

KASOWITZ BENSON TORRES LLP

MARC E. KASOWITZ
DIRECT DIAL: (212) 506-1710
DIRECT FAX: (212) 835-5010
MKASOWITZ@KASOWITZ.COM

1633 BROADWAY
NEW YORK, NEW YORK 10019
(212) 506-1700
FAX: (212) 506-1800

ATLANTA
HOUSTON
LOS ANGELES
MIAMI
NEWARK
SAN FRANCISCO
SILICON VALLEY
WASHINGTON DC

July 1, 2024

Board of Trustees
Northwestern University
633 Clark Street
Evanston, IL 60208

Dear Members of the Board of Trustees:

We write on behalf of StandWithUs, an international nonprofit organization that educates about Israel and combats antisemitism, whose constituents include Northwestern University students and their parents, professors, and alumni, to object to the unlawful and unauthorized capitulation by Northwestern's administrators to the demands of the antisemitic mob of students, faculty members, and others who occupied Northwestern's Deering Meadow in April 2024, and to demand that the Board of Trustees repudiate and nullify that shameful capitulation.

As you know, on April 25, 2024, hundreds of students, faculty members, and others descended on and set up a tent encampment occupying Deering Meadow where, among other things, they openly harassed and threatened Jewish and Israeli students, chanted genocidal slogans against Israel and the Jewish people, such as "Intifada, Intifada, long live the Intifada," and "from the River to the Sea," and plastered campus with antisemitic posters. In response, Northwestern refused to enforce its own codes and policies barring such conduct—codes and policies Northwestern has vigorously enforced when the targets are other protected groups—or do anything else to remedy the severely antisemitic hostile environment that has long pervaded Northwestern's campus and worsened since October 7, 2023, when Hamas terrorists invaded Israel and slaughtered, tortured, raped, burned, mutilated, and kidnapped over 1,200 people.

Rather than take prompt steps to end the encampment and punish and deter the occupiers of Northwestern's campus, Northwestern's President Michael Schill and other administrators negotiated with them and purported to enter into what has been characterized on Northwestern's

KASOWITZ BENSON TORRES LLP

Board of Trustees of Northwestern University

July 1, 2024

Page 2

website as the “Agreement on Deering Meadow.”¹ That purported Agreement rewards the occupiers’ misconduct with numerous concessions, according to which Northwestern “commits,” among other things: to “permit peaceful demonstrations on Deering Meadow through the end of spring quarter classes”; to “publicly condemn the doxing of any community member” and “advise employers not to rescind job offers for students engaging in speech protected by the First Amendment”; to “provide a conduit to engagement with the Investment Committee of the Board of Trustees”; to “answer questions from any internal stakeholder about specific holdings . . . within 30 days” or else “provide a reason” and “timeline”; to “support visiting Palestinian faculty and students at risk (funding two faculty per year for two years; and providing full cost of attendance for five Palestinian undergraduates . . . for the duration of their undergraduate careers),” and to “fundraise to sustain this program”; and to “provide immediate temporary space” and “provide and renovate a house” for “MENA/Muslim students.”

This outrageous capitulation to accommodate the demands of the antisemitic agitators—who openly espoused vicious antisemitism, assaulted, spat on, and stalked Jewish students and engaged in numerous violations of Northwestern’s codes and policies²—only enables and encourages future misconduct. It is in plain violation of Title VI of the Civil Rights Act of 1964 (“Title VI”), risks triggering state anti-BDS sanctions, and apparently was made without the required approval of the Board of Trustees and in contravention of Northwestern’s Bylaws and University Statutes. Accordingly, this purported Agreement not only unlawfully rewards antisemitism and has severely and perhaps irreparably damaged Northwestern’s reputation, but it has also exposed Northwestern to potential liability and jeopardizes its access to federal and state funds.

When Northwestern received federal funds, Northwestern obligated itself to abide by Title VI, which prohibits discrimination against Jews and Israelis.³ Northwestern’s refusal to enforce its own policies and discipline violators, and its decision instead to reward them,

¹ *Agreement on Deering Meadow*, Northwestern University, <https://www.northwestern.edu/leadership-notes/2024/agreement-on-deering-meadow.pdf>.

