

February 13, 2014

Members of the New York State Assembly
Albany, NY 12248

To The Assembly:

We write as members of the Columbia University faculty to reiterate our opposition to legislation that seeks to punish universities and their faculties for engaging in political speech and action protected by the First Amendment. A.08392A, an “Anti-Boycott Bill” introduced into the New York State Assembly on February 10, 2014 by Assembly Speaker Sheldon Silver, suffers from the same infirmities as did its recent predecessors, A.08392 (Silver) and S.06438 (Klein). Mitigation of the penalty does nothing to eliminate the fundamental infirmity of this kind of legislation: it targets members of the academy for their membership in a professional association that has expressed a political view with which some members of the Assembly disagree.

If anything is a bedrock First Amendment value, affirmed repeatedly by the U.S. Supreme Court, it is that the state may not take sides in a matter of robust political debate and then punish the proponents of the side with which it disagrees. Yet, this is precisely what this proposed bill seeks to do.

Some of the signatories to this letter endorse the academic boycott that A.08392A aims to punish, while others do not. Regardless of whether one supports the cause to which this particular boycott is responding, we all firmly believe that academics have a right to express their political views through a wide range of protected speech, including boycotts.

As a community of scholars we are committed to maximizing robust debate around matters on which we ardently disagree. It offends the deepest tenants of academic inquiry that the state would intervene in a matter of well-considered and principled disagreement among scholars by imposing its own orthodoxy and then punishing a viewpoint that it has summarily ruled off-bounds. The notion that some subjects are immune from academic disagreement or must surrender to a view embraced by some lawmakers, violates our core values as scholars, and offends well-settled rights secured by the First Amendment.

Attached is the letter we submitted to the Assembly in opposition to the earlier version of this bill. It enumerates more fully the grounds for our opposition to this kind of ill-conceived legislation.

We urge you in the strongest of terms to defeat the anti-boycott bill, A.8392A, as it threatens the very foundation of academic freedom.

Sincerely,

Katherine Franke, Sulzbacher Professor of Law

Eric Foner, Professor of History

Jagdish Bhagwati, University Professor of Economics and Law

Nadia Abu-El-Haj, Professor of Anthropology

Lila Abu-Lughod, Joseph L. Battenwieser Professor of Social Science

Akeel Bilgrami, Sidney Morgenbesser Chair in Philosophy, Professor, Committee on Global Thought, Director, South Asian Institute

Judith Butler, Tam Mellon Visiting Professor in the Humanities

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Elizabeth Blackmar, Professor of History

Victoria de Grazia, Moore Collegiate Professor of History

Rashid Khalidi, Edward Said Professor of Arab Studies, Department of History

Marianne Hirsch, William Peterfield Trent Professor of Comparative Literature and Gender Studies

Jean Howard, George Delacorte Professor in the Humanities

Martha Howell, Miriam Champion Professor of History

Farah Griffin, William B. Ransport Professor of English & Comparative Literature and African-American Studies

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Mahmood Mamdani, Herbert Lehman Professor of Government

Ira Katz Nelson, Ruggles Professor of Political Science and History

Alice Kessler-Harris, R. Gordon Hoxie Professor of American History in Honor of Dwight David Eisenhower

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Qais Al-Awqati, Robert F. Loeb Professor of Medicine, Jay I. Meltzer Professor of Nephrology & Hypertension, Professor of Physiology & Cellular Biophysics

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Michael Thaddeus, Associate Professor of Mathematics

Sheldon Pollock, Arvind Raghunathan Professor of South Asian Studies

Macartan N. Humphreys, Professor Political Science

Marcia Wright, Professor Emerita of History (Africa)

Jessica Bulman-Pozen, Associate Professor of Law

Peter Marcuse, Professor Emeritus of Urban Planning

Felicity Scott, Associate Professor of Architecture

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Ann Higonnet, Ann Whitney Olin Professor, Barnard College

William H. Simon, Arthur Levitt Professor of Law

(list in formation)

February 3, 2014

Members of the New York State Assembly
Albany, NY 12248

To The Assembly:

We write as members of the Columbia University faculty to oppose A.08392 (Silver) and S.06438 (Klein), “Anti-Boycott Bills” that were drafted “[i]n response to the American Studies Association’s (ASA) boycott of Israel and its academic institutions.”¹ These bills aim to punish political speech and association of academics generally, and specifically target the viewpoint expressed by that speech and association. Both of these aims violate well-settled law protecting First Amendment rights.

