

April 18, 2024

Ms. Asli Ü. Bâli
President
Middle East Studies Association of North America, Inc
Georgetown University
3700 O St. NW, ICC STE 241
Washington, DC 20057

Ms. Laurie Brand
Chair, Committee on Academic Freedom
Middle East Studies Association of North America, Inc
Georgetown University
3700 O St. NW, ICC STE 241
Washington, DC 20057

Dear Ms. Bâli and Ms. Brand:

I am in receipt of your letter of April 8, 2024 to Chancellor Diermeier and Provost Raver on behalf of the Middle East Studies Association, inquiring about the university's position with respect to a number of activities on campus. As framed in your letter, there appears to be, as with the with Palestine Legal's letter, a misunderstanding of the basic underlying facts. Based on these incorrect facts, you assert you "must" "conclude that Vanderbilt has behaved in a discriminatory manner." As we stated to Palestine Legal, the university has not, does not, and will not discriminate against students or student organizations. It has, to the contrary, consistently and equitably enforced its rules related to student organizations and demonstrations and will continue to do so.

I. The letter of April 8, 2024 misstates the facts.

a. The university accommodated the Apartheid Wall exhibit and allowed the SJP event to proceed, even after Students for Justice in Palestine ignored directions from university staff.

With respect to the Apartheid Wall exhibit, Students for Justice in Palestine (SJP), a registered student organization, submitted a request to erect the exhibit before the proposed referendum discussed further below was not allowed to move forward. SJP requested approval to use Rand Yard for the Apartheid Wall beginning on March 18. Rand Yard is not generally a reservable space on campus, and the Vanderbilt Facilities Review Committee reviewed but did not confirm the reservation. Vanderbilt's Student Affairs team communicated to the SJP advisor that the university previously had scheduled grounds maintenance of Rand Yard for that time. Over Spring Break, Student Affairs informed SJP of the scheduled grounds work, which precluded using Rand Yard for the exhibit. (Student Affairs thought the advisor had informed the students prior to Spring Break, but the advisor apparently did not communicate prior to break.)

Student Affairs worked with SJP over Spring Break to secure an alternate location on either Alumni Lawn or Library Lawn, both of which are visible, high-traffic areas, which was one of the main reasons SJP communicated that they wanted to use Rand Yard.

Despite learning over Spring Break that they could not use Rand Yard, SJP set up the Apartheid Wall exhibit on Rand Yard on Monday, March 18. Student Affairs initially asked them to move the wall to one of the alternative locations, as the Rand Yard location had not been approved, and the exhibit was interfering with Facilities' planned maintenance. The university ultimately determined, however, that it could shift the maintenance to another time, and permitted the students to remain in Rand Yard all week and through the weekend, after which they moved the Apartheid Wall exhibit to their gala event at the Student Life Center, where it was stored until April 7, two weeks after the gala event. The university accommodated the student event, even though SJP had not fully cooperated with Student Affairs.

The university requirements applied to SJP are the same applied to all other registered student organizations. The university's enforcement of its rules has been consistent, not discriminatory in any fashion—and the university showed additional flexibility and accommodation for SJP by allowing the Apartheid Wall to remain in Rand Yard despite having to change university plans. The university's actions were not unfair to SJP or in violation of university values or policies.

b. The students assaulted university officials before occupying a closed, locked building.

Your letter inaccurately described the students' activities on March 26 and 27, 2024 as staging a "sit-in in a university building". This does not capture the level of disorder and disruption caused by the students' actions. As the university previously reported, the group of students forcibly entered Kirkland Hall, the university's main administration building, which was closed for ongoing construction (and clearly marked as such). Some of the students physically assaulted a Community Service Officer to gain entrance and proceeded to push staff members who offered to meet with them.

Student Affairs staff took a graduated approach to de-escalating the situation. First, they asked students to leave. When the students refused to leave, staff told them that their actions violated university policy and that they would be subject to disciplinary action. After several hours, the university began issuing interim suspensions. All protest participants who breached the building were placed on interim suspension.

The Metropolitan Nashville and Davidson County Magistrate's Office also charged three students with Class A misdemeanor assault for pushing a Community Service Officer as well as a staff member who offered to meet with them as they entered Kirkland Hall on Tuesday. The officer was injured by the students. A fourth student was charged with vandalism after breaking a window in the building's exterior Tuesday evening.

Free expression is a core value at Vanderbilt, as is civil discourse. Our policies allow for members of the Vanderbilt community to protest and demonstrate regarding issues they care

deeply about, and dozens of peaceful demonstrations have occurred in recent months. In consideration of safety and the university's normal operations, we, as a matter of policy, define the time, place and manner limitations. The safety and well-being of our community is a top priority. The university will take action when our policies are violated, when the safety of our campus is jeopardized and when people intimidate or injure members of our community, as was the case here.

As our Provost recognized, "The gravity of this situation and these outcomes weighs heavily on those of us charged with carrying out our responsibility as leaders; we fully understand that student choices and decisions can lead to serious and costly consequences."

II. The planned boycott cannot proceed.

The Vanderbilt Divest Coalition submitted a petition for a referendum to amend the Vanderbilt Student Government (VSG) constitution to prohibit expenditures from the VSG budget on boycott targets of the Boycott, Divestment, and Sanctions (BDS) Movement. The proposed referendum has not been allowed to go forward and cannot go forward because it will place the university in violation of state law. The amendment would have barred VSG from expending VSG funds with certain companies tied to Israel. VSG is part of the university, not a separate legal entity, and VSG funds are university funds, as VSG receives its monetary support from the university budget.

