No. 26-5057

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RAMSI A. WOODCOCK

Plaintiff-Appellant,

- v. -

UNIVERSITY OF KENTUCKY; ELI CAPILOUTO, IN HIS OFFICIAL AND INDIVIDUAL CAPACITIES; ROBERT DIPAOLA, IN HIS OFFICIAL AND INDIVIDUAL CAPACITIES; WILLIAM EUGENE THRO, IN HIS OFFICIAL AND INDIVIDUAL CAPACITIES; JAMES C. DUFF, IN HIS OFFICIAL AND INDIVIDUAL CAPACITIES; LINDA MCMAHON, IN HER OFFICIAL CAPACITY AS UNITED STATES SECRETARY OF EDUCATION; RUSSELL MATTHEW COLEMAN, ATTORNEY GENERAL

Defendants-Appellees.

On Appeal from the United States District Court
for the Eastern District of Kentucky at Lexington
(Docket No. 5:25-cv-00424-DCR)

RESPONSE TO BRANDEIS CENTER'S MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

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INTRODUCTION

Plaintiff-Appellant Ramsi A. Woodcock ("Plaintiff") is Wyatt, Tarrant, and Combs Professor of Law at University of Kentucky Rosenberg College of Law. In July 2025, Defendants-Appellees Eli Capilouto (president), Robert DiPaola (provost), William Thro (general counsel), and James C. Duff (law dean) (collectively, the "University") suspended Plaintiff, banned him from the law building, and initiated a hostile environment investigation in response to Plaintiff's pro-Palestine speech at conferences at other schools and in online discussion groups for law professors hosted by the Association of American Law Schools. Pl. Br. 21, 25, Dkt. 50. There had been no complaints about Plaintiff by any member of the faculty or any student at the University of Kentucky. Pl. Br. 21–22. The Kentucky Attorney General intervened to defend the constitutionality of a Kentucky law that requires universities in the state to adopt the IHRA definition of antisemitisim, which, *inter alia*, treats "claiming that the existence of a State of Israel is a racist endeavor" as antisemitic. AG Resp. 2, 29–31, Dkt. 55; Am. Compl. ¶ 24, R. 36,PageID# 1621.

The district court abstained under *Younger* and denied Plaintiff's motion for a preliminary injunction on that basis. PI Order, R. 37,PageID## 1771, 1798. Plaintiff appealed on the ground, *inter alia*, that *Younger* abstention was not appropriate because the University was seeking to enforce rules that are flagrantly

unconstitutional because they incorporate the IHRA definition. Pl. Br. 66–67, Dkt. 50. On April 30, 2026, Louis D. Brandeis Center for Human Rights Under Law (the "Brandeis Center"), a pro-Israel nonprofit that is distinct from the university in Massachusetts and the law school in Louisville, filed a motion for leave to file an amicus brief in support of the University. Amicus Mot., Dkt. 60.

Plaintiff opposes that motion because the amicus brief is an attempt to circumvent length limits on the University's brief, adds nothing to the University's arguments, does not describe an adequate interest in this litigation, and is an attempt to flaunt the position of an interest group that is not frank about its interest in the case and which, based on comments made by its chairman, may be pursuing a strategy of promoting baseless investigations of pro-Palestine speech.

ARGUMENT

"[P]articipation as an amicus to brief . . . as a friend of the court [is] a privilege within the sound discretion of the courts[.]" *United States v. State of Michigan*, 940 F. 2d 143, 165 (6th Cir. 1991) (cleaned up). It is a matter of "judicial grace" that is not granted by "rote". *National Organization for Women, Inc. v. Scheidler*, 223 F. 3d 615, 616–17 (7th Cir. 2000). Fed. R. App. P. 29(a)(3) suggests that courts should consider "interest", "relevan[ce]", and "desirab[ility]" in evaluating a motion for leave to file an amicus. Courts have looked to whether the brief (1) appears intended to circumvent length limitations in the parties'

principal briefs, (2) adds anything of consequence to the litigation, or (3) would inject interest group politics into a judicial proceeding. *Voices for Choices v. Illinois Bell Telephone Co.*, 339 F. 3d 542, 544 (7th Cir. 2003); *In re Halo Wireless, Inc.*, 684 F. 3d 581, 596 (5th Cir. 2012). In considering whether an amicus has an adequate interest in the case, they have considered whether the party to be supported lacks adequate representation, whether the operation of stare decisis or res judicata would affect the position of the amicus in another case, and whether the amicus has a unique perspective to offer the court. *Scheidler*, 223 F. 3d at 617.

