

No. 24-71

IN THE
Supreme Court of the United States

AVRAHAM GOLDSTEIN, MICHAEL GOLDSTEIN;
FRIMETTE KASS-SHRAIBMAN; MITCHELL LANGBERT;
JEFFREY LAX; MARIA PAGANO,

Petitioners,

v.

PROFESSIONAL STAFF CONGRESS/CUNY;
CITY UNIVERSITY OF NEW YORK; JOHN WIRENIUS,
in his official capacity as Chairperson of the
New York Public Employee Relations Board;
ROSEMARY A. TOWNLEY, in her official capacity as
Member of the New York Public Employee Relations
Board; ANTHONY ZUMBOLO, in his official capacity as
Member of the New York Public Employee Relations
Board; CITY OF NEW YORK; THOMAS DINAPOLI, in his
official capacity as New York State Comptroller,

Respondents.

**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Second Circuit**

**BRIEF OF STANDWITHUS
AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONERS**

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QUESTION PRESENTED

Whether it violates the First Amendment for a state to prohibit individuals from disassociating from a union's representation to protest that union's expressive activities?

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INTEREST OF *AMICUS CURIAE*¹

This non-party amicus brief is submitted on behalf of the StandWithUs Saidoff Legal Department, a division of StandWithUs, an international, nonprofit Israel education organization founded in 2001 that supports Israel and fights antisemitism around the world. StandWithUs is dedicated to educating people about Israel and combating the extremism and anti-semitism that often distort discourse related to Israel. StandWithUs also vigorously challenges antisemitism through legal action. As a United States-based organization with Jewish and Israeli staff and volunteers, StandWithUs has a strong interest in ensuring that the First Amendment rights of Jewish and Israeli public employees are protected, especially as antisemitism and misinformation have skyrocketed in the wake of the October 7, 2023 terrorist attacks on Israel and subsequent war. The First Amendment principles of freedom of speech must protect Jewish and Israeli Americans equally to all Americans.

As part of its mission, StandWithUs helps protect the rights of Jewish students and professors on campus. Petitioners are faculty members at the City University of New York (“CUNY”). StandWithUs has a strong interest in protecting Petitioners from forced acceptance of speech, viewpoints, and associations that are abhorrent to them as Jews.

¹ Counsel of record received notice of StandWithUs’s intent to file this amicus brief ten days before the due date. No party or counsel for a party authored this brief in whole or in part. No party, counsel for a party, or person other than *amici curiae*, their members, or counsel made any monetary contribution intended to fund the preparation or submission of this brief.

SUMMARY OF ARGUMENT

In this case, a group of six professors employed by CUNY, are forced members of the Professional Staff Congress (“PSC”), a labor union. Pet.App.75a. PSC has actively supported the BDS movement, including a supportive resolution adopted in 2021. Pet.App. 74a, 93a. This activity has directly resulted in the professors being ostracized on campus for their Jewish identity, religious beliefs, or support for Israel. Pet.App. 69a-73a, 75a. But the professors are barred from disassociating from PSC because of New York’s Taylor Law. Pet.App.32a-33a.

The issue before the Court has deep ramifications for Jewish society in America today. From an early age, public school teachers are indoctrinating Jewish students with ideologies that are antisemitic.² College students are placed in the position of potentially being forced by antisemitic professors’ biased assignments to adopt their teacher’s viewpoints for a passing grade.³ And professors in CUNY are required to associate with a group that openly denounces their right to exist.

² *Westwood Teacher No Longer at School Following Anti-Semitic Controversy*, Westside Current, Aug. 6, 2024, https://www.westsidecurrent.com/news/westwood-teacher-no-longer-at-school-following-anti-semitic-controversy/article_2f9acec4-544e-11ef-946d-b391adb3329c.html#:~:text=WESTWOOD%20teacher%20at%20Westwood's,in%20the%20classroom%20officials%20said.

