

centerforconstitutionalrights  
on the front lines for social justice

January 21, 2014

By Fax and Mail

Robert J. Tolchin, Esq.  
The Berkman Law Office, LLC  
111 Livingston Street, Suite 1928  
Brooklyn, New York 11201  
Fax: 718-855-4696

Nitsana Darshan-Leitner, Adv.  
Shurat HaDin – Israel Law Center  
Beit Hakeren  
10 Hata'as Street  
Ramat Gan, 52512  
Israel  
Fax: 972-3-7514174

Dear Mr. Tolchin and Ms. Darshan-Leitner:

We are writing on behalf of the American Studies Association (ASA) in response to your letter of January 9, 2014, which demands that the ASA “cease and desist from [its] unlawful boycott.” You assert that ASA’s resolution in support of Palestinian civil-society’s call for non-violent challenges to Israeli government practices amounts to unlawful “discrimination” on the basis of race/national origin and is tantamount to anti-Semitism. These claims are baseless. The ASA’s resolution and any attendant boycott has nothing to do with religion or ethnicity, but rather with the policies, practices and military activity of the Israeli government, which have been widely condemned as violations of international law for decades. It is the persistent and systematic discrimination undertaken by the Israeli government – with the support of academic institutions – that the ASA seeks to change by way of its resolution.

Despite your attempts to characterize the movement for boycott, divestment and sanctions against Israel as a monolithic and nefarious force, BDS strategies and this resolution are each grounded in the same anti-discrimination principles as other historical divestment and boycott strategies used to protest repressive state practices, including those employed against the South Africa apartheid regime and racial segregation in the United States. It is, moreover, speech activity protected by the First Amendment. Any implementation of the boycott itself would also be protected speech activity. The Supreme Court has held that a politically-motivated boycott which seeks “to bring about political, social and economic change” implicates the speech, assembly, association and petition clauses of the First Amendment and “clearly involve[s] constitutionally protected activity.” *NAACP v. Claiborne Hardware Co.*, 458 U.S.

January 21, 2014

Page 2 of 2

886, 911 (1982). *Holder v. Humanitarian Law Project*, upon which you appear to rely, says nothing to the contrary.

In addition, neither international law nor the assortment of federal, state or administrative provisions your letter cites suggest that an academic boycott such as the one the ASA and its membership endorsed would be a form of unlawful “discrimination.” ASA’s action could not be considered discrimination, let alone discrimination “because of” animus toward the religion, race or national origin of any individual; ASA’s actions are undertaken “because of” the policies of politically-accountable leaders in the Israeli government.

Standing on its commitment to the promotion of international human rights as well its own constitutionally protected rights, ASA will not accede to your unfounded threats. Please be aware that Plaintiffs in a suit challenging a Food Co-op’s boycott of Israeli products were sanctioned \$160,000 plus attorney’s fees under that state’s anti-SLAPP statute because the court recognized that the boycott was in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public concern. If you proceed with a suit against ASA based on these meritless claims of discrimination, and in ignorance of basic First Amendment protections, ASA will defend its position vigorously, including seeking costs and any applicable sanctions.

Sincerely,



Baher Azmy  
Legal Director, Center for Constitutional Rights



Dima Khalidi  
Director, Palestine Solidarity Legal Support  
Cooperating Counsel, Center Constitutional Rights