² Northwestern’s Policy on Discrimination, Harassment, and Sexual Misconduct, for example, prohibits verbal or physical conduct based on a protected class that has the purpose or effect of “[s]ubstantially interfering with, limiting or depriving a member of the community from access or participating in the academic . . . environment” or “[c]reating an academic . . . environment that a reasonable person would consider to be intimidating, hostile, or offensive.” <https://www.northwestern.edu/civil-rights-office/policies-procedures/policies/policy-on-discrimination-harassment-and-sexual-misconduct.pdf>. The Demonstration Policy likewise prohibits “threaten[ing] use of force against any community member.” <https://policies.northwestern.edu/docs/demonstration-policy-final.pdf>. The Interim Policy for Student Demonstrations prohibits “[a]ny installation of tents or other temporary structures on University property except for University-approved events.” <https://policies.northwestern.edu/docs/demonstration-policy-final.pdf>.

³ A complaint has been filed in federal court against Northwestern alleging Title VI violations. See <https://will-law.org/will-files-federal-discrimination-complaint-against-university-in-the-wake-of-nationwide-pro-hamas-protests/>.

perpetuates its hostile environment for Jewish and Israeli students. President Schill entered into the purported Agreement on Deering Meadow apparently without even consulting Northwestern’s Advisory Committee on Preventing Antisemitism and Hate, which was formed to “assess the climate with respect to antisemitism and other forms of hate,” to “provide guidance and advice to the President and Provost to help ensure that the entire University community stands for learning, civil discourse and informed dialogue on even the most intractable conflicts, . . . without fear of harassment or intimidation,” and to advise on “issues related to safety and, when relevant, make recommendations to enhance protection.”⁴ In response, seven members of the Committee immediately resigned, and the Committee soon disbanded.⁵ As a result of Northwestern’s abject failure to remedy its antisemitic hostile environment, its federal funding is at severe risk, and it has exposed itself to liability to affected students and faculty.

It also appears that the purported Agreement was entered into in violation of Northwestern’s Bylaws⁶ and University Statutes,⁷ as it purports to make promises in the name of Northwestern University and commits the University to significant changes, undertakings, and financial expenditures apparently without the authorization or approval of the Board of Trustees or consultation with the relevant committees, contrary to the following and other provisions:

- “No contract, agreement, promise . . . or undertaking in the name of Northwestern University, shall be made by any of its officers . . . or by any student . . . unless the same shall have been first authorized by the Board of Trustees of the University, or . . . authority approved in accordance with the Bylaws.” University Statutes, Art. VII § 2.
- “No agent or officer of the University shall have authority to expend any money or make any contract involving the payment of money unless the same be first approved in accordance with procedures authorized by the Board of Trustees.” Bylaws, Art. V.

⁴ See Northwestern Office of the President, *Overview of Committee Charge*, Northwestern University, <https://www.northwestern.edu/president/about-the-office/special-projects/committee-preventing-antisemitism-hate/advisory-committee-charter.html>.

⁵ Jacob Wendler, *Seven members of Advisory Committee on Preventing Antisemitism and Hate step down*, THE DAILY NORTHWESTERN (May 1, 2024), <https://dailynorthwestern.com/2024/05/01/campus/deering-encampment/breaking-seven-members-of-advisory-committee-on-preventing-antisemitism-and-hate-step-down/>; *University statement on the status of the Committee*, Northwestern University (May 10, 2024), <https://www.northwestern.edu/president/about-the-office/special-projects/committee-preventing-antisemitism-hate/news/status-of-committee.html>.

⁶ Northwestern University, Bylaws (approved March 25, 2023, as amended through Sept. 22, 2023), https://www.northwestern.edu/about/board-of-trustees/bylaws_approved_2023.03.25.pdf (“Bylaws”).

⁷ Northwestern University, University Statutes (as amended through Sept. 22, 2023), <https://www.northwestern.edu/about/board-of-trustees/docs/university-statutes.pdf> (“University Statutes”).

