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**RE: COMPLAINT AGAINST UNIVERSITY OF CALIFORNIA, BERKELEY
SCHOOL OF LAW PURSUANT TO TITLE VI OF THE CIVIL RIGHTS ACT (1964)**

I. INTRODUCTION

On 21 August 2022, nine recognized student organizations (RSOs) from the University of California, Berkeley Law School, passed a bylaw, which stated, inter alia, that they “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.” This is a gross and blatant violation of the protections provided by Title VI of the Civil Rights Act (1964), for the reasons detailed herein. The undersigned respectfully request that this Office open an investigation against the University of California, Berkeley Law School and direct it to immediately invalidate the bylaws in question, and to adopt the proposed remedies set forth below.

Gabriel Groisman is an attorney and a Jewish rights leader focused on combating and confronting antisemitism throughout the United States, educating the public about the rise of antisemitism in our nation, and standing with victims of antisemitism to help strengthen them and, amongst other things, to help victims of antisemitism to find recourse in civilized society, whether in courts of law or in other branches of government.

Arsen Ostrovsky is a human rights lawyer and CEO of the International Legal Forum (ILF), a global network of lawyers and activists, committed to educating about and combating

antisemitism and racial hatred in all its manifestations in the legal arena, including in the United States, and across campuses and educational institutions.

Groisman and Ostrovsky file this Complaint as they firmly believe that there has been an act of discrimination against the Jewish community at UC Berkeley School of Law, and that this Office must open an investigation to make that determination and ultimately provide the protections owed to the Jewish community by the Title VI of the Civil Rights Act.

The claim at hand concerns the profound and deep-seated antisemitism, and the racial, ethnic and religious discrimination directed against Jewish students, faculty and staff at the University of California, Berkeley School of Law, by the forced exclusion and prohibition of their participation in campus activities by at least nine recognized student organizations (RSOs), on the basis of their Jewish ethnic, religious, racial and/or national identity.

Primarily, as a recipient of federal funding, Berkeley Law School is in ongoing and systematic breach of Title VI of the Civil Rights Act (1964)¹, which prohibits discrimination on the basis of “race, color, and national origin”, in the decision of the aforementioned student groups to pass a bylaw² on 21 August 2022, banning “Zionist” speakers.

Berkeley Law School’s acquiescence and support of these groups is in gross violation of Title VI and is contrary to clear US Supreme Court precedent in *Christian Legal Society vs. Martinez*³, where the Court held that registered student groups must accept all comers, including any student to participate, become a member of, or seek leadership positions, regardless of status or beliefs.

Although we acknowledge that Professor Erwin Chemerinsky, Dean of Berkeley Law School, has condemned the adopted by-law, describing it as “very troubling”⁴ and noting that according to their framing, he too would be banned because he supports the existence of the State of Israel, he has neither called for their revocation, nor has he taken any meaningful action in response to this egregious act of discrimination, as required under Title VI of the Civil Rights Act.

Moreover, incredulously, Dean Chemerinsky has repeatedly stated that “only a handful of student groups out of over 100 at Berkeley Law did this.”⁵ It is unfathomable that a similar statement would ever be made that “only a handful” of student groups banned speakers of any other ethnic, religious or racial group. Yet such blatant discrimination directly targeted against Jews is being excused, justified and mainstreamed. The University’s posture is untenable under the law.

¹ Civil Rights Act (1964)

² Berkeley Law Students for Justice in Palestine, https://www.instagram.com/p/Chh_43tpLnm/, 21 August 2022, Accessed 3 October 2022

³ *Christian Legal Society Chapter of the University of California, Hastings College of the Law, aka Hastings Christian Fellowship vs. Martinez*, 561 U.S. 661 (2010)

⁴ The Jewish News of North California, ‘Dean of Berkeley Law: Don’t Generalize About BDS on Campus’, Erwin Chemerinsky, 29 August 2022, <https://jweekly.com/2022/08/29/dean-of-berkeley-law-dont-generalize-about-bds-on-campus/>, Accessed 5 October 2022

⁵ The Jewish Journal, ‘Berkeley Develops Jewish-Free Zones’, A Response by Erwin Chemerinsky to Kenneth Roth, 28 September 2022, <https://jewishjournal.com/commentary/opinion/351854/berkeley-develops-jewish-free-zones/>, Accessed 5 October 2022

The fact that “only a handful” of student groups adopted this discriminatory by-law, in no way diminishes the gravity of the discrimination and injustice that is occurring at Berkeley, nor the fact that Title VI of the Civil Rights Act is being so flagrantly violated.

Selecting a specific characteristic of a religious, racial or ethnic group, and then using that specific characterization as the basis for discrimination is illegal and a flagrant violation of Title VI of the Civil Rights Act. For instance, a by-law at a university prohibiting anyone who believes in Jesus as the son of God to participate in programs at the University would be clearly discriminatory against Christians and violative of Title VI of the Civil Rights Act. This would be the case even if a small percentage of Christians are non-believers. Similarly here, prohibiting anyone who believes in Zionism – a key pillar of the Jewish faith – from participating in certain student groups, is a violation of Title VI of the Civil Rights Act and is simply a modern day form of antisemitism. This is confirmed by the widely accepted and adopted International Holocaust Remembrance Alliance (IHRA) working definition of antisemitism⁶. The IHRA working definition specifically lists “denying the Jewish people their right to self-determination,” which goes to the very core of Zionism, as an example of contemporary antisemitism.

There can be no equivocation: anti-Zionism is antisemitism. In fact, as further detailed below, it is the newest form of antisemitism and the most common form of antisemitism on US college campuses today. Anti-Zionism is the denial of Jews their inalienable and collective right to self-determination, as expressed in the connection to their ancestral homeland, the Land of Israel, which for the overwhelming majority of Jews, forms an integral part of their identity. In fact, the University of California Regents have declared⁷ “anti-Semitism, antisemitic forms of anti-Zionism and other forms of discrimination have no place at the University of California” calling on University leaders actively to “challenge anti-Semitism and other forms of discrimination when and wherever they emerge within the University community.”⁸

By effectively saying “Zionists are not welcome,” these student groups – and by extension Berkeley, from its failure to act - are excluding, marginalizing and silencing Jews, and contributing to the creation of a hostile environment for Jewish students, faculty and staff, in circumstances where antisemitism, including on campus, is already at record high levels across the United States⁹.

