



February 11, 2014

Congressman John Kline
2439 Rayburn HOB
Washington, DC 20515

RE: H.R. 4009 - “Protect Academic Freedom Act”

Dear Congressman Kline:

We at the Center for Constitutional Rights, the National Lawyers Guild and CAIR-USA, organizations dedicated to upholding the rights of individuals to express their political views without repression, are writing to convey our serious concerns with H.R.4009. The bill was drafted to shield Israel from boycotts and to “fight back” against college campaigns critical of Israeli policies.¹ Contrary to its misleading title, this bill undermines academic freedom by punishing speech on matters of public concern at institutions of higher education.

This bill threatens core First Amendment principles, is likely to mobilize a strong opposition from a spectrum of academic and civil society groups, and will no doubt trigger constitutional challenges in the courts.² Accordingly, we urge you to oppose H.R. 4009.

I. Political boycotts constitute “core political speech” and are therefore afforded the highest level of protection under the First Amendment.

The U.S. Supreme Court has long held that the political boycott is an activity afforded the highest level of protection under the First Amendment. In *NAACP v. Claiborne Hardware Co.*, a

¹ News Release, Congressman Peter Roskam, Roskam, Lipinski Introduce Bipartisan Legislation to Protect Academic Freedom by Preventing Academic Boycott of Israel (Feb 6, 2014) <http://roskam.house.gov/media-center/press-releases/roskam-lipinski-introduce-bipartisan-legislation-to-protect-academic>.

² The New York State legislature recently proposed two bills, S.6438 and A.8392, aimed at denying state funds to universities that fund organizations that support the academic boycott of Israel and three other countries. Overwhelming opposition caused the Assembly bill to be delayed. The New York Times reported, “the turnabout has been described by some as a political earthquake in Albany.” See http://takingnote.blogs.nytimes.com/2014/02/07/boycotting-israel-and-the-first-amendment/?_php=true&_type=blogs&_r=0; See also Editorial, *A Chill on Speech*, N.Y. TIMES, Feb. 3, 2014, at <http://www.nytimes.com/2014/02/04/opinion/a-chill-on-speech.html> (“NY Times Editorial”); Center for Constitutional Rights and National Lawyers Guild – New York City Chapter letter to Assembly members, <http://ccrjustice.org/files/1%2030%2014%20%20CCR%20NLG%20NYC%20Letter%20to%20NY%20Assembly%20Members%20FINAL.pdf>; New York Civil Liberties Union letter to Assembly Members, <http://coreyrobin.files.wordpress.com/2014/02/academic-boycott-bill-a8392-s6438-nyclu-statement-final.pdf>; American Association of University Professors’ statement, <http://aaup.org/sites/default/files/files/AAUPstatementboycottlegislation.pdf>, Columbia University Faculty Statement, <http://coreyrobin.files.wordpress.com/2014/02/columbia-faculty-boycott-letter-with-signatures-11.pdf>, CUNY faculty and staff union statement, <http://pscbc.blogspot.com/2014/02/new-york-state-boycott-bill-attacks.html>.

group of white Mississippi merchants sued when civil rights organizations organized a boycott of businesses in segregated southern counties.³ The Court ruled that boycotts “to bring about political, social and economic change” are protected activity under the speech, assembly, association, and petition clauses of the First Amendment.⁴ Even those elements of boycott which seek to encourage or agitate others to comply are protected: “Speech does not lose its protected character, however, simply because it may embarrass others or coerce them into action.”⁵

The Supreme Court’s ruling is unsurprising given the political boycott’s historical role as a non-violent tactic to effect social change and exercise conscience. The United States itself is a product of a colonial boycott against British, Irish, and West Indian goods, called for by the First Continental Congress on October 20, 1774, in an effort to avoid war, persuade British lawmakers, and influence British public opinion.⁶ Many of our country’s most revered civil rights struggles have involved this tactic, such as the Montgomery Bus Boycott and the Delano Grape Strike and Boycott.⁷ Protesters from the anti-abortion movement also boycott corporations that donate to Planned Parenthood.⁸ Recently, U.S. human rights activists have proposed a boycott of Russian goods because of that country’s treatment of LGBT people.⁹ Use of the political boycott as a means of exerting grassroots power over issues of public concern is as American as apple pie.

The Constitution clearly protects the right to advocate for, participate in and organize boycotts in response to issues of public concern. The boycott of Israeli academic institutions—and other boycotts aiming to effect change in Israeli and U.S. policy towards Palestinians—cannot be differentiated from the examples above simply because some Members of Congress may oppose the boycott.

