



May 4, 2016

VIA FEDERAL EXPRESS

Mr. James B. Milliken  
Chancellor, The City University of New York

Dear Chancellor Milliken:

As you are aware, on Friday night, April 15th, the Doctoral Students' Council ("DSC") at the Graduate Center of the City University of New York ("CUNY" or the "University") adopted a Resolution Endorsing the Boycott of Israeli Academic Institutions ("BDS Resolution"). After a lengthy preface of inflammatory remarks against the State of Israel, the DSC resolved to "endorse the Palestinian call to boycott Israeli academic institutions for as long as the Israeli state continues to violate Palestinian rights under international law"; and to "support[] the efforts of Students for Justice in Palestine [SJP] at CUNY and all others engaged in the struggle to end the occupation and colonization of Palestine." As you may also be aware, the Boycott, Divestment, and Sanctions (BDS) movement calls for, among other things, academic institutions and individual scholars to boycott activities and programs sponsored by Israeli universities. As one leading BDS activist has explained, however, "[t]he real aim of BDS is to bring down the state of Israel. . . . There should not be any equivocation on the subject... Justice and freedom for Palestinians are incompatible with the existence of the state of Israel."<sup>1</sup>

In light of the recent passage of this Resolution the University has an obligation to take action sufficient to return the CUNY campuses to a safe, non-harassing, non-discriminatory environment for students and employees alike. Additionally, as laid out more fully herein, the University should take steps to protect itself from any potential liability based on the conduct of DSC members who are also employees of the University.

Importantly, a recent study found that pro-BDS activity "is the strongest predictor of anti-Jewish hostility on campus."<sup>2</sup> To be perfectly clear, this information unequivocally puts the CUNY administration on notice, following passage of the DSC BDS Resolution, of its obligation to take

---

<sup>1</sup> As'ad AbuKhalil, *A Critique of Norman Finkelstein on BDS*, AL-AKHBAR ENGLISH (February 17, 2012, 14:59 PM), <http://english.al-akhbar.com/node/4289>.

<sup>2</sup> *Report on Antisemitic Activity in 2015 at U.S. Colleges and Universities With the Largest Jewish Undergraduate Populations*, Amcha Initiative, <http://www.amchainitiative.org/wp-content/uploads/2016/03/Antisemitic-Activity-at-U.S.-Colleges-and-Universities-with-Jewish-Populations-2015-Full-Report.pdf>.

all necessary steps to prevent hostile and discriminatory treatment of Jewish members of the campus community.

The DSC represents nearly 4,000 members of the graduate school who are also students and faculty across many of the campuses within the CUNY system.<sup>3</sup> Its affiliate, the Adjunct Project, a self-described resource center for Graduate Center Student Workers and CUNY adjuncts, has also endorsed the Resolution, and has encouraged “all members of the CUNY community to raise awareness, through resources like those provided by Labor for Palestine, and to support or get involved with efforts on their campuses, including CUNY for Palestine and SJP chapters.”<sup>4</sup>

The BDS Resolution, which calls for members of the University community to engage in invidious discrimination based on the national origin and/or religion of the targeted persons, marks a significant infringement of academic freedom rights. As such, it is of serious concern to the American Center for Law & Justice (ACLJ), and, as more fully discussed herein, should be of equally serious concern to the University. This is especially true in light of the fact that the past several months have seen a severe increase in the number of anti-Semitic acts on CUNY campuses.<sup>5</sup> Because the implementation of the BDS Resolution would result in violation of CUNY policies, as well as state and federal nondiscrimination laws, University administrators have not only a vital interest in this issue but also an obligation to ensure that members of the University community do not take part in such discriminatory conduct.

The undersigned national legal organizations—the American Center for Law and Justice (“ACLJ”), Stand With Us, and the Louis D. Brandeis Center for Human Rights Under Law, have become aware of the toxic situation on campus. The purpose of this letter is to provide the CUNY administration with a clear legal analysis regarding the recent Resolution, highlighting the University’s responsibilities while also making sure that all the relevant parties are aware of any areas of potential liability.

