

1 ELLIS GEORGE CIPOLLONE O'BRIEN LLP  
Eric M. George (State Bar No. 166403)  
2 egeorge@egcfirm.com  
David J. Carroll (State Bar No. 291665)  
3 dcarroll@egcfirm.com  
2121 Avenue of the Stars, 30th Floor  
4 Los Angeles, California 90067  
Telephone: (310) 274-7100  
5 Facsimile: (310) 275-5697

6 John V. Coghlan (DC Bar No. 1020405), *pro hac vice forthcoming*  
jcoghlan@egcfirm.com  
7 Tara Helfman (DC Bar No. 90009379), *pro hac vice forthcoming*  
thelfman@egcfirm.com  
8 1155 F Street, NW, Suite 750  
Washington, DC 20004  
9 Telephone: (202) 249-6900  
Facsimile: (202) 249-6899

10 THE LOUIS D. BRANDEIS CENTER FOR HUMAN RIGHTS UNDER LAW, INC.  
11 Kenneth L. Marcus (DC Bar No. 437391), *pro hac vice forthcoming*  
klmarcus@brandeiscenter.com  
12 L. Rachel Lerman (State Bar No. 193080), *membership application pending*  
1717 Pennsylvania Ave., NW, Suite 1025  
13 Washington, DC 20006  
Telephone: (202) 559-9296

14 *Attorneys for Plaintiffs*

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 SAN FRANCISCO DIVISION

18 THE LOUIS D. BRANDEIS CENTER, INC.;  
19 JEWISH AMERICANS FOR FAIRNESS IN  
EDUCATION (JAFE),

20 Plaintiffs,

21 vs.

22 REGENTS OF THE UNIVERSITY OF  
23 CALIFORNIA; UNIVERSITY OF  
CALIFORNIA AT BERKELEY; BERKELEY  
24 LAW SCHOOL; MICHAEL DRAKE, in his  
official capacity as President of the University  
25 of California; CAROL T. CHRIST, in her  
official capacity as Chancellor of the  
26 University of California, Berkeley; BEN  
HERMALIN, in his official capacity as  
27 Provost of the University of California,

28 Defendants.

Case No.

**COMPLAINT FOR INJUNCTIVE AND  
DECLARATORY RELIEF FOR:**

1. **Violation of 42 U.S.C. § 1983 (the Equal Protection Clause)**
2. **Violation of 42 U.S.C. § 1983 (Free Exercise Clause)**
3. **Violation of 42 U.S.C. § 1981 (Interference with Right to Contract)**
4. **Violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq.**

**DEMAND FOR JURY TRIAL**

Trial Date: None Set

**INTRODUCTION**

1  
2 1. This suit targets the longstanding, unchecked spread of anti-Semitism at the  
3 University of California Berkeley (“UC Berkeley”), which, following the October 7 Hamas  
4 attacks, has erupted in on-campus displays of hatred, harassment, and physical violence against  
5 Jews. Court intervention is now needed to protect students and faculty and to end this anti-Semitic  
6 discrimination and harassment, which violates University policy, federal civil rights laws, and the  
7 U.S. Constitution.

8 2. Anti-Semitism has been allowed to take root and grow at the UC Berkeley School  
9 of Law (“Berkeley Law”), which is located on the UC Berkeley campus. For over a year, student  
10 organizations at Berkeley Law have been enacting and enforcing policies that confront Jews with  
11 an unthinkable and unlawful ultimatum: Disavow an integral component of your Jewish identity—  
12 Zionism—or be denied the same rights and opportunities enjoyed by other members of the campus  
13 community. Although UC administrators have publicly acknowledged the fundamentally anti-  
14 Semitic nature of such policies, they have taken no action to address them. Even now, in the wake  
15 of October 7, UC Berkeley and Berkeley Law have failed to confront, much less combat, the anti-  
16 Semitic environment their inaction has fostered. Court intervention is therefore needed to put an  
17 end to this anti-Semitic discrimination and harassment, which violate University policy, federal  
18 civil rights laws, and the U.S. Constitution.

19 3. Anti-Zionism is discrimination against those who recognize the Jews’ ancestral  
20 heritage—in particular the Jews’ historic connection to the land of Israel and the right of the  
21 Jewish people to self-determination in their ancestral homeland—as key components of their  
22 Jewish identity. The United States, along with at least forty-two other nations, has recognized that  
23 demonizing, delegitimizing and applying a double standard to Israel—all forms of anti-Zionism  
24 that are distinct from criticism of the State of Israel or opposition to the policies of the Israeli  
25 government—are forms of anti-Semitism. *What is antisemitism?*, INT’L HOLOCAUST  
26 REMEMBRANCE ALL., [https://www.holocaustremembrance.com/resources/working-definitions-  
27 charters/working-definition-antisemitism](https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism) (last visited Nov. 27, 2023). By erasing or denying the  
28 Jewish people’s ancestral connection to one another and to the land of Israel and by rejecting the

1 very right of the State of Israel to exist, anti-Zionism denies to the Jewish people alone a  
2 fundamental human right to self-determination allowed to all other peoples of the world. *See, e.g.*,  
3 U.N. Charter art. 1, ¶2. To be clear, anti-Zionism is altogether different from criticism of the  
4 State of Israel or opposition to the policies of the Israeli government—matters on which robust  
5 debate is encouraged.

6 4. In spite of the recognition of anti-Zionism as a form of anti-Semitism, no fewer  
7 than 23 Berkeley Law student organizations have enacted policies to discriminate against and  
8 exclude Jewish students, faculty, and scholars. For example:

- 9 • To be a member of Women of Berkeley Law, the Queer Caucus at Berkeley, or the  
10 Asian Pacific American Law Students Association, Jewish students must accede to  
11 the groups' support of the Boycott Divestment and Sanctions movement, which  
12 seeks to dismantle the modern State of Israel;
- 13 • In order to volunteer to provide pro bono legal services through a number of  
14 Berkeley Law Legal Services organizations, Jewish students must undergo a  
15 "Palestine 101" training program that emphasizes the illegitimacy of the State of  
16 Israel;
- 17 • And to speak to any of these student organizations, invited speakers must first  
18 repudiate Zionism under a bylaw that prohibits speakers who hold Zionist views  
19 (the "Exclusionary Bylaw"). In fact, the *Berkeley Journal of Gender, Law, and*  
20 *Justice*, goes one step further, prohibiting Zionists not only from speaking to its  
21 members but from publishing in its pages.

22 5. Under these policies, Jewish students, faculty, and guest speakers must deny a  
23 central part of their cultural, ancestral heritage and a fundamental tenet of their faith in order to be  
24 eligible for the same opportunities Berkeley accords to others. The Exclusionary Bylaw's  
25 wholesale ban on "Zionists" is unrelated to the viewpoint a speaker might express as the guest of a  
26 student organization. Rather, it is a ban on Jewish persons—and especially those whose support  
27 for the Jewish State reflects an integral component of their Jewish ancestral, religious, ethnic,  
28

1 national and/or racial identity. Such discrimination is particularly acute for those Jews who must  
2 deny or disavow an integral part of their Jewish identity to be accepted by these Groups.

3         6. The Dean of UC Berkeley, Erwin Chemerinsky, has acknowledged that anti-  
4 Zionism is anti-Semitic “because it denies the existence of the state of Israel, the historical home  
5 of the Jewish people.” Academic Engagement Network, *U.C. Berkeley School of Law Faculty*  
6 *Statement in Support of Jewish Law Students*,  
7 [https://docs.google.com/document/d/1BiOeLJSG7lrh9DSkvxsYRebE6Ck8a0rZaeBWNtjLPY/ed](https://docs.google.com/document/d/1BiOeLJSG7lrh9DSkvxsYRebE6Ck8a0rZaeBWNtjLPY/edit)  
8 [it](https://docs.google.com/document/d/1BiOeLJSG7lrh9DSkvxsYRebE6Ck8a0rZaeBWNtjLPY/edit) (last visited Nov. 27, 2023). The Dean has also acknowledged the impact the Exclusionary  
9 Bylaw has on Jewish students at Berkeley. In the wake of its adoption, he explained: “to say that  
10 anyone who supports the existence of Israel—that’s what you define as Zionism—shouldn’t speak  
11 would exclude about, I don’t know, 90 percent or more of our Jewish students.” Gabe Stutman,  
12 *Several Berkeley Law student groups adopt ‘no Zionist speakers’ rule*, JEWISH NEWS OF N. CAL.  
13 (Aug. 29, 2022), [https://jweekly.com/2022/08/26/several-berkeley-law-student-groups-adopt-no-](https://jweekly.com/2022/08/26/several-berkeley-law-student-groups-adopt-no-zionist-speakers-rule/)  
14 [zionist-speakers-rule/](https://jweekly.com/2022/08/26/several-berkeley-law-student-groups-adopt-no-zionist-speakers-rule/).

15         7. UC Chancellor and Defendant Carol Christ “convey[ed] [her own] understanding  
16 as to why the adoption of the [Exclusionary Bylaw] was deeply upsetting to some Jewish members  
17 of our community for whom Zionism is an indivisible part of their Jewish identity, and who now  
18 say they no longer feel welcome at events held by some of the student organizations that have  
19 agreed to the [policies’] terms.” Exhibit A, Letter from Chancellor Carol T. Christ to the Berkeley  
20 Jewish Community.

21         8. The lack of action against these student groups’ anti-Semitic policies betrays not  
22 only Jewish students and faculty, but UC’s own longstanding commitments to civil rights and  
23 equal treatment of all persons regardless of race, religion, ethnicity, national origin, gender, sexual  
24 preference, military status, physical disability, and/or heritage.

25         9. Conditioning a Jew’s ability to participate in a student group on his or her  
26 renunciation of a core component of Jewish identity is no less pernicious than demanding the  
27 renunciation of some other core element of a student’s identity—whether based on race, ethnicity,  
28 gender, or sexual identity. Imagine, in this day and age, asking members of the LGBTQ

1 community to remain ‘in the closet’ as a condition of membership in an authorized student  
2 group. No such imposition is required—or would be remotely tolerated—of other students, who  
3 remain free to participate fully in student organizations without disavowing or hiding any part of  
4 their identities.

5 10. The University’s rules for registered student groups, including law school groups,  
6 codify UC’s commitments to equality by requiring prospective and current groups alike to adopt  
7 an “all-comers” policy. Under this policy, registered student groups may not impose membership  
8 restrictions based on categories such as race, color, national origin, and religion, among others.  
9 Registered student groups must also pledge their commitment to “the dignity of all individuals,”  
10 and “to uphold[ing] a just community in which discrimination and hate are not tolerated.” *2023-*  
11 *2024 New Organization Application Questions* 6, LEAD CENTER,  
12 [https://docs.google.com/document/d/1dx-7-2d47wuXD-\\_A7PLRdloQAbdOfJHBMOA-](https://docs.google.com/document/d/1dx-7-2d47wuXD-_A7PLRdloQAbdOfJHBMOA-CLc27to/edit)  
13 [CLc27to/edit](https://docs.google.com/document/d/1dx-7-2d47wuXD-_A7PLRdloQAbdOfJHBMOA-CLc27to/edit) (last visited Nov. 27, 2023).

14 11. The student groups’ anti-Semitic policies also run afoul of the University’s Policy  
15 on Nondiscrimination, which prohibits “legally impermissible, arbitrary, or unreasonable  
16 discriminatory practices.” *Policies Applying to Campus Activities, Organizations and Students*,  
17 PACAOS-20, UNIV. OF CAL., <https://policy.ucop.edu/doc/2710522/PACAOS-20> (last visited Nov.  
18 27, 2023).

