

April 19, 2024

By Email

Gary S. Hattem, Board Chair (garysamhattem@gmail.com)
Frances Bronet, President (fbronet@pratt.edu & president@pratt.edu)
Uzma Z. Rizvi, Academic Senate President (urizvi@pratt.edu)
Pratt Institute
200 Willoughby Avenue
Brooklyn, New York 11205

Re: Religious Accommodation Request
and Discriminatory BDS Resolution

Dear Chair Hattem, President Bronet, and President Rizvi,

I write on behalf of numerous Jewish students and staff at Pratt Institute, many of whom are also members of the Louis D. Brandeis Center for Human Rights Under Law and/or Jewish Americans for Fair Education, to:

- (1) request that Pratt reasonably accommodate their religious observance of the Passover holiday by postponing the Academic Senate meeting currently scheduled for the first day of Passover, April 23, 2024, or at least postponing consideration of the proposed “Senate Resolution Supporting an Academic & Cultural Boycott of Israel” (“the BDS Resolution”), so that Jewish Senators and Alternates who observe Passover can participate fully in the deliberations and vote on the BDS Resolution, and other Jewish students, faculty, and staff can advocate and participate to the extent allowed under the rules; and
- (2) warn Pratt in the strongest possible terms that considering, passing, and effecting the BDS Resolution violates numerous federal, state, and local anti-discrimination laws.

Religious Accommodation

If it isn’t self-evident that conducting an Academic Senate meeting on one of the most important Jewish holidays of the year is wrong and contradicts the Pratt Nondiscrimination and Anti-Harassment Policy’s “committ[ment] to fostering a welcoming ... non-discriminatory ... educational, living, and working environment for its community,” and that holding a vote to *boycott Israel* at that Passover meeting is positively obscene, fortunately the law is here to help.

Refusing to reasonably accommodate the religious beliefs of Pratt's Jewish students and staff by postponing a meeting which includes an agenda item that particularly impacts them as Jews so that it is not impossible or a hardship for them to attend and, if applicable, participate in the deliberations and vote on the matter, violates Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. (protecting staff); the New York State Human Rights Law, N.Y. Exec. Law § 296, et seq. (protecting students and staff); the New York City Human Rights Law, N.Y.C. Admin. Code § 8-107, et seq.; and, as referenced above, Pratt's contractual promise to its students and staff to provide a non-discriminatory workplace.

The workings of the Academic Senate play a significant role in Pratt's governance, and engagement in the Academic Senate is an essential component of faculty employment – as an elector of Senators and Alternates, as a participant in debates and conversations around the issues the Academic Senate considers, and, if applicable, as a Senator or Alternate. For Pratt's faculty, engagement with the Academic Senate is as much a feature of their employment as is teaching, researching, and publishing.

The burden on Pratt of postponing this particular Academic Senate meeting scheduled for one of Judaism's holiest days is so slight that it's hardly worth reminding Pratt of the heavy burden it must show in order to justify refusing this accommodation request. Suffice it to say, there is no argument to make that postponement represents an undue hardship that could reasonably be described as substantial in the overall context of Pratt's operations or governance needs.

The BDS Resolution

As academic BDS resolutions go, this one's a doozy. Par for the course among resolutions of this kind, its numerous "whereas" clauses are a hodgepodge of canards which demonize the Jewish state of Israel and object to its very existence, and it only glancingly references the raping, burning, maiming, kidnapping, and murdering of 1,500 men, women, children, the elderly, and the disabled in southern Israel as "the Hamas violence of October 7." Of course, nowhere does it mention the hostages still remaining in Hamas imprisonment or call for their release.

Deliberating these anti-Semitic and discriminatory expressions, let alone adopting them as the official voice of Pratt – or at least the official voice of an important governing body of Pratt -- raises serious questions whether Pratt is establishing an unlawful anti-Semitic hostile environment for its Jewish faculty under the anti-discrimination laws referenced above. As discussed below, Pratt is putting the legitimacy and equality of Jewish identity up for debate.