II. Denying federal funding to institutions of higher learning based on the expressed political viewpoints of scholars, students or academic groups violates the First Amendment.

The Supreme Court has consistently held that government laws and decisions must remain “viewpoint neutral.”¹⁰ Any government attempt to suppress controversial viewpoints, simply because they concern a country identified as “a vital American ally” of the United States, would violate the First Amendment. As Justice Antonin Scalia explained in *RAV v. City of St.*

³ *NAACP v. Claiborne Hardware Co.*, 458 US 886, 1982.

⁴ *Id.* at 911, 912.

⁵ *Id.* at 910.

⁶ Cong. Journal, 1st Cont’l Cong., 1st Sess. (Oct. 20, 1774), reprinted in 1 Journals of the Cont’l Congress 75-81 (Worthington C. Ford et al. eds., 1903); *see also* David Ammerman, In the Common Cause: American Response to the Coercive Acts of 1774 (1974).

⁷ <http://www.montgomeryboycott.com/>;

http://www.ufw.org/board.php?mode=view&b_code=cc_his_research&b_no=10482.

⁸ <http://www.fightpp.org/>.

⁹ <http://www.dumprussianvodka.com/>.

¹⁰ *R.A.V. v. St. Paul*, 505 US 377 (1992); *Perry Education Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37 (1983).

Paul, suppression of controversial but protected speech “raises the specter that the Government may effectively drive certain ideas or viewpoints from the marketplace.”¹¹

This bill singles out academic boycotts against Israel *because of* some representatives’ disagreement with the political message they convey. The bill seeks to punish even mere advocacy of academic boycotts (*i.e.*, a mere statement in support) in an astonishingly overbroad manner. By attempting to silence those on one side of a contentious debate through the withholding of federal funds to universities and colleges across the nation, the proposed legislation strikes at the heart of the First Amendment.

Indeed, the Editorial Board of the New York Times recently said of a similar bill introduced in the New York legislature:

[This] bill is an ill-considered response to the American Studies Association Resolution and would trample on academic freedoms and chill free speech and dissent. Academics are rightly concerned that it will impose a political test on faculty members seeking university support for research meetings and travel.¹²

This bill cynically claims to protect academic freedom while undertaking a massive assault on that same freedom. It would suppress the well-established right of academics to engage in speech activities on public affairs.¹³ This bill casts exactly the “pall of orthodoxy” on academics and their institutions that the Supreme Court has warned against.¹⁴

III. Resolutions Supporting the Academic Boycott of Israel Are Neither Discriminatory Nor Anti-Semitic.

Sponsors of this bill, along with other detractors of the academic boycott, allege that singling out Israeli academic institutions amounts to anti-Semitism and constitutes discrimination against Jewish and Israeli individuals because of their religion or national origin. This allegation aims to deflect attention from the attempts to end Israeli discriminatory practices towards Palestinians by mislabeling the boycott’s supporters as the offending parties.

The American Studies Association’s (ASA) boycott—to which this bill is responding—is politically motivated; it targets institutions, not individuals, in order to change the policies of politically accountable government actors in Israel. The individuals who could be affected by the ASA boycott, for example, are only those who directly represent Israeli state institutions in an official capacity.¹⁵ To equate criticism of the Israeli state, or a boycott of Israeli institutions,

¹¹ *R.A.V.*, 505 US at 387; *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.”).

¹² NY Times Editorial, <http://www.nytimes.com/2014/02/04/opinion/a-chill-on-speech.html>.

¹³ *See, e.g., 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); *Keyishian v. Board of Regents*, 385 U.S. 589 (1967); *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).

¹⁴ *Keyishian*, 385 U.S. at 603.

¹⁵ http://www.theasa.net/what_does_the_academic_boycott_mean_for_the_asa/.

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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 on the race, ethnicity or religious identity of Jewish people as individuals or as a group) and criticism of Israeli institutions.

Attempts to paint academic groups 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.

IV. Conclusion

We are committed to upholding the First Amendment rights of those challenging orthodox views. H.R. 4009 punishes universities and colleges that participate in the time-honored tactic of boycotting to effect political, social and economic change. This bill is constitutionally infirm, and its passage would necessitate a legal challenge in order to protect the right of student groups and academic associations significantly funded by universities to engage in such speech activities. Accordingly, we strongly urge you to oppose H.R. 4009.

Sincerely,



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