

From: SRRT Action Council
To: ALA Council, Committee on Legislation, Intellectual Freedom Committee, International Relations Committee
Subject: Response to the Report of the Resolution Review Task Force
Date: January 17, 2020

THE NEED FOR ADVOCACY

Free expression and intellectual freedom are currently under attack in the United States. A major aspect of this attack is a massive wave of state and federal legislation, and now an executive order, specifically designed to punish advocates for Palestinian rights and chill discussion of the issue of Palestinian rights on college campuses. In this context the American Library Association is clearly obligated to live up to its promise to promote and defend free speech and intellectual freedom by joining with other civil liberties organizations and taking an unambiguous position opposing this legislation, and specifically the Combating BDS Act of 2019, contained in S.1 and H.R.336, and the Anti-Semitism Awareness Act of 2019, S.852 and H.R. 4009.

BACKGROUND

As one of the represented groups on the task force created to review the “Resolution in Defense of the Free Speech of Supporters of the Movement for Palestinian Rights,” SRRT Action Council has received the report of the task force. [\[Appendix A\]](#). We have voted to endorse the resolution as revised by the task force and now titled “Resolution Opposing the Free Speech and Intellectual Freedom Restrictions in the Combating BDS Act, Anti-Semitism Awareness Act, and Related Legislation” [\[Appendix B\]](#), as well as one amendment to the resolution [\[Appendix C\]](#). Also, we have voted to approve this statement, which explains our views on the importance of the issue and ALA’s responsibility to address it, and which responds to various concerns that have been raised about this resolution.

The civil libertarian journalist Conor Friedersdorf has written that “laws intended to constrain pro-Palestinian activists are among the significant threats to the First Amendment.”¹ Even more pointedly, the noted journalist and constitutional attorney Glenn Greenwald has observed without exaggeration that the “*single greatest threat to free speech* in the West—and in the U.S.—is the coordinated, growing campaign to outlaw and punish those who advocate for or participate in activism to end the Israeli occupation.”²

One form this campaign has taken in the U.S. has been legislation designed to penalize companies and individuals who participate in boycotts— especially the boycott organized by the Boycott, Divestment, and Sanctions (BDS) movement—designed to pressure Israel into recognizing Palestinian rights. To date, 27 states have passed such laws, and similar legislation is pending in an additional 14.³ Although such laws have been blocked on constitutional grounds by federal courts in Arizona, Kansas, and Texas, they would be explicitly condoned by the Combating BDS Act of 2019 contained in S.1, which the U.S. Senate passed on February 5, 2019, and its companion bill H.R.336, currently pending in the House.⁴ The ACLU, the National Coalition Against Censorship, and Defending Rights & Dissent have opposed the bill as contrary to the spirit and letter of First Amendment protections.⁵ The bill was also opposed by 23 senators, including Cory Booker, Sherrod Brown, Dianne Feinstein, Kamala Harris, Bernie Sanders, and Elizabeth Warren—all of whom voted against it, specifically for First Amendment reasons. Sen. Feinstein stated that this “Israel anti-boycott legislation would give states a free pass to restrict First Amendment

protections for millions of Americans.... Despite my strong support for Israel, I oppose this legislation because it clearly violates the Constitution.”⁶

Another form this offensive has taken has been the attempt to mandate a definition of anti-Semitism to be used for the enforcement of federal antidiscrimination laws related to education programs or activities. That is the intent of the Anti-Semitism Awareness Act of 2019 (S.852 and H.R. 4009).⁷ There is no question that anti-Semitism is a real and growing problem, including on college campuses. But as the Act itself notes, the Department of Education is *already* empowered to investigate incidents of anti-Semitism as a form of discrimination.⁸ Furthermore, as PEN America has recently stated, “the approach taken in the Act is not constructive, and runs the risk of chilling free speech.”⁹ The ACLU, the Foundation for Individual Rights in Education, and the Center for Constitutional Rights all have observed that the definition of anti-Semitism utilized by the Act is vague and/or overbroad.¹⁰ Aside from that, the Act explicitly includes as part of its definition such examples as “denying the Jewish people their right to self-determination” and “applying double standards” to Israel—charges frequently made against supporters of Palestinian rights.¹¹ For this reason, members of the Alliance for Academic Freedom—including Kenneth Stern, the principal author of the definition used in the Act—wrote regarding a previous version of this bill:

We oppose the Anti-Semitism Awareness Act ... because we believe it endangers academic freedom We believe its language could encourage punishments of legitimate expressions of political opinion. We don't believe that Congress should be in the business of setting forth official definitions of anti-Semitism. And we do not think any definition of anti-Semitism... has any legitimate application by Congress to contentious political speech on campus.¹²

For the same reason, Kenneth Stern told the House Judiciary Committee this bill “should not be considered in any form.”¹³

NEW EXECUTIVE ORDER

Even without the passage of the Anti-Semitism Awareness Act, this past summer the Department of Education initiated an investigation of the Middle East studies program shared by Duke University and the University of North Carolina, because of a complaint that noted it had organized a conference that included BDS members as panelists.¹⁴ More recently, after our task force had finished its work, President Trump issued Executive Order 13899, “Combating Anti-Semitism,” which requires that when considering cases of discrimination for programs and activities receiving federal funding, all executive departments and agencies must consider the definition of anti-Semitism employed in the Anti-Semitism Awareness Act. The Committee on Academic Freedom of the Middle East Studies Association clearly explained the implications of this executive order in a Dec. 12 letter to President Trump:

The deployment of such a broad, vague and flawed definition of anti-Semitism by government agencies threatens the constitutionally protected right to free speech and may have a chilling effect on teaching about, and public discussion of, the Israeli-Palestinian conflict on college and university campuses, thereby undermining the academic freedom so vital to the mission of our institutions of higher education.... We believe that all political speech, including criticism of any government or ideology and advocacy for any group's rights is, and

must remain, constitutionally protected We therefore call on you to revoke this executive order immediately.¹⁵

Agreeing with this view, SRRT Action Council proposes amending the resolution to oppose any executive order that would restrict First Amendment rights. [[Appendix C](#)]

ALA POLICIES

These restrictive bills have been strongly opposed by virtually every significant civil liberties organization in the U.S.—except one: the American Library Association. That is a surprising absence. One of ALA’s most fundamental documents, “The Universal Right to Free Expression: An Interpretation of the Library Bill of Rights,” contains both a mandate and a pledge regarding our support for free speech:

The American Library Association is unswerving in its commitment to human rights, but cherishes a particular commitment to privacy and *free expression*; the two *are inseparably linked and inextricably entwined with the professional practice of librarianship....*

Courageous people, in difficult and dangerous circumstances throughout human history, have demonstrated that freedom lives in the human heart and cries out for justice We draw inspiration from their example. They challenge us to *remain steadfast in our most basic professional responsibility to promote and defend the rights of privacy and free expression....*

The American Library Association opposes any use of governmental prerogative that leads to intimidation of individuals that prevents them from exercising their rights to hold opinions without interference, and to seek, receive, and impart information and ideas. *We urge libraries and librarians everywhere to resist such abuse of governmental power, and to support those against whom such governmental power has been employed.....*

*The American Library Association will not abrogate these principles. We believe that censorship corrupts the cause of justice, and contributes to the demise of freedom.*¹⁶

Our policy on Academic Freedom further states that ALA “*opposes any legislation or codification of documents . . . that undermine academic or intellectual freedom, chill free speech, and/or otherwise interfere with the academic community’s well-established norms and values of scholarship and educational excellence.*”¹⁷

“POLITICAL CAPITAL”

The indicated response to repressive legislation is clear. However, some members of the task force have argued that implementing our principles is not politically expedient. They have complained that the resolution opposes legislation that has bipartisan support, and have suggested that it would involve an unwise expenditure of our “political capital.” They have argued that ALA has limited public policy and advocacy resources, so it should not spend resources on issues outside of our legislative priorities. They have warned that, when required to take a position on an “outside of the library issue,” our Public Policy

and Advocacy staff are likely to alienate legislators they will later need to achieve actual legislative priorities. This, they claim, simply isn't strategic. And they have insisted that, although past resolutions might have gone out of the field of library specific issues, that is no reason to continue. Rather, other important civil liberties groups, such as the ACLU, can carry the non-library issues.

But there are no qualifications in ALA's pledge not to abrogate our principles. Our Interpretation of the Library Bill of Rights doesn't say "ALA supports free speech and intellectual freedom *except* when it's politically expedient," or "*except* when repressive legislation has bipartisan support." In fact, it is even *more* important for us to oppose repressive legislation when it *has* bipartisan support. Is it true that free expression is a "non-library issue"? How can that be the case when free expression is "inseparably linked and inextricably intertwined with the professional practice of librarianship"? And how can that be the case when defending the right to free expression is "*our most basic professional responsibility*"?

We insist that there is no better use of our "political capital" than defending our core values. And we would argue that when those values are under attack—as they increasingly are today—putting your head in the sand is not a "strategy." Then, it is even more important *strategically* to implement the provision in ALA's current *Strategic Plan* that identifies advocacy for intellectual freedom as a "key action area."¹⁸ Also, it is even more important for ALA to join with other civil liberties organizations in resisting those attacks—and not to leave that task to the ACLU.

The entire approach some of our friends on the task force have proposed is a radical departure from all of ALA's traditional practice. In the past we have always recognized the importance of defending our core values, even when "library issues" in the narrowest sense were not involved. For example, in relatively recent years we have opposed disinformation and media manipulation, supported the Dream Act, opposed use of torture, supported whistleblowers, supported the reunification of migrant children with their families, opposed voter suppression, and opposed a census question on citizenship. For some of our colleagues on the task force, this has all been a distraction that there is no reason to continue. For SRRT, these resolutions embody some of the most vital traditions of our profession.

Although we cannot guarantee there will be no costs to defending free speech, we believe that some of our friends on the task force exaggerate the potential costs of this resolution. While there have been unrelenting efforts to restrict the free speech rights of the movement for Palestinian rights, these have not all been successful. As noted, three federal courts have blocked this sort of legislation on First Amendment grounds. The Israel Anti-Boycott Act, which would have criminalized participation in boycotts of companies doing business in Israel and its settlements if they were called for by international governmental organizations, failed to pass in the last Congress and has not yet been reintroduced. Also, although S.1, containing the Combating BDS Act of 2019, passed in the Senate in 2019, 23 senators voted against it. So even in Congress, resistance to this repressive legislation is real.