A. The Amicus Brief Is an Impermissible Attempt to Circumvent Length Limitations on the University's Principal Brief

A court may decline to accept an amicus brief where it is "used to make an end run around court-imposed limitations on the length of parties' briefs[.]" *Voices for Choices v. Illinois Bell Telephone Co.*, 339 F. 3d 542, 544 (7th Cir. 2003).

There is evidence of such an intent here because, in its response brief, the University states that it "adopts and incorporates all arguments made by . . . the amicus". Univ. Resp. 53 n.194, Dkt. 58. The incorporation is not valid because a brief must contain the appellee's "contentions and the reasons for them" and federal rules authorize "adopt[ion] by reference" only of arguments contained in the briefs of other appellees. Fed.R.App.P. 28(a)(8)(A), 28(b), 28(i). But if the University had in consequence directly reproduced the text of the amicus brief in

its own principal brief, the University's brief would have exceeded the 13,000-word limit for principal briefs by more than 2,000 words. Fed.R.App.P. 32(a)(7)(B)(i); Univ. Resp. 53 (certifying that its principal brief is 10,112 words in length); Amicus Br. 29, Dkt. 61 (certifying that its principal brief is 5,162 words in length). The University's incorporation by reference of the amicus brief is therefore properly understood as a failed attempt to circumvent length limits on the University's principal brief.

It is unlikely that the attempt to skirt length limitations in this case was inadvertent. Attorneys practicing before this Court are required to "personally read and verif[y]" "any citations" in any "brief, pleading, motion, or any other paper filed" in this Court on pain of sanction under Fed. R. App. P. 38. *Whiting v. City of Athens*, No. 24-5918, slip op. 6–7 (March 13, 2026). Because counsel for the University apparently believed that the University's adoption of the Brandeis Center's arguments would be legally effective, counsel for the University must have "personally read and verified" the amicus brief before filing its response in order to ensure that the citations contained therein were correct. Thus, counsel would have been familiar with the text of the amicus brief and would have known that it was too long to be reproduced in the University's principal brief. The inference of an intent to circumvent length limitations follows immediately, particularly in light of the fact that "amicus briefs are often used as a means of

evading the page limitations on a party's briefs". *Glassroth v. Moore*, 347 F. 3d 916, 919 (11th Cir. 2003).

"[C]ircumvent[ion of the] page limitations on the parties' briefs . . . prejudice[s] . . . any party who does not have an amicus ally", such as Plaintiff in this case. *Scheidler*, 223 F. 3d at 617. At present, Plaintiff does not have an "amicus ally". Charles Thomason has filed a motion for leave to file an amicus in support of Plaintiff, but Plaintiff did not consent to the filing of that brief. Thomason Mot. 1, Dkt. 52.

The prejudice is magnified in this case because the Attorney General also filed a response brief and the University incorporated all arguments in that brief into its own pursuant to Fed. R. App. P. 28(i). Univ. Resp. 53 n.194, Dkt. 58. The Attorney General claims that his "only interest in this appeal is defending Kentucky's law" adopting the IHRA definition of antisemitism, which happens to be the same issue to which the Brandeis Center devotes its entire brief. AG Resp. 11, Dkt. 55; Amicus Br. ii, Dkt. 61. It follows that, even without the amicus brief, the University stood to benefit from an additional 13,000 words in the Attorney General's principal brief, above and beyond the 13,000 words allowed for its own principal brief, that were earmarked exclusively for discussion of the same subject as that of the amicus brief. By contrast, Plaintiff's reply brief was limited to 6,500 words to be devoted to responding to *all* of the issues raised by the University and

the Attorney General, of which the question of the IHRA definition constitutes but a small part. Fed.R.App.P. 32(a)(7)(B)(ii); AG Resp. 30 (stating that Plaintiff's principal brief "barely mentions" the Kentucky law adopting the IHRA).