By way of introduction, the ACLJ, the main signatory to this letter, is an organization dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys have argued before the Supreme Court of the United States in a number of significant cases involving the freedoms of speech and religion.<sup>6</sup> As a part of the organization’s commitment to the freedom of speech,

---

<sup>3</sup> Press Release, CUNY Doctoral Students’ Council, *Consideration of a Resolution to Boycott Israeli Academic Institutions*, CUNY Doctoral Students’ Council (April 4, 2016), <http://cunydscc.org/2016/04/press-release-consideration-of-a-resolution-to-boycott-israeli-academic-institutions/>.

<sup>4</sup> *The Adjunct Project Endorses the Boycott of Israeli Academic Institutions*, CUNY Adjunct Project (April 12, 2016), <http://cunyadjunctproject.org/2016/04/12/the-adjunct-project-endorses-the-boycott-of-israeli-academic-institutions/>.

<sup>5</sup> Letter from Zionist Organization of America, to James B. Milliken, Chancellor of CUNY and CUNY Board of Trustees (February 22, 2016), <http://zoa.org/2016/02/10315402-letter-to-cuny-chancellor-and-board-of-trustees-jew-haters-spread-fear-at-cuny-colleges/>.

<sup>6</sup> See, e.g., *Pleasant Grove v. Summum*, 555 U.S. 460 (2009) (unanimously holding that the Free Speech Clause does not require the government to accept counter-monuments when it has a war memorial or Ten Commandments monument on its property); *McConnell v. FEC*, 540 U.S. 93 (2003) (unanimously holding that minors have First Amendment rights); *Lamb’s Chapel v. Center Moriches Sch. Dist.*, 508

ACLJ attorneys regularly handle cases specifically involving the protection of academic freedom.<sup>7</sup> As a non-profit organization dedicated to protecting constitutional liberties—especially the rights to free speech and religious expression—by engaging legal, legislative, and cultural issues through advocacy, education, and litigation, the ACLJ has had years of experience negotiating the lines between rights and wrongs.

The Louis D. Brandeis Center for Human Rights Under Law is an independent, unaffiliated, nonprofit corporation established to advance the civil and human rights of the Jewish people and promote justice for all. LDB conducts research, education, and advocacy to combat the resurgence of anti-Semitism on college and university campuses.

StandWithUs is an international, non-profit organization which believes that education is the road to peace. StandWithUs is dedicated to informing the public about Israel and to combating the extremism and anti-Semitism that often distort the issues.

The undersigned organizations firmly believe that in both public and private institutions, the freedom of speech, even offensive speech, should be cherished and respected as part of what makes our democracy so great. But as the U.S. Department of Education's Office for Civil Rights has made clear, there are times when speech crosses over into harassment, and invidious discrimination. Harassment can be verbal if, for example, it is severe, persistent, or pervasive enough to limit or deny a student's ability to participate in or benefit from an educational program. Title VI of the Civil Rights Act of 1964 prohibits discrimination in federally assisted programs and activities, on the basis of race, color, or national origin. A violation of Title VI may be found if discrimination is encouraged, tolerated, not adequately addressed, or ignored by administration. Complaints alleging a violation of Title VI may be filed with the U.S. Department of Education's Office for Civil Rights or in the federal district courts. Although Title VI does not use the word "religion," Jewish students are protected from discrimination based on their perceived ethnic, racial or ancestral background.

The undersigned organizations do not believe in stifling freedoms, but we do believe in following the law and making sure that no one country or people are singled out for attack. The U.S. Department of State definition of anti-Semitism states that: "Anti-Semitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of anti-Semitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities."<sup>8</sup> The State

---

U.S. 384 (1993) (unanimously holding that denying a church access to public school premises to show a film series on parenting violated the First Amendment); *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990) (holding by an 8-1 vote that allowing a student Bible club to meet on a public school's campus did not violate the Establishment Clause).

<sup>7</sup> E.g., *Adams v. Trustees of the Univ. of North Carolina-Wilmington, et al.*, No. 7:07-cv-00064-H (E.D.N.C. Apr. 10, 2007); *Enstrom v. Rice, et al.*, No. 2:12-cv-5168-JGB-SSx (C.D. Cal. June 13, 2012); *Jenkins v. Kurtinitis, et al.*, No. 1:14-cv-1346-ELH (D. Md. Apr. 21, 2014); *Buxton v. Kurtinitis, et al.*, No. 1:14-cv-2836-ELH (D. Md. Sep. 8, 2014).

