

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff,

v.

YAFA K. ISSA,
Defendant.



Daron W. McGrath
CLERK OF THE CIRCUIT COURT
CHAMPAIGN COUNTY, ILLINOIS

No. 2024-CF-934

MOTION TO DISMISS CHARGE AS UNCONSTITUTIONAL AS APPLIED

THE DEFENDANT, Yafa K. Issa, through her attorney, Evan S. Bruno of Bruno Law Offices LLC, hereby moves for an order dismissing the charge in this case as violative of the First Amendment as applied to Ms. Issa. In support of this request, Ms. Issa alleges as follows:

Background: The War in Gaza and the Campus Demonstrations

1. Gaza lies at the meeting place of Israel’s southern border and the Mediterranean Sea. In October 2023, Hamas-led militants attacked Israel from Gaza, killing 1,200 Israelis and taking 250 hostages¹. In response, Israel launched against Gaza one of the most destructive bombing campaigns in modern history^{2,3,4}. More than two million people live within the fenced-in territory of Gaza, in an area roughly 14% the size of Champaign County, making it one of the most densely populated places on Earth⁵. The United States supplied Israel with many of the bombs dropped on Gaza,

¹ *October 7 Crimes Against Humanity, War Crimes by Hamas-led Groups*
<https://www.hrw.org/news/2024/07/17/october-7-crimes-against-humanity-war-crimes-hamas-led-groups>
(last accessed Oct. 31, 2024).

² *Report: Gaza war among most deadly and destructive in history*
<https://www.israelnationalnews.com/news/382414> (last accessed Oct. 31, 2024).

³ *Israel’s military campaign in Gaza seen as among the most destructive in recent history, experts say*
<https://apnews.com/article/israel-gaza-bombs-destruction-death-toll-scope-419488c511f83c85baea22458472a796> (last accessed Oct. 31, 2024).

⁴ *The Ruined Landscape of Gaza After Nearly Three Months of Bombing*
<https://www.wsj.com/world/middle-east/gaza-destruction-bombing-israel-aa528542> (last accessed Oct. 31, 2024)

⁵ *Maps show the extreme population density in Gaza*
<https://www.cnn.com/2023/10/11/middleeast/maps-population-density-gaza-israel-dg/index.html> (last accessed Oct. 31, 2024).

including more than 14,000 2,000-pound bombs and 6,500 500-pound bombs⁶. By January 2024, more than half the buildings in Gaza were damaged or destroyed and more than 80% of Gaza's population—around 1.7 million people—were displaced⁷. Most fled south to Egypt, but Egypt would not let them in⁸. Crammed together at the border town of Rafah, over a million Gazan refugees sheltered in vast tent encampments⁹.

2. Beginning in late 2023 and ramping up in April 2024, demonstrations over the war in Gaza took place at 140 college campuses in 45 states and Washington, D.C.¹⁰. On April 17, 2024, in an expression of solidarity with the displaced refugees of Gaza, activists at Columbia University began erecting and sheltering in tents on the main lawn of the campus¹¹. Within days, like-minded demonstrators on at least 40 American college campuses, including the University of Illinois at Urbana-Champaign (UIUC), assembled similar tent encampments¹².

The Facts of This Case

3. Shortly before dawn on April 26, 2024, the defendant, 18-year-old University of Illinois sophomore Yafa Issa, went to the Alma Mater statute with approximately 20 other people. The group began setting up tents in a triangular patch of grass east of the Alma Mater. At 5:54 a.m., Associate Dean of Students Ann Marie Morgan and

⁶ *Exclusive: US has sent Israel thousands of 2,000-pound bombs since Oct. 7*
<https://www.reuters.com/world/us-has-sent-israel-thousands-2000-pound-bombs-since-oct-7-2024-06-28/> (last accessed Oct. 31, 2024).

⁷ *At least half of Gaza's buildings damaged or destroyed, new analysis shows*
<https://www.bbc.com/news/world-middle-east-68006607> (last accessed Oct. 31, 2024).

⁸ *A crisis is underway as the Egyptian border is flooded with fleeing Palestinian refugees*
<https://www.npr.org/2024/02/22/1233217747/a-crisis-is-underway-as-the-egyptian-border-is-flooded-with-fleeing-palestinian-> (last accessed Oct. 31, 2024).