The Brandeis Center claims that the University's attempt to incorporate the amicus brief by reference is a "separate issue" "not relevant" to the question whether the Court should grant Brandeis Center leave to file. Amicus Mot. 4, Dkt. 60. But the attempt to incorporate the amicus brief by reference is evidence of intent to circumvent the word limit. And that in turn speaks directly to the "interest", "relevance", and "desirability" of granting leave to file an amicus motion pursuant to Fed. R. App. P. 29(a)(3). In light of the foregoing, this Court should deny the motion because it "merely extend[s] the length of the [University]'s brief." *Ryan v. Commodity Futures Trading Com'n*, 125 F. 3d 1062, 1063 (7th Cir. 1997).

B. The Amicus Brief Does Not Add Anything Consequential to the Court's Consideration of the Case and Raises Two Issues Waived or Forfeited by the University Because They Were Not Raised on Appeal

If an amicus brief does not "add[] anything consequential to [the Court's] consideration of th[e] case", the Court should "strike" it. *Halo Wireless*, 684 F. 3d at 596. "[J]udges have heavy caseloads and therefore need to minimize extraneous reading" and "it would not be responsible for [the Court] to permit the filing of a

brief and then not read it (or at least glance at it, or require . . . law clerks to read it)[.]" *Voices for Choices*, 339 F. 3d at 544; *Scheidler*, 223 F. 3d at 616.

The proposed amicus does not "add[] anything consequential" to the Court's consideration of the case. The amicus does four things: (1) it provides background information on the IHRA definition, Amicus Br. 5–15, Dkt. 61, and it argues that (2) "[e]valuating speech to determine intent is entirely permissible", *id*. at 16–18 (3) rules incorporating the IHRA definition "include express guardrails to protect free speech", *id*. at 18–20, and (4) it is "simply wrong" to assert that "courts around the country have held that the IHRA definition violates the first amendment", *id.* at 20–22. (The brief recapitulates these points in a final section on university of Kentucky's policies. *Id*. at 22–27.) The first and third issues "essentially . . . cover the same ground" as the parties' response briefs. *Voices for Choices*, 339 F. 3d at 545. And this Court may not consider the second and third issues because they represent new issues that were forfeited or waived by the parties because they were not briefed in the parties' responses. *See Cellnet Comm'cns, Inc. v. FCC*, 149 F. 3d 429, 443 (6th Cir. 1998).

The background information provided by the amicus and the argument that the IHRA includes guardrails "contain a few additional citations not found in the parties' briefs and slightly more analysis on some points, [but] essentially they cover the same ground" as the brief of the Attorney General that the University's

brief incorporates by reference pursuant to Fed. R. App. P. 28(i). *Voices for Choices*, 339 F. 3d at 545. Like the amicus brief, the Attorney General discusses the policies underpinning the state's adoption of the IHRA definition, AG Resp. 2–3, 8–11, Dkt. 55, and argues that the IHRA functions merely as "guidance while also respecting the First Amendment", AG Resp. 29–31, Dkt. 55. The additional citations are links to a couple of law review articles (one published by the Brandeis Center's founder), a few newspaper articles, and publicly available and widely reported advocacy documents produced by Zionist activists or organizations like the Anti-Defamation League. The Attorney General or the University could easily have identified these sources if they had wished to do so. And the perspectives they provide are identical. *Compare* AG Resp. 8 ("incidents of antisemitism . . . have reached records highs") *with* Amicus Br. 6, Dkt. 61 (stating that "anti-Semitism" is "resurgen[t]"). The sources do not provide "a unique perspective or specific information that can assist the court beyond what the parties can provide." *Voices for Choices*, 339 F. 3d at 545.

The other two issues raised by the amicus brief—that "[e]valuating speech to determine intent is entirely permissible", Amicus Br. 16–18, Dkt. 61, and it is "simply wrong" to assert that "courts around the country have held that the IHRA definition violates the first amendment", *id*. at 20–22—were "not included in" the University or the Attorney General's "opening brief[s] before this court, so [they]

are forfeited." *In re Isaacs*, 895 F. 3d 904, 917 (6th Cir. 2018). "While an amicus may offer assistance in resolving issues properly before a court, it may not raise additional issues or arguments not raised by the parties." *Cellnet*, 149 F. 3d at 442. "Otherwise, outside parties could hijack litigation quite easily." *Self-Insurance Institute of America v. Snyder*, 827 F. 3d 549, 560 (6th Cir. 2016). Accordingly, "[t]o the extent that the amicus raises issues or make[s] arguments that exceed those properly raised by the parties, [this Court] may not consider such issues." *Cellnet*, 149 F. 3d at 443.