⁶ International Holocaust Remembrance Alliance (IHRA), Working Definition of Antisemitism, <https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism>, Accessed 17 October 2022

⁷ University of California Regents, Final Report of the Regents Working Group on Principles Against Intolerance, 2016, <https://regents.universityofcalifornia.edu/documents/pdf/4403.pdf>, Accessed 9 October 2022

⁸ University of California Board of Regents, Regents Policy 4403: Statement of Principles Against Intolerance, 24 March 2016, <https://regents.universityofcalifornia.edu/governance/policies/4403.html>, Accessed 9 October 2022

⁹ ADL Audit Finds Antisemitic Incidents in United States Reached All-Time High in 2021, 25 April 2022, <https://www.adl.org/news/press-releases/adl-audit-finds-antisemitic-incidents-in-united-states-reached-all-time-high-in>, Accessed 5 October 2022

In a recent report¹⁰ released by ADL, there were more than 350 troubling anti-Israel related incidents recorded on U.S. college and university campuses during the 2021-22 academic year, including disturbing anti-Zionist and anti-Israel expressions intended to reinforce opposition to Israel and Zionism as core elements of collegiate life or as a requirement for full acceptance in the campus community.

Indeed, as observed by the Jewish Student Association at Berkeley Law, this by-law will force Jewish students into an all too familiar position, of having to “deny or denigrate a part of their identity or be excluded from community groups”.¹¹

This claim is not a case of requiring student groups to affirmatively provide space to ‘pro-Israel’ speakers, which would be a violation of the First Amendment. However, it is a call on these very same groups not to exclude or prohibit speakers who identify as Zionists, a core and integral component of Jewish identity, which would be tantamount to antisemitism and discrimination, which is in fact clearly outlawed under Title VI of the Civil Rights Act.

Accordingly, based on the reasoning expressed in this claim, we respectfully request that the Office for Civil Rights initiate an urgent investigation of University of California, Berkeley, a public institution and recipient of federal funds¹², as well as Berkeley Law School, for breaches of Title VI of the Civil Rights Act of 1964.

We urge this office to take immediate measures, as afforded under the Act, in addition to a number of further recommended actions, as outlined below, to root out the antisemitism, discrimination and racial hatred at Berkeley, and in order to help create a more tolerant, inclusive and non-discriminatory environment for Jewish students, staff and guests.

II. STATEMENT OF FACTS

On 21 August 2022, nine recognized student organizations (RSOs) from the University of California, Berkeley Law School, passed a bylaw, which stated, inter alia, that they “*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.*”¹³

The following recognized student organizations adopted the aforementioned bylaw¹⁴:

- Berkeley Law Muslim Student Association
- Middle Eastern and North African Law Students Association
- Womxn of Color Collective

¹⁰ ADL: Anti-Israel Activism on U.S. Campuses, 2021-2022, 12 October 2022, <https://www.adl.org/resources/report/anti-israel-activism-us-campuses-2021-2022>, Accessed 13 October 2022

¹¹ Board of the Jewish Student Association at Berkeley Law, Letter to: Berkeley Law Community, 28 August 2022, https://medium.com/@jsabl_48322/jsabl-board-statement-97de2e3f7e77, 11 October 2022

¹² University of California, Berkeley, Office of the Chief Financial Officer, <https://cfo.berkeley.edu/budget-101>, Accessed 6 October 2022

¹³ Berkeley Law for Palestine, https://www.instagram.com/p/Chh_43tpLnm/, 21 August 2022, Accessed 3 October 2022

¹⁴ University of California, Berkeley, *Student Organizations: Student Groups*, <https://callink.berkeley.edu/Organizations>, accessed 11 October 2022

- Asian Pacific American Law Students Association
- Queer Caucus
- Community Defense Project
- Women of Berkeley Law
- Law Students of African Descent
- Law Students for Justice in Palestine

It has been reported that subsequently, an additional five student groups have adopted the by-law, bringing the total to fourteen¹⁵.

Effectively, what this by-law means is that it will prohibit or exclude most Jewish speakers from events and activities held by these organizations, if they support even the mere existence of the State of Israel, which goes to the very core of Zionism (as elaborated in the next section). This point itself, was made by Dean Chemerinsky, who said that under this framing, he too would be excluded because he supports the existence of the State of Israel,¹⁶ adding as would 90% or more of Jewish students at Berkeley Law¹⁷.

By further reference in the operative paragraph of the by-law to ‘occupation of Palestine’, they are falsely implying that Israel is occupied Palestinian territory and therefore has no right to exist in any borders. The categorization of Israel as an ‘apartheid state’, is also not only factually incorrect, without any basis in law, but is widely seen, in and of itself, as an antisemitic accusation.¹⁸

As an example, if one of the groups who passed the bylaw, invited a speaker to one of their events, say a Jewish student or faculty member, the prospective speaker would either need to renounce their Zionism or support for Israel’s right to exist, or be disinvited, in the absence of a refusal to do so, therefore excluded from full participation from such event on campus.

This is blatant and naked racism and discrimination, based on the Jewish students or faculty members Jewish ethnic and religious identity.

It will also only further contribute to the creation of a hostile atmosphere for Jewish students, faculty and staff, who will be marginalized, excluded and ostracized, in being forced to either hide

¹⁵ Jewish Telegraph Agency, A provocative ‘Hitler truck’ inflames tensions in Berkeley amid ‘Jew-free zones’ accusation, 19 October 2022, <https://www.jta.org/2022/10/19/united-states/a-provocative-hitler-truck-inflames-tensions-in-berkeley-amid-jew-free-zones-accusation>, Accessed 3 November 2022

¹⁶ The Jewish News of North California, ‘Dean of Berkeley Law: Don’t Generalize About BDS on Campus’, Erwin Chemerinsky, 29 August 2022, <https://jweekly.com/2022/08/29/dean-of-berkeley-law-dont-generalize-about-bds-on-campus/>, Accessed 5 October 2022

¹⁷ Professor Erwin Chemerinsky, Dean of Berkeley Law School, quoted in The Jewish News of North California: Several Berkeley Law student groups adopt ‘no Zionist speakers’ rule, 29 August 2022, <https://jweekly.com/2022/08/26/several-berkeley-law-student-groups-adopt-no-zionist-speakers-rule/>, Accessed 9 October 2022

¹⁸ See for example: The Jerusalem Post, ‘Calling Israel ‘apartheid’ is plain antisemitic’, 30 June 2022, <https://www.jpost.com/diaspora/antisemitism/article-710863>, Accessed 5 November 2022

or renounce such an integral part of their Jewish identity, as their connection to, and support of, Israel's right to exist.

