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Anthony P. Monaco, President
Tufts University, Office of the President
Ballou Hall, 2nd Floor
Medford, MA 02155
Anthony.Monaco@tufts.edu

Mary R. Jeka
Senior Vice President and General Counsel
Tufts University, University Counsel
Ballou Hall, 3rd Floor
Medford, MA 02155
Mary.Jeka@tufts.edu

Nadine Aubry, Provost
Tufts University, Office of the Provost
1 The Green
Ballou Hall, 2nd Floor
Medford, MA 02155
provost@tufts.edu

Dear President Monaco, General Counsel Jeka and Provost Aubry,

The Louis D. Brandeis Center for Human Rights Under Law is a national public interest legal advocacy organization established to advance the civil and human rights of the Jewish people and promote justice for all. We represent Tufts University student Max Price, who is a member of the Tufts Community Union Judiciary (TCUJ). Over the past several months, Mr. Price has been subjected to anti-Semitic harassment targeting him on the basis of his ethnic and ancestral Jewish identity. This harassment reached a peak a week ago, when Mr. Price was provided with a complaint filed by Tufts Students for Justice in Palestine (SJP) seeking to have him removed from the TCUJ. Mr. Price was given until yesterday to respond in writing to the complaint and was informed that a disciplinary proceeding before the TCU Senate has tentatively been scheduled for February 7, 2021. This hearing represents the continuation of a months-long campaign of intimidation, harassment and discrimination targeting Mr. Price on the basis of his Jewish ethnic identity.¹ It is imperative that the university take prompt and effective steps to protect Mr. Price by halting the upcoming disciplinary hearing and ending the harassment and discrimination that has infringed on Mr. Price's freedom of speech, denied him due process, and deprived him of equal

¹ In addition to the description included in this letter, we have attached as Exhibit A, Mr. Price's personal statement describing the harassment he has endured while at Tufts University. Mr. Price provided this statement to the TCU Senate yesterday in response to the complaint that was filed against him by SJP.

opportunity and equal access to university programs in violation of Title VI of the Civil Rights Act of 1964 and Tufts University's stated institutional policies regarding freedom of speech, including academic freedom, as recently incorporated into regulations of the U.S. Department of Education.

Background

The "Deadly Exchange" campaign at Tufts, which was launched by Tufts Students for Justice in Palestine (SJP) in Spring 2018, falsely blames Israel and its Jewish American supporters for fueling racist conduct in United States law enforcement.² This campaign seeks to link Israel to white supremacy and police brutality. By mischaracterizing the purpose and content of American – Israeli law enforcement exchange programs,³ the Deadly Exchange campaign spreads the false notion that Jews are responsible for systemic racism in the United States. The campaign utilizes anti-Semitic tropes associated with Jewish power and Jewish conspiracies and promotes a modern blood libel – the demonstrably baseless claim that Jews and Israel are somehow responsible for the tragic deaths of unarmed people of color by American police officers.⁴

In the Fall of 2020, Tufts SJP sought to include a Deadly Exchange referendum question on the student election ballot. All members of the Tufts student body were asked to vote on the following:

Do you support Tufts University administration 1) apologizing for sending the former Tufts police chief to an intensive week-long course led by senior commanders in the Israel National Police, experts from Israel's intelligence and security services, and the Israeli Defense Force, 2) prohibiting TUPD officers from attending programs based on military strategies and/or similar international trips in the future, and 3) refining the vetting process to prevent prior program attendees from being hired, not including veterans who may have been stationed or trained abroad during their service?

² Miriam F. Elman, *Israel and the Left: Three Studies of the Crisis: (2) Jewish Voice for Peace's antisemitic Deadly Exchange campaign*, FATHOM, June 2019, <https://fathomjournal.org/israel-and-the-left-three-studies-of-the-crisis-2-jewish-voice-for-peaces-antisemitic-deadly-exchange-campaign/>

³ See Steven Pomerantz, *I am the Architect of the U.S.-Israel Police Exchange. Don't Believe the Lies*. JINSA, June 19, 2020, <https://jinsa.org/i-am-the-architect-of-the-u-s-israel-police-exchange-dont-believe-the-lies/>, and *Leadership Seminar in Israel: Resilience and Counterterrorism*, ADL, <https://www.adl.org/who-we-are/our-organization/signature-programs/law-enforcement-trainings/leadership-seminar-in-israel>

⁴ Andrew Mark Bennett, *JVP's Anti-Semitic Obsession With Jewish Power*, FORWARD, January 9, 2018, <https://forward.com/opinion/391783/jvps-anti-semitic-obsession-with-jewish-power/>