<sup>8</sup> US Department of State, *Defining Anti-Semitism*, June 8, 2010, <http://www.state.gov/j/drl/rls/fs/2010/122352.htm>.

Department notes that such manifestations could also target the state of Israel, conceived as a Jewish collectivity. Anti-Semitism 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. Particularly as it relates to the State of Israel, the State Department lists several examples of what would constitute problematic anti-Semitic speech in this context. These include, but are not limited to: Denying the Jewish people their right to self-determination; accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interest of their own nations; applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation; multilateral organizations focusing on Israel only for peace or human rights investigations; and holding Jews collectively responsible for actions of the State of Israel.<sup>9</sup>

Organizations must be vigilant in making sure that any free and protected speech in any forums that they open does not cross the line into hateful anti-Semitic remarks, the kind of commentary that could improperly single out one group of people for disparate treatment, and limit their ability to participate meaningfully in educational and other campus opportunities.

### **Background: Recent Anti-Semitic Incidents on CUNY Campuses Involving SJP**<sup>10</sup>

#### *Hunter College*

On November 12, 2015, a rally at Hunter College with Students for Justice in Palestine and other groups took place. The rally was originally advertised as part of the Million Student March regarding free public college tuition and student debt. The actual event, however, quickly devolved into students shouting “Zionists out of CUNY” and “Long live the Intifada.”<sup>11</sup> (In this context, CUNY must be aware that threats of “Intifada” are actually threats of violence. The dictionary definition of ‘intifada’<sup>12</sup> is “uprising rebellion, specifically an armed uprising of Palestinians against Israeli occupation.” Intifada primarily has targeted civilians for purposes of terror, and the fact that terror violence is being threatened on CUNY campuses against Jews, without regard to any connection at all to Israeli policy, compounds the offense and the need for forceful response.) Jewish students who attended the rally because of its original goal were quickly singled out. People shouted at the students things like “Zionists go home!”, “Jews are racist sons of bitches!”, “I hope someone gets y’all!”, and “When we take control of CUNY, we are gonna kick you out and make sure you don’t graduate!” Jewish students were aggressively assaulted, as they had their signs in support of lowering tuition ripped out of their hands and destroyed by SJP members. The lasting effects have been so bad that Jewish students are afraid to mention their religious and ethnic background on campus, and some have reported that they now refrain from wearing a Star of David in public. CUNY staff members in attendance were

---

<sup>9</sup> *Id.*

<sup>10</sup> The specific events detailed below at the CUNY campuses is based on the interviews and investigations detailed in the ZOA letter to Chancellor Milliken. See Zionist Organization of America, *supra* note 5.

<sup>11</sup> Stand With Us, *CUNY Hunter Chants Long Live the Intifada*, YOUTUBE (Nov. 13, 2015), <https://www.youtube.com/watch?v=o-9BScEBa8Q>.

<sup>12</sup> *Intifada Definition*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/intifada>.

horrified at the incident, as threats of “dragging Jews into the streets” were shouted at attendees. The President of Hunter College, the President of Undergraduate Student government, and the Chair of the Hunter College Senate all spoke out against the incident but never even referenced, let alone condemned, SJP for its conduct.

### *Brooklyn College*

Despite the fact that Brooklyn College already had one Title VI complaint related to SJP anti-Semitism that it settled in March of 2014, anti-Semitic incidents have continued to occur on campus. Just last year, SJP scheduled anti-Israel events on campus during Jewish holidays. SJP’s members chalked phrases like “RESISTANCE IS JUSTIFIED WHEN PEOPLE ARE OCCUPIED.”<sup>13</sup> In the context of Israeli-Palestinian politics, statements like this go beyond endorsing a side of the conflict and actually advocate for violence. Attempts to remove the chalking by college staff and students were met with anger and anti-Semitism, including threats of violence against a student’s mother. College administration was not only notified about the acts, but agreed to ensure compliance by SJP. In October, Brooklyn College’s SJP promoted violence against Jews on its Facebook page, calling for the “Third Intifada,” with the threat to “Expect Resistance.” The passive admonishments from the school’s administration have done nothing to address the problem: Jewish students are being threatened based on their religion and ethnicity.

