

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 DIPOLA, 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
(Docket No. 5:25-cv-00424-DCR)

**BRIEF OF AMICI CURIAE JVP ACTION, CRITICAL LEGAL
COLLECTIVE AND MIDDLE EAST STUDIES ASSOCIATION IN
SUPPORT OF PLAINTIFF-APPELLANT**

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CORPORATE DISCLOSURE STATEMENT

Amici Curiae JVP Action doing business as JVP, Critical Legal Collective and Middle East Studies Association make the following disclosures under the Sixth Circuit Rule 26.1:

Amici are not subsidiaries or affiliates of a publicly owned corporation. Amici are not publicly owned corporations, not parties to the appeal, and do not have a financial interest in the outcome of this case.

Dated: May 27, 2026

Respectfully submitted
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INTEREST OF AMICI CURIAE

Amici curiae JVP Action (“JVP”), Critical Legal Collective (“CLC”), and Middle East Studies Association (“MESA”) (collectively, “amici”) file this brief to address two issues: (1) Appellees’ and amicus The Brandeis Center’s position that criticism of Israel or Zionism is antisemitic, and (2) amicus The Brandeis Center’s argument that adopting the International Holocaust Remembrance Alliance’s (“IHRA”) redefinition of antisemitism to include antizionism and criticism of Israel remediates this antisemitism. Doc. 19.

I. Interests of JVP

JVP Action is one of the largest progressive Jewish organizations in the world. JVP has worked for over 25 years to mobilize Jewish communities to advocate for a just society in Palestine and Israel rooted in human rights rather than oppression, “equality rather than supremacy, dignity rather than domination, democracy rather than dispossession. A society where every life is precious.”¹ Made up of 720,000 members and supporters with chapters in nearly every state, JVP represents an important, sizeable and vocal minority Jewish viewpoint. Studies show a fifth to a third of American Jews share JVP’s viewpoint,² and 45%

¹ A Jewish Voice for Peace, Our Vision, available at <https://tinyurl.com/cemw6eb9>.

² Decl. of Stefanie Fox ¶ 3; Jewish Electorate Institute, November 2023 National Survey of Jewish Voters, Nov. 18, 2023, available at <https://tinyurl.com/cue2bp3e>; Jerusalem Center for Security and Foreign Affairs, Survey Among American Jews: Over 51% Support for Biden’s Decision to Withhold Arms Shipments to Israel, May 31, 2024, available at <https://tinyurl.com/2e4kdavk>.

of Jewish students believe Israel should not be a Jewish state or are undecided on the issue.³ Accordingly, JVP has a unique perspective and specific experience that can assist the Court beyond what the parties can provide.⁴

Amicus appears in support of Appellant's appeal and writes to situate this case in the broader context of the longstanding disagreements within the Jewish faith regarding Zionism and Israel.

As antizionist Jews who criticize Israel's policies, JVP believes "that [their] voices are needed because the Zionist movement and the state of Israel purport to speak for and act on behalf of all Jews."⁵ But "as Jews, [JVP] do[es] not believe that to be Jewish you must support Zionism."⁶ JVP has grave concerns that the Court will accept Appellant's and amicus The Brandeis Center's position that criticizing Israel and opposing Zionism are antisemitic. JVP is further concerned the Court will find that antizionism should properly be remediated by adopting the IHRA's newly manufactured definition of antisemitism to include antizionism or criticizing Israel. Should this Court accept that adopting the IHRA's redefinition effectively addresses antisemitism and that antisemitism includes antizionism, the Court would be redefining the Jewish faith. This ruling would force Jews to adopt

³ Eitan Hersh & Dahlia Lyss, Report to the Jim Joseph Foundation, A Year of Campus Conflict and Growth: An Over-Time Study of the Impact of the Israel-Hamas War on U.S. College Students, Sept. 2024, available at <https://tinyurl.com/mmxmj8x>.

⁴ Fox Decl.

⁵ *Id.* ¶ 4.

⁶ *Id.* ¶ 11.

a political ideology—Zionism—as part of their religious beliefs, and enshrine “do not criticize the nation-state of Israel” as a foundational religious belief in Judaism. In other words, this Court would be dictating who is and is not a Jew, what Jews are required to believe, and that criticism of a political ideology and nation-state is as heinous as hatred towards a religious group. Such a finding would render antizionist Jews as not being Jews at all and would dilute the protected classes that decades of precedent and lawmaking have defined.

Discriminating against one type of Jew in favor of another, here Zionist Jews over antizionist Jews, restricts Jews from practicing their religious beliefs by adopting a narrow view of what it means to be Jewish. It ignores facts and decades of history, and severely limits JVP members, supporters and anyone holding similar views from exercising their constitutional rights. JVP members are students and professors who oppose Israel’s treatment of Palestinians in Gaza and who would be directly impacted and whose speech would be chilled should the Court adopt this reasoning in its potential ruling.