It is our understanding and belief that Law Students for Justice in Palestine (LSJP) led this initiative to adopt the bylaw.

LSJP list their motto as "From the river to the sea, Palestine will be free"¹⁹, which is a common euphemism for a call to arms and the violent destruction of the State of Israel. According to the ADL, a plain text reading of this phrase connotes the call for "a Palestinian state extending from the Jordan River to the Mediterranean Sea, territory that includes the State of Israel, implying the dismantling of the Jewish state. Indeed, this rallying cry has long been used by the anti-Israel terrorist organizations such as Hamas and the PFLP, which seek Israel's destruction through violent means."²⁰ ADL further note "[u]sage of this phrase, regardless of intent, can have the effect of making members of the Jewish and pro-Israel community feel beleaguered and ostracized."²¹

Accordingly, when the groups who passed the bylaw refer to 'occupation of Palestine', not only are they excluding those Jewish students, but are essentially making it a pre-condition that only those who favor the elimination of the Jewish state, can participate.

LSJP are also leading supporters of the Boycott, Divestment and Sanctions (BDS) Movement, a racist, global antisemitic movement, with ties to Palestinian terror groups, that likewise ultimately calls for the dismantlement of Israel as a Jewish state. The bylaw adopted by these groups also mandated "engaging in the BDS Movement."

The United States government has previously reaffirmed its commitment to "countering the Global BDS Campaign as a manifestation of anti-Semitism."²²

University of California, Berkeley, Chancellor Carol Christ, has previously condemned the BDS Movement, joining nine other University of California Chancellors in stating it "poses a direct and serious threat to the academic freedom of our students and faculty, as well as the unfettered exchange of ideas and perspectives on our campuses, including debate and discourse on the Middle East."²³

¹⁹ Berkeley Law for Palestine, https://www.instagram.com/p/Chh_43tpLnm/, 21 August 2022, Accessed 3 October 2022

²⁰ ADL, Allegation: "From the River to the Sea Palestine Will be Free", 3 May 2022, <https://www.adl.org/resources/glossary-terms/from-the-river-to-the-sea-palestine-will-be-free>, Accessed 7 October 2022

²¹ ADL, Allegation: "From the River to the Sea Palestine Will be Free", 3 May 2022, <https://www.adl.org/resources/glossary-terms/from-the-river-to-the-sea-palestine-will-be-free>, Accessed 7 October 2022

²² Michael R. Pompeo, US Secretary of State, Identifying Organizations Engaged in Anti-Semitic BDS Activities, 19 November 2020, <https://il.usembassy.gov/identifying-organizations-engaged-in-anti-semitic-bds-activities/>, Accessed 11 October 2022

²³ The Jewish Journal, *Ten UC Chancellors Denounce Academic Boycotts of Israel*, 13 December 2018, <https://jewishjournal.com/news/united-states/248723/ten-uc-chancellors-denounce-academic-boycotts-of-israel/>, Accessed 11 October 2022

On 25 August 2022, Dean Chemerinsky, emailed²⁴ the leaders of all student organizations to condemn the bylaw at issue, calling it "troubling" and said if "taken literally," would mean that he couldn't speak at these organizations either, over his support for "the existence of Israel."

In his email, Dean Chemerinsky also noted how "the singling out of the state of Israel for special condemnation, or questioning the very legitimacy of its existence, is considered by many Jewish students to be a form of Antisemitism."

Although Dean Chemerinsky noted "[i]t is important that we be a community, where all feel welcome, respected and included", he did not call for a revocation of this bylaw, reiterating "[o]f course it is the First Amendment right of students to express their views on any issues." The Dean's position is correct that the First Amendment allows students to express their views. In fact, this is a bedrock principle of American Law. However, the wholesome exclusion of students who express and/or hold views is antithetical to the First Amendment, while in this case also violating Title VI.

In response to Dean Chemerinsky's email, on 29 August 2022, Berkeley Law Students for Justice in Palestine wrote²⁵ that "the action of affinity groups to exercise democracy and choosing not to platform Zionists ... is an absolutely tenable action" and that "morally outraged, we have encouraged student groups to boycott the apartheid state and not lend platforms to speakers who support the Zionist project of genocide and apartheid."

In a subsequent op-ed in *The Daily Beast* on 1 October 2022, Dean Chemerinsky wrote, *inter alia*: "At this stage, all some [sic.] student groups have done is express their strong disagreement with Israel's policies. That is their First Amendment right. I find their statement offensive, but they have the right to say it. To punish these student groups, or students, for their speech would clearly violate the Constitution."²⁶

In his 1 October 2022 Op-Ed, Dean Chemerinsky also reaffirmed that "the Law School has an 'all-comers' policy, which means that every student group must allow any student to join and all student group organized events must be open to all students."

He then, yet again, sought to minimize the gravity of the discriminatory act, by rationalizing that only "a handful of student organizations" adopted by the bylaw and that "after the first couple of weeks of the semester, it was virtually never mentioned", as if that made it any more legitimate.

For reasons explained in the following section, despite the erroneous and dangerously misleading manner in which this case has been framed by some, including Dean Chemerinsky, as a First Amendment issue of free speech, it is rather one of discrimination and, religious and ethnic hatred and discrimination, rooted in law, and specifically Title VI of the *Civil Rights Act* of 1964.

