



ACURM and Corporation Members of Brown University
Brown University
Corporation Office
Box 1887
Providence, RI 02912

Sept. 3, 2024

Re: Brown Divest Coalition's Proposal for Divestment from 10 Companies on the Basis of Their Connections to the State of Israel

Dear ACURM and Corporation Members of Brown University,

Brown University stands on the precipice of a momentous decision. The Advisory Committee on University Resources Management ("ACURM") and, subsequently, the Corporation of Brown University ("the Corporation") must make a choice whose repercussions will resound throughout the ivy-covered halls of academia across this country and will impact the history and reputation of this esteemed institution for generations to come. The Corporation of Brown University is the first in this nation to take up the question of divestment from Israel. The precedent set by Brown University will affect more than its own students.

Make no mistake: the eyes of this nation are riveted upon Brown, and the waves generated by this decision will impact all of our peer institutions.

The Brown Jewish Alumni & Friends ("BJAF") Steering Committee strongly opposes the divestment proposal. As representatives of a coalition of hundreds of concerned alumni, faculty, staff, and family members of students, we urge ACURM and the Corporation to reject the demands of a minority contingent of students who would use Brown's endowment as a political tool at the expense of current and future classmates and faculty.

From a practical standpoint, ACURM and the Corporation have but one, valid choice. BDC's proposal fails as a matter of procedure and law. On the basis of ACURM's charge and its "social impact" balancing test, the Corporation's fiduciary duties, and federal and state legal obligations, both bodies must reject Brown Divest Coalition's ("BDC's") demand to divest from companies alleged to "Facilitate the Israeli Occupation of Palestinian Territory" ("the

Divestment Proposal”). ACURM and the Corporation are bound to objective, operational guidelines upon which they must base their decisions, and those guidelines necessitate voting against this proposal.

Fortuitously, this choice is not only the procedurally and legally correct one, but it is also the *right* choice. BDC’s claim that divestment would “promote an immediate ceasefire and a lasting peace” is not only specious and counterintuitive, but is belied by the very nature of the BDS movement, its overtly stated intentions to eradicate the state of Israel, and the nefarious connections of both BDS and National SJP to Hamas itself.¹ In acquiescing to the unrealistic, selfish, and puerile demands of a small group of students - students who have repeatedly disrespected and violated Brown’s Code of Conduct, policies, and their own classmates - Brown would, in reality, be acquiescing to the demands of external parties calling the shots behind the scenes of the unrest on campuses nationwide. The purpose of the endowment is to support and further student and academic advancement at Brown, not to support and further the machinations of foreign, anti-American, terror-supporting political factions. We ask that you consider the concerns of our constituents when making a crucial decision that will affect Brunonians for generations to come.

DIVESTMENT MUST FAIL AS A MATTER OF PROCEDURE AND LAW

1. ACURM must reject BDC’s petition to the Corporation for failure to meet the balancing test under its Charge.

According to its charge, ACURM must balance the gravity of the alleged “social harm” presented by the proposal with: (1) the potential effectiveness of the proposal’s actions; (2) the need to maintain sound financial policy; and (3) the protection of the University’s academic freedom for all.² Furthermore, “ACURM shall not recommend any action that advances a position on social or political questions unrelated to the investment or expenditure of University financial resources under consideration. ACURM should be mindful that partisan political advocacy is not consistent with either Brown’s commitment to academic freedom or its status as a 501c(3) corporation.”³

Yet, the claimed “social harms” BDC seeks to redress – alleged apartheid, genocide, and obstruction of Palestinian rights and access to education - amount to spurious blood libels. They lack any basis in reality. They cannot be solved by approving the Divestment Proposal because they are by nature fictitious, defamatory claims that have been disproven time and again.⁴ Approval of the proposal would be tantamount to Brown officially endorsing such libel at the behest of a partisan, political group in contravention of cold, hard facts and ACURM’s very charge.

¹ “From Ivory Towers to Dark Corners: Investigating the Nexus Between Antisemitism, Tax-Exempt Universities, and Terror Financing,” Dr. Jonathan Schanzer, Nov. 15, 2023 at <https://gop-waysandmeans.house.gov/wp-content/uploads/2023/11/Schanzer-Testimony.pdf>.

² [Charge | ACURM | Brown University](#).

³ [Charge | ACURM | Brown University](#).

⁴ <https://www.reuters.com/world/biden-whats-happening-gaza-is-not-genocide-2024-05-20/>;

Divestment would be neither prudent nor serve the mission of teaching and research. Rather, it would place Brown's endowment and financial resources at considerable risk in order to make an admittedly symbolic statement with no proof of alleviating social harm. Under the balancing test that governs ACURM's decision-making process - essentially a cost-benefit analysis - the Divestment Proposal fails spectacularly for the following reasons:

1. The claims of "social harm are tantamount to libel, factually disputed, and ignore the realities of a complex, geopolitical dispute.
2. The Divestment Proposal not only would be ineffective at influencing relevant policy or conduct, but in fact would prove counterproductive to BDC's purported goal to help the Palestinian people and bring about peace.
3. The Divestment Proposal is contrary to the University's need to maintain a sound financial policy.
4. The Divestment Proposal is tantamount to a partisan political statement and, as such, is inconsistent with Institutional Neutrality, violates and threatens the University's 501(c)(3) status, undermines academic freedom, and is detrimental to an environment conducive to teaching and scholarly inquiry.

