



April 2, 2014

Conference Committee for the Budget  
Maryland General Assembly  
Maryland State House  
Annapolis, MD 21401

Re: Budget Bill SB 170, Amendment 923228/1

Dear Conference Committee Member:

We at the Center for Constitutional Rights, the Maryland and D.C. Chapters of the National Lawyers Guild, and the Defending Dissent Foundation, organizations dedicated to upholding the rights of individuals to express their political views without repression, are writing again to express concerns about a Budget Bill Amendment that would condemn and inhibit expression of views in colleges and universities in Maryland.

Although this Amendment does not contain the penalties against colleges and universities that would be imposed by HB 998 and SB 647 (bills that were not reported by their assigned committees), 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 Delegates.

Furthermore, Amendment 923228/1 (“the Amendment”) inaccurately and inappropriately claims that boycotting Israeli academic institutions on human rights grounds raises questions of anti-Semitism. Criticism of Israeli government policy based on its well-documented discriminatory and repressive policies toward Palestinians is not anti-Semitic and assertions to the contrary undermine real struggles against all forms of discrimination.

#### **A. The Amendment 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.<sup>1</sup> The American Studies Association’s (ASA) resolution to boycott Israeli

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

academic institutions – at which this Amendment is directed<sup>2</sup> – was passed because of the central role that Israeli universities play in Israel’s denial of Palestinian human rights.<sup>3</sup> 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 “marketplace of ideas.” Government interference in academic debates “raises the specter that the Government may effectively drive certain ideas or viewpoints from the marketplace.”<sup>4</sup> This Amendment 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.<sup>5</sup> Even though the Amendment does not contain the same punishment as HB 998 and SB 647 propose, it sends the clear message that the Maryland Legislature disfavors the political viewpoints of academic supporters of the boycott by condemning it as “an inappropriate action on the part of the academic community” that “must be denounced.” Courts have long recognized that speech may still be chilled even when a party continues to exercise its First Amendment rights.<sup>6</sup>

Had language such as this been adopted in response to similar boycotts against the apartheid regime in South Africa, public universities and academics across Maryland 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.

The Amendment’s characterization of academic boycotts generally, and the boycott of Israeli academic institutions specifically as an “unacceptable” and “inappropriate” way to protest Israeli policies ultimately undermines the important role boycotts have played in social justice and human rights struggles, and denies academics their right to decide in what forms they can engage on issues of public concern.

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<sup>2</sup> The Amendment itself explicitly references the academic boycott of Israeli institutions.

<sup>3</sup> 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](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/](http://www.theasa.net/what_does_the_academic_boycott_mean_for_the_asa/).

<sup>4</sup> *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.”).

<sup>5</sup> *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).

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

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

The Amendment suggests that academic boycotts of Israeli institutions “[invoke] fear and [create] a hostile learning environment,” intimating that its motivation is anti-Semitism, defined in the Amendment to include “hostility directed toward...the State of Israel.”

Labeling academic boycotts against Israeli institutions as anti-Semitic 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 Amendment mischaracterizes the boycott by stating that it “results in the restriction and stifling of Israeli scholars,” and that it “disengages Israeli scholars...from invaluable global academic collaborations and conferences.” The ASA boycott resolution, however, 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.<sup>7</sup>

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 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.<sup>8</sup>

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,<sup>9</sup> and 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.

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<sup>7</sup>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/](http://www.theasa.net/what_does_the_academic_boycott_mean_for_the_asa/).

<sup>8</sup> 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>.

<sup>9</sup> 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 that are critical of Israeli policies.

### C. Conclusion

We are committed to upholding the First Amendment rights of those challenging orthodox views. The Amendment to SB 170 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 Maryland legislature should not contribute to this veritable blacklisting of individuals for the constitutionally protected views they hold.

Sincerely,



Betsy G. Cunningham and Curtis Cooper  
Co-Convenors  
National Lawyers Guild – Maryland Chapter



Baher Azmy  
Legal Director  
Center for Constitutional Rights



Rachael Moshman  
President  
National Lawyers Guild – D.C. Chapter



Susan Udry  
Executive Director  
Defending Dissent Foundation