³ Robert Myers, *StandWithUs Urges Santa Monica College to Take Action on Professors' Compelled Speech and Viewpoint Discrimination in Class Assignments*, StandWithUs (June 10, 2024), <https://www.standwithus.com/post/standwithus-urges-santa-monica-college-to-take-action-on-professors-compelled-speech-and-viewpoint>

It is unimaginable that in the United States of America, in 2024, Jewish students and professors are being forced to adopt beliefs that are foreign to them and antithetical to their religion. Yet it is happening. Across this great country – where Jews for centuries have found safety – in today’s academia it has become acceptable to not only exclude and harass Jews based on their religion, but to force them to adopt viewpoints that promote their very destruction.

We urge this Court to grant a writ of certiorari. Doing so will send a strong message: This is not ok. It is not ok to indoctrinate young and impressionable students with antisemitic ideologies. It is not ok to require students to write essays on why Israel is a colonizing force or to create art for resistance encampments. And it is not ok to compel Jewish professors to associate with those who seek to annihilate them.

In 1790, President George Washington wrote to the Hebrew Congregation of Newport, Rhode Island.⁴ He assured and promised them, “[m]ay the children of the stock of Abraham, who dwell in this land, continue to merit and enjoy the good will of the other Inhabitants; while every one shall sit in safety under his own vine and figtree, and there shall be none to make him afraid.” These promises are the promises of the Constitution of the United States of America. The freedom to practice religion and the freedom of association. Washington’s venerable and vintage assurance is now vested in this Court.

⁴ *From George Washington to the Hebrew Congregation in Newport, Rhode Island, 18 August 1790*, Founders Online, <https://founders.archives.gov/documents/Washington/05-06-02-0135> (Last visited Aug. 20, 2024).

DISCUSSION

I. Antisemitism has exploded across campuses and workplaces.⁵

Antisemitism has been simmering on campuses for a long time.⁶ Since October 7, it has boiled over.⁷ Over 100 Title VI civil rights investigations have been initiated since October 7.⁸ In a recent poll, the majority of students went from having quiet campus environments to dangerous ones with major incidents, such as vandalism and assault.⁹ Increases in antisemitism seem to be

⁵ The amici brief of the Zionist Organization of America in Support of Petitioners does an excellent job documenting this explosion.

⁶ Briefing Report: Campus Anti-Semitism, U.S. Commission on Civil Rights (July 2006), <https://www.usccr.gov/files/pubs/docs/081506campusantibrief07.pdf>; Leonard Saxe, et al., *Anti-Semitism and the College Campus: Perceptions and Realities*, Brandeis ScholarWorks (July 2015), <https://scholarworks.brandeis.edu/esploro/outputs/report/Antisemitism-and-the-college-campus-Perceptions/9924143424201921>; *Letter from SWU and CAMERA to AFT President Leonard Saxe, et al., Hotspots of Antisemitism and Anti-Israel Sentiment on US Campuses*, Brandeis ScholarWorks (Oct. 2016), <https://scholarworks.brandeis.edu/esploro/outputs/9924088244301921>.

⁷ Alexandra Fishman, *Focus Groups on Campus Antisemitism Show What a Difference Administrations Can Make*, Jewish Journal (July 31, 2024), <https://www.standwithus.com/post/focus-groups-on-campus-antisemitism-show-what-a-difference-administrations-can-make>

⁸ Peter Cordi, *UC Irvine Jewish student gets big win as civil rights lawsuit looms*, Washington Examiner (June 15, 2024 5:00 am), <https://www.washingtonexaminer.com/policy/education/3046425/university-of-california-irvine-jewish-student-gets-big-win-title-vi-civil-rights-lawsuit-looms/>

⁹ Alexandra Fishman, *Focus Groups on Campus Antisemitism Show What a Difference Administrations Can Make*, Jewish Journal (July 31, 2024), <https://www.standwithus.com/post/>

exacerbated and built on the previous level of antisemitism experienced on that campus before October 7.¹⁰

II. Jew Exclusion Zones and Resistance Encampments on college campuses require passersby to disavow Israel.

There are now “Jew Exclusion Zones” at campuses across the country. In one case gathering significant media attention, a federal district judge granted injunctive relief to a Jewish student against UCLA.¹¹ *Frankel et al. v. Regents of the University of California et al.* is but one of dozens of lawsuits alleging discrimination and more against universities.