The University and the Attorney General raised only three issues in response to Plaintiff's argument in his principal brief that application of the IHRA to Plaintiff's speech is unconstitutional. The first was that the constitutionality of rules incorporating the IHRA "could come into play only if [the University] decides to discipline" Plaintiff. AG Resp. 30, Dkt. 55. The second was that the rules in question incorporate the IHRA definition as mere "guidance" and "respect[] the First Amendment" because they contain clauses stating that "institutions shall adhere to the First Amendment" and suggest that criticism of Israel is permissible so long as it is "similar to that leveled against any other country". AG Resp. 30–31, Dkt. 55. The third was that the University's "need to investigate does not rise or fall on the constitutionality of the IHRA" because there are "multiple bases for [the] investigation", including violations of technology

resources policies that are unrelated to the IHRA. Univ. Resp. 33, Dkt. 58. None of these three issues comes close to the amicus brief's contention that the IHRA definition is insulated from First Amendment attack because it serves only to aid in identifying evidence of intent to harass. And neither comes close to the amicus's contention that it is "simply wrong" to claim that the many cases cited by Plaintiff establish that the IHRA is unconstitutional. Indeed, neither the University nor the Attorney General even cites, much less discusses, *Wisconsin v. Mitchell*, which is the key Supreme Court case put forth by the amicus in support of its contention that the First Amendment does not cover evidence of intent. 508 U.S. 476 (1993); Amicus Br. 17, Dkt. 61. And neither the University nor the Attorney General cites, much less discusses, *any* of the cases that Plaintiff contends establish the unconstitutionality of the IHRA definition. Pl. Br. 66, Dkt. 50; PI Memo, R. 19-1,PageID## 206, 210–11.

Shoemaker v. City of Howell, which the Brandeis Center cites in its motion, supports the view that the issues regarding First Amendment protection for intent evidence and whether courts around the country have invalidated rules applying the IHRA definition were not raised by the parties. 795 F. 3d 553 (6th Cir. 2015); Amicus Mot. 3. In *Shoemaker*, the plaintiff brought a due process challenge to a city ordinance requiring him to cut his grass. *Shoemaker*, 795 F. 3d at 553, 558. The court applied the *Matthews* factors, which the court recognized as being "fluid

and fact dependent", to conclude that process had been adequate. *Id*. at 559–63. The city apparently argued that two *Matthews* due process factors—the severity of the deprivation and the risk of erroneous deprivation—counseled in favor of the city and the court agreed. *Id*. at 561. Amici argued that a third factor—whether additional process would add value—also favored the city because both city ordinance and state law already provided for predeprivation review of penalties. *Id*. at 561–62. The court rejected the plaintiff's argument that the court's consideration of the amici's arguments regarding the third factor was inappropriate because the city had not raised the availability of predeprivation review in its principal brief. *Id*. The court held that the amici "simply augmented" the city's position "[r]ather than raising new issues or arguments." *Id*. at 562.

The amicus's arguments in this case about intent and the holdings of past cases considering the IHRA definition do not "simply augment[]" arguments made by the University or the Attorney General. Unlike in *Shoemaker*, they do not propose to add an additional finger to the scale in a "fluid and fact dependent" multi-factor test such as the *Matthews* test that was itself raised and argued by the parties in their principal briefs. *Id*. at 559. Instead, they propose a completely new line of constitutional defense based on the inapplicability of the First Amendment to intent that was not briefed by the parties. And they challenge Plaintiff's

interpretation of the holdings of roughly half a dozen cases that are not cited much less discussed in either the University or Attorney General's response briefs.

