

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

NORTH CAROLINA COALITION
FOR ISRAEL; KATHRYN WOLF;
RABBI JEROME FOX; and
PERRI SHALOM-LIBERTY,

Plaintiffs,

v.

CITY OF DURHAM, NORTH
CAROLINA; DURHAM CITY
COUNCIL and STEVE SCHEWEL,
Mayor, JILLIAN JOHNSON, Mayor
Pro Tem, VERNETTA ALSTON,
JAVIERA CABALLERO, DeDREANA
FREEMAN, MARK-ANTHONY
MIDDLETON, and CHARLIE REECE,
all in their official capacities as officials
of the City of Durham and Members of
the Durham City Council; DURHAM
HUMAN RELATIONS COMMISSION;
ANDREA M. HUDSON, HRC
Commissioner; DIANE STANDAERT,
HRC Commission Chair; JOHN :
ROOKS, HRC Commissioner; and
MIKEL BARTON, HRC Commissioner,

Defendants.

Civil Action No. 1:19-cv-00309

COMPLAINT

THE PARTIES

1. North Carolina Coalition for Israel is domiciled in the state of North Carolina.
2. North Carolina Coalition for Israel promotes solidarity with Israel through education and advocacy.

3. North Carolina Coalition for Israel is incorporated in the State of North Carolina.

4. Kathryn Wolf holds the position of Vice Chair of North Carolina Coalition for Israel, and is a citizen and resident of the City of Durham, North Carolina.

5. Rabbi Jerome Fox is a Rabbi and community activist and is a citizen and resident of the City of Durham, North Carolina.

6. Perri Shalom-Liberty is a citizen and resident of the City of Durham, North Carolina.

7. Plaintiffs have standing to bring this action because they are personally aggrieved in that they live within the jurisdiction of the City of Durham or interact with same either as citizens, taxpayers or Jewish activists concerned with discrimination against the Jewish community and discrimination directed at that community. In particular, Plaintiffs appreciate the significance of anti-Semitism and discrimination against Jews by utilizing Israel as a symbol of negative, untruthful qualities attributed to Jewish people by those who discriminate and practice both improper and illegal conduct against Jews. Each of the Plaintiffs have interaction with the Defendants in connection with the so-called "Durham statement" in connection with its embrace of the movement to boycott, divest and sanction Israel, and each of the Plaintiffs have tried to prevent such discrimination against the Jewish people from taking place and have worked with or addressed their concerns to both the City of Durham, the Mayor, and

the Human Relations Commission. Each of the Plaintiffs, through the actions of Defendants, have suffered illegal and improper discrimination.

8. The City of Durham is a municipal corporation organized and existing under the laws of North Carolina and located in Durham County, North Carolina. The City of Durham is a body politic and corporate with capacity to sue as provided in N.C. Gen. Stat. § 160A-11.

9. The City Council of the City of Durham, North Carolina, is vested by statute (N.C. Gen. Stat. § 160A-67) and charter with the government and general management of the City of Durham, North Carolina.

10. The City Council members named as Defendants are as follows: Vernetta Alston; Javiera Caballero; DeDreana Freeman; Jillian Johnson; Mark-Anthony Middleton; and Charlie Reece.

11. Steve Schewel is the elected Mayor of the City of Durham, North Carolina, and pursuant to statute may present matters to City Council for passage.

12. The Durham Human Relations Commission, acting through Commissioners Andrea M. Hudson, Diane Standaert, John Rooks and Mikel Barton, discriminated against Plaintiffs based upon religion and in cooperation, conjunction and conspiracy with the City Council of Durham and the Mayor thereof, have denied Plaintiffs their constitutional rights, including the right of due process and equal protection, and retaliated against Plaintiffs based upon the assertion of their rights.

13. The City of Durham, North Carolina and its City Council, in April 2018, became the first City in the United States to Boycott police training with Israel, even though there was no police training occurring or even anticipated.

14. Plaintiffs also invoke supplementary jurisdiction of the Court with respect to state claims as aforesaid.

THE FACTS

15. March 30, 2018. Public record requests demonstrated that in late March, Chief of Police Cerelyn “C.J.” Davis was notified by Durham officials of a Petition filed by an organization calling itself Demilitarize Durham2Palestine (D2P). **The organization wrote to City Council making untruthful assertions of fact concerning Israel and Durham police training.**

16. The Petition and the letters alleged that Durham police were obtaining training by Israeli security forces.

17. At the time the statements and allegations were known, D2P knew that its assertions and the facts contained within its questions to City Council were untrue.

18. The chief of police, in a March 30, 2018 memo, praised police training she received in Israel when a member of the Atlanta Police Department.

19. Davis wrote that the training in Israel was “based on developing leadership academies, leadership principles, and building community and police relations with the growing homeless population in the U.S., compared to Sudanese in Israel.”

20. Davis offered to share the “curriculum and course outline” from her training in Israel with the Atlanta Police Department. This offer was not accepted.

21. On April 5, 2018, Mayor Steve Schewel permitted D2P to present its Petition at a City Council work session, waiving the mandatory procedure to sign up ten (10) days in advance.