Claims of genocide are directly belied by efforts to evacuate Gazan civilians to safe zones and protect evacuation routes. Genocidal regimes do not knock before they arrive. They do not drop millions of pamphlets or send millions of texts and phone calls warning civilians of danger and giving them time to protect themselves. They do not provide over 25,000 tons of medical supplies to the people they seek to exterminate or set up ten military field hospitals.⁵ They do not deliver 650,000 tons of food and more than 3,000 calories per person per day to a group of people they purportedly intend to starve to death.⁶ They do not halt a war in order to ensure children are vaccinated against polio.⁷ If anyone is causing starvation and risking civilian lives in Gaza, it is the genocidal Hamas regime that the BDC supports and condones.⁸

Claims of apartheid are just as spurious and just as widely debunked. Just this past week, Jewish Israeli soldiers risked life and limb to rescue an Arab Muslim Bedouin Israeli citizen who had been held hostage since October 7, 2023. The Israeli man, Qaid Farhan Alkadi, received a phone call from the Prime Minister of Israel and thanked him for "doing G-d's work" in saving

⁵ *Humanitarian Efforts*, Coordinator of the Government Activities in the Territories, <https://gaza-aid-data.gov.il/main/medical-response/> (last visited 19 Jul. 2024).

⁶ <https://www.timesofisrael.com/new-study-finds-food-supply-to-gaza-more-than-sufficient-for-populations-needs/>

⁷ "Israel agrees to pauses in fighting in Gaza for polio vaccination," Tara John, Jennifer Hauser, Abeer Salman, Eugenia Yosef, and Larry Register. Aug. 29, 2024. CNN.com at <https://www.cnn.com/2024/08/29/middleeast/gaza-who-humanitarian-pause-intl-latam/index.html>.

⁸ *Daily Press Briefing by the Office of the Spokesperson for the Secretary-General*, United Nations, 22 May 2024, <https://press.un.org/en/2024/db240522.doc.htm>; Mike Glenn, *U.S. says Hamas stole aid for Gaza sent through newly opened border crossing*, The Washington Times, 3 May 2024, <https://www.washingtontimes.com/news/2024/may/3/us-says-hamas-stole-aid-gaza-sent-through-newly-op/>.

him and bringing him home to his family.⁹ Over two million Arab-Israelis co-exist with equal rights in the state of Israel. They serve in the Knesset, Israel's parliament. They serve on the Supreme Court. They serve as officers in the Israeli Defense Forces commanding Jewish soldiers. They are doctors, lawyers, professors, and politicians. The apartheid libel bandied by the BDC in support of the "social harms" they seek to redress is simply another form of delegitimizing and stigmatizing the Israeli state and its people with no grounding in reality.

Conversely, no tangible, positive impact could possibly redound from divestment, thus failing prong (a) of the balance test. However, a cost/benefit analysis of the likely results of divestment demonstrates that Brown would face palpable internal harm and unnecessarily contribute to external harm, thereby failing prong (b) of the same test. Brown's currently thriving endowment would irresponsibly be placed in the hands of a minority of students who seek to wield it for symbolic, political statements. *Generations* of Brown students and faculty would potentially suffer from likely resultant financial losses for no discernible purpose. The negative financial impact of supporting the Divestment Proposal cannot be overstated. To cater to the whims of a small group of activists moving through the institution, years of violence will be perpetrated on the mission and goals of the University. To accomplish nothing positive, academic departments and faculty could face significant cuts, financial aid could be impacted, and student services eviscerated.

Meanwhile, actual Palestinians on the other side of the world are only harmed by divestment, not helped. With the weaker Palestinian economy dependent on Israel's economy, acts of divestment only result in unemployment and disrupt economic cooperation. While the pro-divestment students sit in their Rhode Island dorms in relative comfort, boycotts of Israeli companies have only increased economic hardship for actual Palestinians living in the region. Should the Divestment Proposal succeed, it could cause real harm to the Palestinians BDC purports to want to help. The people most harmed by the BDS movement in the past two decades have not been Israelis. On the contrary, Palestinian workers and the Palestinian economy have felt the brunt of any negative impact caused by boycotts.¹⁰

What happened when the Boycott, Divestment, and Sanctions ("BDS") movement attacked the Israeli company SodaStream? The boycott had little to no impact on Israel's more elastic, stronger economy. In contrast, the less robust Palestinian economy felt the blow. When SodaStream's profits plummeted in response to BDS's concerted campaign against it, CEO Daniel Birnbaum closed his West Bank factory and moved the operation to southern Israel. As a result, hundreds of Palestinians lost jobs that paid 4-5 times the average salary in the West Bank.

Birnbaum has commented, "If it was up to me, I would have stayed. We showed the world Arabs and Jews can work together."¹¹

⁹ "Israel rescues Bedouin hostage held by Hamas in Gaza," David Gritten. Aug. 27. 2024. BBC.com at <https://www.bbc.com/news/articles/c3w67w47eego>; Video of phone conversation between Alkadi and Netanyahu available at <https://www.facebook.com/reel/822615570076853>.