Our concerns were heightened when the Senate passed its bill, and the House is set to vote this week on its version of the boycott bill. These proposed laws have been cynically misdescribed as protecting academic freedom, when in fact they do just the opposite – if the Anti-Boycott bills become law they will threaten constitutionally protected academic speech and debate by punishing political speech and action by academics on matters of public concern. The law applies only to boycotts against academic institutions in Israel, Hungary, Lebanon, and the Czech Republic, but even its supporters readily admit that its true target is the campaign to boycott universities funded by the Israeli government.²

Columbia University has been the home of vigorous political debate and disagreement for many decades on issues such as racial justice, the Vietnam War, pornography, nuclear power and nuclear weapons, South African apartheid, U.S. foreign policy and intervention in Central America, Iraq, and Afghanistan, rights of religious minorities, the rights of lesbians and gay men to serve openly in the U.S. military, and the relations between Israel and Palestine. In connection with these issues and other issues Columbia faculty, students and staff have engaged a range of tactics and strategies to express their political views including demonstrations and sit-ins, taking over University buildings, calling for divestment or boycott, and condemning public policies and laws. As a community of engaged scholars we treasure the rich climate in which we teach, learn and exchange ideas – often disagreeing with one another vehemently. The proposed law threatens to punish our colleagues who participate in this rich climate of debate and will surely chill debate in the future on the issue of justice in the Middle East.

¹ News Release, Assembly Speaker Sheldon Silver, Assembly to Introduce Legislation in Response to the American Studies Association Boycott of Israel (Jan 10, 2014) <http://assembly.state.ny.us/Press/20140110/> (“Silver Release”). The language of the bills state: “No college in this state may use state aid provided directly to such college to: fund an academic entity, provide funds for membership in an academic entity or fund travel or lodging for any employee to attend any meeting of such academic entity if such entity has issued a public resolution or other official statement or undertaken an official action boycotting a host country or higher education institutions located in such country.”

² Hikind Calls On AG Schneiderman To Address, ASA’s Illegal Boycott Of Israel <http://dovhikind.blogspot.com/2013/12/hikind-calls-on-ag-schneiderman-to.html>.

For this reason we take particular offense at the notion that the New York State Legislature would take the step of threatening to punish speech and advocacy in the form of a boycott on an issue of public concern that some members of the Legislature disfavor.

A key component of academic life is membership in professional organizations, such as the ASA.³ Indeed it is the exceptional faculty member who is not a member of one or more professional organization. Membership in professional academic organizations, attendance at annual meetings, and participation in committee work provide important opportunities for professional development, intellectual exchange, and the evolution of knowledge in the field. Columbia University, in keeping with our peers, supports faculty research and professional development by reimbursing faculty for the costs of membership in relevant professional organizations, and covers the reasonable costs of travel to official meetings of those organizations.

Frequently the governing bodies and/or the membership of professional academic organizations take positions on matters of public concern, such as climate change, the military dictatorship in Honduras, apartheid in South Africa, Secretary of State Hillary