19 12. The failure of the University to enforce its all-comers and anti-discrimination  
20 policies in response to the Exclusionary Bylaw’s ban on “Zionist” speakers and the exclusion of  
21 and hostility towards “Zionist” students across the entire Berkeley campus violates the Equal  
22 Protection and Free Exercise Clauses of the U.S. Constitution, as well as federal anti-  
23 discrimination laws.

24 13. By abdicating responsibility and failing to act as required by UC rules and U.S.  
25 law, the University has enabled the normalization of anti-Jewish hatred on campus. Jewish  
26 students feel compelled to hide their identities. Legal experts and professors are left to wonder  
27 whether they are barred from speaking to law student groups based on the fact that they are Jews.  
28

1           14.     In the wake of October 7, 2023, the deadliest day for the Jewish people since the  
2 Holocaust, Jewish students at UC Berkeley have been the targets of harassment and physical  
3 violence. A Jewish student draped in an Israeli flag was attacked by two protestors who struck  
4 him in the head with a metal water bottle. Jews on campus have been receiving hate e-mails  
5 calling for their gassing and murder. And Jewish students have reported being afraid to go to  
6 class, which would require them to pass through the pro-Hamas rallies taking place in Berkeley's  
7 main thoroughfares.

8           15.     Plaintiffs seek this Court's intervention to set things right by requiring Defendants  
9 to enforce UC policies in an evenhanded way, prohibit discrimination and bias as required by law,  
10 and treat Jewish students, faculty, and invited speakers in the same manner as their non-Jewish  
11 counterparts.

12                           **JURISDICTION, VENUE, AND DIVISIONAL ASSIGNMENT**

13           16.     Plaintiffs bring this action pursuant to 42 U.S.C. § 1983, 42 U.S.C. § 2000d et. seq.,  
14 and 42 U.S.C. § 1981.

15           17.     Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1343(a)(3) and 1343(a)(4),  
16 which provide for original jurisdiction of suits brought pursuant to 42 U.S.C. § 1983. Jurisdiction  
17 is also conferred on this Court by 28 U.S.C. § 1331 because the causes of action arise under the  
18 Constitution and laws of the United States.

19           18.     Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because, upon  
20 information and belief, Defendants reside in the Northern District of California and may be found  
21 and served in the Northern District of California, and because a substantial part of the events, acts,  
22 or omissions giving rise to these claims arose in this District.

23           19.     Pursuant to Local Rule 3-5, this action is properly assigned to either the San  
24 Francisco Division or the Oakland Division because a substantial part of the events or omissions  
25 giving rise to the claim occurred in the County of Alameda.

26                           **PARTIES**

27           20.     Plaintiff The Louis D. Brandeis Center, Inc. (the Brandeis Center) is a nonprofit,  
28 non-partisan corporation established to advance the civil and human rights of the Jewish people

1 and promote justice for all. The Brandeis Center engages in research, education, and legal  
2 advocacy to combat anti-Semitism on college and university campuses and in K-12, in the  
3 workplace, and elsewhere. It empowers students by training them to understand their legal rights  
4 and educates administrators and employers on best practices to combat racism and anti-Semitism.  
5 The Brandeis Center has expended considerable resources in responding to unlawful action by the  
6 defendants, including counseling aggrieved students and professors, raising public awareness of  
7 the defendants' conduct in an effort to seek compliance by the defendants, requesting public  
8 documents to understand Berkeley's violations, and incurring out-of-pocket expenses to hire  
9 outside counsel to assist with the filing of a Public Records Act lawsuit after Berkeley failed to  
10 provide the requested documents. Brandeis Center attorneys and staff have been diverted from  
11 other work while dealing with these matters.

12         21. Plaintiff Jewish Americans for Fairness in Education (JAFE) is a national  
13 membership organization that is housed within and operated by the Brandeis Center. JAFE's  
14 mission, like that of the Brandeis Center, is to advance the civil and human rights of the Jewish  
15 people and promote justice for all; and, in particular, to eliminate anti-Semitism and  
16 discrimination in education and ensure fairness in education for Jewish, Israeli, and other  
17 Americans, through lawful means including litigation. JAFE's members consist of Jewish  
18 American college students, graduate and professional students, parents, alumni, faculty, and other  
19 individuals who have personally been aggrieved by, or have by association been impacted by, anti-  
20 Semitism and discrimination in higher education and K-12. JAFE has members throughout the  
21 country, including Jewish American students and professors affiliated with higher education and  
22 K-12 institutions across the United States. JAFE's membership includes Berkeley undergraduate,  
23 graduate, and law students, as well as Berkeley and Berkeley Law faculty.<sup>1</sup>

24         22. JAFE includes among its members legal scholars and Berkeley faculty who are  
25 qualified, willing, and able to speak to the Legal Programs, Journals, and Groups. Some of these  
26

27 \_\_\_\_\_  
28 <sup>1</sup> Because of its affiliation with the Brandeis Center, members of JAFE also become members of  
the Brandeis Center.

1 members have previously presented to student groups at Berkeley law and have expertise in areas  
2 of the law that are germane to the student groups and legal services projects that have adopted the  
3 Exclusionary Bylaw. They are Jewish, however, and Zionism is integral to their Jewish identity.  
4 Because of these members' Jewish identity, they are prevented from competing for the opportunity  
5 to speak to the Legal Projects and Groups. These Members are therefore denied the opportunity  
6 both to receive compensation from such speaking engagements and to promote themselves and  
7 their scholarship.

8         23.       JAFE Member # 1 is a UC Berkeley Law Professor. He has expertise in legal  
9 policy and criminal law, and has written recently on historic aspects of women in the criminal  
10 justice system and the privatization of prisons. Because he is a Jewish scholar who supports  
11 Israel, he suffers dignitary harm by being treated as a second-class citizen at Berkeley's campus.  
12 In addition, JAFE Member # 1 would welcome the opportunity to speak about his areas of  
13 expertise to the law school's Community Defense Project, the Women of Berkeley, the Defenders  
14 at Berkeley, and the Contra Costa Reentry Project, but he is denied the opportunity because these  
15 groups have adopted the Exclusionary Bylaw.

16         24.       JAFE Member # 2 is a Berkeley Law Professor and one of the nation's foremost  
17 authorities on corporate law and finance. He is also the former head of the Chancellor's  
18 Committee on Jewish Life and, among other things, formed the Women in Business Law Initiative  
19 at the law school. His expertise would be of value to any group whose members are interested in  
20 corporations and finance, which play a role in virtually every organized human endeavor.  
21 Because he is a Jewish scholar who supports Israel, he suffers dignitary harm by being treated as a  
22 second-class citizen at Berkeley's campus. In addition, JAFE Member # 2 would welcome the  
23 opportunity to speak about his areas of expertise with any of the Law Student groups at his  
24 University that have adopted the Exclusionary Bylaw. But he is unable to do so because they have  
25 adopted the Exclusionary Bylaw.

26         25.       JAFE Member # 3 holds a full professorship in law at a private West Coast  
27 university. This Member is a frequent lecturer at U.S. academic institutions, where he has spoken  
28 on issues relating to the Middle East and Africa, international law, and Middle Eastern law. He is



1 qualified, willing, and able to speak to Law School groups such as the Middle Eastern and North  
2 African Law Students Association, Law Students of African Descent, and the *Journal of Middle*  
3 *Eastern and Islamic Law*. Because these groups have adopted the Exclusionary Bylaw, he is  
4 unable to do so.

5         26.       JAFE Member # 4 holds a full professorship in law at a private West Coast  
6 university. This Member lectures to law student projects and student groups based on his  
7 professional expertise in constitutional law and constitutional rights (including issues relating to  
8 race and the law), law and religious freedom, separation of church and state, criminal law and  
9 criminal procedure, and law and public policy. He would welcome the opportunity to speak to  
10 Legal Services Projects, Journals, or groups such as the Queer Caucus, Community Defense  
11 Project, Law Students of African Descent, Contra Costa Reentry Project, and the Defenders at  
12 Berkeley. Because these groups have adopted the Exclusionary Bylaw, he is unable to do so.

13         27.       JAFE Member # 5 holds a full professorship in law emeritus at a public university  
14 in the Mid-Atlantic region. His areas of expertise include constitutional law, civil liberties and  
15 international human rights. He has written scholarly articles about issues pertaining to feminism  
16 and women's rights, gay rights, and Islam. He has also been a frequent lecturer at various  
17 American institutions. This Member would welcome the opportunity to speak about these topics  
18 with Berkeley Law's Legal Services Projects, Journals, or groups such as the Women of Berkeley  
19 Law, Queer Caucus at Berkeley Law, the *Berkeley Journal of Gender, Law, and Justice*, the  
20 Berkeley Law Muslim Students Association, and the Middle Eastern and North African Law  
21 Students Association, but he is unable to do so because these groups have adopted the  
22 Exclusionary Bylaw.

23         28.       JAFE Member # 6 holds a full professorship and an endowed chair in law at the  
24 flagship law school of a midwestern public university system. He is an internationally recognized  
25 expert in the areas of international law and national security law, as well as an expert on the  
26 Middle East and the Arab-Israeli conflict. This Member would welcome the opportunity to speak  
27 about these topics with Berkeley Law Legal Services Projects, Journals, or groups, such as the  
28

1 Middle Eastern and North African Law Students Association and *Journal of Middle Eastern and*  
2 *Islamic Law*. He is unable to do so because these groups have adopted the Exclusionary Bylaw.

3 29. JAFE Member # 7 holds a full professorship and an endowed chair in law at the  
4 private law school of a midwestern private university. This Member is a native of Latin America,  
5 has considerable expertise in international law, and would welcome the opportunity to address  
6 Berkeley Law's Legal Services Projects, Journals or groups, but he is unable to do so because  
7 these groups have adopted the Exclusionary Bylaw.

8 30. JAFE Member # 8 is the chairman of a private law firm, the president of a  
9 nonprofit organization, and an accomplished international lawyer and trial attorney. This  
10 Member, who is of African descent, is one of the few Barrister-Attorneys with full active  
11 practicing certificates in England & Wales, New York, Florida, and Washington D.C. He has  
12 written extensively on the First Amendment and the conflict between faith-based protections and  
13 the rights of the LGBTQ community. This Member would welcome the opportunity to speak  
14 about these topics with the Law Students of African Descent and the Queer Caucus at Berkeley  
15 Law but would be unable to do so because these groups have adopted the Exclusionary Bylaw.

16 31. JAFE Member # 9 holds a full professorship of law at a public university in the  
17 Southeast and heads an academic center for the study of the Middle East and international law. He  
18 is also a frequent lecturer at various American law schools. He has spoken at the invitation of  
19 student groups at Berkeley Law and other law schools. This Member would welcome the  
20 opportunity to speak about these topics with the Middle Eastern and North African Law Students  
21 Association and the *Journal of Middle Eastern and Islamic Law*. However, he is unable to do so  
22 because they have adopted the Exclusionary Bylaw.

23 32. JAFE Member # 10 is a Clinical Professor of Law at an Ivy League Law School.  
24 This Member's areas of expertise include securities law and the politicization of criminal law. He  
25 has lectured at colleges and law schools on race relations, criminal trials, and the Black Lives  
26 Matter (BLM) movement and its history. He would welcome the opportunity to speak about these  
27 topics to the Law School's Community Defense Project, the Defenders at Berkeley, Law Students  
28

1 of African Descent, and the Abolitionist Collective. But he is unable to do so because they have  
2 adopted the Exclusionary Bylaw.

