

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of

COLUMBIA STUDENTS FOR JUSTICE IN PALESTINE,
COLUMBIA-BARNARD JEWISH VOICE FOR PEACE,
MARYAM ALWAN, and CAMERON JONES,

Petitioners,

-against-

TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY
OF NEW YORK, COLUMBIA UNIVERSITY IN THE
CITY OF NEW YORK, MINOUCHE SHAFIK, in her
official capacity as President of Columbia University in the
City of New York, and GERALD ROSBERG, in his official
capacity as Senior Executive Vice President of Columbia
University in the City of New York,

Respondents.

For a Judgment Pursuant to Article 78 of the Civil Practice
Law and Rules.

Index No.: _____

**PETITIONERS' MEMORANDUM OF LAW IN SUPPORT OF THE
VERIFIED PETITION**

NEW YORK CIVIL LIBERTIES UNION
FOUNDATION

PALESTINE LEGAL

Guadalupe V. Aguirre
Veronica R. Salama
Christopher T. Dunn
Camara S. Hudson
125 Broad St., Floor 19
New York, N.Y. 10004
Tel: (212) 607-3300
Fax: (212) 607-3318
laguirre@nyclu.org

Radhika Sainath
Sabiya Ahamed
Palestine Legal
55 Exchange Place
New York, N.Y. 10005

Of Counsel

Counsel for Petitioners

Dated: March 11, 2024
New York, New York

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

PRELIMINARY STATEMENT 1

STATEMENT OF FACTS 2

 I. COLUMBIA UNIVERSITY’S COMMITMENT TO FREE EXPRESSION AND OPEN DEBATE ON CAMPUS AND SHARED-GOVERNANCE STRUCTURES 2

 II. STUDENTS FOR JUSTICE IN PALESTINE AND JEWISH VOICE FOR PEACE..... 6

 III. COLUMBIA’S WELL-ESTABLISHED POLICIES AND PRACTICES REGARDING STUDENT GROUPS..... 7

 A. University policies and practices governing student-group activity 7

 B. The SGB Judiciary Process 8

 C. The SGAB’s Disciplinary Process 9

 IV. THE NOVEMBER 9 PEACEFUL PROTEST AND NOVEMBER 10 SUSPENSION OF STUDENTS FOR JUSTICE IN PALESTINE AND JEWISH VOICE FOR PEACE AT COLUMBIA 10

ARGUMENT 15

 I. COLUMBIA’S SUSPENSION OF STUDENTS FOR JUSTICE IN PALESTINE AND JEWISH VOICE FOR PEACE FAILED TO SUBSTANTIALLY COMPLY WITH THE UNIVERSITY’S ESTABLISHED PROCEDURES FOR SANCTIONING STUDENT GROUPS AND WAS THUS ARBITRARY AND CAPRICIOUS. 16

 II. COLUMBIA’S CHOICE TO SUSPEND SJP AND JVP FOR A MERE ALLEGED PROCEDURAL VIOLATION IS SHOCKING TO ONE’S SENSE OF FAIRNESS AND WAS THEREFORE ARBITRARY AND CAPRICIOUS..... 19

CONCLUSION..... 21

TABLE OF AUTHORITIES

Cases

<i>Bolt v New York City Dept. of Educ.</i> , 30 NY3d 1065 [2018]	19
<i>Fraternity of Alpha Chi Rho, Inc. v Syracuse Univ.</i> , 70 Misc 3d 1223(A) [Sup Ct, Onondaga County 2021]	18
<i>Harris v Trustees of Columbia Univ.</i> , 62 NY2d 956 [1984], <i>revd on dissenting op of Kassal, J.</i> , 98 AD2d 58 [1983]	15
<i>Kickert v New York Univ.</i> , 99 AD3d 502 [1st Dept 2012], <i>mod on other grounds</i> 25 NY3d 942 [2015]	19, 20
<i>Matter of A.E. v Hamilton Coll.</i> , 173 AD3d 1753 [4th Dept 2019]	16
<i>Matter of Doe I v State Univ. of New York at Buffalo</i> , 219 AD3d 1663 [4th Dept. 2023]	17
<i>Matter of Doe v Skidmore Coll.</i> , 152 AD3d 932 [3d Dept 2017]	16
<i>Matter of Olsson v New York City Bd. of Higher Educ.</i> , 49 NY2d 408 [1980]	16
<i>Powers v St. John's</i> , 25 NY3d 210 [2015]	15
<i>Tedeschi v Wagner College</i> , 49 NY2d 652 [1980]	15, 16, 17, 19

Rules

Columbia Statutes §§ 445-50	6
-----------------------------------	---

Other Authorities

Columbia University, ABC Code of Conduct, https://abc.studentgroups.columbia.edu/content/code-conduct [last accessed Mar. 9, 2024]	5
Columbia University, <i>Dean's Discipline</i> , https://bulletin.columbia.edu/columbia-college/standards/ [accessed Mar. 9, 2024]	6
Columbia University, <i>Undergraduate Student Life</i> , https://www.cc-seas.columbia.edu/adjudication [last accessed Mar. 8, 2024]	5
Student Governing Board, About SGB, http://www.columbia.edu/cu/sgb/about.html [last accessed Mar. 7, 2024]	5
Undergraduate Student Life, Student Clubs and Organization, https://www.cc-seas.columbia.edu/studentlife/resources [last accessed Mar. 7, 2024]	5

PRELIMINARY STATEMENT

This Article 78 action challenges Columbia University's summary suspension of its two most prominent student groups that advocate for Palestinian rights, the petitioners Columbia Students for Justice in Palestine and Columbia-Barnard Jewish Voice for Peace. In the midst of intense protests on campuses across the country against Israel's military campaign in Gaza, these two Columbia groups advertised and participated in a peaceful campus protest on November 9, 2023 that was sponsored by a coalition comprised of over 20 groups. The next day, university officials singled out SJP and JVP and suspended them for alleged violations of university procedural rules governing campus events. The two groups were given no notice of the planned suspensions and no opportunity to respond to the charges or to contest them. None of the other groups involved in the event faced disciplinary action.