The amicus's new issues are like the new issue advanced by the amici in *In re Isaacs*, which this Court held had been forfeited because the parties had not raised them in their principal briefs. 895 F. 3d 904, 917 (6th Cir. 2018). In that case, a bankrupt challenged a mortgage lien on her home on the ground that the mortgage had not attached or had not been validly recorded. *Id.* at 907. Amici suggested the alternative avenue of attack of challenging the mortgage as a preferential transfer. *Id*. at 917. This Court ruled that the argument could not be considered because it had not been raised by the parties. *Id*. As in this case, the amici's argument in *In re Isaacs* shared with those of the bankrupt the same target (there the enforceability of a mortgage, here the constitutionality of the IHRA definition). But, as in this case, the amici in *In re Isaacs* improperly wished to rely on an entirely new set of doctrines (there doctrines concerning preferential transfers, here doctrines excluding intent evidence from First Amendment protection and interpretating caselaw regarding the constitutionality of the IHRA definition) to hit the target. *Shoemaker* is unlike both *In re Isaacs* and this case in that the amici in *Shoemaker* wished only to "augment[]" application of a doctrine that had already been raised and discussed by the parties (the *Matthews* test). That is why *Shoemaker* reached a different result. *Shoemaker*, 795 F. 3d at 562.

The University and the Attorney General "ma[d]e certain strategic decisions concerning what material to include in [their] opening brief[s], and [they] affirmatively chose not to include" issues relating to the law of intent evidence under the First Amendment and the interpretation of precedents evaluating the IHRA definition. *Medtronic, Inc. v. Teleflex Life Sciences Ltd.*, 86 F. 4th 902, 907 (Fed. Cir. 2023). The Attorney General's focus on the precise question that interests the Brandeis Center, the University's incorporation of the Attorney General's brief into its own, and the fact that the Attorney General had ample space to argue additional points in his response brief because he left roughly 5,500 words out of his 13,000 allotment unused, further supports the inference of intent to relinquish these issues. AG Resp. 33, Dkt. 55; Fed.R.App.P. 32(a)(7)(B)(i).

Because two of the four issues raised by the amicus were forfeited or waived by the parties, and the other two "essentially . . . cover the same ground" as the principal briefs of the University and the Attorney General, the amicus does not "add[] anything consequential" to the Court's consideration of the case and this Court should deny leave to file it. *Halo Wireless*, 684 F. 3d at 596; *Voices for Choices*, 339 F. 3d at 545.

C. The Brandeis Center Does Not Have an Adequate Interest in this Case

The Seventh Circuit has refused to find an adequate interest in litigation sufficient to justify amicus participation unless "(1) a party is not adequately represented (usually, is not represented at all)", (2) "the would-be amicus has a direct interest in another case, and the case in which he seeks permission to file an amicus curiae brief may, by operation of stare decisis or res judicata, materially affect that interest", or "(3) the amicus has a unique perspective, or information, that can assist the court of appeals beyond what the parties are able to do." *Scheidler*, 223 F. 3d at 617.

None of these factors is satisfied here. The Brandeis Center writes in support of the University and the Attorney General. Amicus Mot. 1, Dkt. 60. The University and the Attorney General are adequately represented. The University is the largest university in Kentucky.[1] It is represented by outside counsel and incorporates by reference a response brief authored by the Kentucky Attorney General. Univ. Resp. 53 n.194, Dkt. 58. The Kentucky Attorney General is the "chief law officer of the Commonwealth of Kentucky". Ky. Rev. Stat. Ann. § 15.020. In its motion, the Brandeis Center does not allege that it has a direct

[1] Matthew Mueller, *University of Kentucky Reports Record Enrollment*, Lexington Herald Leader (Sep. 13, 2024), https://www.kentucky.com/news/local/education/article292364289.html.

interest in any case that might be materially affected, by operation of stare decisis or res judicata, by the disposition of the present case. The Brandeis Center alleges only that it has a general interest in "advance[ing] the civil and human rights of the Jewish people and [in] promot[ing] justice for all", that Plaintiff's challenge to the IHRA definition would affect "policies to combat anti-Semitism on college campuses," and that the amicus can provide "context." Amicus Mot. 1–3, Dkt. 60. These are at best abstract interests.

Finally, as described above, the amicus does not offer a "unique perspective" "that can assist the court of appeals beyond what the parties are able to do". *Scheidler*, 223 F. 3d at 617. The lack of an adequate interest is particularly apparent in this case because, as the Attorney General acknowledged, Plaintiff's appellate brief "barely mentions" the IHRA definition. AG Resp. 30, Dkt. 55. The likelihood that reversal of the district court's abstention order will turn on the IHRA is correspondingly slight—and any interest of the Brandeis Center in the outcome equally so.