3 33. JAFE Member # 11 holds a university professorship chair in law at a public  
4 university in the Southeast. He is also a frequent lecturer and prolific author with expertise in  
5 constitutional law, including gender issues and evidence, as well as issues related to the Middle  
6 East. This Member would welcome the opportunity to speak about these topics to the Law School  
7 Legal Projects and groups, including with the Women of Berkeley Law, the *Berkeley Journal of*  
8 *Gender, Law, and Justice*, the Middle Eastern and North African Law Students Association, the  
9 Community Defense Project, the Defenders at Berkeley, and the *Journal of Middle Eastern and*  
10 *Islamic Law*. However, he is unable to do so because these groups have adopted the Exclusionary  
11 Bylaw.

12 34. JAFE Member # 12 holds a distinguished university professorship at a private  
13 Northeastern law school and is a celebrated novelist, law professor, and essayist. He lectures  
14 widely and has been an invited speaker to a student group at Berkeley Law before the  
15 Exclusionary Bylaw was adopted. His expertise includes criminal justice. He would welcome the  
16 opportunity to speak to any of the Legal Projects, Journals, or Groups, such as the Community  
17 Defense Project, the Contra Costa Reentry Project, or the Defenders at Berkeley, but is unable to  
18 do so because these groups have adopted the Exclusionary Bylaw.

19 35. JAFE Member # 13 is the legal advisor of an independent, nonpartisan research  
20 institute dedicated to promoting transparency and accountability of non-governmental  
21 organizations (NGOs) claiming human rights agendas. Her areas of expertise include business and  
22 human rights, international human rights law, the laws of armed conflict, universal jurisdiction,  
23 international fact finding, NGOs, and the UN. She has written on African law and policy. She has  
24 accepted invitations to speak to law students at Harvard Law School, the University of Chicago,  
25 and Oxford University. She would welcome the opportunity to speak about these topics with the  
26 Women of Berkeley Law, the *Berkeley Journal of Gender, Law, and Justice*, the Middle Eastern  
27 and North African Law Students Association, the *Berkeley Journal of African Law and Policy*,

28

1 and the *Journal of Middle Eastern and Islamic Law*, but she is unable to do so because the groups  
2 have adopted the Exclusionary Bylaw.

3 36. JAFE Member # 14 is a lawyer, Berkeley resident, and co-shareholder in an  
4 Oakland, California-based law firm. This member has employee rights expertise and criminal  
5 defense experience and has frequently spoken to law students at U.S. law schools. He has also  
6 spoken before law students in the Berkeley area. This member's cases include an important case  
7 on behalf of Asian Americans, and he would welcome the opportunity to speak with the South  
8 Asian Law Student Association as well as the Defenders at Berkeley, the Contra Costa Reentry  
9 Project, and the Community Defense Project but is unable to do so because these groups have  
10 adopted the Exclusionary Bylaw.

11 37. JAFE Member # 15 is a prominent lawyer, syndicated columnist for a major  
12 newspaper, former Democratic political appointee, a United States delegate to an international  
13 human rights organization, and an instructor at an Ivy League university. This member has  
14 represented parties in high-profile First Amendment, corporate takeover, employment, breach of  
15 fiduciary duty, and fraud-based cases. His areas of expertise include litigation, employment  
16 litigation, First Amendment and media, and white-collar and government enforcement. He would  
17 welcome the opportunity to speak about these topics to the Law School's Community Defense  
18 Project, the Defenders at Berkeley, and the Abolitionist Collective. But he is unable to do so  
19 because they have adopted the Exclusionary Bylaw.

20 38. JAFE also includes among its members UC Berkeley students who have been  
21 forced to choose between embracing an integral part of their Jewish identity or participating fully  
22 in student groups on campus. Unfortunately, because of the nature of the discrimination at  
23 Berkeley, many of JAFE's members do not feel comfortable identifying themselves given the risk  
24 of further discrimination.

25 39. Defendant UC Berkeley is a public law school founded by the California State  
26 Assembly and operated by the State of California.

27  
28



1           46.       Zionism, which reflects the Jews’ ancestral heritage and deep connection to Israel,  
2 is integral to the religious, national and/or ethnic identity of most Jews. “The vast majority of  
3 Jews around the world feel a connection or kinship with Israel, whether or not they explicitly  
4 identify as Zionists, and regardless of their opinions on the policies of the Israeli government.”  
5 *Zionism*, ANTI-DEFAMATION LEAGUE, <https://www.adl.org/resources/glossary-term/zionism> (last  
6 visited Nov. 27, 2023).

7           47.       Dean Chemerinsky, himself, has stated, “For many Jews, Zionism is a core  
8 component of their identity and ethnic and ancestral heritage.” Academic Engagement Network,  
9 *U.C. Berkeley School of Law Faculty Statement in Support of Jewish Law Students*,  
10 <https://docs.google.com/document/d/1BiOeLJSG7lrhb9DSkvxsYRebE6Ck8a0rZaeBWNtjLPY/ed>  
11 [it](#) (last visited Nov. 27, 2023). Accordingly, he, like many other Jews, experienced the “No  
12 Zionist Speakers” policy “as antisemitism because it denies the existence of the state of Israel, the  
13 historical home of the Jewish people.” *Id.*

14           48.       The Jewish people share not only religious laws and traditions, but also a deep  
15 historical sense of Jewish peoplehood. The Jewish people’s history, theology, and culture are  
16 deeply intertwined with the land of Israel, the birthplace of Jewish religion and culture, and the  
17 place to which Jews have expressly yearned to return across centuries of forced diaspora.  
18 Throughout millennia of exile and persecution, the Jewish people have continued to recognize  
19 Jerusalem (also known as “Zion”) and the land of Israel as the Jews’ ancestral homeland. To this  
20 day, Jews pray facing toward Jerusalem. The Jewish calendar, Jewish life cycle events, Jewish  
21 law, and Jewish prayer reflect the deep historic and ancestral connection of the Jewish people to  
22 the land of Israel. For example, more than half of the 613 commandments included in the  
23 Pentateuch relate to, and can only be fulfilled in, the land of Israel. YOTAV ELIACH, *JUDAISM,*  
24 *ZIONISM AND THE LAND OF ISRAEL* 5-6 (2018).

25           49.       For most Jews, Zionism is as integral to Judaism as observing the Jewish Sabbath  
26 or maintaining a kosher diet. Of course, not all Jews observe the Sabbath or keep kosher, but  
27 those who do clearly are expressing critical components of their Jewish identity. Similarly, not all  
28

1 Jews are Zionists, but for those who are, the connection to the Jewish State is integral to their  
2 Jewish identity.

3         50. It has become commonplace among persons seeking to disguise their anti-Semitism  
4 to use the word “Zionists” to mean Jews, while at the same time arguing (incongruously) that  
5 Zionism is merely a political viewpoint. For example, Zahra Billoo, an activist with the Council  
6 on American-Islamic Relations (CAIR), who was invited to talk to LSJP members, told students  
7 that the ADL and American Jewish Congress are “Zionist” organizations, because she equates  
8 Jews with Zionists. American Muslims for Palestine (AMP) 14th Annual Convention for  
9 Palestine, YOUTUBE (Nov. 27, 2021),  
10 <https://www.youtube.com/watch?v=0q6oroJXkMs&t=1849s>. At the same time, she told the  
11 students that “Zionism” is merely a political position, and that “Zionists” are not a protected class.  
12 *Id.* Arguing about Israeli policy is one thing; no one claims this is anti-Semitic. But as the ADL  
13 has observed, “criticism or condemnation of Israel is transparently a cover for anti-Semitism ...  
14 when it uses traditional anti-Semitic imagery or stereotypes, blames all Jews for the actions of  
15 Israel, or denies or questions Israel’s right to exist.” *What Is... Anti-Israel, Anti-Semitic, Anti-*  
16 *Zionist?*, ANTI-DEFAMATION LEAGUE, [https://www.adl.org/resources/tools-and-strategies/what-](https://www.adl.org/resources/tools-and-strategies/what-anti-israel-anti-semitic-anti-zionist)  
17 [anti-israel-anti-semitic-anti-zionist](https://www.adl.org/resources/tools-and-strategies/what-anti-israel-anti-semitic-anti-zionist) (last visited Nov. 27, 2023). Marginalizing, demonizing, and  
18 excluding Jews on the basis of the Zionist component of their Jewish identity is discrimination  
19 against Jews, pure and simple.

20         51. Nor does being a Zionist remotely equate to being anti-Palestinian. Many Zionists  
21 are pro-Palestinian, sympathetic to Palestinian causes and issues, and desirous of engaging with  
22 groups that support Palestinians.

23                 **B. Lawmakers In The United States And Around The Globe Recognize**  
24                 **That Anti-Zionism Is Anti-Semitism.**

25         52. The International Holocaust Remembrance Alliance (“IHRA”)—whose member  
26 states include the United States—recognizes that Zionism (connection to the Jewish State of  
27 Israel) cannot be separated from the identity of most Jews. On May 26, 2016, the IHRA adopted a  
28 working definition of anti-Semitism (the Definition) that covers acts “[d]enying the Jewish people

1 their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist  
2 endeavor.” *What is antisemitism?*, INT’L HOLOCAUST REMEMBRANCE ALL.,  
3 [https://www.holocaustremembrance.com/resources/working-definitions-charters/working-  
5 definition-antisemitism](https://www.holocaustremembrance.com/resources/working-definitions-charters/working-<br/>4 definition-antisemitism) (last visited Nov. 27, 2023).

5 53. The IHRA Definition has been adopted or endorsed by 43 United Nations (UN)  
6 member states, including the United States. See *Information on endorsement and adoption of the*  
7 *IHRA working definition of antisemitism, International Holocaust Remembrance Alliance*, INT’L  
8 HOLOCAUST REMEMBRANCE ALL., [https://www.holocaustremembrance.com/resources/working-  
10 definitions-charters/working-definition-antisemitism/adoption-endorsement](https://www.holocaustremembrance.com/resources/working-<br/>9 definitions-charters/working-definition-antisemitism/adoption-endorsement) (last visited Nov. 27,  
11 2023). Over a thousand governmental and non-governmental organizations have likewise adopted  
12 the definition. Zvika Klein, *More than 1,000 global entities adopted IHRA definition of*  
13 *Antisemitism*, JERUSALEM POST (Jan. 17, 2023),  
<https://www.jpost.com/diaspora/antisemitism/article-728773>.

14 54. On November 4, 2022, the U.S. Department of State (under President Biden’s  
15 leadership) reaffirmed its commitment to the IHRA Definition. It explained:

16 The United States unequivocally condemns antisemitism and views the International  
17 Holocaust Remembrance Alliance (IHRA) Working Definition of Antisemitism as  
18 integral to the fight to eliminate this scourge. It is widely accepted and used  
19 throughout the world by governments, international organizations, religious and  
20 sports entities, and other civil society organizations, which sends a powerful message  
of solidarity against antisemitism. Bipartisan U.S. administrations have embraced  
and used the IHRA Working Definition of Antisemitism, inclusive of its examples,  
as a policy tool.