In the aftermath of student protests that shook the Columbia University community in 1968, the university implemented policies and procedures for assuring that the right to protest would be respected and that student groups would have procedural protections when faced with efforts by university officials to discipline them, including the creation of a specific process for the handling of alleged violations of university rules by student groups. In suspending SJP and JVP on November 10, 2023, Columbia University disregarded these rules entirely and instead summarily and unilaterally punished the groups.

Not only did Columbia University violate its own policies and procedures in sanctioning SJP and JVP, its imposition of the serious penalty of suspension was plainly disproportionate to the minor violation of procedural rules the university invoked. Indeed, the fact that no other group involved in the November 10 demonstration faced consequences reveals that SJP and JVP were targeted for punishment not because of the claimed rules infractions but because of the content of their advocacy. Notably, at the time of the suspensions, Columbia was facing intense public

pressure to crack down on pro-Palestinian advocacy on its campus, including specific demands that it punish SJP and JVP.

Columbia University's suspension of SJP and JVP violates long-established law requiring private universities to comply with their own disciplinary procedures and requiring punishment be proportionate to alleged offenses. The petitioners therefore seek nullification of the two suspensions and related relief.

STATEMENT OF FACTS

I. COLUMBIA UNIVERSITY'S COMMITMENT TO FREE EXPRESSION AND OPEN DEBATE ON CAMPUS AND SHARED-GOVERNANCE STRUCTURES

Covering a host of important political issues from anti-Black racism, the Vietnam war, reproductive rights, climate change, and Israel-Palestine, Columbia University ("Columbia") has a history of vibrant student activism that has taken many forms, including demonstrations, rallies, picketing, strikes, and sit-ins.¹ Columbia has touted its "long tradition of valuing dissent and controversy and in welcoming the clash of opinions onto campus," and has expressed its commitment to "ensure members of [its] community may engage in [its] cherished traditions of free expression and open debate" thereby fostering a culture of student protest and activism on campus (*see* Salama Affirmation, exhibit B, Columbia University Charters & Statutes ["Columbia Statutes"] at 136). Codifying this commitment in its Rules of University Conduct, the university affirmatively promises that

the University cannot and will not rule any subject or form of expression out of order on the ground that it is objectionable, offensive, immoral, or untrue. Viewpoints will inevitably conflict, and members of the University community will disagree with and may even take offense at both the opinions expressed by others and the manner in which they are expressed. But the role of the University is not to shield individuals from positions that they find unwelcome.

¹ *See e.g.*, affirmation of Veronica Salama ["Salama Affirmation"], exhibit A ["Columbia Protest Articles"]; affirmation of Elana Shanti Sulakshana ¶ 13-22 ["Sulakshana Affirmation"].

(*Id.*).

Student activism itself has played a key role in securing and strengthening Columbia's commitment to supporting student protest and free expression. In 1968, Columbia's campus experienced intense student protest activity in opposition to the Vietnam War and the university's plan to build a gym in Morningside Park to which the surrounding and predominantly Black residents would have limited access.² Hundreds of students protested, marched, and engaged in sit-ins.³ Unable to effectively engage with the students regarding their demands, the university administration instead cracked down on student activists, at one point bringing in over 1,000 New York City Police Department officers to quell the protests, which led to over 700 arrests and over 100 students injured. (Levi 1968 Article.) A fact-finding investigation commissioned by the university to identify the root causes of the 1968 "crisis" observed that the university administrators had "conveyed an attitude of authoritarian [sic] and invited distrust" and contemporary attitudes regarding university/student relations conveyed that students felt they had "no voice," and "the idea of due process . . . was foreign." (*See id.*; *see also* Salama Affirmation, exhibit E, 1968: Columbia in Crisis, Columbia University Libraries, *Consequences*, <https://exhibitions.library.columbia.edu/exhibits/show/1968/consequences/cox> [accessed Mar. 8, 2024] ["1968: Columbia in Crisis"]).

The events of 1968 and revelations from the fact-finding investigation ushered in unprecedented institutional reforms still in place today. In 1969, the university established the University Senate and the Student Governing Board ("SGB") as part of a new shared-governance

² *See* Salama Affirmation, exhibit C, Scott Levi, *From Tumultuous Events, Emerges a Redefinition of University Governance*, Columbia Spectator, Apr 23, 2008 ["Levi 1968 Article"]; Salama Affirmation exhibit D.

³ *See* Levi 1968 Article; *see also* Columbia Protest Articles, *supra* n1.

structures to safeguard against future authoritarian and unilateral actions by the administration towards students and student groups. (See Levi 1968 Article; 1968: Columbia in Crisis.) The University Senate is a policy-making body composed of representatives from the university administration, faculty and other university staff, members from affiliated institutions, students, and alumni (see Columbia Statutes at 16) and was established “to concretize a body of self-governance that is able to check administrative power” (Salama Affirmation, exhibit F, Sarah Huddleston, *University Senate passes recommendations to amend updated University event policy to ‘not place an undue burden on free expression on campus’*, Columbia Spectator, Dec. 8, 2023, <https://www.columbiaspectator.com/news/2023/12/08/university-senate-passes-recommendations-to-amend-updated-university-event-policy-to-not-place-an-undue-burden-on-free-expression-on-campus/> [accessed Mar. 11, 2024] [“Huddleston Article”]). The University Senate is responsible for, among other duties, setting university-wide policies and “promulgat[ing] a code of conduct for faculty, students, and staff and provide for its enforcement.” (Columbia Statutes at 22.) Any amendments to the Rules of University Conduct require the approval of the University Senate and the university’s trustees. (See Salama Affirmation, exhibit G Columbia University–University Senate, *Rules of University Conduct Committee*, <https://senate.columbia.edu/committees/rules> [accessed Mar. 9, 2024]).

