

LDB to MLA: Drop Ultra Vires Boycott Resolution

Washington, D.C., December 20: Lawyers at the Louis D. Brandeis Center for Human Rights Under Law (LDB) have cautioned the Modern Language Association (MLA) against a controversial anti-Israel resolution that some MLA members are urging upon the association. [LDB](#) is a national civil rights organization, known for its work fighting anti-Semitism in higher education.

“MLA needs to know that these resolutions are unlawful and may subject the organization to liability,” [LDB President Kenneth L. Marcus](#) commented. “The MLA is chartered as a scholarly organization to promote the study of modern languages, not a political organization to engage in political affairs relating to Israel and the Middle East. It is unlawful for them to act outside their proper authority. They chose to be a scholarly association, rather than a political organization. What they cannot do is to maintain that they are going to be one kind of nonprofit entity and then do something very different.”

The Brandeis Center letter informed the MLA President and Executive Director in writing that the proposed resolution is *ultra vires* – that is, outside the legal framework by which the MLA has been established – and as an organization that is incorporated in the state of Maryland, likely illegal under Maryland corporate law. Further, the proposed resolution is inconsistent with the mission and programs that the MLA reports to the Internal Revenue Service.

“Many MLA members are concerned that the proposed anti-Israel resolution is discriminatory, anti-Semitic, and a violation of academic freedom. They are right to raise those issues. But the MLA’s leadership also needs to be aware of the legal ramifications of what they are doing,” Marcus added. “These include duties under corporation and taxation law.”

LDB’s letter explained:

A corporation, including an incorporated non-profit academic association, is only empowered to act in furtherance of its corporate mission. Where a corporation acts outside of its power or capacity, as set forth in the corporate mission, the act is *ultra vires* and subject to injunction, liability, or both under Maryland Code, Corporations & Associations § 1-403.

Marcus added, “There is a place in our democracy for political agitation, but it is very different than the role of scholarly associations. The MLA’s leadership owes it to the MLA’s members, supporters, state of incorporation, and the Internal Revenue Service to do what it says it will do in the association’s charter, IRS filings, and in other corporate and taxation documents.”

The corporate mission of the MLA, as set forth in the MLA Constitution, is “to promote study, criticism, and research in the more and less commonly taught modern languages and their literatures and to further the common interests of teachers of these subjects.”

(MLA Const. art. II.) LDB's letter informed the MLA President and Executive Director that the "boycott resolution is clearly unrelated to promotion of the study, criticism, and research of modern languages and literature. Indeed, it does not even purport to be intended to further the field of modern languages."

The MLA's proposed resolution is very similar to a 2013 American Studies Association (ASA) resolution to boycott Israeli academic institutions. This past April, the Brandeis Center, along with prominent litigators at Marcus & Auerbach and Barnes & Thornburg, filed a lawsuit against the ASA on behalf of four distinguished American Studies professors, challenging this unlawful boycott of Israel.

The Brandeis Center's clients, well-known academics in the field of American Studies, [filed suit](#) "to restore the ASA to its stated mission – the promotion of the study of American culture – so that the members of the ASA can once again faithfully exercise their membership."

The text of the Brandeis Center's letter is as follows:

December 14, 2016

VIA E-MAIL

Kwame Anthony Appiah, President
Modern Language Association of America
kappiah@mla.org

Rosemary G. Feal, Executive Director
Modern Language Association of America
rfeal@mla.org

RE: MLA Resolution to Boycott Israeli Academic Institutions

Dear President Appiah and Dr. Feal,

We are the legal staff of the Louis D. Brandeis Center for Human Rights Under Law, a national legal advocacy organization established to advance the civil and human rights of the Jewish people and promote justice for all. We have long been aware of President Appiah's contributions to ethics, and of the scholarly reputation of the Modern Language Association.

We are disappointed to learn about a proposed resolution to boycott Israeli academic institutions ("the boycott resolution") that is currently pending in the MLA. This divisive resolution seeks unprecedented action from the MLA that is far beyond the capacity and powers set forth in the MLA's corporate charter. It is also

inconsistent with the mission and programs that the MLA reports to the IRS in the Form 990.