II. Interests of CLC

The CL Collective, d/b/a/ Critical Legal Collective, is a group of scholars and activists who have come together to protect and advance critical studies in the wake of continuing attacks on critical knowledge and multiracial democracy. It builds partnerships, projects, and power to advance critical knowledge in education

and beyond, in pursuit of the promise of multiracial democracy with equal justice for all.

CLC has a significant interest in this case because its many scholars, benefit from and promote the free scholarly inquiry, teaching, and learning embodied in the promise of academic freedom under the First Amendment, including inquiries and debates about Zionism and Palestine. The university's policies in this case pose a direct threat to academic freedom because they discourage and restrict exploration and learning about these important and topical issues by incorporating the overly broad definition of antisemitism found in and as applied under the International Holocaust Remembrance Alliance definition. CLC urges the Court to enjoin the Defendant from applying its policy against the Plaintiff and to strike down the incorporation of the IHRA definition as part of the Defendant's anti-racism policies.

III. Interests of MESA

The Middle East Studies Association of North America, Inc. is a 501(c)(3) nonprofit membership scholarly association of faculty, students, and researchers interested in the study of the Middle East. MESA has an interest in defending the rights of its members who study, teach and conduct scholarship to speak and associate freely in ways informed by their study of the Middle East. MESA established its Committee on Academic Freedom ("CAF") decades ago to protect

our members' First Amendment rights. Dozens of colleagues in our field have faced significant infringements on their academic freedom as a result of speech on the question of Palestine, which is at issue in this case. MESA's CAF has written to the University of Kentucky in defense of Professor Woodcock's speech rights. Thus, MESA has a well-established interest in the protection of the First Amendment rights of scholars in the field of Middle East Studies similarly situated to Professor Woodcock, and in the robust constitutional protection of academic freedom.

INTRODUCTION

Long before the events of October 7, 2023, and Israel's subsequent and ongoing wars in the region, speech and scholarship regarding Palestine have been subject to informal but very real restrictions. These restrictions came to be known as "the Palestine Exception," meaning that ordinary expectations regarding free expression did not apply when the subject was Palestine. The Palestine Exception in the university context often manifested itself in substantial third-party pressure on universities to restrict expressive activity related to Palestine taking places on US campuses.⁷ After October 7, these attempts have become more brazen, systematic and more extreme, and have even extended to firing tenured professors.⁸ The IHRA definition, insofar as it is incorporated into university anti-racism policies, cannot operate consistently with the academic freedom of professors to research, publish, and teach about Zionism and the question of Palestine insofar as the IHRA definition describes various statements about the State of Israel, such as "Israel is committing genocide against the Palestinians," to be evidence of anti-Semitism, even if the speaker expresses those opinions as a

⁷ See Palestine Legal, *Cases: Highlights From Our Case Work*, <https://palestinelegal.org/case-studies> (collecting dozens of cases in which university officials, acting under pressure from third parties, sought to censor Palestine expressive activity) (last viewed, May 27, 2026).

⁸ See, for example, Megan Zahneis, *This Tenured Professor Says She Was Fired. Her Case Tests the Limits of Academic Freedom*, The Chronicle of Higher Education, Oct. 2, 2024, available at <https://www.chronicle.com/article/this-tenured-professor-says-she-was-fired-her-case-tests-the-limits-of-academic-freedom> (last viewed May 27, 2026).

result of good-faith scholarly inquiry. As a result, the IHRA definition also restricts substantially the right of the public generally, and students especially, to learn about Zionism and the question of Palestine from scholars whose conclusions the IHRA definition would identify as possibly anti-Semitic. Accordingly, use of the IHRA definition to police the scholarly activity of professors and students is a facial violation of their academic freedom, and accordingly, this Court should strike down as unconstitutional University of Kentucky's incorporation of the IHRA definition in its anti-racism policies.

I. Academic Freedom and the First Amendment

The Supreme Court first explicitly recognized academic freedom as enjoying First Amendment protections in *Sweezy v. New Hampshire*. 354 U.S. 234 (1957). By 1967, the Court had declared that academic freedom was a “special concern of the First Amendment.” *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967). It further observed that academic freedom was of “transcendent value to all of us, and not merely to the teachers concerned.” *Id.*

Both decisions were rendered during the heights of the Cold War between the United States and the Soviet Union, which was as much an ideological battle as it was social, economic and at times, through different proxies, kinetic. It was an era when many states, such as New Hampshire in *Sweezy*, and New York in *Keyishian*, sought to eliminate “subversives” and “communists” from public

service, including, public universities. Despite the heightened tensions of that era, the *Sweezy* Court noted that particular care must be taken in any “compulsory process . . . [that] tends to impinge upon such highly sensitive areas as freedom . . . of political association, and communication of ideas, particularly in the academic community.” *Sweezy*, 354 U.S. at 245. In deciding for *Sweezy* and against New Hampshire, it further noted that by subjecting *Sweezy* to a mandatory investigation which involved interrogation about his academic activities, New Hampshire “unquestionably . . . inva[ded] . . . petitioner’s liberties in the areas of academic freedom and political expression.” *Id.* at 250. In a concurring opinion, Justice Frankfurter noted that academic freedom was the hallmark of free societies, while the attempt to impose orthodoxies on universities was the hallmark of totalitarian ones. *Wiemann v. Updegraff*, 344 U.S. 183, 197 (1952) (Frankfurter, J., concurring).

