

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

JOSHUA H. STULMAN,
Box 525
Jenkintown, PA 19046

Plaintiff,

v.

PENNSYLVANIA STATE UNIVERSITY,
201 Old Main
University Park, PA 16802

AND

CHARLES GAROIAN, IN HIS INDIVIDUAL
AND OFFICIAL CAPACITIES,
210 Patterson Building
University Park, PA 16802

AND

ROBERT YARBER, IN HIS INDIVIDUAL
AND OFFICIAL CAPACITIES,
210 Patterson Building
University Park, PA 16802

AND

GRAHAM B. SPANIER, IN HIS
OFFICIAL CAPACITY,
210 Patterson Building
University Park, PA 16802

Defendants.

Case No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Joshua H. Stulman, by and through the undersigned counsel, and for his Complaint against Defendants, Pennsylvania State University (alternatively referred to herein as “Penn State” and the “University”), Charles Garoian, Robert Yarber and Graham B. Spanier, alleges and states as follows:

INTRODUCTION

1. Charles Garoian, Director of the Pennsylvania State University School of Visual Arts, and Robert Yarber, a professor at the Penn State School of Visual Arts, violated the free speech and associational rights of Joshua Stulman while he was an art student at the School of Visual Arts by prohibiting the exhibition of his series of

paintings entitled “Portraits of Terror” in the Patterson Gallery at the University because of Joshua’s artistic viewpoint expressed in those paintings.

JURISDICTION AND VENUE

2. This Court has jurisdiction over Counts I-V pursuant to 28 U.S.C. § 1331 (federal question) and the Civil Rights Act of 1871, 42 U.S.C. §§ 1983 and 1988.

3. This Court has jurisdiction over Count VI Pursuant to 28 U.S.C. §1367.

PLAINTIFF

4. Plaintiff Joshua H. Stulman is an adult individual and a 2006 graduate of Defendant Penn State University with baccalaureate degrees in Anthropology and Art.

DEFENDANTS

5. Defendant Penn State University is a State-related institution of higher education and holds the Commonwealth of Pennsylvania’s exclusive designation as a land-grant institution of higher learning. Moreover, Defendant Penn State is a Pennsylvania governmental instrumentality and its employees are employees of the Commonwealth of Pennsylvania.

6. Defendant Charles Garoian is an adult individual and is the Director of the School of Visual Arts within the College of Art and Architecture of Defendant Penn State University and, upon information and belief, was responsible for the administration of the School of Visual Arts, including enforcement of University rules and regulations and the supervision of faculty members such as Defendant Yarber. Defendant Garoian is sued in his official and individual capacities. Defendant Garoian is an employee of the Commonwealth of Pennsylvania.

7. Defendant Robert Yarber is a Professor of Art at the School of Visual Arts within the College of Art and Architecture of Defendant Penn State University.

Defendant Yarber is sued in his official and individual capacities. Defendant Yarber is an employee of the Commonwealth of Pennsylvania.

8. Defendant Graham B. Spanier is the President of Defendant Penn State University. Defendant Spanier is sued in his official capacity only. Defendant Spanier is an employee of the Commonwealth of Pennsylvania.

FACTUAL BACKGROUND

9. In the Fall of 2005 and Spring of 2006, Plaintiff was a senior working towards the completion of his Bachelor of Fine Arts degree from the School of Visual Arts within the College of Art and Architecture of Penn State University. As a student in the School of Visual Arts, Plaintiff was encouraged to use the Patterson Gallery, an art gallery in the lobby of the second floor of the Patterson Building on the campus of Penn State University, to exhibit his art work for a two week student exhibition. The Patterson Gallery is gallery space specifically designated for the exhibition of undergraduate student art exhibitions, and it was the policy and practice of the School of Visual Arts for its undergraduate students to have exhibitions of their creative works in the Patterson Gallery.

10. Students of the School of Visual Arts were encouraged to exhibit their work at the Patterson Gallery and were provided certain guidelines for their exhibitions, including the following: to plan ahead since graduating seniors in their final semester were given priority; to be considerate of those students whose exhibitions were immediately following their own by removing their exhibition in a timely manner; to promote themselves since the students were solely responsible for their own signage, labels, advertisements, flyers, posters and postcards; that receptions were encouraged but not required; that the students were required to provide professional signage for the exhibition that would include the title of the exhibition, the name of the student whose

work was being exhibited and the name of the sponsoring faculty; to leave the Patterson Gallery in the same condition it was pre-exhibition, which meant performing all necessary repairs, such as patching holes and painting following an exhibition; that students were allowed to keep the proceeds of any sales of their works; and a reminder that the Patterson Gallery is an open hallway in a public building such that the safety of the student's work could not be guaranteed by the University.

11. In order to exhibit their work in the Patterson Gallery, School of Visual Arts students had to submit a written request which included a faculty signature indicating that the faculty member had reviewed the submission and approved the same. The application for the exhibition, including the sponsorship by the faculty member, would be subject to the approval of the Director of the School of Visual Arts. If the Director approved the student's application, the student would be notified by a staff member of the School of Visual Arts to confirm exhibition dates.

12. During the Fall Semester of 2005, Plaintiff obtained the approval of David Ellis, a faculty member at the School of Visual Arts, for two exhibitions in the Patterson Gallery during the Spring Semester of 2006: "HodgePodge: Prints, Drawings and Sketches" and "Portraits of Terror."