22. The Mayor bypassed established policy because D2P asserted that students would miss their vacation.

23. By fast-tracking the process, the Mayor denied the mainstream Jewish community, who are full-time residents of Durham and surrounding areas, the time to learn about the hearing, fully prepare and participate. Although he gave at least six (6) members of D2P the opportunity to read the draft statement, that offer was not made to any Synagogue, the Jewish Federation, to the Voice4Israel (which is a pro-Jewish/Israel group), or to any Rabbi.

24. It is believed and therefore averred that the Mayor and City Council acted deliberately as part of their discriminatory scheme against the Jewish community.

25. On April 5, 2018, Mayor Schewel sent City Manager Thomas Bonfield and all members of City Council a statement on police from the Durham City Council.

26. The directive, which became City policy on April 16th, banned all police exchanges with Israel. In the same directive, it prohibited only “militaristic” exchanges with other countries.

27. Mayor Schewel confirmed that this was the meaning and intent of Council’s statement, although his emails consistently refer to the “statement” as the “Israel Resolution.”

28. Mayor Schewel sent the statement from his personal email account to the personal accounts of Bonfield and all City Council members, thus preventing the statement from being picked up by the media which regularly monitors Council emails. The Mayor has shown an intent to discriminate against the Jewish community by praising the work of those who promoted the “statement” and other blatantly false information about Israel.

29. The proposed policy was written by the Mayor the day before the April 5, 2018 “Work Session” and by prior agreement was presented (despite not being on the agenda) alleging that they would listen to public comment. Members of the Jewish community objected to the inclusion of the name of Israel, noting that the mention did not enhance the message about “militaristic training” being unwelcome for Durham police. While these objections were being aired, the Mayor handed his original statement to a member of the press, who then promptly published it without a vote. It remained the same as originally written. Twelve (12) days later, at “Public Business Session,” two (2) hours of comment were heard; and the original document was promptly passed as written on April 4.

30. On April 16, 2018, Durham City Council in North Carolina voted unanimously to single out Israel as the only foreign country where Durham Police training would not be permitted.

31. On May 15, 2018, Voice4Israel and Durham Chapel Hill Jewish Federation submitted a detailed Complaint to the Durham Human Relations Commission concerning the discriminatory action against the Jewish community.

32. There was no evidence to support the City Council's actions, save propaganda and untruthful statements by organizations with a well-documented animus toward the Jewish State.

33. Upon information and belief, Six (6) of the seven (7) members of Durham City Council signed a Petition holding Israeli police training responsible for helping local police allegedly terrorize black and brown communities here in the U.S.

34. The assertions had no basis in fact and no evidence to support it, but did inform the decision to single out Israel in the approved Statement.

35. Durham's Human Relations Commission subcommittee recommended revisions but not withdrawal of the April 16th Durham City "Statement".

36. The intended purpose of many of the organizations who sought the anti- Israel, anti-Jewish "statement" is to place a wedge between the African-American and Jewish communities, specifically using language and allegations to

inflame sentiments of other minorities without recognition of the effect on the small Jewish community.

37. Defendants and organizations such as Demilitarize Durham² Palestine conflate issues of police brutality in the United States against African-Americans with Jewish and Israeli allegations of behavior which are patently false. The purpose of Defendants is to create a negative sentiment against Israel, the Jewish people, and those Jewish residents of the City of Durham who support the State of Israel.

38. North Carolina and Durham in particular has a prior history of discrimination against minority groups.

39. In the aftermath of the Durham City Council “Statement”, anti-Semitic posters and stickers were placed in downtown Durham. In one of them, a silhouetted man is pointing a gun at the image of a bearded man with a long nose, wearing a yarmulka or Jewish skull cap, with tentacles wrapped around the earth.

40. “Right of Revolution” posters were placed in the City in the aftermath of the Durham “Statement”, “Your ancestors threw off foreign oppression, time for you as well.” Another poster said, “Greedy Jews” and “End Zionist Oppression.”

41. In July 2018, graffiti was placed on a mural in Raleigh, North Carolina, including messages in red markers reading “Slave Markets were closed on Jewish holidays,” “We proud southern blacks know your Jew tricks,” and

“When blacks find out the real reason why they are forced to hate the whites instead of Jews, Israel will disappear and all this with it.”

42. An audit by the Anti-Defamation League of anti-Semitic evidence recorded showed increases in both harassment and vandalism in North Carolina.

43. The Mayor of the City of Durham, who promoted the anti-Semitic “Statement”, blamed Retired Chief of Police Lopez because the former Chief allegedly received military training in Israel.

44. Chief Lopez stated that he had “no interaction with the [Israeli] military or training on military tactics, equipment, etc.” The Deputy Chief explained that in response to civil disturbances, the Durham Police have employed “best practices” from the United States. Durham Police Department has hosted law enforcement officers from China and the UK in addition to a delegation of women from Kenya and LGBTQ representatives from Ireland. All of this shows the disparate treatment shown to Israel based on intentionally discriminatory Jewish stereotyping. Those who quoted and relied upon the untruthful statement attributed to Chief of Police Lopez knew at the time that they provided untruthful statements concerning a police relationship with Israel and that the statements were untrue. The “statement” ultimately passed by Durham did not mention China, UK, Kenya or Ireland, nor was there any discussion or proposal to specifically name those other countries.