Similarly, the SGB was created “to meet student demands for a self-governing student caucus” (See Salama Affirmation, exhibit H). The oldest of Columbia’s governing boards, the SGB is responsible for recognizing and directly supervising all student organizations that are “spiritual,

ideological, political, humanitarian, cultural, or activist” in nature⁴ (*see* Salama Affirmation, exhibit I, SGB Constitution & By-Laws [“SGB Constitution”]). The “SGB general body” is comprised of representative delegates from all member groups and falls under the Undergraduate Student Life⁵ (“USL”) (*see* SGB Constitution at 2-3). Each SGB member group has an assigned USL advisor (*see* SGB Constitution at 8).

The SGB, through an elected “Executive Board” comprised of students, oversees the “discipline of its member groups in the event of constitutional violations and intragroup and intergroup conflict.” (SGB Constitution at 2) The SGB also hears complaints relating to violations of university rules by its member groups, including violations of university rules governing events sponsored by student groups on campus (*see* Salama Affirmation, exhibit L, SGB Judiciary Process [“SGB Judiciary Process”]). The SGB is “authorized to handle discipline and enforce rules for SGB groups” (Salama Affirmation, exhibit K, Student Governing Board Fact Files at 11 [“SGB Fact Files”]; *see also* SGB Judiciary Process at 1). Accordingly, the SGB “may discipline misbehaving SGB groups through restrictions on their budgets and activities,” including through suspensions (*see* SGB Fact Files at 11; *see also* SGB Judiciary Process at 4). The SGB Executive Board maintains a robust adjudicatory process as part of its disciplinary adjudications (*see* SGB Judiciary Process at 2-3) and is advised by the University Student Life (“USL”).

⁴ Subsequently, four additional governing boards were established at Columbia University, each overseeing student groups with focus areas outside of the SGB’s. The additional governing boards are: the Activities Board at Columbia (ABC), the Columbia College Student Council (CCSC), the Engineering Student Council (ESC), and the General Studies Student Council (GSSC) (Columbia University, *Undergraduate Student Life*, <https://www.cc-seas.columbia.edu/adjudication> [accessed Mar. 8, 2024]). Each governing board is responsible for directly supervising their member student groups and have their own applicable disciplinary processes (*see e.g.*, Columbia University, ABC Code of Conduct, <https://abc.studentgroups.columbia.edu/content/code-conduct> [accessed Mar. 9, 2024]).

⁵ This office has gone through various iterations, including the Office of Student Group Advising and the Office of Civic Action and Engagement (*see* Undergraduate Student Life, Student Clubs and Organization, <https://www.cc-seas.columbia.edu/studentlife/resources> [accessed Mar. 7, 2024] [describing the office’s transition to the USL]; Student Governing Board, About SGB, <http://www.columbia.edu/cu/sgb/about.html> [accessed Mar. 7, 2024] [describing the change from the OSGA to the OCAE]).

Columbia has also established the Student Group Adjudication Board (“SGAB”) to adjudicate disciplinary actions against student organizations (*see* Salama Affirmation, exhibit J). The SGAB is a disciplinary hearing board and “peer-to-peer process that consists of trained students elected” from each of the five governing boards, “supported by” three university staff members. (*Id.*) Example of SGAB cases include “[f]inancial policy violations,” travel policy violations, “press policy” violations, and event-policy violations like “advertising events that are not confirmed.” (*See id.*) Governing boards like the SGB and the SGAB only adjudicate complaints of student group misbehavior and thus do not handle any individual-student disciplinary matter.⁶

II. STUDENTS FOR JUSTICE IN PALESTINE AND JEWISH VOICE FOR PEACE

Columbia SJP is a part of a nationwide student movement advocating for Palestinian liberation, human rights, and self-determination (affirmation of Maryam Alwan ¶ 5 [“Alwan Affirmation”]). SJP became an officially recognized student group over a decade ago. (*Id.* ¶ 2.) In that time, the group has worked to raise awareness about Palestinian history, cultures, and struggle for freedoms, as well as advocate in support of the Boycott, Divestment, and Sanctions (“BDS”) movement on campus. (*Id.* ¶ 3.) Over the years, SJP has organized book clubs, demonstrations, vigils, guest speakers, and film screenings. (*Id.* ¶ 10.) Petitioner Alwan is a member and organizer within SJP and a person of Palestinian descent. (*Id.* ¶ 4.) She joined SJP in Spring 2023 to advocate for the humanity and rights of Palestinian people worldwide. (*Id.*)

⁶ Investigations and discipline of an individual student’s academic or behavioral misconduct, including violations of university rules or local, State, or Federal laws, are subject to other university processes, such as the Dean’s Discipline process (*see* Columbia University, *Dean’s Discipline*, <https://bulletin.columbia.edu/columbia-college/standards/> [accessed Mar. 9, 2024]; *see also* Salama Affirmation, exhibit K, SGB Fact Files). If an individual student is alleged to have violated the University Rules of Conduct, however, they are afforded a robust disciplinary process contained therein, which may include informal resolution, administrative resolution (akin to a plea), or a formal hearing by another adjudicative body, the University Judicial Board (Columbia Statutes §§ 445-50).