13. Plaintiff's exhibition "HodgePodge" opened on February 12, 2006 at the Patterson Gallery with a reception that was sponsored by Penn State Hillel, a Jewish student organization at the University. In keeping with the rules and regulations for exhibitions at the Patterson Gallery, under which students were responsible for the promotion of their shows and receptions, Plaintiff distributed announcements for "HodgePodge" which included a statement that an opening reception was sponsored by Penn State Hillel.

14. Plaintiff's exhibition "Portraits of Terror" was scheduled to open on April 22, 2006. "Portraits of Terror" consisted of a series of paintings created by Plaintiff as a student in his painting and drawing classes during his senior year at the School of Visual Arts. "Portraits of Terror" dealt with the issue of terrorism, generally, in the Middle East and, more specifically, Arab-Palestinian terrorism directed towards the State of Israel and its people.

15. Plaintiff worked on certain paintings within the series comprising "Portraits of Terror" while a student in Defendant Yarber's painting class at the School of Visual Arts in the Spring Semester of 2006.

16. Defendant Yarber engaged Plaintiff in discussions regarding the Arab-Israeli conflict while Plaintiff was Yarber's student at the School of Visual Arts. Defendant Yarber frequently expressed a perspective that was sympathetic to the Arab Palestinians and that challenged the actions of Israel during the discussions with Plaintiff regarding the Arab-Israeli conflict. Plaintiff's perspective was sympathetic to Israel and challenged the actions and the motivations of the Arabs Palestinian who attack Israel.

17. On or about February 28, 2006, Plaintiff submitted his mid-term paper to Defendant Yarber for his drawing class and also provided a "lecture" on his mid-term paper to the class on the same day. Plaintiff's mid-term paper dealt with a painting entitled "Peace in Our Time" within the series "Portraits of Terror." "Peace in Our Time" dealt specifically with the appropriation of Nazi symbols by Hamas, Hizballah and the Palestinian Authority, as well as the close association and collaboration of the Arab Palestinian leadership with Adolf Hitler and the attempted extermination of the Jews during World War II. Plaintiff's lecture provided a contextual and historical background for "Peace in Our Time" and the series "Portraits of Terror."

18. During the “question and answer” session following Plaintiff’s lecture on his mid-term paper on February 28th, Defendant Yarber asked Plaintiff why he did not include references to Rabbi Meir Kahane in his lecture since, according to Defendant Yarber, Kahane was also a terrorist and used the same tactics that the Arab terrorists used. Plaintiff distinguished Kahane from the Arab-Palestinian terrorists in his response to Defendant Yarber’s question.

19. Defendant Yarber went further during the “question and answer” session following Plaintiff’s presentation to Defendant Yarber’s class on February 28th and asked Plaintiff why he did not do a painting in his series “Portraits of Terror” about Palestinian children who were killed, presumably through the “terrorist acts” of Israel per Defendant Yarber’s perspective.

20. Following Plaintiff’s presentation in Defendant Yarber’s class, Plaintiff received an email on March 1, 2006 from Defendant Garoian, wherein Defendant Garoian stated that “Portraits of Terror” was provocative and that he wanted to “ensure that [Plaintiff’s] intentions in displaying the images are not hostile but to engage the public in an open dialogue about the issues and ideas.” Garoian wrote that he wished to meet with Plaintiff to discuss the matter.

21. Plaintiff immediately responded to Defendant Garoian’s email on March 1, 2006, explaining to Defendant Garoian that the paintings in “Portraits of Terror” were part of his art work created during his classes at the School of Visual Arts and that his professors were fully aware of the subject matter of the series, and that “Portraits of Terror” deals with Islamic fundamentalism and terrorism in Israel. Plaintiff further informed Defendant Garoian in his reply email that he, as an artist, makes a very clear distinction between Islam and Islamic fundamentalism and that this distinction would be

reflected in his artist's statement. Plaintiff stated that he would be happy to respond to any of Defendant Garoian's questions in person.

22. Defendant Garoian wrote Plaintiff a reply email on March 1, 2006 thanking Plaintiff for his quick response and stating that his assistant would schedule a meeting for them. Defendant Garoian also stated that he had asked Defendant Yarber to join them at that meeting.

23. In or around late March 2006, Defendant Yarber summoned Plaintiff to his office and expressed his concerns over "Portraits of Terror." Plaintiff suggested that Defendant Yarber's concerns be discussed during the meeting proposed by Defendant Garoian in the March 1st email exchange between Plaintiff and Defendant Garoian. At the time, neither Defendant Garoian nor his assistant had followed up with Plaintiff to schedule the meeting.

24. Later in March 2006, Defendant Yarber approached Plaintiff in the Patterson Building while Plaintiff was walking with Tuvia Abramson, Director of Penn State Hillel. Again, Defendant Yarber expressed concerns over "Portraits of Terror" which Defendant Yarber claimed had been "commissioned" by Hillel. Both Plaintiff and Abramson repeatedly corrected Defendant Yarber by telling him that Hillel had no involvement with the content or production of "Portraits of Terror," but to no avail. Defendant Yarber continued asserting that Hillel commissioned "Portraits of Terror."

25. In or around early April 2006, in keeping with the regulations for use of the Patterson Gallery, Plaintiff distributed postcard invitations for the opening of "Portraits of Terror." Like the opening for Plaintiff's previous exhibit "HodgePodge," the invitation stated that Penn State Hillel was sponsoring the reception.

