

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

CAIR LEGAL DEFENSE FUND

Lena F. Masri (D.C. Bar # 100019) (seeking *pro hac vice admission*)

Email: lmagri@cair.com

Gadeir I. Abbas (VA Bar # 81161) (seeking *pro hac vice admission*)

Email: gabbas@cair.com

Carolyn M. Homer (D.C. Bar # 1049145) (seeking *pro hac vice admission*)

Email: chomer@cair.com

453 New Jersey Ave., SE

Washington, DC 20003

Phone: (202) 742-6420

Fax: (202) 488-0833

KELLY / WARNER, PLLC

8283 N. Hayden Road, Suite 229

Scottsdale, Arizona 85258

Raesabbas Mohamed, Esq. (AZ Bar # 027418)

Email: raees@kellywarnerlaw.com

Phone: (480) 331-9397

Fax: (866) 961-4984

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
PHOENIX DIVISION**

**AMERICAN MUSLIMS FOR PALESTINE
and DR. HATEM BAZIAN**

Plaintiffs,

vs.

**ARIZONA STATE UNIVERSITY; ARIZONA
BOARD OF REGENTS; and MARK
BRNOVICH, in his official capacity as
Attorney General of Arizona**

Defendants.

Case No.

COMPLAINT AND JURY DEMAND

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

INTRODUCTION 1

PARTIES 2

JURISDICTION & VENUE..... 3

FACTUAL BACKGROUND 3

The Israel – Palestine Conflict is a Fraught Issue of International Importance 3

Arizona Passes Anti-Boycott, Divestment, and Sanctions Legislation 5

Muslim Students Association Invites Pro-Palestine Speakers to Campus Event..... 6

FIRST CAUSE OF ACTION: VIOLATION OF THE FIRST AND
FOURTEENTH AMENDMENTS TO THE U.S CONSTITUTION..... 9

PRAYER FOR RELIEF 12

1 INTRODUCTION

2 1. The First Amendment protects the rights of all speakers to advocate for
3 all viewpoints on issues of public concern. “If there is any fixed star in our
4 constitutional constellation, it is that no official, high or petty, can prescribe what shall
5 be orthodox in politics, nationalism, religion, or other matters of opinion or force
6 citizens to confess by word or act their faith therein.” *West Virginia State Bd. of Educ.*
7 *v. Barnette*, 319 U.S. 624, 642 (1943).

8 2. The conflict between Israel and Palestine is a longstanding issue of
9 considerable public concern, both in the United States and internationally, to which
10 politicians, professionals, and the press dedicate considerable energy and resources.

11 3. In 2016, the State of Arizona chose to categorically take Israel’s side in
12 this international conflict by adopting Ariz. Rev. Stat. § 35-393. This Act bars the
13 State of Arizona from entering into government contracts with companies or persons
14 who engage in or advocate for economic boycotts of Israel.

15 4. On February 22, 2018 the Muslim Students Association of Arizona State
16 University invited American Muslims for Palestine and Dr. Hatem Bazian to speak at
17 an April 3, 2018 educational event regarding Palestinian perspectives on Middle East
18 conflict, including the Boycott, Divestment and Sanctions Movement. Because of the
19 Act, however, Arizona State University’s standard outside speaker contract was
20 amended in 2016 to contain a “No Boycott of Israel” clause. American Muslims for
21 Palestine and Dr. Hatem Bazian cannot agree to that clause. They are therefore barred
22 from presenting at the April 3, 2018 campus event solely because they engage in and
23 advocate for economic boycotts of Israel as a means to promote Palestinians’ human
24 rights.

1 9. Defendant Arizona Board of Regents is the governing public body for
2 the Arizona University System, including Arizona State University. The Arizona
3 Board of Regent’s principal place of business is located at 2020 N. Central Ave., Suite
4 230 in Phoenix, Arizona.

5 10. Defendant Mark Brnovich is the Attorney General of Arizona. The
6 Attorney General’s principal office is located at 2005 N. Central Ave in Phoenix, AZ.
7 He is responsible for enforcing and defending the constitutionality of Arizona law.
8 Defendant Brnovich is sued in his official capacity, only.

9
 JURISDICTION & VENUE

10 11. This Court has subject matter jurisdiction under 28 U.S.C. § 1331
11 because this action arises under federal law, namely the First and Fourteenth
12 Amendments to the U.S. Constitution.