During the course of SJP's campaign to include this referendum question on the ballot, members of SJP repeatedly pressured Mr. Price to recuse himself from the TCUJ's consideration of the referendum language. Mr. Price was targeted because of his Jewish ethnic identity. As described more fully below, Mr. Price was silenced during the TCUJ's consideration of the proposed referendum language, and is now threatened with a disciplinary hearing and removal from the TCUJ for no reason other than that he is a Jew who celebrates his shared Jewish ancestry and ethnicity by expressing support for a Jewish homeland. It is incumbent upon Tufts University to halt the disciplinary hearing against Mr. Price, scheduled for February 7. That disciplinary hearing is deeply rooted in Jew-hatred and is designed to deny Mr. Price an opportunity to participate in Tufts campus life, programs, and activities.

SJP's harassment of Mr. Price.

Determined to rid the TCUJ of Jews who support Israel, Tufts SJP mounted a campaign in recent months to prevent Mr. Price from serving as an elected member of the TCUJ. (See Exhibit A, Mr. Price's Personal Statement, attached to this letter.) As a result of SJP's demands, Mr. Price was subjected to two hour-long interrogations by student government officials. The first, on November 15, 2020, was by members of the TCUJ. The second, on November 16, was by leadership of the TCU Senate, CSL and TCUJ. During these sessions, Mr. Price was questioned repeatedly about his personal beliefs and his identity as a pro-Israel Jew. Mr. Price was asked whether his service as co-President of Tufts Friends of Israel rendered him biased and unable to participate in the TCUJ referendum deliberations. No other member of TCU student government was subjected to similar interrogation.

After the first of these sessions, the TCUJ members agreed unanimously that Mr. Price had not displayed any bias during the TCUJ deliberations, and that his critiques of the referendum language had all been fact-based. At the conclusion of the second session, the TCU student government participants agreed that there was no need for Mr. Price to recuse himself. Dissatisfied with this result, SJP continued to target Mr. Price by demanding that the Chair of TCUJ remove Mr. Price from the TCUJ's consideration of the referendum language. In response to SJP's continued pressure, the TCUJ Chair arbitrarily silenced Mr. Price by requiring him to remain "on mute" for the entire TCUJ Zoom meeting held on November 18, 2020. Hence Mr. Price was denied freedom of speech and was unable to respond to factual inaccuracies presented by a guest speaker brought to the meeting by SJP to support the Deadly Exchange Campaign.

TCUJ ultimately approved the Deadly Exchange referendum language, and the referendum initiative passed with a vote of 1,725 "yes" votes, 665 "no" votes, and 161 abstentions. SJP's harassment of Mr. Price continued even after the election was complete. SJP recently lodged a

formal complaint⁵ against Mr. Price, alleging that statements he made in March⁶ and April⁷ 2020, relating to SJP and the Deadly Exchange campaign disqualified him from participating in the TCUJ discussions of the proposed Deadly Exchange referendum language. Mr. Price had made the specified statements in his capacity as President of Tufts Friends of Israel. By making this charge SJP condemns Mr. Price as unqualified to sit on the TCUJ because he expressed an opinion - as a Jew and as President of Tufts Friends of Israel - challenging an anti-Semitic campaign that has permeated Tufts' campus for over two years and has baselessly vilified Israel and those who support the Jewish homeland. That assertion is equivalent to accusing a Black student of bias and declaring them unfit to participate in a student government review of a resolution praising a Confederate general because they once made statements condemning racism. It conceals SJP's real goal, which is to cleanse student government of individuals who express support of Israel in advance of the anti-Israel and anti-Semitic Boycott, Divestment and Sanctions campaign that SJP has announced it will pursue at Tufts this Spring.⁸ The University administration must not assist or condone this effort.

Student government is first and foremost an educational opportunity. The University provides it so that students can participate in and experience the democratic process. The University must ensure that this experience is not undermined by those who subvert democracy by silencing opposing speech. SJP's effort to silence Mr. Price, suppress his opinion, and remove him from the TCUJ is viewpoint discrimination that cannot be tolerated in a free society governed by the free-speech principles of the First Amendment – much less at a University whose Trustees have forcefully proclaimed that “[f]reedom of expression and inquiry are fundamental to the academic enterprise.”⁹

⁵ A copy of the complaint, which was signed by “SJP” as an organization, not by any individual students, is attached as Exhibit B.