26. On or about April 11 2006, Defendant Garoian sent Plaintiff and Tuvia Abramson an email wherein he stated, again, that Plaintiff's artwork was provocative

and expressed his desire to meet with both Plaintiff and Abramson to ensure that Plaintiff was “prepared to address his creative work from an informed perspective with the intent of creating educational dialogue and not controversy for the sake of controversy.” Defendant Garoian suggested that Plaintiff, with Abramson’s assistance, prepare a draft press release for “Portraits of Terror.”

27. Abramson responded to Defendant Garoian’s email on or about April 11, 2006, providing several dates on which he was available to meet with Defendant Garoian and Plaintiff, although he pointed out that the Jewish holiday of Passover was approaching and that his office would be closed in observance. Abramson expressed that “Portraits of Terror” was not about a student being provocative but about an art student expressing his artistic talent and feelings about terrorism. Abramson also provided Defendant Garoian with both his home and cell telephone numbers.

28. Defendant Garoian responded to Abramson’s email with an email on April 11th, wherein he stated that Abramson’s email suggested that he did not want to meet and that Plaintiff should consider finding another venue outside of the School of Visual Arts in which to exhibit his work.

29. Plaintiff emailed Garoian on April 12th, welcoming Defendant Garoian’s suggestion for a meeting and reminding Garoian, in a subsequent email sent on April 12th, that Plaintiff had been waiting since March 1st for Defendant Garoian or his assistant to schedule an appointment for them to meet. Plaintiff also provided potential dates and times to meet.

30. Abramson also followed up with an email to Defendant Garoian on April 12th, asking why the tone of Garoian’s emails was confrontational when both Abramson and Plaintiff had expressed that they were willing to meet.

31. On April 13, 2006, Defendant Garoian sent Plaintiff and Abramson an email wherein he stated they would meet on Thursday, April 20, 2006 at 4:00 p.m. and that Plaintiff should bring his artistic statement. Earlier, Abramson had informed Garoian that April 20th was a Jewish Holiday on which Abramson was not supposed to work.

32. Plaintiff replied to Defendant Garoian's email of April 13th, indicating that he would meet on April 20th despite it being a Jewish holiday.

33. On or about April 16, 2007, Plaintiff hung up flyers advertising his exhibit "Portraits of Terror."

34. On or about April 17, 2007, Plaintiff discovered that his flyers had been defaced, with at least one of them having a swastika drawn on it. Plaintiff took the defaced flyer with the swastika to Defendant Yarber to express his concern, to which Yarber offered little to no response.

35. On or about April 18, 2007, Plaintiff issued a press release announcing "Portraits of Terror" and stating that the exhibit creates awareness of radical Islamic terrorism and emphasizes the danger of apathy in the face of terroristic methods that aim to kill innocent people, Muslims and Jews alike.

36. On or about April 19, 2007, Plaintiff noticed that the flyers for "Portraits of Terror" had been torn down.

37. On or about April 19, 2007, Defendant Yarber called Plaintiff into his office to discuss the content of "Portraits of Terror." During this "discussion," Defendant Yarber stated the following to Plaintiff:

- a. That the advertisements for "Portraits of Terror" were racist;
- b. That Plaintiff was a racist;
- c. That Plaintiff's work was racist regardless of Plaintiff's intentions;

- d. That Arab students on Penn State's campus were the victims of "Portraits of Terror";
- e. That Plaintiff was calling all Arabs murderers and deliberately misleading uninformed university students to promote the idea that all Arabs are terrorists;
- f. That Plaintiff's art promoted Islamophobia;
- g. That Israel is a terrorist state;
- h. That Israel had no right to exist.

38. During the April 19th meeting with Plaintiff, Defendant Yarber admitted that he had torn down the flyers and advertisements for "Portraits of Terror."

39. During the April 19th meeting with Plaintiff, Defendant Yarber stated that he would sign up for a classroom in the Patterson Building for the same time as the "Portraits of Terror" exhibit and would show movies such as "Local Angel," a movie that had previously been sponsored by the School of Visual Arts in 2004 and at which Yarber introduced the director, Udi Aloni. "Local Angel" is a documentary movie that is largely sympathetic to Palestinians and critical of the State of Israel in the Arab-Israeli conflict. Defendant Yarber also suggested that he would distribute materials to students that he would advertise as being supplemental to Plaintiff's exhibit "Portraits of Terror."

40. During the evening of April 19, 2006, Defendant Garoian sent Plaintiff, Abramson and Defendant Garoian's invitees to the scheduled April 20th meeting in which a discussion of "Portraits of Terror" was to take place, an email in which Garoian cancelled the exhibition at the Patterson Gallery for "Portraits of Terror," stating the following:

- a. That Defendant Garoian's decision to cancel the exhibition was based on his review of "Penn State's Policy AD42: Statement on

Nondiscrimination and Harassment, and Penn State's Zero Tolerance Policy for Hate."

- b. That Plaintiff's work "Portraits of Terror" did not promote tenets of cultural diversity and assuring opportunities for democratic dialogue within the context of classrooms and exhibition spaces;
- c. That Penn State Hillel sought to advance its own political agenda through "Portraits of Terror";
- d. That "Portraits of Terror" was better suited for Hillel because of its particular cultural and political perspective rather than the Patterson Gallery;
- e. That the Patterson Gallery is reserved for undergraduate students and graduate students, and faculty of the School of Visual Arts, and not open to special interest groups such as Hillel, and that on Plaintiff's application for the exhibition, there was no indication that any other program other than the School of Visual Arts would be sponsoring "Portraits of Terror."

