



**Middle
East
Studies
Association**
of North America, Inc.

3542 N Geronimo Ave
Tucson AZ 85705 USA

tel 520-333-2577
fax 520-207-3166
caf@mesana.org
www.mesana.org



November 8, 2017

The Honorable Lamar Alexander
Chair, Senate Committee on Health, Education, Labor and Pensions
via fax: (202) 228-3398

The Honorable Patty Murray
Ranking Member, Senate Committee on Health, Education, Labor and
Pensions
via fax: (202) 224-0238

Dear Senators Alexander and Murray:

We write on behalf of the Middle East Studies Association of North America (MESA) and its Committee on Academic Freedom to express our grave concern about President Trump's announcement that he intends to nominate Kenneth L. Marcus, President and General Counsel of the Louis D. Brandeis Center for Human Rights Under Law, to serve as Assistant Secretary for Civil Rights at the Department of Education. Mr. Marcus has a sustained record of pressuring universities to limit or suppress free and open discussion of the Israeli-Palestinian conflict and to silence faculty and students who exercise their constitutionally protected right to criticize Israeli policies or advocate for Palestinian rights. The active role he has played in undermining free speech and academic freedom at this country's institutions of higher education raises serious questions about his fitness to hold the position for which he has been nominated.

MESA was founded in 1966 to promote scholarship and teaching on the Middle East and North Africa. The preeminent organization in the field, the Association publishes the *International Journal of Middle East Studies* and has nearly 3000 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 North America and elsewhere.

As President and General Counsel of the Louis D. Brandeis Center for Human Rights Under Law, Mr. Marcus is chiefly responsible for a highly tendentious 2014 report entitled "The Morass of Middle East Studies: Title VI of the Higher Education Act and Federally Funded Area Studies." As we pointed out in a letter dated 23 October 2014 (see <http://mesana.org/committees/academic-freedom/intervention/letters-north-america.html#US20141023B>), this document is replete with false or misleading assertions and insinuations regarding the Title VI program and the university-based Middle East studies centers that it supports. For example, the report asserts that Title VI-supported Middle East studies



Re: Nomination of Kenneth L. Marcus

Page 2

November 8, 2017

centers are “ideologically politicized institutions notorious for one-sided approaches hostile to the United States, the West and Israel.” The real goal of this assertion, and of the report’s many other equally groundless and derogatory claims, seems to be the silencing of opinions regarding the Israeli-Palestinian conflict with which Mr. Marcus does not agree, thereby threatening free speech on college and university campuses, the principles of academic freedom and the autonomy of our institutions of higher education.

Mr. Marcus also has a long history of advocating for a very broad and vague definition of antisemitism that dangerously conflates that form of bigotry and racism, which we of course vigorously condemn, with legitimate and constitutionally protected criticism of Israel, Zionism or Israel’s policies toward the Palestinians. In this regard we call your attention to our letter of 11 June 2007 (<http://mesana.org/committees/academic-freedom/intervention/letters-north-america.html#USCCRJune11>) addressed to the chair of the U.S. Commission on Civil Rights, of which Mr. Marcus was then staff director. We also note the fact that in August 2013 the Department of Education’s Office for Civil Rights dismissed several cases in which Mr. Marcus was involved that had alleged unlawful antisemitic harassment of Jewish students at the Berkeley, Irvine and Santa Cruz campuses of the University of California. We are deeply concerned that, should Mr. Marcus be confirmed as Assistant Secretary for Civil Rights at the Department of Education, he will be in a position to influence the disposition of any future similar cases in a manner consistent with his ideological position.

We further call your attention to the fact that, in keeping with his untenably broad and tendentious definition of antisemitism, Mr. Marcus has argued that the campaign for Boycott, Divestment and Sanctions (BDS) against Israel – a nonviolent campaign that seeks to pressure Israel to end the occupation of Palestinian lands, recognize the rights of Palestinian refugees, and grant full rights to Palestinian citizens – is anti-Semitic (see for example <https://www.insidehighered.com/news/2014/11/03/new-book-questions-link-between-israel-boycott-movement-and-anti-semitism>). MESA does not advocate for or against the BDS campaign as such, but we insist that the right of faculty and students at this country’s institutions of higher education to express their political opinions, including advocacy of BDS, and to engage in open discussion of controversial issues must be protected. Mr. Marcus’ insistence on branding BDS as inherently antisemitic is thus dangerous and threatens the right to free speech and to academic freedom.

We believe that Mr. Marcus’s record raises very serious questions about his fitness to hold the office of Assistant Secretary for Civil Rights at the Department of Education. We therefore urge you to scrutinize that record



Re: Nomination of Kenneth L. Marcus
Page 3
November 8, 2017

very carefully when his nomination comes before the Senate Committee on Health, Education, Labor and Pensions.

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