Beyond that, in identifying the potential costs (and benefits) of this resolution we need to take public opinion into consideration. The evidence there is clear: a majority of the American public *opposes* this sort of restrictive legislation. In a poll conducted September 3-20, 2019 for the Brookings Institution 72% of respondents expressed the view that "We should **OPPOSE** laws that penalize people who boycott Israel because these laws infringe on the Constitutional right to free speech and peaceful protest."¹⁹ This general picture was confirmed by a poll conducted for the think tank Data for Progress September 13-16, 2019. It found that "Overall, voters oppose anti-BDS laws, 36 percent to 28 percent."²⁰

Of course, the political and financial capital of ALA is only enhanced by its reputation as a strong defender of free speech and intellectual freedom. That is at least partly why our advocacy work in these areas is highlighted on ALA's web pages. And that is why the most recent Annual Fund mailing sent out by ALA's Development Office in November 2019 specifically emphasized the Office for Intellectual Freedom's "direct support to library workers and others who are facing threats to intellectual freedom and privacy."²¹ But how long will ALA be able to benefit from its reputation if we abandon our actual support for free speech and intellectual freedom?

LEGISLATIVE CONCERNS

It has been asserted that we cannot name specific bills in our resolution, since that would put the meaning of the resolution at risk if those bills were changed as they move through the legislative process. To the best of our knowledge, this has never been an issue for previous resolutions or positions taken by ALA or other civil liberties organizations. ALA has *frequently* supported or opposed specific bills, or aspects of specific bills.²² So it is unclear why the issue is being raised for *this* particular resolution. Nevertheless, this concern is addressed in the resolved clauses of the revised resolution by the inclusion of the words: "... as introduced, and any other current or future versions of these bills that would continue to infringe on the free speech rights of supporters of the movement for Palestinian rights, including supporters of the BDS movement." Removal of reference to any specific bills would render this resolution innocuous. There is no Congressional supporter of the restrictive bills named in the resolution who sees a contradiction between these bills and free speech or intellectual freedom. So we need to make clear that we see a contradiction. If we do not have the courage to name the bills we oppose, no one will take us seriously—and there is no reason why they should.

It has been argued by some that in the legislative world the impact of opposition resolutions is "burnt bridges," and that most commonly, the harm outweighs the good. Again, this is the first time we have heard of such a consideration. In fact, ALA has repeatedly opposed specific legislation in its resolutions and other statements.²³ And on the face of it, this generalization hardly makes sense. Opposition to any bill involves *support* for its opponents; while support for any bill involves *opposition* to its opponents.

Some of our colleagues on the task force have argued it is an antitrust law violation to support a commercial boycott, and ALA agents who do this are legitimately susceptible to lawsuits and damages. Further, they have argued it is a violation of our 501(c)3 tax status to take a position on a political boycott. So whether BDS is engaged in commercial or political boycotting, they say, is somewhat debatable, but neither is appropriate for ALA. For these reasons, they have insisted, no reference to boycotting or the BDS group should end up in the final version of this resolution.

But neither the original resolution nor the revised resolution takes a position on the BDS boycott. In fact, the revised resolution explicitly states that "ALA does not currently take a position on the political views of BDS or anti-BDS supporters." And there is *no* prohibition on 501(c)3 organizations taking positions in support of the *right* of organizations or individuals to support a boycott. In fact, most civil liberties organizations that oppose anti-BDS legislation, such as the ACLU, the Center for Constitutional Rights, and the National Coalition Against Censorship, *are* 501(c)3 organizations. Jules Lobel, one of the leading constitutional and civil rights attorneys and scholars in the U.S. has advised us, "there is ABSOLUTELY nothing that prevents the ALA from taking a position on legislation that a majority of the organization believes denies Americans freedom of speech."²⁴ So this entire argument is simply irrelevant. We should also note that ALA legal counsel has advised the task force that BDS "is a political boycott and not illegal." It would be deeply troubling if the governing body of a leading civil liberties organization

embraced the view that it was bound by nonexistent restrictive legislation. Regarding the deletion of any reference to BDS from the resolution, much of the current legislation directed against supporters of Palestinian rights is aimed specifically at the BDS movement; it is primarily that movement's right to boycott that is being restricted. So it is crucial that the resolution clearly identify BDS as a central target of this legislation. Deleting any reference to BDS would obscure the resolution's entire purpose.

Finally, there seemed to be concern from some on the task force that the resolution was to be sent to "all members of Congress." It was proposed instead that it be sent only to certain targeted members. But sending our resolutions and statements to all members of Congress is not unusual; ALA has done that repeatedly in the past.²⁵ So why not do that with *this* resolution? It is important that all members of Congress—both those who will oppose and those who will welcome this resolution—understand our view on this issue. Limiting distribution would only limit its impact. There also seemed to be concern that the final resolved clause calls for the distribution of the *entire* resolution, rather than just the resolved clauses. In fact, the SRRT representatives on the task force introduced this provision because we were persuaded by arguments of the resolution's critics that some people might not understand why a library organization was taking a position on this issue. The entire resolution indicates clearly how our position is based directly on our principles.