41. On April 20th, Defendant Garoian cancelled the meeting scheduled with Plaintiff, Abramson of Hillel and the invited members of University faculty, administration and two students from the Muslim student organization, in which a discussion of "Portraits of Terror" was to take place, stating that terrorism as depicted in "Portraits of Terror" was not an appropriate subject matter for the School of Visual Arts.

42. Plaintiff responded to Defendant Garoian's cancellation of both the meeting in which "Portraits of Terror" was to be discussed and the exhibition of "Portraits of Terror" by requesting that Defendant Garoian identify those aspects of "Portraits of Terror" which fell into the category of Hate Speech and otherwise violated

“Penn State’s Policy AD42: Statement on Nondiscrimination and Harassment, and Penn State’s Zero Tolerance Policy for Hate.” Plaintiff advised Defendant Garoian that the flyers for “Portraits of Terror” had been defaced, one of them with a swastika, and torn down. Plaintiff further reminded Defendant Garoian that “Local Angel” had been sponsored by the School of Visual Arts and that Defendant Yarber had offered extra credit to students who wrote a paper about the movie, despite the lack of connection between the film and the class for which extra credit was being offered.

43. Despite being told repeatedly by Plaintiff and Tuvia Abramson, the Director of Penn State Hillel, that Hillel had no involvement in the content of “Portraits of Terror,” that Hillel was merely sponsoring a the exhibit’s opening reception for “Portraits of Terror” by paying for refreshments, and that “Portraits of Terror” was Plaintiff’s art work as a student at the School of Visual Arts and created during his classes. Defendant Garoian emailed Plaintiff, the Centre Daily Times and three Penn State administrators on April 21, 2007, stating that the cancellation was based upon “Portraits of Terror” being “commercial art” that had been sponsored by Hillel, an organization outside of the School of Visual Arts. Defendant Garoian omitted his reference to “Penn State’s Policy AD42: Statement on Nondiscrimination and Harassment, and Penn State’s Zero Tolerance Policy for Hate” that had been referenced as his first and primary basis for cancellation of “Portraits of Terror” in his original email announcing the cancellation.

44. On April 21, 2007 Defendant Garoian sent Plaintiff an email stating that Plaintiff could exhibit “Portraits of Terror” in the Patterson Gallery if he eliminated Penn State Hillel’s “sponsorship.”

45. On April 24, 2007, Defendant Garoian sent Plaintiff an email stating that the Patterson Gallery was now available for the exhibition of “Portraits of Terror.”

46. On April 25, 2007, Plaintiff and Abramson had a meeting with Steve MacCarthy, Vice President of Public Information for the University, during which MacCarthy expressed that he was upset with Defendant Garoian for canceling “Portraits of Terror,” that Defendant Garoian had made a mistake by canceling Plaintiff’s exhibition and that Plaintiff could show “Portraits of Terror” at the Patterson Gallery as soon as Plaintiff wanted, or in the Fall semester, and that Hillel could sponsor the reception.

47. During the April 25th meeting with MacCarthy, Plaintiff informed MacCarthy of the defacement of his flyers, including the flyer defaced with a swastika, and that he had been called a racist and his artwork racist propaganda by Defendant Yarber. Plaintiff further informed MacCarthy that Defendant Yarber had called into question the right of the State of Israel to exist. MacCarthy informed Plaintiff that these complaints were outside of his area and made an appointment for Plaintiff to meet with the appropriate administrator.

48. MacCarthy instructed Plaintiff and Abramson to meet with Tom Poole, Penn State University Vice President of Educational Equity, and Terrell Jones, Vice Provost for Educational Equity, as well as an unnamed third individual.

49. Plaintiff informed Poole, Jones and the other Education Equity representative of the background for “Portraits of Terror” and its cancellation, as well as the defacement and removal of the flyers for “Portraits of Terror” and of being attacked by Defendant Yarber. Instead of discussing the defacement and destruction of the flyers for “Portraits of Terror” or the abuse which Plaintiff felt he suffered at the hands of Defendant Yarber, who called Plaintiff a racist, called Plaintiff’s student artwork racist, called Israel a terrorist state, and who stated that the State of Israel had no right to exist, Jones spoke only about “Portraits of Terror,” Hillel’s involvement with the exhibition of

“Portraits of Terror,” and the sensitivity of the Arab community over “Portraits of Terror,” while Poole and the third individual remained silent. At the end of the meeting, Jones stated that he doubted that “Portraits of Terror” would be exhibited in the Fall and referred Plaintiff to Yvonne Gaudelius, Associate Dean for Undergraduate Studies and Outreach, Penn State College of Arts and Architecture, for Plaintiff’s complaints regarding Defendant Yarber.

50. Although every other student in Plaintiff’s class was told on April 24th by Defendant Yarber that they could pick the date on which they would present their work for critique, Yarber announced that Plaintiff’s critique would take place on Wednesday, April 26, 2007. Further, Defendant Yarber publicly stated that he expected Plaintiff to discuss the political content of Plaintiff’s work “Portraits of Terror,” the articles published in the press about it, and the events surrounding its planned exhibition.

