



**Middle
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September 8, 2016

Governor Jerry Brown
The State Capitol, Suite 1173
Sacramento, CA 95814
via fax: (916) 558-3160

Dear Governor Brown,

We write on behalf of the Middle East Studies Association of North America (MESA) and its Committee on Academic Freedom to express our concern about AB 2844, a bill awaiting your signature or veto which would add Section 2010 to California's Public Contract Code. We believe that the bill is not only overly broad and unnecessary, but also that it threatens the academic freedom of faculty and students at California's institutions of higher education. We therefore urge you to veto this bill.

MESA was founded in 1966 to promote scholarship and teaching on the Middle East and North Africa. The preeminent organization in the field, MESA publishes the *International Journal of Middle East Studies* and has nearly 3,000 members worldwide. MESA is committed to ensuring academic freedom and freedom of expression, both within the region and in connection with the study of the region in North America and elsewhere.

AB 2844 ostensibly seeks to "promote fairness and equality and to combat unlawful discrimination" by amending California's Public Contract Code to require that entities contracting with the State of California in the amount of \$100,000 or more certify, under penalty of perjury, that "any policy that they have against any sovereign nation or peoples recognized by the government of the United States, including, but not limited to, the nation and people of Israel, is not used to discriminate" in violation of several current California laws. The bill's authors claim that this requirement is necessary "to ensure that taxpayer funds are not used to do business with or otherwise support any state or private entity that engages in discriminatory actions against individuals under the pretext of exercising First Amendment rights. This includes, but is not limited to, discriminatory actions taken against individuals of the Jewish faith under the pretext of a constitutionally protected boycott or protest of the State of Israel."

However, the bill's legislative history, as well as the fact that Israel is the only nation specifically named in the bill, make it clear that the real intent of AB 2844 is to utilize the power, authority and fiscal resources of the State of California to silence and punish advocacy of a boycott of Israel by defining such advocacy not as constitutionally protected political speech but as a form of discrimination against Jews. As the American Civil Liberties Union's letter of June 27, 2016 to the bill's sponsors noted, "Just as the government may not exercise its sovereign power against its people in retaliation for their political speech, it cannot deprive them of valuable financial benefits to chill their speech on matters of public concern without a compelling governmental interest – and unquestionably not because it prefers another view."



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We believe that California residents should be protected against harm based on personal characteristics, but California's anti-discrimination legislation is already among the strongest in the nation; as the California State Senate's own Legislative Analysis (dated August 24, 2016) pointed out, "existing [California] law protects individuals against discrimination under numerous statutes, covering a variety of contexts." That analysis also stated that AB 2844 poses "unquantifiable but potentially major future increase in ongoing operating costs" and workload for state agencies, and potentially for California's universities as well, insofar as they are parties to contracts with the state.

We note as well that, if signed into law, AB 2844 could trigger a cascade of nuisance lawsuits by third parties claiming that particular contractors had engaged in discriminatory behavior. These might include the governments and agencies of countries like Saudi Arabia, Egypt and Turkey, including their institutions of higher education, which discriminate against any number of protected categories under California law. Ironically, this act might also prevent the State of California from contracting with the government of Israel, since the U.S. Department of State recognizes, in its Country Reports on Human Rights, that Israeli governmental agencies engage in institutionalized discrimination against non-Orthodox Jews and others who are protected by California law.

Californians who have complaints about alleged discrimination already have existing statutes and regulations to which they can turn; they do not need AB 2844. Even more importantly, the State of California should not be in the business of threatening to prosecute people who choose to exercise their right to free speech by advocating for some form of economic, cultural or academic boycott of Israel. This bill poses a particular threat to academic freedom at California's institutions of higher education by means of its chilling effect on the expression of certain opinions and ideas. We therefore urge you to veto AB 2844 and to reiterate your firm commitment to the constitutionally protected right to freedom of speech and to the defense of academic freedom throughout the State of California.

Sincerely,

A handwritten signature in black ink that reads "B. Baron" followed by a long horizontal flourish.

Beth Baron
MESA President
Professor, City University of New York

A handwritten signature in black ink that reads "Amy W. Newhall" in a cursive style.

Amy W. Newhall
MESA Executive Director
Associate Professor, University of Arizona