D. The Amicus Brief Serves Only Inappropriately to Inject Interest Group Politics into the Federal Appellate Process

An amicus may not "attempt[] to inject interest-group politics into the federal appellate process by flaunting the interest of a . . . group in the outcome of an appeal." *Scheidler*, 223 F. 3d at 617. "The fact that powerful . . .

organizations . . . oppose an appeal is a datum that is irrelevant to judicial decision making". *Voices for Choices*, 339 F. 3d at 544–45. Amicus briefs should not "serve as a show of hands on what interest groups are rooting for what outcome." *Prairie Rivers Network v. Dynegy Midwest Gen., LLC*, 976 F. 3d 761, 763 (7th Cir. 2020). General principles of equity further counsel against granting leave to file an amicus by a flaunter of interest group politics that is less than "frank and fair with the court" about the interest that it purports to represent or has acted in a manner that is "offensive" to the "dictates of natural justice." *Keystone Driller Co. v. General Excavator Co.*, 290 U.S. 240, 244–45 (1933). In that case "the doors of the court [should] be shut against [the group] *in limine*[.]" *Id*. at 245.

The Brandeis Center's brief serves only to "announce the 'vote' of" the Brandeis Center against Plaintiff and his appeal because, as argued above, the Brandeis Center lacks both an adequate interest in this appeal and its brief contributes nothing of consequence to the case. *Voices for Choices*, 339 F. 3d at 545. But, unlike in "the legislative" process, in "judicial processes" such as this one, interest groups such as Brandeis Center "have no vote." *Id*. The Court's interest in preventing Brandeis Center from injecting interest-group politics into this appeal is heightened in this case because the dean of the law school provided uncontroverted testimony that the University initiated the investigation, suspension, and ban that Plaintiff challenges in response to pressure from what he

called "outside interests." Hearing Tr., R. 40,PageID# 1980:11–19. Given the Brandeis Center's self-described "specific[]" "focus" on "college and university campuses", as well as the Brandeis Center's role as the nation's largest single filer of purported antisemitism complaints against universities, it is possible that the Brandeis Center was one of the "outside interests" that pressured the University to violate Plaintiff's constitutional rights in the first place. Amicus Br. 1, Dkt. 61; Middle East Studies Association & American Association of University Professors, *Discriminating against Dissent: The Weaponization of Civil Rights Law to Repress Campus Speech on Palestine* 10–13 (Nov. 2025), https://www.aaup.org/sites/default/files/2025-11/Discriminating-Against-Dissent_0.pdf (describing Brandeis Center as "the most prolific" "Zionist and right-wing advocacy organization[]" "driving the growth of antisemitism investigations") [hereinafter AAUP Report].

The Court's interest in preventing Brandeis Center from injecting interest-group politics into this appeal is heightened by Brandeis Center's failure to be "frank and fair with the court" about the interest that it purports to represent. *Keystone Driller*, 290 U.S. at 244. The Brandeis Center purports to "seek to advance the civil and human rights of the Jewish people" but its brief and history make clear that its interest is in advancing the goals of the subset of Jewish people who subscribe to the nationalist ideology known as "Zionism" and support its

manifestation in a state that experts have concluded is committing genocide.[2] Amicus Br. 1, Dkt. 61. That is clear from the examples discussed in the brief and the authorities upon which the brief relies. At one point, the brief lists as an example of antisemitism that "Jewish students have been barred from common areas for refusing to disavow the State of Israel." Amicus Br. 11, Dkt. 61. But the case to which it cites establishes only that "people who supported the existence of the state of Israel were kept out of [an] encampment." *Frankel v. Regents of University of California*, 744 F. Supp. 3d 1015, 1021 (C.D. Cal. 2024). Thus, any Jews who were excluded were not excluded *as Jews* but rather *as Zionists*. And the encampments considered by the court were organized in part by antizionist Jews, some of whom actively worked to exclude Zionist Jews. *"Are You a Zionist?" Checkpoints at UCLA Encampment Provoked Fear, Debate among Jews,* Los Angeles Times (May 9, 2024), *https://www.latimes.com/california/story/2024-05-09/are-you-a-zionist-checkpoints-at-ucla-encampment-provoked-debate-among-jewish-students*. (stating that "[s]ome of the Jewish students who took part in the encampment played a role in excluding Zionists"). Accordingly, this incident would not be of interest to an organization seeking to defend the rights of the "Jewish people" as a general matter, since Jews were not targeted *as Jews*.