⁹ *Tents appear in Gaza as Israel prepares Rafah offensive*
<https://www.bbc.com/news/world-middle-east-68888299> (last accessed Oct. 31, 2024).

¹⁰ *Columbia University cancels main graduation amid protests*
<https://www.bbc.com/news/world-us-canada-68965723> (last accessed Oct. 31, 2024).

¹¹ *In Focus: The first 24 hours of the 'Gaza Solidarity Encampment'*
<https://www.columbiaspectator.com/main/2024/04/18/in-focus-the-first-24-hours-of-the-gaza-solidarity-encampment/> (last accessed Oct. 31, 2024).

¹² *Campus protests: Pro-Palestinian demonstrations spread as some schools crack down*
<https://www.nbcnews.com/news/us-news/live-blog/columbia-protests-live-update-encampment-continue-college-negotiates-p-rcna149111> (last accessed Oct. 31, 2024).

University of Illinois Police Department (UIPD) Lieutenant Jason Bradley arrived and engaged in conversation with one demonstrator while a few others, including Ms. Issa, looked on. Morgan told the demonstrators that the tents violated the University's policy and would need to be removed. The demonstrator with whom she was speaking informed her that the tents were "kind of the whole point" of the demonstration. Morgan acknowledged the two sides were at an impasse. She said University officials would consult, figure out next steps, and come back. Bradley asked the demonstrators to "keep in mind" that the triangular patch had been roped off because the University was trying make the grass grow in anticipation of the upcoming commencement ceremonies. He gestured to a neighboring trapezoidal patch of grass directly north and said, "obviously this grass isn't cordoned off." Thereafter, some demonstrators began moving tents from the triangular patch of grass to the trapezoidal patch of grass.

4. By 8:00 a.m., a large police presence had formed in the area. Demonstrators in the trapezoidal patch of grass linked arms in a circle around the tents as workers from the Facilities and Services Department ("F & S") stood by to remove the tents. Ms. Issa—who was the president of the UIUC Chapter of Students for Justice in Palestine—alternated between disassembling tents and speaking with police officers and University personnel.
5. At 8:18, Ms. Issa spoke with Lt. Bradley outside the circle of arm-linked demonstrators. The following exchange occurred:

"Ms. Issa: So, we have every right to be here if these tents are down, [and] they're just not propped up, we can stay here?"

Lt. Bradley: Ma'am, the structures need to be removed, and the University has asked that. So here's the thing, the structures need to be removed—it's a violation of the

University rules. The University believes that they've given everyone enough time to do that.

Ms. Issa: And which [inaudible]—sorry.

Lt. Bradley: So—hold on—what they're asking us to do, as the police, is provide some protection for Facilities and Services to remove those. If their work is impeded, then anyone that's impeding their work is going to be issued a trespass to the University, and any students are going to be kicked out. They're going to be suspended. Anyone that's impeding is going to be issued an immediate notice of trespass and arrested for trespass and taken to Champaign County Jail."

Ms. Issa asked Lt. Bradley to clarify whether the demonstration could continue if "the tents are still here, they're just down." Lt. Bradley told her the tents needed to be removed and packed up. Ms. Issa asked "Is there a solid rule saying these tents need to be packed up in a bag?" Lt. Bradley responded, "The University has decided that it is—it is in their policy that any structures are not to be erected." Lt. Bradley said this decision came from the "the grounds policy" of the "campus administration manual." Ms. Issa asked for further clarification whether the tents were still considered "structures" if they were collapsed. Lt. Bradley responded, "The event is not the problem. The structures are the problem." At this point, UIPD Assistant Chief Barb Robbins stepped into the conversation. Ms. Issa asked Robbins for clarification about whether taken-down tents were still "structures" under the policy. The following exchange ensued:

"Ms. Issa: My question is, where in the policy does it say we have to put these tents in bags?"

Robbins: We're beyond talking about policy. The University has policies.

Ms. Issa: I have every right to discuss the policy.

Robbins: Uh, not with us. Not now.

Ms. Issa: I have every right to ask questions about policy.

Robbins: No."

Robbins and Bradley then walked away.