51. Plaintiff sent Defendant Yarber an email on April 25, 2007, expressing that he welcomed the standard critique format but that the content of the “Portraits of Terror” was not open to debate and the current events surrounding its planned exhibition were not open for discussion. Plaintiff asked that Defendant Yarber confirm that he would apply the same guidelines for in-class critiques to Plaintiff that he had applied to every other student in Plaintiff’s class. Defendant Yarber responded with a sarcastic email thanking Plaintiff for “helping me to format my remarks, set the content of my discussion, and provide a general outline on how I will conduct my class.”

52. On April 26, 2007, Plaintiff received emails from Terrell Jones, Vice Provost for Educational Equity, who informed Plaintiff that there was going to be a 9:15 a.m. meeting that Plaintiff and Yvonne Gaudelius, Associate Dean for Undergraduate Studies and Outreach, Penn State College of Arts and Architecture, should attend. Plaintiff responded via email to Jones’ email, informing Jones of Defendant Yarber’s

email regarding Plaintiff's in-class critique and that Plaintiff felt intimidated and threatened in Yarber's class and, thus, had decided not to attend the critique. Plaintiff also asked that the meeting be postponed in light of his exam schedule.

53. Plaintiff received a reply email from Terrell Jones in which Jones stated that Plaintiff would not have to give his presentation in Yarber's class but that Penn State Policy 20-00 required students to initiate resolution of classroom problems by consulting the leadership of their colleges.

54. On April 26, 2006, Dean Gaudelius emailed Plaintiff requesting a meeting to discuss Plaintiff's concerns about Defendant Yarber. Plaintiff suggested that they meet on April 28th.

55. On April 26, 2006, Dean Durst emailed Plaintiff and apologized for the difficult situation that Plaintiff found himself in regarding the exhibition of "Portraits of Terror," and wrote that the College was committed to mounting the exhibition of "Portraits of Terror" either before or after Plaintiff's graduation, or over the summer or at the beginning of the following school year.

56. On April 26, 2006, the official Penn State University spokesperson issued a statement that several faculty members offered to help Plaintiff mount his paintings that week but that Plaintiff had declined. However, the statement omitted that the offer to allow Plaintiff the opportunity for the exhibit was conditioned upon Plaintiff forgoing Penn State Hillel's sponsorship of the exhibition reception.

57. On April 27, 2006, Defendant Garoian emailed Plaintiff and admitted that he had censored Plaintiff's work "Portraits in Terror" and, consequently, Plaintiff's opinions and artistic expression, although his censorship of Plaintiff's work was well-intended. Defendant Garoian further stated in his email that his censorship was done with the consultation and approval of other School of Visual Arts faculty members.

58. On April 27, 2006, Plaintiff received another email from Dean Durst in which Durst instructed Plaintiff that Tuvia Abramson was not to be included in the meeting between Durst and Plaintiff.

59. Dean Gaudelius also emailed Plaintiff on April 27th regarding her meeting with Plaintiff and stated that Tuvia Abramson's input would not be needed at that meeting since they would be discussing the alleged incidents of intimidation in Defendant Yarber's classes.

60. Following several emails regarding scheduling, Plaintiff emailed Dean Durst and reminded him that he wanted to discuss arrangements for the exhibition of "Portraits of Terror," but that he did not feel comfortable meeting alone with Dean Durst and Dean Gaudelius in light of the recent spate of events, particularly having been attacked by a School of Visual Arts professor – Defendant Yarber – with accusations of being a racist who created racist art.

61. On May 5, 2006, Dean Durst responded to Plaintiff's fear of intimidation and lack of security by emailing him that Tuvia Abramson was not a part of the academic structure of Penn State University and, therefore, would not be a part of their discussion.

62. In or around early May 2006, following the May 5th email from Dean Durst, Plaintiff met with lawyers and agreed to have a letter sent on his behalf to Dean Durst, requesting a meeting to discuss Plaintiff's concerns about his treatment by Penn State University faculty and administration, and that the meeting take place in the presence of his lawyers. Lawyers for Penn State University rejected said request.

63. Plaintiff sought and obtained assurance from the Penn State attorneys that there were no administrative procedures or remedies required in order for Plaintiff to pursue rectification of his treatment by Penn State and its representatives.

64. To date, Plaintiff has not had an exhibition of his painting series “Portraits of Terror” at Penn State University.

FIRST CAUSE OF ACTION

Violation of Plaintiff’s First Amendment Right To Freedom of Expression (42 U.S.C. § 1983)

65. Plaintiff realleges and incorporates herein by this reference the allegations contained in paragraphs 1 through 64 of this Complaint.

66. Defendants Penn State University, Garoian and Yarber, acting under the color of state law, deprived Plaintiff of his clearly-established rights to freedom of speech and expression secured by the First Amendment to the Constitution of the United States by and through their cancellation and prohibition of the exhibition of Plaintiff’s artwork, the series of paintings called “Portraits of Terror,” in the Patterson Gallery based upon Plaintiff’s viewpoint as expressed in his paintings. The Patterson Gallery is a public forum in which students, such as Plaintiff, in the School of Visual Arts were encouraged to show their artwork, yet Plaintiff was prohibited from showing “Portraits of Terror” based upon its content and Plaintiff’s viewpoint as expressed in “Portraits of Terror.”

