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Pernel Jones Jr., Cuyahoga County Council President  
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Richard D. Manoloff, Cuyahoga County Law Director  
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June 11, 2024

Cuyahoga County Headquarters  
2079 East Ninth Street  
Cleveland, OH 44115  
216-443-7000

RE: Response to antisemitism accusations related to Cuyahoga County Council Resolution 2024-0208

Dear Messrs. Ronayne, Jones, Schron, and Manoloff:

On behalf of the No New Bonds campaign in the Cleveland area, we are responding to the June 3, 2024 letter from Mr. Michael D. Meuti of Benesch, Friedlander, Coplan & Aronoff LLP on behalf of Anita Gray to Cuyahoga County officials. This letter concerns the proposed Resolution R2024-0208, which if passed, would express the County Council's intention that there be no more purchases by Cuyahoga County of foreign debt instruments as part of the County's investment policy.

The Cleveland Palestine Advocacy Community (CPAC), is the formal sponsor of the No New Bonds coalition campaign in Cleveland. CPAC is a multigenerational, intersectional hub organizing in Cleveland and Northeast Ohio to promote the sanctity and dignity of human life. The coalition is comprised of thousands of people from northeastern Ohio who seek to end the use of Cuyahoga County's tax revenues to support the ongoing Israeli genocide of Palestinians in the Gaza Strip. Besides CPAC members, the County's proposal is applauded and supported by Cleveland Peace Action, the Toledo-based Northwest Ohio Peace Coalition, and the Fremont-based People for Peace & Justice of Sandusky County.

Ms. Gray's assertions against the proposed Resolution are, in our view, legally unsupported viewpoints, as detailed below.

### ***I. Israel Bonds are financing the invasion of the Gaza Strip***

It is costing Israel \$270 million per day to prosecute the invasion of the Gaza Strip. By midsummer, Israel is projected to have spent \$50 billion, more than 10 percent of the nation's total and consequently, the Israeli government has become heavily reliant on debt financing by the sale of Israel bonds.<sup>1</sup> At the Israel Bonds website, the Development Corporation for Israel, which underwrites the bond sales, states, "Israel is at war. We stand with Israel. Make a statement, Invest [*sic*] in Israel Bonds."<sup>2</sup> On its website, Israel Bonds presents a video message from Israeli President Isaac Herzog,<sup>3</sup> in which he rallies "unwavering support for the Jewish state and emphasizes the crucial role of Israel Bonds during this time of conflict and war." There is a question about the bonds' legality since the Development Corporation for Israel is not registered as a foreign agent despite being fully controlled by the Israeli government, having directors who are political appointees of the Israeli government, and acting to advance the discretionary political interests of the Israeli government, all of which require it to register under the Foreign Agent Registration Act.<sup>4</sup>

### ***II. Ms. Gray admits that County investment decisions are wholly discretionary***

The first two sentences of Ms. Gray's "illegality" argument belie the false nature of her position. She agrees with us that "Revised Code § 135.35 identifies how counties *may* invest inactive taxpayer monies. Among the *permissible* investments are debt interests offered by foreign nations recognized by the U.S. Government so long as at the time of purchase. . . ." Ms. Gray thus admits that Cuyahoga County "may" at its option invest inactive monies in "permissible" investments – that the option of investing, or not investing, in Israel bonds according to O.R.C. § 135.35(A)(10) is wholly for the County to decide. If, as Ms. Gray says, the public has a "right to have public funds invested in all sound, eligible securities," that right comes into play only at the point that the Cuyahoga County Council exercises the option of investing in foreign debt instruments. And even then, Cuyahoga County may optionally choose among foreign debt investments from a range of countries, not only Israel's.