[2] *Israel Committing Genocide in Gaza, World's Leading Experts Say*, BBC (Sep. 1, 2025), https://www.bbc.com/news/articles/cde3eyzdr63o.

Opposition to a political ideology adopted by some members of a religious group is hardly evidence of discriminatory intent. But an organization interested in defending Zionism would be interested in condemning such an event. Moreover, the fact that the Brandeis Center considers the exclusion of Jews as Zionists to be antisemitic suggests that the Brandeis Center equates Jewishness with Zionism. By implication, Brandeis Center considers antizionist Jews not to be real Jews. This understanding of the Brandeis Center's position is reinforced by the text of a sermon by Rabbi Elliot Cosgrove that the Brandeis Center cites in its brief. Amicus Br. 10, Dkt. 61. Cosgrove declares that opposing New York mayoral candidate Zohran Mamdani, deemed by Cosgrove to be an "anti-Zionist", requires that Jews "prioritize their Jewish selves", thereby equating Zionism with Jewishness. Given that the Brandeis Center defends the interests only of Zionist Jews, the Brandeis Center is not being "frank and fair with the court" when it makes the claim to advocate for the rights of "the Jewish people" without qualification.

The Court's interest in preventing the Brandeis Center from injecting interest-group politics into this appeal is also heightened because the founder and chairman of the Brandeis Center has acted in a manner that is "offensive" to the "dictates of natural justice." Brandeis Center's "Founder, Chairman, and CEO",

Kenneth L. Marcus,[3] has suggested that he supports a strategy of encouraging groundless investigations—like the investigation at issue in this case—in order to chill pro-Palestine speech. He also has expressed an interest in transforming political debates about Israel on college campuses into legal issues. Pl. Br. 21, Dkt. 50.

Marcus is a longtime "pro-Israel activist" who used his position as head of the U.S. Department of Education's Office for Civil Rights (OCR) to issue a "dear colleague letter" in 2004 that extended protection under Title VI to Jewish people even though Title VI by its terms prohibits discrimination only on the basis of "race, color, or national origin", not religion. 42 U.S.C. § 2000d; AAUP Report 5. Within weeks of issuance of the letter, a Zionist organization filed an antisemitism complaint against University of California and Marcus "bypass[ed] standard procedure" to open an investigation. *Id*. at 5–6. Marcus then left government and founded Brandeis Center, which leveraged the new rule to start filing antisemitism complaints against universities. *Id*. at 7. After OCR dismissed some cases, Marcus wrote in the Jerusalem Post that "we are [nevertheless] having the effect we had set out to achieve" because "[t]hese cases – even when rejected – expose administrators to bad publicity." Kenneth L. Marcus, *Standing up for Jewish*

[3] Brandeis Center, *Brandeis Center's Founder and Chairman*, Brandeis Center (Jun. 5, 2023), https://brandeiscenter.com/founder-and-chairman/.

Students, The Jerusalem Post (Sep. 9, 2013), https://www.jpost.com/opinion/op-ed-contributors/standing-up-for-jewish-students-325648. And he argued that "by pursuing complaints through legal channels, we affirm that these are legal – not political – issues." *Id*. Brandeis Center went on to become the "most prolific" filer of antisemitism complaints with OCR. AAUP report 12–13.

CONCLUSION

For the reasons stated above, Professor Woodcock respectfully requests that this Court deny Brandeis Center's motion for leave to file an amicus brief.

May 11, 2026

Respectfully submitted,

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TYPE-VOLUME CERTIFICATION

Pursuant to Federal Rule of Appellate Procedure 32(g), Joe F. Childers hereby certifies that this motion complies with the type-volume limitation in Rule 26(d)(2)(A) because, as counted by the Microsoft Word word count tool, this motion contains 4,957 words, excluding the parts exempted by Rule 32(f). This motion complies with the typeface requirements in Rule 32(a)(5)(A) and the type-style requirements in Rule 32(a)(6) because this motion has been prepared in proportionally spaced 14-point Times New Roman font.

Dated: May 11, 2026

/s/ Rima Kapitan

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CERTIFICATE OF SERVICE

I certify that on May 11, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit using the CM/ECF system. I also certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Rima Kapitan

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