



**Middle
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Studies
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November 29, 2018

The Honorable Benjamin Cardin
United States Senate
fax: (202) 224-1651

The Honorable Rob Portman
United States Senate
fax: (202) 224-9075

Dear Senators Cardin and Portman:

We write to you on behalf of the Middle East Studies Association of North America (MESA) and its Committee on Academic Freedom to express our deep concern over the most recent version of the Israel Anti-Boycott Act (S. 720) that you have introduced. Though this new version of the bill drops several of the more egregious and dangerous provisions of the original version, introduced in March 2017, it continues to criminalize participation in what it terms “politically motivated” boycotts directed at Israel. As such it violates the principles of academic freedom and threatens the constitutionally protected free speech rights of Americans, including faculty at this country’s public and private institutions of higher education.

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 2,500 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.

If enacted into law, S. 720 would prohibit “covered persons” – broadly defined to include individuals but also businesses and other entities – from boycotting Israel and Israeli businesses (including companies operating in the occupied Palestinian territories) in adherence to boycotts called for by international governmental organizations, such as the United Nations and the European Union. S. 720 would also bar U.S. persons from both furnishing and requesting information about any person’s or company’s business relationship with Israel if they do so in support of a call for boycott by a foreign country or an international governmental organization. Violators would be subject to a civil penalty of up to \$250,000 and, under certain circumstances, criminal prosecution which could result in a fine of up to \$1 million and 20 years in prison.

S. 720 defines the term “covered persons” as including officers and employees of any “domestic concern.” It can therefore be deemed to apply to faculty, staff, and certain graduate student employees at private and state universities who might, in the normal course of their research, teaching and/or public engagement collect and disseminate information about economic and commercial activities in Israel and the occupied Palestinian territories. Furthermore, the distinction that S. 720 claims to draw between “commercial speech” and constitutionally protected “non-commercial speech or other non-commercial expressive activity,” and between prohibited kinds of commercial speech and “the furnishing of normal business information in a commercial context,” is tendentious and legally unsustainable. The bill thus directly threatens free speech rights as well as the mission of American institutions of higher education to promote the free and open exchange of information, ideas and opinions.



Re: Israel Anti-Boycott Act (S. 720)

November 29, 2018

Page 2

We note, moreover, that the boycott is a time-honored form of political expression in the United States, as confirmed in 1982 by the United States Supreme Court in its decision in [NAACP v. Claiborne Hardware](#). As the American Civil Liberties Union [noted in 2016](#) regarding a similar bill under consideration by the California legislature: “Just as the government may not exercise its sovereign power against its people in retaliation for their political speech, it cannot [use financial pressure to] chill their speech on matters of public concern without a compelling governmental interest – and unquestionably not because it prefers another view.” In January 2018 the US District Court for Kansas [ruled](#) more specifically, in the case of *Koontz v. Watson*, that “A desire to prevent discrimination against Israeli businesses is an insufficient public interest to overcome the public’s interest in protecting a constitutional right.”

S. 720 violates First Amendment guarantees of free speech and undermines the principles of academic freedom, and as such is unacceptable in a democracy. We therefore call on you to immediately withdraw this bill and to reaffirm your support for the right to freely express and advocate for one’s political opinions, the free and unrestricted flow of information, and the ability of all Americans, including college and university faculty, staff and students, to produce, debate and disseminate knowledge about vital issues of public concern.

Sincerely,

A handwritten signature in black ink, appearing to read 'Judith E. Tucker', written over a light blue horizontal line.

Judith E. Tucker
MESA President
Professor, Georgetown University

A handwritten signature in black ink, appearing to read 'Amy W. Newhall', written over a light blue horizontal line.

Amy W. Newhall
MESA Executive Director

Cc:

Senator Mike Crapo
Chairman, Committee on Banking, Housing, and Urban Affairs
fax: (202) 228-1375

Senator Sherrod Brown
Ranking Member, Committee on Banking, Housing, and Urban Affairs
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