²⁴ Email by Dean Chemerinsky, dated 25 August 2022, Extracted here:

https://3445b653-a451-4e2c-ae76-ce35f3572216.usrfiles.com/ugd/3445b6_ce878a67921f42f6bd79139d3f5e7141.pdf

²⁵ Letter by Berkeley Law Students for Justice in Palestine, 'Dear Berkeley Law Community', 29 August 2022, <https://www.instagram.com/p/Ch2ty0FvdWJ/?igshid=YmMyMTA2M2Y=>, 11 October 2022

²⁶ *The Daily Beast*, 'There Are No 'Jewish-Free' Zones on the UC-Berkeley Campus', Erwin Chemerinsky, 1 October 2022, <https://www.thedailybeast.com/there-are-no-jewish-free-zones-on-the-uc-berkeley-campus>, Accessed 10 October 2022

III. ZIONISM IS AN INTEGRAL COMPONENT OF JEWISH IDENTITY

Zionism is considered by the vast majority of Jews to be an integral and indispensable part of their Jewish identity.

At its core, Zionism refers to the Jewish people's right to self-determination and liberation in their ancestral homeland, the Land of Israel. Whether religiously observant or secular, for the vast majority of Jews, Israel is a core part of their faith, history, ethnicity and sense of peoplehood.

This sense of Jewish identity is inherently and indivisibly intertwined with the Land of Israel, or as former British Chief Rabbi and one of the most respected authorities on Judaism, Rabbi Lord Jonathan Sacks, noted, today "the Jewish people's primary collective embodiment is as the people of Israel."²⁷

According to a 2019 Gallup survey²⁸, 95% of American Jews support Israel, while a Pew 2020 survey indicated that 82% of U.S. Jews say caring about Israel is an "essential or important part of what being Jewish means to them."²⁹

Over half of the Biblical commandments can only be carried out in Israel itself. Jews, whether in Israel or around the world, have continued to pray in the same historical language, Hebrew, while ending their High Holy Day prayers with the words "Next Year in Jerusalem."

The Jewish people's unbreakable connection to the Land of Israel goes back millennia, to the eras of Joshua, Saul and King David, who declared Jerusalem to be the capital of the Jewish nation over 3,000 years ago. Throughout this time and until this day, the Jews have been the only people to have created and maintained a nation state here.

Although Jews have faced exile, crusaders, conquerors, pogroms, persecution and the Holocaust, there has always been a deep connection to and yearning for liberation and restoration of sovereignty in the land of Israel.

Indeed, in 1878, a Jewish writer by the name of Naphtali Herz Imber, penned a poem 'Tikvateinu', which means 'Our Hope' in Hebrew.

The poem reads, in part³⁰:

Our hope is not yet lost,
The hope that is two-thousand years old,

²⁷ Rabbi Lord Jonathan Sacks, *Connection Between Antisemitism, Anti-Zionism, Judaism & Israel*, 1 May 2019, <https://www.youtube.com/watch?v=MloZvHU3wwg>, Accessed 16 October 2022

²⁸ Gallup: American Jews, Politics and Israel, 27 August 2019, <https://news.gallup.com/opinion/polling-matters/265898/american-jews-politics-israel.aspx>, Accessed 12 October 2022

²⁹ Pew Research Center Survey, Jewish Americans in 2020, 11 May 2021, <https://www.pewresearch.org/religion/2021/05/11/u-s-jews-connections-with-and-attitudes-toward-israel/>, Accessed 11 October 2022

³⁰ The Knesset: The National Anthem, https://m.knesset.gov.il/en/about/lexicon/pages/national_anthem.aspx, Accessed 17 October 2022

To be a free nation in our land,
The Land of Zion and Jerusalem.

"Tikvatenu" was initially sung at the 5th Zionist Congress in Basel in 1901 and in 1933 was adopted as the official anthem of the Zionist Movement. In May 1948, upon the declaration of the independence of the State of Israel, this poem became the national anthem of the re-born state.

Today, there are over 150 countries with a majority Christian population and at least 50 where Muslims form the majority. However, throughout history, and to this day, there has only ever been one Jewish nation, Israel.

Therefore, a rejection of Zionism, including as expressed by those student groups who adopted this bylaw, is an act of antisemitism and direct assault upon the very core ethnic and racial identity of Jewish students.

In describing antisemitism as a "mutating virus," former Chief Rabbi Lord Jonathan Sacks, observed: "In the Middle Ages, Jews were hated because of their religion. In the nineteenth and early twentieth century they were hated because of their race. Today they are hated because of their nation state, the state of Israel. It takes different forms but it remains the same thing: the view that Jews have no right to exist as free and equal human beings."³¹

In other words, today's antisemitism is directed not only against Jews as individuals, but against Israel as the "collective Jew among the nations."³²

In a 17 October 2022 op-ed³³ by Charlotte Aaron, Noah Cohen, Billy Malmed and Adam Pukier, Jewish students at Berkeley Law School, in response to the adoption of the subject bylaw, they write powerfully how "Zionism is integral to our identity" and that the effective proclamation of 'No Zionists Welcome' in this bylaw, serves as "a designation against a critical element of Jewish identity and is no different to excluding anyone else on the basis of their faith and ancestry." The students conclude that, without rescinding of this bylaw or UC Berkeley stopping to fund these "discriminatory policies", Jewish students will be forced to choose: "hide our identities, condemn our ancestry, or accept our marginalization, stigmatization, and exclusion as Zionists."

Indeed, this was a feeling similarly shared by the Jewish Student Association at Berkeley Law, who wrote how this bylaw will force Jewish students into an all too familiar position, of having to "deny or denigrate a part of their identity or be excluded from community groups".³⁴

³¹ Rabbi Lord Jonathan Sacks, Speech to the European Parliament: *'The Mutating Virus: Understanding Antisemitism'*, 27 September 2016,

<https://www.rabbisacks.org/videos/mutating-virus-understanding-antisemitism/>, Accessed 13 October 2022

³² Professor Irwin Cotler, *Global Antisemitism: Assault on Human Rights*, Published in ISGAP Working Paper Series 2009, <https://isgap.org/wp-content/uploads/2013/08/ISGAP-Working-Papers-Booklet-Cotler-09-copy.pdf>, Accessed 10 October 2022

³³ Charlotte Aaron, Noah Cohen, Billy Malmed and Adam Pukier, The Daily Beast: We're Jewish Berkeley Law Students, Excluded in Many Areas on Campus, 17 October 2022, <https://www.thedailybeast.com/were-jewish-berkeley-law-students-excluded-in-many-areas-on-campus?ref=scroll>, Accessed 18 October 2022

³⁴ Board of the Jewish Student Association at Berkeley Law, Letter to: Berkeley Law Community, 28 August 2022, https://medium.com/@jsabl_48322/jsabl-board-statement-97de2e3f7e77, 11 October 2022

No individual should be forced to make such decision or to hide a most basic and fundamental component of their Jewish identity, let alone in a public place of education.