13 12. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202.

14 13. This Court has personal jurisdiction over the Defendants because they
15 reside in this district.

16 14. A substantial part of the events or omissions giving rise to the claims
17 alleged in this Complaint occurred in this Judicial District. Venue therefore lies in the
18 United States District Court for the District of Arizona pursuant to 28 U.S.C. §
19 1391(b)(2).

20
 FACTUAL BACKGROUND

21 **The Israel – Palestine Conflict is a Fraught Issue of International Importance**

22 15. The relationship between Israel and Palestine is one of the most
23 significant international political conflicts of the modern era. One of the core disputes
24

1 within that conflict concerns Israel’s continuing occupation and settlement of
2 Palestinian territories, including the West Bank and Golan Heights.

3 16. On December 23, 2016, the United Nations Security Council
4 unanimously (with the United States abstaining) adopted Resolution 2334. The
5 Resolution condemned Israeli settlements in the Occupied Palestinian Territories, and
6 reaffirmed that continuing settlements “constitute[e] a flagrant violation under
7 international law and a major obstacle to the achievement of the two-State solution
8 and a just, lasting and comprehensive peace.” The Resolution additionally
9 condemned Israeli violence and human rights abuses against Palestinians.

10 17. A robust international movement seeks to impose economic pressure on
11 Israel to cease its settlement activity in Palestinian Territory. Calling itself “Boycott,
12 Divestment, and Sanctions” or “BDS,” the movement seeks the peaceful end of Israeli
13 discrimination against and maltreatment of Palestinians. The BDS movement
14 specifically encourages economic divestment from institutions that are not in
15 compliance with established international law related to the Israeli occupation of
16 Palestine.

17 18. The United States has historically discouraged Israeli settlements as
18 “inconsistent with international law.” Overall, however, U.S. policy strongly supports
19 Israel, and the U.S. and Israel enjoy close political and economic relationships. These
20 friendly relations have tended to soften or mute the United States’ criticism of Israeli
21 settlements. The United States abstained from Resolution 2334 due to its political
22 support of Israel, and previously vetoed a similar U.N. Resolution in February 2011.

23 19. The merits of all perspectives in the Israel-Palestinian conflict and the
24 U.S.’s respective political positions are robustly and publicly debated by leading

1 politicians, academics, universities, non-profit organizations, businesses, and media
2 organizations in the United States and around the world.

3 **Arizona Passes Anti-Boycott, Divestment, and Sanctions Legislation**

4 20. Because the prevailing political sentiment in the United States favors
5 Israel, many U.S. states, private organizations, and public officials view the
6 Palestinian-led Boycott, Divestment, and Sanctions movement as a threat to U.S.-
7 Israel economic relations and Israel's sovereignty.

8 21. This political climate has, in recent years, prompted local and state
9 legislatures to consider more than a hundred bills and resolutions aimed at hindering
10 the Boycott, Divestment, and Sanctions movement. At least twenty-four states have
11 enacted legislation.

12 22. Arizona is one state to enact anti-Boycott, Divestment, and Sanctions
13 measures. On March 17, 2016, Arizona enacted HB 2617, codified at Ariz. Rev. Stat.
14 § 35-393 *et. seq.* In support of the Act, the legislature found that “Boycotts and related
15 tactics have become a tool of economic warfare that threaten the sovereignty and
16 security of key allies and trade partners of the United States.” The Legislature then
17 specifically identified Israel as a subject of threatening boycotts. “The state of Israel
18 is the most prominent target of such boycott activity, beginning with the Arab League
19 Boycott adopted in 1945, even before Israel's declaration of independence as the
20 reestablished national state of the Jewish people.”

21 23. The Legislature concluded that “a company's decision to discriminate
22 against Israel, Israeli entities or entities that do business with Israel or in Israel is an
23 unsound business practice making the company an unduly risky contracting partner
24 or vehicle for investment.”

1 24. Based on these findings, Arizona law now prohibits all public entities
2 from contracting with any company that boycotts Israel, or any person who may
3 induce others to boycott Israel.

4 25. Specifically, Ariz. Rev. Stat. § 35-393.01 provides:

5 A. A public entity may not enter into a contract with a company to
6 acquire or dispose of services, supplies, information technology or
7 construction unless the contract includes a written certification
8 that the company is not currently engaged in, and agrees for the
9 duration of the contract to not engage in, a boycott of Israel.