Columbia-Barnard Jewish Voice for Peace is the Columbia chapter of Jewish Voice for Peace, which describes itself as the largest Jewish anti-Zionist organization in the world (affirmation of Cameron Jones ¶¶ 3-4 [“Jones Affirmation”]). JVP became an officially recognized group at Columbia in 2014. (Jones Affirmation ¶ 3.) JVP has two missions: to create a safe community and cultural space for anti-Zionist Jews and to be an activist group that is inspired by Jewish traditions to fight for Palestinian rights while centering Palestinian voices. (*Id.* ¶ 5.) In support of these missions, JVP has organized cultural events like seders and shabbat dinners, actions such as demonstrations and vigils, and has advocated in support of the BDS movement. (*Id.* ¶ 9.) Petitioner Jones is a member and organizer for JVP. (*Id.* ¶ 2.) He was motivated to join JVP in September 2022 by his personal experiences as an anti-Zionist Jew, and he has valued having a space to celebrate his religion and advocate for Palestinian liberation. (*Id.* ¶ 6.)

As political student groups, SJP and JVP are recognized by and fall under the direct supervision of the SGB and the SGAB (*see* Columbia University, *About the Student Governing Board*, <https://columbia-26ek.b12sites.com/about> [accessed Mar. 9, 2024] [link to document under “Members”]). SJP and JVP are part of a broad coalition of over 20 student organizations across Columbia, each of its four affiliated undergraduate institutions, and sixteen graduate schools called Columbia University Apartheid Divest (“CUAD”) (Jones Affirmation, exhibit A, CUAD Letter to University dated November 9th, 2023).

III. COLUMBIA’S WELL-ESTABLISHED POLICIES AND PRACTICES REGARDING STUDENT GROUPS

A. University policies and practices governing student-group activity

Student groups recognized by Columbia are subject to their governing board’s constitutions and by-laws (*see e.g.* SGB Constitution) and university rules, including the Student Group Event Policy and Procedure and the University Event Policy (collectively, “event policies”) (*see* Salama

Affirmation, exhibit N, University Event Policy, dated September 24, 2023; Salama Affirmation, exhibit O, Student Group Event Policy, dated June 12, 2023). The event policies outline various requirements for things like obtaining event approval, securing event space, and having guests. (Salama Affirmation, exhibit N, O). The event policies apply to protests and demonstrations and prohibit students from advertising or hosting events prior to approval. (Salama Affirmation, exhibit N, O.)

Sometime in October 2023, university administrators unilaterally amended pre-existing event policies without consulting with or approval by the University Senate but did not purport to replace governing procedures under SGB and SGAB for investigating and sanctioning student groups alleged to have violated university policies (*see* Alwan Affirmation, exhibit D, Email from Aaron Gomes dated Nov. 7, 2023; Salama Affirmation, exhibit P, Nov. 17, 2023 University Senate Plenary at 5 [“Nov. 17 Senate Plenary”]). The event policies were amended yet again sometime in 2024, in consultation with the University Senate, to ensure that they were consistent with governing procedures and university rules, including the Rules of University Conduct (*see* Salama Affirmation, exhibit Q, Columbia’s 2024 Demonstrations Policy; Nov. 17 University Senate Plenary [raising concerns that the event policies are not consistent with the Rules of University Conduct]).

B. The SGB Judiciary Process

Complaints against a group governed by SGB may be initiated by an officer of the university or a student in another member group (SGB Judiciary Process at 1). First, a letter detailing the complaint and providing supporting evidence must be submitted to the SGB Executive Board. (*Id.*) The SGB Executive Board then reviews and votes on whether to hear the complaint or refer it to another disciplinary body, such as the SGAB (*Id.* at 2.) If the SGB Executive Board decides to hear a case, it will inform the defendant student group of the complaint

against them, provide a copy of the original complaint and the supporting evidence, and schedule a mediation. (*Id.*) The defendant student group is assigned a representative to serve as an advisor during the mediation. (*Id.*) If mediation is unsuccessful, a hearing is scheduled before members of the SGB executive board. (*Id.*) To find a student group “guilty,” a majority of the hearing committee members must sign on to a written opinion regarding the finding. (*Id.* at 3.)

A guilty finding may lead to discipline. (*Id.* at 4) The sanction must be agreed upon by members of the hearing committee, and the defendant student group must be provided with a written justification for the specific sanction. (*Id.*) Possible sanctions include a warning, a fine, ineligibility to receive a budget for a period, loss of ability to reserve space for a period of time, suspension, and derecognition. (*Id.*; SGB Constitution at 8-9). A student group is entitled to appeal any sanction to the SGB “Town Hall” (SGB Judiciary Process at 4), which are regular meetings of the SGB’s general body. (SGB Constitution.) Bases for appeal include: new substantial information unavailable at the time of the hearing; the SGB Executive Board did not follow proper procedures or violated the SGB Constitution in making its decision; or the sanction was disproportionate to the offense (*Id.*)