At UCLA, to enter the Jew Exclusion Zone, students had to pledge their allegiance to disavow Israel. Only those with a verification wristband were allowed in. Jewish students attempting to pass through were prevented from doing so – not only by activists – but by school personnel. Jewish students were repeatedly blocked from passing through the encampment and unable to reach meetings and study sessions.

focus-groups-on-campus-antisemitism-show-what-a-difference-administrations-can-make

¹⁰ Alexandra Fishman, *Focus Groups on Campus Antisemitism Show What a Difference Administrations Can Make*, Jewish Journal (July 31, 2024), <https://www.standwithus.com/post/focus-groups-on-campus-antisemitism-show-what-a-difference-administrations-can-make>

¹¹ Brianna Herlihy, ‘So abhorrent’: Federal judge rules against UCLA in lawsuit over ‘Jew Exclusion Zone’, FoxNews (August 15, 2024 11:17am EDT), <https://www.foxnews.com/politics/so-abhorrent-federal-judge-rules-against-ucla-lawsuit-over-jew-exclusion-zone>

In that case, Judge Mark Scarsi granted injunctive relief against UCLA and its officers from continuing to discriminate against Jewish students. In his now viral words:

In the year 2024, in the United States of America in the State of California, in the City of Los Angeles, Jewish students were excluded from portions of the UCLA campus *because they refused to denounce their faith*. (Emphasis added) This fact is so unimaginable and so abhorrent to our constitutional guarantee of religious freedom that it bears repeating, *Jewish students were excluded from portions of the UCLA campus because they refused to denounce their faith*. (emphasis original.)

III. Jewish students are being forced to adopt viewpoints and speech.

But Jewish students aren't only facing discrimination outside the classroom, but inside as well. This wave of post October 7th campus antisemitism follows decades of harassment that Jewish students and professors on campuses have endured. For example, in 2012, the Students for Justice for Palestine group at Florida Atlantic University ("FAU") placed "eviction" notices on dorm room doors for students to experience what the Israelis allegedly did to the Palestinians.¹²

When examining the realities of the power dynamic between professors and students, Jewish students at Santa Monica College ("SMC") were potentially compelled to write assignments adopting their professor's hateful views on Israel or risk receiving poor grades by disagreeing with their professors. Jewish art students

¹² *Pro-Palestinian 'eviction' notices at Florida college blasted by Jewish group*, Fox News, April 12, 2012.

were compelled to create art for an SMC Palestinian resistance encampment as an assignment. These assignments are mandatory and required to pass their respective classes. The underlying – and incorrect – compelled speech is that Israel is committing genocide and occupying stolen lands. While a professor’s mere framing of an assignment in a biased way may not, without more, create a constitutional violation, such prompts may well infringe on students’ First Amendment rights by effectively coercing them into agreeing with their professors’ stance or risk receiving bad grades.¹³ Additionally, a recent lawsuit against the California College of the Arts in San Francisco alleges that a professor and students tried to coerce a Jewish student into participating in a walkout over the war and she was “shut down” when she tried to offer her viewpoint.¹⁴

Jewish students face discrimination through campus clubs and associations. For example, at an event at the University of California, Santa Cruz (“UCSC”), an “Anti-Zionist Shabbat Service” film screening required attendees to agree with three statements as a condition of admission to the event, one which was: “We recognize that antizionism is not antisemitism and thus reject the IHRA definition of antisemitism.”¹⁵ The IHRA Definition is the most widely used and accepted definition of anti-Jewish bigotry worldwide

¹³ *Reply to FIRE’s Analysis of StandWithUs Letter to Santa Monica College re: Academic Freedom*, StandWithUs (July 15, 2024).

¹⁴ Andrew Esensten, *Lawsuit: Antisemitism is ‘entrenched’ at California College of the Arts*, jweekly.com (June 11, 2024); *Fiss v. California College of the Arts*, No. 4:24-cv-03415-HSG (N.D. Cal. June 6, 2024), at ¶76.