¹⁰ "The Palestinian Case Against BDS," Bassem Eid. The Washington Institute for Near East Policy. June 25, 2015.

¹¹ "Boycott Israel Movement Stunts the Palestinian Economy," Carrie Sheffield. *Forbes*. Feb. 23, 2015.

BDS seeks to impair ties between the Palestinian and Israeli economies. The trouble is, Palestinians are far more dependent on Israeli imports and products than Israel is on Palestinian imports. BDS seeks to undermine the gainful employment of some 110,000 Palestinian workers by Israeli companies operating in the West Bank and East Jerusalem.¹² It works to destroy the 16 industrial parks and 1,000 facilities where Arabs and Jews now work together, side-by-side, coexisting and collaborating to make their collective lives better and build lasting bridges.¹³

Deepening economic connections and trade are known factors that lessen the outbreak of war between peoples. Common goals and shared economic incentives bring people together. BDS, however, seeks to undermine Israeli investment in the Palestinian Territories, to tear people apart, and to impoverish the people it claims to support. The only natural result of BDS succeeding is poorer Palestinians and the escalation of conflict.

And to what end? What good would be served by passing this particular BDS proposal? These ten companies would quickly find new investors to buy any stock from which Brown divests itself, and Brown would lose any say in the respective companies' activities as a former shareholder. In truth, these companies represent so small a portion of the endowment as to render the act of divestment alone meaningless. The true cost would come from the loss of access to quality financial advisors who will rightly turn their backs on Brown for making a pointless, bigoted statement against the one Jewish state. Respected fund managers will refuse to do business with Brown. The investment office will be unable to attract top talent who want to be able to perform their jobs effectively and not be hamstrung by a handful of activist students with no comprehension of investment strategy. The University will become a pariah to the business world as well as to prospective students and faculty. As such, the proposal fails prong (b) of the balance test. The need to maintain a sound financial policy weighs heavily against divestment.

Lastly, the Divestment Proposal fails prong (c) of the balancing test by undermining academic freedom at Brown. First, it will lend the Corporation's stamp of imprimatur to academically unsound, historically untrue, and factually inaccurate claims about a nation-state and its people. It will stand as a testament to the University's willingness to make political statements in place of conducting rigorous, honest, academic scholarship. Consider what is to become of the Judaic Studies Department. A vote in favor of this proposal acknowledges Israel to be a genocidal, apartheid pariah. Is this only the first step in marginalizing and removing those who wish to conduct sound scholarship related to Israel, its people, culture, languages, religions, and contributions to the world?

Certainly, on many campuses worldwide, BDS does not stop at divestment from a handful of companies. Demands for divestment from Israeli universities inevitably follows like a thunderclap follows lightning. Opening this door to the demonization of Israel and its people is but one step in the concerted, globally orchestrated mission openly espoused by BDS and its leaders to marginalize Israeli universities and scholars. What have we witnessed in the past year if not the shocking degree of brainwashing to which our youth have been exposed on college

¹² *Id.*

¹³ *Id.*

campuses? Today, BDC asks for divestment from 10 companies. Tomorrow, it will be from relationships with Israeli universities and professors. The next day, it will be from Hillel.

The end result – and actual goal of BDS – will be the end of open, free debate on this topic. Political choices will be made, sides chosen, and institutional neutrality overthrown. Brown University’s purpose, the beating heart of this institution, is freedom of thought, expression, exploration, and discovery. A vote for divestment will be as a sword thrust to the heart of Brown’s academic mission.

2. As a Matter of Law, the Corporation Must Reject the Divestment Proposal

a. *The Corporation’s Roles and Responsibilities as well as its Charter Dictate Against the Divestment Proposal*

The Corporation is beholden to its published statement on Roles and Responsibilities, a document that outlines the functions and expectations of its members.¹⁴ This document codifies the fiduciary duties of the Trustees to the University. The first responsibility enumerated in its charge is to “Oversee the University’s faithful and consistent adherence to its mission and values.”¹⁵

Passage of the Divestment Proposal would violate these fiduciary obligations. Brown University’s defined mission “is to serve the community, the nation and the world by discovering, communicating and preserving knowledge and understanding in a spirit of free inquiry, and by educating and preparing students to discharge the offices of life with usefulness and reputation.”¹⁶ Its purpose is to educate the future leaders of this country and world based on principles of academic freedom and rigorous scholarship in a collaborative setting.

Divestment from select companies based on their limited interactions with the one Jewish State, Israel, does not serve to advance this mission and purpose. It is, in fact, contrary to the values espoused by this venerated institution. Will the mission as upheld by Brown University’s Corporation be transformed from open, intellectual discourse and discovery to partisan political activism and discrimination against one country and one people? Will the University allow one segment of the current student population to rewrite its mission and values so as to exclude another segment? The BDS movement is an inherently anti-intellectual endeavor that shuts down discourse, rejects collaborative discovery of negotiated solutions to a complex conflict, and seeks only to demonize Israel and undermine its legitimacy and survival. Agreeing with the Divestment Proposal requires the Corporation to undermine the very mission and ethos that have underpinned Brown University since its inception.