21 U.S. Dep’t of State, Press Statement: The International Holocaust Remembrance Alliance  
22 Working Definition of Antisemitism (Nov. 4, 2022), [https://www.state.gov/the-international-  
24 holocaust-remembrance-alliance-working-definition-of-antisemitism/](https://www.state.gov/the-international-<br/>23 holocaust-remembrance-alliance-working-definition-of-antisemitism/).

24 55. In May 2023, the Biden White House issued a National Strategy to Counter  
25 Antisemitism (the “National Strategy”), particularly in the educational arena. According to the  
26 White House, the dramatic increase in the number of reported anti-Semitic incidents, many of  
27 which are occurring on campuses and in schoolyards, is simply “unacceptable.” The U.S.  
28 National Strategy to Counter Antisemitism 9 (May 2023), <https://www.whitehouse.gov/wp->



1 [content/uploads/2023/05/U.S.-National-Strategy-to-Counter-Antisemitism.pdf](https://content/uploads/2023/05/U.S.-National-Strategy-to-Counter-Antisemitism.pdf) (last visited Nov.  
2 27, 2023). Jewish students report that classmates and teachers “make unfair judgments about  
3 them because they are Jewish,” and ostracize them “if they support the existence of Israel as a  
4 Jewish state.” *Id.* at 40. The National Strategy noted that “[w]hen Jews are targeted because of  
5 their beliefs or their identity, when Israel is singled out because of anti-Jewish hatred, that is  
6 antisemitism.” *Id.* at 9. As the White House has repeatedly explained and confirms in its National  
7 Strategy, protection of Jews as a religious, national, and ethnic group includes protection from  
8 anti-Israel bias and discrimination.

9         56. The Biden administration has likewise publicly embraced the IHRA Definition in  
10 the domestic context through its repeated reliance on Executive Order 13899, which was issued by  
11 President Trump on December 16, 2019. That Executive Order directs federal agencies charged  
12 with enforcing Title VI to consider the IHRA Definition of Anti-Semitism, including the examples  
13 of anti-Semitism identified by IHRA. Exec. Order No. 13899, 84 Fed. Reg. 68799 (Dec. 11,  
14 2019).

15         57. Assistant Secretary of Education Catherine Lhamon wrote in January 2023 that the  
16 administration “affirms OCR’s [Office for Civil Rights] commitment to complying with Executive  
17 Order 13899 on Combating Anti-Semitism,” and referenced OCR guidance on the Executive  
18 Order which remains available in OCR’s online compendium of active policy documents. U.S.  
19 Dep’t of Educ., Press Release: OCR Releases New Fact Sheet on Title VI Protection from  
20 Discrimination Based on Shared Ancestry or Ethnic Characteristics (Jan. 4, 2023),  
21 <https://content.govdelivery.com/accounts/USED/bulletins/340e623>. In other words, this  
22 administration affirms the order as an active component of President Biden’s civil rights policy—  
23 and emphasizes OCR’s “commitment to complying” with it. The IHRA Definition thus remains  
24 the federal regulatory standard for evaluating whether harassing conduct is motivated by anti-  
25 Semitic intent.

26         58. In May 2023, in a Dear Colleague Letter addressing discrimination against Jewish  
27 students, Assistant Secretary Lhamon lists as a resource “Questions and Answers on Executive  
28 Order 13899 (Combating Anti-Semitism) and OCR’s Enforcement of Title VI of the Civil Rights

1 Act of 1964.” U.S. Dep’t of Educ., Dear Colleague Letter Addressing Discrimination Against  
2 Jewish Students 3 (May 25, 2023), [https://www2.ed.gov/about/offices/list/ocr/docs/antisemitism-](https://www2.ed.gov/about/offices/list/ocr/docs/antisemitism-dcl.pdf)  
3 [dcl.pdf](https://www2.ed.gov/about/offices/list/ocr/docs/antisemitism-dcl.pdf). That FAQ in turn explains that Executive Order 13899 “requires federal agencies to  
4 consider the International Holocaust Remembrance Alliance’s (IHRA) working definition of anti-  
5 Semitism and the IHRA’s contemporary examples of anti-Semitism in enforcing Title VI.” U.S.  
6 Dep’t of Educ., Questions and Answers on Executive Order 13899 (Combating Anti-Semitism and  
7 OCR’s Enforcement of Title VI of the Civil Rights Act of 1964) 1, OCR-000127 (Jan. 19, 2021),  
8 <https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-anti-semitism-20210119.pdf>; *see also*  
9 *id.* at 5 (attaching as appendix the IHRA’s Working Definition of Anti-Semitism and  
10 Contemporary Examples of Anti-Semitism).

11 59. The IHRA definition is consistent with the definition of anti-Semitism adopted by  
12 the U.S. Department of State on June 8, 2010, during President Obama’s administration. This  
13 definition explains that anti-Semitism includes efforts to “Delegitimize Israel” by “Denying the  
14 Jewish people their right to self-determination and denying Israel the right to exist.” Dep’t of  
15 State, Fact Sheet: Defining Anti-Semitism (June 8, 2010), [https://2009-](https://2009-2017.state.gov/j/drl/rls/fs/2010/122352.htm)  
16 [2017.state.gov/j/drl/rls/fs/2010/122352.htm](https://2009-2017.state.gov/j/drl/rls/fs/2010/122352.htm).

17 60. On September 26, 2018, UN Secretary General Antonio Guterres applauded the  
18 IHRA’s work in drafting a common definition of anti-Semitism and noted that the IHRA  
19 Definition “can serve as a basis for law enforcement, as well as preventative policies.” Press  
20 Release, Anti-Semitism Rising Even in Countries with No Jews at All, Secretary-General Tells  
21 Event on Power of Education to Counter Racism, Discrimination, U.N. Press Release  
22 SG/SM/19252-RD/1022 (Sept. 26, 2018), <https://press.un.org/en/2018/sgsm19252.doc.htm>.

23 61. On December 6, 2018, the European Council urged European Union member states  
24 that had not done so already to endorse the IHRA’s definition of anti-Semitism. Eur. Council,  
25 Outcome of Proceedings (EC) No. 15213/18 (Dec. 6, 2018),  
26 <https://data.consilium.europa.eu/doc/document/ST-15213-2018-INIT/en/pdf>.

27 62. On June 4, 2019, Organization of American States (OAS) Secretary General Luis  
28 Almagro asked every member state to adopt the IHRA definition of anti-Semitism and adopted the

1 IHRA definition as the official OAS definition to be employed in OAS work. General Luis  
2 Almagro (@Almagro\_OEA2015), TWITTER (June 4, 2019, 1:47 PM),  
3 [https://twitter.com/Almagro\\_OEA2015/status/1135966386302459906?s=20](https://twitter.com/Almagro_OEA2015/status/1135966386302459906?s=20).

4 **C. Registered Student Groups At UC Berkeley, Including The Law**  
5 **School, Are Required Annually To Pledge Their Commitment To “A**  
6 **Just Community In Which Discrimination and Hate Are Not**  
7 **Tolerated.” Once Registered, Groups Obtain Significant Advantages,**  
8 **Including Funding.**

9 63. Both UC Berkeley and the Law School have long and famously heralded their  
10 commitment to civil rights and equal treatment of all persons regardless of race, ethnicity, national  
11 origin, gender, sexual preference, faith, military status, physical disability, and/or heritage.

12 64. UC Berkeley’s rules for registered student groups, including law school groups,  
13 require prospective and current groups alike to include the following “all-comers” clause verbatim  
14 in their respective constitutions:

15 We will not restrict membership based upon race, color, national origin, religion,  
16 sex, gender identity, pregnancy (including pregnancy, childbirth, and medical  
17 conditions related to pregnancy or childbirth), physical or mental disability,  
18 medical condition (cancer related or genetic characteristics), ancestry, marital  
19 status, age, sexual orientation, citizenship, or service in the uniformed services  
(including membership, application for membership, performance of service,  
application for service, or obligation for service in the uniformed services).

20 *Required RSO Constitution Clauses*, LEAD CENTER,

21 [https://docs.google.com/document/d/13UcGDtafC2aqQtWaSN9RhL9XivBCndA201sQHmZ8YQ](https://docs.google.com/document/d/13UcGDtafC2aqQtWaSN9RhL9XivBCndA201sQHmZ8YQ0/edit)  
22 [0/edit](https://docs.google.com/document/d/13UcGDtafC2aqQtWaSN9RhL9XivBCndA201sQHmZ8YQ0/edit) (last visited Nov. 27, 2023).

23 65. Registered student groups must also pledge their commitment to “the dignity of all  
24 individuals,” to free expression, and to upholding “a just community in which discrimination and  
25 hate are not tolerated.” *2023-2024 New Organization Application Questions 6*, LEAD CENTER,  
26 [https://docs.google.com/document/d/1dx-7-2d47wuXD-\\_A7PLRdloQAAbdOfJHBMOA-](https://docs.google.com/document/d/1dx-7-2d47wuXD-_A7PLRdloQAAbdOfJHBMOA-CLc27to/edit)  
27 [CLc27to/edit](https://docs.google.com/document/d/1dx-7-2d47wuXD-_A7PLRdloQAAbdOfJHBMOA-CLc27to/edit) (last visited Nov. 27, 2023).

1           66.     In exchange for making and upholding this pledge and other commitments, groups  
2 are afforded significant privileges, including funding for events, meeting spaces on campus, and  
3 use of the words “UC Berkeley” as part of the groups’ names. Funding is derived from mandatory  
4 student activities fees paid by each student or, in the case of the Law School, from the UC  
5 Berkeley Graduate Assembly, which is funded by Graduate Student Fees.

6           67.     Among the groups that make these commitments are “student-initiated legal  
7 services projects,” which are part of Berkeley Law’s experiential education programs. The Law  
8 School provides these programs so that students can participate in “hands-on learning  
9 opportunities” as early as their first semester at the law school. The Law School describes these  
10 programs as being at the “cutting-edge of legal education” and maintains that they “make Berkeley  
11 Law graduates particularly ready for practice in whatever area they pursue.” *See Experiential  
12 education is a central component of the Berkeley Law experience*, BERKELEY LAW SCH.,  
13 <https://www.law.berkeley.edu/experiential/> (last visited Nov. 27, 2023). These programs allow  
14 students to gain client experience; develop lawyering and leadership skills; meet minimum hours  
15 requirements for summer fellowships; serve the community; receive training, supervision, and  
16 mentoring; and earn pro bono hours for state bar requirements, summer public interest stipends,  
17 and recognition at Berkeley Law’s Public Interest and Pro Bono graduation. *Id.*

18           68.     These commitments are also made by Berkeley Law’s student-edited law journals  
19 (the Journals). Berkeley Law maintains that participation in its Journals “enhances the learning  
20 experience for Berkeley Law students by providing opportunities to develop and improve legal  
21 writing and research skills, with in-depth exposure to a rapidly expanding body of law that  
22 augments general course work.” *Student Journals*, BERKELEY LAW SCH.,  
23 <https://www.law.berkeley.edu/students/student-journals/> (last visited Nov. 27, 2023). The Law  
24 School maintains that Journal membership, with the exception of the *California Law Review*, is  
25 “open to all students” in “keeping with Berkeley Law’s spirit of cooperative education.” *Id.*

26           69.     Unfortunately, as discussed below, a number of student organizations at Berkeley  
27 Law (including student-initiated legal service projects and law journals) and at the undergraduate  
28

1 campus have made and renewed their pledges to respect the dignity of all individuals while  
2 simultaneously expressing their hostility towards Jews.