6. At the time of this demonstration, the University's Campus Administrative Manual (CAM) required pre-approval for an "Outdoor Display," defined as "[a] freestanding structure¹³ or sign *** that is not attached to an existing structure or improvement." An Outdoor Display does not include tents or canopies, which are subject to individual facility reservation policies." *UI Campus Administrative Manual: Outdoor Displays*, FO-49 (Issued Apr. 15, 2013; revised June 23, 2022). The applicable CAM policy on "Reservation of University Property," found at FO-81, did not mention "tents," but generally prohibited "camping," which it defined as "establishing or maintaining an outdoor site on University Property for the purpose of overnight stays or sleeping *** between the hours of 10 p.m. and 8 a.m." *UI Campus Administrative Manual: Reservation of University Property*, FO-81 (issued July 15, 2021).
7. At 8:21 a.m., minutes after ending her conversation with Ms. Issa, Assistant Chief Robbins approached the circle of arm-linked demonstrators, who were chanting, "Free! Free Palestine!" Robbins addressed two demonstrators, seemingly at random, and told them to separate. Another demonstrator wearing a red-checkered keffiyeh stepped into the circle and linked arms in front of Robbins. Lt. Bradley told that

¹³ Although the CAM did not define "structure," the term generally means "something (such as a building) that is constructed" (<https://www.merriam-webster.com/dictionary/structure>) or "something that has been made or built from parts, especially a large building" (https://dictionary.cambridge.org/us/dictionary/english/structure#google_vignette).

demonstrator, "You are subject to trespass and arrest, okay? We are going to remove you." That demonstrator was then pulled from the circle, arrested, and carried away. The circle broke temporarily, and officers and F & S workers began removing tents. A circle reformed around some other tents, and chanting continued. At 8:24, police broke through that circle of chanting demonstrators to remove more tents. By 8:26, all tents were removed. The demonstrators now linked arms and chanted around a pile of miscellaneous supplies in the grass. At 8:32, Robbins dismissed her officers from the scene.

8. Throughout the day, University administration, namely Associate Vice Chancellor Dr. James Hintz, engaged in negotiations with some demonstrators. Hintz told some demonstrators that their demonstration was out of compliance with the University's policies on usage of space, that those who failed to abide by the University's policy would be asked to leave, and that those who refused to leave would be charged with trespassing.
9. Ms. Issa remained near the Alma Mater until approximately 1:30 or 2:00 p.m., when she left for her home off campus. She returned to the Alma Mater around 3:20 p.m., where she found that the crowd of demonstrators and police had grown, and tents were going back up. Demonstrators locked arms in a circle. Ms. Issa went inside the circle, where she distributed water and led chants.
10. At 4:12 p.m., according to Lt. Bradley's written report, Hintz gave the demonstrators a final warning to remove structures. Hintz again informed the group that anyone who impeded the laborers would be subject to trespass. Following Hintz' final warning, Lt. Bradley and approximately 16 other officers organized "into squads and formation to address the group safely," according to Bradley's report. The officers staged near the northwest corner of the Illini Union. Bodycam footage shows Assistant Chief Robbins instructing the officers, "Okay, let's go up here and let's form our wedge," and using her hands to indicate a wedge shape.

11. At 4:27 p.m., the officers approached the demonstration, which consisted of a large group of people interlocking arms and chanting, "Disclose! Divest! We will not stop! We will not rest!" The circle of demonstrators was multilayered and dense. At the center of the circle, the ground was strewn with tent components and miscellaneous supplies. Lt. Bradley estimated that around 200-250 people were present linking arms. Several demonstrators on the outer ring of the circle held a large sign made of fabric on plywood that read "This is the People's Camp." Assistant Chief Robbins led the formation of officers to the circle. She and Bradley took hold of the sign by the top and side edges. Bradley then announced in a loud voice, "Ladies and gentlemen, we're going to place anyone under arrest for trespassing if you don't separate."
12. Bodycam footage shows that approximately eight seconds after Lt. Bradley's announcement, an officer leaned his shoulder against the plywood sign and began driving forward against the crowd. Demonstrators screamed and toppled backwards as officers pushed against the plywood sign, which behaved as a plow against the demonstrators. Officers yelled, "Get back!" Officers at the back of the wedge formation pushed on the backs of their fellow officers to help propel them forward against the demonstrators. The screen capture below shows how the officers used the plywood sign as a plow against the demonstrators (the fabric-covered plywood sign is visible in the upper right):