### *College of Staten Island*

On November 12, 2015, in an event similar to that at Hunter College, SJP members attending a demonstration are said to have chanted “no two-state solution” and called for an intifada. Students were called “Zionists” and blamed for the cost of tuition and CUNY’s lack of a contract with union employees. Most startling is the fact that members of this protest included current CUNY faculty. A Jewish student with a “Keep calm and hug a Jew” sign was told by another student, “I don’t hug murderers.”

Beyond (though partially because of) these specific events, there is a pervasive atmosphere of anti-Semitism that has been allowed to take root on CUNY campuses. Muslim students who want to work with Jewish students for the advancement of all are warned that doing so would make them a “bad Muslim” or draw ire from SJP members. Swastikas have been used to deface property all over campus. Students are afraid to wear the Star of David. College administrators have promised to address these concerns but have failed to do so.

### *John Jay College*

Similar issues have also arisen on John Jay College’s campus. Jewish students have been told they are “terrorists” and “baby killers,” with some members of Hillel even fearing attack as they left school. In October 2014, a “die-in” took place in which SJP members called for an intifada and planned on throwing fake blood at people. Hillel members sought to hold a peaceful counter-protest and were verbally attacked by SJP members. By May 2015, at least three students either transferred or left John Jay College as a result of the hostile anti-Semitic campus environment.

---

<sup>13</sup> Note that SJP’s chalking was illegal, not because of the messages, but because it violated NYC’s defacement ordinances.

Swastikas and racial slurs have been found written all over campus property. JJC had the same issues as did Hunter College concerning the Million Student March, with the same kinds of racial epithets and hate speech.

Students are actively changing the way they live their lives and practice their faith so as to avoid being singled out on campus. Jewish students will sometimes take only morning and night classes so as to avoid the campus during the afternoon when most events are held. As SJP's events are held in the John Jay Atrium, it is impossible to move around campus without being impeded by the events. Rather than wear their kippahs (religious headcovering), some students wear a baseball cap. This allows them to technically observe their religious requirements but avoid being identified as Jewish. Completely failing to grasp the situation and its gravity, at least one campus administrator has said derisively about the treatment of Jews on JJC's campus, "What are these white kids complaining about?"

#### *Kingsborough Community College*

At Kingsborough Community College, the administration itself stands accused of vile anti-Semitic hiring and promotion practices by one of its own hiring managers. In addition to that, the campus is riddled with one anti-Semitic incident after another. Swastikas are regularly observed across the campus. A Jewish-Israeli professor was verbally attacked by students in her class, who asked her how many people she had killed. Another Jewish professor who drove a car to which she attached both an Israeli and American flag, had her car vandalized twice. Yet another outwardly Jewish professor walked into her classroom to find swastikas carved into the door and on the back wall and her keyboard drenched in urine. Recently, various department offices at Kingsborough were faxed lurid, anti-Semitic letters with swastikas.

#### **Hostile Environment**

These and many other instances of anti-Semitic (sometimes couched as anti-Zionist, sometimes more directly anti-Jewish) behavior on CUNY campuses, along with CUNY's failure to adequately address, and, where appropriate, impose disciplinary measures for, these discriminatory acts, has created a hostile environment for both Jewish students and Jewish staff alike. This widespread and systemic failure at CUNY has even caught the attention of New York City's politicians.<sup>14</sup> CUNY's Manual of General Policy, Article VI Policy 6.02, concerning Discrimination and Equal Opportunity, makes it clear that the University must adhere to "federal, state and city laws and regulations regarding non-discrimination and affirmative action." In addition, the Policy on Equal Opportunity and Non-Discrimination makes it clear that

It is the policy of the University to recruit, employ, retain, promote, and provide benefits to employees and to admit and provide services for students without regard to race, color, creed, national origin, ethnicity, ancestry, religion, age, sex, sexual orientation, gender, gender identity, marital status, partnership status, disability, genetic information,

---

<sup>14</sup> Jewish Telegraph Agency, *New York City Council Plans Law To Combat Anti-Semitism at CUNY*, Mar. 2, 2016, <http://forward.com/news/breaking-news/334856/new-york-city-council-plans-law-to-combat-anti-semitism-at-cuny/>.

alienage, citizenship, military or veteran status, pregnancy, or status as a victim of domestic violence/stalking/sex offenses, or any other legally prohibited basis in accordance with federal, state and city laws.