As the *Sweezy* Court recognized, the New Hampshire law at issue had the effect of chilling free academic inquiry and debate on profound issues of society, politics and economics, and that chilling effect was sufficient to make the law constitutionally infirm. *Id.* at 250 (requiring a scholar to answer questions about his academic expressions constitutes “governmental interference” in the scholar’s constitutional rights). Concurring in the decision, Justice Frankfurter expressly warned of the chilling effect that laws such as the one that New Hampshire was

attempting to apply to Sweezy's academic work, describing it as "action that inevitably tends to check the ardor and fearlessness of scholars, qualities at once so fragile and so indispensable for fruitful academic labor." *Id.* at 262. This chilling effect undermines the duty of the "university to provide the atmosphere which is most conducive to speculation." *Id.* at 263.

Justice Frankfurter also noted that the university cannot fulfill its necessary function in a liberal democratic society unless it has the freedom "to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study." *Id.* When the state attempts to interfere in the university's autonomy to determine for itself whether the work of a scholar is acceptable, for example, by passing laws that declare certain positions to be prohibited or disfavored, the state has therefore violated the university's academic freedom, even if no individual scholar is punished or investigated. The IHRA definition, when it is incorporated into mandatory state law, such as its anti-racism laws, as is the case in Kentucky, purports to judge an academic's expression not on academic grounds, but on political ones. It therefore inevitably violates the academic freedom of universities as well as the individual academic freedom of its scholars.

The *Sweezy* majority's language also recognized the close connection of academic freedom to political expression. Although distinct, one does not negate

the other. Academic expression, therefore, can overlap with political expression, and when academic expression does overlap with political expression, it does not lose its right to the First Amendment's protections of academic freedom.

Accordingly, a scholar's communicative activity need not be either academic or political. It may very well be both, as is the case when a scholar's academic activity forms the basis of that scholar's political expressions. And when a scholar's communicative activity is part of his scholarly work and produces political expression, the First Amendment undeniably protects both modes of expression. It is therefore irrelevant whether Professor Woodcock's language on his web page is narrowly academic: it clearly is an extension of his academic work as a legal scholar who applies a decolonizing lens to the question of Israel and Palestine.

It is therefore irrelevant whether a scholar expresses political opinions that offend great sections of the public in the course of his scholarly work. To the contrary, we should expect that scholarly commitments regularly result in views that challenge conventional wisdom. Indeed, the potential for academic freedom to unsettle inherited views in the pursuit of truth is one of the goods that the Supreme Court singled out when it recognized academic freedom as a vital part of the First Amendment. *Id.* (stating that unless students and teachers are "free to inquire, to study, and to evaluate . . . our civilization will stagnate and die."). As this language

makes clear, students also enjoy the right “to inquire, to study, and to evaluate,” and by linking these freedoms to the very survival of our civilization, the Supreme Court recognized that the general public has a profound interest in preserving the vitality of academic freedom.

The connection the Supreme Court identified between the research of scholars, teaching students, and the broad dissemination of academic ideas to society confirms that public communication, such as that which Professor Woodcock engaged in through his website, *Antizionist Legal Studies*, is a fundamental part of his academic freedom. Accordingly, to subject him to investigation for the contents of that website because IHRA classifies his views as evidence of anti-Jewish animus, violates his First Amendment rights to academic freedom and political expression.

II. Academic Freedom and the IHRA Definition

The Brandeis Center for Human Rights Under Law (the “Brandeis Center”) in its *amicus* brief defends the constitutionality of the University of Kentucky’s use of the IHRA definition as part of its anti-racist policies on the grounds that the IHRA definition does not categorically declare that anti-Zionist speech, such as that of Professor Woodcock’s in this case, is anti-Semitic. Rather, it functions only as a “guidepost[.]” that helps administrators smoke out anti-Jewish animus that might otherwise go undetected because according to the Amicus “modern anti-

Semitism is frequently masked as anti-Zionism.” Brandeis Center Amicus Brief at 9-10.

While it is indisputable that anti-Jewish animus, or any other kind of religious or racial bigotry is not an expression of academic freedom, the Court is being asked to uphold a rule that identifies otherwise uncontroversially protected expressions of academic freedom, political expression, or both, as *possible* indicia of anti-Jewish animus that justifies investigation and possible discipline. By making otherwise protected political and scholarly expression the occasion for coercive investigatory proceedings, the state has made a “law that cast[s] a pall of orthodoxy over the classroom.” *Keyishian*, 385 U.S. at 603.