CONCLUSION

Current legislation targeting supporters of Palestinian rights in the United States represents a serious challenge to free speech. Unless it is stopped, we can expect even more restrictive legislation against supporters of Palestinian rights—and then perhaps against other groups such as Black Lives Matter, Antifa, supporters of undocumented workers, or a new antiwar movement. Our "Universal Right to Free Expression" correctly describes the dynamic involved: "Any action [such as censorship] that denies the inalienable human rights of individuals only damages the will to resist oppression, strengthens the hand of the oppressor, and undermines the cause of justice."²⁶ Objections to this resolution based on political expediency are short-sighted and a betrayal of our traditions. Objections based on technical concerns invented for this resolution will probably be abandoned if it is defeated as we return to business as usual. Or worse, they will be codified and will become a further constraint on ALA's capacity to act. During this current assault on the core values of librarianship, ALA is obligated to fulfill its mandate and pledge, to live up to its reputation that has inspired public support, and to implement its current strategic plan by advocating for free expression with a clear, unambiguous, and widely distributed resolution condemning this restrictive legislation.

¹ Conor Friedersdorf, "The Constitutional Right to Boycott," *The Atlantic*, Feb. 2, 2018, <https://www.theatlantic.com/politics/archive/2018/02/is-there-a-constitutional-right-to-boycott/552077/>.

² Glenn Greenwald, "In a Major Free Speech Victory, a Federal Court Strikes Down a Law that Punishes Supporters of Israel Boycott," *The Intercept*, Jan. 32, 2018, <https://theintercept.com/2018/01/31/kansas-bds-law-free-speech/>. Italics added.

³ "Anti-Boycott Legislation Around The Country," Palestine Legal <https://palestinelegal.org/righttoboycott>.

⁴ , "ACLU, April 25, 2019; <https://www.aclu.org/press-releases/third-federal-court-blocks-anti-bds-law-unconstitutional>; "S.1 - Strengthening America's Security in the Middle East Act of 2019," <https://www.congress.gov/bill/116th-congress/senate-bill/1/text?q=%7B%22search%22%3A%5B%22%5C%22combating+bds+act%5C%22%22%5D%7D&r=1&s=2>; "H.R.336 - Strengthening America's Security in the Middle East Act of 2019," <https://www.congress.gov/bill/116th-congress/house-bill/336/text?q=%7B%22search%22%3A%5B%22%5C%22combating+bds+act%5C%22%22%5D%7D&r=1&s=2>.

[congress/house-bill/336/text?q=%7B%22search%22%3A%5B%22%5C%22combating+bds+act%5C%22%22%5D%7D&r=2&s=2](https://www.congress.gov/house-bill/336/text?q=%7B%22search%22%3A%5B%22%5C%22combating+bds+act%5C%22%22%5D%7D&r=2&s=2).

⁵ “ACLU LETTER OPPOSING S. 1 (COMBATING BDS ACT),” ACLU, JAN. 28, 2019, [HTTPS://WWW.ACLU.ORG/LETTER/ACLU-LETTER-OPPOSING-S-1-COMBATING-BDS-ACT](https://www.aclu.org/letter/aclu-letter-opposing-s-1-combating-bds-act); “ANTI-BDS LEGISLATION IN SENATE DISREGARDS FREE SPEECH,” NCAC, JAN. 11, 2019, [HTTPS://NCAC.ORG/NEWS/BLOG/ANTI-BDS-LEGISLATION-IN-SENATE-DISREGARDS-FREE-SPEECH](https://ncac.org/news/blog/anti-bds-legislation-in-senate-disregards-free-speech); “Oppose the Combating BDS Act of 2019,” *Defending Rights & Dissent*, <https://rightsanddissent.salsalabs.org/OpposeS1/index.html?eType=EmailBlastContent&eld=80f351f6-94bc-470d-a945-6dfc3f26fb32>.

⁶ Ron Kompeas, “Why these Democratic presidential hopefuls voted no on an anti-BDS bill,” *Times of Israel*, Feb. 8, 2019, <https://www.timesofisrael.com/why-these-democratic-presidential-hopefuls-voted-no-on-an-anti-bds-bill/>. The article states that 22 senators voted against this bill. The actual number was 23. (See https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=116&session=1&vote=00016.); Sen. Dianne Feinstein, “Feinstein: I Won’t Support Unconstitutional Israel Anti-Boycott Legislation,” Jan. 7, 2019, <https://twitter.com/SenFeinstein/status/1082397106424418304>.

⁷ “S.582 – Anti-Semitism Awareness Act of 2019,” <https://www.congress.gov/bill/116th-congress/senate-bill/852/text>; <https://www.congress.gov/bill/116th-congress/senate-bill/852/text>; “H.R.4009 - Anti-Semitism Awareness Act of 2019,” <https://www.congress.gov/bill/116th-congress/house-bill/4009/text>

⁸ See “S.582 – Anti-Semitism Awareness Act of 2019,” Sec. 2, Findings, <https://www.congress.gov/bill/116th-congress/senate-bill/852/text>,

⁹ PEN America, *Chasm in the Classroom: Campus Free Speech in a Divided America*, 2019, p.75, <https://pen.org/wp-content/uploads/2019/04/2019-PEN-Chasm-in-the-Classroom-04.25.pdf>.