The point of Resolution 2024-0208 is to prospectively exclude investment in *any* foreign debt instruments from County investment decisions. That, too, is an entirely legitimate objective under Ohio law. Ms. Gray's insistence that "Nothing in Revised Code § 135.35 authorizes

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<sup>1</sup> "How Israel Bonds Put the Cost of the War in Gaza on U.S. States and Municipalities," <https://www.thenation.com/article/society/israel-bonds-palm-beach-lawsuit/>

<sup>2</sup> <https://www.israelbonds.com/>

<sup>3</sup> *Id.*, also [https://youtu.be/FQ\\_zo\\_zN3mU](https://youtu.be/FQ_zo_zN3mU)

<sup>4</sup> <https://dawnmena.org/u-s-investigate-israel-bonds-for-failure-to-register-as-foreign-agent-potential-sanctions-violations/>

counties to refuse to invest in a sound, eligible security merely because of political objections” is false, empty rhetoric. Nothing compels Cuyahoga County to invest in Israel Bonds, and certainly no Ohio law forbids public officials charged with responsible oversight of taxpayer money from declining to put County money at risk in a foreign country. Since under O.R.C. § 135.35 counties may “permissibly” invest in a range of financial instruments, including foreign debt, Cuyahoga County may “permissibly” also decide *not* to make foreign investments in the discharge of its fiduciary responsibility.

### ***III. The proposed County policy is not an illegal boycott under O.R.C. § 9.76***

The intent of the Resolution to prohibit future investments in any foreign securities is clearly covered by O.R.C. § 9.76(A)(1)(c). That statute clearly states that “‘Boycott’ does not include . . . (c) A boycott against a public entity of a foreign state when the boycott is applied in a nondiscriminatory manner. . . .” Cuyahoga County’s policy would apply across the board: no investment in any foreign country would be allowed. The Resolution does not single out Israel Bonds from among all eligible foreign debt instruments for disinvestment. Assuming solely for the sake of argument that O.R.C. § 9.76 somehow could pass constitutional muster, Ms. Gray’s legal citation debunks her point. O.R.C. § 9.76(A)(1)(c) clearly permits Cuyahoga County to enact a policy to forbid prospective investments in foreign security instruments.

### ***IV. As a charter county, Cuyahoga County’s decisions about its investment policies trump state law***

Cuyahoga County is a charter county, with constitutional and statutory powers that differ from and exceed those of 86 other Ohio counties. One difference is found in the power to legislate that arises with conversion to a charter form of government. Section 3.09 of the Charter of Cuyahoga County expressly provides that the County Council is the “legislative power of the County” and is fully empowered to “establish procedures for the making of county contracts.” *Id.*, § 3.09(4). According to § 103.02 of the Cuyahoga County Code, “If any conflict arises between any provision, term, procedure, or other requirement of the Ohio Revised Code, Ohio Administrative Code, or any other law or regulation, and this Code, the provision, term, procedure, or other requirement of this Code shall prevail.” Cuyahoga County’s locally-legislated contracting policies, then, legally predominate over any contradictory provisions of Ohio law.

### ***V. It is not antisemitic to oppose the policies of the State of Israel***

Providing no factual substance nor logical discussion, Ms. Gray, a former Anti-Defamation League (ADL) regional director, accuses the County Council of “antisemitism” for even considering the Resolution, insinuating that the County Council is a part of, or influenced by, the international Boycott, Divestment and Sanctions (BDS) political movement. They cite International Holocaust Remembrance Alliance (IHRA) examples of anti-Semitism but

fail to connect those hypotheticals in any way to the legitimate deliberation of public fiscal investment policy by Cuyahoga County Council.

The Cleveland Palestine Advocacy Community condemns antisemitism in the strongest terms humanly possible. Antisemitism is vile and abhorrent. It is the evil in human tribalism that has wrongfully victimized Jews for centuries. It is a wrong that must be remedied. It is a black mark on society. And because of these truths, we believe that organizations like the ADL must stop marginalizing antisemitism by warping its definition to defend right-wing Israeli acts, which surely include the ongoing genocide in the Gaza Strip. We fear that when it is time to challenge genuine anti-Semitic words or conduct, people won't pay attention because, for short-term politicized purposes, organizations like the ADL will have watered the definition down in order to attack civil rights advocates as anti-Semites for having rightfully criticized Israeli political and military actions.