The IHRA definition, moreover, does this without any systematic empirical evidence that anti-Zionist speech or pro-Palestinian speech is a proxy for anti-Jewish animus. The State’s deference to Zionist groups’ interpretations of otherwise protected First Amendment speech as actually being code for anti-Jewish animus stands in sharp contrast to the law’s skepticism of claims that language should be construed in a manner contrary to its ordinary meaning. Trademark law provides a good example of the law’s skepticism to such claims: a party claiming a trademark in an otherwise ordinary expression must prove by competent evidence that secondary meaning is associated in the mind of the relevant public with that expression before the party’s claim to trademark will be credited. The IHRA

definition flips ordinary presumptions about speech on their head: the State, by virtue of incorporating the IHRA definition into its coercive legal system, forces speakers who engage in otherwise constitutionally-protected criticism of Israel, Zionism, or both, to prove that they are *not* driven by anti-Jewish animus, even though the plain sense of their words evinces no anti-Jewish animus, only political, social or economic critique. Accordingly, given the great value the First Amendment places on free political discussion and academic freedom, anyone who claims that speech, the ordinary sense of which is political or academic, is actually engaging in bigotry, should be required to prove the claim with, at a minimum, clear and convincing evidence that no reasonable person could reject. The IHRA definition, by contrast, appears to be based *exclusively* on the reactions and interpretations of Zionists to anti-Zionist or pro-Palestinian speech, something that tells us nothing about the reasonable intent of the speaker, or how such speech would be construed by a reasonable member of the public.

Supreme Court precedent makes clear that rules that chill academic freedom are sufficient to violate the First Amendment, even if they have, in principle, a legitimate end, and even if such rules do not result in any sanctions against particular individuals. Justice Frankfurter, for example, noted in his concurrence that, although the state may have had a reasonable basis for believing that Sweezy advocated the violent overthrow of the government, “when weighed against the

grave harm resulting from governmental intrusion into the intellectual life of a university, such justification for compelling a witness to discuss the contents of his lecture appears grossly inadequate.” *Sweezy*, 354 U.S. at 261 (Frankfurter, concurring).

It is obvious that reasonable academics would view suspension from teaching, even if only temporary, and investigation on accusations of anti-Semitism, even if they are confident that the process will restore them to their positions and vindicate them of the charge of anti-Semitism, as themselves sanctions that should be avoided to the extent possible. Accordingly, incorporation of the IHRA definition into a university’s anti-racism policies predictably and inevitably fetters free inquiry into the study of Zionism and the question of Palestine, contrary to Justice Frankfurter’s admonition that inquiry in the social sciences must remain unfettered, “except for reasons that are exigent and obviously compelling.” *Id.* at 262. If the Supreme Court determined that the investigation and firing of academics reasonably suspected of sympathy for the Soviet Union during the Cold War did not rise to the level of exigent and compelling circumstances, *a fortiori* anti-Zionist expression, particularly in the academic setting, cannot be deemed an exigent or compelling circumstance. Yet, the IHRA definition, as incorporated by the Defendant in its anti-racism policies, targets protected First Amendment activity, without more, for investigation. It accordingly chills

academic freedom on its face. For that reason, the Court should strike it down as violative of the First Amendment and enjoin the University from applying this unconstitutional policy to Professor Woodcock.

But IHRA does not fail only because of the necessary chilling effect it has on the free discussion of Zionism and Palestine. It also exemplifies other pathologies that the Supreme Court condemned when it struck down Cold War-era laws authorizing investigations into academics for their scholarship. As Justice Douglas pointed out in his dissent in *Adler v. Board of Education*, state policies such as that challenged in *Adler*, inevitably lead to systems of surveillance and spying, with loyalty reports on teachers following closely in its wake. 342 U.S. 485 (1952). It ultimately creates “a system which searches for hidden meanings in a teacher’s utterances.” *Id.* at 510. IHRA reproduces this pathology precisely when it comes to linking protected political expressions with hidden evidence of anti-Jewish animus. It authorizes investigation and discipline of scholars not because they have engaged in expressive or other conduct that is objectively laced with anti-Jewish animus, but only because the scholar’s expression is critical of Israel, Zionism, or both.

In fact, laws such as the one in *Adler*, which sought to bar individuals who were members of organizations advocating for the overthrow of the government, thoroughly corrupt the means and the ends of liberal education. By chilling free

inquiry, it undermines the free exercise of reason which is so crucial for academic freedom to flourish. It corrupts the ends of liberal education by foreclosing certain conclusions on grounds other than their truth. The IHRA definition, when incorporated into a state's anti-racism laws, such as in this case, suffers from the same fatal flaws as the Cold War-era laws that the Supreme Court struck down.

III. The Palestine Exception Since October 7, 2023

The intrusions into academic freedom since October 7, 2023 are too numerous to list in detail. The Middle East Studies Association (“MESA”), however, has attempted to compile a comprehensive database of attacks on academic freedom since October 7.⁹ It has compiled four separate datasets, each one representing a different kind of assault on academic freedom: congressional interference, Title VI investigations, employment retaliation, and event interference.¹⁰

A. Employment Retaliation Against Academics

MESA documented 139 incidents of employment retaliation in connection with Palestine-related expression or expression critical of Israel.¹¹ These range

⁹ See Middle East Studies Association Academic Freedom Initiative: a Project of the Middle East Studies Association, available at <https://afi.mesana.org/> (last viewed, May 27, 2026).