¹⁰ “Anti-Semitism Awareness Act continues to threaten free speech on campus,” Foundation for Individual Rights in Education, April 12, 2019, <https://www.thefire.org/anti-semitism-awareness-act-continues-to-threaten-free-speech-on-campus/>; “CCR Joins Rights Organizations in Opposing Anti-Semitism Awareness Act,” Center for Constitutional Rights, Sept. 19, 2019, <https://ccrjustice.org/ccr-joins-rights-organizations-opposing-anti-semitism-awareness-act>.

¹¹ “S.582 – Anti-Semitism Awareness Act of 2019,” <https://www.congress.gov/bill/116th-congress/senate-bill/852/text>; “Romanian Chairmanship 2016,” International Holocaust Remembrance Alliance, May 26, 2016, https://www.holocaustremembrance.com/sites/default/files/press_release_document_antisemitism.pdf.

¹² <https://www.insidehighered.com/views/2018/06/12/criticism-anti-semitism-awareness-act-opinion>

¹³ Kenneth S. Stern, “Will Campus Criticism of Israel Violate Federal Law?,” Opinion, *New York Times*, Dec. 12, 2016, <https://www.nytimes.com/2016/12/12/opinion/will-campus-criticism-of-israel-violate-federal-law.html>.

¹⁴ Erica L. Green, “U.S. Orders Duke and U.N.C. to Recast Tone in Mideast Studies,” *New York Times*, Sept. 19, 2019, <https://www.nytimes.com/2016/12/12/opinion/will-campus-criticism-of-israel-violate-federal-law.html>.

¹⁵ Dina Rizk Khoury and Laurie Brand, “Letter Criticizing President Trump’s Order on Combatting Anti-Semitism,” Dec. 12, 2019, Committee on Academic Freedom, Middle East Studies Association, <https://mesana.org/advocacy/committee-on-academic-freedom/2019/12/12/letter-criticizing-president-trumps-executive-order-on-combating-anti-semitism>.

¹⁶ “The Universal Right to Free Expression: An Interpretation of the Library Bill of Rights,” American Library Association, Adopted January 16, 1991, by the ALA Council; and amended on July 1, 2014. <http://www.ala.org/advocacy/intfreedom/librarybill/interpretations/universalright>. Italics added.

¹⁷ ALA Policy B.2.5 Support of Academic Freedom, American Library Association, <http://www.ala.org/aboutala/governance/policymanual/updatedpolicymanual/section2/53intellfreedom>. Italics added.

¹⁸ “American Library Association Strategic Directions,” American Library Association, June 28, 2015, (2017 Update), http://www.ala.org/aboutala/sites/ala.org.aboutala/files/content/governance/StrategicPlan/Strategic%20Directions%202017_Update.pdf.

¹⁹ “The U.S. and the Middle East: What Americans Think,” the Brookings Institution, Oct. 22, 2019, pp. 9-10, https://www.brookings.edu/wp-content/uploads/2019/10/fp_20191022_us_middleeast_poll_transcript.pdf; “American Attitudes toward the Middle East: a Public Opinion Poll by Shibley Telhami,” Center for Middle East

Policy at Brookings, p. 54,

<https://criticalissues.umd.edu/sites/criticalissues.umd.edu/files/UMCIP%20Middle%20East%20PowerPoint.pdf>

²⁰ Emma Saltzberg,, Senior Fellow, Data for Progress, “Boycott, Divestment, and Sanctions (polling),”, p. 9, <http://filesforprogress.org/memos/BDS-and-anti-boycott-laws.pdf>. Both polls also found a high degree of support for BDS among Democrats. The Brookings Institution poll found that 48% of Democrats who had heard of BDS supported it, while 15% opposed it. (“American Attitudes toward the Middle East,” p. 43.) The Data for Progress poll found that 44% of respondents who voted Democrat in the 2018 election support BDS, while 15% opposed it. (Emma Saltzberg, p. 5.)

²¹ Wanda Brown and Mary Ghikas, “Libraries Transform,” letter, Nov. 20, 2019.

²² For ALA **opposition** to specific bills, etc., see for example: “RESOLUTION ON THE USA PATRIOT ACT AND RELATED MEASURES THAT INFRINGE ON THE RIGHTS OF LIBRARY USERS,”

<https://www.ala.org/ala/washoff/WOissues/civilliberties/theusapatriotact/alaresolution.htm>; “ACTIONS TAKEN BY THE ALA COUNCIL AT THE 2012 ALA MIDWINTER MEETING,” “ADOPTED, ALA CD#20.1, Revised, Resolution Opposing the Research Works Act, as amended to read” and “ADOPTED, ALA CD#20.2, Resolution Opposing the Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act of 2011 (PIPA),”

http://www.ala.org/aboutala/sites/ala.org.aboutala/files/content/governance/council/council_actions/2012mw_a_nnuual_actions/actions_mw2012.pdf; “ALA urges Senate to reject bill to make Register of Copyrights a presidential appointee,”<http://www.ala.org/news/press-releases/2017/04/ala-urges-senate-reject-bill-make-register-copyrights-presidential-appointee>,

“American Library Association urges library advocates to oppose cybersecurity bill CISPA,” <http://www.ala.org/news/press-releases/2012/04/american-library-association-urges-library-advocates-oppose-cybersecurity>; “Keep Copyright Office in Library of Congress,”