The university is and will continue to be a contractor with the State of Tennessee. The boycott proposed in the resolution would, however, render the university ineligible for state contracts over \$250,000. Under Tennessee Code § 12-4-119, contractors with the State are required to certify that the contractor is not engaged in any boycott of Israel. "Boycott of Israel" is defined in relevant part as:

engaging in refusals to deal, terminating business activities, or other commercial actions that are intended to limit commercial relations **with** Israel, *or companies doing business in or with Israel* or authorized by, licensed by, or organized under the laws of the State of Israel to do business, *or persons or entities doing business in Israel*, when such actions are taken... [i]n compliance with, or adherence to, calls for a boycott of Israel.

Tenn. Code § 12-4-119(A)(1)(a) (emphasis added).

Under this language, the proposed amendment seeking to boycott certain companies doing business in or with Israel very clearly qualifies as a "Boycott of Israel." The relevant legal entity for the analysis is not VSG, which has no legal existence separate from the university – it is Vanderbilt University, which regularly contracts with the state of Tennessee, including contracts in excess of \$250,000. In addition, a boycott, as defined in the statute, does not require engaging in a refusal to deal with all companies doing business with Israel. Any action by VSG, or any other registered student organization, to preclude expenditures of university funds on the BDS Movement's consumer and organic boycott targets cannot be allowed because the boycott would render the university ineligible for certain state contracts that the university currently holds and ineligible for future contracts. The university's policies and commitment to academic

freedom and free expression allow students and student groups to fully and robustly express themselves, but student organizations cannot make decisions on behalf of the entire university about the use of university funds that would place the university at legal risk.¹

While Palestine Legal’s letter includes boycott laws in other states that have been blocked by federal courts, it did not include the Eighth Circuit’s decision in *Arkansas Times v. Waldrip as Trustee for the University of Arkansas Board of Trustees*, 37 F.4th 1386 (8th Cir. 2022) (en banc) (cert. denied), the first federal appellate decision addressing state boycott laws. In *Arkansas Times*, the Eighth Circuit, sitting *en banc*, found that the Arkansas certification requirement limited “non-expressive commercial conduct.” Therefore, the statute’s requirement that contractors for public entities had to certify that they would not boycott Israel did not constitute “compelled speech” in violation of the First Amendment.² Beyond the holding in *Arkansas Times*, it bears noting that, unlike the statutes in Kansas, Arizona, Texas and Georgia cited by Palestine Legal, the statute in Tennessee has not been challenged or enjoined. It thus remains state law. Further, the Tennessee statute appears to include features that other states adopted to address infirmities in their original statutes.

Vanderbilt has clearly and publicly stated that, consistent with its commitment to institutional neutrality as part of its culture of free expression, it will not boycott or divest from companies doing business in or with specific nations, unless required by law. We decline to alter our position for the proposed BDS Movement boycott. Our students are free to express their support for the BDS Movement in a manner consistent with university policy, including doing so in a peacefully and respecting the time, place, and manner restrictions the university has in place. They are free to adopt the BDS Movement boycott with their personal funds. But they cannot use university funds to express their personal positions, and certainly not in a manner that would put

¹ Federal law also limits certain boycotts of countries friendly to the United States. The Office of Antiboycott Compliance (“OAC”), in the Bureau of Industry and Security in the Department of Commerce, is charged with administering and enforcing the Anti-Boycott Act of 2018, Part II of the Export Control Reform Act of 2018 (ECRA), and the antiboycott provisions set forth in Part 760 of the Export Administration Regulations, 15 CFR parts 730-774 (EAR). These authorities discourage and, in some circumstances, prohibit U.S. organizations from taking certain actions in furtherance or support of a boycott maintained by a foreign country against a country friendly to the United States. OAC has not directly addressed the Boycott, Divestment, and Sanctions Movement and whether it would qualify as being fostered by a foreign government or as being in support of a boycott fostered by a foreign government. However, in reviewing the genesis of federal antiboycott law in the Arab League Boycott of the last century, the legislative history around the concept of a boycott “fostered” by a foreign government indicates that the federal law intended to account for the broader manner in which the Arab League relied upon non-governmental organizations to enforce its boycott. Congress included the term “foster” to cover actions by organizations that were themselves unable to impose legal requirements but instead able to promote, aid, or encourage such boycotts elsewhere. Thus OAC could take the view that BDS – as a self-billed “Palestinian-led movement” – is a foreign organization fostering a boycott akin to the historical impacts of the Arab League Boycott, or that BDS is itself supporting a boycott fostered by a foreign government. Lack of clarity creates risk under federal as well as state law.

² Arkansas’s law resembles Tennessee’s law. Arkansas Act 710 prohibits state entities from contracting with private companies unless the contract includes a certification that the company “is not currently engaged in, and agrees for the duration of the contract not to engage in, a boycott of Israel.” Ark. Code Ann. § 25-1-503(a)(1). The statute defines “boycott of Israel” as “engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel or in Israeli-controlled territories, in a discriminatory manner.” Ark. Code Ann. § 25-1-502(1)(A)(i).

the university in breach of state law. Nor may they assault or injure university staff in their pursuit of protest.

Sincerely,

Ruby Z Shellaway

Ruby Z. Shellaway
Vice Chancellor, General Counsel
and University Secretary