67. Defendants, acting under color of state law, deprived Plaintiff of his rights to the substantive and procedural components of the due process clause of the Fourteenth Amendment of the United States Constitution, to freedom of speech, expression and association.

68. Defendants, acting under color of state law, deprived Plaintiff of his rights under the First Amendment of the United States Constitution, to freedom of speech, expression and association.

69. The harm facilitated by Defendants’ actions and inactions was foreseeable and a direct result of said actions and failures to act.

70. Upon information and belief, Defendants, with deliberate indifference to the consequences, established and maintained policies, practices and procedures herein described which directly caused constitutional harm.

71. Reasonable officials or persons in the Defendants' position would have been aware of Plaintiff's constitutional entitlement to freedom of speech, expression and association.

72. No reasonable officials or persons in Defendants' positions could have believed, in light of clearly established law, that their conduct comported with established legal standards.

73. Defendants' actions, as alleged here, resulting in the deprivation of Plaintiff's rights under the First Amendment to freedom of speech and expression, have caused Plaintiff to suffer irreparable injury which cannot be fully compensated by an award of monetary damages.

74. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff is entitled to a permanent injunction invalidating and restraining the enforcement of the prohibition of his exhibition of "Portraits of Terror" in the Patterson Gallery at Penn State University, such that Plaintiff can exhibit "Portraits of Terror" in the Patterson Gallery at Penn State University with Penn State Hillel's sponsorship of a reception for the exhibition, and the reasonable costs of this suit, including his attorneys' fees.

SECOND CAUSE OF ACTION

Violation of Plaintiff's First Amendment Right To Freedom of Association (42 U.S.C. § 1983)

75. Plaintiff realleges and incorporates herein by this reference the allegations contained in paragraphs 1 through 74 of this Complaint.

76. Defendants Penn State University, Garoian and Yarber, acting under the color of state law, deprived Plaintiff of his clearly-established right to freedom of

association secured by the First Amendment to the Constitution of the United States by and through their cancellation and prohibition of the exhibition of Plaintiff's artwork, the series of paintings called "Portraits of Terror," in the Patterson Gallery based upon Plaintiff's association with Penn State Hillel. The Patterson Gallery is a public forum in which students, such as Plaintiff, in the School of Visual Arts were encouraged to show their artwork and Plaintiff was prohibited from showing "Portraits of Terror" based upon his association with Penn State Hillel and Plaintiff's viewpoint as expressed in "Portraits of Terror."

77. Defendants, acting under color of state law, deprived Plaintiff of his rights to the substantive and procedural components of the due process clause of the Fourteenth Amendment of the United States Constitution, to freedom of speech, expression and association.

78. Defendants, acting under color of state law, deprived Plaintiff of his rights under the First Amendment of the United States Constitution, to freedom of speech, expression and association.

79. The harm facilitated by Defendants' actions and inactions was foreseeable and a direct result of said actions and failures to act.

80. Upon information and belief, Defendants, with deliberate indifference to the consequences, established and maintained policies, practices and procedures herein described which directly caused constitutional harm.

81. Reasonable officials or persons in Defendants' positions would have been aware of plaintiff's constitutional entitlement to freedom of speech, expression and association.

82. No reasonable officials or persons in Defendants' positions could have believed, in light of clearly established law, that their conduct comported with established legal standards.

83. Defendants' actions, as alleged here, resulting in the deprivation of Plaintiff's right under the First Amendment to freedom of association, have caused Plaintiff to suffer irreparable injury that cannot be fully compensated by an award of monetary damages.

84. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff is entitled to a permanent injunction invalidating and restraining the enforcement of the prohibition of his exhibition of "Portraits of Terror" in the Patterson Gallery at Penn State University, such that Plaintiff can exhibit "Portraits of Terror" in the Patterson Gallery at Penn State University with Penn State Hillel's sponsorship of a reception, and the reasonable costs of this suit, including his attorneys' fees.

THIRD CAUSE OF ACTION

Violation of Plaintiff's First Amendment Rights To Freedom of Speech and Expression (42 U.S.C. § 1983)

85. Plaintiff realleges and incorporates herein by this reference the allegations contained in paragraphs 1 through 84 of this Complaint.

86. Defendant Garoian, acting in his individual capacity and under the color of state law, deprived Plaintiff of his clearly-established rights to freedom of speech and expression secured by the First Amendment to the Constitution of the United States by and through the cancellation and prohibition of the exhibition of Plaintiff's artwork, the series of paintings called "Portraits of Terror," in the Patterson Gallery based upon Plaintiff's viewpoint as expressed in "Portraits of Terror." The Patterson Gallery is a public forum in which students, such as Plaintiff, in the School of Visual Arts were

encouraged to show their artwork, and Plaintiff was prohibited from showing “Portraits of Terror” based upon its content and Plaintiff’s viewpoint as expressed in “Portraits of Terror.”

87. Defendant, acting under color of state law, deprived Plaintiff of his rights to the substantive and procedural components of the due process clause of the Fourteenth Amendment of the United States Constitution, to freedom of speech, expression and association.

88. Defendant, acting under color of state law, deprived Plaintiff of his rights under the First Amendment of the United States Constitution, to freedom of speech, expression and association.

89. The harm facilitated by Defendant’s actions and inactions was foreseeable and a direct result of said actions and failures to act.

90. Upon information and belief, Defendant, with deliberate indifference to the consequences, established and maintained policies, practices and procedures herein described which directly caused constitutional harm.