10 B. A public entity may not adopt a procurement, investment or other
11 policy that has the effect of inducing or requiring a person or
12 company to boycott Israel.

13 26. The Act defines “boycott” to include “engaging in a refusal to deal,
14 terminating business activities or performing other actions that are intended to limit
15 commercial relations with Israel.” Ariz. Rev. Stat. § 35-393.

16 27. To comply with this statutory provision, Arizona agencies and public
17 entities including state universities have started including language in their boilerplate
18 contracts which bars boycotts of Israel.

19 **Muslim Students Association Invites Pro-Palestine Speakers to Campus Event**

20 28. The Muslim Students Association at Arizona State University seeks to
21 engage in interfaith and intellectual dialogue. To that end, it regularly hosts events on
22 campus, including inviting guest speakers. Recent events include:
23 (a) a presentation on the “History of Islam in America” by Ustadh Ubaydullah Evans
24 from the American Learning Institute for Muslims; (b) a panel discussion on

1 “Contemporary Perception of Islam” with Imraan Siddiqi, the Executive Director of
2 CAIR-Arizona, Imam Yaser Ali, a local attorney, and Imam Anas Hlyahel, a
3 contributory author to the popular blog Muslim Matters; and (c) a discussion of
4 “Women in Islam: Beyond the Stereotypes” with Amal Fayad, a local counselor and
5 Naeema Zaman, a local academic.

6 29. The political climate of the Middle East, including all facets of the Israeli
7 – Palestinian conflict, is of particular interest to the Muslim Students Association and
8 its membership. It is also of interest to other professors and students across campus.
9 For example, Arizona State University houses the School of Politics and Global
10 Studies, the School of Historical, Philosophical, and Religious Studies, the
11 Department of Jewish Studies, the Council for Arabic and Islamic Studies, and the
12 Center for the Study of Religion and Conflict – all of which may be interested in a
13 discussion of Israel and Palestine.

14 30. Arizona State University is committed to academic freedom, and to
15 providing an open venue for student organizations to invite outside speakers and host
16 educational events on a wide variety of subjects, and from a wide variety of
17 viewpoints. Student organizations have broad authority to create events and choose
18 who to invite to speak. Such presentations do not reflect the views of Arizona State
19 University itself, but rather those of the individual speakers. For example, the ASU
20 chapter of Students for Justice in Palestine has repeatedly hosted an “Apartheid
21 Week.” For many years, these students set up a large “Mock Apartheid Wall” on the
22 Hayden Lawn filled with art and educational information regarding Palestinian
23 perspectives on Israel’s occupation of Palestinian territories, and Israel’s relegation
24 of Palestinians to second-class status.

1 31. On February 22, 2018, the leadership of the Muslim Students
2 Association invited American Muslims for Palestine and the organization’s chairman,
3 Dr. Hatem Bazian, to give a guest educational presentation on campus. The
4 presentation will be on the BDS movement and is scheduled for April 3, 2018.

5 32. The Muslim Students Association has issued many invitations and
6 scheduled many outside speakers in the past, without incident.

7 33. To host an event, the Arizona Board of Regents and Arizona State
8 University require that student organizations pre-clear the availability of physical
9 facilities, and that the outside speaker sign the university’s standard
10 “Speaker/Artist/Performer Agreement.”

11 34. The standard “Speaker/Artist/Performer Agreement” was amended
12 sometime after passage of Ariz. Rev. Stat. § 35-393 in March 2016. Paragraph 20 of
13 the agreement now reads, in full: “No Boycott of Israel. As required by Arizona
14 Revised Statutes § 35-393.01, Entity certifies it is not currently engaged in a boycott
15 of Israel and will not engage in a boycott of Israel during the term of this Contract.”

16 35. Both American Muslims for Palestine and Dr. Hatem Bazian advocate
17 for boycotts of Israel due to Israel’s continuing violations of international law in its
18 treatment of Palestinians. Dr. Hatem Bazian and American Muslims for Palestine
19 intend to use their speaking opportunity at Arizona State University to educate the
20 campus community about the historical context and rationale for the peaceful
21 Palestinian Boycott, Divestment, and Sanctions movement.