3 **D. Legal Services Projects And Registered Student Groups At Berkeley**  
4 **Law Adopt An Anti-Semitic Bylaw That Excludes “Zionist” Speakers**  
5 **And Silences Jewish Students, Faculty, And Other Members Of The**  
6 **Berkeley Community Who Support The Jewish State Of Israel.**

7 70. Law Students for Justice in Palestine (LSJP) is a recognized student group  
8 operating at Berkeley Law. Its constitution includes an “all-comers” clause which precludes  
9 membership restrictions based on categories such as race, color, national origin, and religion,  
10 among others. Like other registered student groups, LSJP pledges its commitment to “the dignity  
11 of all individuals,” to free expression, and to upholding “a just community in which discrimination  
12 and hate are not tolerated.”

13 71. In August 2022, LSJP amended its constitution to include a bylaw that  
14 discriminates against the Jewish community by providing that the student group “will not invite  
15 speakers that have expressed and continue to hold views or host/sponsor/promote events in  
16 support of Zionism[.]” See LSJP Const., UNIV. OF CAL. BERKELEY,  
17 <https://callink.berkeley.edu/organization/ljdp> (last visited Nov. 27, 2023). The LSJP Constitution  
18 reads, in pertinent part:

19 In the rejection of colonialism, imperialism, and other types of oppression, LSJP is  
20 dedicated to wholly boycotting, sanctioning, and divesting funds from institutions,  
21 organizations, companies, and any entity that participated in or is directly/indirectly  
22 complicit in the occupation of the Palestinian territories and/or supports the actions  
23 of the apartheid state of Israel. Furthermore, in the interest of protecting the safety  
24 and welfare of Palestinian students on campus, LSJP will not invite speakers that  
25 have expressed and continued to hold views or host/sponsor/promote events in  
26 support of Zionism, the apartheid state of Israel, and the occupation of Palestine. To  
27 ensure that solidarity is practiced both in theory and in practice, LSJP members agree  
28 to participate in a “Palestine 101” training held by the Law Students Justice for  
Palestine executive board to learn ways to create a safe and inclusive space for  
Palestinian students and students that are in the support of the liberation of Palestine,  
as well as engaging in the BDS movement in the principled manner Palestinians are  
asking for.

1           72.     A Berkeley law student and self-proclaimed author of the LSJP amendment (*e.g.*,  
2 the Exclusionary Bylaw) explained in a public webinar that the ban on Zionist speakers is to be  
3 read as a declaration that, “We stand against white supremacy and colonialism,” and that only  
4 speakers who agree that Israel is a “racist” and “colonial” endeavor may be invited to speak to  
5 Law School Group members. Because Dean Chemerinsky is himself a Zionist, she stated that UC  
6 Berkeley cannot be “a neutral space where free and open dialogue is taking place.” Finally, she  
7 revealed that her “goal” is to persuade all student groups, including undergraduate groups, at UC  
8 Berkeley and elsewhere, to adopt her Exclusionary Bylaw or a similar statement demonizing Israel  
9 as a “white supremacist,” “colonial” state. *See* Foundation of Middle East Peace, The Berkeley  
10 LSJP Bylaw and Its Aftermath, YOUTUBE (March 6, 2023),  
11 <https://www.youtube.com/watch?v=7oHlyCpgCJ8>.

12           73.     Dylan Saba, an attorney holding himself out as counsel for LSJP, has admitted that  
13 the marginalization and exclusion of Jewish students is both an intended and acceptable  
14 consequence of the Exclusionary Bylaw. His clients, he explained, are “are trying to build a mass  
15 movement” against Israel and are not interested in alleviating “the discomfort of Zionist students.”  
16 To the contrary, he stated, “it is good for people like that to be uncomfortable.” *See* Peter Beinart  
17 with Dylan Saba & Ethan Katz on the Controversy About Zionist Speakers at Berkeley Law,  
18 YOUTUBE (January 6, 2023), <https://www.youtube.com/watch?v=RuDmyoO7-Zk>.

19           74.     Following its own adoption of the Exclusionary Bylaw, LSJP circulated it to other  
20 student groups and Legal Services Projects at Berkeley Law, urging them to amend their own  
21 constitutions to include the Exclusionary Bylaw. Berkeley LSJP (@berkeleylawforpalestine),  
22 INSTAGRAM (Aug. 21, 2022),  
23 [https://www.instagram.com/p/Chh\\_43tpLnm/?igshid=YmMyMTA2M2Y=](https://www.instagram.com/p/Chh_43tpLnm/?igshid=YmMyMTA2M2Y=).

24           75.     Following this request, at least 23 organizations at Berkeley Law have adopted the  
25 Exclusionary Bylaw or a substantially similar version of it to date.

26           76.     For example, the Community Defense Project, one of Berkeley’s practical clinics,  
27 similarly amended its Constitution to read, in pertinent part:  
28

1 In the rejection of colonialism, imperialism, and other types of oppression, CDP is  
2 dedicated to wholly boycotting, sanctioning, and divesting funds from organizations,  
3 companies, and any entity that participated in or is directly/indirectly complicit in  
4 the occupation of Palestinian territories and/or supports the actions of the apartheid  
5 state of Israel. Furthermore, in the interest of protecting the safety of Palestinian  
students on campus, CPD will not invite speakers that have expressed and continued  
to hold views or host/sponsor/promote events in support of Zionism, the apartheid  
state of Israel, and the occupation of Palestine.

6 Cmty. Defense Project Constn. art. V, UNIV. OF CAL. BERKELEY, (amended Aug. 18, 2023),  
7 <https://callink.berkeley.edu/organization/communitydefenseproject> (last visited Nov. 27, 2023).

8  
9 77. The Constitution of the *Berkeley Journal of Gender, Law & Justice* has been  
10 amended to read, in pertinent part:

11 In the rejection of colonialism, imperialism, and other types of oppression, BGLJ is  
12 dedicated to wholly boycotting, sanctioning, and divesting funds from institutions,  
13 organizations, companies, and any entity that participated in or is directly/indirectly  
14 complicit in the occupation of the Palestinian territories and/or supports the actions  
15 of the apartheid state of Israel. . . Furthermore, in the interest of protecting the safety  
16 and welfare of Palestinian students on campus, BGLJ will not invite speakers or  
publish pieces by authors that have expressed and continued to hold views or  
host/sponsor/promote events in support of Zionism, the apartheid state of Israel, and  
the occupation of Palestine.

17 Bylaws (current through July 10, 2023), Art. 4.4(a)-(b), UNIV. OF CAL. BERKELEY,  
18 <https://callink.berkeley.edu/organization/gaberkeleyjournalofgenderlawandjustice> (last visited  
19 Nov. 27, 2023).

20 78. Student leaders in any Legal Services Project or Group wishing to join this  
21 “movement” are required to “participate in a ‘Palestine 101’ training held by the Law Students  
22 Justice for Palestine[.]” *See, e.g., id* at Art. 4.4(c). They are also required to participate actively in  
23 BDS, a movement that seeks the elimination of the Jewish State. *Id.*

24 79. Other than LSJP, none of the Legal Services Projects or Groups has a mission or  
25 purpose that is related to Zionism, Israel, or the Israeli-Palestinian conflict.

26 80. According to students who participated in the Palestine 101 training held by LSJP,  
27 “[t]he presenters equated Zionism with imperialism, ethnic erasure, and colonialism.” Charlotte  
28 Aaron, Noah Cohen, Billy Malmed, Adam Pukier, *We’re Jewish Berkeley Law Students, Excluded*

1 *in Many Areas on Campus*, DAILY BEAST (Oct. 17, 2022), [https://www.thedailybeast.com/were-](https://www.thedailybeast.com/were-jewish-berkeley-law-students-excluded-in-many-areas-on-campus)  
2 [jewish-berkeley-law-students-excluded-in-many-areas-on-campus](https://www.thedailybeast.com/were-jewish-berkeley-law-students-excluded-in-many-areas-on-campus). The “main takeaway” from  
3 the presentation was that “Israel is an illegitimate state that does not have a right to exist” and the  
4 “only option to protect Palestinian students is to exclude Zionists and denounce Zionism.” *Id.*

5 81. The result of the amended constitutions and the Palestine 101 training was  
6 predictable. Jewish first-year law students chose not to join student groups that adopted the  
7 Exclusionary Bylaw and whose leaders attended the Palestine 101 training. As several law school  
8 students explained, “No organization has said ‘Jews are not welcome,’ but in practice, these by-  
9 laws and the training say exactly that. Student leaders now accept the exclusion of Jews because of  
10 an aspect of their identity. There is tolerance to marginalize us because of our faith.” *Id.*

11 82. By amending their constitutions to add the Exclusionary Bylaw, these entities have  
12 marginalized Jewish students for whom Zionism is integral to their identity and excluded Jewish  
13 members of the Berkeley community from participating in group activities in violation of the all-  
14 comers policy. While the Legal Services Projects and Groups may protest that anyone can join,  
15 the fact is that Jewish and Israeli students can do so only by renouncing or hiding their own  
16 identities or by remaining silent. Neither option can lawfully be demanded of any individual  
17 under UC policy or U.S. law.

18 83. As a result, the Exclusionary Bylaw prevents students from obtaining the same  
19 opportunities for participation at the law school and deprives them of opportunities for career  
20 advancement. The ban on Zionist speakers serves to exclude Jewish law students, as Zionism is  
21 integral to Jewish identity, from serving in leadership roles or from fully participating in law  
22 student groups that have adopted the Exclusionary Bylaw. These Jewish students are compelled to  
23 hide or disavow their pride in their ancestral Jewish heritage in order to fully benefit from club  
24 membership.

25 84. Preventing Jewish law students from participating in a journal like *The Berkeley*  
26 *Journal of Gender, Law, and Justice* denies them a beneficial educational opportunity that is  
27 afforded to other students. It limits their avenues for developing and improving legal research,  
28



1 writing, and editing skills, while also limiting their choices for obtaining academic credits towards  
2 graduation.

3 85. Excluding law students from Legal Services Projects prevents them from receiving  
4 a quintessential law school experience. Experiential legal work enables students to acquire hands-  
5 on legal experience while at the same time earning other valuable benefits. These projects allow  
6 law students to earn pro-bono hours for state bar requirements, and receive training, supervision,  
7 and mentorship. Depriving Jewish students of the opportunity to be part of the Community  
8 Defense Project, for example, disservices not only the students but the members of the community  
9 that come to the project for assistance.

10 86. Being excluded from groups like Women of Berkeley Law, the Queer Caucus at  
11 Berkeley, and the Law Students of African Descent means not only the loss of camaraderie and  
12 educational opportunities; it means lost networking opportunities with other students destined for  
13 the California bar and bench, and with practicing lawyers who are interested in mentoring and  
14 promoting young lawyers who belong or belonged to the groups they belonged to in law school.

15 87. The harm is not limited to Jewish students. Registered student groups at UC  
16 Berkeley and at the Law School routinely contract with outside speakers to present to their  
17 members, paying their fees with funds the University provides to registered student groups. By  
18 placing a discriminatory ban on “Zionist” speakers, they have also stigmatized and violated the  
19 rights of scholars who would otherwise have an opportunity to speak to these groups. And they  
20 have prevented those scholars from having even the opportunity to be considered for speaking  
21 engagements, which deprives them of monetary compensation and the advancement of their own  
22 careers.

23 88. As discussed below, the adoption of the Exclusionary Bylaw and the exclusion of  
24 Jews by these Legal Services Projects and Groups violates the U.S. Constitution and federal law.  
25 It also violates UC and UC Berkeley policy, namely the UC Policy on non-discrimination and UC  
26 Berkeley’s “all-comers” policy.