⁶ Jackson Richman, *Campaign at Tufts aims to be first US university to end Israel law-enforcement cooperation*, JNS, March 9, 2020, <https://www.jns.org/campaign-tufts-seeks-first-us-university-endorse-campaign-end-us-israel-law-enforcement-cooperation/>

⁷ Aaron Bander, *Tufts Leaders Say They ‘Strongly Disapprove’ of Award Given to SJP*, JEWISH JOURNAL, April 24, 2020, <https://jewishjournal.com/news/united-states/314637/tufts-leaders-say-they-strongly-disapprove-of-award-given-to-sjp/>

⁸ Tufts Students for Justice in Palestine (@TuftsSJP), FACEBOOK (Dec. 19, 2020), <https://www.facebook.com/TuftsSJP/posts/2162397010563285>

⁹ Trustees of Tufts University, *Declaration on Freedom of Expression at Tufts University* (Revised: November 7, 2009), <https://trustees.tufts.edu/policies/expression/>

Zionism is an integral component of Jewish identity for many Jews, including Mr. Price.¹⁰

Mr. Price is a proud Jew who believes in the Jewish people's right to self-determination. His support of Israel, the Jewish homeland, grows out of his ethnic identity as a Jew and the deep ancestral connection of the Jewish people to the Land of Israel. Historically and legally, Judaism is understood to be both a faith and an ethnicity. Jews share not only religious traditions, but also a deep historical sense of Jewish peoplehood. The Jewish people's history, theology, and culture are deeply intertwined with the Land of Israel. In fact, over half of the 613 commandments in the Pentateuch are connected to the Land of Israel and can only be fulfilled in the Land of Israel. For centuries, Jews have not only prayed facing Jerusalem. They have prayed to *return* to Jerusalem.

Zionism as a political movement of the Jewish people may have originated in the 19th century, but the desire and determination of Jews to return to their ancestral homeland in Israel is thousands of years old, as old as Abraham, Moses, and the enslaved Jewish people's exodus from Egypt to the Promised Land.

Zionism is as integral to Judaism as observing the Jewish Sabbath or maintaining a kosher diet. Of course, not all Jews observe the Sabbath or keep kosher, but those who do are expressing important components of their Jewish identity. Similarly, not all Jews are Zionists. But for many Jews, including many Jewish students at Tufts like Mr. Price, identifying with and expressing support for the Jewish homeland is also a sincere and deeply felt expression of their Jewish ethnic and ancestral identity. Harassing, marginalizing, demonizing, and excluding these Jewish students on the basis of the Zionist components of their Jewish identity is just as unlawful and discriminatory as attacking a Jewish student for observing the Sabbath or keeping kosher. At Tufts, Jewish students, like Mr. Price, who support Israel are branded as "racist" regardless of their attitude toward the policies of the current government of Israel. They are being marginalized and excluded merely because they celebrate the Jews' shared ancestry and ethnicity and the existence of the Jewish homeland. Indeed, UNESCO has cautioned that "Jew" and "Zionist" today are often used interchangeably in an attempt by anti-Semites to cloak their hate.¹¹

¹⁰ Alyza D. Lewin, *Zionism: The Integral Component of Jewish Identity that Jews are Historically Pressured to Shed*, 26 ISRAEL AFFAIRS 330 (2020), <https://www.tandfonline.com/doi/full/10.1080/13537121.2020.1754577?scroll=top&needAccess=true>.

¹¹ See UNESCO & OSCE, ADDRESSING ANTI-SEMITISM THROUGH EDUCATION: GUIDELINES FOR POLICYMAKERS 21, 24, 82–83 (2018), <https://unesdoc.unesco.org/ark:/48223/pf0000263702.locale=en>.

The Deadly Exchange Campaign at Tufts University is a thinly veiled effort to marginalize and exclude pro-Israel, Zionist Jews from participation in campus racial and social justice movements.

As noted above, the Deadly Exchange campaign falsely blames Israel and Americans who support the Jewish state for racism and police brutality in America. The Deadly Exchange referendum at Tufts utilized the Deadly Exchange campaign as a litmus test for students on campus; purportedly dividing students who seek racial and social justice from those who don't. This is evident from the coalition of over 40 student organizations that SJP recruited to support the referendum.¹² In addition to organizations representing minority students at Tufts, such as the Black Student Union, Eritrean and Ethiopian Students Association, Filipinx Student Union, Tufts Association of South Asians, and Tufts Association of Latin American Students, the coalition also includes the Tufts Climate Action Committee, the Tufts Labor Coalition, Action for Sexual Assault Prevention, United for Immigrant Justice, and Tufts Student Coalition for Anti-Racism. The message to Jewish students at Tufts is clear: If you wish be part of the racial and social justice community on campus, if you want to advocate for immigration rights, women's rights, minority rights, or to protect the environment, you must vote "yes" on the Deadly Exchange referendum language. This presents Jewish students who support the Jewish homeland as an expression of their Jewish ethnic identity with an untenable choice. To join the campus racial and social justice community they must first shed their ethnic pride and disavow the Jewish homeland. That is a price no student should have to pay.