Whether it is castigating Jews on the basis on their observance of religious practices, or excluding Jewish students on the basis of the Zionist expression of their Jewish identity, in adopting the aforementioned bylaws, the student groups at Berkeley Law School committed an act of discrimination, including harassment, based on the Jewish students “actual or perceived shared ancestry or ethnic characteristics”, in violation of Title VI of the Civil Rights Act of 1964.

IV. VIOLATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color or national origin in programs or activities that receive federal financial assistance, which includes the University of California, Berkeley.

The Act states that:

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

In 2010, the Office of Civil Rights clarified:

While Title VI does not cover discrimination based solely on religion, groups that face discrimination on the basis of actual or perceived shared ancestry or ethnic characteristics may not be denied protection under Title VI on the ground that they also share a common faith. These principles apply not just to Jewish students, but also to students from any discrete religious group that shares, or is perceived to share, ancestry or ethnic characteristics (*e.g.*, Muslims or Sikhs). Thus, harassment against students who are members of any religious group triggers a school’s Title VI responsibilities when the harassment is based on the group’s actual or perceived shared ancestry or ethnic characteristics, rather than solely on its members’ religious practices. A school also has responsibilities under Title VI when its students are harassed based on their actual or perceived citizenship or residency in a country whose residents share a dominant religion or a distinct religious identity.³⁵

According to Executive Order 13899:

Discrimination against Jews may give rise to a Title VI violation when the discrimination is based on an individual's race, color, or national origin.³⁶

For reasons noted above, Zionism and connection to Israel is considered by most Jews to be an integral and indispensable part of Jewish shared ancestry and identity. By discriminating against

³⁵ U.S. Department of Education, Office for Civil Rights, ‘Letter: Dear Colleague’, 26 October 2010, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>, Accessed 17 October 2022

³⁶ Executive Order 13899 – Combating Antisemitism, 2019, Signed by President Donald J. Trump.

Jewish students, and Israeli students for that matter, the student groups that passed the subject bylaw are denying them full participation in the activities and events being held under the auspices of University of California, Berkeley.

Importantly, the exclusion of Jewish students is creating a hostile environment, where they are being marginalized, stigmatized and forced to conceal core elements of their Jewish identity.

It is important here to note that, according to Executive Order 13899:

It shall be the policy of the executive branch to enforce Title VI against prohibited forms of discrimination rooted in anti-Semitism as vigorously as against all other forms of discrimination prohibited by Title VI.³⁷

According to the Executive Order, in ensuring robust enforcement of Title VI and identifying evidence of discrimination based on race, color, or national origin, all executive departments and agencies charged with enforcing Title VI, are directed to utilize the International Holocaust Remembrance Alliance (IHRA) working definition of antisemitism and its associated ‘contemporary examples of antisemitism’, to the extent that any such examples might be useful as evidence of discriminatory intent.

According to IHRA, antisemitism is defined as follows³⁸:

Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.

The IHRA working definition also includes a number of possible contemporary examples of antisemitism, including in schools. One of these is “Denying the Jewish people their right to self-determination,” which goes to the very core of Zionism, as an inherent and indispensable part of Jewish identity, as outlined above. It also further defines Antisemitic discrimination as “the denial to Jews of opportunities or services available to others”.

On 4 November 2022, the State Department reiterated that the IHRA working definition is “integral to the fight to eliminate this scourge”, noting that “bipartisan U.S. administrations have embraced and used the IHRA Working Definition of Antisemitism, inclusive of its examples, as a policy tool.”³⁹

Selecting a specific characteristic of a religious, racial or ethnic group, and then using that specific characterization as the basis for discrimination is illegal and a flagrant violation of

³⁷ Executive Order 13899 – Combating Antisemitism, 2019, Signed by President Donald J. Trump.

³⁸ International Holocaust Remembrance Alliance (IHRA), Working Definition of Antisemitism, <https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism>, Accessed 17 October 2022

³⁹ U.S. Department of State, The International Holocaust Remembrance Alliance Working Definition of Antisemitism, 4 November 2022, <https://www.state.gov/the-international-holocaust-remembrance-alliance-working-definition-of-antisemitism/>, Accessed 5 November 2022

Title VI of the Civil Rights Act. Additionally, the denial of access and space to those who identify as Zionist, with a deep connection to the State of Israel, constitutes a clear and unequivocal example of antisemitism, pursuant to the IHRA working definition.

Under Title VI, Universities are in breach of the Civil Rights Act and the Department of Education's regulations, in circumstances where an act/s of discrimination and/or harassment have occurred, and the University has tolerated, ignored or failed to adequately address the offending conduct, such that it has negatively affected the ability and willingness of Jewish students to participate fully in the school's education programs and activities⁴⁰.

According to the Office for Civil Rights, "a school must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring."⁴¹

In the 17 October 2022 op-ed⁴² by Berkeley Law School Jewish students, Charlotte Aaron, Noah Cohen, Billy Malmed and Adam Pukier, they describe in detail how the passage of these bylaws will have effect of excluding them from many areas on campus, and creating an atmosphere of "marginalization, stigmatization, and exclusion as Zionists."

The students specifically requested that this bylaw be rescinded, and in the alternative, that UC Berkeley stop funding these discriminatory policies.⁴³

Accordingly, it is our submission that there has been an utter dereliction of duty and failure to act appropriately, or at all, by UC Berkeley, the Berkeley Law School and Dean Chemerinsky, in the face of the discriminatory conduct and in flagrant violation of Title VI of the *Civil Rights Act* of 1964.