45. Virtually all of the statements made by Defendants and their allies to support the Durham “Statement” are untruthful, malicious, a part of the BDS

Movement condemned by the State of North Carolina and represent intentional discrimination against the Jewish community in Durham.

46. Defendants and their co-conspirators have knowingly made false and untruthful statements concerning police training and the State of Israel, including false allegations with respect to policies and procedures of Israel police and military.

47. Defendants and their members have made scurrilous and unsupported statements against Israeli police and the Israeli military as part of an effort to demonize the Jewish community.

48. The Defendants have been supported by and sought the counsel of organizations that routinely accuse Israel of illegal occupation, apartheid, and deliberately killing people of color.

49. The targeting of the only democracy in the Middle East with untruthful statements is done specifically because the nation is Jewish, while Defendants make no statements whatsoever against brutal totalitarian regimes throughout the world.

50. Deadly Exchange leader Stefanie Fox has been the purveyor of statements that are untrue and are calculated to open up a divide between the Jews of Durham and the African-American community, as well as other communities. This organization is a passionately anti-Israel, anti-Jewish group.

51. Emails have been written to the City Council candidates in an attempt to intimidate same, giving them false information in connection with

Israel, the Durham Police Chief and a former Durham Police Chief. These statements make allegations of spying in surveillance, employing shoot-to-kill policies, racial profiling and targeting, which are untrue and intended to create a discriminatory environment for Jewish citizens in the City of Durham.

52. Allegations have been made by said individual and organization loosely called “Deadly Exchange,” claiming “racist state violence” that are untrue and are intended to demonize Israel and the Jewish community in Durham.

53. Allegations have been made by Durham to Palestine that Israel specifically has targeted people of color and Jews of color when in fact Israel is the only country that has brought a substantial number of Jews of color to Israel as refugees.

54. The allegations of Durham to Palestine claim that “policing in the U.S. has a long history of violence and harm against black and brown communities.” The statements read that SWAT teams enter black people’s homes “illegally, to check points that occupy immigrant neighborhoods, to police murderers of Black, Brown, and disabled people, every day militarization of Durham police already endangers our communities. Training police in Israel exacerbates this ongoing problem.”

55. In fact, there is no police training in Israel and the statements made are classic canards of anti-Semitism, linking mistreatment of blacks and “brown” people to Israel and behaviors of Jewish people generally.

56. These statements are intended to, and in fact do, create an environment of tension, anger and hatred towards the Jewish people in Durham, thus creating a hostile environment and seeking to impose discrimination upon the Jewish people in Durham.

57. On or about April 5, 2018, Jillian Johnson sent approximately 46 emails to a variety of individuals.

58. In spite of a pro-Jewish/pro-Israel organization asking for emails which should have resulted in the production of the emails, they were not timely produced.

59. The letters stated that the mayor planned to submit a statement “affirming a city policy against police exchanges with Israel at our work session today....”

60. No other nation was mentioned. Israel and the Jewish people were specifically targeted.

61. City of Durham, Jillian Johnson and others attempted to cover up this explicit attempt at discrimination.

62. The intent of items 40 through 53 were conveyed to the City Council, which made no attempt to investigate the claims but accepted them hurriedly and without due diligence, resulting in alienation of the Jewish community in Durham and the surrounding area.

63. Mayor pro tempore Jillian Johnson, on numerous occasions, has labeled the discriminatory statement “police exchanges with Israel.”

64. Ms. Johnson clearly stated that the April City Council statement is “a statement affirming a city policy against police exchanges with Israel.”

65. In spite of claims to the contrary, to mask their discriminatory intent, the City officials of Durham are clearly singling out Israel as a pariah state in connection with its discriminatory actions.

66. City Council members have been able to control what “sent” emails are publicly visible. Therefore, there has been intent to hide the true purpose of the “statement” with respect to Israel.

67. On April 16, 2018, the Mayor stated that the information concerning police training with the Israeli Army is untrue. He stated there is no factual basis.

68. The Mayor knowing that allegations of a relationship between the Durham Police and the Israeli Police were false, nevertheless promoted the anti-Israel, anti-Jewish “statement” suggesting in stereotypical fashion that Jews would manipulate the Police in a way that would be deleterious and damaging to non-Jews, particularly people of color.

69. Jillian Johnson sent a number of emails, June 6, 2018, with the subject of “BDS & Rocha-Goldberg” in which she specifically stated that she disapproved of potential City Council member candidate Pilar Rocha-Goldberg because she mentioned in her “resume/bio” that she was “active in Beth El Synagogue.” This was for Ms. Johnson “A red flag for me. Potential obstacle for us. Also, have you all discussed the PA endorsement NTG on Monday for Steve’s vacant seat....” This is yet further evidence that the alleged animus towards

Israel was really directed to the Jewish people. As stated previously, Israel is symbolic of traditional anti-Semitism, and anti-Jewish invidiously discriminatory animus practiced by Ms. Jillian Johnson and others on City Council and in the Administration of the City of Durham.