13. The officers broke through into the circle. Ms. Issa, who had been inside the circle, was knocked over. When she got up, she linked arms with several other demonstrators, who stood at a distance from the police, separated by a large pile of tent materials and supplies. Tarps, dismantled tents, tent poles, cardboard boxes, and supplies on the ground made it difficult to keep a sure footing. In reports written later, several officers recalled their concern at the time that members of the crowd could be trampled. Someone in the crowd yelled, "You're trampling over students!" The screen captures below show the ground covered in tarps and tents, into which the officers pushed the demonstrators using the plywood sign as a plow:





14. The scene was chaotic. Chants of "Shame on You!" and "Free! Free Palestine!" rang out. Some demonstrators linked arms, but no longer in a coherent circle. The crammed-together demonstrators were jostled. F & S laborers collected tent materials as officers formed a loose perimeter around them. One officer attempted to grab a bullhorn from a demonstrator who was using it to chant political slogans.

As fallen demonstrators regained their feet, one officer took hold of the sign and turned it ninety degrees on end, perpendicular lengthwise to the ground. He then turned it back to its original orientation, standing it up with its long edge against ground. Officers placed hands against the sign, which separated them from demonstrators, who were packed in a crush of bodies on the other side. As officers continued pushing against the front of the sign, those demonstrators immediately behind the sign were trapped by the dense crowd behind them. As this front row of demonstrators began to topple backwards from the force of the officers pushing on the other side of the sign, they pushed back. Police responded by pushing against the front of the sign even harder. The solid mass of demonstrators behind the sign—many dozens of people—moved forward. The pocket the officers had made inside the demonstration collapsed. At 4:32 p.m., Assistant Chief Robbins gave the order to back out, and the officers withdrew from the demonstration.

15. At 5:35 p.m., after withdrawing from the demonstration, Lt. Bradley told his fellow officers gathered near the circle drive of the Illini Union, "I think where we're at in the policy right now is—is we're not considering this illegal activities [*sic*]. And if they're not, then we're not going to disperse them."
16. Around 6:45 p.m., Ms. Issa and other members of Students for Justice in Palestine, accompanied by a graduate student and a faculty member, met with representatives of the University Administration in a nearby building to talk and negotiate a compromise that would allow the demonstration to continue. The talks ended around 10 p.m., whereupon Ms. Issa and the other demonstrators packed up their belongings and left the area.

17. The Alma Mater encampment was one of dozens of similar encampments set up on college campuses in late April and early May of 2024¹⁴. Within a week of the demonstration at the Alma Mater, President Biden paused the shipment of 1,800 2,000-pound bombs and 1,700 500-pound bombs to Israel¹⁵. He reportedly feared the bombs could be dropped on Rafah, where more than a million Gazan refugees were sheltering in tents¹⁶.

The State's Investigation and Charges

18. In the months that followed the demonstration at the Alma Mater, the State scoured social media to identify participants in the demonstration. UIPD investigators reviewed the Instagram page of the UIUC Chapter of Students for Justice in Palestine, which included a video from the demonstration. From there, investigators found the Instagram profile of Ms. Issa, which included a picture of her wearing the same distinct necklace and holding a phone with the same case as a demonstrator shown in the video from the demonstration. The investigators used the profile name from that Instagram profile to search the UIUC student database, which led them to Ms. Issa. On June 26, 2024, University officers went to Ms. Issa's home and served her with a notice to appear in court for the offense of Class C misdemeanor Mob Action under 720 ILCS 5/25-1(a)(2).

19. The Charging Information filed against Ms. Issa on July 9, 2024, alleges as follows:

“That on April 26, 2024, in Champaign County, Yafa K. Issa committed the offense of MOB ACTION CLASS 4 FELONY [i]n that said defendant knowingly by the use of force and violence

¹⁴ *List of pro-Palestinian protests on university campuses in the United States in 2024*
https://en.wikipedia.org/wiki/List_of_pro-Palestinian_protests_on_university_campuses_in_the_United_States_in_2024 (last accessed Oct. 31, 2024).

¹⁵ *US paused bomb shipment to Israel to signal concerns over Rafah invasion, official says*
<https://apnews.com/article/biden-bombs-gaza-netanyahu-israel-rafa-432aa51e3569d1a73b22273295b1a53f#> (last accessed Oct. 31, 2024).