Contrary to what SJP would have students believe, the Deadly Exchange referendum question was not designed to impact policing on Tufts' campus. A student poll revealed that the policing issues of concern to Tufts students include: whether all TUPD need to be armed, whether a police officer must be present at every TEMS (Tufts Emergency Medical Services) call, whether Tufts can hire more police officers of color, whether unmarked police vehicles are necessary, and how to ensure greater transparency in the TUPD. The Deadly Exchange referendum question did not address a single one of these concerns. Instead of diminishing alleged racism and discrimination at Tufts, the Deadly Exchange referendum fostered an alternate form of harassment and discrimination.

Indeed, even Jewish Voice for Peace (JVP), the anti-Zionist organization that first promoted the "Deadly Exchange" campaign has recognized that the campaign fosters anti-Semitic tropes. In June 2020, JVP noted on its website (emphasis added):

¹² Tufts University Students for Justice in Palestine, *Tufts students pass referendum demanding university end the deadly exchange*, MONDOWEISS, Dec. 22, 2020, <https://mondoweiss.net/2020/12/tufts-students-pass-referendum-demanding-university-end-the-deadly-exchange/>

Highlighting these police exchange programs without enough context or depth can end up harming our movements for justice. **Suggesting that Israel is the start or source of American police violence or racism shifts the blame from the United States to Israel.** This obscures the fundamental responsibility and nature of the U.S., and harms Black people and Black-led struggle. It also **furtheres an antisemitic ideology.** White supremacists look for any opportunity . . . to **frame Jews as secretly controlling** and manipulating the world. Taking police exchanges out of context provides fodder for those **racist and antisemitic tropes.**¹³

Yet the Tufts Deadly Exchange campaign singled out Israel and Jews. An online Zine,¹⁴ prepared by Tufts SJP to describe the campaign, noted that “The United States and Israel are settler-colonial states that work together to keep apartheid power.” In the paragraphs beneath that heading, the Anti-Defamation League (ADL), the largest and oldest Jewish civil rights organization in the United States, is described as “the single largest non-governmental police trainer in the country.” The publication then smears the ADL as “anti-Arab, anti-Muslim, and anti-Palestinian” and as “violently” critical of the Movement for Black Lives. The section closes with the question “Does your theory of safety rely on oppressing another group of people?” The implication is clear. According to SJP’s Zine, Jews are racist and Jews are the ones training US police to be racist. It follows that if you vote “no” on the Deadly Exchange referendum, your “theory of safety” must “rely on oppressing another group of people.”

The SJP Zine goes even further to single out Jews. In a section titled “Some Questions to Ponder,” the publication states:

- Who shows up for Black lives?
- How can Zionists support Black Lives Matter but not support a Free Palestine?
- How are Jewish people taught at a young age to unabashedly support Israel’s settler-colonial practices or worse, join the IDF? What are the implications of this teaching alongside an education emphasizing Jewish Values of “Tikkun Olam” or “repairing the world?”

¹³ Jewish Voice for Peace, *Deadly Exchange Statement*, June 5, 2020 <https://jewish-voiceforpeace.org/update-on-deadly-exchange-campaign/>

¹⁴ Tufts Students for Justice in Palestine, *End the Deadly Exchange at Tufts*, https://indd.adobe.com/view/48dd0486-a3d7-4322-94ff-b72e2d5a9c3b?fbclid=IwAR3gLr-fBzCIK1kKwmGt5oe3-mMGcRwf-Wkwz7rtcHJckFz-_hbizS1Qymo

Implicit in these “questions to ponder” is the premise that Zionists are racists and that Jews who support a Jewish homeland cannot also support Black Lives Matter or racial and social justice movements. To the contrary, principles of justice are at the core of Jewish values. “Justice, Justice shall you pursue” (Deuteronomy 17:20) is a biblical admonishment that Jews hold dear. Indeed, Jews were at the forefront of the civil rights movement in the United States. It is not incongruous to support both the right of Jews to self-determination in the Jews’ ancestral homeland and to support racial and social justice movements. Zionists can support co-existence between Israelis and Palestinians while fighting for human rights. What is anathema to Zionists is the destruction of the world’s one and only Jewish homeland. But that is what the Tufts Deadly Exchange campaign asks Tufts students to accept. It demands that Tufts students who seek social justice agree that the modern State of Israel is illegitimate and has no right to exist. According to the map that SJP included in its Zine, the land *within* Israel’s 1948 borders is “occupied territory” and the entire State of Israel is to be replaced by a State of Palestine.