70. The candidate was opposed specifically and exclusively because of her Judaism and the congregation that she belonged to, demonstrating that the animus which was claimed to be expressed against Israel was and is in fact intentional discrimination directed to the Jewish people of the City of Durham.

71. The Chair of the Durham Human Relations Commission, Diane Standaert, cooperated and conspired with Defendants individually or, in the alternative, on information and belief, as a group.

72. In particular, said HRC Defendants, except for one, cooperated, conspired and arranged with those opposed to the Jewish community and the State of Israel to keep HRC from recommending any change in the offending "Durham statement."

73. An attorney and primary leader behind "Demilitarize Durham2Palestine" utilized his position to claim that any police exchange with Israel would "further militarize U.S. police forces." He argued for discriminatory action toward the State of Israel and the Jewish community, relying upon such irresponsible anti-Israel, anti-Semitic, anti-Jewish databases, including but not limited to "Palestine is Here" and a report from "RAIA".

74. The HRC also relied upon and conspired with Sandra Korn, who attacked the State Department definition of anti-Semitism, because it properly showed an understanding and appreciation for the fact that certain anti-Israel behavior, rhetoric and action, is in fact anti-Semitic and discriminates against Jews.

75. HRC worked directly and indirectly with said individuals and others behind the scenes and without public scrutiny in violation of due process to prevent any vote that would be critical of the Durham “statement”.

76. HRC leaders and supporters, as aforesaid, stereotyped and delegitimized the State of Israel by claiming that Israel was responsible for infiltration of social movements in entire communities, making black and brown people suspect, particularly Arabs and Muslims, refining policies, tactics and technologies that target communities and social movements that seek racial justice and treating protesters as enemy combatants in controlling media coverage of state violence.

77. In particular, those interested in achieving intentional discrimination against the Jewish community through its anti-Israel behavior were concerned about “legitimizing a new (re) definition of anti-Semitism....”

78. The conspiracy and cooperation between the City of Durham, the HRC and the supporters, agents and servants were also critical of South Carolina for adopting the State Department definition of anti-Semitism into law which they claim was “pushed forward by Republican lawmakers under the cover of the

state budget.” The promoters of the anti-Semitic, anti-Israel behavior of HRC in Durham also attempted to enlist support by claiming that the new definition of anti-Semitism has “become popular with the Trump administration.”

79. It is claimed by said Defendants and their supporters that the “right-wing definition of anti-Semitism is meant to paper over the white supremacist roots of anti-Semitism while suppressing the free speech of Palestinians and human rights activists.”

80. Sandra Korn, for example, described herself as “anti-Zionist.”

81. Ms. Korn, in her work, has relied upon a number of groups who utilize and promote, as well as promulgate anti-Semitic, anti-Jewish stereotypes through their use of anti-Israel behavior and rhetoric.

82. The HRC became a willing tool and accomplice in the well-orchestrated effort to symbolize and portray Israel as an untrustworthy, dangerous Jew who exploits others for its own personal gain. This conspiracy, and combination by and between Defendants named herein and their supporters is discriminatory and represents discrimination based upon religion and nationality of the Plaintiffs herein.

83. On January 8, 2019, the Durham Human Relations Commission issued a report, findings and recommendation with respect to the April 16, 2018 “statement” by Durham City Council on international police exchanges.

84. On the first page, third paragraph of the report, it is stated that the Durham Police have participated in “an international exchange that includes

training with military.” This is a knowingly false statement, given the information that was supplied to the Durham Human Relations Commission.

85. On the bottom of page 2 of the report, in an effort to disguise the retaliation, it is stated that, “there seems to be important agreement that the statement was not anti-Semitic.” Plaintiffs do not agree, nor do they so concede, and as set forth herein, they assert the opposite and that intentional discrimination was intended and was the impact of the “statement” and the activities both before and after said statement. Plaintiffs do not believe that there is any need for “demilitarization” of “legal police forces,” as the City Council never provided information demonstrating the Durham police force is militarized.

86. The Commission relied upon organizations and “feedback” that itself was discriminatory against the Jewish community and has developed expertise at utilizing Israel as a stand-in for anti-Semitic stereotypes.

87. The Commission relied upon knowingly false statements indicating that, “The Mayor noted that the Former Chief did participate in the military training and so they thought it was important to include it.”

88. The Commission admitted in its “decision” that the Durham Police Department did host law enforcement visitors from other countries, none of which were mentioned in the Durham “statement.”

89. The Commission did recognize that the method and process by which Durham City Council arrived at the “statement” singling out Israel based upon outrageous and untrue statements and characterizations concerning the nation of

Israel as flawed in a number of respects. The report of the Human Relations Council was also critical of the “lack of clarity of the language itself...”

90. The Human Relations Commission acknowledged that the “statement” “contributed to tension in our community.”

91. The Commission advised nevertheless against revising the “statement.” The “statement” of the Human Relations Commission, whose members are dependent upon City Council for their jobs on the Commission, failed and refused in their obligation to recognize discrimination against the Jewish community, anti-Semitism, and the fact that Israel was utilized as a symbol of traditional stereotypes concerning Jews and the Jewish community. So egregious is the action and failure to act on the part of the Commission that it represents retaliation against those who have protested the Durham “statement” and who presented their position to the Human Relations Commission.