91. A reasonable official or person in the defendant’s position would have been aware of Plaintiff’s constitutional entitlement to freedom of speech, expression and association.

92. No reasonable official or person in the Defendant’s position could have believed, in light of clearly established law, that his conduct comported with established legal standards.

93. Defendant’s actions, as alleged herein, resulting in the deprivation of plaintiffs’ alleged rights under the First Amendment to freedom of speech and expression, have caused plaintiff to suffer mental anguish, injury to his reputation, worry

and upset, embarrassment and humiliation and other such injuries which will be shown by proof at the trial of this action.

94. Pursuant to 42 U.S.C. §§1983 and 1988, Plaintiff is entitled to an award of monetary damages against Defendant Garoian, including the costs of mounting the exhibition of “Portraits of Terror”, shipping and transportation of the exhibition to Penn State University and all other attendant costs with the exhibition, along with the reasonable costs of this action, including his attorney’s fees.

FOURTH CAUSE OF ACTION

Violation of Plaintiff’s First Amendment Rights To Freedom of Association (42 U.S.C. § 1983)

95. Plaintiff realleges and incorporates herein by this reference the allegations contained in paragraphs 1 through 94 of this Complaint.

96. Defendant Garoian, acting in his individual capacity and under the color of state law, deprived Plaintiff of his clearly-established right to freedom of association secured by the First Amendment to the Constitution of the United States by and through the cancellation and prohibition of the exhibition of Plaintiff’s artwork, the series of paintings called “Portraits of Terror,” in the Patterson Gallery based upon Plaintiff’s association with Penn State Hillel. The Patterson Gallery is a public forum in which students, such as Plaintiff, in the School of Visual Arts were encouraged to show their artwork, and Plaintiff was prohibited by Defendant Garoian from showing “Portraits of Terror” based upon his association with Penn State Hillel and Plaintiff’s viewpoint as expressed in “Portraits of Terror.”

97. Defendant, acting under color of state law, deprived Plaintiff of his rights to the substantive and procedural components of the due process clause of the Fourteenth

Amendment of the United States Constitution, to freedom of speech, expression and association.

98. Defendant, acting under color of state law, deprived Plaintiff of his rights under the First Amendment of the United States Constitution, to freedom of speech, expression and association.

99. The harm facilitated by Defendant's actions and inactions was foreseeable and a direct result of said actions and failures to act.

100. Upon information and belief, Defendant, with deliberate indifference to the consequences, established and maintained policies, practices and procedures herein described which directly caused constitutional harm.

101. A reasonable official or person in Defendant's position would have been aware of Plaintiff's constitutional entitlement to freedom of speech, expression and association.

102. No reasonable official or person in Defendant's position could have believed, in light of clearly established law, that his conduct comported with established legal standards.

103. Defendant's actions, as alleged herein, resulting in the deprivation of Plaintiff's right under the First Amendment to freedom of association, have caused Plaintiff to suffer mental anguish, injury to his reputation, worry and upset, embarrassment, and other such injuries which will be shown by proof at the trial of this action.

104. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff is entitled to an award of monetary damages against Defendant Garoian, including the costs of an exhibition at Penn State, and the reasonable costs of this suit, including his attorneys' fees.

FIFTH CAUSE OF ACTION

Violation of Plaintiff's First Amendment Rights To Freedom of Speech and Expression (42 U.S.C. § 1983)

105. Plaintiff realleges and incorporates herein by this reference the allegations contained in paragraphs 1 through 104 of this Complaint.

106. Defendant Yarber, acting in his individual capacity and under the color of state law, deprived Plaintiff of his clearly-established rights to freedom of speech and expression secured by the First Amendment to the Constitution of the United States by and through the cancellation and prohibition of the exhibition of Plaintiff's artwork, the series of paintings called "Portraits of Terror." in the Patterson Gallery in retaliation for and based upon Plaintiff's expression of his viewpoint on the Arab-Israeli conflict as expressed in "Portraits of Terror." The Patterson Gallery is a public forum in which students, such as Plaintiff, in the School of Visual Arts were encouraged to show their artwork, and Plaintiff was prohibited from showing "Portraits of Terror" based upon its content and Plaintiff's viewpoint as expressed in "Portraits of Terror."

107. Defendant Yarber, acting in his individual capacity and under the color of state law, deprived Plaintiff of his clearly-established rights to freedom of speech and expression when Defendant Yarber removed Plaintiff's flyers and advertisements for "Portraits of Terror" from the public walls at Penn State University based upon the content of the flyers and Plaintiff's viewpoint expressed in the flyers and advertisements as well as in the series of artwork titled "Portraits of Terror."

108. Defendant, acting under color of state law, deprived Plaintiff of his rights to the substantive and procedural components of the due process clause of the Fourteenth Amendment of the United States Constitution, to freedom of speech, expression and association.

109. Defendant, acting under color of state law, deprived Plaintiff of his rights under the First Amendment of the United States Constitution, to freedom of speech, expression and association.

110. The harm facilitated by Defendant's actions and inactions was foreseeable and a direct result of said actions and failures to act.

111. Upon information and belief, Defendant, with deliberate indifference to the consequences, established and maintained policies, practices and procedures herein described which directly caused constitutional harm.

112. A reasonable official or person in defendant's position would have been aware of Plaintiff's constitutional entitlement to freedom of speech, expression and association.