¹⁴ Roles and Responsibilities of Trustees, at <https://corporation.brown.edu/about/roles-and-responsibilities>.

¹⁵ *Id.*

¹⁶ Brown University Mission Statement, at <https://www.brown.edu/about/brown-glance>.

Those values are enshrined in the very Charter that established the University in 1764 as edited in the 1945 republication of that Charter by President Wriston. Brown University's Charter provides for no religious tests, stating in pertinent part:

And furthermore, it is hereby enacted and declared that into this liberal and catholic institution shall never be admitted any religious tests: But, on the contrary, all the members hereof shall forever enjoy full, free, absolute, and uninterrupted liberty of conscience: And that the places of Professors, Tutors, and all other officers, shall be free and open for all, *And that youth of all religious denominations shall and may be freely admitted to the equal advantages, emoluments, and honors of the College or University; and shall receive a like, fair, generous, and equal treatment during their residence therein, they conducting themselves peaceably, and conforming to the laws and statutes thereof.* And that the public teaching shall, in general, respect the sciences; *and that the sectarian differences of opinions shall not make any part of the public and classical instruction;* although all religious controversies may be studied freely, examined, and explained by the President, Professors, and Tutors in a personal, separate, and distinct manner to the youth of any or each denomination: *And above all, a constant regard be paid to, and effectual care taken of, the morals of the College.*¹⁷ (emphasis added)

The Divestment Proposal asks the Corporation to act upon “sectarian differences of opinion” in a way that upends the “morals of the College” by promoting discrimination on the basis of national identity, acknowledging spurious blood libels against Israel, and all but ensuring that Jewish students who identify as Zionists will not “receive a like, fair, generous, and equal treatment during their residence” at Brown.¹⁸ The vast majority of Jews in the world and at Brown University view their connection to Israel and Zionism as a central tenet of their Jewish identity.¹⁹ “Eight-in-ten U.S. Jews say caring about Israel is an essential or important part of what being Jewish means to them.”²⁰

A divestment statement by the Corporation effectively would deny the values and beliefs of those Jewish students who feel a deep-rooted, religiously-based connection to their ancestral homeland by acknowledging the libels of genocide, apartheid, and discrimination that form the basis of BDC's proposal. The Corporation would be stepping outside of its core mission in order to upend Brown's morals and values by acceding to attacks against the core identity of a segment of its population. We beseech the Corporation not to make such a statement that eviscerates the identities of these Brunonians.

Furthermore, the “Expectations of Corporation Members” lists as its first duty in its “critical fiduciary oversight capacity,” the requirement to “Demonstrate a continuing dedication and commitment to the University and its mission, and collegially serve Brown University as a

¹⁷ The Charter of Brown University at 15, https://corporation.brown.edu/sites/default/files/documents/charter-of-brown-university_08312020.pdf.

¹⁸ *Id.*

¹⁹ U.S. Jews' connections with and attitudes toward Israel, at <https://www.pewresearch.org/religion/2021/05/11/u-s-jews-connections-with-and-attitudes-toward-israel/>.

²⁰ *Id.*

whole, *rather than representing the interests of any particular constituency.*”²¹ (emphasis added.) BDC disingenuously represents itself as speaking for a “supermajority” of undergraduates per the 2019 divestment vote on campus. In reality, only 2,810 students voted on the 2019 divestment measure. While 69 percent of those who voted favored divestment, this represented a paltry 27.5 percent of the total student population.²² In bending to the whims of this small, politicized group on campus, the Corporation would be choosing the interests of one particular constituency over the community as a whole in contradiction with the express expectations of its members.

b. *The Corporation Must Abide by its Fiduciary Duties as Codified under the Rhode Island Uniform Prudent Management of Institutional Funds Act*

The second responsibility listed in the Corporation’s charge is to “Provide oversight to strategies and policy *designed to preserve and enhance the University’s financial strength, provide for its financial support, and maintain sound financial controls, enabling the University to pursue its mission at the highest levels of distinction.*”²³ (emphasis added.) This charge encompasses the Corporation’s fiduciary duty to guide Brown University as its financial stewards as codified by state law.

Rhode Island has adopted the Uniform Prudent Management of Institutional Funds Act, which governs the investment of assets of charitable institutions, including non-profit universities such as Brown. Under the Rhode Island Uniform Prudent Management of Institutional Funds Act (“RI UPMIFA”), the Corporation and its Trustees owe Brown University duties of prudence and loyalty in managing its endowment assets.²⁴ The Trustees must consider the “charitable purposes of the institution and the purposes of the institutional fund.”²⁵ The “charitable purpose” is defined as “the advancement of education” under the statute.²⁶ Trustees are “responsible for managing and investing” Brown’s endowment “in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.”²⁷

The RI statute identifies eight factors that must be taken into account in managing the University’s assets that inform the prudence of the decision-makers, providing that:

- (1) In managing and investing an institutional fund, the following factors, if relevant, must be considered:
 - (i) General economic conditions;
 - (ii) The possible effect of inflation or deflation;

²¹ “Expectations of Corporation Members,” at <https://corporation.brown.edu/about/roles-and-responsibilities>.