1                   **E. Berkeley Leaders Acknowledge That The Ban Is Discriminatory And**  
2                   **Anti-Semitic Yet Fail To Take Meaningful Action.**

3           89. Although Defendants acknowledged the adoption of the discriminatory violates  
4 school policy, they have failed to take appropriate action in response.

5           90. Section 20.00 of the UC Policies Applying to Campus Activities, Organizations  
6 and Students (PACAOS) entitled “Policy on Nondiscrimination,” provides:

7           The University is committed to a policy against legally impermissible, arbitrary, or  
8 unreasonable discriminatory practices. All groups operating under the authority of  
9 The Regents, including administration, faculty, student governments, University-  
10 owned residence halls, and programs sponsored by the University or any campus, are  
11 governed by this policy of nondiscrimination. The intent of the University’s policy  
on nondiscrimination is to reflect fully the spirit of the law. In carrying out this  
Policy, the University also shall be sensitive to the existence of past and continuing  
societal discrimination.

12 PACAOS-20, <https://policy.ucop.edu/doc/2710522/PACAOS-20> (last visited Nov. 27, 2023).

13           91. As noted above, under the University’s “all-comers” policy, registered student  
14 groups may not impose membership restrictions based on categories such as race, color, national  
15 origin, and religion, among others. Registered student groups must also pledge their commitment  
16 to “the dignity of all individuals,” to free expression, and to upholding “a just community in which  
17 discrimination and hate are not tolerated.” *2023-2024 New Organization Application Questions 6*,  
18 LEAD CENTER, [https://docs.google.com/document/d/1dx-7-2d47wuXD-](https://docs.google.com/document/d/1dx-7-2d47wuXD-A7PLRdloQAbdOfJHBMOA-CLc27to/edit)  
19 [A7PLRdloQAbdOfJHBMOA-CLc27to/edit](https://docs.google.com/document/d/1dx-7-2d47wuXD-A7PLRdloQAbdOfJHBMOA-CLc27to/edit) (last visited Nov. 27, 2023).

20           92. Excluding Jewish students and speakers from participating in these groups violates  
21 both the Policy on Nondiscrimination and the “all-comers” policy. Dean Chemerinsky has  
22 explained that student organizations “have the right to choose speakers for their events based on  
23 viewpoint.” Pat Joseph, *Discriminatory Bylaws and Free Speech; A Q&A with Berkeley Law*  
24 *Dean Erwin Chemerinsky*, CAL. MAG. (Dec. 1, 2022), [https://alumni.berkeley.edu/california-](https://alumni.berkeley.edu/california-magazine/2022-winter/discriminatory-bylaws-and-free-speech/)  
25 [magazine/2022-winter/discriminatory-bylaws-and-free-speech/](https://alumni.berkeley.edu/california-magazine/2022-winter/discriminatory-bylaws-and-free-speech/). But he added that “[i]t would be  
26 punishable if they discriminated based on religion (or race or sex or sexual orientation) in inviting  
27 speakers.” *Id.*

1           93.     Dean Chemerinsky further explained that actually “exclud[ing] a speaker on  
2 account of being Jewish or holding particular views about Israel” is “conduct, of course, [that]  
3 would be subject to sanctions.” Erwin Chemerinsky, *There Are No ‘Jewish-Free’ Zones on the*  
4 *UC-Berkeley Campus*, DAILY BEAST (Oct. 1, 2022) (updated Oct. 2, 2022),  
5 <https://www.thedailybeast.com/there-are-no-jewish-free-zones-on-the-uc-berkeley-campus>. See  
6 also Erwin Chemerinsky, *On “Jewish Free Zones” at Berkeley, the Debate Between Chemerinsky*  
7 *and Marcus Continues*, JEWISH J. (Oct. 12, 2022),  
8 [https://jewishjournal.com/commentary/opinion/352237/on-jewish-free-zones-at-berkeley-the-](https://jewishjournal.com/commentary/opinion/352237/on-jewish-free-zones-at-berkeley-the-debate-between-chemerinsky-and-marcus-continues/)  
9 [debate-between-chemerinsky-and-marcus-continues/](https://jewishjournal.com/commentary/opinion/352237/on-jewish-free-zones-at-berkeley-the-debate-between-chemerinsky-and-marcus-continues/) (explaining that “den[ying] the right or the  
10 ability [of students] to express themselves, to exercise their freedom of speech ... would represent  
11 a cross-over from expression to conduct and that would be subject to serious discipline.”).

12           94.     Berkeley seeks to avoid liability by suggesting the Exclusionary Bylaw  
13 discriminates on the basis of viewpoint but not race, ethnicity, or religion. However, at the same  
14 time, Defendants admit that the Bylaw is anti-Semitic. Dean Chemerinsky, along with 23 other  
15 Berkeley law professors, issued a statement acknowledging that “[m]any Jews (including some of  
16 us signing below who are Jewish) also experience this [bylaw] as antisemitism because it denies  
17 the existence of the state of Israel, the historical home of the Jewish people. For many Jews,  
18 Zionism is a core component of their identity and ethnic and ancestral heritage.” Academic  
19 Engagement Network, *U.C. Berkeley School of Law Faculty Statement in Support of Jewish Law*  
20 *Students*,  
21 [https://docs.google.com/document/d/1BiOeLJSG7lrhb9DSkvxsYRebE6Ck8a0rZaeBWNtjLPY/ed](https://docs.google.com/document/d/1BiOeLJSG7lrhb9DSkvxsYRebE6Ck8a0rZaeBWNtjLPY/edit?pli=1)  
22 [it?pli=1](https://docs.google.com/document/d/1BiOeLJSG7lrhb9DSkvxsYRebE6Ck8a0rZaeBWNtjLPY/edit?pli=1) (last visited Nov. 27, 2023). In the same statement, Dean Chemerinsky and his colleagues  
23 acknowledged, “These bylaws would also impermissibly exclude a large majority of our faculty  
24 from participating in the work of these organizations, including ... Dean [Chemerinsky].” *Id.*  
25 More recently, Dean Chemerinsky recognized that it was “problematic” for the Law School to  
26 award academic credit to students who participated in law journals who adopt the bylaw. See  
27 Exhibit B, E-Mail from Erwin Chemerinsky to Student Journal Leaders.

28

1           95. Defendant Christ has also acknowledged that the bylaw improperly discriminates.  
2 She has explained that “[e]xcluding anyone from any campus activity based on their race, religion,  
3 nationality, ethnicity, gender, or sexuality would represent impermissible discrimination.” Exhibit  
4 A.

5           96. In the same statement, Defendant Christ “convey[ed] [her] understanding as to why  
6 the adoption of the Bylaw was deeply upsetting to some Jewish members of our community for  
7 whom Zionism is an indivisible part of their Jewish identity, and who now say they no longer feel  
8 welcome at events held by some of the student organizations that have agreed to the Bylaw’s  
9 terms.” *Id.*

10           97. Yet, despite being fully aware of the anti-Semitic nature of the Exclusionary Bylaw  
11 and the discriminatory effect it is having on campus, Defendants have not enforced their policies.  
12 They continue to allow groups adopting the Exclusionary Bylaw to receive all the benefits of a  
13 recognized student organization, including space to meet on campus, funding, and use of the  
14 Berkeley logo.

15                   **F. The University’s Failure To Address Anti-Semitism Boils Over After**  
16                   **The October 7, 2023 Attacks.**

17           98. In the days following October 7, 2023—the date that, in President Biden’s words,  
18 “[t]he terrorist group Hamas ... slaughtered ... over 1,300 people” and “committed evils ... and  
19 atrocities that make ISIS look somewhat more rational”—the anti-Semitic atmosphere on  
20 Berkeley’s campus ignited. *Remarks by President Biden and Prime Minister Netanyahu of Israel*  
21 *Before Bilateral Meeting*, THE WHITE HOUSE (Oct. 18, 2023),  
22 [https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/10/18/remarks-by-president-](https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/10/18/remarks-by-president-biden-and-prime-minister-netanyahu-of-israel-before-bilateral-meeting-tel-aviv-israel/)  
23 [biden-and-prime-minister-netanyahu-of-israel-before-bilateral-meeting-tel-aviv-israel/](https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/10/18/remarks-by-president-biden-and-prime-minister-netanyahu-of-israel-before-bilateral-meeting-tel-aviv-israel/).

24           99. While the civilized world responded with horror and grief, students at UC Berkeley  
25 celebrated this twenty-first century pogrom with resulting violence against Jewish students. For  
26 example, a Jewish undergraduate draped in an Israeli flag was set upon by two protesters, who  
27 struck him in the head with his own metal water bottle after he dropped it trying to evade them.  
28 The incident was caught on video and publicly reported. Emily Raguso, *Robbery attempt of*

1 *Israeli flag at UC Berkeley rally for Palestine*, BERKELEY SCANNER (Oct. 25, 2023),  
2 <https://www.berkeleyscanner.com/2023/10/25/uc-berkeley-crime/uc-berkeley-robbery-rally/>.

3 100. Two students described pro-Palestinian protesters disrupting a gathering by Jewish  
4 students to pray and deal with the shock of the Hamas attack. The students also described pro-  
5 Palestinian rallies blocking the main entrance to campus and a lecturer who told students that class  
6 was over early before proceeding to embark on an anti-Israel rant for 18 minutes, with roughly  
7 1,000 freshman as his captive audience. Both students stated that the school does so little to  
8 protect Jewish students, it feels as if the school were condoning anti-Semitism. They added that  
9 officials at the university display a “general disregard” for Jewish students.

10 101. Indeed, many Jewish students have reported feeling afraid to go to class during  
11 these rallies, which take place in Berkeley’s main throughfares—and for good reason. They have  
12 little confidence that UC will protect them from anti-Semitic mobs. On information and belief,  
13 following the October 7 attacks, Chancellor Christ told some members of the Berkeley community  
14 that her public statement addressing the attacks was not as strong as she would have liked due to  
15 her concerns about violence on the campus. And, as Defendant Michael V. Drake recently  
16 acknowledged, “Some [students] feel unsafe leaving their dorm rooms.” UC President Michael V.  
17 Drake, M.D., Opening Remarks at November 15 Regents Meeting (Nov. 15, 2023),  
18 [https://www.universityofcalifornia.edu/press-room/uc-president-michael-v-drake-md-opening-](https://www.universityofcalifornia.edu/press-room/uc-president-michael-v-drake-md-opening-remarks-november-15-regents-meeting)  
19 [remarks-november-15-regents-meeting](https://www.universityofcalifornia.edu/press-room/uc-president-michael-v-drake-md-opening-remarks-november-15-regents-meeting).

20 102. Dean Chemerinsky, himself, has written that he “was stunned when students across  
21 the country, including mine, immediately celebrated the Hamas terrorist attack in Israel on Oct. 7.”  
22 Erwin Chemerinsky, *Nothing has prepared me for the antisemitism I see on college campuses*  
23 *now*, L.A. TIMES (Oct. 29, 2023), [https://www.latimes.com/opinion/story/2023-10-](https://www.latimes.com/opinion/story/2023-10-29/antisemitism-college-campus-israel-hamas-palestine)  
24 [29/antisemitism-college-campus-israel-hamas-palestine](https://www.latimes.com/opinion/story/2023-10-29/antisemitism-college-campus-israel-hamas-palestine); *see also id.* (stating that he has “been  
25 called ‘part of a Zionist conspiracy,’ which echoes of antisemitic tropes that have been expressed  
26 for centuries” and stating that “calling for the total elimination of Israel”—as the anti-Zionists on  
27 campus have been doing—“is antisemitic.”).

