

**IN THE SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION**

ELIZABETH SCHWARTZ,	:	Docket No. A-002006-21TI
	:	
Complainant-Appellant,	:	
	:	
vs.	:	ON APPEAL FROM A FINAL
	:	
	:	AGENCY DECISION OF THE
FAHIM ABDERABBO, FERAS AWWAD,	:	SCHOOL ETHICS COMMISSION
CLIFTON BOARD OF EDUCATION and	:	
PASSAIC COUNTY,	:	DOCKET NO.: C40-21
	:	
Respondents-Respondents.	:	
	:	

**AMICUS CURIAE BRIEF OF THE AMERICAN-ARAB ANTI-DISCRIMINATION
COMMITTEE (ADC) IN SUPPORT OF RESPONDENTS-RESPONDENTS**

ON THE BRIEF:

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I. Introduction

This non-party amicus brief is submitted on behalf of the American-Arab Anti-Discrimination Committee ("ADC"). The ADC is a non-profit civil rights organization founded in 1980 that works to defend and advocate for the human rights and civil liberties of Arab Americans.

As a United States organization that works to defend Arab American civil liberties, ADC has a strong interest in ensuring that members of the school board can exercise their First Amendment free speech rights.

The Appellant is attempting to utilize antisemitism as a veil for what is really a racially motivated attempt to silence the Respondents and prohibit them from exercising their First Amendment rights. Driven by racism, the Appellant wishes to apply a double standard which would allow her to speak about her personal tragedies while prohibiting the Respondents from speaking about the tragedy they experienced in their homeland. The Appellant has a right disagree with the Respondent's statements and personal stories, but the Appellant does not have a right to silence and completely prohibit the Respondent's from enouncing fact-based statements and personal experiences. This is an attack on the First Amendment, which could affect not only the Respondents but other school board members from exercising their right to speak freely.

This brief will make two simple points: first, by accepting Appellant's arguments the Court would be curtailing free speech; second, the statements made by Respondents have basis in fact and do not express any antisemitic sentiment.

II. Argument

A. Free Speech and Viewpoint Discrimination

If the Court were to hold that the Respondent's speech is a violation of the School Ethics Act, the Court would be endorsing viewpoint discrimination.

Viewpoint discrimination is a form of content discrimination that singles out a particular opinion or perspective on an issue and treats it differently than other viewpoints.¹ In arguing that Respondent's statements violated the School Ethics Act, Appellant wishes to apply a viewpoint double standard that would allow her to criticize Palestine by talking freely of her tragedies but would silence Respondents and ban them from speaking on the tragedy they and their families endured in their homeland.

¹ See Rosenberger v. Rector & Visitors of the Univ. of Va., 515 U.S. 819, 830 (1995) (holding that viewpoint discrimination is impermissible when directed at speech otherwise within the forum's limitations); see also Kevin Francis O'Neill and David L. Hudson, Viewpoint Discrimination, **The First. Am. Encyclopedia** (2017), <https://www.mtsu.edu/first-amendment/article/1028/viewpoint-discrimination>.

Simply put, Appellant wishes to endorse viewpoint discrimination that would impose a double standard allowing her to speak freely, while Respondent's are curtailed in what they may speak about.

B. Respondent's Statements are Factually Correct and are a Prime Example of Speech That is Not Antisemitic

Appellant's *amici* seek to skew the statements Respondent's made to make them seem incorrect and therefore antisemitic. However, their statements are supported by the vigorous research of well-respect human rights organizations, and the Respondents are merely repeating what these organizations have already proclaimed. Nothing about the Respondent's statements is profoundly new or unheard of. They have been factually assessed and disseminated by organizations around the world. The Respondent's statements are not misinformed, politically slanted rants, but rather factually informed, well-researched opinions that Respondents have a legal right to espouse as their own viewpoint.