KASOWITZ BENSON TORRES LLP

Board of Trustees of Northwestern University

July 1, 2024

Page 5

years,” and to “fundraise to sustain this program.”¹¹ By agreeing to appoint Professors or establish chairs, and fundraise for this endeavor, the Agreement also triggered provisions which mandate a quorum.

The purported Agreement has already drawn broad condemnation, including from the United States Congress. In its June 7, 2024 letter to President Schill and Board Chair Peter Barris,¹² the U.S. House Committee on Education and the Workforce slammed “Northwestern’s capitulation to its antisemitic encampment and its impeding of the Committee’s oversight” as “unbecoming of a leading university.” The Committee particularly called out President Schill’s “obstructive and misleading testimony” before the Committee on May 23, 2024, noting that President Schill repeatedly and “inappropriately refused to answer questions by Committee members” and made “misleading at best” statements which “raised questions about the candor and veracity of his testimony.” This included questions about President Schill’s “decision to appoint Jessica Winegar to his President’s Advisory Committee on Preventing Antisemitism and Hate, despite her record of defending antisemitism and terrorism, referring to ‘Zionist media,’ and leading academic boycott efforts against Israel,” and President Schill’s testimony that “we did not give in to any of the protestors’ demands”—testimony that cannot be reconciled with the text of the Agreement, which includes no fewer than nine specific commitments made to, and at the request of, the agitators who occupied the campus.¹³

Moreover, as Northwestern’s chapter of Students for Justice in Palestine (“SJP”) touted in an April 30 statement, Northwestern’s putative commitment to provide a conduit to present investment-related concerns to the Investment Committee of the Board and to answer questions about specific holdings will facilitate SJP, an infamous antisemitic organization, in identifying and demanding divestment from Israeli companies and companies doing business with Israel, thereby not only enabling an antisemitic boycott of the sole Jewish country in the world, but also risking triggering state anti-BDS laws, *see, e.g.*, 40 ILCS 5/1-110.16, further harming Northwestern’s ability to finance operations and transact with the state. Indeed, law professors at Harvard Law School and Boston University School of Law recently warned that divestment will “immediately trigger state anti-BDS laws, which could prohibit these states from buying debt issued by an Israel-boycotting university or buying services from it.”¹⁴

¹¹ *See supra* n.1.

¹² Letter from the U.S. House Committee on Education and the Workforce to Northwestern University President Michael Schill and Northwestern University Board of Trustees Chair Peter J. Barris (June 7, 2024), https://edworkforce.house.gov/uploadedfiles/6.7.24_letter_to_schill_and_barris.pdf.

¹³ *Id.*

¹⁴ Jesse M. Fried and David H. Webber, *Colleges Divesting From Israel Face a Ben & Jerry’s Meltdown*, NEWSWEEK (May 13, 2024 1:37 PM) <https://www.newsweek.com/kids-have-no-idea-what-theyre-talking-about-israel-opinion-1900025>.

KASOWITZ BENSON TORRES LLP

Board of Trustees of Northwestern University

July 1, 2024

Page 6

All of the foregoing should be of utmost concern to you, as Northwestern's Trustees, who serve as fiduciary stewards of the University's values, reputation, standing and endowment.¹⁵

We urge you to act in accordance with your legal obligations by immediately renouncing and nullifying this shameful Agreement and taking the necessary steps to ensure that Northwestern's leadership is held accountable for purporting to enter into it.

Sincerely,

A handwritten signature in black ink, appearing to read 'M E Kasowitz', with a stylized flourish at the end.

Marc E. Kasowitz

cc: Chairwoman Virginia Foxx, Committee on Education and the Workforce, U.S. House of Representatives, The United States Congress
The Honorable J.B. Pritzker, Governor of Illinois
Yael Lerman, StandWithUs

¹⁵ See Northwestern University, *Fiduciary Responsibility: Investment Office – Northwestern University*, <https://www.northwestern.edu/investment/impact/fiduciary-responsibility.html>.