¹⁶ *Biden says he will stop sending bombs and artillery shells to Israel if it launches major invasion of Rafah*
<https://www.cnn.com/2024/05/08/politics/joe-biden-interview-cnntv> (last accessed Oct. 31, 2024).

disturbed the public peace in that she, while acting together with a large group of people, and without authority of law, physically prevented University of Illinois Facilities and Services personnel from removing structures erected on University of Illinois property adjacent to the Alma Mater in violation of university regulations by linking arms to form a barrier, physically pushing, pulling and shoving University of Illinois police who were present to assist with ensuring safe access for the F & S personnel, and using a sheet of plywood and other objects as shields to push officers away from the structures, in violation of 720 ILCS 5/25-1(a)(1).”

The Law

20. A defendant in a criminal prosecution may bring a First Amendment challenge to a criminal prosecution before trial through a motion to dismiss the charge. See, e.g. *People v. Austin*, 2019 IL 123910; *People v. Minnis*, 2016 IL 119563; *People v. Melongo*, 2014 IL 114852. “Ordinarily, matters of constitutional magnitude should be raised before the trial begins” and “[t]he trial judge should be given an opportunity to carefully consider legitimate constitutional issues.” *City of Chicago v. Burgard*, 285 Ill. App. 3d 478, 480, 673 N.E.2d 1082, 1084 (1st Dist. 1996).
21. Here, Ms. Issa brings an as-applied First Amendment challenge to the State’s Attorney’s use of the mob-action statute against her in this case. “[A]n as-applied challenge requires a party to show that the statute is being unconstitutionally applied under the facts and circumstances of the given case.” *People v. Rollins*, 2021 IL App (2d) 181040, ¶ 15, 183 N.E.3d 997, 1002. Such a First Amendment challenge “ ‘asserts that the particular acts which gave rise to the litigation fall outside what a properly drawn regulation could cover.’ ” *People v. Normand*, 345 Ill. App. 3d 736, 740, 803 N.E.2d 1099, 1101 (2d Dist. 2004), *aff’d*, 215 Ill. 2d 539, 831 N.E.2d 587 (2005)

(quoting *Vuagniaux v. Dep't of Prof'l Regulation*, 208 Ill. 2d 173, 191, 802 N.E.2d 1156, 1167 (2003)). "It is settled that an as-applied constitutional challenge is inherently fact intensive because it depends on the particular facts and circumstances of the challenging party in each individual case." *City of Chicago v. Alexander*, 2017 IL 120350, ¶ 85 (Kilbride, J., dissenting). Thus, to determine whether a statute is unconstitutional as applied, the trial court must hold an evidentiary hearing and make findings of fact. *People v. Rizzo*, 2016 IL 118599, ¶ 26, 61 N.E.3d 92, 99.

22. The First Amendment provides that "Congress shall make no law *** abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. Amend. I. The Constitution of Illinois of 1970 provides that "[t]he people have the right to assemble in a peaceable manner, to consult for the common good, to make known their opinions to their representatives and to apply for redress of grievances." Ill. Const. art. I, § 5. This provision of the Illinois Constitution is interpreted and applied in lockstep with the First Amendment of the U.S. Constitution. *City of Chicago v. Alexander*, 2017 IL 120350, ¶ 57.
23. The U.S. Supreme Court also recognizes the unenumerated First Amendment right "to associate for the purpose of engaging in those activities protected by the First Amendment—speech, assembly, petition for the redress of grievances, and the exercise of religion." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 618 (1984). Although not all instances of group association are constitutionally protected, "[t]he right to associate does not lose all constitutional protection merely because some members of the group may have participated in conduct or advocated doctrine that itself is not protected." *N.A.A.C.P. v. Claiborne Hardware Co.*, 458 U.S. 886, 908 (1982).
24. As charged in this case, "[a] person commits mob action when he or she engages in any of the following: (1) the knowing or reckless use of force or violence disturbing

the public peace by 2 or more persons acting together and without authority of law[.]” 720 ILCS 5/25-1(a)(1).

