

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

ALEXANDER KESTENBAUM and
STUDENTS AGAINST ANTISEMITISM,
INC.,

Plaintiffs,

v.

PRESIDENT AND FELLOWS OF
HARVARD COLLEGE,

Defendant.

Case No. 1:24-cv-10092-RGS

**DECLARATION OF TIMOTHY WHELKY IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS**

I, Timothy Whelsky, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, as follows:

1. I am the Associate Dean for Enrollment and Student Services at Harvard Divinity School. I am familiar with the facts set forth in this declaration based on personal knowledge. I am competent and willing to testify to the matters contained in this declaration.

2. I submit this declaration in support of the Rule 12(b)(1) portions of President and Fellows of Harvard College's ("Harvard") Motion to Dismiss Plaintiffs' Amended Complaint.

3. Plaintiff Alexander "Shabbos" Kestenbaum is a current student at Harvard Divinity School. He is scheduled to graduate in May 2024.

4. Harvard has responded on numerous occasions to antisemitism-related concerns expressed by Mr. Kestenbaum. Administrators at the Divinity School and the University's Office of Equity, Diversity, Inclusion, and Belonging, among others, have interacted with Mr. Kestenbaum to receive reports of concerns; directed him to available support, counseling, and

security resources; provided him with opportunities to discuss his concerns; and advised him how to file a formal complaint under any of the University's applicable policies, including the Non-Discrimination and Anti-Bullying Policy ("Non-Discrimination Policy").

5. On December 31, 2023, Mr. Kestenbaum contacted Harvard Divinity School's Interim Dean David Holland, among others, and expressed concerns over an interaction between himself and another Divinity School student whom he alleged engaged in antisemitic conduct and speech. On January 1, Interim Dean Holland responded to Mr. Kestenbaum, copying me, thanking him for bringing the issue to the School's attention, acknowledging that Mr. Kestenbaum was "feeling unsettled and unsafe," and indicating that the school took antisemitism very seriously. Mr. Kestenbaum responded thanking us and expressed that he looked forward to working with the Divinity School Administration to tackle the issue of antisemitism at Harvard.

6. On January 21 and 22, 2024, Mr. Kestenbaum reported that posters depicting Israeli hostages had been vandalized. On January 22, the Divinity School's Office of Diversity, Inclusion and Belonging thanked Mr. Kestenbaum for reaching out and informing the school of his concerns, informed him that the matter had been referred to the Divinity School's administrators as well as to the Harvard University Police Department ("HUPD") for investigation, advised Mr. Kestenbaum of his rights to file complaints under Harvard's policies, and expressed a desire to meet with Mr. Kestenbaum in person to discuss his concerns.

7. On January 23, 2024, I contacted Mr. Kestenbaum separately about this issue to encourage him to file a report with HUPD as well as a report under Harvard's Non-Discrimination Policy, and I offered to speak with him in person to discuss the resources and options available to him. Mr. Kestenbaum responded on January 24, thanking me for my outreach and indicating that he would be scheduling a meeting with Harvard Divinity School

faculty members. I wrote back that same day reiterating my willingness to meet and speak with Mr. Kestenbaum.

8. On January 24, 2024, Mr. Kestenbaum expressed concerns over the presence of an allegedly antisemitic speaker on an upcoming panel discussion organized by the Harvard Graduate Student Union BDS Caucus—an unrecognized student group. On January 25, I responded to Mr. Kestenbaum that I could “serve as a resource and sounding board for [him] in trying to identify how best to address [his] concerns, even if I may not be in a position to intervene directly on events sponsored by other units [at Harvard].” I informed Mr. Kestenbaum that I had forwarded his concerns to the Weatherhead Center for International Affairs at Harvard’s Kennedy School, where the event was to take place, and that I had referred his questions and concerns to Harvard’s Graduate School of Arts and Sciences, as the student group organizing the event was based out of that school. I also provided Mr. Kestenbaum with my availability for an in-person conversation the following day.

9. On February 10, 2024, Mr. Kestenbaum expressed concerns with his removal from a WhatsApp group chat for, and administered by, Divinity School students. On February 12, Dean Gauchel responded to Mr. Kestenbaum, copying me, thanking him for sharing his concerns and explaining that the WhatsApp group in question is not officially affiliated with or managed by the Divinity School and is instead student-run. Dean Gauchel further expressed his and his office’s continuing availability should Mr. Kestenbaum wish to meet and discuss his concerns, directed Mr. Kestenbaum to other available support resources, and reiterated the process by which Mr. Kestenbaum could, if he wished, file a formal complaint under the University’s Non-Discrimination Policy.

10. On February 13, 2024, I contacted Mr. Kestenbaum to follow up on, and echo the sentiments expressed in, Dean Gauchel's February 12 email. I expressed a desire to speak with Mr. Kestenbaum in person to learn more about his concerns and to assist him in navigating the various options available to him to lodge a formal or informal complaint. I also told Mr. Kestenbaum that, while the Divinity School "may not be able to intervene on events or demonstrations taking place on other campuses or on social media," we would work to assist Mr. Kestenbaum in voicing and sharing his concerns about those events.

11. On February 13, 2024, Mr. Kestenbaum responded to my email and expressed his frustration with what he perceived as a lack of progress or action on the part of the University in response to his numerous concerns. In addition to reiterating many of his prior concerns, Mr. Kestenbaum posed six specific questions regarding the University's policies and practices, as well as its plans for addressing antisemitism generally and specific incidents that he considered antisemitic.

12. In a separate email, also on February 13, Mr. Kestenbaum expressed his concerns about alleged antisemitic events and demonstrations on campus and on social media. That same day, Dean Gauchel sent Mr. Kestenbaum a response, on which I was copied. Dean Gauchel informed Mr. Kestenbaum that he "hear[d] his anger and frustration and [was] very sorry for all [he was] holding and for the impact on" him. Dean Gauchel then offered to connect Mr. Kestenbaum with various counseling and support services made available by the University, offered to meet with Mr. Kestenbaum in person to discuss his concerns further, and provided information about Harvard's Non-Discrimination Policy and Mr. Kestenbaum's options to lodge a complaint under that policy.

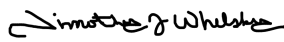
13. On February 17, 2024, I wrote to Mr. Kestenbaum and reiterated a desire to meet in person and advise him of the processes available to him to lodge complaints under Harvard's various policies. I advised Mr. Kestenbaum that "[p]art of the difficulty is that [his] messages contain strong declarative statements and calls for action, but not enough information to adequately advise [him]." I then provided Mr. Kestenbaum with specific responses to each of the six questions that he had posed in his February 13 email, while once again inviting him to speak with me in person at greater length about these, and any other, issues.

14. On February 27, 2024, Mr. Kestenbaum expressed his concerns about an upcoming phone banking effort, organized by a group called Harvard PSC, that was due to take place in a common area at the Divinity School. The event was investigated by my colleagues at the Divinity School, who determined that the phone bank was not a registered event and instead involved a small number of students using a common area that was available for use without reservation by any student or student group. The phone bank proceeded without incident as the students involved did not disrupt others and did not restrict anyone's ability to access, or pass through, the common area. Harvard security was on the scene for the duration of the event to ensure that there were no violations of the University's policies or threats to safety.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Signed this 12th day of April 2024 under the pains and penalties of perjury.

✕

/s/ 

Timothy Whelsky