28

1 103. On information and belief, a number of persons on campus (including Jewish  
2 faculty and staff) have also been receiving hate e-mails calling for their gassing and murder.  
3 Although these e-mails were reported to the University, it has failed to respond appropriately or in  
4 a timely matter.

5 104. To quote Dean Chemerinsky, “There has been enough silence and enough tolerance  
6 of antisemitism on college campuses.” *Id.* Plaintiffs seek relief from this Court to ensure that  
7 Berkeley complies with the law and its own policies to ensure that anti-Semitic discrimination—  
8 like all discrimination—is punished. At the very least, the University must stop providing  
9 recognition and resources to those student organizations that are openly excluding Jews and  
10 fueling further anti-Semitism.

11 **COUNT I**

12 **Violation of 42 U.S.C. § 1983 (the Equal Protection Clause)**

13 **(on Behalf of All Plaintiffs)**

14 105. Plaintiffs incorporate by reference the allegations set forth in the preceding  
15 paragraphs.

16 106. Under the Fourteenth Amendment to the United States Constitution, a State shall  
17 not “deny to any person within its jurisdiction the equal protection of the laws.”

18 107. Defendants have, in their individual and official capacities, deprived Plaintiffs of  
19 equal protection of the laws, as secured by the Fourteenth Amendment, through a policy and  
20 practice that treats Plaintiffs differently than similarly situated individuals because Plaintiffs are  
21 Jewish. Specifically, Defendants have selectively chosen not to enforce Berkeley’s all-comers  
22 policy and Policy on Nondiscrimination against student organizations in the Law School and the  
23 undergraduate campus that have discriminated against or excluded Jewish members of the school  
24 community from participating in organizations, programs, and activities. For similar reasons,  
25 Defendants’ decision not to enforce the Policy on Nondiscrimination against these groups where  
26 they refuse to accept Jewish speakers is unlawful.

27 108. Defendants intentionally chose not to enforce the school’s policies in an  
28 evenhanded way, stating that they would enforce school policies in similar circumstances but

1 would not do so against anti-Zionist behavior by Law School student organizations, despite  
2 acknowledging that the behavior by these organizations is anti-Semitic.

3 109. As a result of Defendants' decision not to enforce its policies, Plaintiffs have  
4 suffered significant injuries.

5 110. Legal scholars who are members of Plaintiff JAFE have been deprived of the right  
6 to compete for the opportunity to present to organizations at Berkeley that have adopted the  
7 Exclusionary Bylaw. They are denied this right not because of anything they would say, but  
8 because of their Jewish identity. Many of these scholars have expertise in areas that would be  
9 directly relevant to the groups that have adopted the Exclusionary Bylaw and would benefit—  
10 financially and otherwise—by being able to present before these groups.

11 111. Student members of Plaintiff JAFE are deprived of the right to participate fully in  
12 student organizations at a time when “extracurricular programs are ... essential parts of the  
13 educational process.” *Christian Legal Soc. Chapter of the Univ. of Cal., Hastings Coll. of L. v.*  
14 *Martinez*, 561 U.S. 661, 686 (2010). This denial is most acute for those members of JAFE who  
15 are Berkeley law students who are now unable to participate fully in groups that have adopted the  
16 Exclusionary Bylaw. This denial precludes them from participating in groups that have nothing to  
17 do with their Jewish beliefs or identity. For example, the Law School members of JAFE are  
18 denied the ability to participate in Community Defense Project, an organization whose mission is  
19 to provide pro bono legal services to the community. The harm extends to undergraduates, as  
20 well, who have been forced to choose between embracing their Jewish identity or being rejected  
21 from student organizations. These undergraduates report that the campus environment is not  
22 welcoming to Jewish students, many of whom feel silenced and alienated. Some avoid wearing  
23 anything that identifies them as Jewish. Some avoid campus activities altogether, while others  
24 stick to Jewish groups and activities.

25 112. Defendants have no overriding or legitimate state interest, let alone a compelling  
26 one, to justify their decision to selectively enforce UC Berkeley policy to the detriment of  
27 Plaintiffs. Even if such an interest existed, Defendants have failed to narrowly tailor their actions  
28 to serve such an interest.

**COUNT II**

**Violation of 28 U.S.C. § 1983 (Free Exercise Clause) (on behalf of all Plaintiffs)**

113. Plaintiffs incorporate by reference the allegations set forth in the preceding paragraphs.

114. Free exercise of religion “means first and foremost, the right to believe and profess whatever religious doctrine one desires.” *Emp. Div., Dept. of Hum. Res. of Or. v. Smith*, 494 U.S. 872, 877 (1990).

115. In addition to being an integral component of Jewish ancestral, ethnic and national identity, Zionism is a core tenet of the religious identity of many Jews, including Jews at Berkeley Law, and Jews in the legal profession whose ideas, experience, and practice might resonate with members of the Groups that would ban them.

116. Legal scholars who are members of Plaintiff JAFE and are practicing Jews for whom Zionism is a core tenet of their religious identity have been deprived of the right to compete for the opportunity to present to organizations at Berkeley that have adopted the Exclusionary Bylaw.

117. Similarly, student members of Plaintiff JAFE who are practicing Jews for whom Zionism is a core tenet of their religious identity are deprived of the right to fully participate in student organizations.

118. The Legal Scholars and speakers who are practicing Jews may not profess, but must disavow or conceal, a core element of their Jewish religious identity to present to or participate in these Groups, and are thus being asked to forego the free exercise of their religion as a condition of speaking to or with Group members. Similarly, the Jewish students who are practicing Jews may not profess, but must disavow or conceal, a core element of their Jewish religious identity to fully benefit from the student group opportunities.

119. UC leaders recognize this state of affairs but, by permitting the Groups to remain UC registered student groups with all of the material support and resources that entails, are abdicating their duty to protect the Free Exercise rights of these individuals in contravention of the



1 U.S. Constitution, federal civil rights laws, and UC rules prohibiting discrimination on the basis of  
2 religious identity.

3 **COUNT III**

4 **Violation of 42 U.S.C. § 1981 (Interference with Right to Contract**  
5 **Based on Race) (on Behalf of JAFE Members Who Are Scholars)**

6 120. Plaintiffs incorporate by reference the allegations set forth in the preceding  
7 paragraphs.

8 121. 42 U.S.C. § 1981(a) provides that “[a]ll persons within the jurisdiction of the  
9 United States shall have the same right in every State and Territory to make and enforce  
10 contracts...as is enjoyed by white citizens.” “The term ‘make and enforce contracts’ includes the  
11 making...of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the  
12 contractual relationship.” *Id.* § 1981(b).

13 122. To be actionable under § 1981, a contractual relationship need not already exist,  
14 “because § 1981 protects the would-be contractor along with those who already have made  
15 contracts.” *Domino’s Pizza, Inc. v. McDonald*, 546 U.S. 470, 476 (2006).

16 123. The U.S. Supreme Court has recognized that Jews may state a claim of racial  
17 discrimination under the civil rights statutes, including § 1981 and its sister statute,  
18 42 U.S.C. § 1982. *Shaare Tefila Congregation v. Cobb*, 481 U.S. 615, 618 (1987) (“Jews are not  
19 foreclosed from stating a cause of action against other members of what today is considered to be  
20 part of the Caucasian race.”); *see also id.* (citing the analysis of *Saint Francis Coll. v. Al-Khazraji*,  
21 481 U.S. 604, 613 (1987), which examined Section 1981).

22 124. JAFE Members include Legal Scholars who, but for the existence of the  
23 Exclusionary Bylaw, could and would have the ability to enter into a contract to present to student  
24 organizations at Berkeley. Because of their Jewish ancestral heritage and related support for  
25 Israel, and because of the Exclusionary Bylaw, they cannot do so.

26 125. By permitting the Groups to remain registered student groups with all the benefits  
27 accruing to such groups, including space to meet on campus, funding, and use of the Berkeley  
28

1 logo, Defendants are allowing funds and assets derived from taxpayer money to be disbursed in a  
2 discriminatory manner.

3 **COUNT IV**

4 **Violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq. (on behalf of**  
5 **JAFE Members Who Are Berkeley Undergraduates and Law Students)**

6 126. Plaintiffs incorporate by reference the allegations set forth in the preceding  
7 paragraphs.

8 127. Defendant UC Berkeley receives financial assistance from the U.S. Department of  
9 Education and is therefore subject to suit under Title VI of the Civil Rights Act of 1964.

10 128. Discrimination against Jews is prohibited under Title VI of the Civil Rights Act of  
11 1964, as reflected in the written policies of the Department of Education's Office for Civil Rights.  
12 *See e.g.*, U.S. Dep't of Educ., OCR Dear Colleague Letter: Addressing Discrimination Against  
13 Jewish Students (May 25, 2023), [https://www2.ed.gov/about/offices/list/ocr/docs/antisemitism-](https://www2.ed.gov/about/offices/list/ocr/docs/antisemitism-dcl.pdf)  
14 [dcl.pdf](https://www2.ed.gov/about/offices/list/ocr/docs/antisemitism-dcl.pdf); U.S. Dep't of Educ., OCR-000127, Questions and Answers on Executive Order 13,899  
15 (Jan. 19, 2021), [https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-anti-semitism-](https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-anti-semitism-20210119.pdf)  
16 [20210119.pdf](https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-anti-semitism-20210119.pdf); U.S. Dep't of Educ., OCR-00107, Dear Colleague Letter: Combatting  
17 Discrimination Against Jewish Students (2017),  
18 <https://www2.ed.gov/about/offices/list/ocr/docs/jewish-factsheet-201701.pdf>; Letter from Thomas  
19 Perez, Asst. Att. Gen., Civ. Rts. Div., U.S. Dep't of Justice to Russlyn Ali, Asst. Sec'y for Civ.  
20 Rts., OCR, U.S. Dep't of Educ. Re: Title VI and Coverage of Religiously Identifiable Groups  
21 (Sept. 8, 2010),  
22 [https://www.justice.gov/sites/default/files/crt/legacy/2011/05/04/090810\\_AAG\\_Perez\\_Letter\\_to](https://www.justice.gov/sites/default/files/crt/legacy/2011/05/04/090810_AAG_Perez_Letter_to_Ed_OCR_Title%20VI_and_Religiously_Identifiable_Groups.pdf)  
23 [Ed\\_OCR\\_Title%20VI\\_and\\_Religiously\\_Identifiable\\_Groups.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2011/05/04/090810_AAG_Perez_Letter_to_Ed_OCR_Title%20VI_and_Religiously_Identifiable_Groups.pdf); U.S. Dep't of Educ., OCR Dear  
24 Colleague Letter: Religious Discrimination (Sept. 23, 2004),  
25 <https://www2.ed.gov/about/offices/list/ocr/religious-rights2004.html>.

