

April 1, 2014

Judiciary Committee Members
Illinois State Senate
Capitol Building
Springfield, IL 62706

RE: Senate Joint Resolution 59 – “Anti-Boycott Resolution”

Dear Judiciary Committee Member:

We at the Center for Constitutional Rights are writing to convey our serious concerns with Senate Joint Resolution (SJR) 59, which condemns academic boycotts and encourages public universities to condemn such boycotts. Although this Resolution does not contain the penalties against universities that would be imposed by SB 3017 (a bill still before this committee), it nonetheless impermissibly intrudes into the academic freedom of faculty members who wish to speak on matters of public concern based on the viewpoints of certain Senators. Furthermore, SJR 59 inaccurately and inappropriately claims that there is a trend of “singling out” Israeli academic institutions for a boycott on “purported human rights grounds” that raises questions of anti-Semitism. Criticism of Israeli government policy based on its well-documented discriminatory and repressive policies towards Palestinians is not anti-Semitic and assertions to the contrary undermine real struggles against all forms of discrimination.

A. SJR 59 Targets Core Political Speech That is Protected by the First Amendment

The Supreme Court has held that boycotts “to bring about political, social and economic change” involve speech, association and petition activities unquestionably protected under the First Amendment.¹ The American Studies Association’s (ASA) resolution to boycott Israeli academic institutions – at which this Resolution is directed² – was passed because of the central role that Israeli universities play in Israel’s denial of Palestinian human rights.³ Resolutions such as the ASA’s are core political speech and thus deserve the “special protection” afforded by the First Amendment.

Faculty members and students, not legislators or administrators, should determine the content and form of their own academic expression in a forum that is intended to be a

¹ *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 911 (1982).

² The Resolution itself explicitly references the academic boycott of Israeli institutions. See also State Senator Ira Silverstein’s announcement about SJR 59’s companion bill, which admits that the bill specifically targets those that “promote political boycotts of Israel and other foreign nations,” and refers directly to the ASA’s resolution endorsing an academic boycott of Israeli academic institutions, available at <http://www.senatorsilverstein.com/>.

³ American Studies Association Resolution on the Academic Boycott of Israel, available at http://www.theasa.net/american_studies_association_resolution_on_academic_boycott_of_israel; see also ASA Boycott Resolution, *What does the boycott mean for the ASA?*, available at http://www.theasa.net/what_does_the_academic_boycott_mean_for_the_asa/.

“marketplace of ideas.” Government interference in academic debates “raises the specter that the Government may effectively drive certain ideas or viewpoints from the marketplace.”⁴ This Resolution represents such an inappropriate intrusion of legislators into academic discourse with which they disagree, and it casts exactly the “pall of orthodoxy” on academics and their institutions on matters of public concern that the Supreme Court has warned against.⁵ Even though the Resolution does not contain the same punishment as SB 3017 proposes, the Resolution sends the clear message that the Illinois Legislature disfavors the political viewpoints of academic supporters of the boycott. Courts have long recognized that speech may still be chilled even when a party continues to exercise its First Amendment rights.⁶

Had a Resolution such as this been passed in response to similar boycotts against the apartheid regime in South Africa, public universities and academics across Illinois would have been shunned for expressing their refusal to be complicit in South Africa’s discriminatory practices. It would have been an unacceptable outcome then, and it is an unacceptable outcome now – regardless of the current unpopularity of the ASA’s position among legislators.

B. Academic Boycott Resolutions Such as the ASA’s Are Motivated by Human Rights Issues, Not Anti-Semitism

SJR 59 suggests that “singling out” Israeli academic institutions for a boycott on “purported human rights grounds” amounts to anti-Semitism. This allegation aims to deflect from the real motivation of academic boycotts of Israel, which are a means of protesting Israel’s discriminatory practices towards Palestinians. The Resolution thereby undermines the important role boycotts have played in social justice and human rights struggles.

Moreover, it disparages the purpose behind boycotts against Israel, which target the state’s well-documented discriminatory and repressive policies towards Palestinians, not any ethnic or religious groups. The ASA boycott resolution targets institutions, not individuals, in order to change the policies of politically accountable government actors in Israel and the U.S. The individuals who could be affected by the ASA resolution, for example, are only those who directly represent Israeli state institutions in an official capacity.⁷ To equate criticism of the Israeli state or a boycott of Israeli academic institutions with anti-Semitism is as misguided as calling criticism of or sanctions against the Iranian government anti-Muslim or anti-Persian, and as illogical as classifying criticism of the Chinese occupation of Tibet as hateful against people of Chinese ethnicity. Common sense makes clear the distinction between anti-Jewish bias (based

⁴ *R.A.V. v. St. Paul*, 505 U.S., 387 (1992) (internal quotations and citations removed); *See also West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943) (“If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.”).

⁵ *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967); *see also Adler v. Board of Education*, 342 U.S. 485 (1952); *Cramp v. Board of Public Instruction*, 368 U.S. 278, 82 S.Ct. 275, (1961); *Board of Regents v. Roth*, 408 U.S. 564 (1972); *Perry v. Sindermann*, 408 U.S. 593 (1972); *Mt. Healthy City Board of Ed. v. Doyle*, 429 U.S. 274 (1977).

⁶ *Housing Works, Inc. v. City of New York*, 72 F. Supp. 2d 402, 421 (S.D.N.Y. 1999).

⁷ ASA Boycott Resolution, *What does the boycott mean for the ASA?*, available at http://www.theasa.net/what_does_the_academic_boycott_mean_for_the_asa/.

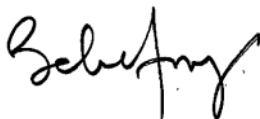
on the race, ethnicity or religious identity of Jewish people as individuals or as a group) and criticism of Israeli institutions. The law also recognizes the distinction.⁸

Attempts to paint academic groups and individuals that support boycotts as anti-Semitic and discriminatory against Jews and Israelis are not only legally bankrupt; they also trivialize important struggles against anti-Semitism and all other forms of racism. They also have resulted in significant threats and targeting of academics because of their views,⁹ and resulted in fears that their careers will be affected because of their political expression. This would only increase with the State's endorsement of the false notion that such views are anti-Semitic.

C. Conclusion

We are committed to upholding the First Amendment rights of those challenging orthodox views. SJR 59 constitutes a blanket condemnation of an honored American tactic to effect social, political and economic change, solely because public officials disagree with the message that certain groups are expressing. The mischaracterization of criticism of Israel in general, and academic boycotts against Israel in particular as anti-Semitic is a disturbing trend that has a lasting effect on those academics that engage on this issue of great concern, by supporting boycotts or otherwise. The Illinois legislature should not contribute to this veritable blacklisting of individuals for the constitutionally protected views they hold.

Sincerely,



Baher Azmy
Legal Director
Center for Constitutional Rights

⁸ See, e.g., recent letters by the U.S. Department of Education Office for Civil Rights dismissing several claims under Title VI of the Civil Rights Act alleging that campus activity critical of Israel created an anti-Semitic hostile environment. The letters explain that the allegations were not actionable because the activities complained of constitutionally protected First Amendment expression, and were based on political viewpoint, not race, ethnicity or national origin. For more information and to view the letters, see <http://ccrjustice.org/newsroom/press-releases/victory-student-free-speech%2C-department-of-education-dismisses-complaint>.

⁹ See, e.g., collection of hate mail received by supporters of the academic boycott, available at <http://bdsloveletters.com/tag/threats/>. Many other academics have reported receiving hate mail, being threatened, and even losing their jobs because of their views critical of Israeli policies.