The Deadly Exchange campaign at Tufts is a litmus test used by SJP to marginalize, harass and exclude from the campus community Jewish students like Max Price, who support the Jewish State of Israel as an expression of their ethnic and ancestral identity. To protect these students, the university must recognize and condemn the campaign’s inherent anti-Semitic content.

Tufts University is legally obligated to protect Mr. Price.

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in programs, like Tufts', that receive federal funds. Guidance issued by the U.S. Department of Education Office for Civil Rights (OCR) and the U.S. Department of Justice Civil Rights Division confirms that Title VI covers discrimination on the basis of Jewish ancestry and ethnicity.¹⁵

The Executive Order on Combating Anti-Semitism,¹⁶ issued in December 2019, directs all federal agencies, including the Department of Education, to refer to the International Holocaust Remembrance Alliance Working Definition of Antisemitism (the "IHRA Definition") when investigating allegations of anti-Semitism under Title VI of the Civil Rights Act of 1964. The IHRA Definition¹⁷ has been adopted by over twenty-eight countries, government entities, U.S. states and cities, and is supported or endorsed by the European Union and the U.N. Secretary General.¹⁸ The definition recognizes anti-Semitism as hatred toward Jews and provides guidance for understanding when anti-Israel and anti-Zionist expression becomes targeted, intentional, discriminatory harassment and intimidation of Jewish students. The Executive Order is particularly relevant to situations like Mr. Price's, where protected free expression has crossed the line into harassing, discriminatory, and unlawful conduct.

The U.S. Department of Education's regulation on *Religious Liberty and Free Inquiry*, implementing Executive Order 13864 (Improving Free Inquiry, Transparency, and Accountability

¹⁵ See Kenneth L. Marcus, *Dear Colleague Letter*, Dept. of Educ. OCR (2004), <https://www2.ed.gov/about/offices/list/ocr/religious-rights2004.html> and Thomas E. Perez, *Letter to Russlynn H. Ali*, Dept. of Educ. OCR (2011) 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 ("discrimination against Jews . . . violates Title VI when that discrimination is based on [the Jewish people's] actual or perceived shared ancestry or ethnic characteristics, rather than its members' religious practice.") See also: *Shaare Tefila Congregation v. Cobb*, 481 U.S. 615 (1987).

¹⁶ EXECUTIVE ORDER ON COMBATING ANTI-SEMITISM, Exec. Order 13899 (Dec. 11, 2019), <https://trumpwhitehouse.archives.gov/presidential-actions/executive-order-combating-anti-semitism/>.

¹⁷ INTERNATIONAL HOLOCAUST REMEMBRANCE ALLIANCE WORKING DEFINITION OF ANTISEMITISM, <https://www.holocaustremembrance.com/working-definition-antisemitism>.

¹⁸ ADL, *The President's Executive Order on Anti-Semitism: Frequently Asked Questions*, <https://www.adl.org/resources/backgrounders/the-presidents-executive-order-on-anti-semitism-frequently-asked-questions>.

at Colleges and Universities) provides that private universities must honor their own policies regarding freedom of speech as a condition of any and all grants received from the Department.¹⁹

Each grantee that is an institution of higher education, as defined in 20 U.S.C. 1002(a), that is private (hereinafter “private institution”) must comply with its stated institutional policies regarding freedom of speech, including academic freedom, as a material condition of the Department’s grant.²⁰

This federal regulation incorporates Tufts’ policies regarding freedom of speech, including the Trustees’ *Declaration on Freedom of Expression at Tufts University*, into Tufts’ grant conditions with the Education Department. The *Declaration*, as incorporated, rightly states that “[f]reedom of expression and inquiry,” while not absolute, are “fundamental to the academic enterprise.” The Trustees, moreover, have commendably admonished that “[m]embers of the university community, including academic and administrative leaders, must hold accountable those who do not respect these values” (emphasis added). You have also publicly adopted these principles, President Monaco, in your expression of Tufts policy going back to your Inaugural Address, in which you eloquently pledged that, “Tufts is a community, above all, where freedom of expression is cherished.”²¹ Indeed, you have repeated these principles throughout your tenure, emphasizing their centrality at Tufts throughout its entire distinguished history:

Since its founding in 1852, Tufts has embraced a campus culture that encourages the free and unfettered exchange of ideas. It is what defines us as a university in pursuit of discovery and knowledge, and it is what prepares our students to take on the complex challenges of our times.²²

¹⁹ U.S. Secretary of Education Betsy DeVos Delivers on Promise to Protect Free Inquiry and Religious Liberty, *Press Release*, Dept. of Educ., Sept. 9, 2020, <https://www.ed.gov/news/press-releases/us-secretary-education-betsy-devos-delivers-promise-protect-free-inquiry-and-religious-liberty>

²⁰ Free Inquiry Final Rule <https://www2.ed.gov/about/offices/list/ope/freeinquiryfinalruleunofficialversion09092020.pdf> at 235, amending 34 CFR § 75.500 (c)(1).

²¹ Anthony P. Monaco, Inaugural Address, Tufts University (October 21, 2011), <https://president.tufts.edu/news/2011/10/21/inaugural-address/>

²² Anthony P. Monaco, “Free Speech on Tufts Campus,” *The Tufts Daily* (January 13, 2015), <https://tuftsdaily.com/opinion/2015/01/13/free-speech-tufts-campus/>

These “defining” principles are “Advertised Commitments to Free Expression”²³ which are publicly known and relied upon, by current and prospective Tufts students, their families, federal agencies, and nonprofit organizations. To this extent, these principles are enforceable through the federal Education Department, as well as under contract law.²⁴

Tufts University is therefore legally obligated to protect Mr. Price from anti-Semitic harassment that targets him because of his Zionist identity and seeks to silence him, to punish him for his exercise of expressive rights protected under Tufts’ stated institutional policies, and to deny him an equal opportunity to serve on the Tufts TCUJ.

The harassment targeting Mr. Price on the basis of his Jewish ethnic and ancestral identity violates Tufts University Policy.

Tufts’ non-Discrimination Policy²⁵ states:

As a member of the Tufts community you have the right to work, learn, and live in an environment free from discrimination and harassment. You have the right to equal opportunity and equal access to all university programs, employment and activities.

Max Price, was selectively targeted, harassed, interrogated and ultimately silenced, by SJP and members of the Tufts student government, because of his Jewish ethnic identity. His harassers seek to cleanse the student government of Jews who support Israel, and they are now seeking to deny him equal access to university programs by unlawfully removing him from his duly elected position on the TCUJ. His rights as a Tufts student to equal educational opportunity and to an environment free from harassment and discrimination have been violated.

The Bill of Rights²⁶ included in the TCU Constitution, Article I(D)(3) states:

All members of the TCU shall be entitled to . . . [a]ctively participate in the TCU government by voting on campus-wide issues, . . .

²³ Foundation for Individual Rights in Education, https://www.thefire.org/fire_speech-codes/tufts-demonstrations/.

²⁴ The Trustees have also rightly acknowledged that members of the Tufts community also owe to one another other forms of respect that do not “enjoy[] the force of law” but that have also not been extended to Mr. Price, such as “the basic respect” and “ethical obligations of human beings engaged in a common endeavor.”

²⁵ TUFTS UNIVERSITY OFFICE OF EQUAL OPPORTUNITY, NON-DISCRIMINATION POLICY, <https://oeo.tufts.edu/policies-procedures/non-discrimination/>

²⁶ Tufts Community Union Constitution, *as amended*, April 26, 2018, <https://drive.google.com/file/d/11Jsr8tEF-G6sLWvEC6EnrgrA7Z2dmw9P/view>

[and] participating during meetings of the government or Senate . .