¹⁰ See *id.*, *Data & Insights*, <https://afi.mesana.org/data-insights/> (last viewed, May 27, 2026).

¹¹ See Middle East Studies Association Academic Freedom Initiative, *Employment Retaliation Database*, available at <https://afi.mesana.org/data-insight/employment-retaliation-database/> (last viewed, May 27, 2026). The underlying data is available in a spreadsheet at <https://airtable.com/app8E7k9vmbL93RM2/shr3bYUacd6BeruvO/tblxi4OQN2pAGEQv/viwjm995XTLlrIIGH> (last viewed, May 27, 2026).

from suspension in 32% of the cases, loss of employment in 42% of the cases, placement on administrative review in 8% of the cases, official censure in 5% of the cases, and 9% of the cases falling under “other.” The underlying data reveals the reasons for the adverse employment decisions, the nature of the adverse employment decisions, and the institutional breadth of the institutions that took these retaliatory actions.

Among the expressive activities that triggered the retaliatory employment actions against faculty, whether tenured, tenure track or adjuncts, include: publishing an article in *Jewish Currents* that described Israel’s war on Gaza as a genocide; taking part in a pro-Palestine encampment; class discussion on Palestine and a repost on Instagram; expressing support for campus protestors and condemning assault on student protestors on *Democracy Now*; screening the documentary *Israelism*;¹² mentioning in class being jailed for civil disobedience while protesting at an Israeli consulate; attending a protest and forward an open letter to a faculty listserv; asking a disruptive Israeli student who was recording the teacher’s class to leave; and signing a statement.

¹² Israelism is a documentary that tells the story of two American Jews who radically rethink their commitments to Zionism after witnessing Israeli treatment of Palestinians. *Israelism: The Awakening of Young American Jews*, available at <https://www.youtube.com/watch?v=Iq6J7Q6L0yw> (last viewed, May 27, 2026).

B. Title VI Investigations

MESA and the Association of American University Professors (“AAUP”), meanwhile, have published a detailed report on the federal government’s weaponization of Title VI in the wake of October 7, often using the IHRA definition to justify launching investigations of US colleges and universities.¹³ According the MESA database of Title VI investigations since October 7, 2023,¹⁴ as of April 20, 2026, 210 Title VI investigations have been launched against American colleges and universities. Of these, 147 were launched based on allegations of anti-Semitism, 35 based on allegations of anti-Palestinian, anti-Arab, or anti-Muslim racism, with unidentified reasons for the remaining 28 investigations. Sixty-two of the complaints occasioned by a complaint of anti-Semitism were brought by five individuals and organizations: the Brandeis Center (24); Zachary Marshall (15); CampusReform (13); StandWithUS (10); and the Zionist Organization of America (7).

¹³ See Middle East Studies Association Academic Freedom Initiative, *Discriminating Against Dissent: Weaponization of Civil Rights Law to Repress Campus Speech on Palestine*, available at <https://afi.mesana.org/resource/discriminating-against-dissent-the-weaponization-of-civil-rights-law-to-repress-campus-speech-on-palestine/> (last viewed, May 27, 2026). The report itself is available at https://afi.mesana.org/wp-content/uploads/2025/11/Discriminating_Against_Dissent_Report.pdf.

¹⁴ See *id.*, *Title VI Lawsuits and Investigations Database*, available at <https://afi.mesana.org/data-insight/title-vi-lawsuits-and-investigations-database/> (last viewed, May 27, 2026). The underlying data is available at <https://airtable.com/appym7XUgvvAjxnBL/shrG0vY8tu1NzdjWo/tblQe7b5p8ronOG7X/viwmvFF8BAx495U5> (last viewed, May 27, 2026).

Despite the protestations of the amicus to the contrary, the Brandeis Center has historically used speech highly critical of Israel and Zionism, which it admits is not, on its face, anti-Semitic, to pressure universities to investigate faculty and students, with the express aim of imposing political pressure on universities to clamp down on pro-Palestine, anti-Israel advocacy. Kenneth Marcus, the founder of the Brandeis Center, himself recognized that the point of filing Title VI complaints against pro-Palestine or anti-Israeli expressive conduct was not to win cases, but to “expose administrators to bad publicity,” with the aim of inducing administrators to chill such speech. *Discriminating Against Dissent: the Weaponization of Civil Rights Law to Repress Campus Speech on Palestine*, MESA and the AAUP, November 2025 at 7, available at https://www.aaup.org/sites/default/files/2025-11/Discriminating-Against-Dissent_0.pdf (last viewed May 27, 2026).