26 129. On November 7, OCR issued a new Dear Colleague Letter, reminding schools that  
27 receive federal financial assistance that they have a responsibility to address discrimination against  
28 Jewish, Muslim, Sikh, Hindu, Christian, and Buddhist students, or those of another religious

1 group, when the discrimination involves racial, ethnic, or ancestral slurs or stereotypes; when the  
2 discrimination is based on a student's skin color, physical features, or style of dress that reflects  
3 both ethnic and religious traditions; and when the discrimination is based on where a student came  
4 from or is perceived to have come from, including discrimination based on a student's foreign  
5 accent; a student's foreign name, including names commonly associated with particular shared  
6 ancestry or ethnic characteristics; or a student speaking a foreign language. . . Harassing conduct  
7 can be verbal or physical and need not be directed at a particular individual. U.S. Dep't of Educ.,  
8 OCR Dear Colleague Letter: Shared Ancestry or Ethnic Characteristics (Nov. 7, 2023),  
9 <https://www2.ed.gov/about/offices/list/ocr/sharedancestry.html>.

10 130. OCR further explains that “the following type of harassment creates a hostile  
11 environment: unwelcome conduct based on shared ancestry or ethnic characteristics that, based on  
12 the totality of circumstances, is subjectively and objectively offensive and is so severe or  
13 pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's  
14 education program or activity.” *Id.* And it repeats its longstanding admonition that “[s]chools  
15 must take immediate and effective action to respond to harassment that creates a hostile  
16 environment.” *Id.*

17 131. By the admission of Berkeley, itself, its willful failure to enforce its Policy on  
18 Nondiscrimination—including by revoking privileges of registration to the student groups who are  
19 violating this policy—discriminates against Jews.

20 132. Defendants' failure to enforce UC policies has created an environment that is  
21 hostile towards Jews. The hostility towards Jewish members of the UC Berkeley community is  
22 severe enough that it interferes with their ability to participate in the programs and activities of the  
23 school, including clinical opportunities, which provide students the opportunity to engage in  
24 supervised practice of law and to earn course credits toward their law degrees.

25 133. JAFE Members include students at Berkeley. As described in the allegations  
26 above, these members have effectively been excluded from participation in, and have been denied  
27 the benefits of, educational, networking, and other programs at Berkeley. Specifically, while  
28 Jewish individuals can in theory join student groups that ban speech by Zionists, they can do so

1 only by renouncing or pretending to renounce an immutable aspect of their identity or by  
2 remaining silent, since their speech is prohibited by the bylaws. Neither “solution” is tenable, nor  
3 can either lawfully be required of any individual.

4 134. While on notice of the discrimination against and hostile environment for Jewish  
5 members of the community (as shown by their public statements), Defendants have failed to take  
6 corrective action.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs respectfully request that this Court order the following relief:

- 9 1. An injunction preliminarily and permanently enjoining Defendants from (i)  
10 permitting registered student organizations to exclude Jews; (ii) funding any  
11 student organization that excludes Jews; and (iii) granting official recognition to  
12 any student organization that excludes Jews.
- 13 2. An injunction preliminarily and permanently requiring Defendants to enforce their  
14 Policy on Nondiscrimination and their all-comers policy on an evenhanded basis,  
15 ensuring that Jewish members of the Berkeley community are protected, with  
16 respect to their physical safety and otherwise, from discrimination on the basis of  
17 their Jewish identity, including those for whom Zionism is an integral part of that  
18 identity.
- 19 3. An injunction preliminarily and permanently mandating that Defendants take action  
20 to end the hostile environment on campus by (i) communicating to the entire  
21 Berkeley community via broadcast e-mail or a similar medium that Berkeley will  
22 condemn, investigate, and punish any conduct that harasses members of the Jewish  
23 community, or others, on the basis of their ethnic or ancestral background; (ii)  
24 providing education about anti-Semitism, including by conducting mandatory  
25 training for administrators and professors; (iii) instituting strict review and approval  
26 policies to ensure that the administration does not conduct, or finance, programs  
27 that deny equal protection to Jewish members of the Berkeley community including  
28 those for whom Zionism is an integral part of their identity.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28


- 4. A declaratory judgment that the failure by Defendants to enforce its policies to protect Jewish members of the Berkeley community has violated Plaintiffs' rights under (i) the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution, (ii) the Free Exercise Clause of the U.S. Constitution, (iii) Title VI of the 1964 Civil Rights Act, 42 U.S.C. § 2000d et seq., and (iv) Plaintiffs' right to contract as ensured by 42 U.S.C. § 1981.
- 5. Plaintiffs' reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.
- 6. Any other relief which this Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs demand a jury trial on all issues so triable.

DATED: November 28, 2023

ELLIS GEORGE CIPOLLONE O'BRIEN LLP  
Eric M. George

By:   
\_\_\_\_\_  
Eric M. George  
David J. Carroll  
Attorneys for Plaintiffs

# **Exhibit A**



Carol T. Christ

CHANCELLOR

200 California Hall #1500  
Berkeley, CA 94720-1500  
510 642-7464  
chancellor@berkeley.edu  
chancellor.berkeley.edu

Dear Jewish Students, Faculty, and Staff,

I am writing today to express my support for you as valued members of our campus community. I am concerned about how you and members of other communities have been impacted by the adoption of, and the ensuing reactions to a bylaw endorsed by certain Berkeley Law student organizations which excludes speakers who support Israel and Zionism. Due to the extraordinary complexity and divisiveness of the issues involved, I have been focusing on direct engagement with members of the Jewish, Israeli, Palestinian, and Muslim communities and their supporters in what has been a challenging effort to foster healing. I will continue my efforts to foster a greater degree of mutual understanding across this difficult divide.

I want to convey my understanding as to why the adoption of the bylaw was deeply upsetting to some Jewish members of our community for whom Zionism is an indivisible part of their Jewish identity, and who now say they no longer feel welcome at events held by some of the student organizations that have agreed to the bylaw's terms.

I realize that for some, opposition to Zionism is solely a function of the State of Israel's policies and actions. I do not believe criticism of Israel is inherently antisemitic or anti-Zionist. I understand the reasons for opposition to some of Israel's policies and actions. At the same time, I have observed that there are those whose opposition to Zionism springs from a belief that the Jews as a people have no right to a homeland—the essence of Zionism's original aspirations. As a result, I understand how opposition to Zionism seems for some to be opposition to Israel's very existence, and therefore is regarded as antisemitic by some members of the Jewish community.

I am also very concerned about the impact that these recent events, the vitriolic social media posts, and the unbalanced and inaccurate media reporting are having on those who authored or supported the adoption of the bylaw. I condemn the harassment and threats they and their supporters have been subject to and, in particular, the truck-borne billboards that have singled out and attacked many student leaders and staff members by name. I commend the statement issued by Jewish students at Berkeley Law that also condemned these "abhorrent attacks" and expressed Jewish law students' commitment to stand with their fellow students.

I believe that all student organizations have the right, and a legally protected ability, to invite speakers based on their viewpoint to the events they host and sponsor. We must be consistent in defending that right for all groups, including pro-Palestinian ones. The Supreme Court has been clear that those holding events have a First Amendment right to decide the views to be communicated at those events.

I am aware that the current situation has led many members of your community to feel more vulnerable and unwelcome in campus spaces. This concerns me deeply. Excluding anyone from any campus activity based on their race, religion, nationality, ethnicity, gender, or sexuality would represent impermissible discrimination. As always, we urge anyone who experiences or is made aware of actions that they believe may violate the Student Code of Conduct or campus regulations to report those actions immediately to [Center for Student Conduct](#) and/or the [Office for the Prevention of Harassment and Discrimination](#).

I believe that as an institution of higher education we must seek to foster understanding, facilitate dialogue, and remain open to and respectful of diversity of perspective. In addition, my administration has an unwavering commitment to confronting antisemitism, Islamophobia, and all forms of discrimination and bias including that against Jewish students in order to provide all of our students with a true sense of belonging. I am proud of our many Jewish student organizations and Berkeley student Chabad to support and foster a thriving community, and all that is contributed to our academic mission by our world-class Jewish Studies program, the Magnes Museum, and the Helen Diller Institute of Jewish Law and Israel Studies, which frequently hosts speakers and visiting scholars from Israel. In addition, I value the campus partnership with the Berkeley Hillel Jewish Student Center for helping to build community.

In recent weeks I have met with members of the Chancellor's Committee on Jewish Student Life and Campus Climate, and the chairperson, Professor Ethan Katz. Together we are discussing and exploring how we can improve the Jewish experience at Berkeley by, among other things, developing substantive responses to your concerns, needs and interests. I have asked Professor Katz to keep the community informed about the outcome of our efforts.

I acknowledge and accept that our university is a work in progress. I understand and deeply regret that here at Berkeley members of communities which have been historically marginalized and discriminated against far too often feel unsafe, unwelcome, and disrespected. In the course of my meetings, through this message and a similar one I am sending to Muslim and Palestinian students, I hope to catalyze thought, discussion and action that will enable us to more fully align our words and deeds with our Principles of Community.

I ask and urge all of us to consider how even as we disagree, that we also recognize and respect each other's humanity and place in our community.

Respectfully yours,

Carol T. Christ  
Chancellor



# **Exhibit B**

Dear editors of journals, editorial boards of journals, and their faculty advisors,

I have consistently taken the position that student organizations are permitted by UC policy and applicable law to choose who to invite as speakers on the basis of their viewpoint. I thus have said from the outset that student organizations cannot be penalized by the campus for adopting the Bylaw proposed by Law Students for Justice in Palestine.

The issue has now arisen as to what consequences would ensue if entities where academic credit is awarded adopt the LSJP Bylaw or other viewpoint-based organizational statements and requirements for their members that relate neither to the publication of an academic law journal nor to the specific academic focus of a particular journal. The LSJP Bylaw, for example, says that in adopting it, organizations will require that their members participate in specific training. ("To ensure that solidarity is practiced both in theory and in practice, members agree to participate in a 'Palestine 101' training held by the Law Students Justice for Palestine to learn ways to create a safe and inclusive space for Palestinian students and students that are in the support of the liberation of Palestine, as well as engaging in the BDS movement in the principled manner Palestinians are asking for.")

I have concluded that it would be problematic for the Law School to award academic credit to participating students when Berkeley Law journals adopt viewpoint-based organizing principles and practices that have no pedagogical relationship to the publication of the journal or to its academic focus. Although student organizations generally may adopt viewpoints as part of their charters and impose conditions of membership consistent with the our all-comers policy, it is quite different when it is the Law School awarding academic credit. We would not allow a viewpoint-based litmus test as a requirement for earning academic credit for other courses. The Law School would not permit a Civil Procedure or a Business Association instructor to require participation in a training that was unrelated to the course material. When credit is awarded for participation, the Law School is integrally and irreducibly involved in determining that the activity is pedagogically sufficient and appropriate for academic credit, including by setting requirements, and by appointing a faculty member to determine that each student has done the requisite work for credit.

To be clear, if a journal wishes to adopt the LSJP bylaw, it may do so. In that case, that journal will be treated like every other student organization and may choose speakers based on viewpoint and create requirements for membership (so long as it remains in compliance with the Law School's all-comers policy). In that instance, no academic credit will be awarded to participants. But if a journal desires to have its participating students earn academic credit, then it cannot impose adopt a viewpoint-based bylaw or participation requirement that bears no legitimate pedagogical relationship to the academic practices of the journal's work.

Because students already have registered for credits this semester, journals cannot change their policies for this semester. If they wish, they may choose to forego academic credit beginning in Spring 2024 semester.

I do not come to this conclusion lightly. My decision is not intended to punish, or to dissuade any student organization from asserting its views. I have consistently protected the ability of student organizations to adopt the LSJP Bylaw. But it is fundamentally different when it is the Law School awarding academic credit for participation.

Warmly,

Erwin