113. No reasonable official or person in defendant's position could have believed, in light of clearly established law, that his conduct comported with established legal standards.

114. Defendant's actions, as alleged herein, resulting in the deprivation of Plaintiff's rights under the First Amendment to freedom of speech and expression, have caused Plaintiff to suffer mental anguish, injury to his reputation, worry and upset, embarrassment, and other such injuries which will be shown by proof at the trial of this action.

115. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff is entitled to an award of monetary damages against Defendant Yarber and the reasonable costs of this suit, including his attorneys' fees.

SIXTH CAUSE OF ACTION

Defamation

116. Plaintiff realleges and incorporates herein by this reference the allegations contained in paragraphs 1 through 115 of this Complaint.

117. Defendant Garoian sent an email on April 19, 2006 to Penn State students, faculty and administrators in which he stated that after reviewing Penn State's Policy AD42: Statement on Nondiscrimination and Harrassment, and Penn State's Zero Tolerance Policy for Hate, he decided to cancel Plaintiff's exhibition "Portraits of Terror," likening it to hate speech.

118. Defendant Garoian sent an email to the Centre Daily Times wherein he stated that Plaintiff's exhibition of "Portraits of Terror" was cancelled because it was "commercial art" and sponsored by Hillel, an organization outside of the School of Visual Arts, to advance their own political agenda. This statement by Defendant Garoian was false when made and he knew the statement to be false, or should have known after the repeated repudiations by both Plaintiff and Tuvia Abramson, Director of Penn State Hillel, of Garoian's previous statements that Hillel had some involvement with, control over or contributed to the substance of Plaintiff's work in "Portraits of Terror" other than agreeing to provide refreshments for the opening reception of the exhibition.

119. Defendant Garoian understood and intended that his statement in his April 19th email to Penn State students, faculty and administrators that Plaintiff's exhibition was hate speech in violation of Penn State policies was to be applied to Plaintiff as Defendant Garorian's justification for cancellation of "Portraits of Terror."

120. Defendant Garoian understood and intended that his statement to the Centre Daily Times that "Portraits of Terror" was "commercial art" that was in some

way commissioned, sponsored, controlled or otherwise influenced by Hillel be applied to Plaintiff as Defendant Garoian's justification for prohibiting the exhibition of "Portraits of Terror" at the Patterson Gallery.

121. Defendant Garoian's statements in his April 11th email were wilful and were defamatory in that Garoian stated that Plaintiff's artwork was hate speech.

122. Defendant Garoian's statements to the Centre Daily Times were wilful and were defamatory in that Garoian suggested that the purpose of the "Portraits of Terror" was to promote a political agenda by Hillel rather than to demonstrate Plaintiff's artistic vision, talent and technique that Plaintiff had cultivated and developed through his education at Penn State University; that the inspiration and creative impetus for "Portraits of Terror" came from a source other than Plaintiff and that Plaintiff was nothing more than a megaphone and his work nothing more than a billboard for Hillel's political agenda; and that "Portraits of Terror" consisted of little more than political advertisements and was not art worthy of being shown in a "gallery." Garoian's statements went to the merits of Plaintiff's craft and work, as an artist, and caused *per se* injury.

123. In addition, Garoian's statements implied that Plaintiff was a liar as Plaintiff had previously stated on numerous occasions that Hillel had not commissioned his artwork and was not the sponsor of the "Portraits of Terror."

124. The Centre Daily Times published Defendant Garoian's statements and, thus, obviously understood that said statements were to be applied to the Plaintiff.

125. As a result of Defendant Garoian's statements as alleged herein, Plaintiff has suffered special harm. Specifically, an exhibition of "Portraits of Terror" to be shown at Gratz College in and around January or February 2007 was cancelled because the Cheltenham Police Department informed Gratz that it could not provide security to

the college because of the controversial nature of plaintiff's paintings. This decision by the Cheltenham police department was based upon the defamatory comments made by Defendant Garoian. Furthermore, Garoian's statements in his April 19th email to Penn State students, faculty and administration, and his email to the Centre Daily Times were *per se* slanderous, as they attacked the integrity of his art and the authenticity and, thus, integrity of his creative vision. Plaintiff suffered embarrassment, humiliation and loss of reputation as an emerging artist as a result of Garoian's defamatory statements.

126. Plaintiff is entitled to recover monetary damages of Defendant Garoian in an amount to be determined at the trial of this action as a result of his defamation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Joshua Stulman respectfully requests that the Court enter judgment against Defendants Pennsylvania State University, Charles Garoian, and Robert Yarber and provide Plaintiff with the following relief:

1. An injunction prohibiting the enforcement of the prohibition of "Portraits of Terror" from being exhibited at the Patterson Gallery;
2. Compensatory and Punitive Damages pursuant to the claims under 42 U.S.C. § 1983 asserted against Defendants Garoian and Yarber in their individual capacities;
3. Plaintiff's reasonable attorneys' fees, costs and other costs and disbursements in this action pursuant to 42 U.S.C. § 1988;
4. Compensatory and Punitive damages of Defendant Garoian in his individual capacity resulting from his defamation of Plaintiff;
5. All such other and further relief as to this Court seems just and proper and to which Plaintiff may be entitled.

6. For jury trial on issues so triable.

BILLET & CONNOR, P.C.

By: /s/ DS1073

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DATED: April 17, 2007