⁴⁰ U.S. Department of Education, Office for Civil Rights, 'Letter: Dear Colleague', 26 October 2010, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>, Accessed 17 October 2022

⁴¹ U.S. Department of Education, Office for Civil Rights, 'Letter: Dear Colleague', 26 October 2010, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>, Accessed 17 October 2022

⁴² Charlotte Aaron, Noah Cohen, Billy Malmed and Adam Pukier, The Daily Beast: We're Jewish Berkeley Law Students, Excluded in Many Areas on Campus, 17 October 2022, <https://www.thedailybeast.com/were-jewish-berkeley-law-students-excluded-in-many-areas-on-campus?ref=scroll>, Accessed 18 October 2022

⁴³ Charlotte Aaron, Noah Cohen, Billy Malmed and Adam Pukier, The Daily Beast: We're Jewish Berkeley Law Students, Excluded in Many Areas on Campus, 17 October 2022, <https://www.thedailybeast.com/were-jewish-berkeley-law-students-excluded-in-many-areas-on-campus?ref=scroll>, Accessed 18 October 2022

V. WIDESPREAD CONDEMNATIONS OF THE PASSAGE OF THE BYLAW

The adoption of the bylaw has been condemned by, but not limited to the following Jewish groups, students, faculty, legal experts and elected officials:

- a) On 28 August 2022, the Board of the Jewish Student Association at Berkeley Law published an open letter to the Berkeley Law Community, noting, *inter alia*⁴⁴:

“This bylaw supports the Boycott, Divestment, and Sanction of Israel, and we are concerned by the impact this bylaw is having on our Jewish community. That our organization was one of the few affinity groups not contacted during this process underlies our concern that these actions will disproportionately silence Jewish voices on campus.

This bylaw alienates many Jewish students from certain groups on campus. In considering which organizations to join, students should not be forced to choose between identifying as either “pro-Palestine” and thereby “anti-Israel,” or “pro-Israel” and thereby “anti-Palestine.” This dichotomy distorts the complexity of this issue. Students can advocate for Palestinians and criticize Israeli policies without denying Israel the right to exist or attacking the identity of other students. To say otherwise is antithetical to the dialogue around which our educational community is built. We are troubled that this bylaw creates an environment in which only one viewpoint is acceptable.

We are further concerned by the antisemitic impact the bylaw may have on the Berkeley Law community. Many Jewish students’ identities are intertwined with the existence of Israel as an ancestral Jewish homeland, just as many Palestinians’ identities are strongly connected to their ancestral homeland. When an affinity group adopts this bylaw or conditions speaking privileges on denouncing Israel, many Jewish people are put in a position all too familiar: deny or denigrate a part of their identity or be excluded from community groups.”

- b) On 29 September 2022, Kenneth L. Marcus, founder and chairman of the Louis D. Brandeis Center for Human Rights Under Law and a former Assistant U.S. Secretary of Education for Civil Rights, wrote⁴⁵ “Anti-Zionism is flatly anti-Semitic” and refuted Dean Chemerinsky’s claim that this is a First Amendment issue of free speech, explaining instead how this is “discriminatory conduct” that “operate like racially restrictive covenants, precluding minority participation into perpetuity” and “may violate a host of civil rights laws, such as Title VI of the Civil Rights Act of 1964.”
- c) On 30 September 2022, in an open letter⁴⁶ to Dean Chemerinsky, the American Association of Jewish Lawyers and Jurists (AAJLJ) wrote that it was “abhorrent and

⁴⁴ Board of the Jewish Student Association at Berkeley Law, Letter to: Berkeley Law Community, 28 August 2022, https://medium.com/@jsabl_48322/jsabl-board-statement-97de2e3f7e77, 11 October 2022

⁴⁵ The Jewish Journal, Kenneth L. Marcus: Berkeley Develops Jewish-Free Zones, 29 September 2022, <https://jewishjournal.com/commentary/opinion/351854/berkeley-develops-jewish-free-zones/>

⁴⁶ The Jewish Journal, Letter to Dean Chemerinsky on behalf of the American Association of Jewish Lawyers and Jurists, 30 September 2022, <https://jewishjournal.com/commentary/opinion/351923/letter-to-dean-chemerinsky-on-behalf-of-american-association-of-jewish-lawyers-and-jurists/>, Accessed 11 October 2022

appalling” that “a prominent law school, such as UC Berkeley, antisemitic acts are being repeatedly tolerated, condoned, and by such inaction, encouraged.”

The AAJLJ further noted that the student lawyers “are being taught that law is a tool by which a race or religion can be openly discriminated against, in exactly the same way that black people were refused the right to purchase properties in certain areas, in exactly the same way that voting boundaries have been gerrymandered. Using the bylaws to restrict is using a legal tool to oppress — lawfare.”

- d) On 2 October 2022, the Anti-Defamation League (ADL) said “We continue to be concerned by about incidents among these Berkeley Law student groups that seek to exclude Zionist speakers. Such efforts are discriminatory and antisemitic.”⁴⁷ ADL CEO Jonathan Greenblatt added this was “appalling anti-Jewish discrimination.”⁴⁸
- e) On 3 October 2022, 40 leading Jewish and pro-Israel organizations from across the United States, signed an open letter⁴⁹, reiterating “Jewish faith and identity for millennia have been anchored by the desire to restore sovereignty in our indigenous homeland, the core idea of Zionism. Like observing Shabbat and kosher dietary laws, Zionism is vital to the consciousness of many, if not most, Jews.”

The organizations noted this this bylaw is “unabashed antisemitism” and “a vicious attempt to marginalize and stigmatize the Jewish, Israeli, and pro-Israel community and to normalize the requirement that Zionist Jews hide or alter a fundamental aspect of their identity in order to be fully accepted in certain arenas.”

The organizations called upon Berkeley Law to “immediately take all lawful and necessary steps to ensure that none of its student organizations is permitted to discriminate against Jews based on any aspect of their Jewish identity, including their Zionism. As a first step, the nine student organizations should rescind the new, discriminatory provisions from their bylaws or face appropriate sanctions for their failure to do so.”

- f) On 3 October 2022, in a letter addressed to the student organizations that passed the bylaw, 150 Jewish student groups across the United States, including UC Berkeley, wrote⁵⁰: “As members of the global Jewish Community, we recognize these bylaws as a deliberate attempt to exclude Jewish students from the UC Berkeley campus community. So today, we call upon you to immediately extirpate this bylaw from your governing documents.”