First, numerous human rights organizations and nations across the world have declared that Israel's behavior constitutes apartheid. Most recently, after years of research and fact gathering, Amnesty International declared Israel is committing the crime of apartheid against Palestinians.² Moreover, South Africa,

² Israel's Apartheid Against Palestinians: Cruel System of Domination and Crime Against Humanity, **Amnesty Int'l** (Feb. 1, 2022), <https://www.amnesty.org/en/documents/mde15/5141/2022/en/>.

the originator of the crime of apartheid, has called on the United Nations to declare Israel an apartheid state.³ Israel's status as an apartheid state has factual grounding, and as cited earlier Respondents have a constitutional right to express this viewpoint.

Second, there is a factual basis for Respondent's statement that the tactics used by police that killed George Floyd were taught by Israel. United States police officers have been training in Israel since 2002. Israeli forces train United States police officers on crowd control, the use of force, and surveillance.⁴ Specifically, the lethal tactic police used that ultimately resulted in George Floyd's death is a tactic often employed by Israeli forces in Palestine.⁵ To claim that George Floyd's death was the result of Israeli taught policing techniques is based in fact and is a fair inference to make.

Third, the report that Appellant's claim refutes the Respondent's assertion that Gaza is an open-air prison is more

³ Thabi Myeni, South Africa Calls for Israel to be Declared an 'Apartheid State,' **Al Jazeera** (July 26, 2022), <https://www.aljazeera.com/news/2022/7/26/south-africa-calls-for-israels-proscription-as-apartheid-state>.

⁴ With Whom are Many U.S. Police Departments Training? With a Chronic Human Rights Violator—Israel, **Amnesty Int'l** (Aug. 25, 2016), <https://www.amnestyusa.org/with-whom-are-many-u-s-police-departments-training-with-a-chronic-human-rights-violator-israel/>.

⁵ The Knee-on-Neck, Long Staple of Israel's Occupation of Palestine, **TRT World** (May 30, 2020), <https://www.trtworld.com/magazine/the-knee-on-neck-long-a-staple-of-israel-s-occupation-of-palestine-36787>.

than a decade old, it was published in 2011 before the 2014 conflict broke out.⁶ Since the report, which did claim that Israel's tactics in Gaza were legal under international law, numerous developments have taken place that have prompted numerous human rights agencies to declare Gaza as an open-air prison.⁷ Most importantly, Mr. Awwad was not proclaiming a belief that is unheard of or new in any way. Numerous news organizations and human rights organizations have also proclaimed that Gaza is "an open-air prison." Mr. Awwad was merely repeating what has already been stated by many before him.⁸ If news organizations and human rights advocates can proclaim that Gaza is an open-air prison, there must be a legitimate and compelling reason for Appellant to proclaim that Mr. Awwad may not repeat their words when recounting personal tragedy.

⁶ The United Nations has since claimed that Gaza would become uninhabitable by 2020 if Israel continued its tactics. Gaza Could Become Uninhabitable in Less Than Five Years in Wake of 2014 Conflict and Ongoing De-Development, According to New UNCTAD Report, **UNCTD** (Sept. 1, 2015), <https://unctad.org/press-material/gaza-could-become-uninhabitable-less-five-years-wake-2014-conflict-and-ongoing-de>.

⁷ See Gaza: Israel's 'Open -Air Prison' at 15: Israel, Egypt Movement Restrictions Wreak Havoc on Palestinian Lives, **Hum. Rts. Watch** (June 14, 2022), <https://www.hrw.org/news/2022/06/14/gaza-israels-open-air-prison-15>.

⁸ See e.g., Ronald Høvring, Gaza: The World's Largest Open-Air Prison, **Norwegian Refugee Council** (Apr. 26, 2018), <https://www.nrc.no/news/2018/april/gaza-the-worlds-largest-open-air-prison/>.

Fourth, money given by the United States to Israel is spent on military equipment and training. That military equipment is used to launch ammunition at Palestine, which in 2019 killed 135 Palestinians, and the military are also trained to use oppressive tactics, such as tear gas and rubber bullets, that injure Palestinians in their own homeland.⁹ This brief could continue to detail how U.S. funded military equipment is used to kill and injure Palestinians, but the fact remains that the United States funds Israel's military, and those funds are knowingly used to purchase weapons and train forces that kill, injure, and oppress Palestinians.