22 36. Neither Dr. Hatem Bazian nor American Muslims for Palestine can or
23 will sign the contract with the “No Boycott of Israel” provision, which is required by
24 state law. As advocates for Palestinian rights and justice, they cannot in good faith

1 certify or state that they do not boycott Israel, and will not engage in a boycott of
2 Israel.

3 37. Dr. Hatem Bazian and American Muslims for Palestine would accept the
4 Muslim Students Association’s invitation if the “No Boycott of Israel” clause were
5 stricken. They agree to all other contractual terms. The “No Boycott of Israel”
6 provision of the ASU’s standard speaker agreement is, to Plaintiffs’ knowledge, the
7 only barrier to their participation at the Muslim Student Association’s scheduled April
8 3, 2018 event.

9 **FIRST CAUSE OF ACTION**

10 **VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS TO**
11 **THE U.S CONSTITUTION**

12 38. Plaintiffs incorporate all of the above paragraphs as though fully set forth
13 herein.

14 39. The First Amendment provides: “Congress shall make no law ...
15 abridging the freedom of speech, or of the press.” U.S. CONST. Amend. I.

16 40. The First Amendment binds the State of Arizona pursuant to the
17 incorporation doctrine of the Fourteenth Amendment.

18 41. Political speech on issues of great national and international importance
19 is central to the purposes of the First Amendment. Speech and advocacy related to
20 the Israel – Palestine conflict is core political speech on a matter of public concern
21 entitled to the highest levels of constitutional protection.

22 42. Economic boycotts for the purposes of bringing about political change
23 are entrenched in American history, beginning with colonial boycotts on British tea.
24 Later, the Civil Rights Movement relied heavily on boycotts to combat racism and

1 bring about societal change. The Supreme Court has recognized that non-violent
2 boycotts intended to advance civil rights constitute “form[s] of speech or conduct that
3 [are] ordinarily entitled to protection under the First and Fourteenth Amendments.”
4 *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982).

5 43. The First Amendment protects the rights of speakers to call for and
6 participate in economic boycotts as a means of amplifying their message. Joining
7 voices together to participate in and call for political boycotts is protected association
8 under the First Amendment.

9 44. The Arizona Board of Regents and Arizona State University provide a
10 limited public forum for student organizations and their sponsored educational events.
11 Any “ideologically driven attempts to suppress a particular point of view” within that
12 forum “are presumptively unconstitutional.” *Rosenberger v. Rector and Visitors of*
13 *the University of Virginia*, 515 U.S. 819, 830 (1995).

14 45. Ariz. Rev. Stat. § 35-393 and the “No Boycott of Israel” clause each
15 constitute viewpoint discrimination, because they only bar speech and expression
16 against Israel, and not speech or expression in favor of Israel or against Palestine.

17 46. Ariz. Rev. Stat. § 35-393 and the “No Boycott of Israel” clause each
18 constitute content-specific restrictions on speech, because they single out boycotts *of*
19 *Israel* for disfavored treatment.

20 47. Ariz. Rev. Stat. § 35-393 and the “No Boycott of Israel” clause each
21 constitute speaker-specific restrictions on speech, because they single out government
22 contractors who advocate for Palestine and against Israel as specific speakers who
23 warrant disfavored treatment.

24

1 48. Ariz. Rev. Stat. § 35-393 and the “No Boycott of Israel” clause each
2 impose a prior restraint on speech, by requiring speakers to certify in advance that
3 they do not and will not engage in a boycott of Israel.

4 49. Ariz. Rev. Stat. § 35-393 and the “No Boycott of Israel” clause each
5 constitute impermissible State attempts to impose conditions on an independent
6 contractor on a basis that infringes constitutionally protected freedom of speech.

7 50. Ariz. Rev. Stat. § 35-393 and the “No Boycott of Israel” clause each
8 constitute impermissible State attempts to impose an ideological litmus test or compel
9 speech related to government contractors’ political beliefs, associations, and
10 expressions.

11 51. Ariz. Rev. Stat. § 35-393 and the “No Boycott of Israel” clause are each
12 substantially overbroad.

13 52. Ariz. Rev. Stat. § 35-393 and the “No Boycott of Israel” clause are each
14 void for vagueness.

15 53. Both Ariz. Rev. Stat. § 35-393 and the “No Boycott of Israel” clause
16 operate to chill the exercise of constitutionally protected speech and associations.