Indeed, the Brandeis Center is clearly indifferent, if not hostile, to academic freedom, at least if it involves Palestine or Zionism. Kenneth Stern, one of the principal drafters of the IHRA definition, has decried its use in suppressing academic freedom on Palestine and Zionism. He has quoted Marcus as expressing satisfaction when scholars leave universities that have adopted the IHRA

definition, such as Columbia University in its Title VI settlement,¹⁵ for fear that they will not be able to research and teach without interference. Kenneth Stern, *A Bad Deal: By Adopting the IHRA Definition of Antisemitism, Universities Are Sacrificing Academic Freedom*, available at <https://knightcolumbia.org/content/a-bad-deal-why-using-the-ihra-definition-of-antisemitism-on-campus-is-incompatible-with-academic-freedom-and-students-right-to-open-inquiry> (last viewed May 27, 2026) (decrying the weaponization of the IHRA definition to suppress student and faculty speech, and police what invited speakers to universities could say and quoting Marcus as saying that while “it may be sad for [professors who self-terminate] personally [as a result of the incorporation of IHRA], it may not be so bad for the students”).

There is every reason to suspect that the same academic freedom-incompatible logic is driving the upsurge in the claim of anti-Semitism in American colleges and universities to justify intrusive and threatening investigations if these institutions do not clamp down on pro-Palestine or anti-Israeli expressive activity. A clear example is the recent settlement that the Brandeis Center entered into with the University of California at Berkeley pursuant

¹⁵ See Ryan Quinn, *Columbia ‘Incorporating’ IHRA Antisemitism Definition*, Inside Higher Ed, July 17, 2025, available at <https://www.insidehighered.com/news/quick-takes/2025/07/17/columbia-incorporating-ihra-antisemitism-definition> (last viewed May 27, 2026).

to which Berkeley agreed to incorporate the IHRA definition in various curricular and disciplinary procedures,¹⁶ despite the overwhelming rejection of the IHRA definition by Berkeley's own faculty.¹⁷

C. Event Interference

MESA has documented 122 interferences with events on US campuses since October 7, 115 of which were events involving Palestine advocacy, four events involving Israel, one involving Lebanon, and two coded as “other.”¹⁸ The cancelled events included lectures, art displays, musical performances, public statements by academics, expressive clothing, fundraisers, student-led Boycott, Divest and Sanction (“BDS”) referenda, and teach-ins, among others. The reasons given

¹⁶ See The Brandeis Center, *Brandeis Center Secures Landmark Settlement Requiring UC Berkeley to End Discriminatory ‘Anti-Zionist Boycotts’ and Prevent Campus Anti-Semitism*, Mar. 19, 2026, available at <https://brandeiscenter.com/wp-content/uploads/2026/03/Brandeis-Center-UCB-Press-Release.pdf> (last viewed May 27, 2026) (touting, among other things, that the University of California-Berkeley will be required to consider the IHRA definition in evaluating complaints of anti-Semitism).

¹⁷ Berkeley Faculty Association, *BFA Statement on the Brandeis Settlement Agreement*, Mar. 30, 2026, available at <https://ucbfa.org/2026/03/bfa-statement-on-the-brandeis-settlement-agreement/> (last viewed May 27, 2026) (condemning settlement as contrary to “fundamental principles of academic freedom and shared governance,” noting that the UC Berkeley Academic Senate had voted overwhelmingly to reject the IHRA definition in its Resolution on Academic Freedom of April 22, 2025, see University of California letter, Apr. 28, 2025, available at <https://academic-senate.berkeley.edu/sites/default/files/council-chair-president-re-berkeley-resolution-to-protect-acad-political-freedom.pdf> (last visited May 27, 2026), by a margin of 94.6% (370 in favor and 21 opposed), and expressing puzzlement that the Regents had agreed to this settlement when “at least nine such Title VI cases had been dismissed” by federal courts instead of “defend[ing] . . . our rights under law.”).

¹⁸ See Middle East Studies Association Academic Freedom Initiative, *Event Interference Database*, available at <https://afi.mesana.org/data-insight/events-cancellations-database-2/> (last viewed May 27, 2026). The underlying data is available at <https://airtable.com/appEeLvsnJUeIhe0H/shrJ8YsZtE3vn6f1e/tblQeDatA8iYyDYNH/viwwWqRHUiAS4F3b2> (last viewed May 27, 2026).

included: diversity, anti-Semitism, security, failure to follow proper procedures, timing/sensitivity, safety/security, and lack of balance. The pressure to cancel, delay or relocate the event off campus typically came from university and college administrators, often at the behest of complaints from the “community.” None of these cases involved allegations that the messages emanating from these proposed events threatened imminent violence. Nevertheless, universities and colleges chose to interfere with them in flagrant violation of the First Amendment rights of students, faculty and staff.