³ Academic Associations to which one or more Columbia faculty belong include: *American Studies*: American Studies Association; *Anatomy*: Association of Anatomists; *Ancient History*: American Philological Association; *Anthropology*: American Anthropological Association; *Archaeology*: Archeological Institute of America; *Architecture*: Association of Collegiate Schools of Architecture; *Area Studies*: African Studies Association, Association for Asian Studies, Association for Asian American Studies, Latin American Studies Association, Middle East Studies Association; *Art History*: College Art Historians; *Astronomy*: American Astronomical Society, American Institute of Physics, *Astrophysics*: American Astronomical Society; *Biochemistry*: American Society for Biochemistry and Molecular Biology; *Bioinformatics*: International Society for Computational Biology; *Biology*: American Institute of Biological Sciences; *Biomedical Sciences*: Federation of American Societies for Experimental Biology; *Biophysics*: Biophysical Society; *Cell Biology*: American Society for Cell Biology; *Chemistry*: American Chemical Society; *City Planning*: American Planning Association; *Classical Languages and Literatures*: American Philological Association; *Communication*: Association for Education in Journalism and Mass Communication, International Communication Association; *Comparative Literature*: Modern Language Association of America; *Computational Biology*: International Society for Computational Biology; *Criminology*: American Society of Criminology; *Demography*: Population Association of America; *Economics*: American Economic Association; *Education*: American Educational Research Association; *Endocrinology*: Endocrine Society; *Engineering*: American Chemical Society, American Institute of Chemical Engineers, American Physical Society, American Society of Civil Engineers, Biomedical Engineering Society, Institute of Electrical and Electronics Engineers, Materials Research Society; *English*: Association of Writers and Writing Programs, Modern Language Association of America; *Fine Arts*: College Art Association; *Folklore and Folklife*: American Folklore Society; *Geology*: Geological Society of America; *Gerontology*: Gerontological Society of America; *Government*: American Political Science Association; *Greek*: American Philological Association; *History*: American Historical Association; *History of Science*: History of Science Society; *Immunology*: American Association of Immunologists; *International Relations*: American Political Science Association; *Journalism*: Association for Education in Journalism and Mass Communication; *Latin*: American Philological Association; *Law*: American Association of Law Schools; Clinical Legal Education Association; Law and Society Association, Society of American Law Teachers; *Linguistics*: Linguistics Society of America; *Management*: Academy of Management; *Materials Science*: Materials Research Society; *Mathematics*: American Mathematical Society, Society for Industrial and Applied Mathematics; *Microbiology*: American Society for Microbiology; *Modern Languages and Literature*: Modern Language Association of America; *Molecular Biology*: American Society for Biochemistry and Molecular Biology; *Music*: American Musicological Society; *Nutrition*: American Society for Nutrition; *Nursing*: National League for Nursing; *Pharmacology*: American Society for Pharmacology and Experimental Therapeutics; *Philosophy*: American Philosophical Association; *Physics*: American Institute of Physics, American Physical Society; *Physiology*: American Physiological Society; *Political Science*: American Political Science Association; *Public Administration*: American Society for Public Administration; *Psychology*: American Psychological Association; *Radiology*: Radiation Research Society; *Regional Planning*: American Planning Association; *Religious Studies*: American Academy of Religion; *Social Work*: Council on Social Work Education; *Sociology*: American Sociological Association; *Sports Medicine*: American College of Sports Medicine; *Statistics*: American Statistical Association; *Theater*: Association for Theater in Higher Education; *Theology*: American Academy of Religion; *Women's Studies*: National Women's Studies Association; *Writing*: Association of Writers and Writing Programs.

Clinton's decision to deny a visa to Professors Adam Habib and Tariq Ramadan to visit the U.S., the detention of scholars in Iran, President George W. Bush's administration's treatment of foreign prisoners – calling such treatment torture – and the Pentagon's previous Don't Ask Don't Tell policy. Membership in a professional organization and attendance at annual meetings does not in any respect indicate individual agreement or disagreement with the positions the organization and its collective membership might take. And these diverse and multiple memberships certainly do not reflect the views of the University as an institution. Nevertheless, the debate of matters of public concern, along with matters of more narrow scholarly concern, is among the important functions of these professional associations.

Statutes such as A.08392 and S.06438 that seek to suppress the rights of educators to participate in public affairs have long been condemned by the U.S. Supreme Court as an affront to the free speech rights of academics, and even more, as an affront to the very essence of democratic self-rule in a free society. In fact, an overwhelming number of the Supreme Court's free speech cases have involved threats to the free speech rights of educators.⁴ These cases establish a fundamental and unwavering principle: "[S]peech concerning public affairs is more than self-expression; it is the essence of self-government."⁵ The Court has frequently reaffirmed that speech on public issues occupies the "highest rung of the hierarchy of First Amendment values," and is entitled to special protection.⁶

In few other precincts of society are First Amendment values more important than in the academy. As the Court has noted: "[o]ur Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom."⁷ Without question, A.08392 and S.06438 patently violate this well-established Constitutional principle, imposing a particular orthodoxy with respect to a complex matter of public concern and punishing both faculty and universities who refuse to comply with that orthodoxy.