Fifth, the efficacy of Israel's engagement is ethnic cleansing has been factually investigated and confirmed by institutions and individuals.¹⁰ A United Nations Human Rights investigator has proclaimed that Israel's treatment of Palestinians can "only be described in its cumulative impact as a form of ethnic cleansing."¹¹

⁹ 3,601 Palestinians Killed by Israeli Forces and Over 100,000 Injured During the Decade, **UNOCHR** (Feb. 12, 2019), <https://www.ochaopt.org/content/casualties-thousands-killed-conflict-related-incidents>.

¹⁰ Dua Haider, Ethnic Cleansing of Palestinians: A Deep Dive Into How Israel Has Violated Humanitarian Laws and Justified Appropriation, **The Org. For World Peace** (June 14, 2021), <https://theowp.org/ethnic-cleansing-of-palestinians-a-deep-dive-into-how-israel-has-violated-humanitarian-laws-and-justified-appropriation/>.

¹¹ Israel Engaged in Ethnic Cleansing: UN Investigator, **Reuters** (Mar. 21, 2011), <https://www.reuters.com/article/us-israel-un-cleansing/israel-engaged-in-ethnic-cleansing-un-investigator-idUSTRE72K5CY20110321>.

Finally, Respondent's speech is blatantly not antisemitic. Notably, not once in their statements did Respondent's mention the Jewish people or the Jewish faith. Respondents merely criticized the state of Israel like one would criticize the United States for its human rights violations. Jewish Voices for Peace importantly notes that criticism of Israel that may be seen as excessive or applying a double standard is not antisemitic.¹² Respondents were criticizing the state of Israel without mentioning the Jewish people, the Jewish faith, or any complicity in the state's tactics on the part of the Jewish people. Examples of antisemitism cited in numerous antisemitism definitions include holding Jews as collectively responsible for actions of the state of Israel; making mendacious, dehumanizing, or stereotypical allegations about Jews as a collective; or calling for the killing or harming of Jews. The majority of definitions also state that evidence-based criticism of Israel as a state are not antisemitic, even if the statements are contentious. This is exactly the type of statements the Respondent's made: factually informed opinions regarding Israel's treatment of Palestinians.

Again, Respondents never mentioned the Jewish people or the Jewish faith in their comments. Their comments were aimed exclusively at the State of Israel as an entity, not at any

¹² **Jewish Voices for Peace, On Antisemitism** (2017).

individual or faith. Respondents criticized the state of Israel's human rights abuses as any other individual could criticize the United States for its genocide of the Native Americans.

III. Conclusion

Issues surrounding Israel's occupation of Palestine, and treatment of Palestinians is a topic many unfortunately have a difficult time discussing. The Appellant is trying to utilize the Court as a vehicle to find support for their side of the debate. In filing this *amicus* brief, ADC is not asking the Court to decide the factual validity of any of the statements made. Rather ADC is showing that, unlike Appellant's politically skewed propaganda *amicus* brief, the Respondent's statements have factual basis, are not antisemitic, and are protected by the First Amendment.

Appellant seeks to silence the Respondent's from speaking out and criticizing the state of Israel, which is speech protected by the First Amendment. Appellant seeks to coat the Respondent's statements in a veil of antisemitism to construe the validity of the Respondent's statements. However, first, the Respondent's statements were protected by the First Amendment which prohibits viewpoint discrimination; second, the Respondent's statements were factually correct and were mere recantations of statements made by news outlets, human rights organizations, and government entities; and finally, the Respondent's statements in no way come close to the definition of antisemitism as his statements were criticisms

of the actions of the state of Israel not statements against the Jewish people or religion.

Dated: August 8, 2022

Respectfully submitted,

ON THE BRIEF:

Abed Awad

/s/ Abed Awad

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