<https://americanlibrariesmagazine.org/blogs/the-scoop/keep-copyright-office-in-library-of-congress/>; “ALA WASHINGTON OFFICE REPORT TO COUNCIL” January 16, 2019, “Library copyright office” and “CASE Act,”

http://www.ala.org/aboutala/sites/ala.org.aboutala/files/content/governance/council/council_documents/2019_ms_council_docs/ALA%20CD%2030%20Washington%20Office%20Report.pdf; For ALA **support** for specific bills,

see for example: “Resolution in Support of Requesting Congress to Reintroduce and Vote on the Dream Act,”

http://www.ala.org/aboutala/sites/ala.org.aboutala/files/content/governance/council/council_documents/2011mw_council_docus/cd39%20dream_act.pdf; “RESOLUTION ON CURBING GOVERNMENT SURVEILLANCE AND RESTORING CIVIL LIBERTIES,”

http://www.ala.org/aboutala/sites/ala.org.aboutala/files/content/cd_20_20_4%20COL%20Report.pdf;

“Supporting the USA FREEDOM Act of 2015: ALA’s perspective,”

<https://www.districtdispatch.org/2015/05/supporting-the-usa-freedom-act-of-2015-alas-perspective/>; “American Library Association Statement of Support for “Digital Learning Equity Act of 2015,”

<http://www.ala.org/news/press-releases/2015/06/american-library-association-statement-support-digital-learning-equity-act>; “Save the Internet Bill Introduced,” <https://americanlibrariesmagazine.org/blogs/the-scoop/bicameral-save-the-internet-bill-introduced/>.

²³ See links to ALA opposition to specific bills in previous end note.

²⁴ Jules Lobel, email message to Tom Twiss, Dec. 30, 2019.

²⁵ “SRRT Resolutions 2005: Resolution on the Connection Between the Iraq War and Libraries,”

<http://www.ala.org/rt/srrt-resolutions-2005-resolution-connection-between-iraq-war-and-libraries>; “Resolution on the Protection of Privacy Rights,” <http://www.ala.org/rt/srrt-resolutions-2002-resolution-protection-privacy-rights>;

“ALA Pushes for Maximum FY16 Library Funding,” Report on Washington Office Activities, Oct. 13, 2015; http://www.ala.org/aboutala/sites/ala.org.aboutala/files/content/governance/officers/eb_documents/2015_2016_ebdocuments/ebd12_1_washington_office_rpt_fa15.pdf;

“ALA Calls for ‘Public Option’ in Health Care Reform,” http://www.ala.org/news/news/pressreleases2009/august2009/pubop_wo;

“SRRT Resolutions 2004: Resolution Against the Use of Racist Training Materials by the U.S. Military,” <http://www.ala.org/rt/srrt-resolutions-2004-resolution-against-use-racist-training-materials-us-military>; “SRRT Resolutions 2002: Resolution Against Secret Tribunals,” <http://www.ala.org/rt/srrt-resolutions-2002-resolution-against-secret-tribunals>.

²⁶ “The Universal Right to Free Expression: An Interpretation of the Library Bill of Rights,”
<http://www.ala.org/advocacy/intfreedom/librarybill/interpretations/universalright>.

Appendix A

December 20, 2019

To: Committee on Legislation (COL), Intellectual Freedom Committee (IFC), International Relations Committee (IRC)

From: Resolution review task force

Subject: BDS resolution

A report/forwarding letter to the Committee on Legislation (COL), Intellectual Freedom Committee (IFC), International Relations Committee (IRC)

Resolution Opposing the Free Speech and Intellectual Freedom Restrictions in the Combating BDS Act, Anti-Semitism Awareness Act, and Related Legislation

Former title: Resolution in Defense of the Free Speech of Supporters of the Movement for Palestinian Rights

The Boycott, Divestment, Sanctions (BDS) resolution was approved by a vote of 63-62 at the ALA membership meeting on Saturday, June 22. The resolution was brought before Council on Sunday, June 23.

Council voted to refer the resolution to the Committee on Legislation (COL), Intellectual Freedom Committee (IFC), and International Relations Committee (IRC). Council wanted the committees to review the resolution and report back to the ALA Council at the 2020 Midwinter Meeting. The chairs of each committee formed a task force that also included representatives from the Social Responsibilities Round Table (SRRT). The task force report was to be completed by Midwinter 2020.

Emily Drabinski (IRC), co-leader
 Eldon Ray James (IFC), co-leader
 Robert Barr (COL)
 Tara Brady (SRRT)
 Sue Considine (IRC)
 Sara Dallas (COL)
 Jim DelRosso (IFC)
 Tom Twiss (SRRT)
 Andrew Wertheimer (member of ALA Council)

In a series of three virtual meetings beginning on Oct. 10, the task force discussed both the resolution and the task set by Council. Most of task force members did not want to change the wording of the resolution in a way that nullified the intent of the membership that voted for the resolution but wanted to change any wording that made the resolution's purpose less clear. The first act of the task force changed the title of resolution to reflect that purpose: opposing the free

speech and intellectual freedom restrictions in the Combating BDS Act, Anti-Semitism Awareness Act, and related legislation.

Some members of the task force wanted to change the substance of the resolution but ultimately that minority position did not gain enough support.

This report does not discuss all of the task force's revisions. This report highlights only what the co-leaders considered the most important of the revisions and the most significant points of contention.