²² Letter from President Paxson: Responding to Divestment Referendum Vote, March 22, 2019, at <https://www.brown.edu/news/2019-03-22/referendum>.

²³ Roles and Responsibilities of Trustees, at <https://corporation.brown.edu/about/roles-and-responsibilities>.

²⁴ RI ST § 18-12.1-3, at <http://webserver.rilin.state.ri.us/Statutes/TITLE18/18-12.1/18-12.1-3.htm>.

²⁵ *Id.* at § 18-12.1-3(a).

²⁶ *Id.* at § 18-12.1-2, at <http://webserver.rilin.state.ri.us/Statutes/TITLE18/18-12.1/18-12.1-2.htm>.

²⁷ *Id.* at § 18-12.1-3(b).

- (iii) The expected tax consequences, if any, of investment decisions or strategies;
- (iv) The role that each investment or course of action plays within the overall investment portfolio of the fund;
- (v) The expected total return from income and the appreciation of investments;
- (vi) Other resources of the institution;
- (vii) The needs of the institution and the fund to make distributions and to preserve capital; and
- (viii) An asset's special relationship or special value, if any, to the charitable purposes of the institution.²⁸

Voting in favor of the Divestment Proposal would represent a violation of the Trustees' statutorily prescribed fiduciary duties to Brown University for several reasons. First, as noted above, the actual divestiture from the 10 companies targeted by BDC would not sufficiently correlate to BDC's stated political objectives to render the choice a prudent one. Second, choosing to divest from these particularly large and high performing corporations also would be imprudent, as they are typically inflation proof and outperform other equity sectors. They will not be easy to replace. These types of companies also tend to pay out high dividends and generate large quantities of cash which the University would lose out on for little benefit in return.

Donor designations complicate matters further. They will need to be examined to assess whether they would be violated by divestment, and Rhode Island's UPMIFA makes clear that, with rare exception, donor direction must be followed. In addition, donor designations often seek to accomplish their goals through cash, such as designating that the income from their bequest be used to fund a scholarship. Brown would need to find other cash-heavy instruments to replace those from which it is forced to divest. The entire process likely will be costly as it will require third-party evaluation and assistance to accomplish.

Furthermore, the choice to divest to make a political statement necessarily implicates other political statements. The same arms manufacturers who may supply some small quantity to Israel may also supply Ukraine. Inadvertently, Brown could be deemed to be making a pro-Putin statement by divesting from such military contractors. Some of these companies are also involved in projects supported by other campus constituencies. General Electric, for example, creates value in the environmental friendliness space. Are BDC's concerns more important to the Corporation and to Brown than the concerns of its environmentally conscious constituents? The inadvertent messages and impacts of this Divestment Proposal are complex and cannot be overlooked by sound fiduciaries.

Lastly, the BDS movement is directly contrary to the statutory mission of Brown, namely education. Divestment shuts down discourse. It replaces the richness that comes from learning about the other with simplistic rejectionism of the other. BDS does not support intellectually sound

²⁸ *Id.* at § 18-12.1-3(c).

resolution to the Israeli-Palestinian conflict. It supports the dissolution of one of the parties to the conflict. It promotes academic boycotts of Israeli universities and academics. It seeks to build walls rather than break them down. Brown's very ethos and culture – one of collaboration, openness, and respect for all – are at stake in this vote. The Corporation members are duty-bound to protect that ethos and culture.

c. Brown Risks the Enforcement Against it of Anti-BDS Laws Nationwide

“If adopted, the Brown Divest Now proposal will have immediate and profound legal consequences for Brown...”²⁹

Both the Corporation's fiduciary duties and the Rhode Island state anti-BDS law dictate against supporting the Divestment Proposal. Thankfully, you do not have to take our word for it alone. In a clear warning shot across Brown's bow, the Attorneys General of 24 states have declared this divestment proposal illegal in an August 26, 2024 letter to the University.³⁰

The Divestment Proposal directly violates Rhode Island's Anti-Discrimination in State Contracts Act and exposes Brown University to the scrutiny of and potential legal action by the Attorney General of Rhode Island as well as the 24 Attorneys General signatory to that letter. In July, 2016, then-governor Gina Raimondo signed into law HB-7736,³¹ after it had passed by a 63-4 vote in the Rhode Island House and by acclamation in the Senate.³² Known as the Anti-Discrimination in State Contracts Act, it prohibits the state from entering into contracts with any institution boycotting Israel or any other ally of the United States. The law provides:

A public entity shall not enter into a contract with a business to acquire or dispose of supplies, services, information technology, or construction unless the contract includes a representation that the business is not currently engaged in, and an agreement that the business will not during the duration of the contract engage in the boycott of any person, firm or entity based in or doing business with a jurisdiction with whom the state can enjoy open trade, and/or the boycott of any public agencies, entities or instrumentalities of the jurisdiction with whom the state can enjoy open trade.³³

The law says that a boycott means “blacklist, divest from, sanction or otherwise refuse to deal with a person, firm or entity, or a public entity of a foreign state.”³⁴

Moreover, Rhode Island passed this law to prevent precisely the type of discriminatory boycott sought by BDC. Representative Mia Ackerman, who introduced the bill, openly expressed the

²⁹ Letter from the State of Arkansas and 23 other States urging rejection of the “Brown Divest Now” proposal, Aug.26, 2024, at <https://arkansasag.gov/wp-content/uploads/2024-08-26-Arkansas-Letter-to-Brown-University-Corporation.pdf>.