C. The SGAB’s Disciplinary Process

In some instances, the SGB may refer a complaint to the SGAB, which also can receive complaints from “[m]embers of the Columbia community” reported to it through a “General Concern Report” form (SGAB Adjudication Process). The SGAB reviews the complaint and determines the appropriate response for resolution, including whether the matter should be resolved through the Rules of University Conduct or Dean’s Discipline process. (*See id.*) If the case remains with the SGAB, and depending on the allegations, the SGAB can proceed with an informal resolution with the student group’s adviser or seek a resolution through a formal SGAB hearing. (*Id.*) As with SGB hearings, SGAB hearings must conclude with a written explanation of

the board's findings of fact, the outcome of the hearing, and the rationale for the decision (Salama Affirmation, exhibit M). Possible sanctions include warning, loss of space reservation abilities, group probation, suspension, or group de-recognition (SGAB Adjudication Process). A student organization can appeal SGAB decisions based on one of the following reasons: new information that was unavailable at the time of the hearing has arisen; concerns with the process that materially affect the outcome; and the sanction is disproportionate to the nature of the offense. (*Id.*) The SGAB will then provide the student group with a written decision within five business days of receiving the appeal. (*Id.*)

IV. THE NOVEMBER 9 PEACEFUL PROTEST AND NOVEMBER 10 SUSPENSION OF STUDENTS FOR JUSTICE IN PALESTINE AND JEWISH VOICE FOR PEACE AT COLUMBIA

On November 9, 2023, students across the United States responded to an internationally organized “call to action” to engage in peaceful protest activity calling for an end to Israel’s current military campaign in the Gaza Strip, which at that point had claimed over 10,000 Palestinian lives and which today has claimed over 30,000 Palestinian lives (*see e.g.*, Salama Affirmation, exhibit R). On the Columbia campus, CUAD, which is a coalition of student organizations like SJP, JVP, Palestinian Student Union – Dar – (“Dar”), Somali Student Association, Asian American Alliance, African Student Union, Student Organization of Latinxs, and Barnard-Columbia Abolition Collective (“BCAC”)⁷—planned and hosted a peaceful demonstration and temporary art installation (Jones Affirmation ¶ 16). As part of CUAD’s planning efforts, the coalition created a flyer inviting students to join their demonstration. (Jones Affirmation ¶ 16; *see* Figure 1 below.)

⁷ *See* Jones Affirmation, exhibit A, Columbia University Apartheid Divest, *Columbia University Apartheid Divest: Who we are*, Columbia Spectator, Nov. 14, 2023, <https://www.columbiaspectator.com/opinion/2023/11/14/columbia-university-apartheid-divest-who-we-are/> [accessed Mar 10, 2024].

Numerous student-group members of CUAD, including SJP, JVP, Dar, and BCAC promoted the event via social media and other channels (Jones Affirmation ¶ 18).



Figure 1 – CUAD Flyer for the November 9, 2023 Demonstration

Over 200 students, including the individual petitioners, attended the demonstration (Jones Affirmation ¶ 28). For about two hours the students stood in unison at Low Steps listening to student speakers (Jones Affirmation ¶ 29). The students chanted political slogans like “Ceasefire Now!” and “Stop Bombing Gaza!” and conducted a symbolic “die-in”—a form of street theater where people lie on the ground to symbolize lives tragically lost (Jones Affirmation ¶ 29; Alwan Affirmation ¶ 6; Alwan Affirmation, exhibit T). Students also engaged with the art installation, writing the names of the over 10,000 Palestinians killed in Gaza at that point (Jones Affirmation ¶ 29; Alwan Affirmation ¶ 21-23). The demonstration ended with the students singing “We Shall Overcome” in unison. (Jones Affirmation ¶ 29.) Columbia was aware that the event was organized, advertised, hosted, and attended by CUAD’s broad coalition of student groups given CUAD had delivered a letter to the university explaining as much on November 9, 2023. (Jones Affirmation, exhibit A, CUAD letter.)

On November 10, 2023, members of SJP and JVP received an email from the Dean of Undergraduate Student Life, Cristen Scully Kromm, with the subject line “Decision and Notification.” (Jones Affirmation ¶ 30; Alwan Affirmation ¶ 30.) The email stated, in relevant part:

Columbia University is suspending Students for Justice in Palestine (SJP) and Jewish Voice for Peace (JVP) as official student groups through the end of the fall term. This decision was made after the two groups repeatedly violated University policies related to holding campus events, culminating in an unauthorized event Thursday afternoon that proceeded despite warnings and included threatening rhetoric and intimidation.

Suspension means the two groups will not be eligible to hold events on campus or receive University funding. Lifting the suspension will be contingent on the two groups demonstrating a commitment to compliance with university policies and engaging in consultations at a group leadership level with university officials.

(Jones Affirmation, exhibit C, Suspension Announcement). The email was a forwarded message on behalf of Columbia’s Executive Vice President Gerald Rosberg, (“VP Rosberg”) as the “Chairman of the Special Committee on Campus Safety” (“the Committee”). (*Id.*) The university has since renewed SJP and JVP’s suspension past the fall term.

No other student-group member of CUAD was sanctioned for organizing, advertising, or hosting the November 9 demonstration (Alwan Affirmation ¶ 42). Indeed, no action was taken against any of the other coalition member groups. (Alwan Affirmation ¶ 43.)