Should the boycott resolution pass it would be *ultra vires*, that is, outside the legal framework by which the MLA has been established. A corporation, including an incorporated non-profit academic association, is only empowered to act in furtherance of its corporate mission. Where a corporation acts outside of its power or capacity, as set forth in the corporate mission, the act is *ultra vires* and subject to injunction, liability, or both under Maryland Code, Corporations & Associations § 1-403.

The corporate mission of the MLA is set forth in the MLA Constitution:

The object of the association shall be to promote study, criticism, and research in the more and less commonly taught modern languages and their literatures and to further the common interests of teachers of these subjects.

(MLA Const. art. II.) The boycott resolution is clearly unrelated to promotion of the study, criticism, and research of modern languages and literature. Indeed, it does not even purport to be intended to further the field of modern languages. It also differs from the sorts of “political” questions that the MLA has addressed in the past: “the growth of contingent labor and the decline of tenure in higher education; language study as an educational right; and, very broadly, a diminishment in support for the humanities,” as President Appiah pointed out in a recent column. (K. Anthony Appiah, *President’s Column: Taking Issue, Taking Stock*, MLA NEWSLETTER (Winter 2016) at 3.) Indeed, it may be maintained that the boycott resolution harms study and research by dividing the membership, and excluding academics along political lines based on ethnic and national associations, thereby undermining the values that the MLA works to advance. Simply stated, the boycott resolution is *ultra vires* and, if passed by the MLA, would violate Md. Corp. & Assoc. § 1-403 and leave MLA officers open to potential liability under Maryland law.

As you may be aware, the Brandeis Center represents members of the American Studies Association (ASA) in a lawsuit against the ASA challenging a resolution very similar to the one at issue here. That lawsuit alleges, *inter alia*, that the ASA resolution is *ultra vires* and illegal. For the same reasons, we believe that the MLA’s proposed boycott resolution is also *ultra vires*, and would be illegal under the law of Maryland.

Furthermore, we are struck by the prospect that the divisive boycott resolution may pass with as little as 10% of the membership vote. As President Appiah observed in *Taking Issue, Taking Stock*, “[i]t is evident that the membership is divided on the issue.” We question whether the charter members of the MLA ever intended for the 10% rule to apply to such controversial provisions. Rather, we

believe that the 10% rule was enacted to allow for the passage of non-controversial resolutions pertaining to matters where the 10% reflects a broader and perhaps self-evident consensus among the members, not to address political views where the membership is likely to be deeply divided - not only about the content of the resolution, but also about whether the subject falls within the fundamental purpose of the association. President Appiah has properly called for a general review of the assumptions behind and procedures called for when the organization takes up such issues.

We are also concerned about the boycott resolution's clearly negative effect on academic freedom. Although the boycott resolution states, "When academic freedom is curtailed, higher education is compromised," it is quite obvious that the resolution itself would severely limit academic exchange and collaboration. It would directly discriminate against the MLA's Israeli members and those who plan to collaborate with them, and harm the interests of thousands of students who seek to study abroad in Israel, or engage in research partnerships with Israeli academics.

We respectfully call on your leadership to table or reject the boycott resolution. The boycott resolution can only bring further divisiveness, and that may lead to irreparable damage to both the internal culture and the reputation of the MLA, as it has for other associations that have passed such resolutions. Moreover, if the resolution is adopted, it may open the MLA to a lawsuit similar to the one pending against the ASA.

Thank you in advance for your serious consideration of this matter. We are available to share our expertise on these issues, and further discuss our recommendations with you. We can be reached by e-mail at klmarcus@brandeiscenter.com or by phone at (202) 559-9296.

Sincerely,

The Louis D. Brandeis Center for Human Rights Under Law



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About the Louis D. Brandeis Center: The Louis D. Brandeis Center, Inc., or LDB, is an independent, nonprofit organization established to advance the civil and human rights of the Jewish people and promote justice for all. The Brandeis Center conducts research, education, and advocacy to combat the resurgence of anti-Semitism on college and university campuses. It is not affiliated with the Massachusetts university, the Kentucky law school, or any of the other institutions that share the name and honor the memory of the late U.S. Supreme Court justice. For more information, contact Aviva Vogelstein at (202) 559-9296 or avogelst@brandeiscenter.com.