hr or \$25/hr Amherst \$20/hr or	Yes	Yes

Updated

				\$35hr. Non-res. Events: \$350.00 +		
Nacul Center	592 Main St Amherst	256-8025 M-F 9-4 www.nacul.com	30 in Gallery 6 in small room	\$25 \$25	Yes	Parking Lot
Northampton Center for the Arts	17 New South St. Northampton	584-7327 T-F 11-4, NOHOArts.org	Auditorium (300) & Gallery; 2 rooms with 35 each room	Yes - Call \$45/hr \$75/clean up	Yes	On Street & Smith Garage
Northampton Friends Meeting	43 Center St Northampton	584-5190 - Nancy northampton.quaker.org				
People's Institute	38 Gothic St. Northampton	584-8313	Various Classrooms	Yes Call first	Only basement	On Street
Quality Inn	237 Russell St. Hadley	John 584-9816	40	\$75/day	Yes	Yes
St. Brigid's Church Parish Hall	46 N. Prospect St. Amherst	Pastor 253-7935 M-F 9-5	Hall seats 500	Call	Yes	Yes
Somatics	32 Masonic St Northampton	586-2555	Large space – 1000 sq.ft. Smaller spaces – 2 -100 sq. ft. each	\$25/hr \$15/hr	Yes	On Street
Building	Address	Contact	Capacity/Type	Fee	Wheel Chair Accessible	Parking
Sunbridge/Elaine Manor	20 N. Maple St. Hadley	Kathy Graves 584-5057	Large Dining room	Free for Non-profit s	Yes	Yes
Synthesis Center	274 N. Pleasant St. Amherst	Emily Bayard 256-0772	Seats 15	Yes No, for Non-profit Org.	Yes	Lot - 6-8 spaces

Updated

				doing comm. work		
Thorne's Market – 3 rd Floor	150 Main St. 3 rd Floor Northampton	Lisa Thompson 586-5553 APEarts.org	Performance space for performing Arts 125, 100 chairs	Yes Call	Yes	Garage/ On Street
Unitarian Church	220 Main St Northampton	584-1390 Wed. & Thurs., 1-4 PM	40 chairs			Street
Unitarian Meeting House	121 N. Pleasant St. Amherst	Judy 253-2848	Seats 140	Call	Yes	Public
Log Cabin www.logcabin- delaney.com/events	500 Easthampton Road, Holyoke	Diane Skrzyniarzsan (Event Consultant) @ 535-5077	Social: 6 to 600 Corporate: 6 to 1,000	Yes	Yes	Ample parking for tours & group functions
Summit View www.summitviewbanquethou se.com www.summitviewbanquethou se.com/SummitviewMenu.pdf	555 Northampton Street, Holyoke	538-7431 <a href="mailto:info@summitviewbanquet
house.com">info@summitviewbanquet hous e.com	Banquet hall			Yes

STANDING UP FOR JEWISH STUDENTS

There is yet one more critical approach: Confronting this behavior for what it is – a violation of the civil rights of Jewish students.

BY KENNETH L. MARCUS

SEPTEMBER 9, 2013 20:52

As American college students return to campus for the new academic year, there are signs that the movement for Boycott, Divestment, and Sanctions against Israel will be stronger this year. And Israel-haters won't stop there. They will harass Jewish students. They will interrupt pro-Israel speakers and rallies. They will vandalize Jewish property, spit at Jewish students, threaten violence, or physically assault Jewish supporters of Israel. For several years, the Jewish community has struggled with the right response to such incidents as they have escalated.

There are, of course, brave students and faculty willing to stand up to this thuggish behavior. And there are many Jewish student groups who are giving a home to those who want to have civil discussions about the Jewish state.

But there is yet one more critical approach: Confronting this behavior for what it is – a violation of the civil rights of Jewish students.

This can be done by pursuing a claim before the US Department of Education's Office for Civil Rights. In 2004, and again in 2010, OCR acknowledged that Jewish students have civil rights that must be protected. Since then, several Jewish advocates have filed complaints with OCR, trying to protect the rights of Jewish students.

It is fair to ask whether this effort is working.

In one sense, we have been disappointed.

Between August 19 and 21, OCR dismissed high-profile cases alleging unlawful anti-Semitic harassment at the Berkeley, Irvine and Santa Cruz campuses of the University of California.

Seeing all these cases rejected has been frustrating and disappointing, but we are, in fact, comforted by knowing that we are having the effect we had set out to achieve.

First, we have given voice at the highest levels of the federal government to the concerns of Jewish students and faculty. These cases may have been rejected by a low-level regional staffer, but as long as we bring them, they will force federal officials to take seriously the conclusions reached by two successive administrations: That Jews deserve protections from ethnic disparagement in higher education settings.

Second, we have put universities on notice.

These cases – even when rejected – expose administrators to bad publicity. Just last week, I heard from a university chancellor who is eager to work with the Schusterman Center for Israel studies at Brandeis University to avert the possibility of a civil rights complaint.

At many campuses, the prospect of litigation has made a difference.

If a university shows a failure to treat initial complaints seriously, it hurts them with donors, faculty, political leaders and prospective students. No university wants to be accused of creating an abusive environment.

Federal officials have noted the abusive habits of some faculty and students, and those findings have bruised the reputation of these campuses. This is important.

Third, by pursuing complaints through legal channels, we affirm that these are legal – not political – issues. In this respect, it doesn't matter whether Israel should or should not have a security barrier. It doesn't matter whether Israel should support Jewish housing beyond the Green Line. It doesn't matter even that there is such a thing as a Jewish state.

What matters is that universities should be places where Jews do not feel threatened by virtue of their shared ethnic heritage. We are shifting the debate.

Fourth, we are creating a very strong disincentive for outrageous behavior by students in particular. Israel-haters now publicly complain that these cases make it harder for them to recruit new adherents. Apparently students are being told not to get mixed up in Jewbaiting, rather to focus on their studies and get their degrees. Needless to say, getting caught up in a civil rights complaint is not a good way to build a resume or impress a future employer.

Finally, the only way to win these cases is to file them, even when we see some or most rejected. In my view, the findings of existing authorities are important but not final. Not all cases are going to meet the same fate.

Sadly, the outrages of anti-Semitism on the campus make it likely that Jew-hatred will become even more extreme and another incident will capture the attention of our legal team and federal investigators. When that happens, we will be ready.

After all, we cannot leave Jewish students undefended. When young people have the courage to step forward and assert their rights, we must stand behind them.

The author is president and general counsel of the Louis D. Brandeis Center for Human Rights Under Law and former staff director of the US Commission on Civil Rights.