³⁰ *Id.*

³¹ “R.I. opposes discrimination against Israel,” The Providence Journal, July 17, 2016.

³² “Rhode Island passes anti-boycott legislation,” The Times of Israel, June 19, 2016.

³³ *Id.*

³⁴ “2016 – H 7736: An Act Relating to Public Property and Words – Anti-discrimination in State Contracts,” the State of Rhode Island, Introduced February 24, 2016.

legislative intent of this law. As Rep. Ackerman stated, “Today’s interdependent global economy requires that trade policy be developed at the national and state level. One of our greatest trading allies is the State of Israel, the only democratic, non-discriminatory country in the Middle East.”³⁵

While it is true that Brown is a private institution as opposed to a state school, this does not absolve it from being subject to the state law. Any contracts Brown currently has with the state or state entities, including hospitals where medical and public health students train and work, will be implicated. Future contractual relations with the state will be stymied. And, as Arkansas Attorney General Tim Griffin warned,

If adopted, the Brown Divest Now proposal will have immediate and profound legal consequences for Brown, its employees, and its student body because it may trigger the application of laws in nearly three-fourths of States prohibiting States and their instrumentalities from contracting with, investing in, or otherwise doing business with entities that discriminate against Israel, Israelis, or those who do business with either. Adopting that proposal may require our States—and others—to terminate any existing relationships with Brown and those associated with it, divest from any university debt held by state pension plans and other investment vehicles, and otherwise refrain from engaging with Brown and those associated with it. We therefore urge you to reject this antisemitic and unlawful proposal.³⁶

For instance, if Brown sells its Choices curriculum in one of these 24 states, it will no longer be able to do so. If Brown faculty collaborate with state schools in these jurisdictions, those projects will be at risk. “Indeed, in response to reports about Brown consideration of the Brown Divest Now proposal, many of our States are currently undertaking a review of our pension investments and contracts to determine if Brown has already violated state law.”³⁷

These Attorneys General do not hesitate to recognize that the BDS movement is inherently antisemitic and discriminatory, and they have made plain their intentions to invoke their laws to combat such malignant intent. ACURM and the Corporation must consider these real impacts when weighing the value and impact of divestment measures that demonstrate little likelihood of effecting their intended goals. As a matter of law, therefore, ACURM and the Corporation must reject the Divestment Proposal.

REJECTING DIVESTMENT IS THE RIGHT AND MORAL CHOICE

Thankfully, this necessitated outcome also results in the proper moral outcome. Promoting BDS does not just violate the law, ACURM’s charges, the Corporation’s fiduciary duties, and good fiscal sense. It is just plain wrong.

³⁵ “R.I. opposes discrimination against Israel,” The Providence Journal, July 17, 2016.

³⁶ Letter from the State of Arkansas and 23 other States urging rejection of the “Brown Divest Now” proposal, Aug. 26, 2024, at <https://arkansasag.gov/wp-content/uploads/2024-08-26-Arkansas-Letter-to-Brown-University-Corporation.pdf>.

³⁷ *Id.*

BDS is rejectionist. Since its inception, the BDS movement has overtly acknowledged its end goal of the destruction of Israel. Every step, every act undertaken to support BDS is meant to delegitimize and undermine Israel's right to exist. Not its government, not its leadership, not Netanyahu or his cronies, but *Israel's very right to exist*. Its founder, Omar Barghouti, has expressed this intent repeatedly. "Definitely, most definitely, we oppose a Jewish State in any part of Palestine. No Palestinian, rational Palestinian, not a sell out Palestinian, would ever accept a Jewish state in Palestine."³⁸ Compare this goal to that of the anti-apartheid movement against South Africa. No one ever questioned South Africa's basic right to exist as a nation state when promoting the boycott against it. The goal was to change South Africa's policies, not to wipe it off the face of the Earth.

BDS promotes hate. Do not be fooled by the disingenuous mantle of humanitarianism with which the BDC cloak themselves. Their website proclaims their intent in a section aptly entitled "Who We Are."³⁹ "Brown University Students for Justice in Palestine is affirmatively an anti-Zionist organization that fully supports the Boycott, Divestment, and Sanctions movement against the state of Israel."⁴⁰ They are telling you exactly who they are and what they stand for, and it is anathema to this institution's mission, purpose, and culture.

BDS demands never cease. Do not be fooled by an attempt to portray this decision as reasonable because it limits the request to 10 companies. BDS strategy views campus divestment as merely a stepping stone to larger scale boycotts and other measures aimed at destroying the Jewish state. Even Norman Finkelstein, an outspoken opponent of Israel, has recognized that BDS is "not really talking about rights. They're talking about [how] they want to destroy Israel."⁴¹ Success today will embolden the movement to seek academic boycotts and boycotts of Hillel, as is occurring today on campuses across the U.S.