17 54. The Arizona Attorney General, Arizona Board of Regents, and Arizona
18 State University each lack a compelling or legitimate governmental interest in the
19 enforcement of Ariz. Rev. Stat. § 35-393 and the “No Boycott of Israel” clause.

20 55. Enforcement of Ariz. Rev. Stat. § 35-393 and the “No Boycott of Israel”
21 clause does not constitute the least-restrictive means of fulfilling any state interest.

22 56. Ariz. Rev. Stat. § 35-393 is facially unconstitutional under the First
23 Amendment and cannot be enforced against anyone by the Arizona Attorney General.
24

1 57. Ariz. Rev. Stat. § 35-393, as implemented through the “No Boycott of
2 Israel” clause in the “Speaker/Artist/Performer Agreement” promulgated by the
3 Arizona Board of Regents and Arizona State University, is unconstitutional as applied
4 to Plaintiffs and their plans to present, as Palestinian activist speakers, a campus
5 discussion on the Israel-Palestine conflict with a on April 3, 2018.

6 58. Absent an injunction, Plaintiffs will suffer irreparable harm because they
7 will be barred by state law and contract from engaging in protected First Amendment
8 speech and association on a matter of public concern. Plaintiffs will be chilled in their
9 discussion of and advocacy for Palestinian rights, and unable to participate in the ASU
10 MSA’s April 3, 2018 event.

11 59. If Defendants are not enjoined from enforcing Ariz. Rev. Stat. § 35-393,
12 and from including the “No Boycott of Israel” clause in state contracts, Plaintiffs and
13 all advocates for Palestine will be effectively prohibited from entering into any
14 agreement with the State of Arizona unless they give up the constitutionally-protected
15 views that are central to their educational and advocacy missions.

PRAYER FOR RELIEF

16
17 WHEREFORE, Plaintiffs respectfully request the Court enter the following
18 relief:

- 19 A. Declare Ariz. Rev. Stat. § 35-393 unconstitutional and unenforceable;
- 20 B. Issue judgment in Plaintiffs’ favor and against Defendants on all causes
21 of action alleged herein;
- 22 C. Grant Plaintiffs a preliminary and permanent injunction striking the “No
23 Boycott of Israel” clause from their contemplated speaker contract with the
24 Arizona Board of Regents and Arizona State University, thereby permitting

1 them to participate in the Muslim Students Association’s planned April 3, 2018
2 event regarding the BDS movement.

3 D. Enter a preliminary and permanent injunction against Defendants’
4 inclusion of boycott provisions under Ariz. Rev. Stat. § 35-393 in any state
5 contract, and against Defendant Attorney General’s continuing enforcement of
6 Ariz. Rev. Stat. § 35-393.

7 E. Declare void any “No Boycott of Israel” clause pursuant to Ariz. Rev.
8 Stat. § 35-393 that now exists in any and all contracts between Arizona public
9 entities and private companies or persons.

10 F. Award Plaintiffs their reasonable costs and attorney’s fees pursuant to 42
11 U.S.C. § 1988; and

12 G. Grant such other and further relief as the Court may deem to be just and
13 proper.

14 **JURY DEMAND**

15 NOW COME Plaintiffs, by and through their undersigned counsel, and hereby
16 demand trial by jury of the above-referenced causes of actions.

17
18
19
20
21
22
23
24

1 Dated this 28th day of February 2018.

2 **CAIR LEGAL DEFENSE FUND**

3 By /s/ Lena F. Masri

4 Lena F. Masri (D.C. Bar No. 100019)

(seeking *pro hac vice* admission)

5 Gadeir I. Abbas (VA Bar No. 81161)

(seeking *pro hac vice* admission)

6 Carolyn M. Homer (D.C. Bar No. 1049145)

(seeking *pro hac vice* admission)

7 453 New Jersey Ave., SE

Washington, DC 20003

8 Phone: (202) 742-6420

9 Fax: (202) 488-0833

KELLY / WARNER, PLLC

10 By /s/Raees Mohamed

11 Raees Mohamed, Esq. (AZ Bar # 027418)

12 8283 N. Hayden Road, Suite 229

Scottsdale, Arizona 85258

13 Phone: (480) 331-9397

14 Fax: (866) 961-4984

Attorneys for Plaintiffs