I particularly want to draw your attention to the action items in the BDS Resolution, i.e., the "Be it Resolved" clauses that command a total "academic and cultural boycott of Israel." This means, according to the BDS Resolution, "that Pratt no longer engages in events, activities, agreements, or projects involving Israel, its lobby groups or its cultural institutions, or that otherwise promote the normalization of Israel in the global cultural sphere, or whitewash Israel's violations of international law and Palestinian rights." The BDS Resolution further specifies

“termination of Pratt’s partnership with Bezalel University,” i.e., Bezalel Academy of Arts and Design Jerusalem.

Any such boycott is illegal and, of course, among other things, would trigger the state to divest (oh, the irony) all state funding from Pratt pursuant to New York State Executive Order No. 157 (2016).

My focus, however, is the unlawful discrimination against your Jewish and Israeli students and staff that this boycott represents in violation of the aforementioned federal, state, and local laws prohibiting discrimination on campuses and in employment based on either race, ethnicity, shared ancestry, national origin, and/or religion, depending on the particular statute.

To begin with, adoption of BDS would put in doubt whether Israeli students and staff are permitted to attend or work at Pratt. This clearly violates the prohibition against national origin discrimination found in all these statutes. Moreover, the BDS Resolution can be read to preclude on-campus Jewish holiday observances that reference Israel (almost all do), or to dictate new norms for holiday observance that satisfy the dictates of the BDS Resolution, which would violate the prohibition against religious and/or shared ancestry discrimination. Also, the BDS Resolution’s ban on Israel’s “lobby groups” arguably would be used to punish any Jewish religious or communal organization that supports Zionism, i.e., the existence of an independent Jewish state. That is to say, the BDS Resolution could be construed to ban Pratt’s association with virtually all of mainstream American Jewry’s religious and/or communal institutions and organizations. It is a realization of the anti-Semitic goal of demonizing every Jew; of “mapping” the Jewish enemy that exists everywhere among us down to every last Jewish gathering spot.¹

Further, the BDS Resolution uniquely targets the academic, research and professional interests and associations of Jewish and Israeli students, who have a particular interest in topics concerning Israel. The BDS Resolution would stifle intellectual inquiry and exposure to ideas and research emanating from Israel that would diminish the ability of students to learn and faculty to stay current in their respective fields. Many of Pratt’s Jewish students study in Israel, and many of Pratt’s Jewish faculty conduct research and collaborate on projects in Israel. Not only would the BDS Resolution put a halt to these activities, but even the sharing at Pratt of ideas and experiences gleaned from Israeli organizations, institutions, and academics would be a form of “normalization of Israel in the global cultural sphere.”

Here is it important for Pratt to accept that these attacks on Israel aren’t just attacks on Israel. They are attacks on the very identity of many of Pratt’s Jewish students and staff. An essential element of Judaism and Jewish peoplehood is understanding the land of Israel as the Jewish ancestral homeland, the focus of Jewish religious observance, and the site of Jewish redemption. Wherever in the world Jews are, they pray facing Jerusalem. The expression “Next Year in Jerusalem” is recited at Passover and as the closing declaration of the Yom Kippur service. When the groom concludes the Jewish wedding ceremony by breaking a glass, he does so in memory of Jerusalem and swears not to “forget thee O Jerusalem.” Indeed, a considerable number of Jewish religious obligations can only be performed in the land of Israel. All this is

¹ See e.g., “BDS-promoted mapping project is antisemitic and must be condemned,” Trestan, R., Boston Globe, June 14, 2022).

why, according to a 2020 Pew Research Center study, 80% of American Jews say caring about the state of Israel is an essential or important part of what being Jewish means to them.

Thus, as noxious as the BDS Resolution banning Israel is on its face, it must further be understood for what it is: a ban on most American Jews who will not excise from their Jewish identity what is for them a foundational element of Jewish belief and peoplehood – the belief in a free and independent Jewish state in the Jewish people’s ancestral homeland, Israel.