Tragically, the anti-boycott bills pending before the New York State legislature this month are not the first of their kind whereby the Legislature has sought to impose upon the academy a particular orthodoxy on a matter of public concern. A 1949 amendment to New York's Education Law, known as "the Feinberg Law," disqualified from employment in the educational system any person who advocated the overthrow of government by force, violence, or any unlawful means, or published material advocating such overthrow or organized or joined any society or group of persons advocating such doctrine. The law was largely aimed at removing members of the Communist party from the profession of teaching, and required prospective teachers to sign loyalty oaths and

⁴ See e.g.: Adler v. Board of Education, 342 U.S. 485, 72 S.Ct. 380, 96 L.Ed. 517 (1952); Cramp v. Board of Public Instruction, 368 U.S. 278, 82 S.Ct. 275, 7 L.Ed.2d 285 (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).

⁵ Garrison v. Louisiana, 379 U.S. 64, 74-75 (1964).

⁶ NAACP v. Claiborne Hardware Co., 458 U.S. 886, 913 (1982).

⁷ Keyishian v. Board of Regents, 385 U.S. 589, 684 (1967).

disavow membership in the Communist party. Several prospective teachers who refused to sign the Feinberg Law oaths were denied teaching posts under the law and they challenged the law claiming that their First Amendment Rights had been abridged. The Supreme Court agreed and held that the Feinberg Law was unconstitutional insofar as it abridged the First Amendment rights of educators. The Court observed the following about the Feinberg Law, in terms that are equally true of the anti-boycott law now pending in Albany:

The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. Particularly is that true in the social sciences, where few, if any, principles are accepted as absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.⁸

Finally, the proposed anti-boycott bills specifically target a particular form of First Amendment expression, the boycott. About this the Supreme Court has also been clear: boycotts “to bring about political, social and economic change” are unquestionably protected speech under the First Amendment.⁹ This form of political action has been used in countless contexts through time and across circumstance, but it has a particularly important history in the United States as a tactic to challenge Jim Crow segregation in the U.S. South, including the famous Montgomery bus boycott led by Dr. Martin Luther King, Jr. The 1982 Supreme Court case N.A.A.C.P. v. Claiborne Hardware Co. recounts the civil rights movement’s use of boycotts to challenge racial segregation in Mississippi and cements this political tactic as one clearly protected by the First Amendment.

Some of the signatories to this letter endorse the principles underlying the ASA’s resolution to boycott Israeli academic institutions, others do not. Regardless of whether one supports the cause to which this particular boycott is responding, we all firmly believe that academics have a right to express their political views through a wide range of protected speech, including boycotts. A law targeting the boycott of academic institutions in countries such as Israel, Hungary, Lebanon, and the Czech Republic cannot be differentiated from the laws that punished boycotts in the U.S. civil rights movement or those that compelled academics to sign loyalty oaths as a condition of employment. Simply because a cause or political viewpoint may be unpopular with elected officials does not, and cannot, justify a law censoring speech by academics in connection with that cause or viewpoint. Assembly Speaker Sheldon Silver has clearly stated that the purpose of these bills is to cut state aid to academic institutions that fund membership in professional organizations such as the ASA.¹⁰ These bills thus embody exactly the kind

⁸ Keyishian v. Board of Regents, 385 U.S. 589, 684 (1967), quoting Sweezy v. State of New Hampshire, 354 U.S. 234, 250 (1957).

⁹ N.A.A.C.P. v. Claiborne Hardware Co., 458 U.S. 886, 911 (1982).

¹⁰ Silver Release, <http://assembly.state.ny.us/Press/20140110/>.

of retaliatory action undertaken by public officials who dislike the content or viewpoint of certain speech activities that courts have consistently found unconstitutional.

We urge you in the strongest of terms to defeat the anti-boycott bill, A.08392, as it threatens the very foundation of academic freedom.

Sincerely,

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(list in formation)

cc: New York State Governor Andrew Cuomo
Columbia University President Lee Bollinger