The conduct of SJP, and CUNY's reluctance to take any action to deter such further conduct, clearly satisfy the Manual's definitions of discrimination and harassment. Discrimination is:

treating an individual differently or less favorably because of his or her protected characteristics—such as race, color, religion, gender, national origin, or any of the other bases prohibited by this Policy.<sup>15</sup>

Harassment is a form of discrimination that consists of:

unwelcome conduct based on a protected characteristic that has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile or abusive work or academic environment. Such conduct can be spoken, written, visual, and/or physical.<sup>16</sup>

This policy covers prohibited harassment based on all protected characteristics other than sex.

Additionally, the University's inaction may open it up to liability under § 8-602 of the New York City Administrative code, which allows for civil actions to enjoin discriminatory harassment:

a) Whenever a person interferes by threats, intimidation or coercion or attempts to interfere by threats, intimidation or coercion with the exercise or enjoyment by any person of rights secured by the constitution or laws of the United States, the constitution or laws of this state, or local law of the city and such interference or attempted interference is motivated in whole or in part by the victim's actual or perceived race, creed, color, national origin, gender, sexual orientation, age, whether children are, may or would be residing with such victim, marital status, partnership status, disability, or alienage or citizenship status as defined in chapter one of this title, the corporation counsel, at the request of the City Commission on Human Rights or on his or her own initiative, may bring a civil action on behalf of the city for injunctive and other appropriate equitable relief in order to protect the peaceable exercise or enjoyment of the rights secured....<sup>17</sup>

Applicable federal law similarly protects against this type of discriminatory conduct. The Equal Protection Clause of the Fourteenth Amendment to the Constitution provides that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws."<sup>18</sup> The Equal Protection Clause requires state officials to treat an individual in the same manner as others

---

<sup>15</sup> The City University of New York Policy on Equal Opportunity and Non-Discrimination, CUNY, 1.

<sup>16</sup> *Id.* At 1–2.

<sup>17</sup> N.Y.C. Admin. § Code 8-602.

<sup>18</sup> U.S. CONST. amend. XIV, § 1.

similarly situated. Pursuant to 42 U.S.C. § 1983, government officials may also be held personally liable for denying a person equal protection of the laws.<sup>19</sup>

In addition, Title VI of the federal Civil Rights Act of 1964, 42 U.S.C. § 2000(d) provides:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.<sup>20</sup>

CUNY has a legal obligation to prevent unlawful discrimination by its employees and staff.<sup>21</sup> The BDS Resolution, which calls for members of the CUNY system, including adjuncts and student employees, to engage in invidious discrimination, opens up CUNY to potential liability under the state and federal laws identified above.

In addition, Section 1324b of the Immigration and Nationality Act prohibits employers from intentional employment discrimination “based upon citizenship or immigration status, national origin, and unfair documentary practices,” while Executive Order 11246, as amended, prohibits discrimination in employment by all institutions with federal contracts and requires affirmative action to ensure equal employment opportunities.

### **The DSC BDS Resolution**

The DSC BDS Resolution is just another instance of anti-Semitic action on campus. It is worth noting that a previous attempt to pass this type of boycott resolution failed in October 2014. The vote had been scheduled for a Friday night in September, but was eventually postponed out of respect for Sabbath-observant Jews. This time, perhaps taking a lesson from SJP’s pattern of staging its anti-Semitic events on Jewish holidays, the vote for an academic boycott nonetheless took place on Friday evening, excluding observant Jews (often those most visible and targeted for abuse) and disregarding vocal protests.

This call for an academic boycott stifles academic freedom and intellectual engagement. Over 250 universities and colleges have condemned the academic boycott,<sup>22</sup> and the Association of American Universities (AAU) has urged scholars around the world who believe in academic freedom to oppose the boycott.<sup>23</sup> The American Association of University Professors opposed

---

<sup>19</sup> *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 257 (2009). See also *Hafer v. Melo*, 502 U.S. 21, 25 (1991) (confirming that state government employees may be sued in their individual capacities pursuant to 42 U.S.C. § 1983 for action taken under color of state law that causes the deprivation of a federal right) (relying on *Kentucky v. Graham*, 473 U.S. 159, 166 (1985)).