This is why, for example, the Office for Civil Rights at the U.S. Department of Education (OCR) applies the International Holocaust Remembrance Alliance (IHRA) definition of anti-Semitism in evaluating complaints made against colleges receiving federal funds, such as Pratt.²

IHRA defines anti-Semitism as “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.”³ Integral to this definition, IHRA includes several examples pertinent to the current on-campus experience of Jewish students, faculty, and staff at universities across the United States. These include but are not limited to the following:

- Justifying the killing or harming of Jews in the name of a radical ideology;
- Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor;
- Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations;
- Drawing comparisons of contemporary Israeli policy to that of the Nazis; and
- Holding Jews collectively responsible for actions of the state of Israel.

It is worth noting here that OCR has also recognized that a school fails to uphold its Title VI obligations when it fails to adequately respond to harassment that targets a student on the basis of shared ancestry or ethnicity, and OCR has treated the targeting of Zionists as a form of national origin harassment on the basis of shared ancestry.⁴

² EXECUTIVE ORDER ON COMBATING ANTI-SEMITISM, Exec. Order 13899 (Dec. 11, 2019), <https://www.govinfo.gov/content/pkg/DCPD-201900859/pdf/DCPD-201900859.pdf>; Questions and Answers on Executive Order 13899 (Combating Anti-Semitism and OCR’s Enforcement of Title VI of the Civil Rights Act of 1964, U.S. DEP’T EDUC.– OFFICE FOR C.R. (Jan. 19, 2021), <https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-anti-semitism20210119.pdf>.

³ International Holocaust Remembrance Alliance Working Definition Of Antisemitism, <https://www.holocaustremembrance.com/working-definition-antisemitism>

⁴ See Kenneth L. Marcus, Deputy Assistant Secretary of Education for Enforcement, “Dear Colleague Letter” (Sept. 13, 2004), available at <https://www2.ed.gov/about/offices/list/ocr/religious-rights2004.html>; Russlynn Ali, Asst. Secretary of Education for Civil Rights, U.S. Dept. of Education, “Dear Colleague Letter” (Oct. 26, 2010), available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>; Thomas Perez, Assistant Attorney

For practical purposes, this means that when a student is subjected to discrimination and harassment involving an example of anti-Semitism found in IHRA, including those that deal with Israel and/or Zionism, that student has a basis to file a complaint with OCR, which per the Executive Order, must consider IHRA and its examples in conducting its investigations. In turn, because a university's conformity to Title VI is considered in light of IHRA, universities risk being found in violation of Title VI for permitting conduct that constitutes an example of anti-Semitism under IHRA.

The BDS Resolution would put in effect policies that patently violate the IHRA definition.

It would be imprudent for Pratt in this regard to view its obligations to its employees under Title VII differently than to its students under Title VI, particularly where the New York State and New York City Human Rights Laws expressly require courts to interpret the laws' protections expansively.

Conclusion

In sum, (1) Pratt must reasonably accommodate its students' and staff's religious observance of the Passover holiday by postponing the Academic Senate meeting currently scheduled for the first day of Passover, April 23, 2024, or at least postponing consideration of the proposed BDS Resolution, so that Jewish Senators and Alternates who observe Passover can participate fully in the deliberations and vote on the BDS Resolution, and other Jewish students, faculty, and staff can advocate and participate to the extent allowed under the rules; and, moreover, (2) Pratt should abandon the BDS Resolution entirely as its effectuation would violate numerous federal, state, and local anti-discrimination laws.

Very truly yours,



Hon. Rory Lancman
Director of Corporate Initiatives and Senior Counsel
THE LOUIS D. BRANDEIS CENTER
FOR HUMAN RIGHTS UNDER THE LAW
917-363-9004
rlancman@brandeiscenter.com

cc: Thomas G. Greene
Director of Legal Affairs
tgreene@pratt.edu

[General, U.S. Department of Justice, "Title VI Coordination and Enforcement" \(Aug. 19, 2010\), available at https://www.justice.gov/sites/default/files/crt/legacy/2011/01/21/titlevi_memo_tp.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2011/01/21/titlevi_memo_tp.pdf); *see also* Mia Karvonides, Senior Legal Advisor to the Assistant Secretary and Deputy Assistant Secretary of Education "Letter to University of Vermont," (Apr. 3, 2023), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/01222002-a.pdf>