Requiring Mr. Price to remain “on mute” for the duration of the TCUJ’s November 18 meeting, silencing his speech, and preventing him from fully participating in that TCUJ meeting constituted a blatant violation of Mr. Price’s rights under this provision of the TCU Constitution. Silencing Mr. Price similarly violated the Tufts Board of Trustees 2009 *Declaration on Freedom of Expression* which recognizes that “[f]reedom of expression and inquiry are fundamental to the academic enterprise.”²⁷

In addition, SJP and the TCU Senate violated Mr. Price’s due process rights as set forth in the Tufts Student Conduct Resolution Procedure (SCRP).²⁸ According to the SCRP, complaints like the one filed by SJP against Mr. Price are to be submitted to the Office of Community Standards (SCRP C). If proper procedure had been followed, the Office of Community Standards would have appointed a “conduct officer” who would have scheduled an “initial meeting” with Mr. Price to discuss the complaint (SCRP I(4)). Only after the conduct officer had reviewed the complaint, discussed it with Mr. Price, and given him the opportunity to reply in writing to the complaint would a hearing have been scheduled. SJP deliberately side-stepped these important procedures designed to protect students, like Mr. Price, from baseless, harassing complaints. When Mr. Price called this omission to the attention of the TCU Senate, he was told that although his disciplinary hearing scheduled for February 7 would be governed by Section K of the SCRP, the TCU Senate had no intention of abiding by these preliminary procedures.²⁹ Mr. Price has a right to have a university administrator review the complaint and meet with him to determine whether or not the complaint should be permitted to proceed to a hearing. By refusing to follow this procedure, SJP and the TCU Senate have denied Mr. Price due process protections to which he is entitled under the SCRP.

Silencing Mr. Price during the TCUJ deliberations of the Deadly Exchange campaign denied the free speech that the First Amendment secures against government suppression.

Excluding Mr. Price from the TCUJ deliberations on the basis of his Jewish ethnic identity and his familiarity with the Deadly Exchange campaign and SJP denied his right of free speech that is sacred to any educational institution – and which the Trustees of this particular institution

²⁷ Trustees of Tufts University, *Declaration on Freedom of Expression at Tufts University* (Revised: November 7, 2009), <https://trustees.tufts.edu/policies/expression/>.

²⁸ Tufts University Student Conduct Resolution Procedure, <https://students.tufts.edu/student-affairs/student-code-conduct/v-student-conduct-resolution-procedure>

²⁹ A copy of the relevant email exchange between Mr. Price and the TCU Parliamentarian is attached as Exhibit C.

have rightly insisted is “necessary . . . for learning to take place.”³⁰ SJP claims that Mr. Price’s prior statement about the Deadly Exchange campaign disqualified him from serving on the TCUJ. This would prohibit a student who is “familiar with” a topic (as the TCU Constitution Article III(D)(4)(a) suggests) from engaging in student government review of a resolution that relates to that subject. Excluding individuals who are “familiar with” a controversial issue means excluding not only individuals who have prior personal knowledge relating to that subject, but also excluding all students whose identity is intertwined with it. Taken to its logical conclusion, SJP’s position would mean that Black students may not participate in student government discussions related to race, Catholic students may not evaluate student government resolutions related to religion, and Jewish students must be precluded from discussing anti-Semitism.

For example, if a Black student studying in 1952 at a university had been active with the National Association for the Advancement of Colored People (NAACP), would that student have been prohibited from speaking out against a resolution urging the Supreme Court to retain the “separate but equal” rule of *Plessy v. Ferguson*?

Or if a Catholic student studying in 1960 at a university had expressed faith in the Pope and the Vatican should that student have been disqualified from opposing a resolution urging the defeat of John F. Kennedy in his race for President because Catholics could not be trusted to make decisions veering from Catholic doctrine?

Similarly, a Jewish student who supports the existence of a Jewish homeland should not be barred from consideration of a resolution that blames Israel for racism in America.

Denying a Black, Catholic or Jewish student the right to express their opinion in such situations amounts to “viewpoint discrimination.” The United States Supreme Court and lower federal and state courts have held that the constitutional protection of free speech prohibits the governmental suppression of speech in any public forum in a manner that is not content-neutral. E.g., *Lamb’s Chapel v. Center Moriches Union Free School District*, 508 U.S. 384 (1993); *Rosenberger v. Rector and Visitors of Univ. of Virginia*, 515 U.S. 819, 829 (1995). Even where there is benign intent, such discrimination is subject to strict scrutiny. *Reed v. Town of Gilbert*, 576 U.S. 155, 165-166 (2015). See *Good News Club v. Milford Central School*, 533 U.S. 98, 107-114 (2001). Many of the original decisions on this subject concerned the exclusion of religious groups from the public forum (e.g., *Widmar v. Vincent*, 454 U.S. 263 (1981)), but the principle extends beyond religion.³¹

³⁰ Trustees of Tufts University, *Declaration on Freedom of Expression at Tufts University* (Revised: November 7, 2009), <https://trustees.tufts.edu/policies/expression/>

³¹ For example, in *Sweet Sage Cafe, LLC v. Town of North Redington Beach*, Florida, 2017 WL 385756 (M.D. Fla. January 27, 2017), a local sign ordinance that permitted certain signs and prohibited others based on the content of the signs was held to violate the First Amendment because it was “a content-based scheme of speech regulation that is not narrowly tailored to serve a compelling government purpose.”