We are very aware that if antisemitism is allowed to fester, it won't be long before it breeds anti-Palestinian hatred and other acts of hatred. We all have a vested interest in fighting hate. We should be allies in fighting hate. Thus, when the ADL and Anita Gray manipulate antisemitism for political reasons, it doesn't just jeopardize the well-being of Jews. It jeopardizes the well-being of every marginalized community.

The IHRA's so-called "working definition" of anti-Semitism cited by Ms. Gray was written by an accomplished civil rights lawyer, Kenneth Stern, in the early 2000s. It was adopted in 2005 by the European Union Agency for Fundamental Rights to help guide some nations in Europe in the gathering of statistics and anecdotal examples of antisemitism. Stern has repeatedly insisted in writings and public speeches that he never intended for his working definition to be converted into a weapon to censor criticism of Israel as a nation.<sup>5</sup>

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<sup>5</sup> See K. S. Stern, 'Written testimony of Kenneth S. Stern before the United States House of Representatives Committee on the Judiciary: Hearing on examining anti-semitism on college campuses', 7 November 2017; <https://docs.house.gov/meetings/JU/JU00/20171107/106610/HHRG-115-JU00-Wstate-SternK-20171107.pdf> p. 7/25 (accessed 9 June 2024) ("The definition was not drafted, and was never intended, as a tool to target or chill speech on a college campus."); also, "Line Between Anti-Israel and Anti-Semitic Protests Splits AJC," <https://forward.com/news/141386/line-between-anti-israel-and-anti-semitic-protests/> ("While some of the recent allegations (such as charging pro-Israel Jewish students admission to a university event while allowing others to attend for free) might well raise a claim under Title VI, many others simply seek to silence anti-Israel discourse and speakers. This approach is not only unwarranted under Title VI, it is dangerous."); and "I drafted the definition of anti-semitism. Right-wing Jews are weaponizing it," <https://www.theguardian.com/commentisfree/2019/dec/13/antisemitism-executive-order-trump-chilling-effect> ("Antisemitism is a real issue, but too often people, both on the political right and political left, give it a pass if a person has the 'right' view on Israel. Historically, antisemitism thrives best when leaders stoke the human capacity to define an 'us' and a 'them', and where the integrity of democratic institutions and norms (such as free speech) are under assault.").

Notably, even the IHRA, champion of the working definition, has maintained for years on its website that “criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic.”<sup>6</sup>

## ***VI. Conclusion***

“The working definition is at once a proxy for, and a symptom of, a range of issues, including the failure of international law to hold Israel accountable for its crimes, the ineffectiveness and/or indifference of international law towards the ongoing occupation of Palestine, and the unresolved legacies of the Holocaust.”<sup>7</sup> To this description from 2020, we would add that the working definition is shamelessly being manipulated to silence critics of this unprecedented genocide monstrously implemented by the Israeli Defense Force against Palestinians.

Unquestionably, Ms. Gray has a right to her political opinions, but the public has a correlative right to expect Cuyahoga County officials to see Ms. Gray’s misleading accusations and name-calling as mere trolling, and to proceed to adopt serious fiscal policies protecting the public interest as they see fit.

Best regards,

CLEVELAND PALESTINE ADVOCACY COMMUNITY

By /s/ Terry J. Lodge

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Cc: Cuyahoga County Council

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<sup>6</sup> <https://holocaustremembrance.com/resources/working-definition-antisemitism>

<sup>7</sup> Rebecca Ruth Gould, “The IHRA Definition of Antisemitism: Defining Antisemitism by Erasing Palestinians,” [https://www.researchgate.net/publication/343283278\\_The\\_IHRA\\_Definition\\_of\\_Antisemitism\\_Defining\\_Antisemitism\\_by\\_Erasing\\_Palestinians](https://www.researchgate.net/publication/343283278_The_IHRA_Definition_of_Antisemitism_Defining_Antisemitism_by_Erasing_Palestinians)