While supporting both free speech and intellectual freedom, COL representatives opposed including specifically named legislation in the resolution. One COL representative stated in an early comment "...ALA has limited public policy and advocacy resources. COL has significant concerns with spending resources on issues that are outside of our legislative priorities. It is far more effective to take specific lobbying actions on issues that are directly and unambiguously tied to libraries with legislators. Our PPA staff tells us that they are unable to achieve successful outcomes when they are required to take a position on an outside-of-the-library issue over which they have little influence and little perceived expertise. Further, they are likely to alienate legislators who they will later need to achieve actual legislative priorities. Simply put: this isn't strategic."

Other task force members stated that the resolution would require minimal resources to implement. A SRRT representative stated that "...defending our core values is not an 'outside-of-the library issue,' and that ALA has a long tradition of taking positions in defense of our core values. There should be no higher legislative priority." The SRRT representative also noted that ALA policy says that "we oppose restrictions of free expression and the undermining of intellectual freedom;" it does not say we defend free speech and intellectual freedom only when that does not alienate certain legislators. COL representatives countered that while past resolutions may have gone out of the field of library specific issues that is no reason to continue. "We have a very divided Congress and we must be able to work with both sides of the aisle," he said.

COL also expressed concern that naming specific bills in the resolution would put the meaning of the resolution at risk if those bills were changed as they move through the legislative process. Indeed, as the task force completed its work, President Trump signed an executive order meant in part to address BDS actions on college campuses. The policy picture around the status of BDS activism in the United States is rapidly changing. A SRRT representative noted that ALA has frequently supported or opposed specific bills. The possibility that the text of the bills named might change was addressed by revising the wording of the resolved clauses to include the wording "...as introduced, and any other current or future versions of these bills that would continue to infringe on the free speech rights of supporters of the movement for Palestinian rights, including activists and supporters of the BDS movement." It would also be possible to insert a clause opposing President Trump's recent executive order.

COL representatives countered that the federal policy environment has changed dramatically. More issues are on the table and ALA needs to focus on the issues for which ALA is the only advocate. Other important civil liberties groups, such as the ACLU can carry the non-library issues, said a COL representative. In response, SRRT representatives observed that it would be

shortsighted and a betrayal of ALA's traditions to abandon the defense of our core values when they are under attack. In the present policy environment all supporters of civil liberties need to speak up.

The mover of the resolution, one of the SRRT representatives, insisted that the resolution lost its meaning without the names of the specific legislation opposed. Others on the committee agreed and ultimately the wording of resolution contains specific legislation titles. COL continued to disagree with the inclusion of specific legislative titles.

The task force also discussed a perception of some ALA members that the resolution expressed anti-Semitism. The movers disagreed, stating that was neither their intent nor their perception. The essence of their point of view is that supporting the right to constitutionally protected criticism of Israel is not anti-Semitism. They agreed, after much discussion, to changes in the language of the title and resolution itself to minimize references that might be misconstrued and to add language that reinforced a forceful stand against both anti-Semitism and Islamophobia.

Another point of contention centered on the nature of the BDS movement. While insisting the BDS movement is non-violent, SRRT representatives agreed to remove wording that labeled the movement "non-violent" from the resolution. SRRT representatives also agreed to add the phrase "...while ALA does not currently take a position on the political views of BDS or anti-BDS supporters, we strongly oppose efforts to stifle political expression."

The task force discussed at length positions on boycotts as speech and the nature of political and economic boycotts as defined by federal courts. We opted to reference the one decision by the Supreme Court which clearly states that a boycott is protected speech. There remained some unresolved questions from task force members about whether the BDS movement was a political as well as economic action but those are issues unresolved in federal courts as well.

The task force also suggests that this resolution be reviewed by the ALA legal counsel to assess whether the wording of the resolution conflicts with any ALA policy. Does ALA have a policy that prohibits the association from taking a position that supports a commercial or political boycott? One COL representative stated, "It is an antitrust law violation to support a commercial boycott and ALA agents who do this are legitimately susceptible to lawsuits and damages. It is a violation of our 501(c)3 tax status to take a position on a political boycott. Whether this particular group is engaged in commercial or political boycotting is somewhat debatable, but neither is appropriate. From the perspective of the Committee on Legislation, no reference to boycotting or the BDS group should end up in the final version of this resolution." Further, COL representatives asserted that opposition resolutions should be reserved for only the most critical needs: In the legislative world, the impact of opposition resolutions is "burnt bridges." Sometimes this makes sense, for example, defunding the IMLS, but more commonly, the harm outweighs the good, COL representatives said.

COL desired to follow legal advice from ALA counsel on the antitrust and tax status limitations issues. SRRT believes that the consensus of civil liberties organizations and constitutional experts is more relevant than the advice of ALA counsel regarding the legal right to boycott.

A SRRT representative noted that ALA frequently takes positions opposing legislation, policies, executive orders, etc. The SRRT representative provided six recent examples. SRRT insisted that

support for the free speech of BDS is not the same as support for BDS, and that this resolution takes no position on BDS. However, the SRRT representative also noted that BDS is a political boycott and that there is no prohibition on 501(c)3 organizations supporting political boycotts. The SRRT representative maintained that supporters of BDS are the main groups and individuals targeted by proposed legislation, so removal of reference to BDS would make the resolution ambiguous and ineffective.