BDS is discriminatory, bigoted, and anti-Semitic. It singles out the one Jewish state for condemnation while ignoring real humanitarian crises and genocides occurring throughout the world. While falsely demonizing Israel, BDS is silent on the wars and genocides in Syria, Sudan, China, Ukraine, and elsewhere. BDS shows its racist, bigoted nature in its single-minded focus on destroying the Jewish state. As Thomas Friedman so aptly stated, "criticizing Israel is not anti-Semitic, and saying so is vile. But singling out Israel for opprobrium and international sanction... is anti-Semitic, and not saying so is dishonest."⁴²

BDS harms Palestinians. Nothing is more dishonest about the movement than its masquerade as a pro-Palestinian effort. Palestinian workers earn twice as much working for Israeli

³⁸ Vimeo Video, *Omar Barghouti- Strategies for change*, Dag Hammarskjold Society, 23 Sep. 2013, <https://vimeo.com/75201955>.

³⁹ Brown Divest Coalition website, "Who We Are," <https://browndivest.org/new-page-4>.

⁴⁰ *Id.*

⁴¹ Norman Finkelstein, "Norman Finkelstein on BDS," YouTube, February 15, 2012, at <http://www.youtube.com/watch?v=iggdO7C70P8>.

⁴² Thomas Friedman, "Campus Hypocrisy," New York Times, October 16, 2002, at <http://www.nytimes.com/2002/10/16/opinion/campus-hypocrisy.html>.

companies as they do for Palestinian ones.⁴³ Before the current war, more than 100,000 Palestinians worked in Israel proper as well as West Bank settlements.⁴⁴ As noted above, the boycott of SodaStream threw thousands of Palestinians out of work. Noam Chomsky himself, one of Israel's harshest critics, accused BDS of calling for "the destruction of Israel," and said that "if you really hate the Palestinians, [BDS] is a good step because it's going to harm them."⁴⁵ If one cares about peace and resolution to conflict, one seeks to improve economic ties and relations between adversaries, not to create breaches and increased poverty.

BDS has direct ties to recognized terrorist organizations. Contrary to their dissimulated claims of serving a humanitarian, peace-loving purpose, the main organizations in the U.S. orchestrating the BDS movement – Students for Justice in Palestine (SJP) and its parent organization American Muslims for Palestine ("AMP") – have strong ties to terror-funding organizations. Since 2016, Jonathan Schanzer, a former terror finance analyst for the U.S. Treasury Department and now Sr. Vice President for Research at the Foundation for Defense of Democracies has testified before Congressional committees at least four times specifically about the nexus between BDS and terror-financing groups.⁴⁶

His research and testimony demonstrate deep connections between former employees of the now defunct Holy Land Foundation, Kind Hearts Foundation for Humanitarian Development, and the Islamic Association of Palestine – organizations implicated in and prosecuted by the Treasury for supplying Hamas with millions of dollars – and the organizations that lead the BDS movement today. Those employees lower down the chain of command who managed not to be prosecuted, convicted, and imprisoned in the scandals surrounding those three entities simply regrouped and formed new "charities." Today, they can be found leading AMP and National SJP as employees and board members. His research demonstrates ample connections between AMP, Hamas, the PFLP, and the PLO. As Dr. Schanzer testified to the House Foreign Affairs

⁴³ PCBS, "Labour Force Survey Annual Report: 2010," April, 2011, at http://www.pcbs.gov.ps/Portals/_PCBS/Downloads/book1744.pdf; Djamila Ould Khettab, "The Palestinians who work in settlements," *Your Middle East*, April 15, 2012, https://www.swuconnect.com/insys/npoflow.v.2/_assets/pdfs/fact_sheets/BDS%20factsheet.pdf.

⁴⁴ Khaled Abu Toameh, "20,000 Palestinians working in settlements, survey finds," *Jerusalem Post*, August 15, 2013, at <http://www.jpost.com/Middle-East/20000-Palestinians-working-in-settlements-survey-finds-323222>.

⁴⁵ Noam Chomsky, "Noam Chomsky Interviewed by Frank Barat, on Israel/Palestine (4/4)," YouTube, September 22, 2010, at <http://www.youtube.com/watch?v=H5hY-gffVOM>.

⁴⁶ <https://www.fdd.org/team/jonathan-schanzer/>; "From Ivory Towers to Dark Corners: Investigating the Nexus Between Antisemitism, Tax-Exempt Universities, and Terror Financing," Dr. Jonathan Schanzer, Nov. 15, 2023 at <https://gop-waysandmeans.house.gov/wp-content/uploads/2023/11/Schanzer-Testimony.pdf>; "Israel, the Palestinians, and the United Nations: Challenges for the New Administration," Dr. Jonathan Schanzer, Feb. 2, 2017, at <https://www.congress.gov/115/meeting/house/105508/witnesses/HHRG-115-FA13-Wstate-SchanzerJ-20170202.pdf>; "Examining Current Terrorist Financing Trends and the threat to the Homeland," Dr. Jonathan Schanzer, May 12, 2016, at <https://www.congress.gov/114/meeting/house/104904/witnesses/HHRG-114-HM05-Wstate-SchanzerJ-20160512.pdf>; "Israel Imperiled: Threats to the Jewish State," Dr. Jonathan Schanzer, April 16, 2016 at <https://docs.house.gov/meetings/FA/FA18/20160419/104817/HHRG-114-FA18-Wstate-SchanzerJ-20160419.pdf>.