INTENT TO DISCRIMINATE

92. The United States Department of State and European Union defines anti- Semitism as follows:

Anti-Semitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of anti-Semitism are directed toward Jewish or non- Jewish individuals and/or their property, toward Jewish community institutions and religious facilities. It is expressed in speech, writing, visual forms and action, and employs sinister stereotypes and negative character traits. Anti-Semitism may manifest itself with regard to the State of Israel through actions which attempt to demonize, delegitimize or apply double standards to Israel because of Jewish identity.

93. As indicated, anti-Semitism may be manifested with regard to the State of Israel through actions which attempt to demonize, delegitimize or apply double standards to Israel because of Jewish identity.

94. Statements made about Israel which are untrue and which attempt to foster boycotts of Israel, whether economic, social or otherwise, are not political speech.

95. The Durham City Police Department has made it clear that there have been no policy changes and no interaction with the military or training on military tactics, or equipment in connection with the City of Durham and any other foreign nation.

96. Defendants knew at the time their statements and actions occurred that they were untrue and intended solely to cast aspersion on Israel because it is a Jewish nation.

97. The conduct of Defendants has directly impacted the Jewish community in Durham, North Carolina, which has suffered discrimination by virtue of their religion as a direct and proximate result of the actions of Defendants.

98. On or about July 30, 2017, North Carolina's Governor Roy Cooper signed into law legislation that would bar the state from doing business with companies that boycott Israel.

99. The Bill requires divestment from, and prohibits state agencies from contracting with companies that boycott Israel.

100. It is the expressed policy of the State of North Carolina in a Bill overwhelmingly passed by the State House of Representatives and the Senate that boycotts of Israel will not be tolerated.

101. The National Organization of Black Law Enforcement Executives (NOBLE) has endorsed a Georgia-based exchange program with Israeli officers, saying that the program “works continuously to improve public safety,” and that NOBLE members, which total more than 3,000, have benefitted from it for decades. The attempt by Defendants and their allies in “Deadly Exchange” and Jewish Voice for Peace have demonstrated their discriminatory intent against the Jewish community in Durham not only by falsely claiming that the City of Durham former Chief of Police was involved in the exchange with Israeli military, but also in stating that Jews, the Jewish people and Israel cooperate and conspire with those in the United States who discriminate and cause harm against people of color. In the resolution passed by NOBLE, the Board warned that “anti-police and anti-Israel groups launched a propaganda campaign against U.S. police training in Israel under the misnomer of ‘deadly exchange,’” which falsely accuses American officers of learning “to kill and to oppress minorities” in Israel. The statement went on to note that: “Not only do such claims lack any foundation in the facts or histories of such exchanges, but the inflammatory causal attribution that such training leads to deadly encounters in the US is utterly fallacious and slanderous....” The Georgia Association of Chiefs of Police and the Georgia Sheriffs’ Association have made similar statements.

102. The reliance of Defendants herein upon organizations that discriminate against Jews, the Jewish community and Israel is specifically undertaken as part and parcel of discriminatory behavior and further demonstrates an attempt by said Defendants in their cooperation and conspiracy with anti-Jewish and anti-Semitic groups to discriminate intentionally against Jews, Israel, and the Jewish residents of the City of Durham, North Carolina.

103. The group boycott by Defendants has a direct and proximate effect on the Jewish community in Durham, North Carolina.

104. The boycott initiated by the actions of Defendants has no basis in fact and is intended to discriminate against Israel, the Jewish community and the Jewish residents of Durham, North Carolina.

105. North Carolina, on the date indicated, was the 22nd state with laws or executive orders banning state business with companies that support Boycott, Divestment and Sanctions movement, or BDS Against Israel.

106. The attempt at a group boycott perpetrated by Defendants is an intentional attempt to prevent those in the City of Durham from doing business with Israel and the Jewish community.'

LEGAL PRINCIPLES

107. 42 U.S. Code § 1983 provides a vehicle for enforcing the laws and Constitution of the United States.

108. The First, Fifth and Fourteenth Amendments to the United States Constitution are intended to prevent discrimination based upon, *inter alia*, religion.

109. Defendants have conspired with and are guilty of parallel conduct with the City Council of Durham to discriminate intentionally against the Jewish community and the City of Durham.

110. The conduct of Defendants, including but not limited to the City of Durham and City Council, represents a disparate impact as well as disparate conduct as against the Jewish residents of the City of Durham, North Carolina.

111. Title VI of the 1964 Civil Rights Act prevents discrimination by programs and activities that receive federal funds.

112. The City of Durham, North Carolina, receives federal funds for programs and activities.

113. Article 6(G) General Assembly of North Carolina, Session 2017, House Bill Section 147-86.80, *et seq.*, prohibited refusals to deal, terminated business activities, or taking actions intended to penalize, inflict economic harm or otherwise limit commercial relations specifically with Israel or persons or entities doing business in Israel or in Israeli-controlled territories. The clear intent and purpose of the state statute was to create a policy recognizing the efforts to boycott Israel would be prohibited. The statute specifically addressed in Section 147-86.82 restrictions on contracts with the State or subdivisions of the State. While not

directly regulating the discriminatory “statement” of the City of Durham, the statute represents state policy.