⁴⁷ Anti-Defamation League, via Twitter, 2 October 2022, <https://twitter.com/ADL/status/1576571171931185152>, Accessed 17 October 2022

⁴⁸ Jonathan Greenblatt, Twitter: <https://twitter.com/JGreenblattADL/status/1576688562632032256>, 3 October 2022

⁴⁹ The Jewish Journal, Pro-Israel Groups Release a Statement on Berkeley Controversy, 3 October 2022, <https://jewishjournal.com/news/351954/exclusive-26-pro-israel-groups-release-a-statement-on-berkeley-controversy/>, Accessed 25 October 2022

⁵⁰ Open Letter by 150 Jewish Student Groups, 3 October 2022, https://jewishjournal.com/wp-content/uploads/2022/10/221003_statement_and_organizations.pdf, Accessed 20 October 2022

Noting that more than 95% of Jewish Americans support the state of Israel, the Jewish student groups noted that “To prevent Jewish students from participating in student organizations unless they renounce the central tenet of their ethnocultural identity is an unconscionable act of discrimination. A connection to one’s heritage and homeland should not be a punishable offense. We are all equally entitled to be present on this campus and exercise our rights independent of discrimination.”

- g) On 3 October 2022, Rep. Michelle Steel (R-CA) released the following statement in response to nine student groups at the University of California, Berkeley Law School adopting by the bylaw⁵¹:

“Discrimination of any kind has no place in our society. This antisemitic movement at Berkeley is deeply troubling and hurtful. Our colleges and universities should be a place of learning and free thought, not discrimination. I’m a proud supporter of Israel, our greatest ally in the Middle East, and will continue to be a voice in Congress for our Jewish friends and neighbors.”

- h) On 7 October 2022, Rep. Ritchie Torres (D-NY), said that⁵²:

“A ban that excludes most of the Jewish community is an example of how anti-Zionism in policy translates into antisemitism in practice.”

- i) On or about 10 October 2022, members of UC Berkeley School of Law Faculty, including Dean Chemerinsky, published the following statement in support of Jewish law students⁵³:

“We hereby endorse the principle of free and open speech at the law school. This includes the fundamental principle that all students should be freely admitted to all student groups and under no circumstances should any student be denied admission to any student group.

We are highly aware of the extensive discrimination against Jews in World and U.S history. In particular, we note that 2 of 3 Jews in Europe were murdered during the Holocaust and that the United States has engaged in extensive discrimination of Jews during its history.

With this background, we also condemn the discriminatory bylaw adopted by a small minority of our law student groups refusing to accept speakers who have Zionist views or beliefs. We believe this rule is not only wrong but is antithetical to free speech and our community values. These bylaws would also impermissibly exclude a large majority of our faculty from participating in the work of these organizations, including our Dean.

⁵¹ Rep. Michelle Steele (R-CA), Press Release: Steele Condemns Antisemitism at Berkeley Law, 3 October 2022, <https://steel.house.gov/media/press-releases/steel-condemns-antisemitism-berkeley-law>, Accessed 4 November 2022

⁵² Rep. Ritchie Torres (D-NY), Statement posted on Twitter: <https://twitter.com/RitchieTorres/status/1578439106337525760>, 7 October 2022

⁵³ U.C. Berkeley School of Law Faculty Statement in Support of Jewish Law Students, <https://docs.google.com/document/d/1BiOeLJSG7lrbh9DSkvxsYRebE6Ck8a0rZaeBWNtjLPY/edit>, Accessed 24 October 2022

Many Jews (including some of us signing below who are Jewish) also experience this statement as antisemitism because it denies the existence of the state of Israel, the historical home of the Jewish people. For many Jews, Zionism is a core component of their identity and ethnic and ancestral heritage. As an educational institution we hope that the student groups that have now endorsed a “No Zionist speakers” pledge will engage in dialogue on these issues.”

j) On 17 October 2022, Charlotte Aaron, Noah Cohen, Billy Malmed and Adam Pukier, Jewish students at Berkeley Law School, wrote⁵⁴ how “Zionism is integral to our identity” and that the effective proclamation of ‘No Zionists Welcome’ in this bylaw, serves as “a designation against a critical element of Jewish identity and is no different to excluding anyone else on the basis of their faith and ancestry.” The students conclude that, without rescinding of this bylaw or UC Berkeley stopping to fund these “discriminatory policies”, Jewish students will be forced to choose: “hide our identities, condemn our ancestry, or accept our marginalization, stigmatization, and exclusion as Zionists.”

k) On 31 October 2022, Rep. Brad Sherman (D-CA) made the following statement⁵⁵:

“This shameful bylaw not only undermines students’ First Amendment rights but also effectively bars nearly all of Berkeley Law’s Jewish students from having equal access to student organizations.

For too long, we have given antisemitism a pass when its proponents label it as anti-Zionism. 95% of American Jews hold views that may fall under the definition of Zionism, which is simply the belief that the Jewish people should have statehood – just like the Ukrainian people, the Armenian people, or any other nation. To oppose the national self-determination rights of only the Jewish people has always been and will always be antisemitic.

This unacceptable decision comes at a time where antisemitic speech and incidents are on the rise in California and across the country – with antisemitic incidents in 2021 hitting the highest amount ever recorded in the United States. California ranked the third highest in number of antisemitic incidents last year, which of course includes the shocking incident in Spring of 2021 where several people waving Palestinian flags beat diners in a Los Angeles sushi restaurant while chanting “death to Jews” and “Free Palestine.” There have also notably been a flurry of antisemitic incidents across Los Angeles just this week and in Berkeley over the summer.