¹⁵ *StandWithUs Letter to UC Santa Cruz*, StandWithUs (March 7, 2024).

and the one that most Jews agree best represents their actual experiences. According to Executive Order 13899,¹⁶ all agencies charged with enforcing the non-discrimination requirements of Title VI of the Civil Rights Act of 1964, including the U.S. Department of Education, must consider the IHRA Definition when investigating claims of antisemitic discrimination. The event, and the co-sponsorship by one of the UCSC Resource Centers, effectively denies the mainstream Jewish community the right to define its own identity and attacks against that identity.¹⁷ Additionally, forcing attendees to expressly agree with the organizers' viewpoints silences the viewpoint of many Jewish members of the campus community and likely constitutes compelled speech in violation of the First Amendment.¹⁸

And even after leaving college, Jewish students are being compelled to apologize for their beliefs. At the University of California, Irvine ("UCI"), diplomas are being withheld from students who participated in pro-Israel speech. One student, Alex Minn, was given a sanction letter demanding he write an essay admitting to and apologizing for conduct (that he denies).¹⁹

At Fairburn Elementary School in the Westwood neighborhood of Los Angeles, it was discovered that a newly hired teacher, Mx. Skye Tooley, encouraged

¹⁶ Executive Order on Combating Anti-Semitism – The White House (archives.gov), 84 Fed. Reg. 68779 (Dec. 11, 2019).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Peter Cordi, *Jewish student's diploma withheld over run-in with 'antisemitic' poster*, Washington Examiner (June 13, 2024 8:24 am), <https://www.washingtonexaminer.com/policy/education/3039067/jewish-student-university-california-irvine-withheld-diploma-antisemitic-poster/>

children to draw slogans such as “From the River to the Sea, Palestine must be free,” alongside other drawings with messages like “Free Palestine” and “Stop the bombing.”²⁰ In their social media posts, Tooley said, “You can teach about Palestine in elementary! To bring awareness, we made protest posters and hung them in our hall.”

At Stanford University, one professor required all Jewish students to raise their hands, separated them from their belongings, and ordered them to stand in the corner. The explanation? That they must experience what the Israelis are allegedly are doing to Palestinians.²¹

IV. Jewish teachers and professors are being harassed and prevented from teaching.

Jewish teachers are faring no better. Danielle Kaminsky is a global history teacher in New York City. After being terrorized by students – including with swastikas, death threats, Nazi salutes and Hitler-loving comments – Kaminsky has filed a federal lawsuit alleging that not only did the school administration not stop the hate but encouraged it as well.²²

²⁰ Jamie Paige, *UPDATE: A Westwood Elementary School Faces Parent Boycott Amid Outrage Over New Teacher's 'Hate-Filled Curriculum'* (Aug. 6, 2024), https://www.westsidecurrent.com/news/westwood-elementary-school-faces-parent-boycott-over-concerns-with-new-teachers-conduct/article_336e15de-5380-11ef-a6e2-0f78a4e1ff50.html

²¹ Snejana Farberov, *Stanford Teacher Suspended for Allegedly Separating Out Jewish Students in Class as “Colonizers,”* N.Y. Post, Oct. 13, 2023, <https://nypost.com/2023/10/13/stanford-teacher-suspended-for-singling-out-jewish-students/>

²² Georgia Worrell and Priscilla DeGregory, *Jewish teacher sues DOE over antisemitism at NYC high school, shares abhorrent*

A professor at Columbia University, Shai Davidai, Ph.D., was barred from campus for leading a pro-Jewish rally.²³ Other professors are resigning as a direct result of the hatred and lack of free inquiry and respect for diverse opinions.^{24 25}

This is America in 2024. What would Washington say?

V. Across the country, national teacher unions are promoting antisemitic and anti-Israel speech.

Two major national unions have recently considered antisemitic and anti-Israel resolution. These resolutions would effectively speak for all its members.