114. In North Carolina State Constitution Article 1, Declaration of Rights, Section 1, provides for the equality and rights of persons. Section 13 guarantees religious liberty, and Section 19 guarantees equal protection of the laws.

115. Defendants have violated the federal statute by intentional discrimination against Jewish residents of the City of Durham, North Carolina.

116. The City of Durham has no particular policy with respect to whom it permits to view email exchanges, and yet Defendants have specifically barred Voice4Israel, claiming that the organization is “trolling the internet.”

117. The statements are untrue and the unilateral summary barring of Voice4Israel is a blatant violation of the organization and its members’ First Amendment right of speech, to petition the government, and for equal treatment.

COUNT I

Constitutional Violation: First, Fifth and Fourteenth Amendments

118. The preceding paragraphs are incorporated herein by reference as though fully set forth.

119. This action is brought pursuant to 42 U.S. Code § 1983.

120. The Defendants, individually and as entities, have acted under color of state law or, in the case of those individuals and entities that are not

municipalities or employed by municipalities, said individuals and entities acted in concert and conspiracy with state actors and therefore under the color of state law.

121. The Constitution of the United States of America and the State of North Carolina afford protection from discrimination based upon a number of factors, *inter alia*, religion and national origin.

122. The “statement” and activities of Durham City Council, including those in conspiracy with the individual and entity Defendants, represent discrimination against Plaintiffs and the Jewish residents of the City of Durham based upon their religion and national identification.

123. The conduct of Defendants herein is both disparate conduct and represents disparate impact upon Plaintiffs and the Jewish residents of the City of Durham, North Carolina.

WHEREFORE, it is respectfully prayed for monetary and injunctive relief against Defendants, including but not limited to, attorney’s fees under 42 U.S. Code § 1988.

COUNT II

Statutory Violation – 1964 Civil Rights Act and its Applicable Titles; 42 U.S. Code 1983 and 1985

124. The preceding paragraphs are incorporated herein as though fully set forth.

125. Title VII of the 1964 Civil Rights Act found at 42 U.S. Code prevents discrimination by programs and activities that receive federal funds. The City of

Durham receives federal funds for a number of activities and has intentionally discriminated against Plaintiffs as set forth herein.

126. Title VII of 42 U.S. Code prohibits discrimination on the basis of race, color, religion, sex or national origin.

127. Defendant City of Durham is an employer, albeit not the employer of Plaintiffs set forth herein.

128. Defendants, individually and in concert, combination and conspiracy, have violated 42 U.S. Code § 1983 with respect to Plaintiffs.

129. Defendants have violated constitutional rights of Plaintiffs, including but not limited to the First, Fifth and Fourteenth Amendment to the United States Constitution and the equivalent provisions in the North Carolina Constitution.

WHEREFORE, it is respectfully prayed for monetary and injunctive relief against Defendants, including but not limited to, attorney's fees under 42 U.S. Code § 1988 and its state equivalent.

COUNT III

State Law Claims – North Carolina Constitution and any North Carolina Statutory Authority

130. The preceding paragraphs are incorporated herein by reference as though fully set forth.

131. Defendants, individually and as entities, have conspired, combined and undertaken parallel conduct for the purpose of discriminating against

Plaintiffs and the Jewish residents of Durham, North Carolina, for their religious and national identification and because of their support for the State of Israel.

132. The particular and specific acts representing the conspiracy are set forth herein and consist of the cooperation, coordination and parallelism of conduct by and between the individuals and entities that promoted the discriminatory statement which emanated from the City Council of the City of Durham with respect to Israel police activities.

133. This action is brought pursuant to the protections afforded by the North Carolina Constitution and statutory authority as aforesaid.

134. Defendants have violated the Open Meetings Law as aforesaid, entitling Plaintiffs to injunctive relief as well as to attorney's fees.

WHEREFORE, it is respectfully prayed for monetary and injunctive relief against Defendants, including but not limited to attorney's fees

COUNT IV

Declaratory Judgment

135. The preceding paragraphs are incorporated herein by reference as though fully set forth.

136. Plaintiffs request against Defendants rescission of the statement by the City of Durham and declaration that the conduct and issuance of the statement was discriminatory in connection with Plaintiffs herein.

137. Plaintiffs request that the Court declare the “statement” and conduct of Defendants to represent discrimination against Plaintiffs based upon race, religion or nationality.

138. Plaintiffs request that the actions by City of Durham and City Council, including the Mayor, be found to be in violation of Plaintiffs’ constitutional and statutory rights as aforesaid, and that Defendants have discriminated against Plaintiffs based upon religion, nationality and assertion of First, Fifth and Fourteenth Amendment rights.

WHEREFORE, it is respectfully prayed for monetary and injunctive relief against Defendants, including but not limited to, attorney’s fees under 42 U.S. Code § 1988, and its state equivalent.

COUNT V

Retaliation

139. The preceding paragraphs are incorporated herein by reference as though fully set forth.

140. Durham’s Human Relations Commission, acting for and on behalf of City Council and the Mayor, retaliated against Plaintiffs and the Jewish community in connection with Plaintiffs’ conduct in opposing City Council’s “statement” against the State of Israel.