25. The State’s Attorney’s application of the mob-action statute in this case is unconstitutional because it relies on First Amendment-protected assembly and association to satisfy the “2 or more persons acting together” element of the offense, and First Amendment-protect conduct to satisfy the “disturbing the public peace” element of the offense. The State’s theory is as follows. Because the demonstrators were linking arms and chanting political slogans in a circle that surrounded camping tents, and because the University administration decided that camping tents were “structures” that violated their policy on space usage, the UIPD was justified in using a wedge formation to physically pierce through the circle of demonstrators to get to the tents. The resistance the wedge formation encountered, according to the State’s theory, was “force and violence” that “disturbed the public peace.” And, critically, because those on the receiving end of the wedge formation were all protesting the war in Gaza through a symbolic tent encampment, all were “acting together” and guilty of “mob action” when some amongst them resisted destruction of the tent encampment. As explained below, the First Amendment cares about context, and in the context of a political demonstration like this one, the First Amendment prohibits criminal prosecution on a theory of group liability.

26. In *N.A.A.C.P. v. Claiborne Hardware Co.*, 458 U.S. 886 (1982) white merchants brought suit in Mississippi state court for damages and injunctive relief against the National Association for the Advancement of Colored People (“N.A.A.C.P.”) and 146 individual members who organized and participated in a boycott of white businesses. *Id.* at 889. In upholding the trial court’s finding of common law tort liability for malicious interference with business, the Mississippi Supreme Court concluded that “ [i]n carrying out the agreement and design, certain of the defendants, acting for all others, engaged in acts of physical force and violence

against the persons and property of certain customers and prospective customers [of the plaintiff merchants]. *** If any of these factors—force, violence, or threats—is present, then the boycott is illegal regardless of whether it is primary, secondary, economical, political, social or other.’ ” *Id.* at 894 (quoting *N.A.A.C.P. v. Claiborne Hardware Co.*, 393 So.2d 1290, 1300 (1980)). The Mississippi Supreme Court rejected the defendants’ First Amendment defenses, reasoning that the defendants’ boycott included “ ‘illegal force, violence, and threats against the peace to achieve a goal,’ ” and the First Amendment does not protect “ ‘the right to commit crime.’ ” *Id.* quoting 393 So.2d at 1301.

27. In reversing the Mississippi Supreme Court, the U.S. Supreme Court held that when constitutionally protected activity is present, “a special obligation” is imposed upon the Court “to examine critically the basis on which liability was imposed.” *Id.* at 916. In applying that framework to the civil liability imposed upon the petitioners, the Court endeavored to “consider the effect of our holding that much of petitioners’ conduct was constitutionally protected on the ability of the State to impose liability for elements of the boycott that were not so protected.” *Id.* at 916-917. The Court further held:

“No federal rule of law restricts a State from imposing tort liability for business losses that are caused by violence and by threats of violence. When such conduct occurs in the context of constitutionally protected activity, however, ‘precision of regulation’ is demanded. *NAACP v. Button*, 371 U.S. 415, 438 (1963). Specifically, the presence of activity protected by the First Amendment imposes restraints on the grounds that may give rise to damages liability and on the persons who may be held accountable for those damages.” *Id.* at 916-17.

The *Claiborne Hardware* Court reviewed prior First Amendment decisions, from which it drew the following principle of group liability:

“Civil liability may not be imposed merely because an individual belonged to a group, some members of which committed acts of violence. For liability to be imposed by reason of association alone, it is necessary to establish that the group itself possessed unlawful goals and that the individual held a specific intent to further those illegal aims. ‘In this sensitive field, the State may not employ “means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.” ’ “ *Id.* at 920 (quoting *Carroll v. President & Com’rs of Princess Anne*, 393 U.S. 175, 183–84 (1968) (quoting *Shelton v. Tucker*, 364 U.S. 479, 488 (1960))).

28. The Charging Information filed against Ms. Issa describes acts committed by a “large group of people” at the Alma Mater. Specifically, the charge alleges that the following acts of the large group “disturbed the public peace”: (1) “linking arms to form a barrier,” (2) “physically pushing, pulling and shoving University of Illinois police who were present to assist with ensuring safe access for the F & S personnel,” and (3) “using a sheet of plywood and other objects as shields to push officers away from the structures.” The offense of mob action is unique because the State is not required to allege that Ms. Issa *personally* did any of these things, but only that she was “acting together with a large group of people” that did these things. See, e.g., *In re B.C.*, 176 Ill. 2d 536, 549, 680 N.E.2d 1355, 1362 (1997) (“To sustain a conviction for mob action it must be shown that a defendant was part of a group engaged in physical aggression reasonably capable of inspiring fear of injury or harm.”). In other words, the lynchpin of Ms. Issa’s liability under the mob-action statute is her association with other demonstrators. “[S]tate action which may have the effect of

curtailing the freedom to associate is subject to the closest scrutiny.” *State of Ala. ex rel. Patterson*, 357 U.S. at 460–61. This mob-action prosecution, wielded against a group of people associating together to exercise First Amendment rights, runs afoul of the First Amendment’s demand for “precision of regulation.” *Claiborne Hardware*, 458 U.S. at 916–17.