⁵⁴ Charlotte Aaron, Noah Cohen, Billy Malmed and Adam Pukier, The Daily Beast: We’re Jewish Berkeley Law Students, Excluded in Many Areas on Campus, 17 October 2022, <https://www.thedailybeast.com/were-jewish-berkeley-law-students-excluded-in-many-areas-on-campus?ref=scroll>, Accessed 18 October 2022

⁵⁵ Rep. Brad Sherman (D-CA), Press Release: Congressman Brad Sherman’s Statement Condemning the Abhorrent Decision by Berkeley Student Groups to Exclude Jewish and Pro-Israel Speakers, 31 October 2022, <https://sherman.house.gov/media-center/press-releases/congressman-brad-sherman-s-statement-condemning-the-abhorrent-decision>, Accessed 4 November 2022

The Jewish community knows all too well that antisemitic rhetoric like that used by the 14 Berkeley Law clubs can escalate into acts of hatred. While I appreciate Berkeley Law Dean Erwin Chemerinsky rightfully calling the adoption of this exclusionary bylaw “troubling”, more must be done. UC Berkeley touts free speech as one of its “most cherished values.” However, the adoption of this bylaw makes it so that many students, particularly Jewish students, will not be able to access student organizations that their tuition funds as a result of those students exercising their free speech rights. As a result, the funding and registered status that Berkeley provides to these student organizations must be made conditional on this discriminatory and antisemitic bylaw being revoked.

At a time of rising antisemitism, we must stand firm against attempts to alienate and demonize the Jewish community. I urge Berkeley Law to stand with its Jewish students and cease funding to any student organizations that effectively bar Jewish speakers and students from participating.”

- l) On 1 November 2022, Rep. Josh Gottheimer (D-NJ) wrote to Dr. Miguel Cardona, the Secretary of Education, urging the Department of Education to investigate UC Berkeley’s School of Law for potential violations of Title VI of the Civil Rights Act and report to Congress on whether federal funding to UC Berkeley is being used to further discrimination against Jewish and pro-Israel students, including through funding for campus organizations⁵⁶.

Rep. Josh Gottheimer further added:

“Individual UC Berkeley law students have a First Amendment right to hold any opinion, and to advocate for those opinions, even those which may be bigoted or racist. However, under Title VI of the Civil Rights Act of 1964, groups chartered by the University and using University funds and taxpayer dollars may not discriminate on the basis of “(1) shared ancestry or ethnic characteristics, or (2) citizenship or residency in a country with a dominant religion or distinct religious identity.” Also, according to the Executive Order on Combating Anti-Semitism, “It shall be the policy of the executive branch to enforce Title VI against prohibited forms of discrimination rooted in anti-Semitism as vigorously as against all other forms of discrimination prohibited by Title VI.”

It is important to send a clear message that all students and community members, including those who are Jewish, will not be singled out, penalized, or made to feel unwelcome at UC Berkeley. I respectfully ask you to report to Congress on whether and how federal taxpayer dollars are used to discriminate against Jewish and pro-Israel students at UC Berkeley.”

- m) On 7 November 2022, Kevin McCarthy (R-CA), Minority Leader of the US House of Representatives, condemned “the antisemitic behavior occurring at U.C. Berkeley’s

⁵⁶ Rep. Josh Gottheimer (D-NJ), Letter addressed to: Dr. Miguel Cardona, the Secretary of Education, 1 November 2022, <https://jewishinsider.nyc3.digitaloceanspaces.com/wp-content/uploads/2022/11/02011556/Letter-to-Secretary-Cardona-re-Antisemitism-at-UC-Berkeley-With-Watermark.pdf>, Accessed 16 November 2022

School of Law and the institution's failure to promote a safe campus for all students."⁵⁷
Rep. McCarthy added:

"Antisemitism is a scourge on our society and has no place in American life. For decades, Israel has not only been our greatest ally in the Middle East, but one of our greatest allies on the world stage. It is shameful that Berkeley Law, an institution which, on its own website, touts itself as "one of the most vibrant places on the planet," would allow this type of prejudiced behavior to take place on its campus without any consequences for involved parties.

"Berkeley Law must step up and immediately condemn these student groups to stop antisemitic behavior on campus. To turn a blind eye and continue to allow this blatant discrimination is un-American and runs directly counter to our values."

VI. SUGGESTED REMEDIES

We recommend the following suggested remedies, in order for UC Berkeley and Berkeley Law School to comply with Title VI of the Civil Rights Act of 1964 and create an overall environment for Jewish students, staff, faculty and visitors, that is open, inclusive and free of discrimination, racial hatred and harassment:

- a. Invalidate and rescind the antisemitic bylaw at issue, and any similar antisemitic or discriminatory bylaw.
- b. In the alternative, ensure that no University funding is received by any student organization that has passed this bylaw and revoke the Recognized Student Organization status of those groups who have adopted it.
- c. Enshrine an 'all comers' policy in the University laws, that require student groups to be free of discrimination and equally open and accessible to all, irrespective of faith, background or national origin.
- d. Issue an unequivocal statement denouncing antisemitism in all its manifestations, including anti-Zionism.
- e. Publicly acknowledge that for the overwhelming majority of Jews, Zionism is an inherent, integral and indispensable component of their Jewish identity.
- f. Adopt in full the International Holocaust Remembrance Alliance (IHRA) working definition of antisemitism, including all its associated contemporary examples, in order to

⁵⁷ Kevin McCarthy (R-CA) and Minority Leader of the US House of Representatives, Press Release: McCarthy Condemns Antisemitism at Berkeley Law School, 7 November 2022, <https://kevinmccarthy.house.gov/media-center/press-releases/mccarthy-condemns-antisemitism-at-berkeley-law-school>, Accessed 11 November 2022

identify instances in which antisemitism has occurred on campus and be guided by the definition in the investigation and response to the incident/s in question.

- g. Create an educational, diversity and training plan, to be open to all students on campus and mandatory for staff and faculty. Such plan should be guided by the IHRA working definition, to educate about antisemitism, its history and modern manifestations, the importance of Zionism to Jewish identity, as well as how to create best practices, in order to foster an environment on campus that is open, inclusive and free of antisemitism, that does not discriminate or marginalize Jewish students, including those who publicly identify as Zionist.
- h. Create a consultative Task Force, comprised of Jewish students, faculty and staff, as well as outside professional experts, representatives of civil society and Jewish communal leaders, to determine any additional means by which to address antisemitism on campus and create a more open and inclusive environment for Jewish students, free of antisemitic harassment and discrimination. The task force should then revert to campus administrators with a list of additional proposals and recommendations.

VII. CONCLUSION

Based on the aforementioned reasons, we respectfully request that this Office hold that University of California, Berkeley Law School has violated Title VI of the Civil Rights Act of 1984 and that it be directed to immediately invalidate the bylaws in question, and to adopt the proposed remedies as outlined above.

Respectfully submitted,



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