Not content with interfering in the quotidian events that make up the extracurricular lives of American university and college students, universities and colleges have acted proactively to ban public speaking events where they feared the speaker – usually because the speaker was either a Muslim or an Arab – would speak about Palestine. The University of Southern California, for example, took the unprecedented step of cancelling the valedictory address of Asna Tabassum, ostensibly on “security grounds.” *USC Cancels Speech by Valedictorian Who Expressed Support for Palestinians, Cites Safety Concerns*, Associated Press, April 17, 2024, available at <https://www.pbs.org/newshour/education/usc-cancels-speech-by-valedictorian-who-expressed-support-for-palestinians-cites-safety-concerns> (last viewed May 27, 2026). Rutgers University recently withdrew an invitation to Rami Elghandour, CEO of the biotech company Arcellx. He was

invited to deliver the convocation address on May 15 at the Rutgers School of Engineering, his alma mater but the dean of the engineering school rescinded the invitation after receiving complaints from some students that they would boycott the event due to Elghandour's social media posts critical of Israel. Jake Offenharz, *Rutgers University Withdraws Invite to a Graduation Speaker Over His Criticism of Israel*, Associated Press, May 6, 2026, available at <https://apnews.com/article/rutgers-israel-commencement-rami-elghandour-e39c6cf6d0d90cdce80ab5e0d3243379> (last viewed May 27, 2026). When University of Michigan professor Derek Peterson, chair of the faculty senate and a 2017 recipient of a MacArthur Grant, spoke at commencement in praise of pro-Palestinian student protestors, some university trustees publicly expressed demands that the University should punish him, and the University of Michigan's president, Domenico Grasso, apologized for the professor's statement, contrary to the University's stated policy of institutional neutrality, and despite the fact that "the remark received loud and long applause." Emma Whitford, *Michigan Professor's Praise for Pro-Palestinian Protestors Sparks Furor*, Inside Higher Ed, May 4, 2026, available at <https://www.insidehighered.com/news/faculty/academic-freedom/2026/05/04/professors-praise-pro-palestine-protestors-sparks-furor> (last viewed May 27, 2026).

It would not be an exaggeration to say that universities are striving to eliminate all opportunities for students to engage in free speech at commencement ceremonies out of fear that they will use that opportunity to criticize Israel. CUNY Law School, in the fall of 2023, *before* October 7, announced that it would not permit any student speakers at the 2024 graduation ceremony. This change in policy followed two consecutive years in which student speakers used their platform to criticize Israel, resulting in backlashes among certain sections of the public. Maia Coleman, *After Anti-Israel Speeches, a Law School Curtails Graduation Speeches*, N.Y. Times, May 21, 2024, available at <https://www.nytimes.com/2024/05/21/nyregion/cuny-law-school-commencement-address-canceled.html> (last viewed May 27, 2026). Mehr Kotval, an undergraduate student at New York University and an editor at large of the Washington Square News, published an editorial warning that New York University, which banned live student speeches at commencement after a student gave pro-Palestinian remarks at last year's commencement, was on the verge of permanently replacing live student speeches with pre-recorded, sanitized messages solely to prevent students from speaking in favor of Palestinian freedom and against genocide. Mehr Kotval, *Opinion: Defend Student Speech at Graduation Before it Disappears*, Washington Square News, May 6, 2026, available at

<https://nyunews.com/opinion/2026/05/06/nyu-has-upended-graduation-proceedings>
(last viewed May 27, 2026).

IV. Conclusion

The Supreme Court’s precedents on academic freedom make clear that only the most compelling reasons can justify its violation. Even at the height of the Cold War and the perceived threat of nuclear war or subversion at the hands of Communist agents, the Supreme Court did not flinch in upholding the sacrosanct character of academic freedom. In so doing, the Supreme Court recognized that third parties also have a compelling and ongoing interest in the robust protection of academic freedom, both students and the public at large. As Justice Black eloquently explained in his dissent in *Adler*, it is the policy of the First Amendment to “leave the mind and spirit of man absolutely free. Such a governmental policy encourages varied intellectual outlooks in the belief that the best views will prevail.” *Adler*, 342 U.S. at 497.

Zionists are free to object to Professor Woodcock’s characterization of the Zionist project and the State of Israel as colonial in character and the remedy he proposes using reasoned argument. They are not entitled to enlist the power of the state to punish him for those views or to prevent third parties from hearing Professor Woodcock’s arguments and evaluating them for themselves based on the merits of his reasoning.

Whatever the intent of the advocates of the IHRA definition, no reasonable person can deny that the effect of the IHRA definition is to censor speech related to Zionism and the Question of Palestine. No reasonable person can claim that it enhances First Amendment values. The First Amendment is offended from the moment a state adopts it as part of mandatory law. It violates the institutional academic freedom of universities by substituting political standards for academic standards in the evaluation of scholarly work. It violates the rights of students to learn and inquire on matters related to Zionism and the Question of Palestine. And it violates the rights of the public to learn from debate about the great public issues of the day, of which Palestine is undoubtedly one. It is therefore obvious that the coercive enforcement of the IHRA definition as part of the State of Kentucky's anti-racism policies, given the acknowledged overbreadth of the IHRA definition, runs afoul of the bedrock principle of First Amendment law: that ideas should prevail based on their intrinsic value, not because of the power of the state.