29. The State’s Attorney’s disregard for precision is evident from the face of the charging document, which relies on core First-Amendment activity to make its case. At the outset, the State’s Attorney ignores the First Amendment nature of the assembly by referring to the demonstration as simply “a large group of people.” The charge then cites the linking of arms “to form a barrier.” What the State’s Attorney sees as a “barrier” is a universally recognized expression of unity. Martin Luther King Jr. linked arms with his wife as they marched from Selma to Montgomery¹⁷.

Hongkongers linked arms across the city in opposition to control from Beijing¹⁸. The owner of the Jacksonville Jaguars linked arms with his players during the National Anthem in response to a U.S. President’s tweets¹⁹. The linking of arms is woven into the fabric of the First Amendment, and it was a ubiquitous feature of the pro-Palestine campus demonstrations of 2024²⁰. It symbolized solidarity with the displaced refugees of Gaza, who were sheltering in tents and surrounded by forces of opposition.

30. The State’s Attorney’s targeting of core First Amendment conduct does not end at the linking of arms. Protestors at the Alma Mater displayed a large sign that read, “This is the People’s Camp.” It is difficult to imagine anything more squarely protected by the First Amendment than a sign at a political protest. To the

¹⁷ <https://www.britannica.com/event/Selma-March> (last accessed Oct. 31, 2024).

¹⁸ *Hong Kong protesters form human chains across the city* <https://www.cbsnews.com/news/hong-kong-protesters-form-human-chains-across-the-city/> (last accessed Oct. 31, 2024).

¹⁹ <https://blogs.illinois.edu/view/6231/559409> (last accessed Oct. 31, 2024).

²⁰ <https://www.npr.org/sections/pictureshow/2024/05/04/1248904667/campus-protests-photos> (last accessed Oct. 31, 2024).

prosecution in this case, however, the sign was a “sheet of plywood” being used as a “shield.” Like a hammer in search of a nail, a police wedge formation on the march can turn any group of arm-linked protestors into a “barrier” and any signboard into a “shield.” But if precision of regulation is to mean anything, it must mean the State cannot build a criminal charge on a foundation of protected First Amendment conduct.

31. Reasonable time, place, and manner restrictions govern the right to public protest, and the caselaw is well developed. The charge in this case asserts that “structures” were “erected on University of Illinois property adjacent to the Alma Mater in violation of university regulations.” It was this alleged violation of University regulations that justified UIPD’s use of force to break up the demonstration to remove the tents. However, as already explained, the University’s policy on “outdoor displays,” which required pre-approval for “structures,” explicitly stated that an outdoor display “does not include tents or canopies.” *UI Campus Administrative Manual: Outdoor Displays*, FO-49 (Issued Apr. 15, 2013; revised June 23, 2022). Here it should be noted that in August 2024, the University amended portions of its Campus Administrative Manual regarding expressive activity, structures, signs, and usage of property. A University spokesperson told the News Gazette, “UI officials heard from students, staff, faculty and ‘visitors’ alike that policies were hard to find, unclear, seemed inconsistent or referenced laws that were also hard to find.”²¹
32. However, even if the University did have a policy in place prohibiting symbolic tent encampments (it did not) it is well-established that “restrictions of this kind are valid provided that they are justified without reference to the content of the regulated

²¹ *UI proposes policy changes surrounding protests, structures on campus* https://www.news-gazette.com/news/local/university-illinois/ui-changes-policies-surrounding-protests-structures-on-campus/article_5a12e04a-4f96-11ef-ac6c-8b46d482f2b9.html (last accessed Oct. 31, 2024).

speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.” *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984). In *Clark*, activists sought a permit to camp in tents in Washington, D.C.’s Lafayette Park and the National Mall to call attention to the plight of homelessness, but the National Park Service denied their request, citing regulations that prohibited camping in those parks. *Id.* at 289. Applying the First Amendment, the Supreme Court explained that “[s]ymbolic expression of this kind may be forbidden or regulated if the conduct itself may constitutionally be regulated, if the regulation is narrowly drawn to further a substantial governmental interest, and if the interest is unrelated to the suppression of free speech.” *Id.* at 294. Here, even if the University had been correct that its regulations prohibited tents, those regulations were not immune to First Amendment review. But no judicial review took place. Instead, the University swiftly set out to remove the encampment by force. This prosecution, if allowed to proceed, provides a roadmap for state actors to circumvent time, place, and manner review: throw police at a protest, and after a fracas ensues, prosecute the whole group for mob action. The First Amendment cannot be so easily circumvented.

33. In the context of the Alma Mater demonstration, the question before this Court is whether the State’s ends can be more narrowly achieved so as to avoid stifling fundamental personal liberties. *Claiborne Hardware*, 458 U.S. at 920. They can be. The State can prosecute individual protestors for individual crimes. But it cannot call the entire demonstration “mob action” and prosecute Ms. Issa and others for the acts of fellow demonstrators.
34. The lesson of *Claiborne Hardware* is that a group of individuals cannot be prosecuted on a theory of joint liability when the primary glue holding the group together is the shared exercise of First Amendment freedoms. To do so would be to chill future

generations of Illinoisans from banding together to amplify a shared viewpoint, particularly when the shared viewpoint is most likely to enflame passions. Strong emotions that inspire a group to speak out may inspire some within the group to act out. But as the Supreme Court held in *Claiborne Hardware*, “the presence of activity protected by the First Amendment imposes restraints on the grounds that may give rise to damages liability and on the persons who may be held accountable for those damages.” *Id.* at 916-17. This holding applies with even greater force in the criminal context.

35. Accepting, for the sake of argument, that some individuals at the Alma Mater engaged in unlawful acts, there is no dispute that such conduct occurred during, and in furtherance of, a political demonstration. A criminal prosecution that requires proof of a defendant’s membership in a group organized to advance political messages “must be judged *strictissimi juris* [(by the strictest law)], for otherwise there is a danger that one in sympathy with the legitimate aims of such an organization, but not specifically intending to accomplish them by resort to violence, might be punished for his adherence to lawful and constitutionally protected purposes, because of other and unprotected purposes which he does not necessarily share.” *Noto v. United States*, 367 U.S. 290, 299–300 (1961). This breathing room for First Amendment conduct is necessary to protect the “ ‘profound national commitment’ that ‘debate on public issues should be uninhibited, robust, and wide-open.’ ” *Claiborne Hardware Co.*, 458 at 928 (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)).

36. The following passage from *Claiborne Hardware* is apt:

“The taint of violence colored the conduct of some of the petitioners. They, of course, may be held liable for the consequences of their violent deeds. The burden of demonstrating that it colored the entire collective effort, however, is not satisfied

by evidence that violence occurred or even that violence contributed to the success of the boycott. A massive and prolonged effort to change the social, political, and economic structure of a local environment cannot be characterized as a violent conspiracy simply by reference to the ephemeral consequences of relatively few violent acts. Such a characterization must be supported by findings that adequately disclose the evidentiary basis for concluding that specific parties agreed to use unlawful means, that carefully identify the impact of such unlawful conduct, and that recognize the importance of avoiding the imposition of punishment for constitutionally protected activity. *** A court must be wary of a claim that the true color of a forest is better revealed by reptiles hidden in the weeds than by the foliage of countless freestanding trees.” 458 U.S. at 933–34.

37. When alleged criminal conduct occurs within the context of a First-Amendment-protected protest or demonstration, individuals must be judged by their individual conduct. The lesson of *N.A.A.C.P. v. Claiborne Hardware* is that guilt-by-association liability must yield when First Amendment-protected association is at play.

WHEREFORE, the defendant, Yafa Issa, requests a hearing on this motion and an order from this Court dismissing the mob-action charge against her on the grounds that its application under the circumstances of this case violates her First Amendment rights.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify I timely served a true and correct copy of the foregoing motion upon the Champaign County State's Attorney's Office by hand delivery.



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