In a now-removed section of the university’s “Event Policy and Campus Resources FAQ,” the university described the Committee as a “temporary entity [and] mechanism to aid the administration in coordinating on campus . . . to address the deluge of operational issues around security that have arisen since October 7, 2023.” (Salama Affirmation, exhibit U, University

FAQ).⁸ The university has expressly stated that the Committee is not a policy-making entity. (*See id.*) The Committee reportedly meets daily. (*See id.*)

It was only as a result of the suspension notice that the petitioners, the University Senate, and broader Columbia University Community learned of the Committee's existence (Jones Affirmation ¶ 31; Nov. 17 Senate Plenary at 16-17). After news broke about the Committee's existence following its suspension of SJP and JVP, members of the Columbia University community raised concerns about the lack of transparency around the committee's composition and function, the process in which the committee had been established, the committee's suspension of SJP and JVP, and the committee's authority to unilaterally impose discipline on student groups (*see e.g.* Nov. 17 Senate Plenary 17; Alwan Affirmation ¶ 40; Affirmation of Kathryn Franke ["Franke Affirmation"] ¶ 11-16). The university subsequently acknowledged these concerns and attempted to address them at a November 17, 2023 University Senate Plenary meeting (Nov. 17 Senate Plenary). In answering questions about the committee's suspension of SJP and JVP, the university asserted that the decision to suspend SJP and JVP "came as a recommendation during the process of dealing with student groups. . . . [And VP Rosberg] and others were involved in formulating a recommendation that went to the senior leadership of the University, which approved" the decision. (Nov. 17 Senate Plenary at 17.) However, the SGB and SGAB had no involvement in the university's decision to suspend SJP and JVP. (*See id.* at 5 [recommending that student groups be sanctioned "under the appropriate procedures (e.g., SGAB, etc.)" in response to the university's unilateral decision to suspend SJP and JVP]; Jones Affirmation ¶ 43-45; Alwan Affirmation ¶ 32.)

⁸ This description was the university's response to the question "What is the Special Committee on Campus Safety?"; it is unclear why or when the university removed this section (*see* Salama Affirmation, exhibit U).

Immediately after issuing the suspension decision to SJP and JVP on November 10, the university issued a press statement about the decision on the Columbia News website from Vice President Rosberg, as the Committee's chair (Salama Affirmation, exhibit V). The press statement mirrored the language in the November 10 email sent to the students, including accusations that the demonstration "included threatening rhetoric and intimidation." (*See id.*) Upon information and belief, Columbia has rarely publicly announced a decision to suspend a student group (Franke Affirmation ¶ 10 [asserting that she had never seen the university make such a public announcement in their 45 years]). The public suspension decision garnered local, national, and international media attention (*see e.g.*, Alwan ¶¶ 33-35).

The university's public accusations that SJP and JVP had engaged in "threatening rhetoric and intimidation" deeply upset the Petitioners who grew concerned that the university's characterizations would paint the organizations and individual students as violent and significantly increase their risk of being doxxed or otherwise harmed or targeted by members of the public (Alwan Affirmation ¶ 51-52; Jones Affirmation ¶ 38-39). This language also appeared to invoke violations of the Rules of University Conduct, which prohibit speech that "constitutes a genuine threat of harassment" (Columbia Statutes at 136), prompting the petitioners to inquire whether the university was accusing them of violating those rules (Franke Affirmation ¶ 13; Franke Affirmation exhibit B). When pressed to specify which of the student groups' actions constituted "threatening rhetoric and intimidation," VP Rosberg proffered that protestors' accusations that Israel was "a racist state committing genocide" and "is an apartheid state" could upset some people and "seems . . . like an incitement of violence." (Franke Affirmation ¶ 20). However, VP Rosberg clarified that the student groups did not violate the Rules of University Conduct and were not suspended for any violation thereof (Franke Affirmation ¶ 20; Nov. 17 Senate Plenary at 8).

Prior to the student groups' suspension, Columbia was facing both internal and external pressure to crack down on pro-Palestinian demonstrations and student groups, specifically SJP and JVP (*see e.g.*, Salama Affirmation, exhibit AA). One email campaign that was started by a Columbia professor and had been circulating within the Columbia community specifically called for the university to disband SJP and, falsely labeling them antisemitic and pro-terror (Alwan Affirmation ¶ 15). And in October 2023, billionaire alum Leon Cooperman threatened to suspend all donations to the university over the student protests of Israel's military campaign in Gaza (Salama Affirmation, exhibit BB). Indeed, that month the university's donor relations office had been inundated with emails from donors and others condemning the university for failing to crack down on pro-Palestinian advocacy and began to track them (affirmation of Chigurupati Sonali, ¶¶ 9-12). That same month, billionaire Henry Swieca resigned from the Columbia Business School board over his indignation that the university was allowing "blatantly anti-Jewish student groups and professors" to "operate with complete impunity" (Salama Affirmation, exhibit CC).

ARGUMENT

Over 40 years ago in *Tedeschi v Wagner College*, the New York Court of Appeals established that disciplinary actions by private universities in New York are subject to review and nullification under Article 78 (49 NY2d 652, 660 [1980] [nullifying suspension of student]). As the Court of Appeals explained in 2015, such action is invalid if "it fails to abide by its own rules" (*Powers v St. John's*, 25 NY3d 210, 216 [2015] [citing *Harris v Trustees of Columbia Univ.*, 62 NY2d 956, 959 [1984], *rev'd on dissenting op of Kassal, J.*, 98 AD2d 58, 67-73 [1983]) or imposes a penalty so excessive that it shocks one's sense of fairness (*id.* [citation omitted]).

Here, there are two independent bases for annulling Columbia's decision to suspend SJP and JVP. First, by unilaterally suspending the student groups and offering no process whatsoever, the university wholly bypassed—and therefore did not substantially comply with—well-

established, governing procedures. Second, the university's unprecedented imposition of a suspension as discipline—the second-most severe penalty available—for an alleged procedural violation is plainly excessive to shock one's sense of fairness.

I. COLUMBIA'S SUSPENSION OF STUDENTS FOR JUSTICE IN PALESTINE AND JEWISH VOICE FOR PEACE FAILED TO SUBSTANTIALLY COMPLY WITH THE UNIVERSITY'S ESTABLISHED PROCEDURES FOR SANCTIONING STUDENT GROUPS AND WAS THUS ARBITRARY AND CAPRICIOUS.