The American Federation of Teachers (“AFT”) is considering resolutions that will punish Israel through

email: ‘All Jews need to be exterminated’ (New York Post), Brandeis Center (May 3, 2024), <https://brandeiscenter.com/jewish-teacher-sues-doe-over-antisemitism-at-nyc-high-school-shares-abhorrent-email-all-jews-need-to-be-exterminated-new-york-post/>

²³ Desheania Andrews, Isabel and Ronny Reyes, *Outspoken Jewish professor barred from Columbia campus — but administration turns blind eye to even bigger tent city springing up* (April 22, 2024), <https://nypost.com/2024/04/22/us-news/columbia-professor-and-outspoken-israel-supporter-shai-davidai-says-hes-been-barred-from-the-main-campus/>

²⁴ Rebecca Cypess, *Why I Left My Faculty Position at Rutgers*, Tablet Magazine, July 1, 2024, <https://www.tabletmag.com/sections/news/articles/rutgers-yeshiva-university-jewish-educational-principles>

²⁵ Mauricio Karchmer, *Why I Quit My Dream Job at MIT*, The Free Press, Jan. 9, 2024, <https://www.thefp.com/p/resigned-mit-october-7-antisemitism>

divestment.²⁶ The National Education Association considered similar resolutions at their national conference in July 2024.²⁷ The proposed AFT resolution comes on the heels of a resolution by the group’s executive council, condemning “all forms of antisemitism and Islamophobia,” and calling for “a negotiated bilateral cease-fire, agreed to by both sides in this war,” and for “a two-state solution.”²⁸

But consider public educators like Tova Plaut from New York City and Amy Leserman from Los Angeles. Both are Jewish members of AFT. These resolutions force Ms. Plaut and Ms. Leserman to be spoken for and to accept speech that they disagree with and have no relevance to the jobs of union teachers. To the contrary, these resolutions have a spillover effect and encourage teachers to teach that Israel is a colonizing country and committing genocide. The passage of such resolutions signal that the Union is encouraging such hateful indoctrination and lesson plans.²⁹ That signal puts

²⁶ *Randi Weingarten*, StandWithUs (July 24, 2024), <https://www.standwithus.com/post/letter-from-swu-and-camera-to-aft-president-randi-weingarten>

²⁷ Zach Kessel, Major Teachers’ Union to Vote on Resolution Accusing Israel of ‘Genocide’ National Review (July 2, 2024 2:59 PM), <https://www.nationalreview.com/news/major-teachers-union-to-vote-on-resolution-accusing-israel-of-genocide/>

²⁸ *AFT Executive Council Adopts Resolution Unanimously Calling for the End of the Israel-Hamas War by Negotiated Bilateral Cease-Fire, Promoting Steps Toward a Two-State Solution for Israeli and Palestinian Self-Determination*, AFT (Jan. 30, 2024), <https://www.aft.org/press-release/aft-executive-council-adopts-resolution-unanimously-calling-end-israel-hamas-war>

²⁹ Francesca Block, *Israel-Bashing on the Agenda for National Teachers Union* (July 17, 2024), <https://www.thefp.com/p/israel-bashing-on-agenda-teachers-union>

Jewish educators in the uncomfortable position of either allowing the Union to speak for them, or actively separating from the union – which often (as demonstrated in this case) is not an option.

But it's not just the teachers' unions. Labor unions too have taken up resolutions seeking to boycott Israel and condemn Israel for genocide.³⁰ United Auto Workers President Shawn Fain took to X promoting the college campus lawbreaking and denouncing Israel for its war against Hamas.³¹ Likewise, the union representing approximately 9,000 Starbucks workers expressed “solidarity with Palestine” after October 7th.³²

VI. United States of America 2024 or Germany 1933?

It is not hyperbolic to compare college campuses today to Nazi Germany in 1933. While nothing compares to the Nazi slaughter of six million Jews, it is shocking to hear college students celebrate Hamas and call for the destruction of Jews and Israel. Beyond being ostracized and harassed, Jewish students and academics also endure the broad tolerance and justification provided by university leaders to lawbreakers.

³⁰ Editorial, The UAW Has a Gaza Policy, Wall St. J., May 5, 2024, <https://www.wsj.com/articles/shawn-fain-uaw-hamas-gaza-israel-campus-protests-39d68e2f>

³¹ Ibid.

³² Shannon Thaler, *Starbucks workers union voices 'solidarity with Palestine' after Hamas attack*, New York Post (Oct. 12, 2023, 4:55 p.m. ET).

CONCLUSION

For all these reasons and for the reasons stated by Petitioners, the Court should grant the petition for a writ of certiorari.

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