141. Plaintiffs and those in the Jewish community filed an action before the Human Relations Commission.

142. The City Council is responsible for appointing and removing HRC Commissioners.

143. In this matter, Defendants utilized the HRC to retaliate against Plaintiffs and members of the Jewish community for their complaints and protests with respect to the discriminatory and anti-Semitic “statement” issued by the City of Durham in connection with the State of Israel.

144. Public records reveal that Mayor Steve Schewel and Mayor Pro Tempore Jillian Johnson both described their policy as an “Israel Resolution.”

145. Johnson sent 46 emails to residents explaining that there was a “statement affirming a city policy against police exchanges with Israel.”

146. The “statement” continued Johnson’s use of Durham city resources, beginning in 2015, to promote boycotting of Israel.

147. Multiple versions of the petition presented to City Council dishonestly stated that Israel training “helps the police terrorize Black and Brown communities here in the U.S.” The Mayor later acknowledged the statement was false, but nevertheless acted improperly and illegally based upon it.

148. Six (6) out of seven (7) Council members signed various versions of the petition prior to the “statement” being passed.

149. Johnson helped to write the petition presented to the Council.

150. A four-person HRC subcommittee formed to research the matter and conclude a six-month investigation by issuing a draft report that found the Council

at fault in multiple ways. A drafted report recommended that Council remove the singling out of Israel from its April 16th “statement. “

151. On January 6, 2019, two (2) days before the HRC was scheduled to vote on its report, the HRC issued an updated draft report that rejected its own recommendation that City Council remove the singling out of Israel from its April 16th “statement.”

152. The updated draft contained an admission by HRC that because Durham City Council had publicly said that it refused to revisit this issue, the HRC felt it pointless to proceed and instead decided to renege on its earlier recommendation.

153. The reason for this is that HRC is controlled by Durham City Council, which utilized it in this instance to retaliate against Plaintiffs and the Jewish community at large.

154. Former HRC Chair Phil Seib wrote the HRC in protest of the HRC’s intended action.

155. The HRC meeting was not a legitimate attempt to provide due process or any manner of a fair expression of concern.

156. Only 20 chairs were provided for the public. The speaker system was oftentimes inaudible. Only a single microphone was provided with a small amplifier.

157. A number of Commissioners at the “hearing” discussed not the discriminatory “statement” of the Durham City Council, but rather attacked the

State of Israel in conformity with the by then established practice of utilizing Israel as an anti- Semitic stand-in for its discrimination against the Jewish people and Plaintiffs herein.

158. HRC Commissioner Andrea M. Hudson compared the April 16th Durham “statement” to the Bible, and said that government should not be asked to change a policy it had written because, like the Bible, the policy had already been written.

159. Commissioner Ricardo Correa stated that the “statement” was discriminatory.

160. Correa noted that only one foreign country was targeted by City Council, and that was Israel. Correa asked why Council and HRC were silent while thousands of Hispanics are murdered across the globe.

161. HRC Commissioners who signed the discriminatory anti-Semitic anti-Israel petition given to City Council did not reveal their conflict of interest. Petition signatories included Diane Standaert (Commission Chair) and John Rooks (Commission Vice- Chair). The other two, Andrea Hudson and Mikel Barton, were on the HRC subcommittee that was set up to research the issue and write the HRC report. Thus, half of the subcommittee members tasked with researching City Council discrimination against Israel were anti-Israel activists who reported to a Chair and Vice-Chair who were also anti-Israel activists.

162. Commissioner Andrea Hudson publicly supports well-known acknowledged anti-Semite Louis Farrakhan. She stated on Facebook, “Minister Farrakhan always speaking truth.”

163. On Facebook, Hudson complimented a local nation of Islam leader, Rafiq Zaidi, who on April 16th told Durham City Council that Jews have a “synagogue of Satan” and “an inordinate amount of control” over politics.

164. The only motivation and intent for keeping the word “Israel” in the statement was to inflict shame and humiliation upon the local Jewish population in an act of discrimination and anti-Semitism.

165. The actions of HRC lack due process, violate the constitutional rights of Plaintiffs as aforesaid, and represents discrimination based upon religion.

166. The actions and conduct as aforesaid constitute a violation of the Constitution, United States and North Carolina, and the statutes as aforesaid.

WHEREFORE, it is respectfully prayed for monetary and injunctive relief against Defendants, including but not limited to, attorney’s fees under 42 U.S. Code § 1988, and its state equivalent.

COUNT VI

Declaratory Judgment

167. The preceding paragraphs are incorporated herein as though fully set forth.

168. Plaintiffs request that the actions of the Human Relations Commission are considered to be retaliation for Plaintiffs' assertion of their civil rights.

169. Plaintiffs request that the actions of the Human Relations Commission in rubber-stamping City Council based upon retaliation and lack of due process because of obvious conflicts of interest be rescinded and rendered nugatory based upon retaliation and discrimination set forth.

170. Plaintiffs request that the actions of the Human Relations Commission and its members be found in violation of Plaintiffs' constitutional and statutory rights as aforesaid, and that Defendants have discriminated against Plaintiffs based upon religion, nationality, and assertion of their First, Fifth and Fourteenth Amendment rights.