Silencing Max Price's expression of opinion on the TCUJ Judiciary because he is Jewish and expresses a Zionist, pro-Israel opinion is flagrant "viewpoint discrimination" that cannot be tolerated in a free society or in a university where the free-speech principles of the First Amendment govern. The university must forcefully condemn this violation of Mr. Price's right to free expression.

Recommended Corrective Action

Max Price has been subjected to unlawful harassment and discrimination by students who seek to silence him and deny him the opportunity to serve on the TCUJ. He has been singled out for this treatment because of his Jewish ethnic identity. To protect Mr. Price Tufts University must (1) promptly halt the disciplinary hearing scheduled for February 7; (2) conduct an investigation to determine which students are responsible for the anonymous complaint (filed in the name of SJP); (3) discipline any students who are found, after prompt investigation, to have violated university policy by conducting a campaign of intimidation and harassment targeting Mr. Price; (4) warn Students for Justice in Palestine that it may not retaliate against Mr. Price for bringing this harassment campaign to the attention of university administrators, and that the organization will be sanctioned if SJP or any its members retaliate against Mr. Price; and (5) President Monaco should apologize to Mr. Price and the Tufts Jewish community, publicly and in writing on behalf of the University, for the way in which they have been treated.

In addition, we offer the following recommendations for the University to address campus anti-Semitism³² and make Tufts University a welcome and safe environment for all students:

- (A) The University should issue a statement condemning anti-Semitism in all its forms and publicly acknowledge that, for many Tufts students, Zionism is integral to their identity as Jews. We propose the following language:

We condemn antisemitism in all its forms. We recognize that Zionism is a key component of the religious and ethnic identity of many students on our campus. Efforts to demonize Zionism and make these Tufts students feel unsafe expressing this part of their religious and ethnic identity is contrary to our university's basic values of mutual respect and inclusion. Our university must be a place for the free and open exchange of ideas. It is never acceptable to harass, intimidate, marginalize, exclude or demonize any part of our university community on the basis of its identity.

- (B) The University should officially adopt and utilize the IHRA Working Definition of Anti-Semitism and its contemporary examples when investigating and responding to

³² Attached as Exhibit D are prior communications to the University from the Tufts Jewish community describing incidents of anti-Semitism at Tufts University.

- incidents of harassment and discrimination at Tufts to determine whether they are motivated by anti-Semitic animus or bias. The University should publicly encourage the Tufts community to educate itself about the many manifestations of anti-Semitism by reading and studying the IHRA Definition and its contemporary examples.
- (C) The University should revise its non-discrimination policy to include a prohibition on discrimination based on shared ancestry and ethnic characteristics, including anti-Semitism as defined in Executive Order 13899 and, more specifically, in the IHRA Working Definition and IHRA's contemporary examples of anti-Semitism. The revised policy should include a description of the forms of anti-Semitism that can manifest in the University environment and provide examples of discrimination on the basis of shared ancestry and ethnic characteristics, which must include the contemporary examples of anti-Semitism in the IHRA Definition.
- (D) The University should conduct training for the University community, including students, faculty, staff, administrators, and campus security, concerning the revised non-discrimination policy and its implementation. Such training must include programming and educational materials about national origin discrimination and harassment, which specifically address the many manifestations of anti-Semitism and incorporate the IHRA Working Definition and its contemporary examples.
- (E) The University should offer credit-bearing coursework in the study of anti-Semitism and should provide resources to support Tufts faculty and students who choose to conduct research and study in this area. The University should also hire an expert in anti-Semitism as a tenure-track faculty position.

We remain available to share our expertise on these issues and to further discuss our recommendations with you. If we can be of assistance, please feel free to contact us via email (at the email addresses beneath our signatures) or by phone at (202) 559-9296.

Sincerely yours,



Kenneth L. Marcus
Founder & Chairman
klmarcus@brandeiscenter.com



Alyza D. Lewin
President
alewin@brandeiscenter.com



Denise Katz-Prober
Director of Legal Initiatives
denisekp@brandeiscenter.com

Tufts University
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cc: Peter R. Dolan, Chair of the Board of Trustees
chairman@tufts.edu

JEWISHINSIDER