IHRA violates this principle by chilling constitutionally protected speech and justifying the punishment of those brave enough to engage in speech that runs afoul of the IHRA definition. There is no need for a court to wait until a university reaches a final decision to punish a faculty member such as Professor Woodcock before it can strike down use of the IHRA definition to investigate him. The violation of the First Amendment takes place immediately upon its adoption and its

threat to treat constitutionally protected scholarship or speech about Israel and the question of Palestine prima facie evidence of anti-Jewish bigotry. The imposition of sanctions would be an additional First Amendment violation. Professor Woodcock's case presents the rare opportunity for a federal court to provide a remedy that vindicates the First Amendment rights of all interested parties: the faculty member himself, the students and the public. Were the University of Kentucky to proceed in its investigation and, for example, sanction Professor Woodcock by dismissal, money damages for wrongful dismissal in violation of the First Amendment would be wholly inadequate as it would not vindicate the First Amendment rights of the students and the public at large. Accordingly, amici urge this Court to reverse the lower court's decision to abstain from deciding Professor Woodcock's summary judgment motion, rule on the merits of his claim for itself, and strike down the University of Kentucky's incorporation of the IHRA definition in its anti-racism policies.

Dated: May 27, 2026

Respectfully submitted
By: /s/ Bina Ahmad
Bina Ahmad
Hanna Chandoo
Dan Stormer
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Form 6. Certificate of Compliance With Type-Volume Limit**Certificate of Compliance With Type-Volume Limit, Typeface Requirements, and Type-Style Requirements**

1. This document complies with [the type-volume limit of Fed. R. App. P. [29(b)(4)]] [the word limit of Fed. R. App. P. [29(a)(4)]] because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) [and [N/A]]:
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- Attorney for JVP ACTION (D.B.A. JVP)
- Dated: May 27, 2026

CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2026, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system. I certify that service will be accomplished upon all registered counsel of record by the appellate CM/ECF system.

Dated: May 27, 2026

Respectfully submitted

By: /s/ Bina Ahmad

Bina Ahmad

Hanna Chandoo

Dan Stormer

Counsel for *Amici*

DECLARATION OF STEFANIE FOX

I, Stefanie Fox, declare under penalty of perjury that the following is true and correct to the best of my knowledge:

1. I am Executive Director of JVP Action (“JVP”), a U.S. based, grassroots membership organization mobilizing Jewish communities to fight for a just society in Palestine/Israel rooted in human rights rather than oppression, equality rather than supremacy, dignity rather than domination, democracy rather than dispossession. A society where every life is precious. I have been on staff with JVP for a total of 16 years. I have been Executive Director for the last 5 years.
2. I am Jewish, the descendent of Ashkenazi Jews who barely survived antisemitic pogroms and instilled in me that the core of being Jewish is a belief that every life is a whole universe made *b'tselem Elohim*, in the image of the divine. I do my work for justice in Palestine/Israel and raise my Jewish child understanding that the Jewish obligation to save lives, *pikuach nefesh*, supersedes all other Jewish laws.
3. With 720,000 members and supporters, JVP is one of the largest progressive Jewish organizations in the world.
4. JVP believes that our voices and actions are needed because the Zionist movement and the state of Israel purport to speak for and act on behalf of all Jews.
5. We work to build with allied U.S.-based movements for justice towards liberation in Palestine/Israel and everywhere.
6. We are committed to both Jewish communities and Palestinian communities, and to creating the future we all deserve.
7. Our work is inspired by the Jewish Warsaw Ghetto fighters, labor organizers, Civil Rights veterans and many more ancestors who worked tirelessly for

liberation – of all people.

8. We commit to dismantling antisemitism in the most effective way possible: as part of our struggle against all forms of oppression and bigotry.
9. We are committed to building an organizing home where Black, Indigenous, Latinx, Asian, SWANA/Mizrahi, and Sephardi Jewish members feel welcome, home, and whole, where white Jews feel supported to build their anti-racist praxis and bring their full selves, where all of our work embodies the multiplicity of Jewish histories, lineages, stories, and traditions, where each of us can name and fight out of our own specific stakes in building Jewish futures beyond nationalism and Zionism.
10. Some Jewish legacy institutions make supporting the Israeli government the price of entry into our religion. They suggest that our millennia-old religion requires adherence to Zionism: an ideology that has required in practice the dispossession, occupation, oppression of Palestinians to create and maintain an ethno-state where Jews have more rights than Palestinians on their own indigenous land.
11. As Jews, we do not believe that to be Jewish you must support Zionism. We welcome our communities into the life-affirming politics of anti-Zionism. Where Zionism suggests Jews require a supremacist nation state to answer the real question of Jewish safety, anti-Zionism means supporting justice for the Palestinian people, including their right to live in freedom and equality, and to return to their homes and land. Anti-Zionism also means believing that Jews, and all people, belong and should be safe wherever they live.

Dated: May 27, 2026


Stefanie Fox