As a review task force we did not take a vote endorsing or opposing the resolution believing that was beyond the task set for us by the committee chairs. Our respective organizations may take such action but we, as a task force, limited ourselves to attempting to revise the wording of the resolution to eliminate any misconceptions about its significance and intent.

While we represented different organizations and each of us held firm opinions on this resolution, each member of the working group treated other members with respect and consideration. We worked in a collegial arrangement that met the task assigned to us and each of us gained insight into the divergent opinions of others.

The task force also suggests that Council allows the mover or other SRRT representative as well as a COL representative, to speak to the resolution from the floor when it comes before Council for a final vote.

Submitted by:

Emily Drabinski (IRC) and Eldon Ray James (IFC)
co-leaders

Appendix B

Resolution Opposing the Free Speech and Intellectual Freedom Restrictions in the Combating BDS Act, Anti-Semitism Awareness Act, and Related Legislation

Whereas, the American Library Association (ALA) “opposes any use of governmental prerogatives that lead to the intimidation of individuals or groups and discourages them from exercising the right of free expression as guaranteed by the First Amendment to the U.S. Constitution” (ALA Policy B.2.4 Governmental Intimidation);

Whereas, ALA “opposes any legislation or codification of documents . . . that undermine academic or intellectual freedom, chill free speech, and/or otherwise interfere with the academic community’s well-established norms and values of scholarship and educational excellence” (ALA Policy B.2.5 Support of Academic Freedom);

Whereas, such bills as S.1, the Strengthening America's Security in the Middle East Act of 2019, which the U.S. Senate passed on February 5, 2019, and its companion bill H.R.336 in the House include the Combating BDS Act, which the American Civil Liberties Union (ACLU) has explained, “would condone state laws penalizing businesses and individuals who participate in boycott, divestment, or sanctions (‘BDS’) activities and other politically motivated boycotts against Israel and Israeli controlled territories”;

Whereas, the ACLU has determined that the intent of the Combating BDS Act is “contrary to the spirit and letter of the First Amendment guarantee of freedoms of speech and association;” and the National Coalition Against Censorship has similarly opposed the act on First Amendment grounds; and while ALA does not currently take a position on the political views of BDS or anti-BDS supporters, we strongly oppose efforts to stifle political expression; and

Whereas, in *NAACP v. Claiborne Hardware Co.* (458 U.S. 886 (1982)), the Supreme Court ruled that the First Amendment protects political boycotts as protected speech;

Whereas, Boycott, Divestment, and Sanctions (BDS) is a movement, modeled after the struggle against apartheid in South Africa, which calls for pressure on Israel to attain Palestinian rights;

Whereas, federal courts have struck down provisions of state anti-BDS laws that required people to sign a pledge not to participate in BDS activities as a condition of public employment or ability to enter into a contract with a public agency, the sort of anti-BDS legislation condoned by the Combating BDS Act;

Whereas, S.852 and H.R. 4009, the Anti-Semitism Awareness Act of 2019, currently before Congress, provides a definition of anti-Semitism to be used for the enforcement of Federal antidiscrimination laws concerning education programs or activities;

Whereas, as noted in the Act, the Department of Education is already empowered to investigate incidents of anti-Semitism as a form of discrimination;

Whereas, according to the ACLU, the “overbroad definition of anti-Semitism” in the Anti-Semitism Awareness Act “risks incorrectly equating constitutionally protected criticism of Israel with anti-Semitism, making it likely that free speech will be chilled on campuses”; and

Whereas, the ACLU, the Alliance for Academic Freedom, the Center for Constitutional Rights, Defending Rights & Dissent, the Foundation for Individual Rights in Education, PEN America, and Kenneth Stern, a primary author of the definition of anti-Semitism employed in the bill, have all opposed previous versions of the bill or the current version of the Anti-Semitism Awareness Act; now therefore be it

Resolved, that the American Library Association, on behalf of its members:

1. opposes S.1 and H.R.336 as introduced, and any other current or future versions of these bills that would continue to infringe on the free speech rights of supporters of the movement for Palestinian rights, including supporters of the BDS movement; and
2. opposes S.852 and H.R. 4009 as introduced, and any other current or future versions of these bills that would threaten to chill free speech on college campuses of supporters of the movement for Palestinian rights, including supporters of the BDS movement; and
3. opposes any federal, state, or local legislation, or campus policy that would restrict, or that currently restricts, First Amendment rights, that include speech through boycotts, of supporters of the movement for Palestinian rights or other political movements; and
4. opposes anti-Semitism, [Islamophobia](#), and all other forms of racism, and remains concerned about the increase in bigotry-motivated violence; and
5. send copies of this entire resolution to all members of Congress and all civil liberty organizations named in the resolution

Appendix C

Proposed amendment to **Resolution Opposing the Free Speech and Intellectual Freedom Restrictions in the Combating BDS Act, Anti-Semitism Awareness Act, and Related Legislation:**

Insert: “or any executive order” after “opposes any federal, state, or local legislation,” in resolved clause 3, so that it reads:

3. opposes any federal, state, or local legislation, or any executive order or campus policy that would restrict, or that currently restricts, First Amendment rights, that include speech through boycotts, of supporters of the movement for Palestinian rights or other political movements; and