As established by the Court of Appeals, the disciplinary actions of a university against its students or student organizations must proceed in accordance with the university's own rules, guidelines, and procedures (*see Tedeschi*, 49 NY2d at 660; *Matter of A.E. v Hamilton Coll.*, 173 AD3d 1753, 1754 [4th Dept 2019] [stating rule applies to student organizations]). Courts look more closely at challenged non-academic decisions (*Tedeschi*, 49 NY2d at 658; *compare id. with Matter of Olsson v New York City Bd. of Higher Educ.*, 49 NY2d 408, 413 [1980] [by contrast, describing the “utmost restraint” exercised by courts in their review of institutional decisions related to academic qualifications]). While “perfect adherence to every procedural requirement” is not required, a university must “substantially” comply with its own procedures (*Matter of Doe v Skidmore Coll.*, 152 AD3d 932, 935 [3d Dept 2017] [finding that “multiple failures” to comply with its policies, “taken together, demonstrated a lack of substantial compliance” and prejudiced petitioner]).

Here, the Court should find that Columbia acted arbitrarily and capriciously when it failed to substantially comply with applicable disciplinary procedures through the SGB or SGAB and denied SJP and JVP access to robust procedural protections, particularly in light of the university's apparent pretextual motive—to crack down on the student groups for their support of Palestinian rights.

In *Tedeschi*, the petitioner was suspended by a private college after a series of incidents in which she engaged in “disruptive” and “irrational” behavior, including dramatically tearing up her test book at the end of an exam, subjecting her professor to “a barrage of telephone calls in which [she] repeatedly threatened to commit suicide, or to ‘fix’ [her professor],” and appearing “in a distraught condition at the front door of [her professor’s] home” (*Tedeschi*, 49 NY2d at 655-56). In terms of process, the petitioner was given verbal notice of her suspension and had a meeting with three senior college officials. (*Id.* at 656.) The Court of Appeals held that the college did not substantially comply with its procedures because the applicable set of guidelines for the petitioner’s suspension required a hearing by the school’s Student-Faculty Hearing Board, which she was not afforded; consequently, the Court ordered the college to reinstate the petitioner or provide her with a hearing. (*Id.* at 662.) In so holding, the Court rejected the college’s argument that in providing informal meetings with the senior officials the college was sufficiently compliant; the Court noted “[t]hrough those meetings may have been sensitive and fair, as the Trial Judge indicated, it constituted no acceptable substitute for a hearing board composed of both students and faculty.” (*Id.* at 661.)

Here, Columbia similarly disregarded applicable procedural safeguards by summarily adjudicating the student groups’ purported procedural violations through an ad hoc, untransparent “safety” committee rather than established SGB or SGAB process (*see* Suspension Notice). Notably, just three days before the suspension, the university acknowledged the governing SGB or SGAB procedures when it reminded students that student groups recognized by the SGB “alleged to have violated [university event] policies may be referred to their governing board or the Student Group Adjudication Board (SGAB)” (Alwan Affirmation, exhibit D). Despite this notice and unlike the respondent in *Tedeschi*, which offered at least some process (*Tedeschi*, 49

NY2d at 656), Columbia chose to provide SJP and JVP with *no process at all* and thus fell far short of substantially complying with its established student-group-suspension procedures (*see id.* at 661-62; *see also Matter of Doe 1 v State Univ. of New York at Buffalo*, 219 AD3d 1663, 1664 [4th Dept. 2023] [university adjudication of a student misconduct case through the university code rather than the applicable formal Title IX grievance policy was arbitrary and capricious]). In so doing, the university significantly prejudiced SJP and JVP.

The university singled out SJP and JVP for discipline even though the November 9 demonstration was planned, advertised, and hosted by CUAD. Importantly, bodies like the SGB and SGAB were instituted at Columbia as part of a shared-governance structure to safeguard against this type of authoritarian action by university administrators (*see e.g.*, Salama Affirmation, exhibits C Levi 1968 Article; E 1968: Columbia in Crisis; F Huddleston Article). Moreover, their processes provide important mechanisms to hash out important nuances in facts, liability, and a student group's defenses. For example, in bypassing the SGB or SGAB process, the university denied the student groups several layers of due process, including, among other things, the right to obtain the factual bases of the allegations in writing, opportunities for mediation, hearings, and appeal (*see* Salama Affirmation, exhibits L SGB Judiciary Process; J SGAB Adjudication). Had the university afforded the SJP and JVP the proper procedural protections, the groups could have raised a defense that pointed out the November 9 event was sponsored by CUAD and raised an issue about whether the event policies even applied to SJP and JVP in light of that fact.

The groups also could have invoked the numerous suspect circumstances that evince that the university's decision was actually motivated by factors "outside the merits" of the violation (*see Fraternity of Alpha Chi Rho, Inc. v Syracuse Univ.*, 70 Misc 3d 1223(A) [Sup Ct, Onondaga

County 2021] [finding that procedural violations of the disciplinary rules were “quite troubling” in light of petitioner’s claim that the charge was “motivated by factors other than its merits”]) that is, pressure from pro-Israel donors and individuals opposed to SJP and JVP’s message. Finally, the groups also could have appealed the decision, particularly by raising the excessiveness of the sanctioned imposed as a basis (*see e.g.*, Salama Affirmation, exhibit J SGAB Adjudication Process [enumerating disproportionate sanction as a basis for appeal]).