<sup>20</sup> 42 U.S.C. § 2000(d).

<sup>21</sup> “[I]t is when execution of a government’s policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983.” *Monell v. Dep’t of Soc. Servs. of the City of New York*, 436 U.S. 658, 694 (1978)

<sup>22</sup> See *List of Universities rejecting academic boycott of Israel*, LEGAL INSURRECTION (December 22, 2013), <http://legalinsurrection.com/2013/12/list-of-universities-rejecting-academic-boycott-of-israel/>.

<sup>23</sup> *AAU Statement on Boycott of Israeli Academic Institutions*, ASSOCIATION OF AMERICAN UNIVERSITIES (Dec. 20, 2013), <http://www.aau.edu/WorkArea/downloadAsset.aspx?id=14859>.

academic boycotts since 2005.<sup>24</sup> Similarly, the American Federation of Teachers recently opposed the boycott stating that it “not only fl[ies] in the face of the principles of academic freedom that protect and enhance the integrity of scholarly work, but also stifle[s] the intellectual and democratic engagements through which the solutions to our world’s most difficult problems spring.”<sup>25</sup>

While the DSC insists that the boycott “targets institutions based on their political ties,” not on national origin,<sup>26</sup> the BDS call for academic boycotts makes clear that it attributes Palestinian oppression to Israeli *individuals*, not merely institutions.<sup>27</sup>

As it relates to this particular Resolution, the University should also be aware that New York State Senate Bill S6378<sup>28</sup> prohibits the state from “contracting with, or state investment in businesses or individuals that promote or engage in activities to boycott, sanction, or divest in Israel and other American allied nations.” According to the bill’s sponsors, this is to “prevent the state from becoming unwilling participants in a discriminatory agenda.”<sup>29</sup>

It is also worth noting that the DSC is affiliated with the Adjunct Project, a resource center for Graduate Center Student Workers and CUNY adjuncts.<sup>30</sup> The consequences of any boycott would be grave for Israelis working and studying alongside other DSC members, subjecting them to scrutiny, reprisals, and retaliation merely because of their national origin or the national origin of their sponsors or affiliates. Because the implementation of the BDS Resolution would result in violation of numerous CUNY policies, as well as state and federal nondiscrimination laws, and aside from the fact that it could end up forcing the University to cut any and all funding to the DSC, CUNY administrators also have an obligation to ensure that all CUNY employees, including student employees serving in such roles as tutors, researchers, and teaching assistants, do not take part in such discriminatory conduct in the course of their official duties.

In addition to all of the above, the BDS Resolution stands in direct contrast to the professed moral and ethical standards of the CUNY system:

---

<sup>24</sup> See American Association of University Professors, *On Academic Boycotts*, <http://aaup.org/report/academic-boycotts>.

<sup>25</sup> Press Release, *AFT’s Weingarten on American Studies Association’s Boycott Decision*, AMERICAN FEDERATION OF TEACHERS (December 13, 2013), <http://www.aft.org/press-release/afts-weingarten-american-studies-associations-boycott-decision#sthash.ySqGsu8g.dpuf>.

<sup>26</sup> *FAQ*, Academic Boycott of Israel at CUNY, <https://cunyboycott.wordpress.com/faq/> (last visited Apr 19, 2016).

<sup>27</sup> *Academic Boycott*, BDS MOVEMENT, <http://www.bdsmovement.net/activecamps/academic-boycott> (last visited November 14, 2014) (explaining that while the Palestinian Campaign for Academic and Cultural Boycott of Israel (PACBI)-inspired calls for boycott “consistently target institutions, not individuals,” the BDS Call is much “wider”).

<sup>28</sup> 2015 New York Senate Bill No. 6378, New York Two Hundred Thirty-Eighth Legislative Session, 2015 New York Senate Bill No. 6378, New York Two Hundred Thirty-Eighth Legislative Session.