WHEREFORE, it is respectfully prayed for monetary and injunctive relief against Defendants, including but not limited to, attorney's fees under 42 U.S. Code § 1988, and its state equivalent.

COUNT VII

Meetings of Public Bodies – Open Meetings Law

171. The preceding paragraphs are incorporated herein as though fully set forth.

172. This is also an action pursuant to Article 33C of Chapter 143 of the General Statutes of North Carolina, "Meetings of Public Bodies," the public policy of which as stated in G.S. § 143-318.9 is as follows: "Whereas the public bodies that

administer the ... policy making ... functions of North Carolina and its political subdivisions exist solely to conduct the people's business, it is the public policy of North Carolina that the hearings, deliberations and actions of these bodies be conducted openly."

173. Upon information and belief, prior to April 2018 no items were placed on City Council's agenda addressing establishment of a City policy covering police training with departments or agencies in foreign countries.

174. On April 3, 2018, City Council members received an email from members of an organization called "Demilitarize Durham2Palestine," calling on the Council to place a resolution on its April 5 work session agenda that would address police training exchanges with agencies in other countries generally and Israel specifically.

175. On April 5, 2018 at 12:54 a.m., using a personal email account, Mayor Steve Schewel emailed an electronic document titled "Statement on policing from the Durham City Council" to the personal email accounts of council members DeDreana Freeman, Jillian Johnson and Mark-Anthony Middleton.

176. In the body of the 12:54 a.m. message, Schewel wrote:

"Dear DeDreana, Jillian and Mark-Anthony,
Please see two attachments prior to the work session. First is Chief Davis' memo to Tom Bonfield.

Second is a statement I have written and will introduce today during the Announcements section of the work session. I have labored long and hard over it and I hope it meets your approval. My plan is to introduce it at the work session and put it on the agenda for council

approval on April 16. I am sure the public will want to discuss it then.

Thanks to all of you for your one-on-one discussions this past week. Best wishes,
Steve.”

A copy of the email is attached hereto as Exhibit “A.”

177. On April 5, 2018, at 12:56 a.m., using a personal email account, Schewel emailed an electronic document titled “Statement on policing from the Durham City Council” to the personal email accounts of Council members Vernetta Alston, Charlie Reece and Javiera Caballero.

178. In the body of the 12:56 a.m. email, Schewel wrote:

“Vernetta, Charlie and Javiera,
Please see two attachments prior to the work session.
First is Chief Davis’ memo to Tom Bonfield.
Second is a statement I have written and will introduce today during the Announcements section of the work session. I have labored long and hard over it and I hope it meets your approval. My plan is to introduce it at the work session and put it on the agenda for council approval on April 16. I am sure the public will want to discuss it then.
Thanks to all of you for your one-on-one discussions this past week. Best wishes,
Steve.”

A copy of the email is attached as Exhibit “B.”

179. At the Council’s scheduled April 5, 2018 work session, the Council listened to several speakers from the public about the issue of police exchanges but did not publicly discuss the statement.

180. At the Council’s regularly scheduled April 16, 2018 business meeting, more than two hours of public comment were taken on the issue of police exchanges.

Schewel read into the record the statement as previously circulated to Council members in the early morning hours of April 5. After public comment, the statement was unanimously approved with one Council member, Alston, not present.

181. The Open Meetings Law requires adequate notice be given for all meetings. G.S. § 143-318.12.

182. The Open Meetings Law requires public access be provided for all meetings convened by electronic means. G.S. § 143-318.13(a).

183. The Open Meetings Law defines an “official meeting” as “a meeting, assembly, or gathering together at any time or place or the simultaneous communication by conference telephone or other electronic means of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business...” G.S. § 143-318.10(d).

184. No public notice was provided for the electronic meeting Mayor Schewel convened with a majority of Council on April 5, 2018 at 12:54 a.m.

185. No public notice was provided for the electronic meeting Mayor Schewel convened with a majority of Council on April 5, 2018 at 12:56 a.m.

186. No public access was provided for the electronic meeting Mayor Schewel convened with a majority of Council on April 5, 2018 at 12:54 a.m.

187. No public access was provided for the electronic meeting Mayor Schewel convened with a majority of Council on April 5, 2018 at 12:56 a.m.

188. On information and belief, City Council members continue to transact City business via personal email.

189. A draft report examining the Council's decision to approve the statement on policing prepared by the Durham Human Relations Commission encourages the Council to stop using personal email to conduct City business. The draft report is attached as Exhibit "C."

190. The actions of the Defendants set out above are in violation of the Open Meetings Law, G.S. § 143-318.9 to 143-318.18.

191. Pursuant to G.S. § 143-318.16(a), this Court is authorized to grant injunctive relief to enjoin the recurrence of similar violations of the law.

192. Pursuant to G.S. § 143-318.16B, the Court is authorized to award attorney's fees and costs to Plaintiffs if Plaintiffs prevail in this action.

WHEREFORE, it is respectfully prayed for monetary and injunctive relief against Defendants, including but not limited to, attorney's fees under 42 U.S. Code § 1988, and its state equivalent.

This the 19th day of March 2019.

/s/ D.J. O'Brien III
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