Clearly, the disciplinary adjudication through the university’s ad hoc committee was “no acceptable substitute” for an adjudication through the SGB or SGAB (*see Tedeschi*, 49 NY2d at 661; *see also Kickertz v New York Univ.*, 99 AD3d 502, 510 [1st Dept 2012], *mod on other grounds* 25 NY3d 942 [2015] [failure to provide petitioner the opportunity to cross-examine her accuser and to allow key procedural rulings to be influenced by the Dean failed to substantially comply with university rules and was arbitrary and capricious]). Upholding Columbia’s sanction here would thus impermissibly allow the university to “avoid its own rules whenever its administrative officials in their wisdom see fit to offer what they consider as a suitable substitute [and]... reduce [its] guidelines to a meaningless mouthing of words” (*see Tadeshi*, 49 NY2d at 662).

II. COLUMBIA’S CHOICE TO SUSPEND SJP AND JVP FOR A MERE ALLEGED PROCEDURAL VIOLATION IS SHOCKING TO ONE’S SENSE OF FAIRNESS AND WAS THEREFORE ARBITRARY AND CAPRICIOUS.

An independent basis for nullifying the suspension arises from Columbia University’s choice to impose suspension as discipline—a severe sanction that falls just short of de-recognition—for allegedly planning, advertising, and participating in the November 9 demonstration. Such an outsized sanction for a mere procedural violation mandates reversal because it is disproportionate to the offense in light of the circumstances and similar instances of misconduct by student groups, both historically and in the present day, have resulted in vastly

disparate treatment by the university (*Bolt v New York City Dept. of Educ.*, 30 NY3d 1065, 1071 [2018] [citations omitted]; *Kickertz*, 99 AD3d at 502).

In *Kickertz v New York University*, the First Department found that the petitioner's expulsion from New York University for forging documents to obtain the school credits necessary to graduate shocked one's sense of fairness because, among other factors, the petitioner's punishment was harsher "than the punishment [NYU] has given to similarly situated students." (*Kickertz*, 99 AD3d at 513). The court's comparison rested on two simple examples: one from three years earlier wherein a student, like the petitioner, had misrepresented their clinical work, yet was only required to repeat the academic year; a second example was provided by the petitioner, wherein she testified her advisor told her that another student had done something "really bad," much worse than her, and was still able to graduate. (*Id.*).

Assuming *arguendo* that the student groups had indeed violated the event policy, there are several instances of similar or more serious rule violations by student groups at Columbia, both historically and in the present circumstances, that received vastly different treatment by the university. Most importantly, the University was well-aware that the demonstration in question was organized, advertised, and hosted by CUAD, yet no other student group was sanctioned, let alone suspended (Jones Affirmation ¶¶18-25). And between October 7 and November 9, 2023, several student groups apparently engaged in similar conduct regarding advertising and/or holding events without approval and without consequence (Jones Affirmation ¶ 17). By targeting SJP and JVP for such severe and disparate treatment, Columbia acted arbitrarily and capriciously.

Moreover, Columbia has historically treated student protest activity with the same leniency it showed to CUAD. In fact, the decision to suspend a SJP and JVP for a minor infraction appears to be the first of its kind (Franke Affirmation ¶ 11). One incident in April 2016 led by the student

group Columbia Divest for Climate Justice (“CDCJ”) is particularly instructive. For eight full days, CDCJ occupied the rotunda of the Low Library, urging then-University President Lee Bollinger to publicly support their demand for fossil fuel divestment (Sulakshana Affirmation). As a result, nineteen events that were scheduled to take place, and ranged from 10 to 450 expected attendees, were forced to relocate (*Id.* ¶ 17). The student group also organized at least four emergency rallies on the Low library steps during the occupation, none of which had obtained pre-approval, to raise awareness of the group’s demands (*Id.* at ¶¶ 12, 19). Yet, these objectively disruptive demonstrations did not result in *any* sanction for the student group, much less a full suspension (*Id.* ¶ 11). In fact, after the sit-in ended, then-President Lee Bollinger invited CDCJ to meet and discuss its concerns (*Id.*) The university’s more appropriate—given the university’s strong commitment to free expression—and proportionate response to the CDCJ stands in sharp contrast to its harsh treatment of SJP and JVP. Accordingly, the Court should find the university’s disciplinary action against SJP and JVP arbitrary and capricious.

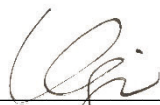
CONCLUSION

For these reasons, as well as those stated in the petitioners’ Verified Petition and supporting papers, the Court should grant the relief sought therein.

Dated: March 11, 2024
New York, New York

Respectfully Submitted,

NEW YORK CIVIL LIBERTIES UNION
FOUNDATION



Guadalupe V. Aguirre
Veronica R. Salama
Christopher T. Dunn
Camara S. Hudson
125 Broad St., Floor 19
New York, N.Y. 10004

Tel: (212) 607-3300
Fax: (212) 607-3318
laguirre@nyclu.org
vsalama@nyclu.org
cdunn@nyclu.org
chudson@nyclu.org

Counsel for Petitioners

PALESTINE LEGAL

Radhika Sainath
Sabiya Ahamed
55 Exchange Place
New York, N.Y. 10005

Of Counsel

CERTIFICATION PURSUANT TO 22 NYCRR 202.8-B

I, Guadalupe Aguirre, an attorney duly admitted to practice law before the courts of the State of New York, hereby certify that this Memorandum of Law complies with the word count limit set forth in 22 NYCRR § 202.8-b because it contains 6,698 words, excluding the parts exempted by § 202.8-b(b). In preparing this certification, I have relied on the word count of the word-processing system used to prepare this affidavit.



Guadalupe Aguirre

Dated: March 11, 2024
New York, New York