<sup>29</sup> *Senate Passes Bill Supporting Israel and Other U.S. Allies Targeted by Boycotts*, The New York State Senate (Jan. 21, 2016), <https://www.nysenate.gov/newsroom/press-releases/senate-passes-bill-supporting-israel-and-other-us-allies-targeted-boycotts>.

<sup>30</sup> *About Us*, CUNY Adjunct Project, <http://cunyadjunctproject.org/about-2/>.

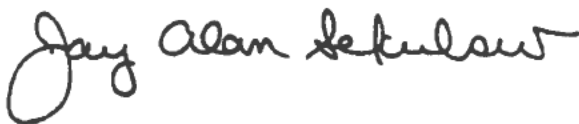
The tradition of the university as a sanctuary of academic freedom and center of informed discussion is an honored one, to be guarded vigilantly. The basic significance of that sanctuary lies in the protection of intellectual freedoms; the rights of professors to teach, of scholars to engage in the advancement of knowledge, of students to learn and to express their views, free from external pressures or interference. These freedoms can flourish only in an atmosphere of mutual respect, civility and trust among teachers and students, only when members of the university community are willing to accept self-restraint and reciprocity as the condition upon which they share in its intellectual autonomy.

Academic freedom and the sanctuary of the university campus extend to all who share these aims and responsibilities. They cannot be invoked by those who would subordinate intellectual freedom to political ends, or who violate the norms of conduct established to protect that freedom. Against such offenders the university has the right, and indeed the obligation, to defend itself.<sup>31</sup>

In light of the foregoing, we the undersigned urge the administration of the City University of New York to defend itself, and to take all necessary steps to protect itself against legal liability that would flow from the adoption and implementation of activities in support of the BDS movement, such as the Resolution. Further, we are resolved to take all appropriate legal action in the event that any student or faculty member suffers from related discriminatory behavior.

We appreciate the fact the school has already come out strongly against the actions of the DSC,<sup>32</sup> but it is necessary to do more to return the campuses to a non-harassing, non-discriminatory environment, including conducting full and thorough investigations of the incidents described herein (and any that may follow) and imposing disciplinary measures where appropriate. At the very least, in order to protect itself from legal liability, CUNY leadership should issue a public statement explicitly reiterating the prohibition against any person, in his/her capacity as a CUNY employee, from taking any action in furtherance of the Resolution.

Respectfully,



Jay Alan Sekulow  
*Chief Counsel*


---

<sup>31</sup> RULES AND REGULATIONS FOR THE MAINTENANCE OF PUBLIC ORDER PURSUANT TO ARTICLE 129A OF THE EDUCATION LAW


<sup>32</sup> see <http://www1.cuny.edu/mu/forum/2016/04/15/statement-by-chancellor-james-b-milliken-on-a-graduate-center-student-council-resolution-calling-for-a-boycott-of-israeli-academic-institutions/>



*Yael Mazar*

Yael Mazar  
Director of Legal Affairs  
StandWithUs  


*Kenneth L. Marcus*

Kenneth L. Marcus  
President and General Counsel  
Louis D. Brandeis Center for Human Rights Under Law  


Cc: U.S. Attorney General Loretta Lynch  
U.S. Senator Chuck Schumer  
U.S. Senator Kirsten Gillibrand  
U.S. Senator Lamar Alexander  
U.S. Senator Patty Murray  
U.S. Congresswoman Yvette Clarke  
U.S. Congressman Dan Donovan  
U.S. Congressman Hakeem Jeffries  
U.S. Congresswoman Carolyn Maloney  
U.S. Congressman Jerrold Nadler  
U.S. Congressman John Kline  
U.S. Congressman Robert C. Scott  
U.S. Congresswoman Virginia Foxx  
U.S. Congressman Ruben Hinojosa  
Governor Andrew M. Cuomo  
New York Attorney General Eric Schneiderman  
New York Senator Jack Martins  
New York Senator Simcha Felder  
New York Senator Kenneth P. LaValle  
New York Assemblyman Dov Hikind  
Mayor Bill de Blasio  
Dr. Karen L. Gould, President of Brooklyn College

Dr. William J. Fritz, President of the College of Staten Island  
Ms. Jennifer J. Raab, President of Hunter College  
Mr. Jeremy Travis, President of John Jay College