Committee, “Americans have a right to know who is leading the BDS campaign and so do the students who may not be aware of AMP’s leaders or their goals.”⁴⁷

A key question ACURM and the Corporation should include in their analysis of this proposal is: who wants it? Who is funding this divestment movement? It is no coincidence that encampments promoting divestment across the U.S. used the same tents, the same pamphlets, the same slogans. It is not an accident that when one SJP chapter decides it is time to take over a campus building, ten follow suit within days. It is not random that Hillels are now the latest targets on campuses of SJP harassment and divestment demands since the return to campus.

The Congressional Committee on Oversight and Accountability currently is investigating the funding sources behind pro-Hamas and antisemitic groups proliferating on campuses and has requested documents from numerous universities to answer this very question.⁴⁸ The same Congressional Committee also subpoenaed AMP and National SJP directly in May for information regarding their promotion of Hamas propaganda on campuses, their own sources of funding, and potential ties to Hamas.⁴⁹

Who bought those high-quality tents? Who paid for those pamphlets and those “Days of Resistance Toolkits” found all over the country?⁵⁰ Who paid for and produced the BDC’s heavily produced, glossy-covered Divestment Proposal before you? Who coordinated, funded, and orchestrated the encampment the BDC students used to obtain this very opportunity to press for divestment?

On May 3, 2024, the Institute for the Study of Global Antisemitism & Policy released an alarming report revealing Hamas-linked funding for National SJP and its various chapters. Entitled “National Students for Justice in Palestine (NSJP): Antisemitism, Anti-Americanism, Violent Extremism and the Threat to American Universities,” the report delves into the organized, external, illegal forces motivating and bankrolling SJP riots and harassment of Jews on campuses nationwide.⁵¹ The report found not only externally organized radicalization on campuses, but millions of dollars of funding tied to groups who fund Hamas. The report corroborates Dr. Schanzer’s extensive research. Before voting to support Brown SJP’s bid to demonize Israel, ACURM and the Corporation owe it to themselves to read this report and Dr. Schanzer’s testimony and consider at whose behest they would divest.

Using divestment to make a political statement outside the bounds of Brown’s educational remit is problematic enough, but allowing organizations actively fomenting illegal activity and

⁴⁷ “Israel Imperiled: Threats to the Jewish State,” Dr. Jonathan Schanzer, April 16, 2016 at 11, <https://docs.house.gov/meetings/FA/FA18/20160419/104817/HHRG-114-FA18-Wstate-SchanzerJ-20160419.pdf>.

⁴⁸ Letter from Rep. Virginia Foxx and Rep. Jason Smith to Dr. Alan Garber and Ms. Penny Pritzger re: antisemitic harassment at Harvard University, June 3, 2024, at https://edworkforce.house.gov/uploadedfiles/harvard_whole_house_investigation_into_antistemitism_letter.pdf.

⁴⁹ Letter from James Comer to Dr. Osama Abuirshaid, Executive Director of AMP, May 29, 2024, at <https://oversight.house.gov/wp-content/uploads/2024/05/Letter-to-National-SJP-5.29.24.pdf>.

⁵⁰ https://isgap.org/wp-content/uploads/2024/06/SJP_Report.pdf.

⁵¹ “National Students for Justice in Palestine (NSJP): Antisemitism, Anti-Americanism, Violent Extremism and the Threat to American Universities,” https://isgap.org/wp-content/uploads/2024/06/SJP_Report.pdf.

undermining U.S. security interests and foreign policy to dictate Brown's institutional priorities exposes the University to liabilities, reputational damage, and moral rot from within. ACURM and the Corporation must protect Brown University from making such a choice.

CONCLUSION

At a critical juncture in history when antisemitism has once more come into fashion, ACURM and the Corporation have been tasked with a choice. You must decide whether Brown stands on the right or the wrong side of history. You must decide whether Brown stands beside a small group of bigots and antisemites or speaks on behalf of *all* of its students and constituents. You must decide whether this hallowed institution values institutional neutrality or uses its endowment as a tool for partisan politics. You must decide whether Brown values the safety of its Jewish students or will toss them to the wolves. You must decide whether Brown has abandoned its educational and research mission in order to play mouthpiece to nefarious foreign influences seeking to undermine our very nation's security or whether it stands by the values for which this university has stood for hundreds of years as espoused by President Wriston in Brown's Mission Statement: "*...that the sectarian differences of opinions shall not make any part of the public and classical instruction... And above all, a constant regard be paid to, and effectual care taken of, the morals of the College.*"⁵²

For the sake of the current and future members of this community, Brown must not falter in making the right choice. You must reject divestment.

Sincerely,

The Brown Jewish Alumni & Friends Steering Committee:

Ellen Ginsberg Simon '00

Abby Doft '91, P'27

Inbar Kirson P'26

Fred Horowitz '86

Justin Steinberg '98

Gabriella Raviv '22

⁵² The Charter of Brown University at 15, https://corporation.brown.edu/sites/default/files/documents/charter-of-brown-university_08312020.pdf.